

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported): **March 30, 2006**

SILICON LABORATORIES INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

000-29823
(Commission File Number)

74-2793174
(IRS Employer
Identification No.)

4635 Boston Lane, Austin, TX 78735
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: **(512) 416-8500**

Not Applicable

(Former Name or Former Address, if Changed since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

On March 30, 2006, Silicon Laboratories Inc., a Delaware corporation, as the lessee, and BAL Investment & Advisory, Inc., a Delaware corporation, as the lessor, entered into a Lease, Deed of Trust and Security Agreement (the "Lease Agreement"). In connection with the closing of the Lease Agreement, Silicon Laboratories also entered into a Participation Agreement dated March 30, 2006 with BAL Investment & Advisory, Wells Fargo Bank Northwest, National Association and various other financial institutions named therein.

Under the terms of the Lease Agreement, Silicon Laboratories will lease a facility in Austin, Texas for its corporate headquarters. The property on which the facility is located is subject to a 99-year ground lease between the City of Austin and, as the assignee of the ground lease, BAL Investment & Advisory. The facility contains approximately 221,000 square feet, of which certain portions have been subleased. The Lease Agreement has a term of seven years. The base rent for the term of the lease is payable in arrears in quarterly installments in an amount equal to the interest accruing on \$44.3 million at the annual rate of three-month LIBOR (adjusted at the end of each three-month period) plus a margin of approximately 1.1%. In addition to base rent, the Lease Agreement requires Silicon Laboratories to pay all taxes, insurance and operating costs relating to the use and operation of the facility and to perform all maintenance and repairs of the facility. Silicon Laboratories is also responsible for the costs of any tenant improvements that it elects to make associated with the facility.

The Lease Agreement and Participation Agreement impose certain obligations on Silicon Laboratories and grants certain rights and remedies to BAL Investment & Advisory in the event of certain defaults by Silicon Laboratories under the Lease Agreement or the Participation Agreement, including the right to terminate the Lease Agreement, to bring suit to collect damages, and to compel Silicon Laboratories to purchase the facility. The Lease Agreement and Participation Agreement contain other customary representations, warranties, obligations, conditions, indemnification provisions and termination provisions, including covenants that Silicon Laboratories shall maintain unencumbered cash and highly-rated short term investments of at least \$75 million and a ratio of funded debt to EBITDAR over the four prior fiscal quarters of no greater than 1.5 to 1.

During the term of the Lease Agreement, Silicon Laboratories has an on-going option to purchase the building for a total purchase price of approximately \$44.3 million. Prior to the expiration of the term, Silicon Laboratories is required to either purchase the facility for approximately \$44.3 million or, provided that Silicon Laboratories is not in default under the Lease Agreement or the Participation Agreement, Silicon Laboratories may elect to cause the facility to be sold to a party unaffiliated with Silicon Laboratories (the "Sale Option"). In order to exercise the Sale Option, Silicon Laboratories must make a payment to BAL Investment & Advisory on or before the expiration of the Lease Agreement in the amount of approximately \$35.3 million. To the extent that the net proceeds generated from the sale of the facility to a third party exceed \$9.0 million, Silicon Laboratories would have the right to receive (a) substantially all

of such excess proceeds if the sale occurs prior to the end of the term or (b) up to approximately \$35.3 million of such excess proceeds if the sale occurs after the end of the term.

The foregoing descriptions are subject to, and qualified in their entirety by, the Lease Agreement and the Participation Agreement. The Lease Agreement and the Participation Agreement are attached hereto as Exhibit 10.1 and Exhibit 10.2, respectively, and the terms thereof are incorporated herein by reference.

ITEM 2.03. CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

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ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

(c) Exhibits.

- 10.1 Lease, Deed of Trust and Security Agreement dated March 30, 2006 among Silicon Laboratories Inc., BAL Investment & Advisory, Inc. and Gary S. Farmer.
- 10.2 Participation Agreement dated March 30, 2006 among Silicon Laboratories Inc., BAL Investment & Advisory, Inc., Wells Fargo Bank Northwest, National Association and various other financial institutions named therein.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SILICON LABORATORIES INC.
(Registrant)

April 5, 2006
Date

/s/ Russell J. Brennan
Russell J. Brennan
VICE PRESIDENT AND
CHIEF FINANCIAL OFFICER
(PRINCIPAL ACCOUNTING OFFICER)

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<u>Exhibit No.</u>	<u>Description</u>
10.1	Lease, Deed of Trust and Security Agreement dated March 30, 2006 among Silicon Laboratories Inc., BAL Investment & Advisory, Inc. and Gary S. Farmer.
10.2	Participation Agreement dated March 30, 2006 among Silicon Laboratories Inc., BAL Investment & Advisory, Inc., Wells Fargo Bank Northwest, National Association and various other financial institutions named therein.

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LEASE, DEED OF TRUST AND
SECURITY AGREEMENT

Dated as of March 30, 2006

among

SILICON LABORATORIES INC.,
as Lessee

and

BAL INVESTMENT & ADVISORY, INC.,
as Lessor

and

GARY S. FARMER,
as the Deed of Trust Trustee pursuant to Section 24.2 hereof

This Lease, Deed of Trust and Security Agreement has been executed in multiple counterparts. To the extent, if any, that this Lease, Deed of Trust and Security Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no lien on this Lease, Deed of Trust and Security Agreement may be created through the transfer or possession of any counterpart hereof other than counterpart "Number 1," which shall be identified as the counterpart containing the receipt therefor executed by Wells Fargo Bank Northwest, National Association, as Collateral Agent, on or following the signature page thereof.

This counterpart is [not] the original counterpart.

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EXHIBITS

EXHIBIT A — Legal Description of Land
EXHIBIT B — Memorandum of Lease, Deed of Trust and Security Agreement

LEASE, DEED OF TRUST AND SECURITY AGREEMENT

This Lease, Deed of Trust and Security Agreement dated as of March 30, 2006 (as amended, supplemented, or otherwise modified from time to time, this “*Lease*”), among BAL INVESTMENT & ADVISORY, INC., a Delaware corporation, having its principal office at One Financial Plaza, 2nd Floor, Mail Code: RI1-537-02-02, Providence, Rhode Island 02903, as Lessor (“*Lessor*”) and SILICON LABORATORIES INC., a Delaware corporation, having its principal office at 4635 Boston Lane, Austin, Texas 78735, as Lessee (“*Lessee*”), and GARY S. FARMER, a resident of Travis County, Texas, as the Deed of Trust Trustee for the use and benefit of the Lessor, whose office is located at 401 Congress Avenue, Suite 1500, Austin, Texas 78701 (the “*Deed of Trust Trustee*”).

WITNESSETH:

The parties are entering into the Operative Documents pursuant to which the Participants agree to provide financing for the acquisition of the Leased Property.

On the Closing Date, Lessor, solely using the Lessor Amount and the Advance funded by the Lenders, will, *inter alia*, (i) purchase the Facility from the Seller and (ii) assume all of the Seller’s right, title and interest in and to (A) the Ground Lease pursuant to the Assignment of Ground Lease, (B) the Related Agreements which constitute leases pursuant to the Assignment of Subleases, and (C) the other Related Agreements pursuant to the Assignment of Related Agreements.

Pursuant to this Lease, Lessor will lease the Leased Property to Lessee and Lessee will lease the Leased Property from Lessor.

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

For all purposes hereof, the capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in Appendix 1 to that certain Participation Agreement dated as of even date herewith, among Lessee, as Lessee; Lessor; Wells Fargo Bank Northwest, National Association, not in its individual capacity except as expressly stated therein, but solely as Collateral Agent; and the financial institutions listed on Schedule II thereto, as Lenders (as amended, supplemented or otherwise modified from time to time pursuant thereto, the “*Participation Agreement*”); and the rules of interpretation set forth in Appendix 1 to the Participation Agreement shall apply to this Lease. Except as otherwise expressly provided in Section 16.5 hereof, all obligations imposed on the Lessee under this Lease shall be the full recourse liability of Lessee.

ARTICLE II

LEASE OF LEASED PROPERTY; LEASE TERM

Section 2.1. Leased Property. (a) Lessor hereby agrees to lease all of Lessor’s interest in the Leased Property to Lessee hereunder, and Lessee hereby agrees, expressly for the direct benefit of Lessor, to lease all of the Leased Property from Lessor for the Term. The Lessor and the Lessee acknowledge that the Lessee shall be purchasing certain equipment directly from the Seller and none of such equipment purchased by Lessee shall be deemed part of the Leased Property.

(b) In the event that either the Schneider Sublease or the Retail Sublease are terminated for any reason whatsoever, Lessee and Lessor hereby agree that this Lease and the Memorandum thereof and the Participation Agreement shall be amended by the parties hereto, at the expense of the Lessee, to include within the definition of “Leased Property” all Improvements under the Schneider Sublease and the Retail Sublease.

Section 2.2. Term. Unless earlier terminated, the term of this Lease shall consist of a term (the “*Term*”) commencing on the Closing Date and ending on but not including the earlier of (i) the date which is eighty-four months immediately following the Closing Date or (ii) any Termination Date.

Section 2.3. Title. The Leased Property is leased to the Lessee without any representation or warranty, express or implied, by the Lessor and subject to the rights of parties in possession, the existing state of title with respect thereto (including, without limitation, all Liens other than Lessor Liens) and all Applicable Laws and any violations thereof. The Lessee shall in no event have any recourse against the Lessor for any defect in or exception to title to the Leased Property other than resulting from Lessor Liens created by Lessor.

ARTICLE III

PAYMENT OF RENT

Section 3.1. Rent. (a) During the Term, the Lessee shall pay to Lessor Basic Rent (i) on each Payment Date and (ii) on the date required under Section 20.1(i) in connection with the Lessee's exercise of the Sale Option.

(b) The Lessee's inability or failure to take possession of all or any portion of the Leased Property when accepted or deemed accepted hereunder, whether or not attributable to any act or omission of the Lessee or any act or omission of the Lessor, shall not delay or otherwise affect the Lessee's obligation to pay Rent in accordance with the terms of this Lease.

Section 3.2. Payment of Basic Rent. Basic Rent shall be paid absolutely net to the Lessor so that this Lease shall yield to the Lessor the full amount thereof, without setoff, deduction or reduction.

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Section 3.3. Supplemental Rent. The Lessee shall pay to the Lessor or the Person entitled thereto any and all Supplemental Rent promptly as the same shall become due and payable, and if the Lessee fails to pay any Supplemental Rent, the Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of Basic Rent; *provided* that Supplemental Rent (other than Supplemental Rent payable to the Lessor, any Lender, the Collateral Agent or the Person entitled thereto consisting of any of the Lease Balance, the Sale Option Recourse Amount, the Purchase Amount, Break Costs and any amounts payable at the Overdue Rate and any amounts payable under Article XIII of the Participation Agreement) shall not be deemed due and payable by Lessee to the Person entitled thereto unless such amount is not paid within 30 days after Lessee has received written notice of such Supplemental Rent from Lessor, any Lender or the Collateral Agent or the Person entitled thereto. Lessee shall pay to the Lessor, as Supplemental Rent, among other things, on demand, to the extent permitted by Applicable Laws, interest at the applicable Overdue Rate on any installment of Basic Rent not paid when due for the period for which the same shall be overdue and on any payment of Supplemental Rent payable to the Lessor or any Indemnitee not paid when due and payable as provided above for the period from the due date until the same shall be paid. The expiration or other termination of the Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this Lease, in the event of any failure on the part of the Lessee to pay and discharge any Supplemental Rent as and when due, the Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added under any agreement with a third party for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent.

Section 3.4. Method of Payment. Subject to Section 3.1(b) hereof, each payment of Rent shall be paid by wire transfer by the Lessee to the Collateral Agent (or in the case of Excepted Payments directly to the Person entitled thereto) prior to 1:00 P.M., New York City time, to the account of the Collateral Agent designated on Schedule III to the Participation Agreement in funds consisting of lawful currency of the United States of America which shall be immediately available on the scheduled date when such payment shall be due, unless such scheduled date shall not be a Business Day, in which case such payment shall be made on the next succeeding Business Day unless the result of such extension would be to carry into another calendar month, in which case such payment shall be made on the immediately preceding Business Day. Payments received after 1:00 P.M., New York City time, on the date due shall, for the purpose of Section 16.1 hereof, be deemed received on such day; *provided, however*, that for the purposes of the second sentence of Section 3.3 hereof, such payments shall be deemed received on the next succeeding Business Day and subject to interest at the Overdue Rate as provided in such Section 3.3.

ARTICLE IV

QUIET ENJOYMENT; RIGHT TO INSPECT

Section 4.1. Non-Interference. Subject to Section 4.2 hereof and subject to Lessor's cure rights, as provided for in Section 17.1 and the rights of Ground Lessor under the Ground Lease

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and the parties under the other Related Agreements, Lessor covenants that it will not interfere in Lessee's use or possession of the Leased Property during the Term, so long as no Event of Default has occurred and is continuing, it being agreed that Lessee's remedies for breach of the foregoing covenant shall be limited to a claim for damages or the commencement of proceedings to enjoin such breach, as applicable. Such right is independent of and shall not affect Lessee's obligations hereunder and under the other Operative Documents or Lessor's rights otherwise to initiate legal action to enforce the obligations of Lessee under this Lease. The foregoing covenant shall not require Lessor to take any action contrary to, or which would permit Lessee to use the Leased Property for a use not permitted under the provisions of this Lease.

Section 4.2. Inspection and Reports. (a) Upon three (3) Business Days prior notice (such notice being waived by Lessee during the existence of an Event of Default) to Lessee and subject to the provisions of Section 16.15 of the Participation Agreement, Lessor or the Collateral Agent (collectively, the "Inspecting Parties") at any time during the Term may inspect (i) the Leased Property and (ii) the Leased Property Records and make copies and abstracts therefrom and may discuss the affairs, finances and accounts with respect to the Leased Property with Lessee's officers. All such inspections shall be during Lessee's normal business hours, shall be subject to Lessee's customary safety and security provisions and shall be at the expense and risk of the Inspecting Parties, except that if an Event of Default or Default has occurred and is continuing and, subject to Section 16.5 hereof, Lessee shall reimburse the Inspecting Parties for the reasonable costs of such inspections and, except for the Inspecting Party's gross negligence or willful misconduct, such inspection shall be at Lessee's risk. No inspection shall unreasonably interfere with Lessee's operations. None of the Inspecting Parties shall have any duty to make any such inspection or inquiry. None of the Inspecting Parties shall incur any liability or obligation by reason of making any such inspection or inquiry unless and to the extent such Inspecting Party causes damage to the Leased Property or any property of Lessee or any other Person during the course of such inspection.

(b) To the extent permissible under Applicable Laws, during the Term Lessee shall prepare and file, or cause to be prepared and filed, in a timely fashion, or, where Lessor shall be required to file, Lessee shall prepare, or cause to be prepared, and make available to Lessor within a reasonable time period prior to the date for filing and Lessor shall file, any reports with respect to the condition or operation of the Leased Property that shall be required to be filed with any Governmental Authority.

ARTICLE V

NET LEASE, ETC.

Section 5.1. Net Lease, Etc. This Lease shall constitute a net lease and Lessee's obligations hereunder to pay Rent shall be absolute and unconditional under any and all circumstances. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall the Lessee be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to the Rent, nor shall the obligations of the Lessee hereunder be affected (except as expressly herein permitted and by performance of the

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obligations in connection herewith) by reason of: (i) any defect in the condition, merchantability, design, construction, quality or fitness for use of the Subject Property or any part thereof, or the failure of the Subject Property or any part thereof to comply with all Applicable Laws, including any inability to use the Subject Property or any part thereof by reason of such non-compliance; (ii) any damage to, removal, abandonment, salvage, loss, contamination of, or Release from, scrapping or destruction of or any requisition or taking of the Subject Property or any part thereof; (iii) any restriction, prevention or curtailment of or interference with any use of the Subject Property or any part thereof or any termination of the Ground Lease; (iv) any defect in title to or rights to the Subject Property or any part thereof or any Lien on such title or rights or on the Subject Property or any part thereof (provided, that the foregoing shall not relieve any Person from its responsibility to remove Lessor Liens attributable to it); (v) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by the Lessor, the Collateral Agent or any Lender; (vi) to the fullest extent permitted by Applicable Laws, any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to the Lessee, the Lessor, the Collateral Agent, any Lender or any other Person, or any action taken with respect to this Lease by any trustee or receiver of the Lessee, the Lessor, the Collateral Agent, any Lender or any other Person, or by any court, in any such proceeding; (vii) any claim that the Lessee has or might have against any Person, including without limitation any Participant, or any vendor, manufacturer, contractor of or for the Subject Property or any part thereof; (viii) any failure on the part of the Lessor to perform or comply with any of the terms of this Lease, of any other Operative Document or of any other agreement; (ix) any invalidity or unenforceability or illegality or disaffirmance of this Lease against or by the Lessee or any provision hereof or any of the other Operative Documents or any provision of any thereof; (x) the impossibility or illegality of performance by the Lessee, the Lessor or both; (xi) any action by any court, administrative agency or other Governmental Authority; (xii) any restriction, prevention or curtailment of or interference with the use of the Subject Property or any part thereof; (xiii) the failure of Lessee or any of its Affiliates to achieve any accounting or tax benefits or the characterization of the transaction intended by the parties as set forth at Section 24.1 hereof and Section 5.1 of the Participation Agreement; or (xiv) any other cause or circumstances whether similar or dissimilar to the foregoing and whether or not the Lessee shall have notice or knowledge of any of the foregoing. The Lessee's agreement in the preceding sentence shall not affect any claim, action or right the Lessee may have against any Person. The parties intend that the obligations of the Lessee hereunder shall be covenants and agreements that are separate and independent from any obligations of the Lessor hereunder or under any other Operative Documents and the obligations of the Lessee shall continue unaffected unless such obligations shall have been modified or terminated in accordance with an express provision of this Lease.

Section 5.2. No Termination or Abatement. The Lessee shall remain obligated under this Lease in accordance with its terms and the terms of the other Operative Documents and shall not take any action to terminate, rescind or avoid this Lease (except as provided herein) to the fullest extent permitted by Applicable Laws, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution, or other proceeding affecting the Lessor, the Collateral Agent or any Lender, or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator of the Lessor, the Collateral Agent or any Lender or by any

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court with respect to the Lessor, the Collateral Agent or any Lender. The Lessee hereby waives all right to terminate or surrender this Lease (except as provided herein) or to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense with respect to any Rent. The Lessee shall remain obligated under this Lease in accordance with its terms and the terms of the other Operative Documents and the Lessee hereby waives any and all rights now or hereafter conferred by statute or otherwise to modify or to avoid strict compliance with its obligations under this Lease. Notwithstanding any such statute or otherwise, the Lessee shall be bound by all of the terms and conditions contained in this Lease.

ARTICLE VI

ASSIGNMENTS, SUBLEASES AND DELEGATIONS

Section 6.1. Assignment and Subletting. Except for assignments and subleases permitted by this Article VI, Lessee, during the Term, may not assign, sublease, mortgage, pledge or otherwise transfer to any Person, at any time, in whole or in part, any of its right, title or interest in, or obligations to or under this Lease, any other Operative Document or to any portion of the Leased Property; *provided* that so long as no Event of Default has occurred and is continuing, Lessee may, without the consent of the Collateral Agent, the Lessor or the Lenders, (i) assign all, but not less than all, of its rights in the Operative Documents to any Affiliate of Lessee and (ii) sublease all or any part of its rights, title and interest in the Leased Property to any Person; *provided further* that: (a) no sublease or assignment shall in any way discharge or diminish any of the obligations of Lessee to Lessor, the Collateral Agent or any Lender under any Operative Document; (b) Lessee shall remain directly and primarily liable under this Lease and the Operative Documents with respect to all the Leased Property; (c) each such sublease and assignment of the Leased Property shall be made expressly subject to and subordinated to this Lease and to the rights of Lessor, the Collateral Agent and the Lenders (*provided* that (1) the limitation in clause (c) above shall not apply to any sublease or assignment in effect as of the Closing Date or any renewals or extensions thereof resulting from the exercise by any sublessee of any extension or renewal rights existing thereunder as of the Closing Date which are at the sole option of such sublessee and (2) with respect to subleases in effect as of the Closing Date, the Lessor shall enter into a commercially reasonable recognition and non-disturbance agreement pursuant to which Lessor acknowledges that it will not interfere in such sublessee's use or possession of the portion of the Leased Property subject to such sublease or assignment (so long as such sublessee is not in default thereunder); and (d) except with respect to any sublease or assignment in effect as of the Closing Date or any extension or renewal thereof pursuant to extension or renewal rights existing as of the Closing Date and which are at the sole option of the sublessee thereunder, each such sublease and assignment shall expressly provide for the termination prior to the last day of the Term (unless otherwise agreed and consented to by the Lessor); *provided further* that Lessee shall not assign or sublease any portion of the Leased Property to, or permit the assignment or the sublease of any portion of the Leased Property by, any Person who at the time of such sublease or assignment shall then be the subject of any proceeding for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors.

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Lessee shall give Lessor prompt written notice of any assignment or sublease permitted under this Article VI, and shall promptly provide Lessor with a fully executed copy of each document evidencing such assignment or sublease.

Section 6.2. Assignment of Related Agreements. Lessor and Lessee acknowledge that effective as of the Closing Date, Seller has assigned to Lessor and delegated to Lessor, and Lessor has assumed, all obligations on the part of Seller under the Related Agreements. Additionally, during the Term, to the extent permitted by the Related Agreements, Lessor hereby assigns to Lessee all rights and benefits conferred to Lessor under the Related Agreements, including without limitation all rights to receive rent or other payments by any sublessees or to enforce any rights and remedies against each Person that is a party to the Related Agreements. Lessee hereby assumes and agrees to perform all obligations of the Lessor under the Related Agreements pursuant to Section 9.1(h) of the Participation Agreement and to diligently enforce any rights and remedies against each Person or related party under the Related Agreements. Lessor further grants to Lessee the right to grant or withhold any consents, waivers, extensions, and indulgences under the Related Agreements and to amend, supplement, restate, and otherwise make modifications to the Related Agreements as Lessee may determine to be necessary or appropriate in Lessee's sole discretion. Notwithstanding the foregoing, Lessee may not exercise and enforce any such rights or remedies against such Person or related party under the Related Agreements or amend, supplement, waive, extend, restate or otherwise modify the Related Agreements if such exercise or enforcement of rights or remedies or amendment, supplement, waiver, extension, restatement or modification (i) would cause a violation of any of Lessee's obligations under this Lease or the other Operative Documents, (ii) would increase any of the Lessor's obligations under any Operative Document, or (iii) would have a Material Adverse Effect. Lessor hereby constitutes Lessee as the agent and attorney-in-fact of Lessor for the purpose of exercising and enforcing, and with full right, power and authority to perform the obligations of Lessor and to exercise and to enforce, all of the right, title, interest and remedies of the Lessor in, under and to the Related Agreements and any other agreements and arrangements concerning the use, operation, and repair of the Leased Property. Lessor agrees, at Lessee's expense, to execute and deliver or to join in the execution of such further instruments as may be necessary to enable the Lessee to perform Lessor's obligations under the Related Agreements during the Term and to exercise and enforce the rights, remedies and obligations conferred to or delegated to Lessee pursuant to this paragraph. Upon termination of the Lease and delivery of possession of the Subject Property to Lessor pursuant to Article XVI (as a result of a Limited Recourse Event of Default only) or Article XX of the Lease or to a third party, the Lessee shall have no further obligation to perform obligations under the Related Agreements pursuant to this paragraph. Lessee consents to Lessor's execution and delivery of the transfer and assignment documents to which Lessor is a party, delivered pursuant to the Purchase Agreement on the Closing Date.

Notwithstanding the foregoing, the Lessor may, at any time that an Event of Default has occurred and is continuing, revoke the rights of Lessee granted in this Section 6.2 (i) to exercise or enforce any rights or remedies under the Related Agreements, (ii) to grant or withhold any consents, waivers, extensions, and indulgences under the Related Agreements or (iii) to amend, supplement, waive, extend, restate or otherwise modify the Related Agreements; *provided that*

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such revocation shall not affect Lessee's obligations under Section 9.1(h) of the Participation Agreement.

ARTICLE VII

LESSEE ACKNOWLEDGEMENTS

Section 7.1. CONDITION OF THE LEASED PROPERTY. THE LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING THE LEASED PROPERTY "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY THE LESSOR, THE COLLATERAL AGENT OR THE LENDERS AND IN EACH CASE SUBJECT TO (a) THE EXISTING STATE OF TITLE (EXCLUDING LESSOR LIENS), (b) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (c) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR A PHYSICAL INSPECTION MIGHT SHOW, (d) VIOLATIONS OF REQUIREMENTS OF LAW WHICH MAY EXIST ON THE DATE HEREOF ON OR AT ANY TIME HEREAFTER AND (e) THE RIGHTS OF GROUND LESSOR UNDER THE GROUND LEASE AND THE OTHER PARTIES UNDER THE RELATED AGREEMENTS. NONE OF THE LESSOR, THE COLLATERAL AGENT OR ANY OF THE LENDERS HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (OTHER THAN AS IN SECTION 4.1 HEREOF) (EXPRESS OR IMPLIED) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE (OTHER THAN FOR LESSOR LIENS), VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, OR FITNESS FOR USE OF THE LEASED PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED PROPERTY (OR ANY PART THEREOF) AND NONE OF THE LESSOR, THE COLLATERAL AGENT OR THE LENDERS SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN (OTHER THAN FOR LESSOR LIENS) OR THE FAILURE OF THE LEASED PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY APPLICABLE LAWS. All risks incident to the matters discussed in the preceding sentences, as between the Lessor, the Collateral Agent and the Lenders, on the one hand, and Lessee, on the other, are to be borne by Lessee. The provisions of this Section 7.1 have been negotiated, and, except to the extent otherwise expressly stated, the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by any of the Lessor, the Collateral Agent or the Lenders, express or implied, with respect to the Leased Property (or any interest therein), other than the obligation to remove Lessor Liens attributable to it, that may arise pursuant to any law now or hereafter in effect or otherwise.

Section 7.2. Risk of Loss. During the Term, as between Lessee and Lessor, the risk of loss of or decrease in the enjoyment and beneficial use of the Leased Property as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by the Lessee, and the Lessor shall in no event be answerable or accountable therefor.

Section 7.3. Certain Duties and Responsibilities of Lessor. Lessor undertakes to perform such duties and only such duties as are specifically set forth herein and in the other Operative Documents (other than the Related Agreements with respect to any time prior to the termination of the Lease and the transfer of possession of the Leased Property to Lessor pursuant to Article XVI (as a result of a Limited Recourse Event of Default only) or Article XX of the Lease, or a third party), and no implied covenants or obligations shall be read into this Lease

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against Lessor, and Lessor agrees that it shall not, nor shall it have a duty to, manage, control, use, sell, maintain, insure, register, lease, operate, modify, dispose of or otherwise deal with the Subject Property in any manner whatsoever, except as required by the terms of the Operative Documents and as otherwise provided herein. Lessee hereby agrees that none of Lessor, the Collateral Agent or any Lender shall be obligated to perform any covenant or agreement set forth herein or in the other Operative Documents or permit the exercise by Lessee of any right set forth herein or in the other Operative Documents if such agreement or covenant or the exercise of such right is prohibited by or conflicts with the terms of any Related Agreement.

ARTICLE VIII

POSSESSION AND USE OF THE PROPERTY, ETC.

Section 8.1. Possession and Use of the Leased Property. Lessee agrees that the Leased Property will be used as a Class "A" office building in a manner consistent with this Lease and the other Operative Documents and applying standards of use no lower than the standards applied by the Lessee for other comparable properties owned or leased by the Lessee. At all times during the Term, the Leased Property shall remain in the possession and control of Lessee or its permitted assignees or sublessees; Lessee warrants that the Leased Property will at all times be used and operated under and in compliance in all material respects with the terms of the Ground Lease and the other Related Agreements which relate to the Leased Property. Lessee shall not use the Leased Property or any part thereof for any purpose or in any manner that would materially adversely affect the Fair Market Value, utility, remaining useful life or residual value of the Leased Property, ordinary wear and tear excepted. Lessee assumes and agrees to pay all fees, charges, costs, assessments, impositions, utilities and other amounts which relate to or arise in connection with the purchase, disposition, ownership, lease or use of any real or personal property, Governmental Actions and other rights, privileges or entitlements required to be paid in connection with the Leased Property. All such charges for utilities imposed with respect to the Leased Property for a billing period during which this Lease expires or terminates (except when Lessee purchases the Subject Property in accordance with the terms of this Lease, in which case Lessee shall be solely responsible for all such charges) shall be adjusted and prorated on a daily basis between Lessee, Lessor (but solely as a result of the return of the Subject Property in connection with the exercise by Lessee of the Sale Option pursuant to Article XX hereof or as a result of a Limited Recourse Event of Default under Section 16.5 hereof) and any purchaser of the Subject Property, and each party shall pay or reimburse the other for each party's *pro rata* share thereof; *provided*, that in no event shall Lessor have any liability therefor. Lessee shall be entitled to receive any credit or refund received by the Lessor on account of any utility charges paid by Lessee, net of the costs and expenses reasonably incurred by the Lessor in obtaining such credit or refund, and the amount of such credit or refund shall be promptly paid over to Lessee.

Section 8.2. Compliance with Requirements of Law and Insurance Requirements. Subject to the terms of Article XII relating to permitted contests, the Lessee, at its sole cost and expense, shall (a) comply with all Applicable Laws (including all Environmental Laws) and Insurance Requirements relating to the Leased Property, including the use, operation, maintenance, repair and restoration thereof and any sale thereof pursuant to Section 19.1(b),

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whether or not compliance therewith shall require structural or extraordinary changes in the Facility or interfere with the use and enjoyment of the Leased Property, and (b) procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the use, operation, maintenance, repair and restoration of the Leased Property and for the use, operation, maintenance, repair and restoration of the Facility.

ARTICLE IX

MAINTENANCE AND REPAIR; REPORTS

Section 9.1. Maintenance. Lessee, at its sole cost and expense, shall maintain, service and repair (a) the Leased Property to keep it (i) in good working order and (ii) in such condition as the Lessee would, in the prudent management of its own properties, maintain, service and repair similar property owned or leased by the Lessee and, in any event, to the extent required to maintain the Leased Property in good condition and repair (which shall include, without limitation, repairs required to any structural element of the Leased Property and replacement of any component or mechanical system of the Leased Property) and in compliance with the Ground Lease, any other Related Agreements, all Applicable Laws, Industry Standards and Insurance Requirements, noncompliance with which might result in the imposition of a penalty on any Indemnified Party or materially adversely affect the Leased Property or the operation thereof and, in any event in accordance with prudent industry practice, and (b) the Leased Property to keep it maintained as a Class "A" office building. In the event of any damage or destruction other than a Significant Casualty with respect to the Leased Property, the Lessee shall, at its own expense, with reasonable promptness, repair or restore the same so that upon the completion of such repair or restoration the Leased Property shall be in the condition required by the provisions of this Section 9.1 and so that the value, utility and useful life of the Property shall be at least equal to the value, utility and useful life of the Leased Property immediately prior to the occurrence of such damage or destruction.

Section 9.2. Maintenance Costs and Warranties. The Lessee agrees to pay all costs, expenses, fees and charges incurred in connection with (i) the use and operation of the Leased Property by the Lessee during the Term, including but not limited to repairs, maintenance, storage and servicing as provided in Article X and this Article IX and (ii) the preserving and protecting of the Leased Property, and the repairing, maintaining and servicing of the Leased Property as provided in Article X and this Article IX, during the period after a termination of the Lessee's right of possession of the Leased Property pursuant to Section 16.2 (subject to Section 16.5) and prior to the interest of the Lessor in the Leased Property being sold to a third person by the Lessor. So long as no Event of Default has occurred and is continuing, the Lessor hereby constitutes the Lessee as the agent and attorney-in-fact of the Lessor for the purpose of exercising and enforcing, and with full right, power and authority to exercise and to enforce, all of the right, title and interest of the Lessor in, under and to the warranties and obligations of any supplier of goods or services in respect of the Leased Property and agrees to execute and deliver such further instruments as may be necessary to enable the Lessee to obtain goods or services furnished for the Leased Property by said suppliers. The Lessor shall have no other obligation or duty with respect to any of such matters. So long as no Event of Default has occurred and is

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continuing, any proceeds obtained by the Lessee from the enforcement of the warranties and obligations of any supplier of goods or services in respect of the Leased Property shall be held by the Lessee and applied from time to time to the repair and maintenance of the Leased Property, and any balance thereof remaining at the expiration of the Term shall be paid over to the Lessor or as it may direct, subject to Section 5.2 of the Participation Agreement.

Section 9.3. Lessor Not Obligated to Maintain or Repair. The Lessor shall not under any circumstances be required to build any improvements on the Leased Property, make any repairs, replacements, Modifications or renewals of any nature or description to the Leased Property, make any expenditure

whatsoever in connection with this Lease or maintain the Leased Property in any way. The Lessee waives any right to (i) require the Lessor to maintain or repair all or any part of the Leased Property or (ii) make repairs at the expense of the Lessor pursuant to any Applicable Laws, contract, agreement, or covenant, condition or restriction in effect at any time during the Term.

Section 9.4. Maintenance and Repair Reports. Lessee shall keep maintenance and repair records in sufficient detail, at least on the same basis as records are kept for similar properties owned or leased by Lessee, to indicate the nature and date of major work done at or to the Leased Property. Such records shall be kept on file by Lessee and shall be made available to Lessor upon reasonable request. Lessee shall give written notice to Lessor of any Event of Loss promptly after Lessee has knowledge thereof.

ARTICLE X

MODIFICATIONS, ETC.

Section 10.1. Modifications and Lessee Improvements. (a)(i) Lessee, at Lessee's own cost and expense, shall make alterations, renovations, improvements and additions to the Leased Property or any part thereof and substitutions and replacements therefor (collectively, "*Modifications*") which are (A) necessary to repair or maintain the Leased Property in the condition required by Section 9.1; (B) necessary in order for the Leased Property to be in compliance with Applicable Laws in all material respects; (C) necessary for the Leased Property to constitute a Class "A" office building; and (D) necessary or advisable to restore the Leased Property to its condition existing prior to a Casualty or Condemnation to the extent required pursuant to Article XIV (collectively, the "*Required Modifications*"); and (ii) so long as no Event of Default or Default has occurred and is continuing, Lessee, at Lessee's sole discretion and cost and expense, may undertake Modifications to the Leased Property so long as such Modifications comply with Applicable Laws in all material respects and with Section 9.1 and subsection (b) of this Section 10.1 (collectively, the "*Permitted Modifications*").

(b) The making of any Modifications must be in compliance with the following requirements:

(i) No such Modification (other than Lessee Improvements or Modifications described in Schedule 10.1 hereof) with a cost exceeding \$2,000,000 for any such

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Modification, shall be made or undertaken without the prior written consent of Lessor and the Collateral Agent (which consent shall not unreasonably be withheld).

(ii) No Modifications shall be undertaken in violation in any material respect of the terms of the Ground Lease, any other Related Agreement or any restriction, easement, condition, covenant or other similar matter affecting title to or binding on the Leased Property unless Lessee shall have obtained, so far as the same may be required from time to time, all material permits, consents, waivers or other authorizations relating to such Modifications from the applicable Governmental Authorities or third Persons. Lessor, at Lessee's expense, shall join in the application for any such permit or authorization and execute and deliver any document in connection therewith, whenever such joinder is necessary or advisable.

(iii) All Modifications (other than Lessee Improvements) shall be completed in a good and workmanlike manner and in compliance in all material respects with the Ground Lease, the Related Agreements, all Applicable Laws and Insurance Requirements and all Modifications (other than Lessee Improvements) must be located solely on the Land or Lessee or Lessor must have obtained by no later than the commencement of such Modifications (other than Lessee Improvements) access rights reasonably satisfactory to the Collateral Agent.

(iv) All Modifications shall, when completed, be of such a character as to not materially adversely affect the Fair Market Value, utility, remaining economic useful life or residual value of the Leased Property from the Fair Market Value, utility, remaining economic useful life or residual value thereof immediately prior to the making thereof (assuming the Leased Property was then in the condition required by this Lease) or, in the case of Modifications being made by virtue of a Casualty or Condemnation, immediately prior to the occurrence of such Casualty or Condemnation (assuming the Leased Property was then in the condition required by this Lease).

Section 10.2. Title to Modifications. (a) Title to the following described Modifications shall, without further act, vest in Lessor and shall be deemed to constitute a part of the Leased Property and be subject to this Lease:

- (i) Modifications that are in replacement of or in substitution for a portion of any item of Leased Property;
- (ii) Required Modifications; or
- (iii) Modifications that are Nonseverable.

If requested by Lessor, Lessee shall execute and deliver any deeds, bills of sale, assignments, lease supplements or other documents of conveyance reasonably necessary to evidence the vesting of title in and to such Modifications to Lessor.

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(b) If Modifications are not within any of the categories set forth in clauses (i) through (iii) of Section 10.2(a) (each, a "*Lessee Improvement*"), then title to such Lessee Improvements shall vest in Lessee and such Lessee Improvements shall not be deemed to be Modifications which are part of the Leased Property.

(c) All Lessee Improvements may, so long as removal thereof (i) shall not result in the violation of any Applicable Laws, (ii) shall not adversely affect the Lessee's ability to comply with its obligations under this Lease or any other Operative Document, and (iii) no Event of Default is continuing, be removed at any time by Lessee. Lessee agrees to notify Lessor in writing at least 30 days before it removes any Lessee Improvement or Lessee Improvements which individually or in the aggregate had an original cost exceeding \$2,000,000, and Lessee shall at its expense repair any damage to the Leased Property caused by the removal of such Lessee Improvement. Lessor (or the purchaser of the Leased Property) may purchase from Lessee any such

Lessee Improvement (if not already owned by Lessor) that Lessee intends to remove from the Leased Property prior to the return of the Leased Property to Lessor pursuant to Section 20.3 hereof or sale of the Leased Property to a third party, which purchase shall be at the Fair Market Value of such Lessee Improvement as determined by the Appraiser at the time of such purchase. Title to any such Lessee Improvement shall vest in Lessor (or the purchaser of the applicable Leased Property) if not removed from the Leased Property by Lessee prior to the return of the Leased Property to Lessor or sale of the Leased Property to a third party.

ARTICLE XI

COVENANTS WITH RESPECT TO LIENS AND EASEMENTS

Section 11.1. Covenants with Respect to Liens. (a) During the Term, Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to any portion of the Subject Property, Lessor's title thereto, or any interest of Lessor, Collateral Agent or the Lenders therein. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Leased Property free and clear of, and duly to discharge, eliminate or bond in a manner reasonably satisfactory to Lessor and the Collateral Agent, any such Lien (other than Permitted Liens or Lessor Liens) if the same shall arise at any time.

(b) Nothing contained in this Lease shall be construed as constituting the consent or request of the Lessor, express or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair, restoration or demolition of or to the Leased Property or any part thereof. NOTICE IS HEREBY GIVEN THAT NONE OF THE LESSOR, THE COLLATERAL AGENT OR ANY OF THE LENDERS IS OR SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE LESSEE, OR TO ANYONE HOLDING THE LEASED PROPERTY OR ANY PART THEREOF THROUGH OR UNDER THE LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF THE LESSOR, THE COLLATERAL AGENT OR ANY LENDER IN AND TO THE LEASED PROPERTY.

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Section 11.2. Lessee's Grants and Releases of Easements; Lessor's Waivers. Provided that no Event of Default shall have occurred and be continuing, and subject to the provisions of Articles VII, IX and X and Section 8.2, the Lessor hereby consents in each instance to the following actions by the Lessee in the name and stead of the Lessor and the Lessor hereby appoints the Lessee as the true and lawful attorney-in-fact of the Lessor with full power and authority to execute documents on behalf of the Lessor for the following purposes, but at the Lessee's sole cost and expense: (a) the granting of, or entry into agreements in connection with, easements, licenses, rights-of-way, building and use restrictions and covenants and other rights and privileges in the nature of easements or similar interests and burdens reasonably necessary or desirable for the use, repair, maintenance or protection of the Leased Property as herein provided; (b) the release of existing easements or other rights in the nature of easements which are for the benefit of, or burden to, the Leased Property; (c) the execution of amendments to, or waivers or releases of, any easements, licenses or covenants and restrictions affecting the Leased Property; and (d) the filing and processing of any and all permit applications, authorizations, entitlements, agreements with any Governmental Authority or amendments thereof, or other documents reasonably required or beneficial for construction or installation of Modifications which could not reasonably be expected to adversely affect the rights of the Lessor, the Collateral Agent or any Lender under the Operative Documents; *provided, however,* that in each case (i) such grant, release, dedication, transfer, amendment, agreement or other action does not materially impair the value, utility, residual value or remaining useful life of the Subject Property, (ii) such grant, release, transfer, amendment, agreement or other action in the Lessee's judgment is, subject to Articles VIII, IX and X hereof, reasonably necessary or desirable in connection with the use, operation, repair, maintenance, alteration or improvement of the Leased Property, (iii) such grant, release, dedication, transfer, amendment, agreement or other action will not cause the Subject Property or any portion thereof to fail to comply with the provisions of this Lease or any other Operative Documents and all Applicable Laws (including, without limitation, all applicable zoning, planning, building and subdivision ordinances, all applicable restrictive covenants and all applicable architectural approval requirements); (iv) all governmental consents or approvals required prior to such grant, release, dedication, transfer, amendment, agreement or other action have been obtained, and all filings with any Governmental Authorities required prior to such action have been made; (v) the Lessee shall remain obligated under this Lease and under any instrument executed by the Lessee consenting to the assignment of the Lessor's interest in this Lease as security for indebtedness, in each such case in accordance with their terms, as though such grant, release, dedication, transfer, amendment, agreement or other action had not been effected; (vi) during the Term, the Lessee shall timely pay and perform any obligations of the Lessor under such grant, release, dedication, transfer, amendment, agreement or other action; and (vii) with respect to any action described in Section 11.2(a) through Section 11.2(d), inclusive, no such action described in such sections could reasonably be expected to have a Material Adverse Effect. Without limiting the effectiveness of the foregoing, *provided,* that no Default or Event of Default shall have occurred and be continuing, the Lessor shall, upon the request of the Lessee, and at the Lessee's sole cost and expense, execute and deliver any instruments delivered to it that are necessary or appropriate to confirm any such grant, release, dedication, transfer, amendment, agreement or other action to any Person permitted under this Section.

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ARTICLE XII

PERMITTED CONTESTS

Section 12.1. Permitted Contests in Respect of Applicable Laws. Except to the extent otherwise provided in Section 13.4(b) of the Participation Agreement with respect to Taxes and Impositions, if, to the extent and for so long as (x) a test, challenge, contest, appeal or proceeding for review, as applicable, of (A) any Applicable Law relating to the Leased Property or any part thereof or the obligation to comply therewith or (B) any Supplemental Rent payable to any Person other than Lessor, Collateral Agent or any Lender, shall be prosecuted diligently and in good faith in appropriate proceedings by the Lessee or (y) compliance with such Applicable Law or payment shall have been excused or exempted by a valid nonconforming use, variance, permit, waiver, extension or forbearance, Lessee shall not be required to comply with such Applicable Law or to make such payment but only if and so long as any such test, challenge, contest, appeal, proceeding, waiver, extension, forbearance or noncompliance shall not, in the reasonable opinion of the Lessor and the Collateral Agent, involve (A) any risk of criminal liability being imposed on the Lessor, the Collateral Agent, any Lender or any item of Subject Property or (B) any material risk of (1) foreclosure, forfeiture or loss of the Subject Property, or any material part thereof, (2) the nonpayment of Rent to Lessor, Collateral Agent or any Lender, (3) any sale of, or the creation of any Lien (other than a Permitted Lien) on, any part of the Subject Property (*provided, however,* nothing herein shall be deemed to reduce or diminish Lessee's obligations at Section 11.1), (4) civil or criminal liability being imposed on the Lessor, the Collateral

Agent, any Lender or any part of the Subject Property for which the Lessee is not obligated to indemnify such parties under the Operative Documents or (5) enjoinder of, or interference with, the use, possession or disposition of the Subject Property in any material respect. Subject to Article XIII of the Participation Agreement, Lessee shall also have a right to contest and appeal any Taxes or Impositions.

None of the Lessor, the Collateral Agent or any Lender will be required to join in any proceedings pursuant to this Section 12.1 unless a provision of any Applicable Law requires that such proceedings be brought by or in the name of such party; and in that event such party will join in the proceedings or permit them or any part thereof to be brought in its name if and so long as (i) the Lessee has not elected the Sale Option and (ii) the Lessee agrees in writing to pay, and pays, all related expenses (including attorneys' fees) and agrees in writing to indemnify the Lessor, the Collateral Agent and the Lenders, in form and substance reasonably satisfactory to each of the respective Indemnitees, in respect of any claim relating thereto.

ARTICLE XIII

INSURANCE

Section 13.1. Required Coverages. During the Term, Lessee will maintain at all times:

(a) *General Liability Insurance.* Combined single limit insurance against claims for third-party bodily injury, including death, and third-party property damage occurring as a result

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of the ownership, use, maintenance or operation of the Subject Property in an amount at least equal to \$5,000,000 per occurrence. Such coverage may be subject to deductibles or self-insured retentions up to an amount that is consistent with Lessee's insurance program for similar property owned or leased by Lessee and in keeping with prudent industry practice.

(b) *Property Insurance.* Insurance against loss of or damage to the Leased Property, or any portion thereof by reason of any insurable peril in an amount consistent with Lessee's insurance program for similar property owned or leased by Lessee, in keeping with prudent industry practice (subject to such deductibles and/or self-insurance in such minimum amounts as is consistent with Lessee's insurance program for similar property owned or leased by Lessee, in keeping with prudent industry practice); *provided, however,* that at no time shall the amount of such coverage be less than the replacement cost of the Leased Property, including any costs that may be required to cause the Leased Property to be restored in accordance with then current Applicable Laws.

(c) *Other Insurance.* Such other insurance, in each case as is generally carried by Lessee for similar properties owned or leased by it in such amounts and against such risks as are then customary for Lessee. Lessee shall also cause to be in place in the amounts and at the times required the insurance required to be carried by Lessor under the Ground Lease and the other Related Agreements, to the extent such Related Agreements impose insurance requirements in excess of those required by this Article XIII.

Section 13.2. Insurance Coverage. The insurance coverage required in Section 13.1 shall be written by reputable insurance companies that are financially sound and solvent and otherwise reasonably appropriate considering the amount and type of insurance being provided by such companies. Any insurance company selected by Lessee shall be rated in A.M. Best's Insurance Guide or any successor thereto (or if there be none, an organization having a similar national reputation) and shall have a general policyholder rating of "A" (or comparable rating for a rating by an organization other than A.M. Best) and a financial rating of at least "X" (or comparable rating for a rating by an organization other than A.M. Best) or be otherwise acceptable to the Participants. In the case of liability insurance maintained by Lessee, it shall name the Collateral Agent and each of the Participants as additional insureds and, in the case of property insurance maintained by Lessee covering the Leased Property, it shall name the Collateral Agent as mortgagee and sole loss payee. Each policy referred to in Section 13.1 shall provide that: (i) it will not be canceled or amended with regard to reduction of limits, reduction or elimination of coverages, or increase in the amount of any deductible, retained limit, or self-insured retention, or allowed to lapse without renewal, except after not less than 30 days prior written notice (10 days for nonpayment of premium) to Lessor and Collateral Agent; (ii) the interests of Lessor, Collateral Agent and any Lender shall not be invalidated by any act or negligence of or breach of warranty or representation by Lessee or any other Person having an interest in the Leased Property; (iii) such insurance is primary with respect to any other insurance carried by or available to Lessor, Collateral Agent or any Lender; (iv) with respect to such other insurance the insurer shall waive any right of subrogation, setoff, counterclaim, or other deduction, whether by attachment or otherwise, against Lessor; and (v) any such liability policy shall contain a cross-liability clause providing for coverage of Collateral Agent and each Participant, as if separate policies had been issued to each of them. Lessee will notify Lessor and Collateral Agent

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promptly of any policy cancellation, reduction in policy limits, modification or amendment which has or could have an adverse effect on, or in any way impair, any insurance coverage provided for herein or in Section 13.1.

Section 13.3. Delivery of Insurance Certificates. On or before the Closing Date, Lessee shall deliver to Collateral Agent and Lessor certificates of insurance satisfactory to Collateral Agent and Lessor evidencing the existence of all insurance required to be maintained hereunder and setting forth the respective coverages, limits of liability, carrier, policy number and period of coverage. Thereafter, throughout the Term, at the time each of Lessee's insurance policies is renewed (but in no event less frequently than once each year) or upon written request by Lessor following an Event of Default, Lessee shall deliver to Collateral Agent and Lessor certificates of insurance evidencing that all insurance required by Sections 13.1 and 13.2 to be maintained by Lessee is in effect.

Section 13.4. Insurance by Lessor, Collateral Agent or any Lender. Each of the Lessor, the Collateral Agent or any Lender may at its own expense carry insurance with respect to its interest in the Leased Property, and any insurance payments received from policies maintained by the Collateral Agent or any Participant shall be retained by Lessor, such Collateral Agent or such Lender, as the case may be, without reducing or otherwise affecting Lessee's obligations hereunder.

ARTICLE XIV

CASUALTY AND CONDEMNATION

Section 14.1. Casualty and Condemnation. (a) Subject to the provisions of this Article XIV, if all or any portion of the Leased Property suffers a Casualty (other than a Significant Casualty as to which a Termination Notice has been given), Lessee shall control the negotiations with the relevant insurer and, except as otherwise provided in this Section 14.1, any insurance proceeds payable with respect to such Casualty shall be paid directly to the Lessee, or if received by the Collateral Agent or any Participant, shall be paid over to the Lessee and shall be used by Lessee solely for the reconstruction, restoration and repair of such Leased Property, and if the use of, access to, occupancy of or title to the Leased Property or any part thereof is the subject of a Condemnation (other than a Significant Condemnation as to which a Termination Notice has been given), then any award or compensation relating thereto shall be paid, except as otherwise provided in the Ground Lease and the other Related Agreements, and this Section 14.1, to the Lessee and shall be used by Lessee solely for the restoration of the Leased Property. Any insurance proceeds or condemnation award or compensation in excess of \$2,000,000 for any single Casualty or Condemnation which are payable with respect to a Casualty or Condemnation (whether or not a Significant Casualty or a Significant Condemnation, respectively) shall be held in trust by the Collateral Agent in a segregated account (the “*Proceeds Account*”) for reimbursement to the Lessee from time to time during the course of the Lessee’s restoration of the Leased Property and compliance with the provisions of Article IX hereof. Any such amounts held by the Collateral Agent shall be invested by the Collateral Agent in Permitted Investments at the direction of the Lessee from time to time, with all interest and earnings on such investments

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being payable to the Lessee promptly upon receipt thereof by the Collateral Agent from time to time. All amounts held by the Lessor, the Collateral Agent or any of the Lenders on account of any award, compensation or insurance proceeds paid directly to or otherwise received by the Lessor, the Collateral Agent or any of the Lenders shall promptly be remitted to the Lessee (or if the immediately preceding sentence is applicable, the Collateral Agent) to be applied in accordance with this Section 14.1. Each of the Lessee and the Lessor shall, prior to any deposit contemplated by this Section 14.1 in the Proceeds Account, and thereafter from time to time as reasonably requested by the Collateral Agent, take any and all actions (including, without limitation, the execution of such security and other agreements and UCC financing statements as the Collateral Agent shall reasonably request) reasonably requested by the Collateral Agent in order to grant to the Collateral Agent (on behalf of the Participants) a first priority perfected Lien on and security interest in the Proceeds Account and any and all amounts and other property from time to time on deposit therein. To the extent that Lessor has Funded amounts for the repair, rebuilding and reconstruction of the Leased Property, and insurance proceeds or condemnation awards are received thereafter, such proceeds and awards in amounts equal to such Fundings by Lessor shall be paid to the Collateral Agent and applied in accordance with Section 5.3(d)(iii) of the Participation Agreement. Notwithstanding the foregoing, if any Event of Default shall have occurred and be continuing, all awards, compensations or insurance proceeds shall be paid directly to the Collateral Agent or, if received by the Lessee, shall be held in trust for the Participants and shall be paid over by the Lessee to the Collateral Agent. All amounts held by the Lessor or the Collateral Agent on account of any award, compensation or insurance proceeds either paid directly to the Lessor or the Collateral Agent or turned over to the Lessor or the Collateral Agent, in each case after the occurrence and during the continuance of an Event of Default, shall at the option of the Lessor (at the direction of the Participants) either be (A) paid to the Lessee for the repair of damage caused by such Casualty or Condemnation in accordance with this clause (a), or (B) applied pursuant to Section 5.3 of the Participation Agreement to the Lease Balance and any other amounts owed by Lessee under the Operative Documents in accordance with Article XVI hereof and Section 5.3(j) of the Participation Agreement.

(b) In the event any part of the Leased Property becomes subject to condemnation or requisition proceedings during the Term, Lessee shall give notice thereof to Lessor promptly after Lessee has knowledge thereof and, to the extent permitted by Applicable Laws, Lessee shall control the negotiations with the relevant Governmental Authority unless an Event of Default exists or such condemnation or requisition could result in a Significant Condemnation in which case Lessor shall be entitled to control such negotiations; *provided*, that in any event, Lessor may participate at Lessor’s expense (if an Event of Default exists Lessor may control or participate at Lessee’s expense, subject to Section 16.5 hereof) in such negotiations; and *provided* in all cases, that no settlement will be made without Lessor’s prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed). Lessee shall give to Lessor such information, and copies of such documents, which relate to such proceedings, or which relate to the settlement of amounts due under insurance policies required by Article XIII, and are in the possession of Lessee, as are reasonably requested by Lessor. If the proceedings relate to a Significant Condemnation, Lessee shall act diligently in connection therewith. Nothing contained in this Section 14.1(b) shall diminish Lessor’s rights with respect to condemnation awards and property insurance proceeds under Articles XIII or XIV.

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(c) In no event shall a Casualty or Condemnation affect the Lessee’s obligations to pay Rent pursuant to Section 3.1 or to perform its obligations and pay any amounts due on the Expiration Date or pursuant to Articles XVIII and XXI.

(d) If, pursuant to this Article XIV, this Lease shall continue in full force and effect following a Casualty or Condemnation, the Lessee shall, at its sole cost and expense (and, without limitation, if any award, compensation or insurance payment is not sufficient to restore the Leased Property in accordance with this clause (d), pay the shortfall) and promptly and diligently repair any damage to the Leased Property caused by such Casualty or Condemnation in conformity with the requirements of Sections 9.1 and 10.1 so as to restore the Leased Property to at least the same condition and value as existed immediately prior to such Casualty or, in the case of Condemnation, to as close to the same condition as possible. In such event, title to the Leased Property shall remain with the Lessor subject to the terms of this Lease. Upon completion of such restoration, the Lessee shall, if the actual cost of such restoration exceeds \$2,000,000, furnish to Lessor a Responsible Officer’s Certificate confirming that such restoration has been completed pursuant to this Lease.

Section 14.2. Environmental Matters. At Lessee’s sole cost and expense, Lessee shall in a reasonably prompt and diligent manner undertake or cause to be undertaken any response, clean up, remedial or other action necessary to remove, clean up or remediate any Environmental Violation to the extent required by Applicable Laws with respect to the Leased Property (a “*Remediation*”).

Section 14.3. Notice of Environmental Matters. Lessee shall promptly provide to Lessor written notice of any pending or threatened claim, action or proceeding involving any Environmental Violation of which Lessee has knowledge or any Release of which Lessee has knowledge on, at, under or from the Land, which violation or Release could, in Lessee’s reasonable judgment, require in excess of \$500,000 in costs for Remediation, or which could result in the imposition of criminal penalties upon Lessor, Collateral Agent or any Lender (any such violation, claim, action, proceeding or Release, a “*Material Environmental Violation*”). All such notices shall describe the nature of the Material Environmental Violation, including any claims, actions or proceedings in respect thereof, and Lessee’s proposed response thereto. In addition, Lessee shall provide to Lessor, within ten (10) Business Days of receipt, copies of all significant written communications with any Governmental Authority relating to any such Material Environmental Violation. Lessee shall also promptly provide such detailed reports of any such Material Environmental Violations as may reasonably be requested by Lessor or the Collateral Agent.

Upon completion of the Remediation of such Material Environmental Violation by Lessee, Lessee shall cause to be prepared by an environmental consultant reasonably acceptable to Lessor and Collateral Agent a report describing the Material Environmental Violation and the actions taken by Lessee (or its agents) in response to such Material Environmental Violation, and a statement by the consultant that in such consultant's opinion after due inquiry, the Material Environmental Violation has been remediated in compliance in all material respects with applicable Environmental Law. The Remediation of each such Material Environmental Violation shall be completed prior to the Expiration Date unless the Subject Property has been purchased by Lessee in accordance with Article XV or

Article XVIII. Nothing in this Article XIV shall reduce or limit Lessee's obligations elsewhere in this Lease or under the Participation Agreement.

ARTICLE XV

TERMINATION OF LEASE

Section 15.1. Termination upon Certain Events; Lessee Assumption of Related Agreements. (a) If an Event of Loss with respect to the Leased Property or Significant Environmental Event with respect to the Subject Property occurs during the Term with respect to the Subject Property, then the Lessor may elect to terminate the Lease by giving written notice (a "Termination Notice") to the Lessee, but in any event no later than sixty (60) days following Lessee's written notice to Lessor and Collateral Agent of the occurrence of such Event of Loss or Significant Environmental Event as a consequence of such Event of Loss or Significant Environmental Event, the Lease is to be terminated on the Payment Date specified in Section 15.1(b).

(b) Following the Lessee's receipt of the Termination Notice, the Lessee shall be obligated to purchase the Lessor's interest in all, but not less than all, of the Subject Property on or prior to the next occurring Payment Date (but in no event any earlier than sixty (60) days from the date the Lessee receives the applicable Termination Notice) by paying the Lessor an amount equal to the Purchase Amount.

Section 15.2. Termination Procedures. In connection with the purchase of the Subject Property in accordance with Section 15.1(b), this Lease shall terminate and, concurrent with the Lessor's receipt of the Purchase Amount:

(a) the Lessor and Lessee shall comply with the provisions of Sections 21.1(i) through 21.1(v); and

(b) the Lessor shall convey to the Lessee any net proceeds (that is, after deducting all costs and expenses incurred by the Lessor, the Collateral Agent or any Lender(s) incident to collecting any such proceeds of the Event of Loss or Significant Environmental Event, including, without limitation, reasonable fees and expenses for counsel) with respect to the Event of Loss or Significant Environmental Event giving rise to the termination of this Lease theretofore received by the Lessor or, at the request of the Lessee, to the extent actually received and if acceptable to Lessor in its sole judgment, Lessor shall apply such amounts against sums due hereunder.

(c) Lessee hereby agrees that upon a termination of this Lease pursuant to this Article XV, Article XVIII or Section 19.1(a) hereof, Lessee shall enter into an assignment and assumption agreement with Lessor in form and substance satisfactory to Lessor, pursuant to which Lessor shall assign to Lessee, and Lessee shall so assume, any and all obligations of the Lessor under the Related Agreements.

ARTICLE XVI

EVENTS OF DEFAULT

Section 16.1. Events of Default. The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "Event of Default":

(a) the occurrence of a Payment Default; or

(b) the Lessee shall fail to make payment of any Supplemental Rent (other than Supplemental Rent referred to in clause (a) of this Section 16.1) within five (5) Business Days after such Supplemental Rent is due and payable; or

(c) the Lessee shall fail to maintain insurance as required by Article XIII of this Lease (but not including the requirement set forth in Section 13.3 of this Lease); or

(d) the Lessee shall fail to observe, perform or comply with (i) Section 9.1(h) (after giving effect to any applicable notice or grace period in the applicable Related Agreement), Section 9.1(o), Section 9.1(p) or Section 9.1(q) of the Participation Agreement or (ii) Section 11.1 or Article XVIII, XIX or XX hereof; or

(e) the Lessee shall fail to observe or perform any term, covenant or condition applicable to it under any Operative Document to which it is party (other than those described in Section 16.1(a), (b), (c) or (d) hereof) and, in each such case, such failure shall have continued unremedied for thirty (30) days after the earlier of Lessee's knowledge thereof or written notice thereof has been given to the Lessee by the Lessor, the Collateral Agent or any Lender; *provided however* that if such failure is capable of cure but cannot be cured by diligent efforts within such thirty (30) day period but such diligent efforts shall be properly commenced within such thirty (30) day cure period and the Lessee is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional one hundred twenty (120) days, but not to extend beyond the Expiration Date; or

(f) any representation or warranty made by the Lessee in any Operative Document to which it is a party or which is contained in any certificate, document or financial statement or other statement furnished at any time under or in connection with any Operative Document shall

prove to have been incorrect, false or misleading in any material respect on or as of the date made; or

(g) (i) the Lessee or any of its Material Subsidiaries shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of

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debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Lessee or any of its Material Subsidiaries shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Lessee or any of its Material Subsidiaries in any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Lessee or any of its Material Subsidiaries in any case, proceeding or other action seeking issuance of a warrant of attachment, execution, restraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Lessee or any of its Material Subsidiaries shall in writing consent to, approve, or acquiesce to, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Lessee or any of its Material Subsidiaries shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(h) any Operative Document of the type described in clause (a), (b), (c), (d), (e), (f), (g), (h), (k), (m), (n), (o) or (q) of the definition thereof or the security interest or Lien granted under this Lease or any other Operative Document shall, in whole or in material part, terminate, cease in whole or in material part to be effective or (other than as expressly provided therein) cease to be the legal, valid and binding enforceable obligation of the parties thereunder; or Lessee, directly or indirectly, contests in any court the effectiveness, validity, binding nature or enforceability thereof; or any security interest or Lien securing Lessee's or Lessor's obligations under the Operative Documents, in whole or in part, ceases to be a perfected first priority security interest and Lien (subject only to Permitted Liens); or

(i) the Lessee shall contest the effectiveness, validity, binding nature or enforceability of any Operative Document of the type described in clause (a), (b), (c), (d), (e), (f), (g), (h), (k), (m), (n), (o) or (q) of the definition thereof or any Lien granted under any Operative Document which secures the Lessee's obligations under the Operative Documents; or

(j) (i) the Lessee or any Material Subsidiary shall fail to make any scheduled payment of principal, interest or rent (whether as primary obligor or as guarantor or other surety) under any agreement under which Funded Debt having a principal amount in excess of \$20,000,000 is outstanding, when due (after giving effect to any applicable notice or grace period), or (ii) except as otherwise provided in clause (i) above, Funded Debt of Lessee or any Material Subsidiary with a principal amount in excess of \$20,000,000 has been accelerated for any reason whatsoever; or

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(k) (i) any member of the ERISA Group shall fail to pay when due an amount or amounts aggregating in excess of \$20,000,000 which it shall have become liable to pay under Title IV of ERISA; or (ii) notice of intent to terminate a Material Plan shall be filed under Title IV of ERISA by any member of the ERISA Group, any plan administrator or any combination of the foregoing; or (iii) any member of the ERISA Group has been notified in writing that the PBGC has instituted proceedings under Title IV of ERISA to terminate, to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer any Material Plan; or (iv) a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated; or (v) any of the events described in clause (iii) above shall occur with respect to any Plan or Plans (other than a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA) (A) that have aggregate Unfunded Liabilities in excess of \$20,000,000 and (B) with respect to which either (1) one or more members of the ERISA Group have engaged in a transaction or transactions described in Section 4069 of ERISA or (2) one or more members of the ERISA Group is a member of the "controlled group" under Section 412(c)(11) of the Code or Section 4001(a)(14) of ERISA; or (vi) there shall occur a complete or partial withdrawal from, or a default, within the meaning of Section 4219(c)(5) of ERISA, with respect to, one or more (A) multiemployer plans, within the meaning of Section 4001(a)(3) of ERISA, with respect to which a member of the ERISA Group shall have engaged, within the previous five plan years, in a transaction described in Section 4212(c) of ERISA, or (B) Multiemployer Plans, which could reasonably be expected to result in the incurrence by one or more members of the ERISA Group of a current payment obligation in excess of \$20,000,000; *provided* that no Event of Default shall occur under clause (v) or (vi) if (A) the Unfunded Liabilities of the Other Plans in respect of which events described in clause (v) have occurred, together with the current payment obligations that could reasonably be expected to result from complete or partial withdrawals or defaults described in clause (vi), shall not exceed \$20,000,000 and (B) each member of the ERISA Group that could reasonably be expected to be liable for such Unfunded Liabilities or current payment obligations is diligently contesting, in good faith, by appropriate proceedings, the imposition of such liabilities or obligations; or

(l) (i) one or more judgments or orders for the payment, in the aggregate, of money in excess of \$20,000,000 shall be rendered against the Lessee or any of its Material Subsidiaries and such judgments or orders shall continue unsatisfied and unstayed for a period of thirty (30) days or (ii) one or more judgments or orders shall be rendered against the Lessee or any Material Subsidiary, which judgments or orders shall be stayed on condition that a bond or collateral equal to or greater than, in the aggregate, \$20,000,000 be posted or provided, and such judgments or orders shall not be bonded, overturned or lifted within a period of thirty (30) days.

Section 16.2. Remedies. Upon the occurrence of any Event of Default and at any time thereafter, the Lessor may, so long as such Event of Default is continuing, do one or more of the following as the Lessor in its sole discretion shall determine, without limiting any other right or remedy the Lessor may have on account of such Event of Default, including, without limitation,

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the right to compel the Lessee to purchase the Subject Property as set forth in Section 18.2, but subject to the rights of the Lessee to purchase the Subject Property pursuant to the terms and within the time periods as set forth in Section 18.1 and Section 18.2:

(a) The Lessor may, by notice to the Lessee, rescind or terminate this Lease as to any or all of the Leased Property as of the date specified in such notice; *provided, however*, (i) no reletting, or taking of possession of the Leased Property (or any portion thereof) by the Lessor will be construed as an election on the Lessor's part to terminate this Lease unless a written notice of such intention is given to the Lessee, (ii) notwithstanding any reletting, or taking of possession, the Lessor may at any time thereafter elect to terminate this Lease for a continuing Event of Default and (iii) no act or thing done by the Lessor or any of its agents, representatives or employees and no agreement accepting a surrender of the Leased Property shall be valid unless the same be made in writing and executed by the Lessor;

(b) The Lessor may (i) demand that the Lessee, and the Lessee shall upon the written demand of the Lessor, return the Leased Property promptly to the Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of the Participation Agreement and Article IX and Sections 8.2 and 14.2 hereof, and Lessee shall comply with the requirements at Section 15.2(b) to the extent requested by Lessor, as if the Leased Property were being returned at the end of the Term, and the Lessor shall not be liable for the reimbursement of the Lessee for any costs and expenses incurred by the Lessee in connection therewith and (ii) without prejudice to any other remedy which the Lessor may have for possession of the Leased Property, and to the extent and in the manner permitted by Applicable Laws, enter upon the Leased Property in accordance with all Applicable Laws and take immediate possession of (to the exclusion of the Lessee) the Leased Property or any part thereof and expel or remove the Lessee, by summary proceedings or otherwise, all without liability to the Lessee for or by reason of such entry or taking of possession (*provided, however*, Lessor shall remain liable for actual damages caused by its gross negligence or willful misconduct), whether for the restoration of damage to property caused by such taking or otherwise and, in addition to the Lessor's other damages, the Lessee shall be responsible for all costs and expenses incurred by the Lessor and the Lenders in connection with any reletting, including, without limitation, reasonable brokers' fees and all costs of any alterations or repairs made by the Lessor;

(c) The Lessor may (i) sell all or any part of the Subject Property at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee (except that Excess Sales Proceeds are payable to and shall be paid to the Lessee) with respect thereto (except to the extent required by clause (ii) below if the Lessor shall elect to exercise its rights thereunder) in which event the Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated; and (ii) if the Lessor shall so elect, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the date of such sale, as damages for loss of a bargain and not as a penalty (in lieu of Basic Rent due for periods commencing on or after the Payment Date

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coinciding with such date of sale (or, if the sale date is not a Payment Date, the Payment Date next preceding the date of such sale)), an amount equal to (A) the excess, if any, of (1) the Purchase Amount calculated as of such Payment Date (including all Rent due and unpaid to and including such Payment Date), over (2) the net proceeds of such sale (that is, after deducting all costs and expenses incurred by the Lessor or any Lender incident to such conveyance, including, without limitation, repossession costs, brokerage commissions, prorations, transfer taxes, fees and expenses for counsel, title insurance fees, survey costs, recording fees and any repair costs); plus (B) interest at the Overdue Rate on the foregoing amount from such Payment Date until the date of payment;

(d) The Lessor may, at its option, (i) elect not to terminate this Lease with respect to the Leased Property and continue to collect all Basic Rent, Supplemental Rent and all other amounts due the Lessor (together with all costs of collection) and enforce the Lessee's obligations under this Lease as and when the same become due, or are to be performed, and (ii) upon any abandonment of the Leased Property by the Lessee, elect not to terminate this Lease and may make the necessary repairs (and the Lessee shall pay the reasonable costs of such repairs) in order to relet the Subject Property, and relet the Subject Property or any part thereof (in place, if so elected by Lessor) for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Lessor in its reasonable discretion may deem advisable; and upon each such reletting all rentals actually received by the Lessor from such reletting shall be applied to the Lessee's obligations hereunder and the other Operative Documents in such order, proportion and priority as the Lessor may elect in the Lessor's sole and absolute discretion. If the rentals received from the reletting pursuant to this Section 16.2(d) during any period are less than the Rent with respect to the Leased Property to be paid during that period by the Lessee hereunder, the Lessee shall pay any deficiency, as calculated by the Lessor on the next Payment Date;

(e) Unless the Subject Property has been sold in its entirety, the Lessor may, whether or not the Lessor shall have exercised or shall thereafter at any time (subject to the Lessee's prior performance in full under this clause) exercise any of its rights under clause (b), (c) or (d) with respect to the Leased Property or any portions thereof, demand, by written notice to the Lessee specifying the Termination Date (which shall be a date not earlier than ten (10) Business Days after the date of such notice) that the Lessee purchase, on or before such Termination Date, the Subject Property (or any remaining portion thereof) in the manner provided in Section 18.2 and in accordance with the provisions of Article XXI;

(f) By written notice to Lessee, the Lessor may declare the aggregate outstanding Lease Balance to be immediately due and payable (such declaration shall be deemed to have occurred upon an Event of Default under Section 16.1(g));

(g) The Lessor may exercise any other right or remedy that may be available to it under Applicable Laws, or proceed by appropriate court action (legal or equitable) to enforce the terms hereof or to recover damages for the breach hereof. Separate suits may

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be brought to collect any such damages for any period(s), and such suits shall not in any manner prejudice the Lessor's right to collect any such damages for any subsequent period(s), or the Lessor may defer any such suit until after the expiration of the Term, in which event such suit shall be deemed not to have accrued until the expiration of the Term;

(h) The Lessor may retain and apply against the Lease Balance and all other amounts due and owing by the Lessee under the Operative Documents, in accordance with Section 5.3 of the Participation Agreement, all sums which the Lessor would, absent such Event of Default, be required to pay to, or turn over to, the Lessee pursuant to the terms of this Lease and upon payment in full of the Lease Balance and all such amounts described above in this clause (h), the Subject Property shall be conveyed to Lessee in accordance with Section 21.1 of this Lease; or

(i) If an Event of Default shall have occurred and be continuing, the Lessor, as a matter of right and with notice to the Lessee, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Leased Property, and the Lessee hereby irrevocably consents to any such appointment. Any such receiver(s) shall have all of the usual powers and duties of receivers in like or similar cases and all of the powers and duties of the Lessor in case of entry onto the Land, and shall continue as such and exercise such powers until the date of confirmation of the sale of the Subject Property unless such receivership is sooner terminated.

To the maximum extent permitted by law, the Lessee hereby waives (x) the benefit of any appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale of the Subject Property or any interest therein and (y) any rights now or in the future conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use the Subject Property in mitigation of the Lessor's damages or which may otherwise limit or modify any remedy of damages.

The Lessor shall be entitled to enforce payment of the Loans and Lessor Amount and the performance of the obligations secured hereby and to exercise all rights and powers under this instrument or under any of the other Operative Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this instrument nor its enforcement, shall prejudice or in any manner affect the Lessor's right to realize upon or enforce any other security now or hereafter held by the Lessor, it being agreed that the Lessor shall be entitled to enforce this instrument and any other security now or hereafter held by the Lessor in such order and manner as the Lessor may determine in its absolute discretion. No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Operative Documents to the Lessor or to which it may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as

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often as may be deemed expedient by the Lessor. Without limiting the foregoing, each of the powers, rights and remedies as set forth or otherwise permitted pursuant to this Article XVI are independent of the provisions of Article XIII of the Participation Agreement and shall not be affected by any exclusion set forth at Section 13.1(b) of the Participation Agreement.

The proceeds derived from any sale of Subject Property and other amounts recovered pursuant to the foregoing remedies after an Event of Default shall be distributed pursuant to Section 5.3(g) of the Participation Agreement. The amount realized by the Lessor upon a sale of the Subject Property shall be net of Lessor's and Lessee's sale expenses (including reasonable attorneys' fees and expenses) and other expenses reasonably and customarily incurred by the Lessor or Lessee in connection with the Lessor holding and owning such Subject Property until such time as the Subject Property is sold. The obligation to deliver to the Lessee, in accordance with Section 5.3(g) of the Participation Agreement, any Excess Sales Proceeds in connection with any sale of the Subject Property shall survive this Lease.

Section 16.3. Waiver of Certain Rights. (a) To the maximum extent permitted by law, the Lessee hereby waives the benefit of any appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale of the Subject Property or any interest therein, and (b) if this Lease shall be terminated pursuant to Section 16.2, the Lessee waives, to the fullest extent permitted by law, (i) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (ii) any right of redemption, re-entry or repossession; (iii) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt or limiting the Lessor with respect to the election of remedies; and (iv) any other rights which might otherwise limit or modify any of the Lessor's rights or remedies under this Article XVI.

Section 16.4. Deed of Trust Remedies. Without limiting any other remedies set forth in this Lease, and also, without limiting the generality of Article XXIV hereof, the Deed of Trust Trustee, for the benefit and at the direction of the Lessor, may proceed by a suit or suits in equity or at law, whether for a foreclosure hereunder, or (to the extent permitted by law) for the sale of the Subject Property, or against the Lessee on a recourse basis for the Lease Balance, or for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power granted herein, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Subject Property, or for the enforcement of any other appropriate legal or equitable remedy. The Deed of Trust Trustee and the Lessor shall have all rights available to a deed of trust trustee or a beneficiary of a deed of trust under the laws of the State of Texas, including, without limitation, all rights granted a mortgage holder or deed of trust beneficiary under applicable Texas law. In the event that any provisions of this Lease shall be inconsistent with Texas law, the provisions of such Texas law shall take precedence over such provision of this Lease, but shall not invalidate or render unenforceable any other provision of this Lease that can be construed in a manner consistent with such Texas law. If any provision of this Lease shall grant the Deed of Trust Trustee and the Lessor any rights or remedies upon default of the Lessee which are more limited than the rights that would otherwise be vested in the Deed of Trust Trustee and the Lessor under such Texas law in the absence of such provision, the Deed of Trust

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Trustee and the Lessor shall be vested with the rights granted in such Texas law to the full extent permitted by law.

Section 16.5. Limitation on Recourse. (a) Notwithstanding anything to the contrary contained in this Lease or any other Operative Document, in the event and only in the event a Limited Recourse Event of Default occurs and is continuing and no other Event of Default has occurred and is continuing and the Lessee has returned possession of the Subject Property to Lessor in accordance with, and otherwise in the condition required by, this Lease, Lessee's recourse liability under the Operative Documents (except as set forth in clause (b) below) will not exceed the sum of the Sale Option Recourse Amount, plus any overdue amounts accruing thereon if such amount is not paid when due.

(b) The limitation on Lessee's recourse liability set forth in Section 16.5(a) shall not apply with respect to the rights of Lessor, Collateral Agent or any Lender (A) to seek (i) the recovery of all damages, (ii) the recovery of any portion of the Lease Balance in excess of the Sale Option Recourse Amount and (iii) the recovery of any other amounts due and payable by Lessee under the Operative Documents, in each case, from the proceeds of the sale, lease,

foreclosure, repossession or other disposition of the Subject Property or any other Lessee Collateral or (B) to any claim for indemnity under Article XIII of the Participation Agreement, except in the case of this clause (B), any claim under such Article XIII of the Participation Agreement for the Lease Balance in excess of the Sale Option Recourse Amount.

ARTICLE XVII

LESSOR'S RIGHT TO CURE

Section 17.1. The Lessor's Right to Cure the Lessee's Defaults. The Lessor, without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to), upon five (5) Business Days' prior notice to the Lessee in the case of any Event of Default, remedy any Event of Default or default by Lessee under Section 9.1(h) of the Participation Agreement that has occurred and is continuing for the account and at the sole cost and expense of the Lessee, including (i) the failure by the Lessee to maintain the insurance required by Article XIII and (ii) the failure by Lessee to perform the obligations under the Related Agreements pursuant to and in accordance with Section 9.1(h) of the Participation Agreement, and may, to the fullest extent permitted by law and the Related Agreements, and notwithstanding any right of quiet enjoyment in favor of the Lessee, enter upon the Subject Property for such purpose and take all such action thereon as may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All reasonable out-of-pocket costs and expenses so incurred (including fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by the Lessor, shall be paid by the Lessee to the Lessor on demand as Supplemental Rent.

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ARTICLE XVIII

PURCHASE PROVISIONS

Section 18.1. Early Termination Options. Subject to the conditions contained herein and without limitation of Lessee's purchase obligation pursuant to Section 18.2, on (a) any Business Day during the Term, provided Lessee has not elected the Sale Option, or (b) on any Business Day after the occurrence of an Event of Default, Lessee may, at its option, purchase all, but not less than all, of the Subject Property (the "*Early Termination Option*") at a price equal to the Purchase Amount. The Early Termination Option shall terminate automatically and without notice upon the occurrence of an Event of Default arising as a result of an Insolvency Event. Upon the occurrence of any other Event of Default, Lessee shall be permitted to purchase the Subject Property so long as Lessee pays the Collateral Agent or Lessor the Purchase Amount and Lessee executes such documents as are necessary to consummate such purchase within 10 Business Days after Lessee's receipt of written notice of the Lessor's exercise of any remedy under Section 16.2 hereof or Section 24.2(d) hereof. Except as provided for in the preceding sentence, in order to exercise the Early Termination Option, Lessee shall deliver to Lessor and the Collateral Agent, a written notice (the "*Purchase Notice*") not less than thirty (30) days' prior to the date upon which it intends to consummate the Early Termination Option, which Purchase Notice shall be irrevocable when made. If the Lessee exercises the Early Termination Option then, upon the Lessor's receipt of all amounts due in connection therewith, the Lessor shall transfer to the Lessee all of the Lessor's right, title and interest in and to the Subject Property in accordance with the procedures set forth in Section 21.1, such transfer to be effective as of the date specified in the Purchase Notice. The Lessor agrees that it shall cooperate with the Lessee in effecting any transfer to a designee of the Lessee pursuant to this Section 18.1.

Section 18.2. Acceleration of Subject Property Purchase. (a) The Lessee shall be obligated to purchase for an amount equal to the Purchase Amount the Lessor's interest in the Subject Property (notwithstanding any prior election to exercise its Early Termination Option pursuant to Section 18.1) (i) automatically and without notice upon the occurrence of an Event of Default described in Section 16.1(g), whether or not another Event of Default described in one or more other clauses of Section 16.1 shall have been or thereafter is declared, and (ii) as provided for at Section 16.2(e), upon written demand of the Lessor upon any other Event of Default.

(b) Any purchase under this Section 18.2 shall be in accordance with the procedures for transfer set forth in Section 21.1.

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ARTICLE XIX

END OF TERM OPTIONS

Section 19.1. End of Term Options. Before the Expiration Date, Lessee shall, by delivery of written notice to Lessor and Collateral Agent at least 120 days before the Expiration Date, exercise one of the following options:

(a) Purchase for an amount in immediately available funds equal to the Purchase Amount all, but not less than all, of the Subject Property on or before the last day of the Term (the "*Purchase Option*"); and if Lessee shall have elected to purchase the Subject Property, (1) Lessee may (A) assign its right to purchase the Subject Property hereunder to a third party, in which case such third party shall consummate the purchase of the Subject Property on or before the last day of the Term, *provided* that if such third party fails to consummate the purchase of the Subject Property on or before the last day of the Term, Lessee shall consummate the purchase of the Subject Property on the last day of the Term or (B) designate a third party to acquire title to the Subject Property, without assigning Lessee's rights to purchase the Subject Property hereunder and (2) Lessor shall, upon the payment to Lessor of the Purchase Amount then due and payable by Lessee under the Operative Documents, transfer all of Lessor's right, title and interest in and to the Subject Property (including, to the extent permitted thereby, the Related Agreements) to Lessee or such other party designated by Lessee pursuant to Section 21.1; or

(b) Sell on behalf of Lessor for cash to a single purchaser not in any way affiliated with Lessee or any of its Affiliates all, but not less than all, of the Subject Property on the last day of the Term (the "*Sale Option*"); *provided, however,* that Lessee's right to sell the Subject Property pursuant to the Sale Option shall be conditioned upon and subject to the fulfillment by Lessee of each of the terms and conditions set forth in Article XX. All subleases with respect to the Subject Property (other than those that constitute Related Agreements or any subleases entered into by the tenants under the Related Agreements in accordance with the terms thereof) shall have been terminated prior to consummation of the Sale Option. Lessee shall not enter into any additional subleases or renew any subleases with respect to the Subject Property following Lessee's election of the

Sale Option. Following Lessee's election of the Sale Option, Lessee shall not remove any Modifications (other than Lessee Improvements) or commence any Modifications (other than Required Modifications) without the consent of the Required Participants.

Section 19.2. Election of Options. Unless (i) Lessee shall have affirmatively elected the Sale Option within the time period provided for in Section 19.1 and satisfied each of the requirements in Articles XX and XXI, or (ii) Lessee shall have elected to purchase the Subject Property pursuant to Section 18.1, Lessee shall be deemed to have elected the Purchase Option. In addition, the Sale Option shall automatically be revoked if there exists a Default (other than a Limited Recourse Default), Event of Default (other than a Limited Recourse Event of Default),

Significant Environmental Event, Significant Casualty or Significant Condemnation at any time after the Sale Option is properly elected or Lessee fails to comply with each of the terms and conditions set forth at Articles XX and XXI and in such event Lessor shall be entitled to exercise all rights and remedies provided in Article XVI. Lessee may not elect the Sale Option if there exists on the date the election is made a Default (other than a Limited Recourse Default), an Event of Default (other than a Limited Recourse Event of Default), Significant Environmental Event, Significant Casualty or Significant Condemnation. Any election by Lessee of the Purchase Option pursuant to Section 19.1(b) shall be irrevocable at the time made.

ARTICLE XX

SALE OPTION

Section 20.1. Sale Option Procedures. The Lessee's effective exercise and consummation of the Sale Option with respect to the Subject Property shall be subject to the due and timely fulfillment of each of the following provisions as to the Subject Property as of the dates set forth below.

(a) (i) the Lessee shall have given to the Lessor and the Collateral Agent written notice of the Lessee's exercise of the Sale Option in accordance with Section 19.1 and (ii) Lessee shall have obtained all authorizations, consents and approvals from any Governmental Authority and any Person (including, without limitation, the counterparties to the Related Agreements) required to be obtained to effectively consummate the Sale Option.

(b) No Event of Default (other than a Limited Recourse Event of Default), Default (other than a Limited Recourse Default), Significant Environmental Event, Significant Casualty or Significant Condemnation shall have occurred and be continuing on or at any time following the date of Lessee's notice of exercise of the Sale Option.

(c) Upon surrender of the Leased Property, (i) the Leased Property shall be in the condition required by Section 9.1 and (ii) the Lessee shall have completed or caused to be completed and paid the cost of all Modifications commenced prior to the Expiration Date, and Lessee shall have caused to be completed prior to the Expiration Date the repair and rebuilding of the affected portions of the Leased Property suffering a Casualty or Condemnation.

(d) The Lessee shall, as nonexclusive agent for the Lessor, use commercially reasonable efforts to obtain the highest cash purchase price for the Subject Property. Subject to clause (h) below, the Lessee will be responsible for hiring brokers and making the Subject Property available for inspection by prospective purchasers, and all marketing of the Subject Property shall be at Lessee's expense. The Lessee shall, upon reasonable notice during normal business hours (subject to Lessee's customary security and safety measures), upon request, permit inspection of the Subject Property and any Leased Property Records by the Lessor, the Collateral Agent, any Lender and any potential purchasers, and shall otherwise do all things reasonably necessary to sell and deliver possession of the Subject Property to any purchaser.

(e) The Lessee shall use commercially reasonable efforts to procure bids from one or more bona fide prospective purchasers to purchase the Subject Property. No such purchaser shall be the Lessee or any Affiliate of the Lessee.

(f) The Lessee shall submit all bids to the Lessor, the Collateral Agent and the Lenders, and the Lessor will have the right to review the same and if directed to submit any one or more bids. All bids shall be on an all-cash basis unless the Lessor and the Lenders shall otherwise agree in their sole discretion and shall be for an amount not less than the Fair Market Value of the Subject Property. The Lessee shall use commercially reasonable efforts to deliver to the Lessor and the Lenders not less than ninety (90) days prior to the Expiration Date a binding written unconditional (except as set forth below), irrevocable offer by such purchaser or purchasers offering the highest all cash bid to purchase all, but not less than all, of the Subject Property (unless otherwise agreed to by the Lessor and the Lenders). Lessor and the Lenders (A) shall have the sole authority to determine whether to accept the highest all cash bid for the Subject Property; *provided, however*, that to the extent the sum of the Sale Option Recourse Amount (reduced by any amounts to be distributed to Collateral Agent or any Participant pursuant to clause *first* of Section 5.3(d)(i) of the Participation Agreement) and the all cash Net Sales Proceeds for the Subject Property equals or exceeds the Lease Balance and all other amounts due and owing herein, Lessor and the Lenders shall be deemed to have accepted such bid and (B) if accepted or deemed accepted by Lessor and the Lenders, Lessee shall sell the Subject Property on the Expiration Date in accordance with the terms of such bid to the purchaser submitting such bid and comply with and satisfy the requirements and covenants of clause (v) of Section 21.1, and on the Expiration Date, Lessee shall pay to Collateral Agent all such amounts and the Gross Proceeds as are required to be paid on such date pursuant to Sections 20.1(i), 20.1(j) and 20.1(k). If, within 45 days prior to the Expiration Date, the all-cash Net Sales Proceeds for the Subject Property offered in the bids submitted by Lessee for Lessor's and the Lenders' acceptance together with the Sale Option Recourse Amount (reduced by any amounts to be distributed to Collateral Agent or any Participant pursuant to clause *first* of Section 5.3(d)(i) of the Participation Agreement) do not equal or exceed the then outstanding Lease Balance and all such bids were not previously accepted (or deemed accepted), then Lessor or the Lenders may in their respective sole and absolute discretion accept or reject such bids.

(g) In connection with any such sale of the Subject Property, the Lessee will provide to the purchaser all customary "seller's" indemnities (including, without limitation, an environmental indemnity to the extent the same is required by the purchaser), representations and warranties regarding title, absence of Liens (except Lessor Liens and Permitted Liens of the type described in clauses (a) (excluding Liens relating to the interest or rights of Lessee), (b), (c) or (h) of the definition of "*Permitted Liens*") and the condition of the Subject Property (including, without limitation, compliance with all Environmental Laws). The Lessee shall have obtained, at its cost and expense, all required governmental and regulatory consents and approvals and shall have made all filings as required by Applicable Laws in order to carry out and complete the transfer of the Subject Property so that the Leased Property can

be operated for its intended use as an office and retail facility. As to the Lessor, any such sale shall be made on an “as is, where is, with all faults” basis without representation or warranty by the Lessor, other than the absence

of Lessor Liens. Any agreement as to such sale shall be in form and substance reasonably satisfactory to the Lessor.

(h) All Sales Costs shall be paid from the Gross Proceeds of the Subject Property. The Lessee shall pay or cause to be paid directly, and not from the sale proceeds of the Subject Property, all Marketing Costs which, in aggregate, do not exceed \$100,000 (the “Marketing Costs Cap”).

(i) Whether or not a sale of the Subject Property is completed on the Expiration Date, the Lessee shall pay to the Lessor on or prior to the Expiration Date (or in the case of Supplemental Rent, to the Person entitled thereto) an amount equal to (i) the Sale Option Recourse Amount plus (ii) all accrued and unpaid Rent (including Supplemental Rent, if any) and all other amounts hereunder which have accrued or will accrue prior to or as of the Expiration Date, in the type of funds specified in, and in accordance with, Section 3.4 hereof.

(j) The Lessee shall pay to the Lessor on or prior to the Expiration Date the amounts, if any, required to be paid pursuant to Article XIII of the Participation Agreement.

(k) If a sale of the Subject Property shall be consummated on or before the Expiration Date, Lessee shall pay or cause to be paid (i) Sales Costs out of the Gross Proceeds from the sale of the Subject Property, (ii) Marketing Costs (not to exceed the Marketing Costs Cap) to the Person entitled thereto and (iii) to Lessor, the Net Sales Proceeds of such sale of the Subject Property, which Net Sales Proceeds shall be applied pursuant to Section 5.3(d) of the Participation Agreement.

(l) The Lessee shall, to the extent permitted by Applicable Laws, assign, and shall cooperate with all reasonable requests of the Lessor or the purchaser for obtaining any and all licenses, permits, approvals and consents of any Governmental Authorities or other Persons that are or will be required to be obtained by the Lessor or such purchaser in connection with its use, operation, control or maintenance of the Subject Property in compliance with Applicable Laws.

(m) Prior to the Expiration Date, Lessee shall, subject to the Marketing Costs Cap, furnish to the Lessor, the Collateral Agent, and each Lender and, if the Subject Property is to be sold on the Expiration Date, the independent purchaser hereunder a reasonably current Environmental Audit dated no earlier than forty-five (45) days prior to the Expiration Date and addressed to each such party. Such Environmental Audit shall be prepared by an environmental consultant selected by the Collateral Agent and the Lessor and reasonably acceptable to the Lessee and shall contain conclusions satisfactory to the Participants and such purchaser as to the environmental status of the Subject Property. If the Subject Property is sold during the Extended Remarketing Period pursuant to Section 20.3, such Environmental Audit shall be updated to a date not later than forty-five (45) days prior to the date of such sale and be subject to the reevaluation of the Lessor and the Lenders and if applicable, the independent purchaser on the same basis as provided in the preceding sentence. If any such Environmental Audit indicates any Remediation is required or that a Phase II environmental assessment is required, Lessee shall undertake such Remediation or obtain such Phase II environmental assessment and undertake any

Remediation indicated in such Phase II environmental assessment, and prior to the Expiration Date shall obtain a written statement by such environmental consultant indicating in his or her opinion that all remedial actions indicated in such environmental assessment or further environmental assessment have been undertaken and completed in compliance with Applicable Laws.

If one or more of the foregoing provisions of this Section 20.1 shall not be fulfilled as of the date set forth above, then the Lessor shall declare by written notice to the Lessee the Sale Option to be null and void (whether or not it has been theretofore exercised by the Lessee), in which event all of the Lessee’s rights under this Section 20.1 shall immediately terminate and the Lessee shall be obligated to purchase the Subject Property pursuant to Section 19.1(a) on the Expiration Date.

Except as expressly set forth herein, the Lessee shall have no right, power or authority to bind any Participant in connection with any proposed sale of the Subject Property.

Section 20.2. Certain Obligations Continue. During the period following Lessee’s exercise of the Sale Option up to and including the Expiration Date, the obligation of the Lessee hereunder, including the obligation to pay Rent with respect to the Leased Property (including the installment of Rent due on the Expiration Date), shall continue undiminished. The Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XX.

Section 20.3. Failure to Sell Subject Property. If Lessee shall exercise the Sale Option and shall fail to sell the Subject Property on the Expiration Date in accordance with and subject to the provisions of Section 20.1, then Lessee and Lessor hereby agree as follows:

(a) Lessee shall, if requested by Lessor, continue to use reasonable commercial efforts as non-exclusive agent for Lessor to sell the Subject Property on behalf of Lessor in accordance with this Article XX for the period (the “Extended Remarketing Period”) commencing on the Expiration Date and ending on the earlier of (i) the sale of the Subject Property in accordance with the provisions of this Article XX or such earlier date as Lessor has received payment in full of the Lease Balance and all accrued and unpaid Rent and (ii) the date that is two years after the Expiration Date. Without limiting the foregoing, all of the provisions of Section 20.1 (excluding subsections (a)(i), (b)(i) (other than with respect to obligations of the Lessee that survive the termination of this Lease pursuant to Section 20.3(b) below), (m) and (k) thereof) shall be applicable to the Extended Remarketing Period and any sale during such period. Lessor’s appointment of Lessee as Lessor’s nonexclusive agent to use its reasonable commercial efforts to obtain the highest all-cash price for the purchase of the Subject Property shall not restrict Lessor’s right to market or lease the Subject Property or to retain one or more sales agents or brokers at Lessee’s sole cost and expense (subject to Section 20.1(h)), or the right of any Participant to submit or cause to be submitted bids for the Subject Property in the manner contemplated by Section 20.1.

(b) On the Expiration Date, Lessee shall return possession of the Leased Property to Lessor in accordance with and otherwise, in the condition required by, this Lease (including each of the requirements and conditions set forth at Section 20.1(c), Section 20.1(i) and Section 20.1(m)). Thereafter, this Lease shall terminate, except with respect to any obligations of Lessee pursuant to Article XIII of the Participation Agreement and Section 25.1 of this Lease that expressly survive such termination and the obligations of Lessee under this Section 20.3 and Section 21.1 of this Lease, and Lessee shall have no further obligation to pay Rent which would otherwise accrue after the date of such termination or to perform any other obligations under the Lease. Following the Expiration Date, Lessor shall be free to sell or lease all or any portion of the Subject Property to any party at such reasonable times and for such amounts as Lessor deems commercially reasonable and appropriate in order to maximize Lessor's opportunity to recover the Post-Expiration Date Balance. Sales Costs shall be paid out of the Gross Proceeds of the sale of the Subject Property and Net Sales Proceeds from the sale of the Subject Property shall be applied as provided in Section 5.3(d)(ii) of the Participation Agreement. Following the Expiration Date, Lessor shall have the right to enter into leases for all or any portion of the Subject Property at fair market rentals and otherwise on commercially reasonable terms, and the net operating cash flow therefrom shall be payable to Lessor in reduction of the Lessor Balance.

(c) Lessor reserves all rights under this Lease and the other Operative Documents arising out of Lessee's breach of any provisions of this Lease (including this Article XX), occurring prior to or on the Expiration Date, including the right to sue Lessee for damages.

(d) To the greatest extent permitted by Applicable Laws and subject to Section 20.3(e) below, Lessee hereby unconditionally and irrevocably waives, and releases Lessor from, any right to require Lessor, the Collateral Agent and the Lenders during the Extended Remarketing Period to sell the Subject Property in a timely manner or for any minimum purchase price or on any particular terms and conditions, Lessee hereby agreeing that if Lessee shall elect the Sale Option, its ability to sell the Subject Property on or prior to the Expiration Date and to cause any Person to submit a bid to Lessor pursuant to Section 20.1 shall constitute full and complete protection of Lessee's interest hereunder.

(e) If the Subject Property has not been sold by the Expiration Date, Lessor shall obtain an appraisal from an independent MAI real estate appraiser selected by Lessor, Lessee and the Collateral Agent which shall establish the Fair Market Value of the Subject Property as of the Expiration Date. If the Subject Property has not been sold by the two-year anniversary of the Expiration Date, then Lessor shall pay to Lessee the lesser of (x) the Sale Option Recourse Amount and (y) the positive difference, if any, between the Fair Market Value of the Leased Property and the sum of the outstanding Lease Balance (as of the Expiration Date after giving effect to any payments by Lessee or third parties (including, without limitation, proceeds of insurance or Condemnation) on or before such date which reduced the Lease Balance) plus an amount equal to the estimated Post-Closing Sales Costs assuming an actual sale to a third party in an arm's-length

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transaction had occurred on the two-year anniversary of the Expiration Date (as of the two-year anniversary of the Expiration Date). The amount to be paid to Lessee pursuant to the immediately preceding sentence shall include interest on such amount at the Lessee Interest Rate accruing from the Expiration Date until but not including the date of such payment. The estimate of Post-Closing Sales Costs as provided for above shall be made by Lessor based on available information relating to similar commercial real estate sales of real property located in the State of Texas and the county where the Subject Property is located.

(f) In the event that the Subject Property is not sold within two (2) years after the Expiration Date and upon payment by Lessor of the amount, if any, required in clause (e) above at the end of such two-year period, Lessee shall have no further right, title or interest in and to the Subject Property or any proceeds thereof, which in each case shall remain the sole and exclusive property of the Lessor.

ARTICLE XXI

PROCEDURES RELATING TO PURCHASE OR SALE OPTION

Section 21.1. Provisions Relating to Conveyance of the Subject Property Upon Purchase by the Lessee, Sales or Certain Other Events. In connection with any termination of this Lease pursuant to the terms of Article XV, any purchase of the Subject Property in accordance with Article XVIII or in connection with the Lessee's obligations under Section 16.2(e), any other conveyance or purchase of the Subject Property made pursuant to the terms of this Lease then, upon the date on which this Lease is to terminate with respect to the Leased Property and upon tender by the Lessee of the amounts set forth in Article XV, Sections 16.2(e), 18.1 or 18.2, as applicable:

(i) subject to clause (vi) of this Section 21.1, the Lessor shall execute and deliver to the Lessee (or to the Lessee's designee) at the Lessee's cost and expense and subject to clause (vi) of this Section 21.1, (x) a special warranty deed (warranting as to Lessor Liens only) with respect to the Subject Property, (y) a quitclaim assignment of the entire interest of the Lessor in the Subject Property (which shall include an assignment of all of the right, title and interest of the Lessor in and to any insurance proceeds of condemnation award with respect to the Subject Property not previously received by the Lessor and an assignment of leases of the Subject Property) and the Related Agreements in each case in recordable form, and (z) a FIRPTA Affidavit, in each case, otherwise in conformity with local custom and without any representation or warranty of any kind except as to the absence of any Lessor Liens;

(ii) subject to clause (vi) of this Section 21.1, the Subject Property shall be conveyed to the Lessee (or to the Lessee's designee) "AS IS, WHERE IS" and in its then present physical condition;

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(iii) subject to clause (vi) of this Section 21.1, the Lessor shall execute and deliver to Lessee (or its designee) and the Lessee's title insurance company an affidavit as to the Lessor's title and Lessor's Liens attributable to it and shall execute and deliver to the Lessee a statement of termination of this Lease.

(iv) subject to clause (vi) of this Section 21.1, the Lessor shall execute and deliver to Lessee a statement of termination of this Lease and shall cause the Collateral Agent to execute and deliver releases of any Liens created by the Operative Documents attributable to the Collateral Agent or the Lessor, and termination statements for any financing statements which are then of record naming the Collateral Agent or the Lessor as the secured party;

(v) if the Lessee properly exercises the Sale Option, then, subject to Section 20.3, the Lessee shall, on the Expiration Date, and at its own cost, transfer possession of the Subject Property to the independent purchaser thereof, by surrendering the Subject Property into the possession of the Lessor or such purchaser, as the case may be, free and clear of all Liens other than Permitted Liens of the type described in clauses (i) (excluding Liens relating to the rights and interests of Lessee), (ii), (iii), (vii) or (ix) of the definition of “*Permitted Liens*”, in good condition (as modified by Modifications permitted by this Lease), ordinary wear and tear excepted, and in compliance in all material respects with Applicable Laws and the provisions of this Lease, and the Lessee shall execute and deliver to the purchaser at the Lessee’s cost and expense a deed and bill of sale with respect to the Subject Property, in each case in recordable form and otherwise in conformity with local custom, warranting that such Subject Property is free and clear of all Liens (other than Permitted Liens of the type described in clauses (i) (relating to the rights and interests of Lessee), (ii), (iii), (iv), (vii) or (ix) of the definition of “*Permitted Liens*”), the Lessee shall execute and deliver to the purchaser and the purchaser’s title insurance company an affidavit as to the absence of any Liens (other than Permitted Liens), and such other affidavits and certificates reasonably requested by any title insurance company insuring title to the Subject Property, as well as a FIRPTA affidavit, and an instrument in recordable form declaring this Lease to be terminated on the date of closing of the sale of the Subject Property. The Lessee shall, on and within a reasonable time before and up to one year after the Expiration Date, cooperate reasonably with the Lessor and the purchaser of the Subject Property in order to facilitate the purchase and use by such purchaser of the Subject Property, which cooperation shall include the following, all of which the Lessee shall do on or before the Expiration Date or as soon thereafter as is reasonably practicable: providing all Subject Property Records and all know-how, data and technical information relating thereto, granting or assigning (to the extent assignable) all licenses necessary for the operation and maintenance of the Subject Property, and cooperating reasonably in seeking and obtaining all necessary Governmental Action. The obligations of the Lessee under this paragraph shall survive the expiration or termination of this Lease; and

(vi) Lessee shall cause, (A) to the extent required to consummate the sale, all counterparties to the Related Agreements to execute written consents to any such transfer,

purchase or conveyance of the Subject Property and the Related Agreements and (B) Lessee or such third party purchaser, as applicable, to assume all obligations of Lessor under the Related Agreements. Upon such sale, Lessor will be discharged and relieved of all obligations under the Related Agreements.

ARTICLE XXII

ACCEPTANCE OF SURRENDER

Section 22.1. Acceptance of Surrender. No surrender to the Lessor of this Lease or of the Leased Property or of any part of any thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by the Lessor and, prior to the payment or performance of all obligations under the Loan Agreement, the Lenders, and no act by the Lessor or the Lenders or any representative or agent of the Lessor or the Lenders, other than a written acceptance, shall constitute an acceptance of any such surrender.

ARTICLE XXIII

NO MERGER OF TITLE

Section 23.1. No Merger of Title. There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in part, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) title to the Subject Property, except as may expressly be stated in a written instrument duly executed and delivered by the appropriate Person or (c) a beneficial interest in the Lessor.

ARTICLE XXIV

INTENT OF THE PARTIES

Section 24.1. Nature of Transaction. It is the intention of the parties that:

(a) the Overall Transaction constitutes an operating lease from Lessor to Lessee for purposes of Lessee’s financial reporting, including, without limitation, under Financial Accounting Standards Board Statement No. 13;

(b) for purposes of all federal, state and local income, franchise, transfer and other taxes, and bankruptcy, insolvency, conservatorships and receiverships (including the substantive law upon which bankruptcy, conservatorship, insolvency and receivership proceedings are based) real estate law, commercial law and UCC:

(i) the Overall Transaction constitutes a financing by the Participants to Lessee and preserves beneficial ownership in the Subject Property in Lessee, Lessee will be entitled to all tax benefits with respect to the Subject Property

ordinarily available to owners of property similar to the Subject Property for tax purposes and the obligations of Lessee to pay Basic Rent shall be treated as payments of principal, if any, and interest to the Participants, and the payment by Lessee of any amounts in respect of the Lease Balance shall be treated as payments of principal to the Participants;

(ii) this Lease grants a security interest or a Lien, as the case may be, in the Lessee's interest in the Leased Property and the other Lessee Collateral in favor of the Lessee and Lessor, and for the benefit of the Participants to secure payment and performance of the Obligations; and

(iii) the Security Instruments create Liens and security interests in the Subject Property and the other Lessee Collateral and Lessor Collateral in favor of the Collateral Agent for the benefit of all of the Participants to secure Lessee's and Lessor's payment and performance of its obligations under the Operative Documents.

Each of the parties hereto agrees that it will not, nor will it permit any Affiliate to at any time, take any action or fail to take any action with respect to the preparation, filing or audit of any income tax return, including an amended income tax return, to the extent that such action or such failure to take action would be inconsistent with the intention of the parties expressed in this Section 24.1.

Nevertheless, Lessee acknowledges and agrees that none of the Lessor, the Collateral Agent, Arranger or any Lender has made any representations or warranties concerning the tax, accounting or legal characteristics of the Operative Documents or any aspect of the Overall Transaction and that Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents and the Overall Transaction as it deems appropriate.

(c) Specifically, but without limiting the generality of subsection (a) of this Section 24.1, the Lessor and the Lessee intend and agree that for the purpose of securing the Lessee's obligations for the repayment of the Obligations, (i) the Lease shall also be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code; (ii) the conveyance provided for hereby shall be deemed to be a grant by the Lessee to the Lessor, for the benefit of the Participants, of a Lien (including the Lessee's Mortgage) on and security interest in all of the Lessee's present and future right, title and interest in and to the Leased Property and the Lessee Collateral, including but not limited to the Lessee's leasehold estate therein and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property, whether in the form of cash, investments, securities or other property to secure such loans, effective on the date hereof, to have and to hold such interests in the Leased Property unto the Lessor, for the benefit of the Participants; (iii) the possession by the Lessor of notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed

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to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-313 of the UCC; and (iv) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of the Lessee shall be deemed to have been given for the purpose of perfecting such security interest under Applicable Laws. The Lessor and the Lessee shall, to the extent consistent with the Lease, take such actions and execute, deliver, file and record such other documents, financing statements, mortgages and deeds of trust as may be necessary to ensure that, if the Lease were deemed to create a security interest in the Leased Property in accordance with this Section 24.1(c), such security interest would be deemed to be a perfected security interest in the Leased Property and the Lessee Collateral with priority over all Liens, other than Permitted Liens, under Applicable Laws and will be maintained as such throughout the Term. Lessee hereby authorizes Lessor to file any and all financing statements covering the Leased Property or any part thereof that Lessor may require.

Section 24.2. Liens and Security Interests. (a) Specifically, without limiting the generality of Section 24.1, the Lessor and the Lessee intend and agree that in the event of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State or Commonwealth thereof affecting the Lessee, the Lessor, the Collateral Agent or any Lender or any collection actions, the transactions evidenced by the Operative Documents shall be regarded as loans and advances made by the Participants as unrelated third party lenders to the Lessee secured by the Subject Property and the Lessee Collateral. To secure such loans and advances and other Obligations, the Lessee has GRANTED, BARGAINED, SOLD, WARRANTED, CONVEYED and CONFIRMED, and hereby GRANTS, BARGAINS, SELLS, WARRANTS, CONVEYS and CONFIRMS the Leased Property and the Lessee Collateral unto the Deed of Trust Trustee, its successors and assigns (for the benefit of the Participants) IN TRUST WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION AND HEREBY GRANTS unto the Lessor, its successors and assigns a security interest in the Leased Property and the Lessee Collateral.

(b) Specifically, but without limiting the generality of Section 24.1, the Lessor and the Lessee further intend and agree that, for the purpose of securing the obligation of the Lessee for the repayment of the above-described loans to the Lessee, (i) this Lease shall also be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code and a real property mortgage and deed of trust; (ii) the conveyance provided for hereby and in Section 2 of this Lease shall be deemed to be a grant by the Lessee to the Deed of Trust Trustee and its successors and assigns in trust for the use and benefit of the Lessor (for the benefit of the Participants) of a mortgage lien and security interest in all of the right, title and interest of the Lessee in and to the Leased Property, the Lessee Collateral and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property (it being understood that the Lessee hereby grants and warrants and grants a security interest in the Leased Property and all proceeds thereof to the Deed of Trust Trustee and its successors and assigns in Trust, for the use and benefit of the Lessor (for the benefit of the Participants), to secure the loans and advances described in Section 24.2(a)); (iii) the possession by the Lessor or any of its agents of notes and such other items of property as constitute

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instruments, money, negotiable documents or chattel paper shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-305 of the Uniform Commercial Code; and (iv) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of the Lessee shall be deemed to have been given for the purpose of perfecting such security interest under all Applicable Laws. The Lessor and the Lessee shall, to the extent consistent with this Lease, take such actions and execute, deliver, file and record such other documents and financing statements as may be necessary to ensure that, if this Lease was deemed to create a security interest in the Leased Property in accordance with this Section 24.2, such security interest would be deemed to be a perfected security interest (subject only to Permitted Liens) and will be maintained as such throughout the Term. Lessee hereby authorizes Lessor to file any and all financing statements covering the Leased Property or any part thereof that Lessor may require.

Certain of the personal property covered by this Lease is or will become fixtures on the real property which is a part of the Leased Property, and this Lease (or a memorandum thereof) upon being filed for record in the real estate records of the county wherein such fixtures are situated shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the Uniform Commercial Code of the State of Texas upon such of the property which are or may become fixtures. The mailing address of Lessee (as debtor) and the address of Lessor (as secured party) from which information may be obtained are set forth in the introductory paragraph of this Lease. The Lessee has an interest of record in such real property. The identification number of the Lessee in Delaware is 2653461.

(c) Specifically, but without limiting the foregoing or the generality of Section 24.1, Lessee hereby grants, bargains, sells, warrants, conveys, aliens, remises, releases, assigns, sets over and confirms to the Deed of Trust Trustee and its successors and assigns in trust WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the use and benefit of the Lessor, its successors and assigns, and grants Lessor, its successors and assigns a security interest in all of Lessee's right, title, and interest, whether now owned or hereafter acquired, in and to the following (collectively, the "*Lessee Collateral*"): (i) the Leased Property, (ii) the real estate lying and being in the County of Travis in the State of Texas (the "*State*") more particularly described in *Exhibit A* attached hereto and made a part hereof (the "*Land*"), together with and including but not limited to the leasehold estate interest in such real estate created under and pursuant to the Ground Lease, this Lease, or any other lease or sublease; all estate, right and title of Lessee in possession or expectancy in and to such property or any part thereof; and all Appurtenant Rights relating thereto; (iii) all buildings and improvements (including but not limited to the Improvements) of every kind and description heretofore or hereafter erected or placed on the Land; (iv) all materials intended for construction, reconstruction, alteration and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof; (v) all fixtures attached to the Land or Improvements and all equipment used in connection with the operation, protection and maintenance of the Land and the Improvements attached to the Land and the buildings and improvements now or hereafter located thereon including but not limited to all heating, lighting, plumbing, ventilating, air conditioning, refrigerating, water cooling, incinerator,

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compact, elevator, escalator, cleaning systems, sprinkler systems and other fire prevention and extinguishing apparatus used in connection with the operation, protection and maintenance of the Land and the Improvements; (vi) all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land, buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and, for the purpose of this Lease, to be real estate and covered by this Lease; and as to the balance of the property aforesaid, this Deed of Trust is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code of the State for the purpose of creating hereby a security interest in said property, which is hereby granted by Lessee as debtor to Lessor as secured party, securing the Obligations hereby secured; (vii) this Lease and the memorandum thereof, all rent payable under this Lease, and all other rents, income, payments, purchase prices, receipts, revenues, issues and profits payable under this Lease or any other Operative Document, (viii) all ground leases, leases, subleases, estates, tenements, hereditaments, privileges, licenses, franchises, appurtenances, agreements, contracts, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Leased Property or any part thereof (including but not limited to the Related Agreements); (ix) all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, tunnels, passages, sewer rights, waters, water courses, water rights, minerals, flowers, shrubs, crops, trees and other emblements now or hereafter located on the Land or under or above the Land or any part or thereof; (x) all rental agreements and arrangements of any sort now or hereafter affecting the Leased Property or any portion thereof and providing for or resulting in the payment of money for the use of the Leased Property or any portion thereof, whether the user enjoys the Leased Property or any portion thereof as tenant for years, licensee, tenant at sufferance or otherwise, and irrespective of whether such agreements and arrangements be oral or written, and including any and all extensions, renewals and modifications thereof and guaranties of the performance or obligations of any tenants or lessees thereunder; (xi) all reversions, income, rents, issues, revenues and profits thereof, including all interest in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof, or under any contracts or options for the sale of all or any part of, said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the Obligations hereby secured and to demand, sue for and recover the same when due or payable; *provided* that the assignments made hereby shall not impair or diminish the obligations of Lessee under the provisions of such leases, subleases, or other agreements nor shall such obligations be imposed upon the Deed of Trust Trustee or Lessor; (xii) all books and records relating to or used in connection with the operation of the Leased Property or any part thereof; (xiii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Leased Property or any part thereof; and (xiv) all management contracts, service contracts, utility contracts, documents and agreements relating to the construction of any improvements (including any and all construction contracts, architectural contracts, engineering contracts, designs, plans, specifications, drawings, surveys, tests, reports, bonds and governmental approvals) and all other contracts, licenses and permits now or hereafter

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affecting the Leased Property or any part thereof and all guaranties and warranties with respect to any of the foregoing; (xv) all insurance policies (including title insurance policies) required to be maintained under the Operative Documents, including the right to collect and receive such proceeds, and including any unearned premiums thereon; (xvi) all utility, escrow and all other deposits and all letters of credit, certificates of deposit, negotiable instruments and other rights and evidence of rights to cash now or hereafter relating to the Leased Property; (xvii) all judgments, awards of damages, settlements, payments, and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the Leased Property or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets; (xviii) all property and rights, if any, which are by the express provisions of this Lease required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subjected to the lien hereof by Lessee or by anyone in Lessee's behalf; (xix) all rights in and to common areas and access roads on adjacent properties and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the Leased Property or any part thereof; (xx) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action; (xxi) all modifications, extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds of any of the foregoing; and (xxii) proceeds (both cash and non-cash) of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance, all of which foregoing items are hereby

declared and shall be deemed to be a portion of the security for the indebtedness and Obligations herein described, a portion of the above described collateral being located upon the Land.

(d) *Power of Sale.* Without limiting any other remedies set forth herein, in the event that a court of competent jurisdiction rules that this Lease constitutes a mortgage, deed of trust, security agreement or other secured financing with respect to the Leased Property as is the intent of the parties pursuant to Section 24 hereof, then the Lessor and the Lessee agree that (i) the Lessee hereby grants to the Deed of Trust Trustee and its successor and assigns in trust for the use and benefit of the Lessor (for the benefit of the Participants) the Leased Property (including the fee simple estate therein) and Lessee Collateral WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION to the extent permitted by law, and that, upon the occurrence and during the continuance of any Event of Default, the Deed of Trust Trustee may, and is hereby irrevocably empowered to, with or without entry, and to the extent permitted by Applicable Laws, sell or cause the sale of the Subject Property and Lessee Collateral or any part or parts thereof at one or more public auctions as an entirety or in parcels as the Deed of Trust Trustee may elect free from any equity of redemption for cash, on credit, or for other property, for immediate or future

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delivery, and on such terms as the Deed of Trust Trustee shall deem advantageous and proper, such sale or sales to be made in such manner and upon such notice and advertisement as may be required by Applicable Laws, or in the absence of any such requirements, as the Deed of Trust Trustee may deem appropriate, and to make conveyance to the purchaser or purchasers. The Lessor (or, to the extent required by law, the Deed of Trust Trustee) may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, by filing its notice of election and demand for sale with the Deed of Trust Trustee direct the Deed of Trust Trustee to enforce its trust and to sell the Subject Property and the Lessee Collateral, as an entirety or in parcels, by one sale or by several sales, held at one time or at different times, all as the Deed of Trust Trustee may elect, each sale to be held at the location set forth in the notice of such proposed sale and the Deed of Trust Trustee shall have given notices of the proposed sale in the manner hereinafter set forth, and to make due conveyance to the purchaser or purchasers, with special warranty of title or no warranty of title to such purchaser or purchasers binding upon the Lessee and its heirs, executors, administrators, and successors. Such sale must begin at the time stated in the notice referred to below in this Section or as otherwise permitted by Applicable Laws. The Lessee, for itself, its heirs and assigns, and for anyone who may claim by, through or under the Lessee, hereby expressly and specifically waives all rights to a marshaling of the assets of the Lessee, including the Subject Property and the Lessee Collateral, or to a sale in inverse order of alienation.

The Deed of Trust Trustee (or a person or persons selected by the Deed of Trust Trustee) shall promptly comply with all notice and other requirements of the laws of Texas then in force with respect to such sales, and shall give the required public notice of the time and place of such sale by advertisement weekly in some newspaper of general circulation then published in the County or City and County in which the Subject Property is located. No notice of such sale or sales other than the notices hereinabove provided shall be required to be given to the Lessee (or anyone who may claim by, through or under the Lessee) or any other persons and any other notice (including, without limitation, any notice of acceleration of, or intent to accelerate, the unpaid balance of any Obligation) is expressly waived.

The provisions of this Section with respect to posting, serving, filing, and giving notices of sale are intended to comply with the provisions of Texas law. In the event the requirement for any notice, or the posting, serving, filing, or giving thereof, under Texas law shall be eliminated or the prescribed manner of posting, serving, filing, or giving same is modified by future amendment to Texas law, the requirement for such particular notice shall be stricken from, or the manner of posting, serving, filing, or giving any notice hereunder modified in, this Deed of Trust in conformity with such amendment. The manner herein prescribed for posting, serving, filing, or giving any notice, other than that to be posted and filed or caused to be posted or filed by the Deed of Trust Trustee, shall not be deemed exclusive but such notice or notices may be posted, served, filed, or given in any other manner which may be permitted by Applicable Laws. Further, in relation to this Deed of Trust and the exercise of any power of sale by the Deed of Trust Trustee hereunder, if Texas law shall be amended or modified to require any other notice or the posting, filing, serving, or giving thereof or any statute hereafter enacted shall require any other notice or the posting, filing, serving, or giving thereof, the Deed of Trust Trustee or the person selected by him is hereby authorized and empowered by the Lessee to give such notice or

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make such posting, filing, serving, or giving thereof; *provided, however*, the Lessee waives such other notice or the posting, filing, serving, or giving thereof to the full extent the Lessee may lawfully so do.

In addition to any other remedies granted in this Deed of Trust to the Lessor or the Deed of Trust Trustee (including specifically, but not limited to, the right to proceed against all the Lessee Collateral in accordance with the rights and remedies in respect to those portions of the Collateral which are real property pursuant to Section 9.501(d) of the Uniform Commercial Code), the Lessor may proceed under the Uniform Commercial Code as to all or any part of the personal property (tangible or intangible) and fixtures included with the Lessee Collateral (such portion of the Lessee Collateral being referred to herein as the "*Personalty*") and shall have and may exercise with respect to the Personalty all the rights, remedies, and powers of a secured party under the Uniform Commercial Code, including, without limitation, the right and power to sell, at one or more public or private sales, or otherwise dispose of, lease, or utilize the Personalty and any part or parts thereof in any manner authorized or permitted under the Uniform Commercial Code after default by a debtor, and to apply the proceeds thereof toward payment of any costs and expenses and attorney's fees and legal expenses thereby incurred by the Lessor, and toward payment of the Obligations hereby secured in such order or manner as provided herein.

ARTICLE XXV

MISCELLANEOUS

Section 25.1. Survival; Severability; Etc. Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of the Lessee or the Lessor arising from events commencing prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. If any term or provision of this Lease or any application thereof shall be declared invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby. If any right or option of the Lessee provided in this Lease, including any right or option described in Articles XIV, XV, XVIII, XIX or XX, would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one (21) years after the date of death of the last survivor

of the descendants of Franklin D. Roosevelt, the former President of the United States, Henry Ford, the deceased automobile manufacturer, and John D. Rockefeller, the founder of the Standard Oil Company, known to be alive on the date of the execution, acknowledgment and delivery of this Lease.

Section 25.2. Amendments and Modifications. Subject to the requirements, restrictions and conditions set forth in the Participation Agreement, neither this Lease nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing, in recordable form, signed by the Lessor and the Lessee.

Section 25.3. No Waiver. No failure by the Lessor or the Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default

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hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. To the fullest extent permitted by law, no waiver of any default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

Section 25.4. Notices. All notices, demands, requests, consents, approvals and other communications hereunder shall be in writing and directed to the address described in, and deemed received in accordance with the provisions of, Section 16.3 of the Participation Agreement.

Section 25.5. Successors and Assigns. All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 25.6. Headings and Table of Contents. The headings and table of contents in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 25.7. Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

Section 25.8. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York except that the provisions for the creation, perfection, priority, enforcement and foreclosure of the liens and security interests created hereunder will be governed by and construed according to the laws of the State of Texas.

Section 25.9. Original Lease. The single executed original of this Lease marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt thereof of Collateral Agent, on or following the signature page thereof shall be the original executed counterpart of this Lease. To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code, no security interest in this Lease may be created through the transfer or possession of any counterpart other than such original executed counterpart.

Section 25.10. The Deed of Trust Trustee. The Deed of Trust Trustee is appointed hereunder solely for the purpose of effecting the intentions of the parties set forth in Section 24.2 hereof in the State of Texas. The Deed of Trust Trustee shall at all times act pursuant to the directions of the Lessor, and the Lessee shall have no power to control or direct the Deed of Trust Trustee. The Deed of Trust Trustee may be removed or replaced in the sole discretion of the Lessor. The Lessee shall pay all fees and expenses of the Deed of Trust Trustee in connection with this Lease and the transactions contemplated hereby, including all fees and expenses incurred in the exercise of any remedies hereunder.

Section 25.11. Lessor Limitations on Recourse. The parties hereto agree that, except as specifically set forth in the Lease or in any other Operative Document, Lessor shall have no

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liability whatsoever to the Lessee, the Lenders, Collateral Agent or any of their respective successors and assigns or any other Person for any claim based on or in respect of this Lease or any of the other Operative Documents or arising in any way from the Overall Transaction; *provided, however*, that Lessor shall be liable (a) for its own willful misconduct or gross negligence (or negligence in the handling of funds), *provided* that a default under, or the failure of Lessor to perform any obligation, covenant or agreement in, any Related Agreement or otherwise required by Applicable Laws, Governmental Action or third parties with respect to the Subject Property shall not be deemed gross negligence or willful misconduct, (b) Lessor Liens on the Leased Property which are attributable to it or (c) for liabilities that may result from the inaccuracy or incorrectness of any representations or warranties expressly made by it in Section 8.4 of the Participation Agreement or (d) for its failure to perform the covenants and agreements set forth in the Lease and the Participation Agreement.

Section 25.12. Recordation of Memorandum of Lease. On the Closing Date, the parties hereto will execute and record with the appropriate recording office located in Travis County, Texas a Memorandum of Lease in the form of Exhibit B hereto.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the parties have caused this Lease be duly executed and delivered as of the date first above written.

SILICON LABORATORIES INC., as Lessee

By: /s/ Jonathan D. Ivester
Name: Jonathan D. Ivester
Title: Vice President of Worldwide Operations

Address: 4635 Boston Lane
Austin, TX 78735
Attention: Chief Legal and
Intellectual Property Counsel

STATE OF TEXAS)
) SS.:
COUNTY OF TRAVIS)

This instrument was acknowledged before me on the 24 day of March, 2006, by Jonathan D. Ivester, Vice President of Worldwide Operations of Silicon Laboratories Inc., a Delaware corporation, on behalf of said corporation.

Melissa Alcantara
Notary Public State of Texas

My Commission expires: 10-04-2009

BAL INVESTMENT & ADVISORY, INC., as Lessor

By: /s/ Sonia T. Delen
Name: Sonia T. Delen
Title: Principal

STATE OF CALIFORNIA)
) SS.:
COUNTY OF SAN FRANCISCO)

This instrument was acknowledged before me on the 24 day of March, 2006, by Sonia T. Delen, Principal of BAL Investment & Advisory, Inc., a Delaware corporation, on behalf of said corporation.

Yvette Montalvo Baron
Notary Public State of California
My Commission expires: 9-23-2008

THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART.

Receipt of this original counterpart of the foregoing Lease is hereby acknowledged as of the date hereof.

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in
its individual capacity, but solely as Collateral Agent

By: /s/ Val T. Orton
Name: Val T. Orton
Title: Vice President

SCHEDULE 10.1 TO LEASE

MODIFICATIONS

Lessee shall have the right without further consent or approval from Lessor or the Collateral Agent to remodel and renovate the Facility affecting approximately 140,000 square feet of space and having a projected total cost of approximately \$5,000,000 (the "Initial Fit-Up Work"), provided the Initial Fit-Up Work otherwise shall comply with the requirements in Section 10.1(b)(ii), (iii), and (iv) and the other provisions of this Lease. The Initial Fit-Up Work shall include the following work: (i) demolition of existing interior walls, (ii) erecting office and conference room walls and interior doors and windows; (iii) modifying the existing ductwork to provide heating, ventilation and air conditioning service to the offices, conference rooms and other areas within the Facility; (iv) installing electrical, audiovisual, telephone and data outlets, (v) relocating lighting fixtures, (vi) installation of carpeting and other floor coverings, (vii) installation of interior and exterior signage, (viii) installation and/or modification of life safety and security systems, and (ix) installation of furniture, fixtures and equipment.

LEGAL DESCRIPTION OF LAND

When recorded return to:

Susan E. Rollins, Esq.
Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603-4080

**MEMORANDUM OF
LEASE, DEED OF TRUST AND
SECURITY AGREEMENT**

Dated as of March 30, 2006

among

SILICON LABORATORIES INC.,
as Lessee

and

BAL INVESTMENT & ADVISORY, INC.,
as Lessor

and

GARY S. FARMER,
as the Deed of Trust Trustee

400 West Cesar Chavez Street
Austin, Texas 78701

This Memorandum of Lease, Deed of Trust and Security Agreement has been executed in multiple counterparts. To the extent, if any, that this Memorandum of Lease, Deed of Trust and Security Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no lien on this Memorandum of Lease, Deed of Trust and Security Agreement may be created through the transfer or possession of any counterpart hereof other than counterpart "Number 1," which shall be identified as the counterpart containing the receipt therefor executed by Wells Fargo Bank Northwest, National Association, as Collateral Agent, on or following the signature page thereof.

This counterpart is [not] the original counterpart.

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**MEMORANDUM OF
LEASE, DEED OF TRUST AND SECURITY AGREEMENT**

This Memorandum of Lease, Deed of Trust and Security Agreement dated as of March 30, 2006 (as amended, supplemented, or otherwise modified from time to time, this “*Memorandum*”), among BAL INVESTMENT & ADVISORY, INC., a Delaware corporation, having its principal office at One Financial Plaza, Mail Code: RI1-537-05-02, Providence, RI 02903, Attention: Gina Cabral, as Lessor (“*Lessor*”) and SILICON LABORATORIES INC., a Delaware corporation, having its principal office at 4635 Boston Lane, Austin, Texas 78735, as Lessee (“*Lessee*”), and GARY S. FARMER, a resident of Travis County, Texas, as the Deed of Trust Trustee for the use and benefit of the Lessor, whose office is located at 401 Congress Avenue, Suite 1500, Austin, Texas 78701 (the “*Deed of Trust Trustee*”).

W I T N E S S E T H:

- A. The parties are entering into the Operative Documents pursuant to which the Participants agree to provide financing for the acquisition of the Leased Property.
- B. On the Closing Date, Lessor, solely using the Lessor Amount and the Advance funded by the Lenders, will, *inter alia*, (i) purchase the Facility from the Seller and (ii) assume all of the Seller’s right, title and interest in and to (A) the Ground Lease pursuant to the Assignment of Ground Lease, (B) the Related Agreements which constitute leases pursuant to the Assignment of Subleases, and (C) the other Related Agreements pursuant to the Assignment of Related Agreements.
- C. Pursuant to the Lease, Deed of Trust and Security Agreement dated as of the date hereof among the Lessor, the Lessee and the Deed of Trust Trustee, Lessor leases the Leased Property to Lessee and Lessee leases the Leased Property from Lessor, and Lessee GRANTS, BARGAINS, SELLS, WARRANTS, CONVEYS and CONFIRMS unto the Deed of Trust Trustee, its successors and assigns (for the benefit of the Participants) IN TRUST WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION AND HEREBY GRANTS unto the Lessor, its successors and assigns a security interest in the Leased Property and the Lessee Collateral.

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to enter into this Memorandum:

ARTICLE I

DEFINITIONS

For all purposes hereof, the capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in Appendix 1 to that certain Participation Agreement dated as of even date herewith, among Lessee, as Lessee; Lessor; Wells Fargo Bank Northwest, National Association, not in its individual capacity except as expressly stated therein, but solely

Silicon Laboratories Inc.

Memorandum of Lease, Deed of Trust and
Security Agreement

as Collateral Agent; and the financial institutions listed on Schedule II thereto, as Lenders (as amended, supplemented or otherwise modified from time to time pursuant thereto, the “*Participation Agreement*”); and the rules of interpretation set forth in Appendix 1 to the Participation Agreement shall apply to this Memorandum. All obligations imposed on the Lessee under the Lease and this Memorandum shall be the full recourse liability of Lessee.

ARTICLE II

LEASE OF LEASED PROPERTY; LEASE TERM; PURCHASE OPTION

Section 2.1. Leased Property. (a) Lessor hereby agrees to lease all of Lessor's interest in the Leased Property to Lessee hereunder, and Lessee hereby agrees, expressly for the direct benefit of Lessor, to lease all of the Leased Property from Lessor for the Term.

(b) In the event that either the Schneider Sublease or the Retail Sublease is terminated for any reason whatsoever, Lessee and Lessor hereby agree that the Lease and this Memorandum and the Participation Agreement shall be amended by the parties hereto, at the expense of the Lessee, to include within the definition of "Leased Property" all Improvements under the Schneider Sublease and the Retail Sublease.

Section 2.2. Term. Unless earlier terminated, the term of the Lease shall consist of a term (the "Term") commencing on the Closing Date and ending on but not including the earlier of (i) the date which is eighty-four months immediately following the Closing Date or (ii) any Termination Date.

Section 2.3. Title. The Leased Property is leased to the Lessee without any representation or warranty, express or implied, by the Lessor and subject to the rights of parties in possession, the existing state of title with respect thereto (including, without limitation, all Liens other than Lessor Liens) and all Applicable Laws and any violations thereof. The Lessee shall in no event have any recourse against the Lessor for any defect in or exception to title to the Leased Property other than resulting from Lessor Liens created by Lessor.

Section 2.4. The Lease contains certain purchase rights enforceable against and in favor of Lessee during the Term, and certain rights in Lessee to market and sell the Leased Property during the Term, all on terms more fully set forth in the Lease.

ARTICLE III

NET LEASE, ETC.

Section 3.1. Net Lease, Etc. The Lease shall constitute a net lease and Lessee's obligations hereunder to pay Rent shall be absolute and unconditional under any and all circumstances.

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Section 3.2. CONDITION OF THE LEASED PROPERTY. THE LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING THE LEASED PROPERTY "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY THE LESSOR, THE COLLATERAL AGENT OR THE LENDERS AND IN EACH CASE SUBJECT TO (a) THE EXISTING STATE OF TITLE (EXCLUDING LESSOR LIENS), (b) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (c) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR A PHYSICAL INSPECTION MIGHT SHOW AND (d) VIOLATIONS OF REQUIREMENTS OF LAW WHICH MAY EXIST ON THE DATE HEREOF OR AT ANY TIME HEREAFTER.

ARTICLE IV

INTENT OF THE PARTIES

Section 4.1. Nature of Transaction. It is the intention of the parties that:

(a) the Overall Transaction constitutes an operating lease from Lessor to Lessee for purposes of Lessee's financial reporting, including, without limitation, under Financial Accounting Standards Board Statement No. 13;

(b) for purposes of all federal, state and local income, franchise, transfer and other taxes, and bankruptcy, insolvency, conservatorships and receiverships (including the substantive law upon which bankruptcy, conservatorship, insolvency and receivership proceedings are based) real estate law, commercial law and UCC:

(i) the Overall Transaction constitutes a financing by the Participants to Lessee and preserves beneficial ownership in the Subject Property in Lessee, Lessee will be entitled to all tax benefits with respect to the Subject Property ordinarily available to owners of property similar to the Subject Property for tax purposes and the obligations of Lessee to pay Basic Rent shall be treated as payments of principal, if any, and interest to the Participants, and the payment by Lessee of any amounts in respect of the Lease Balance shall be treated as payments of principal to the Participants;

(ii) the Lease grants a security interest or a Lien, as the case may be, in the Lessee's interest in the Leased Property and the other Lessee Collateral in favor of the Lessee and Lessor, and for the benefit of the Participants to secure payment and performance of the Obligations; and

(iii) the Security Instruments create Liens and security interests in the Subject Property and the other Lessor Collateral in favor of the Collateral Agent for the benefit of all of the Participants to secure Lessee's and Lessor's payment and performance of its obligations under the Operative Documents.

Each of the parties hereto agrees that it will not, nor will it permit any Affiliate to at any time, take any action or fail to take any action with respect to the preparation, filing or audit of any income tax return, including an amended income tax return, to the extent

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that such action or such failure to take action would be inconsistent with the intention of the parties expressed in this Section 4.1.

Nevertheless, Lessee acknowledges and agrees that none of the Lessor, the Collateral Agent, Arranger or any Lender has made any representations or warranties concerning the tax, accounting or legal characteristics of the Operative Documents or any aspect of the Overall Transaction and that Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents and the Overall Transaction as it deems appropriate.

(c) Specifically, but without limiting the generality of subsection (a) of this Section 4.1, the Lessor and the Lessee intend and agree that for the purpose of securing the Lessee's obligations for the repayment of the Obligations, (i) the Lease and this Memorandum shall also be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code; (ii) the conveyance provided for hereby is and shall be deemed to be a grant by the Lessee to the Lessor, for the benefit of the Participants, of a Lien (including the Lessee's Mortgage) on and security interest in all of the Lessee's present and future right, title and interest in and to the Leased Property and the Lessee Collateral, including but not limited to the Lessee's leasehold estate therein and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property, whether in the form of cash, investments, securities or other property to secure such loans, effective on the date hereof, to have and to hold such interests in the Leased Property unto the Lessor, for the benefit of the Participants; (iii) the possession by the Lessor of notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-313 of the UCC; and (iv) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of the Lessee shall be deemed to have been given for the purpose of perfecting such security interest under Applicable Laws. The Lessor and the Lessee shall, to the extent consistent with the Lease and this Memorandum, take such actions and execute, deliver, file and record such other documents, financing statements, mortgages and deeds of trust as may be necessary to ensure that, if the Lease were deemed to create a security interest in the Leased Property in accordance with this Section 4.1(c), such security interest would be deemed to be a perfected security interest in the Leased Property and the Lessee Collateral with priority over all Liens, other than Permitted Liens, under Applicable Laws and will be maintained as such throughout the Term. Lessee hereby authorizes Lessor to file any and all financing statements covering the Leased Property or any part thereof that Lessor may require.

Section 4.2. Liens and Security Interests. (a) Specifically, without limiting the generality of Section 4.1, the Lessor and the Lessee intend and agree that in the event of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State or

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Commonwealth thereof affecting the Lessee, the Lessor, the Collateral Agent or any Lender or any collection actions, the transactions evidenced by the Operative Documents shall be regarded as loans and advances made by the Participants as unrelated third party lenders to the Lessee secured by the Subject Property and the Lessee Collateral. To secure such loans and advances and other Obligations, the Lessee has GRANTED, BARGAINED, SOLD, WARRANTED, CONVEYED and CONFIRMED, and hereby GRANTS, BARGAINS, SELLS, WARRANTS, CONVEYS and CONFIRMS the Leased Property and the Lessee Collateral unto the Deed of Trust Trustee, its successors and assigns (for the benefit of the Participants) IN TRUST WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION AND HEREBY GRANTS unto the Lessor, its successors and assigns a security interest in the Leased Property and the Lessee Collateral.

(b) Specifically, but without limiting the generality of Section 4.1, the Lessor and the Lessee further intend and agree that, for the purpose of securing the obligation of the Lessee for the repayment of the above-described loans to the Lessee, (i) the Lease and this Memorandum shall also be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code and a real property mortgage and deed of trust; (ii) the conveyance provided in this Memorandum shall be deemed to be a grant by the Lessee to the Deed of Trust Trustee and its successors and assigns in trust for the use and benefit of the Lessor (for the benefit of the Participants) of the Leased Property and the Lessee Collateral and a grant or a security interest in all of the right, title and interest of the Lessee in and to the Leased Property, the Lessee Collateral and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property (it being understood that the Lessee hereby grants and warrants and grants a security interest in the Leased Property and all proceeds thereof to the Deed of Trust Trustee and its successors and assigns in Trust, for the use and benefit of the Lessor (for the benefit of the Participants), to secure the loans and advances described in Section 4.2(a)); (iii) the possession by the Lessor or any of its agents of notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-305 of the Uniform Commercial Code; and (iv) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of the Lessee shall be deemed to have been given for the purpose of perfecting such security interest under all Applicable Laws. The Lessor and the Lessee shall, to the extent consistent with the Lease and this Memorandum, take such actions and execute, deliver, file and record such other documents and financing statements as may be necessary to ensure that, if the Lease and this Memorandum was deemed to create a security interest in the Leased Property in accordance with this Section 4.2, such security interest would be deemed to be a perfected security interest (subject only to Permitted Liens) and will be maintained as such throughout the Term. Lessee hereby authorizes Lessor to file any and all financing statements covering the Leased Property or any part thereof that Lessor may require.

Certain of the personal property covered by this Memorandum is or will become fixtures on the real property which is a part of the Leased Property, and this Memorandum upon being filed for record in the real estate records of the county wherein such fixtures are situated shall operate also as a financing statement filed as a fixture filing in accordance with the applicable

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provisions of the Uniform Commercial Code of the State of Texas upon such of the property which are or may become fixtures. The mailing address of Lessee (as debtor) and the address of Lessor (as secured party) from which information may be obtained are set forth in the introductory paragraph of this Memorandum. The Lessee has an interest of record in such real property. The identification number of the Lessee in Delaware is 2653461.

(c) Specifically, but without limiting the foregoing or the generality of Section 4.1, Lessee hereby grants, bargains, sells, warrants, conveys, aliens, remises, releases, assigns, sets over and confirms to the Deed of Trust Trustee and its successors and assigns in trust WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the use and benefit of the Lessor, its successors and assigns, and grants Lessor, its successors and assigns a security interest in all of Lessee's right, title, and interest, whether now owned or hereafter acquired, in and to the following (collectively, the "Lessee Collateral"): (i) the Leased Property; (ii) the real estate lying and being in the County of Travis in the State of Texas (the "State") more particularly described

in Exhibit A attached hereto and made a part hereof (the "Land"), together with and including but not limited to the leasehold estate interest in such real estate created under and pursuant to the Ground Lease, the Lease and this Memorandum, or any other lease or sublease; all estate, right and title of Lessee in possession or expectancy in and to such property or any part thereof; and all Appurtenant Rights relating thereto; (iii) all buildings and improvements (including but not limited to the Improvements) of every kind and description heretofore or hereafter erected or placed on the Land (legally described on Exhibit A attached hereto and made a part hereof; (iv) all materials intended for construction, reconstruction, alteration and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof; (v) all fixtures attached to the Land or Improvements and all equipment used in connection with the operation, protection and maintenance of the Land or Improvements attached to the Land and the buildings and improvements now or hereafter located thereon including but not limited to all heating, lighting, plumbing, ventilating, air conditioning, refrigerating, water cooling, incinerator, compacting, elevator, escalator, cleaning systems, sprinkler systems and other fire prevention and extinguishing apparatus used in connection with the operation, protection and maintenance of the Land and the Improvements; (vi) all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land, buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and, for the purpose of the Lease and this Memorandum, to be real estate and covered by the Lease and this Memorandum; and as to the balance of the property aforesaid, this Memorandum is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code of the State for the purpose of creating hereby a security interest in said property, which is hereby granted by Lessee as debtor to Lessor as secured party, securing the Obligations hereby secured; (vii) the Lease and this Memorandum, all rent payable under the Lease, and all other rents, income, payments, purchase prices, receipts, revenues, issues and profits payable under the Lease or any other Operative Document; (viii) all ground leases, leases, subleases, estates, tenements, hereditaments, privileges, licenses, franchises, appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Leased Property or any part thereof, (including but not limited to the Related Agreements identified on Schedule I

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attached hereto and made a part hereof); (ix) all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, tunnels, passages, sewer rights, waters, water courses, water rights, minerals, flowers, shrubs, crops, trees and other emblements now or hereafter located on the Land or under or above the Land or any part or thereof; (x) all rental agreements and arrangements of any sort now or hereafter affecting the Leased Property or any portion thereof and providing for or resulting in the payment of money for the use of the Leased Property or any portion thereof, whether the user enjoys the Leased Property or any portion thereof as tenant for years, licensee, tenant at sufferance or otherwise, and irrespective of whether such agreements and arrangements be oral or written, and including any and all extensions, renewals and modifications thereof and guaranties of the performance or obligations of any tenants or lessees thereunder; (xi) all reversions, income, rents, issues, revenues and profits thereof, including all interest in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof, or under any contracts or options for the sale of all or any part of, said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the Obligations hereby secured and to demand, sue for and recover the same when due or payable; *provided* that the assignments made hereby shall not impair or diminish the obligations of Lessee under the provisions of such leases, subleases, or other agreements nor shall such obligations be imposed upon the Deed of Trust Trustee or Lessor; (xii) all books and records relating to or used in connection with the operation of the Leased Property or any part thereof; (xiii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Leased Property or any part thereof and (xiv) all management contracts, service contracts, utility contracts, documents and agreements relating to the construction of any improvements (including any and all construction contracts, architectural contracts, engineering contracts, designs, plans, specifications, drawings, surveys, tests, reports, bonds and governmental approvals) and all other contracts, licenses and permits now or hereafter affecting the Leased Property or any part thereof and all guaranties and warranties with respect to any of the foregoing; (xv) all insurance policies (including title insurance policies) required to be maintained under the Operative Documents, including the right to collect and receive such proceeds, and including any unearned premiums thereon; (xvi) all utility, escrow and all other deposits and all letters of credit, certificates of deposit, negotiable instruments and other rights and evidence of rights to cash now or hereafter relating to the Leased Property; (xvii) all judgments, awards of damages, settlements, payments, and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the Leased Property or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets; (xviii) all

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property and rights, if any, which are by the express provisions of the Lease required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subjected to the lien hereof by Lessee or by anyone in Lessee's behalf; (xix) all rights in and to common areas and access roads on adjacent properties and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the Leased Property or any part thereof; (xx) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action; (xxi) all modifications, extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds of any of the foregoing; and (xxii) proceeds (both cash and non-cash) of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance, all of which foregoing items are hereby declared and shall be deemed to be a portion of the security for the indebtedness and Obligations herein described, a portion of the above described collateral being located upon the Land.

(d) *Power of Sale.* Without limiting any other remedies set forth herein or in the Lease, in the event that a court of competent jurisdiction rules that the Lease and this Memorandum constitutes a mortgage, deed of trust, security agreement or other secured financing with respect to the Leased Property as is the intent of the parties pursuant to Section 4 hereof, then the Lessor and the Lessee agree that (i) the Lessee hereby grants to the Deed of Trust Trustee and its successor and assigns in trust for the use and benefit of the Lessor (for the benefit of the Participants) the Leased Property (including the fee simple estate therein) and Lessee Collateral WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION to the extent permitted by law, and that, upon the occurrence and during the continuance of any Event of Default, the Deed of Trust Trustee may, and is hereby irrevocably empowered to, with or without entry, and to the extent permitted by Applicable Laws, sell or cause the sale of the Subject Property and Lessee Collateral or any part or parts thereof at one or more public auctions as an entirety or in parcels as the Deed of Trust Trustee may elect free from any equity of redemption for cash, on credit, or for other

property, for immediate or future delivery, and on such terms as the Deed of Trust Trustee shall deem advantageous and proper, such sale or sales to be made in such manner and upon such notice and advertisement as may be required by Applicable Laws, or in the absence of any such requirements, as the Deed of Trust Trustee may deem appropriate, and to make conveyance to the purchaser or purchasers. The Lessor (or, to the extent required by law, the Deed of Trust Trustee) may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, by filing its notice of election and demand for sale with the Deed of Trust Trustee direct the Deed of Trust Trustee to enforce its trust and to sell the Subject Property and Lessee Collateral, as an entirety or in parcels, by one sale or by several sales, held at one time or at different times, all as the Deed of Trust Trustee may elect, each sale to be held at the location set forth in the notice of such proposed sale and the Deed of Trust Trustee shall have given notices of the proposed sale in the manner hereinafter set forth, and to make due conveyance to the purchaser or purchasers, with special warranty of title or no warranty of title to such purchaser or purchasers binding upon the Lessee and its heirs, executors, administrators, and successors. Such sale must begin at the time stated in the notice referred to below in this Section or as otherwise permitted by Applicable Laws. The Lessee, for itself, its heirs and

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assigns, and for anyone who may claim by, through or under the Lessee, hereby expressly and specifically waives all rights to a marshaling of the assets of the Lessee, including the Subject Property and the Lessee Collateral, or to a sale in inverse order of alienation.

The Deed of Trust Trustee (or a person or persons selected by the Deed of Trust Trustee) shall promptly comply with all notice and other requirements of the laws of Texas then in force with respect to such sales, and shall give the required public notice of the time and place of such sale by advertisement weekly in some newspaper of general circulation then published in the County or City and County in which the Subject Property and Lessee Collateral is located. No notice of such sale or sales other than the notices hereinabove provided shall be required to be given to the Lessee (or anyone who may claim by, through or under the Lessee) or any other persons and any other notice (including, without limitation, any notice of acceleration of, or intent to accelerate, the unpaid balance of any Obligation) is expressly waived.

The provisions of this Section with respect to posting, serving, filing, and giving notices of sale are intended to comply with the provisions of Texas law. In the event the requirement for any notice, or the posting, serving, filing, or giving thereof, under Texas law shall be eliminated or the prescribed manner of posting, serving, filing, or giving same is modified by future amendment to Texas law, the requirement for such particular notice shall be stricken from, or the manner of posting, serving, filing, or giving any notice hereunder modified in, this Deed of Trust in conformity with such amendment. The manner herein prescribed for posting, serving, filing, or giving any notice, other than that to be posted and filed or caused to be posted or filed by the Deed of Trust Trustee, shall not be deemed exclusive but such notice or notices may be posted, served, filed, or given in any other manner which may be permitted by Applicable Laws. Further, in relation to this Deed of Trust and the exercise of any power of sale by the Deed of Trust Trustee hereunder, if Texas law shall be amended or modified to require any other notice or the posting, filing, serving, or giving thereof or any statute hereafter enacted shall require any other notice or the posting, filing, serving, or giving thereof, the Deed of Trust Trustee or the person selected by him is hereby authorized and empowered by the Lessee to give such notice or make such posting, filing, serving, or giving thereof; *provided, however*, the Lessee waives such other notice or the posting, filing, serving, or giving thereof to the full extent the Lessee may lawfully so do.

In addition to any other remedies granted in the Lease or this Memorandum to the Lessor or the Deed of Trust Trustee (including specifically, but not limited to, the right to proceed against all the Lessee Collateral in accordance with the rights and remedies in respect to those portions of the Collateral which are real property pursuant to Section 9.501(d) of the Uniform Commercial Code), the Lessor may proceed under the Uniform Commercial Code as to all or any part of the personal property (tangible or intangible) and fixtures included with the Lessee Collateral (such portion of the Lessee Collateral being referred to herein as the "*Personalty*") and shall have and may exercise with respect to the Personalty all the rights, remedies, and powers of a secured party under the Uniform Commercial Code, including, without limitation, the right and power to sell, at one or more public or private sales, or otherwise dispose of, lease, or utilize the Personalty and any part or parts thereof in any manner authorized or permitted under the Uniform Commercial Code after default by a debtor, and to apply the proceeds thereof

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toward payment of any costs and expenses and attorney's fees and legal expenses thereby incurred by the Lessor, and toward payment of the Obligations hereby secured in such order or manner as provided herein.

ARTICLE V

MISCELLANEOUS

Section 5.1 Incorporation by Reference. All of the terms, provisions and conditions of the Lease shall be incorporated herein by reference and this Memorandum shall serve as record notice of such terms, provisions and conditions.

Section 5.2 Conflict of Lease. In the event of any conflict between the terms and provisions of this Memorandum and the terms and provisions of the Lease, the terms and provisions of the Lease shall be controlling.

Section 5.3 Assignment of Lease. Lessee acknowledges and agrees that all of Lessor's interest in the Lease has been assigned, transferred, conveyed and set over by Lessor to the Collateral Agent for the benefit of the Participants.

Section 5.4 Notices. All notices, demands, requests, consents, approvals and other communications hereunder shall be in writing and directed to the address described in, and deemed received in accordance with the provisions of, Section 16.3 of the Participation Agreement.

Section 5.5 Successors and Assigns. All the terms and provisions of the Lease and this Memorandum shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 5.6 Headings and Table of Contents. The headings and table of contents in this Memorandum are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 5.7. *Counterparts.* This Memorandum may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

Section 5.8. *Governing Law.* This Memorandum shall be governed by and construed in accordance with the laws of the State of New York except that the provisions for the creation, perfection, priority, enforcement and foreclosure of the liens and security interests created hereunder will be governed by and construed according to the laws of the State of Texas.

Section 5.9. *Original Lease.* The single executed original of this Memorandum marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt thereof of Collateral Agent, on or following the signature page thereof shall be the original executed counterpart of this Memorandum. To the extent that this

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Memorandum constitutes chattel paper, as such term is defined in the Uniform Commercial Code, no security interest in this Memorandum may be created through the transfer or possession of any counterpart other than such original executed counterpart.

Section 5.10. *The Deed of Trust Trustee.* The Deed of Trust Trustee appointed hereunder is solely for the purpose of effecting the intentions of the parties set forth in Section 4.2 hereof in the State of Texas. The Deed of Trust Trustee shall at all times act pursuant to the directions of the Lessor, and the Lessee shall have no power to control or direct the Deed of Trust Trustee. The Deed of Trust Trustee may be removed or replaced in the sole discretion of the Lessor. The Lessee shall pay all fees and expenses of the Deed of Trust Trustee in connection with the Lease and the transactions contemplated hereby, including all fees and expenses incurred in the exercise of any remedies hereunder.

Section 5.11. *Lessor Limitations on Recourse.* The provisions of Section 25.11 of the Lease are hereby incorporated by reference.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the parties have caused this Memorandum of Lease, Deed of Trust and Security Agreement be duly executed and delivered as of the date first above written.

SILICON LABORATORIES, INC., as Lessee

By: /s/ Jonathan D. Ivester

Name: Jonathan D. Ivester

Title: Vice President of Worldwide Operations

Address: 4635 Boston Lane
Austin, TX 78735
Attention: Chief Legal and
Intellectual Property Counsel

STATE OF TEXAS)
) SS.:
COUNTY OF TRAVIS)

This instrument was acknowledged before me on the 24 day of March, 2006, by Jonathan D. Ivester, Vice President of Worldwide Operations of Silicon Laboratories Inc., a Delaware corporation, on behalf of said corporation.

Melissa Alcantara
Notary Public State of Texas

My Commission expires: 10-04-2009

BAL INVESTMENT & ADVISORY, INC., as Lessor

By: /s/ Sonia T. Delen

Name: Sonia T. Delen

Title: Principal

STATE OF CALIFORNIA)
) SS.:
COUNTY OF SAN FRANCISCO)

This instrument was acknowledged before me on the 24 day of March, 2006, by Sonia T. Delen, Principal of BAL Investment & Advisory, Inc., a Delaware corporation, on behalf of said corporation.

Yvette Montalvo Baron
Notary Public State of California
My Commission expires: 9-23-2008

THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART.

Receipt of this original counterpart of the foregoing Memorandum is hereby acknowledged as of the date hereof.

WELLS FARGO BANK NORTHWEST, NATIONAL
ASSOCIATION, not in its individual capacity,
but solely as Collateral Agent

By:/s/ Val T. Orton
Name: Val T. Orton
Title: Vice President

EXHIBIT A

LEGAL DESCRIPTION OF LAND

Lots 1, 2, 3, 4, 7 and 8, Block 2, of the Original City of Austin, Travis County, Texas, according to the map or plat recorded in the General Land Office of the State of Texas, and (i) Lot(s) 5 and 6, AMENDMENT OF THE AMENDED PLAT OF LOTS 5 AND 6, OF THE ORIGINAL CITY OF AUSTIN, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded under Document No. 200200047 of the Official Public Records of Travis County, Texas, (ii) together with the area within the alley traversing said Block which was vacated by Ordinance of record in Volume 5651, Page 936 of the Deed Records of Travis County, Texas, (iii) and across a tract of 59 square feet as described in Ordinance recorded under Document No. 2005143364 of the Official Public Records of Travis County, Texas, and Memorandum recorded under Document No. 2005143365 of the Official Public Records of Travis County, Texas said 1.773 acres being the same property more particularly described by metes and bounds as follows:

BEING A 1.773 ACRE TRACT OF LAND SITUATED IN THE ORIGINAL CITY AUSTIN, IN TRAVIS COUNTY, TEXAS, BEING ALL OF LOTS 1, 2, 3, 4, 7, AND 8, BLOCK 2, OF THE ORIGINAL CITY OF AUSTIN, ACCORDING TO THE MAP OR PLAT RECORDED IN THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, ALL OF LOTS 5 AND 6, AMENDMENT OF THE AMENDED PLAT OF LOTS 5 AND 6, OF THE ORIGINAL CITY OF AUSTIN, BLOCK 2, A SUBDIVISION RECORDED IN DOCUMENT NO. 200200047 OF THE OFFICIAL PUBLIC RECORDS OF SAID COUNTY, ALL OF A VACATED 20 FOOT WIDE ALLEY AND RECORDED IN VOLUME 5651, PAGE 936 OF THE OFFICIAL PUBLIC RECORDS OF SAID COUNTY, AND ALL OF A VACATION OF 59 SQUARE FEET AND RECORDED IN DOCUMENT NO. 2005143364 AND DOC. NO. 2005143365 OF THE OFFICIAL PUBLIC RECORDS OF SAID COUNTY, 1.773 ACRE TRACT AS SHOWN ON THE ACCOMPANYING LAND TITLE SURVEY IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE at a calculated point at the intersection of the centerline of Guadalupe Street (80 foot right-of-way width) and the centerline of West 2nd Street (80 foot right-of-way width), having state plane coordinates of N = 10,069,712.59', E = 3,112,799.57' and from which point a 1/2" iron rod found at the intersection of the north right-of-way line of West 3rd Street (80 foot right-of-way width) and the centerline of said Guadalupe Street bears, N 16° 33' 50" E for a distance of 396.26 feet;

THENCE with the centerline of said Guadalupe Street, S 16° 34' 45" W for a distance of 40.00 feet to a calculated point on the south right-of-way line of said West 2nd Street;

THENCE with the south right-of-way line of said West 2nd Street, N 73° 25' 15" W for a distance of 39.46 feet to a MAG nail set with "Baker-Aicklen" washer for the northeast corner of said vacation of 59 square foot tract, same being the intersection of the west right-of-way line of said Guadalupe Street and the south right-of-way line of said West 2nd Street, for the northeast corner and POINT OF BEGINNING hereof;

THENCE with the east line of said vacation of 59 square foot tract, same being the west right-of-way line of said Guadalupe Street, the following two (2) courses and distances:

(1) S 16° 10' 27" W for a distance of 73.56 feet to a MAG nail set with "Baker-Aicklen" washer for the southeast corner of said vacation of 59 square foot tract, for an angle point hereof, and

(2) N 73° 48' 39" W for a distance of 1.06 feet to a MAG nail set with "Baker-Aicklen" washer for the southwest corner of said vacation of 59 square foot tract, being on the east line of said Lot 5, for an angle point hereof;

THENCE with the east line of said Block 2, in part with the east line of said Lots 5 and 6, same being the west right-of-way line of said Guadalupe Street, S 16° 34' 45" W for a distance of 203.08 feet to a calculated point on an electric manhole for the southeast corner of said Block 2, same being the intersection of the west right-of-way line of said Guadalupe Street and the north right-of-way line of West 1st Street, for the southeast corner hereof, from

which a calculated point at the intersection of the centerline of said Guadalupe Street and the centerline of said West 1st Street, have state plane coordinates of N = 10,069,370.79', E = 3,112,697.81' bears, S 73° 25' 15" E for a distance of 40.00 feet and S 16° 34' 45" W for a distance of 40.00 feet;

THENCE with the south line of said Block 2, same being the north right-of-way line of said West 1st Street, N 73° 21' 23" W for a distance of 279.00 feet to a MAG nail set with "Baker-Aicklen" cap for the southwest corner of said Block 2, same being the intersection of the north right-of-way line of said West 1st Street and the east right-of-way line of San Antonio Street (80 foot right-of-way width), for the southwest corner hereof;

THENCE with the west line of said Block 2, same being the east right-of-way line of said San Antonio Street, N 16° 34' 45" E for a distance of 276.65 feet to a MAG nail set with "Baker-Aicklen" cap for the northwest corner of said Block 2, same being the intersection of the east right-of-way line of said San Antonio Street and the south right-of-way line of said West 2nd Street, for the northwest corner hereof, from which a MAG nail found at the intersection of the centerline of Nueces Street and the centerline of said West 3rd Street bears, N 16° 34' 45" E for a distance of 436.30 feet, N 73° 21' 23" W for a distance of 399.92 feet, and S 16° 38' 37" W for a distance of 40.00 feet; and

THENCE with the north line of said Block 2, same being the south right-of-way line of said West 2nd Street, S 73° 21' 23" E for a distance of 279.54 feet to the POINT OF BEGINNING hereof and containing 1.773 acre of land.

RELATED AGREEMENTS

Ground Lease Agreement dated February 15, 2000 between Computer Sciences Corporation (the "Seller") and the City of Austin, Texas,

Master Agreement dated February 1, 2000 between Seller and the City of Austin, Texas,

Lease dated June 28, 2004 between Seller and Page Southerland Page, LLP,

Schneider Building Sublease Agreement dated February 15, 2000 between Seller and the City of Austin, Texas.

Retail Sublease Agreement dated as of February 15, 2000 between Seller and the City of Austin, Texas,

Managed Growth Agreement dated as of February 15, 2000 between the City of Austin, Texas and the Seller,

Agreement Concerning Project Area Design Standards, dated as of February 15, 2000 between the City of Austin, Texas and the Seller,

Agreement dated February 22, 2000 between Seller and Hensel Phelps Construction Co., and

Purchase Agreement with Joint Escrow Instructions dated February 10, 2006 between Seller and Lessee and any and all agreements assigned by Seller to Lessor pursuant thereto.

All as the same may be amended, modified, supplemented and/or assigned from time to time.

PARTICIPATION AGREEMENT

dated as of March 30, 2006

among

SILICON LABORATORIES INC.,
as Lessee,BAL INVESTMENT & ADVISORY, INC.,
as Lessor,WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,
not in its individual capacity, except as expressly
stated herein, but solely as Collateral Agent,

and

THE FINANCIAL INSTITUTIONS NAMED ON SCHEDULE II HERETO,
as LendersBANC OF AMERICA LEASING & CAPITAL, LLC,
As Sole Lead Arranger
and Sole Book Runner

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PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (this "*Participation Agreement*"), dated as of March 30, 2006, is entered into by and among SILICON LABORATORIES INC., a Delaware corporation, as Lessee (together with its permitted successors and assigns, in its capacity as the Lessee, the "*Lessee*"); BAL INVESTMENT & ADVISORY, INC., as Lessor (the "*Lessor*"); WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, except as expressly stated herein, but solely as Collateral Agent (the "*Collateral Agent*"); and the financial institutions listed on Schedule II hereto as Lenders (together with their permitted successors, assigns and transferees, each a "*Lender*", and collectively, the "*Lenders*").

WITNESSETH

- A. Lessee, Collateral Agent, the Lenders and the Lessor desire to enter into this Participation Agreement and the other Operative Documents for the purpose of financing the Leased Property, title to which will be held by Lessor, to secure Lessee's performance under the Operative Documents.
- B. The Ground Lessor is the fee simple owner of the Land.
- C. The Ground Lessor and the Seller have previously entered into the Ground Lease pursuant to which the Ground Lessor leased to Seller, and Seller leased from the Ground Lessor, the Land.
- D. On the date hereof, pursuant to the Assignment of Ground Lease the Seller will assign to Lessor its right, title and interest as ground lessee under the Ground Lease and Lessor will assume certain obligations thereunder.

E. On the date hereof, the Seller will (i) pursuant to the Deed, convey to Lessor its right, title and interest in and to the Facility, (ii) pursuant to the Assignment of Subleases, fully assign to Lessor its right, title and interest as lessor or sublessor under the Related Agreements which constitute leases and Lessor shall assume certain obligations thereunder, and (iii) pursuant to (x) the Assignment of Purchase Agreement, (y) the Assignment of Ground Lease and (z) the Assignment of Related Agreements, fully assign to Lessor its right, title and interest as lessor, sublessor or interested party, as the case may be, under the other Related Agreements and Lessor shall assume certain obligations thereunder.

F. On the date hereof, Collateral Agent, on behalf of Lessor, using amounts Funded by the Lessor and the Lenders, will provide funds to pay Lessor for acquisition of the Subject Property and other costs (including transaction costs) related to the Subject Property and the Overall Transaction.

G. Subject to the terms and conditions of this Participation Agreement and the other Operative Documents, on the Closing Date, among other things, Lessee and Lessor will enter into the Lease pursuant to which Lessor will agree to lease to Lessee, and Lessee will agree to lease from Lessor, the Leased Property pursuant to the Lease.

H. To secure the repayment of the Lessor's and Lenders' respective Lessor Amount and Loans, the Collateral Agent, on behalf of the Participants, will have the benefit of a Lien on the Subject Property and the other Lessor Collateral.

NOW, THEREFORE, in consideration of the mutual agreements contained in this Participation Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

Section 1.1. Definitions; Interpretation. Unless the context shall otherwise require, capitalized terms used and not defined herein shall have the meanings assigned thereto in Appendix 1 hereto for all purposes hereof; and the rules of interpretation set forth in Appendix 1 hereto shall apply to this Participation Agreement.

ARTICLE II

CLOSING DATE

Section 2.1. Effectiveness of Agreement. (a) This Participation Agreement shall be effective as of March 30, 2006 (the "Closing Date"), subject to the satisfaction or waiver as set forth herein of all of the conditions precedent set forth in Article VI.

(b) Subject to the conditions set forth in this Participation Agreement and pursuant to the terms hereof, on the Closing Date, *inter alia*, Lessor and Lessee will enter into the Lease pursuant to which Lessor shall lease to Lessee, and Lessee shall lease from Lessor, the Leased Property for the Term.

(c) Except for any documents to be executed and delivered by Seller, Lessee and Lessor pursuant to the Purchase Agreement, which shall be delivered through the Escrow, all documents and instruments required to be delivered on the Closing Date and in connection with the Advance pursuant to this Participation Agreement shall be delivered at the offices of Chapman and Cutler LLP, 111 West Monroe Street, Chicago, Illinois 60603, or at such other location as the Collateral Agent and the Lessee may mutually agree.

Section 2.2. Acquisition of Facility and Leasehold Interest in Land; Grants of Lien; Assignment of Related Agreements. Subject to the terms and conditions of this Participation Agreement, on the Closing Date, (i) Seller and Lessor shall enter into the Assignment of Ground

Lease pursuant to which Seller shall assign to Lessor and Lessor shall assume, Seller's right, title and interest as ground lessee under the Ground Lease, (ii) Seller shall convey to Lessor its right, title and interest in the Facility pursuant to the Deed, (iii) Lessor and Seller shall enter into the Assignment of Subleases pursuant to which Seller shall assign to Lessor and Lessor shall assume Seller's right, title and interest in the Related Agreements which constitute leases, (iv) Lessor and Seller shall enter into (x) the Assignment of Purchase Agreement and (y) the Assignment of Related Agreements pursuant to which Seller shall assign to Lessor and Lessor shall assume, Seller's right, title and interest in the other Related Agreements, (v) Lessor and Lessee shall enter into the Lease pursuant to which Lessor shall lease to Lessee, and the Lessee shall lease from Lessor, the Leased Property for the Term, and (vi) Lessee, Lessor and Collateral Agent, as applicable, shall enter into and/or record the Assignment of Ground Lease, the Assignment of Related Agreements, the Deed of Trust, the Memorandum of Lease, the Assignment of Leases and Rents and memoranda thereof and the UCC Financing Statements.

ARTICLE III

FUNDING OF ADVANCE

Section 3.1. Funding.

(a) *Amount of Funding.* Subject to the terms and conditions of this Participation Agreement and in reliance on the representations and warranties made as of the Closing Date of each of the parties hereto contained herein or made pursuant hereto, upon receipt of the Advance Request, on the Closing Date the Collateral Agent (on behalf of the Lessor) shall, to the extent it has received amounts from the Participants, make the requested Advance and each Participant will Fund the Advance, as and to the extent provided herein, in each case by making available to Lessor or Collateral Agent (on behalf of the Lessor) by wire transfer of immediately available funds in accordance with the instructions set forth in the Advance Request, an amount equal to (i) with respect to the Lenders, such Lender's Loan Commitment and (ii) with respect to the Lessor, the Lessor Commitment. Notwithstanding the foregoing, the Funding by each Participant on the Closing Date shall not exceed such Participant's Commitment. The Lessor shall not issue Notes or, except as otherwise expressly permitted by the Operative Documents, otherwise incur indebtedness secured by the Subject Property or any portion thereof in an amount in excess of the Aggregate Commitment Amount. No amounts paid or prepaid with respect to any Lessor Amount or the Loans may be readvanced.

(b) *Notes and Lessor Amount.* Each Lender's Loans shall be evidenced by a single Note issued to such Lender and repayable in accordance with, and with Interest accruing pursuant to, the terms of the Loan Agreement. The Lessor Amount shall accrue Yield at the Yield Rate. Each Lender is authorized and entitled to make notations on its Notes in accordance with the Loan Documents, each of which notations shall constitute *prima facie* evidence of the accuracy of the information so noted, absent manifest error.

(c) *Funding.* The Advance required to be made by the Collateral Agent (on behalf of the Lessor) on the Closing Date shall be funded by the Participants making a Funding directly to the Collateral Agent. Such Funding by the Participants to the Collateral Agent with respect to

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the Advance shall be deemed to constitute the required Funding from the Participants to Lessor, and the corresponding payment by the Collateral Agent for the purposes provided in Section 3.1(d).

(d) *Use of Proceeds.* Pursuant to Section 3.3, the Funding shall be used by the Collateral Agent on behalf of the Lessor solely (i) to Advance the Aggregate Commitment Amount for the Subject Property and (ii) to pay Transaction Expenses.

(e) *Advance.* All remittances made by the Participants for the Funding of the Advance shall be made in immediately available federal funds by wire transfer to the Collateral Agent at the Collateral Agent's address referred to in Schedule III hereto prior to 12:00 noon (New York City time) on the Closing Date; *provided*, that if the terms and conditions for the Advance set forth herein have not been satisfied by 10:00 a.m. New York time on the Closing Date, no Participant shall be obligated to maintain the availability of its funds for the Advance unless such Participant has received a satisfactory indemnity for the overnight investment of such funds. Promptly upon Collateral Agent's receipt of such funds from the Participants, subject to the conditions herein, Collateral Agent shall wire such funds on the Closing Date to the Persons entitled thereto as provided for in the Advance Request. The Funding by each Participant to the Collateral Agent of its respective portion of the Advance shall constitute authorization and direction by such party to Collateral Agent to make the Advance pursuant to this Article III.

Section 3.2. [Intentionally Omitted].

Section 3.3. Advance Request.

(a) *Notice and Closing.* At least two (2) Business Days prior to the Closing Date, Lessee shall deliver to Collateral Agent (which shall promptly forward a copy of such Advance Request to each Participant) an irrevocable written notice substantially in the form of Exhibit A (an "Advance Request"), setting forth:

(i) the proposed Closing Date;

(ii) a statement of the amount of the requested Advance setting forth (A) a description of the use of proceeds of such Advance, indicating which portions of such Advance will be used to pay the purchase price for the Subject Property and which portion of such Advance will be used to pay Transaction Expenses, and the identity of the Persons entitled to such payments; and

(iii) wire transfer instructions for the disbursement of the appropriate amount of funds to Lessee or to such other Persons as may be entitled to the Advance.

(b) On the Closing Date, and subject to the satisfaction of the conditions set forth in Article VI, Participants shall, as and to the extent provided herein, Fund the Advance by wire transfer directly to Collateral Agent.

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(c) Concurrent with the making of the Advance, all deposits previously made by Lessee under the Purchase Agreement and held in escrow shall be refunded to Lessee.

ARTICLE IV

YIELD, INTEREST

Section 4.1. *Yield.* The Lessor Amount shall accrue Yield at the Yield Rate, calculated using the actual number of days elapsed and, during the initial Interest Period and when the Yield Rate is based on the LIBO Rate (Reserve Adjusted), a 360-day year basis and, at all other times, a 365-day (or, if applicable, 366-day) year basis. If all or any portion of the Lessor Amount, any Yield payable thereon or any other amount payable hereunder shall not be paid when due (whether at stated maturity, acceleration thereof or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the Overdue Rate.

Section 4.2. *Interest on Loans.* Each Loan shall accrue Interest computed and payable in accordance with the terms of the Loan Agreement.

Section 4.3. *Computations.* Computations of Interest and other amounts payable in respect of the Notes shall be made by Collateral Agent in accordance with the Loan Agreement and this Article IV. Lessor hereby appoints Collateral Agent as its agent for purposes of computing the Yield in respect of the Lessor's Interest and determining the Yield Rate. No later than thirty (30) days prior to each Payment Date, Collateral Agent shall deliver to Lessee and each Participant a written statement of the amount of Interest and Yield then due, the due date therefor and the calculation thereof; *provided* that in each case, the failure of Collateral Agent to provide such notice shall not relieve Lessee from any liability that it may have under the Operative Documents to pay any such amount; and *provided, further* that Collateral Agent's failure to give such notice shall result in no liability to it.

Section 4.4. *Payments of Rent; Payments and Prepayments of Loans and Lessor Amount.* (a) Notwithstanding any provisions in the Lease to the contrary, the Lessor hereby directs the Lessee to pay to the Collateral Agent all Basic Rent payable from time to time by Lessee and all Supplemental Rent to

the extent such Supplemental Rent is payable to Lessor under the Lease (other than Excepted Payments or Supplemental Rent that is payable to Persons other than Lessor, which the Lessor hereby directs the Lessee to make directly to the applicable Person entitled thereto).

(b) In the event that the Lessee pays the Lease Balance to the Lessor in connection with the Lessee's purchase of the Subject Property in accordance with any of Sections 15.1, 16.2(e), 18.1 or 18.2 of the Lease or Article XIX of the Lease, the Lessor will prepay the entire outstanding principal amount of the Loans and the Lessor Amount. Each of the Participants hereby acknowledges that its Loans or the Lessor Amount, as the case may be, may be so prepaid without any prepayment premium (other than Break Costs, if any).

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Section 4.5. Fees. If and only if the Advance is made and Lessor consummates the purchase of the Subject Property on the Closing Date, Lessee agrees to pay the fees set forth in this Section 4.5 (collectively, the "Fees").

(i) *Upfront Fees.* Lessee agrees to pay to the Collateral Agent on behalf of the Participants an up front fee payable on the Closing Date to each Participant in an amount equal to, for each Lender or Lessor, the product of (a) the aggregate amount of the Loan Commitment or Lessor Commitment of such Lender or Lessor, as applicable, multiplied by (b) 0.25%.

(ii) *Other Fees.* The Lessee also agrees to pay (x) to the Collateral Agent, for its own account, the fees set forth in the Collateral Agent Fee Letter, payable in the amounts and on the dates set forth therein and (y) to the Arranger, the fees set forth in the Arrangement Fee Letter payable in the amounts and on the dates set forth therein.

Section 4.6. Obligations Several. The obligations of the Participants hereunder or elsewhere in the Operative Documents shall be several and not joint; and no Participant shall be liable or responsible for the acts or defaults of any other party hereunder or under any other Operative Document.

Section 4.7. Highest Lawful Rate. It is the intention of the parties hereto to conform strictly to applicable usury laws and, anything herein to the contrary notwithstanding, the obligations of (x) Lessee to Lessor under this Participation Agreement and the Lease, (y) Lenders under the Loan Agreement and the Notes and (z) either Lessee or Lessor or any other party under any other Operative Document shall, in each case, be subject to the limitation that payments of interest or of other amounts constituting interest under Applicable Laws shall not be required to the extent that receipt thereof would be in excess of the Highest Lawful Rate, or otherwise contrary to provisions of law applicable to the recipient limiting rates of interest which may be contracted for, charged, received, taken or reserved by the recipient. Accordingly, if the transactions or the amount paid or otherwise agreed to be paid for the use, forbearance or detention of money under this Participation Agreement, the Lease, the Loan Agreement, the Notes, the Lessor Amount or any other Operative Document would exceed the Highest Lawful Rate or otherwise be usurious under Applicable Laws (including, without limitation, the federal and state laws of the United States of America, or of any other jurisdiction whose laws may be mandatorily applicable) with respect to the recipient of any such amount, whether due to the acceleration of the maturity of the Lease Balance, the optional or mandatory purchase of the Leased Property or otherwise, then, in that event, notwithstanding anything to the contrary in this Participation Agreement, the Lease, the Loan Agreement, the Notes, the Lessor Amount or any other Operative Document, it is agreed as follows as to the recipient of any such amount:

(a) the provisions of this Section 4.6 shall govern and control over any other provision in this Participation Agreement, the Lease, the Loan Agreement, the Notes, the Lessor Amount and any other Operative Document, and each provision set forth therein is hereby so limited;

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(b) the aggregate of all consideration which constitutes interest under Applicable Laws that is contracted for, charged or received under this Participation Agreement, the Lease, the Loan Agreement, the Notes, the Lessor Amount or any other Operative Document shall under no circumstances exceed the maximum amount of interest allowed by Applicable Laws (such maximum lawful interest rate, if any, with respect to such recipient herein called the "Highest Lawful Rate"), and all amounts owed under this Participation Agreement, the Lease, the Loan Agreement, the Notes, the Lessor Amount and any other Operative Document shall be held subject to reduction and: (i) the amount of interest which would otherwise be payable to the recipient hereunder and under the Lease, the Loan Agreement, the Notes, the Lessor Amount and any other Operative Document shall be automatically reduced to the amount allowed under Applicable Laws, and (ii) any interest paid in excess of the Highest Lawful Rate shall be credited to the Lease Balance (or, if such consideration shall have been paid in full, refunded to the Lessee);

(c) all sums paid, or agreed to be paid for the use, forbearance and detention of the money under this Participation Agreement, the Lease, the Loan Agreement, the Notes, the Lessor Amount or any other Operative Document shall, to the extent permitted by Applicable Laws, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or computation of interest on such indebtedness does not exceed the applicable usury ceiling;

(d) if at any time the interest, together with any other fees, late charges and other sums payable pursuant to or in connection with this Participation Agreement, the Lease, the Loan Agreement, the Notes, the Lessor Amount and any other Operative Document executed in connection herewith or therewith and deemed interest under Applicable Laws, exceeds that amount which would have accrued at the Highest Lawful Rate, the amount of interest and any such fees, charges and sums to accrue to the recipient of such interest, fees, charges and sums pursuant to the Operative Documents shall be limited, notwithstanding anything to the contrary in the Operative Documents, to that amount which would have accrued at the Highest Lawful Rate for the recipient, but any subsequent reductions in the otherwise applicable rate of interest or yield, as applicable, shall not reduce the interest to accrue pursuant to the Operative Documents to an amount below the recipient's Highest Lawful Rate until the total amount of interest payable to the recipient (including all consideration which constitutes interest) equals the amount of interest which would have been payable to the recipient (including all consideration which constitutes interest), but for the effect of this Section 4.6; and

(e) the right to accelerate the maturity of the Lease Balance or to require the purchase of the Subject Property pursuant to the Operative Documents does not include the right to accelerate any interest (as determined under Applicable Law) which has not otherwise accrued on the date of such acceleration or mandatory purchase.

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ARTICLE V

CERTAIN INTENTIONS OF THE PARTIES

Section 5.1. Nature of Transaction. It is the intention of the parties that:

(a) the Overall Transaction constitutes an operating lease from Lessor to Lessee for purposes of Lessee's financial reporting, including, without limitation, under FASB Statement No. 13;

(b) for the purposes of all federal, state and local income, franchise, transfer and other taxes; all bankruptcies, insolvencies, conservatorships and receiverships (including the substantive law upon which bankruptcy, conservatorship, insolvency and receivership proceedings are based); and real estate law, commercial law and Uniform Commercial Code purposes:

(i) the Overall Transaction constitutes a financing by the Participants to Lessee and preserves beneficial ownership in the Subject Property in Lessee, Lessee will be entitled to all tax benefits with respect to the Subject Property ordinarily available to owners of property similar to the Subject Property for tax purposes, and the obligations of Lessee to pay Basic Rent shall be treated as payments of principal, if any, and interest to the Participants, and the payment by Lessee of any amounts in respect of the Lease Balance shall be treated as payments of principal to the Participants;

(ii) the Lease grants a security interest or Lien, as the case may be, in the Lessee's interest in the Leased Property and the other Lessee Collateral, in favor of the Lessor, and for the benefit of the Participants, to secure Lessee's payment and performance of its Obligations under the Operative Documents; and

(iii) the Security Instruments create Liens on and security interests in the Subject Property and the other Lessor Collateral and Lessee Collateral for the benefit of all of the Participants to secure Lessor's and Lessee's payment and performance of its obligations under the Operative Documents.

Each of the parties hereto agrees that it will not, nor will it permit any Affiliate to at any time, take any action or fail to take any action with respect to the preparation, filing or audit of any income tax return, including an amended income tax return, to the extent that such action or such failure to take action would be inconsistent with the intention of the parties expressed in this Section 5.1.

Nevertheless, Lessee acknowledges and agrees that none of the Lessor, the Collateral Agent, Arranger or any Lender has made any representations or warranties concerning the tax, accounting or legal characteristics of the Operative Documents or any aspect of the Overall Transaction and that Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents and the Overall Transaction as it deems appropriate.

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Specifically, without limiting the generality of the foregoing, the parties hereto intend and agree that in the event of any insolvency, conservatorship or receivership proceedings or matters or a petition under the United States bankruptcy laws, or any other applicable insolvency, conservatorship or receivership laws or statute of the United States of America or any State thereof affecting Lessee, Lessor, or the Lenders or any collection actions, the transactions evidenced by the Operative Documents (including, without limitation, the Lease) shall be regarded as loans made directly to Lessee by the Participants, in each case as unrelated third party lenders, and that Lessor holds title to the Subject Property for the benefit of the Participants to secure Lessee's obligations to repay such loans to the Participants and all other amounts due under any of the Operative Documents.

Section 5.2. Amounts Due Under Lease. Anything else herein or elsewhere to the contrary notwithstanding, it is the intention of the Lessee, the Lessor and the Lenders that: (i) the amount and timing of installments of Basic Rent due and payable from time to time under the Lease shall be equal to the aggregate payments due and payable as Interest on the Loans and Yield on the Lessor Amount due on each Payment Date; (ii) if the Lessee elects the Early Termination Option, the Purchase Option or becomes obligated or otherwise elects to purchase the Subject Property under the Lease, then the Loans, the Lessor Amount, all accrued and unpaid Interest and Yield thereon, any Fees and all other obligations of the Lessee owing to the Lessor and the Participants shall be paid in full by the Lessee; (iii) if the Lessee properly elects the Sale Option with respect to the Subject Property and subject to Articles XX and XXI of the Lease, the Lessee shall only be required to pay to the Collateral Agent the proceeds of the sale of the Subject Property, the Sale Option Recourse Amount with respect to the Leased Property and any amounts due pursuant to Section 20.2 of the Lease (which amounts may be less than the aggregate amount of the unpaid principal of the Notes and Lessor Amount), together with all other amounts due and payable under Article XIII; and (iv) subject to the limitation in Section 16.5 of the Lease, upon an Event of Default resulting in an acceleration of the Lessee's obligation to purchase the Subject Property under the Lease, the amounts then due and payable by the Lessee under the Lease shall include all amounts necessary to pay in full the Lease Balance, *plus* all other amounts then due from the Lessee to the Participants under the Operative Documents.

Section 5.3. Distribution. (a) Each payment of Basic Rent (and any payment of interest on overdue installments of Basic Rent) received by the Collateral Agent shall be distributed by the Collateral Agent to the Participants pro-rata, in accordance with, and for application to, the amount of Interest and Yield then due on the Loans and the Lessor Amount, respectively, as well as any overdue Interest or Yield due to each Lender or Lessor (to the extent permitted by Applicable Laws).

(b) Any payment received by the Collateral Agent as a result of:

(i) the purchase of all of the Subject Property in connection with the Lessee's exercise of its Early Termination Option under Section 18.1 of the Lease or its Purchase Option under Section 19.1 of the Lease or pursuant to the penultimate paragraph of Section 20.1 of the Lease, or

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(ii) the payment of the Lease Balance in accordance with Section 15.1 of the Lease,

shall be distributed by the Collateral Agent to pay in full, on a pro-rata basis, as applicable, the Participant Balance of each Participant and the balance, if any, of such payment or amounts shall be promptly distributed to, or as directed by, the Lessee.

(c) Any payments received by the Collateral Agent as Sale Option Recourse Amount in accordance with Section 20.1(i) of the Lease upon the Lessee's exercise of the Sale Option shall be distributed by the Collateral Agent in the following amounts and order of priority:

first, on a pro rata basis based on their respective shares of the Loan Balance, to the Lenders for application to pay in full the Loan Balance owing to them;

second, to the Lessor to pay in full the Lessor Balance; and

third, the balance, if any, shall be promptly distributed to, or as directed by, the Lessee.

(d) (i) Any payments received by the Collateral Agent as Net Sales Proceeds from the sale of the Subject Property on or before the Expiration Date pursuant to the Lessee's exercise of the Sale Option pursuant to Article XX of the Lease, together with any payment made as a result of the valuation process conducted pursuant to Section 13.2 hereof shall be distributed by the Collateral Agent from the funds so received in the following order of priority:

first, so much of such amount as shall be required to reimburse Lessor and Collateral Agent for any Lessor Marketing Costs;

second, to the Lessor for application to pay in full the Lessor Balance;

third, on a pro rata basis based on their respective shares of the sum of the outstanding Loan Balance, if any, to the Lenders for application to pay in full the outstanding Loan Balance;

fourth, to Lessee to pay in full the Sale Option Recourse Amount to the extent previously paid by Lessee; and

fifth, the balance, if any, shall be promptly distributed to, or as directed by, the Lessee.

(ii) If possession of the Leased Property is delivered to Lessor pursuant to Section 20.3 of the Lease, then at the end of each calendar month following the Expiration Date, but prior to the last day of the Extended Remarketing Period, any payments received by the Collateral Agent during the calendar month then ended as Net Sales Proceeds from the sale of the Subject Property or proceeds from the rental, or other disposition of the Subject Property and any

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insurance proceeds paid in connection with a Casualty or Condemnation relating to the Subject Property shall be distributed by the Collateral Agent in the following order of priority:

first, so much of such amount as shall be required to reimburse Lessor and Collateral Agent for Lessor Marketing Costs;

second, to the Lessor for application to pay in full the Lessor Balance as of the Expiration Date;

third, solely with respect to a sale of the Subject Property prior to the two-year anniversary of the Expiration Date, to Lessee to pay any unreimbursed Sale Option Recourse Amount to the extent previously paid by Lessee on the Expiration Date together with interest at the Lessee Interest Rate on the portion of the unreimbursed Sale Option Recourse Amount distributed to Lessee on such date, accruing from the Expiration Date to, but not including, the date of such distribution pursuant to this Section 5.3(d)(ii); and

fourth, the balance, if any, shall be promptly distributed to, or as directed by the Lessor.

(iii) Except as provided in Section 5.3(g)(ii), any payments received by the Collateral Agent pursuant to the sixth sentence of Section 14.1(a) of the Lease, shall be distributed by the Collateral Agent, on the Payment Date immediately following the receipt by the Collateral Agent of any such payment, in the funds so received in the following order of priority:

first, on a pro rata basis based on their respective shares of the sum of the outstanding principal amount of the Loans and Lessor Amount, as the case may be, to the Participants for application to pay in full the outstanding principal amount of the Loans and Lessor Amount;

second, on a pro rata basis based on the amount of accrued Interest and Yield payable to each Participant, to the Participants for application to pay all accrued Interest and Yield; and

third, the balance, if any, shall be promptly distributed to, or as directed by, the Lessee.

(e) All payments of Supplemental Rent received by the Collateral Agent (excluding any amounts payable pursuant to the preceding provisions of this Section 5.3) shall be distributed promptly by the Collateral Agent upon receipt thereof to the Persons entitled thereto pursuant to the Operative Documents.

(f) Notwithstanding any other provision of this Section 5.3, any Excepted Payment received at any time by the Collateral Agent shall be distributed promptly to the Person entitled to receive such Excepted Payment pursuant to the Operative Documents.

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(g) (i) All amounts received by the Collateral Agent in connection with any sale, lease or other disposition of all or any part of the Subject Property as a result of, or following, an Event of Default (including a Limited Recourse Event Default) or any Event of Loss or Significant Environmental Event after the occurrence and during the continuance of an Event of Default shall be distributed by the Collateral Agent in the following order of priority:

first, so much of such payments or amounts as shall be required in accordance with the Operative Documents to pay or reimburse Collateral Agent for any costs or fees incurred or owing as a result of such Event of Default;

second, so much of such payments or amounts as shall be required to pay the then existing or prior Participants the amounts payable to them pursuant to any expense reimbursement or indemnification provisions of the Operative Documents or any other amount (including, without limitation, Fees, but not including amounts referred to in *second* and *third* below) due pursuant to the Operative Documents shall be distributed to each such Participant without priority of one over the other in accordance with the amount of such payment or payments payable to each such Person;

third, on a pro rata basis based on their respective shares of the Participant Balance, to the Participants for application to pay in full the Participant Balance; and

fourth, the balance, if any, of such payment or amounts remaining thereafter shall be promptly distributed to, or as directed by, the Lessee.

(ii) All payments received and amounts realized (other than payments or amounts described in clause (g)(i) above) by the Collateral Agent as a result of, or following, an Event of Default (including a Limited Recourse Event of Default) shall, if received by the Collateral Agent, be distributed by the Collateral Agent in the following order of priority:

first, so much of such payment or amounts as shall be required in accordance with the Operative Documents to pay or reimburse Collateral Agent for any costs or fees incurred or owing as a result of such Event of Default;

second, so much of such payments or amounts as shall be required to pay the then existing or prior Participants the amounts payable to them pursuant to any expense reimbursement or indemnification provisions of the Operative Documents or any other amount (including, without limitation, Fees, but not including amounts referred to in *second* and *third* below) due pursuant to the Operative Documents shall be distributed to each such Participant without priority of one over the other in accordance with the amount of such payment or payments payable to each such Person;

third, on a pro rata basis based on their respective shares of the Participant Balance, to the Participants for application to pay in full the Participant Balance; and

fourth, the balance, if any, of such payment or amounts remaining thereafter shall be promptly distributed to, or as directed by, the Lessee.

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(iii) During the occurrence and continuance of an Event of Default, all amounts (other than Excepted Payments) received or realized by the Collateral Agent and otherwise distributable pursuant to Section 5.3(a) shall be distributed as provided for in clause (g)(ii) above.

(h) (i) Any payment received by the Collateral Agent for which no provision as to the application thereof is made in the Operative Documents or elsewhere in this Section 5.3 shall be distributed in accordance with Section 5.3(g)(ii).

(ii) Except as otherwise provided in Section 5.3(f), all payments received and amounts realized by the Collateral Agent under the Lease or otherwise with respect to the Subject Property, or any proceeds thereof, to the extent received or realized at any time after an indefeasible payment in full of the Participant Balances of all of the Participants and all other amounts due and owing to the Collateral Agent or the Participants, shall be distributed forthwith by the Collateral Agent in the order of priority set forth in Section 5.3(g)(ii), except that such payment shall be distributed omitting clause "third" of such Section 5.3(g)(ii).

(i) Any payment received by the Collateral Agent for which provision as to the application thereof is made in an Operative Document, but not elsewhere in this Section 5.3, shall be distributed forthwith by the Collateral Agent to the Person and for the purpose for which such payment was made in accordance with the terms of such Operative Document.

(j) Except to the extent clause (b) or (g) is applicable thereto, all amounts payable to the Lessee for the repair of damage caused by such Casualty or Condemnation in accordance with Section 14.1(a) of the Lease shall be distributed to, or as directed by, the Lessee in accordance with Section 14.1 of the Lease.

(k) Except as contemplated by Sections 5.3(d)(ii) or 5.3(d)(iii), to the extent any payment made to any Participant, personally, is insufficient to pay in full the Participant Balance of such Participant plus all accrued Interest and Yield, as the case may be, owing to such Participant, then each such payment which is payable to a Lender shall first be applied to accrued Interest and then to principal outstanding on the Loans and each such payment which is payable to Lessor shall first be applied to accrued Yield and then to the Lessor Amount, as applicable.

Section 5.4. Adjustments. (a) If any Participant (a "Benefited Participant") shall at any time receive any payment of all or part of its Loans or Lessor Amount, as applicable, or Interest or Yield thereon, as applicable, or receive any of the collateral in respect thereof (whether voluntarily or involuntarily, by setoff, or otherwise), in an amount greater than the amount to which such Participant was entitled pursuant to Section 5.3, such Participant shall return such amount or collateral to the Collateral Agent for distribution to the Person(s) entitled thereto in accordance with Section 5.3; *provided, however*, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Participant so that the excess payment or benefits returned by such Benefited Participant exceed the remaining excess payment or benefits held by such Benefited Participant, the excess payment or benefits, as applicable, returned by such Benefited Participant shall be restored to the Benefited Participant, to the extent of such recovery, but without interest.

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ARTICLE VI

CONDITIONS PRECEDENT TO CLOSING DATE AND ADVANCE

Section 6.1. Conditions Precedent to the Closing Date and the Advance. The obligations of the Lessor (which may be performed by the Collateral Agent to the extent and in the manner set forth in this Participation Agreement) to make the Advance on the Closing Date, the obligations of the Lessor to Fund the related Lessor Amount on the Closing Date and the obligation of the Lenders to make the related Funding of their Loans on the Closing Date are subject to the satisfaction or waiver by the Participants on or prior to the Closing Date of each of the following conditions precedent, each of which shall be deemed fully satisfied or waived by the Participants and the Collateral Agent if the Advance is made and such Advance is released by the Participants from the escrow arrangement contemplated on the Closing Date:

(a) *Authorization, Execution and Delivery of Documents; No Default.* Each of the Operative Documents shall have been duly authorized, executed and delivered by each of the other parties thereto, shall (to the extent the form and substance thereof shall not be prescribed hereby) be in form and substance satisfactory to each Participant and an executed counterpart of each thereof (except for the Notes, originals of which shall only be delivered to the applicable Lender, and for each Fee Letter, originals and copies of which shall only be delivered to the parties thereto) shall have been received by each of the Participants and the Collateral Agent. Each Lender shall have received an original, duly executed Note, registered in such Lender's name. Each of the Operative Documents listed in this clause (a) shall be in full force and effect as to all other parties and no Default, Event of Default or Loan Agreement Event of Default shall have occurred or be continuing.

(b) *Legality, Etc.* In the opinion of each Participant, the Overall Transaction shall not violate any Applicable Laws and no change shall have occurred or been proposed in Applicable Laws that would make it uneconomic or illegal for any party to any Operative Document to participate in any of the transactions contemplated by the Operative Documents or otherwise would prohibit the consummation of any transaction contemplated by the Operative Documents or expand the duties, obligations and risks of such Participant.

(c) *Fees and Expenses.* The Collateral Agent shall be prepared to pay and (concurrently with the closing hereunder) shall pay, using the proceeds of the Advance, to the Persons entitled thereto, all Transaction Expenses and Fees accrued as of the Closing Date pursuant to and as set forth in Section 4.5.

(d) *Lessee's Resolutions and Incumbency Certificate, Etc.* The Lessee shall have delivered to the Collateral Agent and each Participant (i) a good standing certificate with respect to Lessee from the secretary of state of Lessee's state of organization, issued by such office no earlier than thirty (30) days prior to the Closing Date and (ii) a Responsible Officer's Certificate of Lessee substantially in the form of Exhibit H-1, attesting and certifying as to (A) the authority for the execution, delivery and

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performance by Lessee of each Operative Document to which it is or will be a party, (B) its organizational documents, (C) its constituent documents and (D) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Documents to which it is a party.

(e) *Funding Indemnity Letter.* The Collateral Agent and the Participants shall have received a funding indemnity letter executed by Lessee dated the Closing Date, and in form and substance satisfactory to each Participant (the "Funding Indemnity Letter").

(f) *Certificate of Lessor.* The Collateral Agent shall have received a secretary's certificate signed by an authorized signatory of the Lessor substantially in the form of Exhibit H-2 and customarily provided by Lessor in transactions of this type.

(g) *Opinion of Special Counsel to the Participants.* Each Participant shall have received an opinion of Chapman and Cutler LLP, special counsel to the Participants, as to the matters set forth in Exhibit B-1, which opinion shall be reasonably acceptable in form and substance to such Participant.

(h) *Opinions of Special Counsel to Lessee.* The Collateral Agent and each Participant shall have received an opinion of DLA Piper Rudnick Gray Cary, special counsel and special local counsel to the Lessee, as to the matters set forth in Exhibit B-2, which opinion shall be reasonably acceptable in form and substance to the Participants.

(i) *Taxes.* All taxes, fees and other charges payable in connection with the execution, delivery, recording, filing and registration of the Operative Documents, if any, and the transactions to consummated on the Closing Date, or the provisions for such payments, shall have been made by the Lessee to the satisfaction of the Collateral Agent.

(j) *Appraisal.* The Collateral Agent and each Participant shall have received an Appraisal (the "Appraisal") performed by the Appraiser and in form and substance satisfactory to each Participant which shall establish (by the use of appraisal methods reasonably satisfactory to each Participant) the Fair Market Value of the Leased Property as of the Closing Date and as of the end of the Term.

(k) *Requirements of Law.* The Overall Transaction does not and will not violate in any material respect any Applicable Laws and does not and will not subject any such Person to any material adverse regulatory prohibitions or constraints or cause any such Person to violate any Applicable Laws.

(l) *[Intentionally Omitted.]*

(m) *Offeree Letter.* Collateral Agent and Lessee shall have received a certificate, substantially in the form of Exhibit L, from the Arranger, dated the Closing Date, with respect to offerees of the Notes (the "Offeree Letter").

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(n) *Environmental Report.* At least four (4) Business Days prior to the Closing Date, an Environmental Audit satisfactory to each Participant with respect to the Land shall have been received by Collateral Agent and each Participant, and Collateral Agent and each Participant shall receive a letter from the consultant performing the Environmental Audit which allows Collateral Agent and the Participants to rely on such report.

(o) *Acquisition of Facility and Leasehold Interest in Land; Assumption of Related Agreements.*

(i) Lessor and Seller shall have deposited with the Escrow Agent a fully executed original of the Assignment of Ground Lease pursuant to which the Seller shall have assigned to Lessor, and Lessor shall have assumed, Seller's right, title and interest as ground lessee, in and to the Ground Lease;

(ii) Seller and Lessor shall have deposited with the Escrow Agent a fully executed original of the special warranty deed (the "Deed"), executed by the Seller and dated the Closing Date with respect to the Facility and fixtures existing on the Leased Property, sufficient to convey to Lessor good and marketable fee simple title thereto free of all Liens, other than Permitted Liens;

(iii) Lessor shall have deposited with the Escrow Agent a fully executed original of the Assignment of Subleases pursuant to which the Seller shall have assigned to Lessor and Lessor shall have assumed, Seller's right, title and interest in and to the Related Agreements which constitute leases;

(iv) Seller and Lessor shall have deposited with the Escrow Agent a fully executed original of (x) the Assignment of Purchase Agreement and (y) the Assignment of Related Agreements pursuant to which Seller shall have assigned to Lessor, and Lessor shall have assumed, Seller's right, title and interest in and to the Related Agreements (other than those Related Agreements covered by clause (iii) above); and

(v) Collateral Agent shall have received evidence reasonably satisfactory to it that the Deed, the Lease or memoranda thereof, the Ground Lease or memoranda thereof, the Assignment of Ground Lease, the Assignment of Subleases, the Assignment of Related Agreements, the Deed of Trust and the Assignment of Leases and Rents or any memoranda thereof shall have been or in connection with the Advance are being recorded with the appropriate Governmental Authorities in an order satisfactory to the Collateral Agent (and the issuance of the title insurance policies in Section 6.1(r) shall be satisfactory evidence of the foregoing), and the UCC Financing Statements shall have been or are being filed with the appropriate Governmental Authorities.

(p) *Searches.* Collateral Agent and each Participant shall have received reports, acceptable to the Collateral Agent and Lessor, as to the Lessee and Seller by the

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appropriate county and state filing or recording offices of the state and county in which (i) each of the Lessee's and Seller's chief executive office is located and (ii) each of Lessee and Seller is organized, in each case dated not earlier than fifteen (15) Business Days prior to the Closing Date, of the results of a search of the applicable UCC files and any indices of Liens maintained by such offices (including, if applicable, indices of judgment, revenue and tax liens).

(q) *Survey.* Lessee shall have, or shall have caused to be, delivered and certified to Collateral Agent, each Participant and to the Title Insurance Company an "as built" ALTA survey of the Subject Property, (i) dated a satisfactory date to the Collateral Agent and each Participant, (ii) in a form reasonably satisfactory to Collateral Agent, each Participant and the Title Insurance Company, (iii) including any applicable flood zone designation with property annotations based on Federal Flood Insurance Rate Maps, (iv) enabling the Title Insurance Company to delete any standard printed survey exception contained in the applicable title policy and to issue the Title Policies, (v) in accordance with the Minimum Standard Detail Requirements for Land Title Surveys jointly established and adopted by the American Land Title Association and the National Society of Professional Surveyors in 2005 and (vi) the location of all improvements thereon. Without limiting the generality of the foregoing, there shall be surveyed and shown on such survey, as applicable, the following: (A) the locations of any established building setback lines; (B) the lines of streets abutting the Subject Property and width thereof; (C) all access and other easements appurtenant to the Land necessary to use the Subject Property; (D) all roadways, paths, driveways, easements, encroachments and overhanging projections and similar encumbrances affecting the Subject Property, whether recorded, apparent from a physical inspection of the Subject Property or otherwise known to the surveyor; (E) any encroachments on any adjoining property; (F) if the Subject Property is described as being on a filed map, a legend relating the survey to said map and (G) a vicinity sketch showing the closest thoroughfare intersection.

(r) *Title and Title Insurance.* (i) Lessor and Collateral Agent shall have received from the Title Insurance Company a Texas Form (T-1 Rev. 4-02) Owner's Policy of Title Insurance (the "Owner's Policy") in form and substance acceptable to Collateral Agent, insuring that Lessor has a good and marketable fee simple title to the Subject Property, subject, in each case, to the Related Agreements which constitute leases, such exceptions to title as are acceptable to Collateral Agent, in an amount equal to the aggregate Loan Commitment, together with complete, legible copies of all encumbrances, maps and surveys of record, (ii) Collateral Agent, for the benefit of the Participants, shall have received from the Title Insurance Company, a Texas Form (T-2 Rev. 1-1-93) Mortgage Policy of Title Insurance (the "Lenders' Policy"; together with the Owner's Policy, the "Title Policies"), in form and substance acceptable to Collateral Agent, insuring the Lien of the Deed of Trust as a valid first priority Lien against the Subject Property subject to such exceptions to title as are acceptable to Collateral Agent, in an amount equal to the Aggregate Commitment Amount, together with complete, legible copies of all encumbrances and plats of record, and (iii) the Title Policies shall be dated as of the Closing Date and, to the extent permitted under Applicable Laws, shall (to

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the extent available under Texas law): (w) contain affirmative endorsements as to mechanics' liens, doing business, usury, zoning, comprehensive coverage, encroachments, the nonviolation of covenants and restrictions, rights of access and survey matters, (x) delete the creditors' rights and

survey exclusions, (y) contain endorsements regarding the effect of recharacterization and (z) contain such other endorsements reasonably requested by Collateral Agent.

(s) *Filings and Recordings.* All filings or recordings enumerated in Schedule 6.1(s), as well as all other filings and recordings necessary or advisable, including precautionary financing statements and/or mortgage filings, reasonably deemed necessary by Collateral Agent, to perfect the rights, titles and interests of the Participants and the Collateral Agent intended to be created by the Operative Documents shall have been made in the appropriate places or offices, including any recordings and filings necessary to create, perfect, preserve and protect: (i) Lessor's interest in the Lessee Collateral, and (ii) first priority liens for the benefit of Collateral Agent and the Participants on the Lessor Collateral and Lessee Collateral, subject only to Permitted Liens.

(t) *Insurance.* Insurance complying with, and to the extent required to be in place on the Closing Date pursuant to the provisions of Article XIII of the Lease shall be in full force and effect as evidenced by certificates of insurance, broker's reports or insurance binders delivered to Collateral Agent and Lessor, all in form and substance reasonably satisfactory to the Participants.

(u) *Advance Request.* The Collateral Agent shall have received a fully executed copy of the Advance Request, executed by the Lessee, in accordance with Section 3.3(a).

(v) *Representation and Warranties.* On the Closing Date, the representations and warranties of the Lessee herein and in each of the other Operative Documents shall be true and correct in all material respects as though made on and as of such date, except to the extent such representations or warranties relate solely to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date.

(w) *Litigation.* No action or proceeding shall have been instituted, nor shall any action or proceeding be threatened, before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority (i) to set aside, restrain, enjoin or prevent the full performance of this Participation Agreement, any other Operative Document or any transaction contemplated as part of the Overall Transaction, (ii) that questions the validity of the Operative Documents or the rights or remedies of the Collateral Agent or the Participants with respect to the Lessee, the Subject Property or the other Lessor Collateral under the Operative Documents, or (iii) which in the reasonable judgment of the Required Participants may have a Material Adverse Effect.

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(x) *Defaults and Other Events.* There shall not have occurred and be continuing any Default or Event of Default. There shall not have occurred and be continuing any Event of Loss or Significant Environmental Event for which the Lessor has given a Termination Notice pursuant to Section 15.1(a) of the Lease. There shall not have occurred and be continuing any Event of Loss or Significant Environmental Event, unless the period given Lessor for delivery of a Termination Notice pursuant to Section 15.1(a) of the Lease has expired without delivery of such Termination Notice and all insurance proceeds and condemnation awards received in connection with such Event of Loss or Significant Environmental Event have been applied toward the payment of the repair, rebuilding or reconstruction of the Leased Property under Section 14.1(d) and (e) of the Lease. No Default or Event of Default will have occurred after giving effect to the making of the Advance requested by the Advance Request.

(y) *Consents and Approvals.* All Governmental Actions and other approvals, consents, licenses and easements required to be taken, given or obtained, as the case may be, by or from any Governmental Authority or another Person (including, but not limited to, the Ground Lessor and the other parties to the Related Agreements), or by or from any trustee or holder of any indebtedness or obligation of Lessee, and its affiliates, in each case that are necessary in connection with the execution and delivery of the Operative Documents and the consummation of the transactions contemplated thereby by such persons and that are necessary to have been obtained by such persons prior to the Closing Date in connection with any portion of the Overall Transaction shall have been taken, given or obtained, as the case may be and shall be in full force and effect, except for any such governmental actions, approvals, consents, licenses or easements the failure of which to obtain or maintain could not reasonably be expected to cause a Material Adverse Effect.

(z) *Ground Lessor Estoppel Certificate.* The Collateral Agent and each Participant shall have received the Estoppel Certificate executed by the Ground Lessor in the form of Exhibit M hereto.

(aa) *Related Agreements.* The Collateral Agent and each Participant shall have received an executed version of the Ground Lease and each of the Related Agreements, in each case certified by Lessee to its knowledge as true, correct and complete.

(bb) *Purchase Agreement.* The Collateral Agent and each Participant shall have received an executed version of the Purchase Agreement and the other documents and certificates delivered pursuant thereto and evidence satisfactory to it that each of the conditions contained in Section 7 of the Purchase Agreement have been satisfied in full.

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ARTICLE VII

[INTENTIONALLY OMITTED]

ARTICLE VIII

REPRESENTATIONS

Section 8.1. Representations of the Lenders. Each Lender represents and warrants, severally and only as to itself, to the other Lenders, Lessor, the Collateral Agent and the Lessee that as of the date hereof and as of the Closing Date:

(a) *ERISA*. Such Lender is not and will not be making its Loans hereunder, and is not performing its obligations under the Operative Documents, with the assets of an “employee benefit plan” (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or “plan” (as defined in Section 4975(e)(1) of the Code).

(b) *Status*. Such Lender is a commercial bank, branch or agency of a bank or other similar financial institution, or an Affiliate thereof.

(c) *Power and Authority*. Such Lender has the requisite power and authority to enter into and perform its obligations under the Operative Documents to which it is a party.

(d) *Lessor Liens*. There are no Lessor Liens attributable to such Lender on the Lease or the Leased Property.

(e) *Organization, Etc*. Such Lender is a corporation, limited liability company or banking association validly organized and existing and in good standing under the laws of the State or jurisdiction of its creation.

(f) *Investment*. The Note being acquired by such Lender is being acquired by such Lender for investment and not with a view to the resale or distribution of such interest or any part thereof, but without prejudice, however, to the right of such Lender at all times, subject to Article XII, to sell or otherwise dispose of all or any part of such interest under a registration available under the Securities Act or under an exemption from such registration available under the Securities Act, it being understood that the disposition by such Lender of the Note to be purchased by such Lender shall, at all times, remain within its control, subject to Article XII.

(g) *Offer of Securities, Etc*. Neither such Lender nor any Person authorized to act on its behalf has, directly or indirectly, offered to sell the Notes or any other similar securities (the sale or offer of which would be integrated with the sale or offer of the Notes), for sale to, or solicited any offer to acquire any of the same from, any Person.

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(h) *No Registration*. Such Lender understands and acknowledges that the Notes have not been and will not be registered under the Securities Act in reliance upon the exemption provided in Section 4(2) of the Securities Act or any other applicable exemption, that the Notes have not and will not be registered or qualified under the securities or “blue sky” laws of any jurisdiction, that the Notes may be resold or otherwise transferred only if so registered or qualified or if an exemption from registration or qualification is available, that none of the Lessee, the Lessor or the Collateral Agent is required to register the Notes and that any transfer must comply with the provisions of the Operative Documents relating thereto. Such Lender will comply with all applicable federal and state securities laws in connection with any subsequent resale of the Notes held by it.

(i) *Institutional Investor*. Such Lender is a sophisticated institutional investor and an “accredited investor” as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) of the Securities Act, and has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of its investment in the Notes and is able to bear the economic risk of such investment. Such Lender has been given such information concerning the Notes, the other Operative Documents, the Leased Property, the Lessor and the Lessee as it has requested.

(j) *[Intentionally Omitted.]*

(k) *Legend*. Such Lender understands and acknowledges that the Note which it is acquiring will bear a legend as set forth in the form Note included in the Loan Agreement.

The making of any Loan on the Closing Date or the assignment of any interests therein pursuant to Article XII shall constitute an affirmation by the subject assignee or acquiring Lender of the preceding representations and warranties.

Section 8.2. Warranties and Representations of the Lessee. The Lessee warrants and represents to each of the other parties that, except as set forth in Schedule 8.2 attached hereto, as of the date hereof and as of the Closing Date:

(a) *Existence and Power*. The Lessee is a corporation duly organized and validly existing under the laws of the jurisdiction of its incorporation, is duly qualified to do business as a foreign corporation in the State of Texas and is in good standing in the State of Texas and in all other jurisdictions, except where the failure to be so qualified would not have a Material Adverse Effect, and has full corporate power and authority and all necessary licenses and permits to carry on its present business and operations, to own or lease its properties and to execute, deliver and perform its obligations under the Operative Documents to which it is a party.

(b) *Authorization; Enforceability*. The Operative Documents to which the Lessee is a party have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding obligations of the Lessee enforceable against the

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Lessee in accordance with the respective terms thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally and general equitable principles (whether in equity or at law).

(c) *No Contravention; Consents and Approvals*. (i) The execution and delivery by the Lessee of each of the Operative Documents to which it is a party and compliance by the Lessee with all of the provisions thereof do not and will not contravene any law, governmental rule or regulation or any order of any court or Governmental Authority or agency applicable to or binding on the Lessee or contravene the provisions of, or constitute a default under, or result in the creation (except as contemplated by the Operative Documents) of any Lien upon the property of the Lessee under, its charter or by-laws or any indenture, mortgage, contract or other agreement or instrument to which the Lessee is a party or by which it or any of its properties may be bound or affected.

(ii) No authorization, consent, approval, license, exemption of, or filing or registration with, any Government Authority, or approval or consent of any other Person, is required for the due execution, delivery or performance by Lessee of any of the Operative Documents or the consummation of the Overall Transaction, except those which have been obtained or made and are in full force and effect.

(d) *Litigation.* Except as disclosed in the Lessee's financial statements described in Section 8.2(h)(i), there are no proceedings pending or, to the knowledge of the Lessee, threatened against the Lessee in any court or before any Governmental Authority or arbitration board or tribunal as to which there exists a substantial likelihood of an adverse determination which is reasonably likely, individually or in the aggregate (and after consideration of payments made under any insurance policies then in effect), when resolved, to have a Material Adverse Effect. The Lessee is not in default with respect to any order of any court or Governmental Authority or arbitration board or tribunal.

(e) *Registrations; Filings.* Lessee has obtained all consents, approvals and authorizations and made or obtained all filings, registrations or qualifications required for the parties to consummate the transactions contemplated by the Operative Documents.

(f) *Title to the Subject Property.* Subject at all times to Section 5.1 hereof, the Lessor will on the Closing Date have good and marketable recorded title to the Subject Property, free and clear of all Liens other than Permitted Liens.

(g) *No Violations.* None of the transactions contemplated by the Operative Documents (including, without limitation, the funding by the Lessor of the Lessor Amount and the purchase by the Lenders of the Notes) will result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulations issued pursuant thereto, including, without limitation, Regulations T, U and X issued by the Board of Governors of the Federal Reserve System. The proceeds of the sale of the

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Notes and the funding of the Lessor Amount will be used only for the purpose of financing (i) the acquisition of the Subject Property, (ii) the payment of the Transaction Expenses incurred in connection therewith and (iii) such other purposes, if any, as may be indicated on the closing statements prepared by the Escrow Agent or the Advance Request. None of the proceeds from the Notes or the funding of the Lessor Amount will be used to purchase or carry (or refinance any borrowing the proceeds of which were used to purchase or carry) any "security" within the meaning of the Securities Exchange Act of 1934, as amended.

(h) *Financial Information.* (i) The audited consolidated balance sheets of the Lessee and its Subsidiaries as of December 31, 2005 and the related audited consolidated statements of income, stockholder equity and cash flows for the fiscal year ending December 31, 2005, accompanied by a report thereof containing an opinion unqualified as to scope limitations imposed by the Lessee and otherwise without qualification (copies of which are available on EDGAR), have been prepared in accordance with GAAP consistently applied, and correctly set forth in all material respects the financial condition of the Lessee and its Subsidiaries as of such date and the results of its operations, earnings and cash flows for the period then ended.

(ii) Since December 31, 2005, there has been no event, circumstance or condition which could reasonably be expected to have a Material Adverse Effect.

(i) *Creation of Liens; Permitted Liens.* (i) On the Closing Date, (i) all filings necessary or reasonably requested by the Required Participants to establish and perfect the Lessor's title to and interest in the Subject Property and the Lessee Collateral as against the Lessee and any third parties and to perfect the lien and security interest of the Lessor under the Lease in the Leased Property and the other Lessee Collateral as against creditors of and purchasers from the Lessee have been duly made, and the Lease will on the Closing Date create a valid and perfected first priority lien and security interest in the Leased Property and the other Lessee Collateral effective as against creditors of and purchasers from the Lessee securing the payment of all obligations of the Lessee under the Operative Documents, and (ii) all filings necessary or reasonably requested by the Required Participants to perfect the lien and security interest of the Collateral Agent under the Assignment of Leases and Rents and the Deed of Trust with respect to the Subject Property and the other Lessee Collateral and Lessor Collateral as against creditors of and purchasers from the Lessee and the Lessor have been duly made, and the Assignment of Leases and Rents and the Deed of Trust will on the Closing Date create a valid and perfected first priority lien and security interest in the Subject Property and the other Lessee Collateral and Lessor Collateral effective as against creditors of and purchasers from the Lessee and Lessor securing the payment of all obligations of the Lessee and Lessor under the Operative Documents; and

(ii) The Subject Property is free and clear of all Liens other than Permitted Liens.

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(j) *Insurance.* On the Closing Date, the Subject Property will be covered by the insurance required by Section 13.1 of the Lease to the extent set forth therein.

(k) *Absence of Defaults; Fulfillment of Master Agreement.* (A)(i) No Default or Event of Default has occurred and is continuing, (ii) the Lessee is not or, but for the passage of time, would be in violation in any material respect of any term of any charter instrument or by-law to which it is a party or by which it may be bound, (iii) the Lessee is not or, but for the passage of time, would be in violation in any respect of any term of any agreement or instrument to which it is a party or by which it may be bound, except as would not have a Material Adverse Effect, (iv) the Lessee is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, the failure to comply with which would have a Material Adverse Effect and (v) the Lessee has obtained all licenses, permits, franchises and other governmental authorizations material to the conduct of its business, except where the failure to so obtain would not have a Material Adverse Effect;

(B) No default has occurred or is continuing (i) with respect to the Tenant, under and as defined in, the Ground Lease, (ii) with respect to the Seller under any Related Agreement or (iii) with respect to any other party under any Related Agreement which, in the case of this clause (iii) only, would have a Material Adverse Effect; and

(C) All obligations of CSC under, and as defined in, the Master Agreement have been fully discharged.

(l) *Sale of Notes and Funding of Lessor Amount.* The execution and delivery of this Agreement and the issue and sale of the Notes and the funding of Lessor Amount under the Operative Documents will not involve any transaction which is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975 of the Code. The representation by the Lessee in the preceding sentence is made in reliance upon and subject to the accuracy of the representations of the Participants in Section 8.1(a).

(m) *No Transfer Taxes.* On the Closing Date, all sales, use or transfer taxes payable required to be paid as of the Closing Date upon the acquisition by the Lessor of the Subject Property and on the lease of the Leased Property to the Lessee will have been paid (or provision for the payment thereof shall have been made) or such transactions will then be exempt from any such taxes and no taxes, fees or other charges in connection with the execution and delivery of the Operative Documents or the issuance and sale of the Notes and the funding of Lessor Amount are payable.

(n) *Taxes.* The Lessee has filed all tax returns that are required to have been filed by it in any jurisdiction, or has timely filed extension requests with respect thereto, and has paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon it or its properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which if not paid

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would not result in a Material Adverse Effect or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Lessee has established adequate reserves in accordance with GAAP. The Lessee knows of no basis for any other tax or assessment that could reasonably be expected to have a Material Adverse Effect on any of them. The charges, accruals and reserves on the books of the Lessee in respect of Federal, state or other taxes for all fiscal periods are adequate.

(o) *Solvency.* The Lessee is Solvent.

(p) *Location of Chief Executive Office and Principal Place of Business; Formation.* The Lessee's chief executive office and principal place of business is 7000 West William Cannon Drive, Austin, TX 78735, and the place where its records concerning the Leased Property and all documents relating thereto are kept, is either (i) 7000 West William Cannon Drive, Austin, TX 78735 or (ii) 4635 Boston Lane, Austin, TX 78735. The Lessee is only formed in the State of Delaware and "Silicon Laboratories Inc." is the name as it appears in the official filings in the State of Delaware.

(q) *Title to Property; Leases.* (i) The Lessee has good and marketable title to all of the properties and other assets (real or personal, tangible, intangible or mixed) it owns or purports to own, except for such defects in title as, in the aggregate, would not have a Material Adverse Effect on any of them.

(ii) *Leases.* All leases to which the Lessee is a party as lessee or sublessee are in full force and effect, except for such defects in title and such invalidity or unenforceability of leases as, in the aggregate, would not have a Material Adverse Effect on any of them.

(r) *Not an Investment Company/Public Utility Holding Company.* The Lessee is not an "investment company" or a company "controlled" by an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or subject to regulation under the Public Utility Holding Company Act of 1935.

(s) *Full Disclosure.* No information, report, financial statement, exhibit or schedule furnished by or on behalf of the Lessee to the Lenders and the Lessor in connection with the negotiation of any Operative Document or included therein or delivered pursuant thereto contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading.

(t) *Compliance with ERISA.* (i) The Lessee and each other member of the ERISA Group have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect on any of them. Neither the Lessee nor any other member of the ERISA Group has incurred any liability with respect to any Plan pursuant to Title I or IV of ERISA (other than routine benefit

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claims in accordance with Plan provisions) or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3 of ERISA), and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by the Lessee or any other member of the ERISA Group, or in the imposition of any Lien on any of the rights, properties or assets of the Lessee or any ERISA Group, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not individually or in the aggregate result in a Material Adverse Effect.

(ii) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of such Plan's most recently ended plan year for which an actuarial report has been prepared on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities by more than \$0 on a non-termination basis in the case of any single Plan and by more than \$0 on a non-termination basis in the aggregate for all Plans. The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meanings specified in section 3 of ERISA. All calculations shall be made under Section 302 of ERISA.

(iii) The Lessee and the other member of the ERISA Group have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(iv) The expected post-retirement benefit obligation (determined as of the last day of the Lessee's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Lessee has been disclosed in the most recent Annual Report on Form 10-K filed by the Lessee with the Securities and Exchange Commission.

(u) *[Intentionally Omitted.]*

(v) *Environmental Matters.*

(i) In the ordinary course of its business, the Lessee from time to time conducts reviews of the effect of Environmental Laws on its business, operations and properties, in the course of which it attempts to identify and evaluate associated liabilities and costs. On the basis of this review, the Lessee has concluded that it is not subject to any Environmental Claims under Environmental Laws in effect as of the Closing Date that are likely to have a Material Adverse Effect;

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(ii) As of the Closing Date, to the knowledge of the Lessee, no Environmental Claims, investigation or written inquiry exists, and the Lessee is not aware of any circumstances which would warrant or give rise to such an Environmental Claim, investigation or inquiry, with regard to the Lessee or any facility owned, leased or operated by the Lessee, under CERCLA, Environmental Laws in effect on the Closing Date that are likely to have a Material Adverse Effect;

(iii) except as otherwise could not reasonably be expected to have a Material Adverse Effect, the Subject Property (including soils, surface waters, groundwaters on, at or under the Subject Property) does not contain and is not otherwise affected by, and to the Lessee's knowledge (other than certain Hazardous Substances that previously have been cleaned up or remediated in accordance with applicable commercial laws and which do not have a Material Adverse Effect) has not previously contained or been affected by, any Hazardous Substances in amounts or concentrations which (1) constitute or constituted a violation of applicable Environmental Laws or (2) could give rise to liability or obligation under applicable Environmental Laws;

(iv) except as otherwise could not reasonably be expected to have a Material Adverse Effect, the Subject Property and all operations conducted in connection therewith are in compliance, and have been in compliance, with all applicable Environmental Laws, and there are no Hazardous Substances at, under or about the Subject Property or such operations which could reasonably be expected to interfere with the continued operation of the Subject Property;

(v) except as otherwise could not reasonably be expected to have a Material Adverse Effect, the Lessee has obtained, is in compliance with, and has made all appropriate filings for issuance or renewal of, all environmental permits with respect to the Subject Property, and all such environmental permits are in full force and effect;

(vi) except as otherwise could not reasonably be expected to have a Material Adverse Effect, Lessee has not received any notice of violation, alleged violation, noncompliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws, in each case, with respect to the Subject Property, nor does Lessee have knowledge or reason to believe that, any such notice has been received by Seller or will be received or is being threatened;

(vii) except as otherwise could not reasonably be expected to have a Material Adverse Effect, Hazardous Substances have not been transported or disposed of from the Subject Property in violation of, or in a manner or to a location which could reasonably be expected to give rise to liability under, applicable Environmental Laws, nor have any Hazardous Substances been generated, treated, stored or disposed of at, on or under the Subject Property in

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violation of, or in a manner which could reasonably be expected to give rise to liability under, any applicable Environmental Laws;

(viii) except as otherwise could not reasonably be expected to have a Material Adverse Effect, no judicial proceedings or governmental or administrative action is pending, or threatened, under any applicable Environmental Law with respect to the Subject Property, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any applicable Environmental Law with respect to the Subject Property; and

(ix) except as otherwise could not reasonably be expected to have a Material Adverse Effect, there has been no release, or threat of release, of Hazardous Substances at or from the Subject Property, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under applicable Environmental Laws.

(w) *Applicable Law.* The Subject Property and the contemplated use thereof is in material compliance with all Applicable Law (including, without limitation, all zoning and land use laws and Environmental Laws) and Insurance Requirements, except for Applicable Laws as it shall be contesting in good faith by appropriate proceedings. There is no action, suit or proceeding (including any proceeding in condemnation or eminent domain or under any Environmental Law) pending or, to the best of its knowledge, threatened with respect to it, or the Subject Property which could reasonably be expected to have a Material Adverse Effect.

(x) *USA Patriot Act.* Neither Lessee nor any Subsidiary (A) is a Person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control or in Section 1 of the Anti-Terrorism Order or (B) engages in any material dealings or transactions with any such Person. Lessee and its Subsidiaries are in compliance with the USA Patriot Act.

(y) *Flood Hazard Area.* No portion of the Subject Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency.

(z) [Intentionally Omitted].

(aa) *Purchase Agreement.* To Lessee's actual knowledge, as of the Closing Date each of the representations and warranties of the Seller set forth in the Purchase Agreement is true and correct.

(bb) *Rights in Respect of the Subject Property.*

(i) The Subject Property is located in City of Austin, Travis County, Texas. The Subject Property and any present use and presently anticipated future

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use thereof by Lessee and its agents, assignees, employees, invitees, lessees, licensees and tenants comply with all Requirements of Law (including zoning and land use laws) and Insurance Requirements, except for such instances of non-compliance that could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No notices, complaints or orders of violation or non-compliance or liability have been issued to the Lessee or, to the best of its knowledge, threatened by any Person with respect to the Subject Property or the present or intended future use thereof, except for such violations and instances of non-compliance as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and Lessee is not aware of any circumstances which could give rise to the issuance of any such notices, complaints or orders;

(ii) The Improvements are located wholly within the boundaries of the Land (other than as indicated in the survey delivered pursuant to Section 6.1(q) hereof) and comply with applicable building restrictions and requirements, and setback and sideyard lines and will not encroach on or interfere with existing easements (whether on, above or below ground), conditions or restrictions affecting the Subject Property and that there are no encroachments (other than as indicated in the survey delivered pursuant to Section 6.1(q) hereof) from the Subject Property extending to adjacent property or from adjacent property onto the Subject Property nor are there any gaps or gores;

(iii) The zoning classification applicable to the Land on which the Subject Property is located (which zoning classification and the governmental bodies have jurisdiction thereof shall be described) permits the use of the Leased Property as contemplated by the Operative Documents. All licenses, permits and approvals necessary for the operation and use of the Leased Property have been obtained and are in full force and effect and that the Subject Property and the operation of the Leased Property as contemplated by the Operative Documents will comply with all Requirements of Law in existence as of the Closing Date, except where non-compliance would not result in a Material Adverse Effect;

(iv) Adequate ingress and egress to and from the Subject Property is available over dedicated and accepted public streets and rights-of-way;

(v) Adequate utility facilities are available to the Subject Property over dedicated and accepted public streets and rights of way; and

(vi) Any exceptions to the title of the Lessor to the Subject Property do not individually or in the aggregate materially have a Material Adverse Effect.

(cc) *Casualties and Condemnations.* As of the Closing Date, no Casualty has occurred and is continuing and there is no action pending or, to the best of the Lessee's knowledge, threatened by any Governmental Authority to initiate a Condemnation.

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(dd) *Subjection to Government Regulation.* As of the Closing Date, to the Lessee's knowledge neither Collateral Agent nor any Participant will, solely by reason of entering into the Operative Documents or consummating the transactions contemplated thereby, (i) become subject to ongoing regulation of its operations by any Governmental Authority; or (ii) become subject to ongoing regulation of its operations by any Governmental Authority upon exercise of remedies (other than the operation of the Subject Property) under the Operative Documents or upon the expiration thereof; or (iii) be required to qualify to do business in any jurisdiction.

(ee) *Appraisal Data.* To the Lessee's knowledge, the written information provided by Lessee to the Appraiser, taken as a whole, was true and correct in all material respects on the date so given and did not omit any information known and available to Lessee necessary to make the information provided not misleading.

(ff) *Related Agreements.* (i) Schedule I to the Deed of Trust sets forth a complete and accurate list as of the Closing Date of each Related Agreement; and

(ii) Except for the agreements set forth on Schedule 8.2(ff) which may terminate, as of the Closing Date, (x) the Ground Lease and (y) except as would not have a Material Adverse Effect, each other Related Agreement is in all material respects valid, binding and in full force and effect and is enforceable by Lessor against the other parties thereto in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting creditors' rights generally and general equitable principles (whether in equity or at law). As of the Closing Date, no party (A) under the Ground Lease or, (B) except as would not have a Material Adverse Effect or except with regard to the agreements set forth on Schedule 8.2(ff) hereto, under any other Related Agreement has given notice of termination of, or taken any action inconsistent with the continuation of, the Ground Lease or any other Related Agreement. As of the Closing Date, none of such other parties will have any presently exercisable right to terminate the Ground Lease or, except as would not have a Material Adverse Effect or except with regard to the agreements set forth on Schedule 8.2(ff) hereto, any other Related Agreement for any reason, including as a result of the execution, delivery or performance of the Operative Documents.

(gg) *Offer of Securities, Etc.* Neither the Lessee nor (assuming the accuracy of the representations of the Participants set forth in Sections 8.1(i) and 8.4(g) hereof) any Person authorized to act on its behalf has, directly or indirectly, offered to sell the Notes, the Lessor's Interest or any other similar securities (the sale or offer of which would be integrated with the sale or offer of the Notes or the Lessor's Interest), for sale to, or solicited any offer to acquire any of the same from, any Person other than the Participants and other "accredited investors" (as defined in Regulation D of the Securities and Exchange Act).

(hh) *Subleases; Assignments.* Other than the subleases that constitute Related Agreements and assignments that are referenced in the definition of Related Agreements, as of the Closing Date, there are no other subleases or assignments in effect with respect

to the Subject Property, other than such other subleases or assignments which do not have a Material Adverse Effect.

Section 8.3. *[Intentionally Omitted]*.

Section 8.4. *Representations and Warranties of Lessor.* Lessor hereby represents and warrants to each of the other parties hereto as that as of the date hereof and as of the Closing Date:

(a) *Power and Authority.* The Lessor has the requisite power and authority to enter into and perform its obligations under the Operative Documents to which it is a party.

(b) *Lessor Liens.* There are no Lessor Liens attributable to Lessor on the Leased Property or the other Lessor Collateral.

(c) *Organization, Etc.* The Lessor is a corporation validly organized and existing and in good standing under the laws of the State of Delaware.

(d) *Investment.* The Lessor's Interest being acquired by the Lessor as of the Closing Date is being acquired by Lessor for investment and not with a view to the resale or distribution of such interest or any part thereof, but without prejudice, however, to the right of Lessor at all times, subject to Article XII, to sell or otherwise dispose of all or any part of such interest under a registration available under the Securities Act or under an exemption from such registration available under the Securities Act, it being understood that the disposition by Lessor of the Lessor's Interest to be purchased by Lessor shall, at all times, remain within its control, subject to Article XII.

(e) *Offer of Securities, Etc.* Neither the Lessor nor any Person authorized to act on its behalf has, directly or indirectly, offered to sell the Lessor's Interest or any other similar securities (the sale or offer of which would be integrated with the sale or offer of the Lessor's Interest), for sale to, or solicited any offer to acquire any of the same from, any Person.

(f) *No Registration.* The Lessor understands and acknowledges that the Lessor's Interest has not been and will not be registered under the Securities Act in reliance upon the exemption provided in Section 4(2) of the Securities Act or any other applicable exemption, that the Lessor's Interest has not and will not be registered or qualified under the securities or "blue sky" laws of any jurisdiction, that the Lessor's Interest may be resold or otherwise transferred only if so registered or qualified or if an exemption from registration or qualification is available, that none of the Lessee, the Lenders or the Collateral Agent is required to register the Lessor's Interest and that any transfer must comply with the provisions of the Operative Documents relating thereto. The Lessor will comply with all applicable federal and state securities laws in connection with any subsequent resale of the Lessor's Interest held by it.

(g) *Institutional Investor.* The Lessor is a sophisticated institutional investor and an "accredited investor" as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) of the Securities Act, and has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of its investment in the Lessor's Interest and is able to bear the economic risk of such investment. The Lessor has been given such information concerning the Lessor's Interest, the other Operative Documents, the Leased Property, the Collateral Agent, the Lenders and the Lessee as it has requested.

(h) *ERISA.* Lessor is not and will not be Funding the Lessor Amount with the assets of an "employee benefit plan" (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA, or a "plan" (as defined in Section 4975(e)(1) of the Code).

(i) *Enforceability, Etc.* Each Operative Document to which Lessor is a party constitutes the legal, valid and binding obligation of Lessor enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

Section 8.5. *Representations and Warranties of Wells Fargo Bank Northwest, National Association, individually and as Collateral Agent.* Collateral Agent and Wells Fargo Bank Northwest, National Association, in its individual capacity and not in its capacity as Collateral Agent, each severally hereby represents and warrants to each of the other parties hereto that as of the date hereof and as of the Closing Date:

(a) *Organization and Authority.* It is duly organized as a national banking association under the laws of the United States, and has the power and authority to enter into and perform its obligations under the Operative Documents.

(b) *Authorization; Binding Effect.* The Operative Documents to which Collateral Agent is or will be a party have been or will be, on the date required to be delivered hereby, duly authorized, executed and delivered by the Collateral Agent. This Participation Agreement is, and each such other Operative Document is, or, when so executed and delivered by the Collateral Agent will be, the valid, legal and binding obligation of the Collateral Agent, enforceable against the Collateral Agent in accordance with their respective terms, except as enforcement may be limited by

bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(c) *Non-Contravention.* Neither the execution and delivery by the Collateral Agent of the Operative Documents to which it is or will be a party, either in its individual capacity, or as Collateral Agent, or both, nor compliance with the terms and provisions thereof, conflicts with, results in a breach of, constitutes a default under (with or without the giving of notice or lapse of time or both), or violates any of the terms, conditions or provisions of: (i) its charter documents or bylaws; (ii) any bond, debenture, note, mortgage, indenture, agreement, lease or other instrument to which it is now a party or by which it or its property, either in its individual capacity, or as Collateral Agent, or both, is

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bound or affected, where such conflict, breach, default or violation would be reasonably likely to materially and adversely affect the ability of the Collateral Agent, either in its individual capacity, or as Collateral Agent, or both, to perform its obligations under any Operative Document to which it is or will be a party, either in its individual capacity, or as Collateral Agent, or both; or (iii) any of the terms, conditions or provisions of any law, rule, regulation, order, injunction or decree of any United States Governmental Authority governing the banking or trust powers of Wells Fargo Bank Northwest, National Association or Governmental Authority of the State of Utah, either in its individual capacity or as Collateral Agent, or both, where such conflict, breach, default or violation would be reasonably likely to materially and adversely affect the ability of the Collateral Agent, either in its individual capacity or as the Collateral Agent or both, to perform its obligations under any Operative Document to which it is or will be a party.

(d) *Absence of Litigation, etc.* There is no litigation (including derivative actions), arbitration or governmental proceedings pending or, to the best knowledge of the Collateral Agent, threatened against it which would be reasonably likely to have material adverse effect on the Collateral Agent's ability to perform its obligations under the Operative Documents to which it is or will be a party.

(e) *Governmental Actions.* No action, consent or approval of, registration or filing with or any other action by any United States Governmental Authority governing the banking or trust powers of Wells Fargo Bank Northwest, National Association, is or will be required for the execution, delivery or performance by the Collateral Agent of the Operative Documents to which it is a party, either in its individual capacity or as the Collateral Agent or both or in connection with the Overall Transaction, except those which have been made or obtained or will be obtained on a timely basis in the ordinary course of the Collateral Agent's business, and which are and shall remain in full force and effect.

ARTICLE IX

COVENANTS OF LESSEE

Section 9.1. Lessee Covenants. The Lessee covenants that, until such time as the earlier to occur of the date when: (i) the Lease Balance has been paid in full or (ii) Lessee returns the Leased Property to the Lessor pursuant to Section 20.3 of the Lease, the Lessee will comply with the following provisions:

(a) *Statutory Compliance.* Lessee will comply in all material respects with all valid and applicable statutes, laws, ordinances, zoning and building codes and other rules and regulations of the United States of America, of the states and territories thereof and their counties, municipalities and other subdivisions and of any foreign country or other jurisdictions applicable to such Person, unless failure to comply would not have a Material Adverse Effect.

(b) *[Intentionally Omitted.]*

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(c) *Fiscal Year, Financial Statements Etc.*

(i) *Date of Annual Financial Statements.* The annual financial statements of the Lessee will be dated as of December 31 if such date occurs on a Saturday or, if not, as of the Saturday nearest to December 31 in each year, unless Lessee changes its fiscal year.

(ii) *Annual Financial Statements; Compliance Certificate.* The Lessee will furnish to each Participant and the Collateral Agent as soon as available, and in any event within 90 days after the end of each fiscal year, the consolidated balance sheets and statements of income, stockholders' equity and cash flows of the Lessee as at the end of such fiscal year (in reasonable detail), setting forth in comparative form the corresponding figures for the previous fiscal year and accompanied by (A) a report of independent certified public accountants of recognized national standing which are acting as the Lessee's auditors stating that such financial statements have been prepared in accordance with GAAP and fairly present the consolidated financial position and results of operations of the Lessee as at the end of and for such fiscal year, and without an explanatory paragraph for a going concern uncertainty (*provided* that so long as the Lessee is a reporting company under the Securities Exchange Act of 1934, as amended, the Participants shall be deemed to have been furnished the foregoing financial statements to the extent such financial statements are posted within such time period on EDGAR) and (B) a certificate of the Lessee signed by a Financial Officer to the effect that the Financial Officer has no knowledge of any Default, or if such Financial Officer has such knowledge, specifying such Default and the nature thereof, and what action the Lessee has taken, are taking or propose to take with respect thereto, together with a schedule, in form reasonably satisfactory to the Participants, of the computations used by the Lessee in determining compliance with the covenants contained in Sections 9.1(p) and (q).

(iii) *Quarterly Financial Statements; Compliance Certificate.* The Lessee will furnish to each Participant and the Collateral Agent as soon as available and, in any event, within 45 days after the end of each of the first three fiscal quarters of the Lessee, the internally prepared consolidated balance sheets and statements of income and cash flows of the Lessee as of the end of such fiscal quarter, in all comparative form (*provided* that so long as the Lessee is a reporting company under the Securities Exchange Act of 1934, as amended, the Participants shall be deemed to have been furnished the foregoing financial statements to the extent such financial statements are posted within such time period on EDGAR) accompanied by a certificate of the Lessee signed by a Financial Officer to the effect that

such financial statements have been prepared in accordance with GAAP (subject to normal year-end adjustments), together with a schedule in form reasonably satisfactory to the Participants, of the computations by the Lessee in determining compliance with the covenants contained in Sections 9.1(p) and (q).

(iv) *Notice of Litigation, Defaults, Etc.* The Lessee will, subject to Section 16.15, (A) promptly furnish to each Participant written notice of any litigation or any administrative or arbitration proceeding (x) which creates a material risk of resulting, after giving effect to any applicable insurance, in the payment by Lessee of more than \$20,000,000, or (y) which has, or creates a material risk of having, a Material Adverse Effect and (B) promptly, and in any event within ten (10) Business Days of a Responsible Officer acquiring knowledge thereof, notify each Participant in writing of the existence of any Default or Event of Default, specifying the nature thereof and what action the Lessee has taken, is taking or propose to take with respect thereto.

(v) *Other Information.* The Lessee will maintain accurate books, accounts and records of the financial affairs of the Lessee and its Subsidiaries sufficient to permit the preparation of financial statements therefrom in accordance with GAAP and will prepare all financial statements required hereunder in accordance with GAAP and in compliance with the regulations of any Governmental Authority having jurisdiction thereof. The Lessee will provide copies to each Participant, promptly after the sending, making available or filing of all reports and financial statements which the Lessee sends or makes available to its stockholders, and all registration statements and amendments thereto, and all reports on Form 8-K or any similar form hereafter in use which the Lessee files with the Securities and Exchange Commission; *provided* that so long as the Lessee is a reporting company under the Securities and Exchange Act of 1934, as amended, the Participants shall be deemed to have been furnished with the foregoing reports, financial statements, registration statements and amendments thereto, reports on Form 8-K or any similar form to the extent such documents are posted within such time period on EDGAR. At any time (i) the Lessee ceases to be a reporting company under the Securities and Exchange Act of 1934, as amended, or (ii) an Event of Default has occurred or is continuing, (A) from time to time at reasonable intervals upon the request of any authorized officer of any Participant and subject to Section 16.15, Lessee will furnish to each Participant such other information regarding the business, assets, financial condition, income or prospects of the Lessee as such officer may reasonably request and (B) subject to Section 16.15, Lessee will permit, representatives and independent contractors of the Collateral Agent or any Participant to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of Lessee and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Lessee, in each case at the expense of Lessee at any time during normal business hours and without advance notice.

(d) *Transactions with Affiliates.* Lessee will not effect any transaction with any of its respective Affiliates on a basis less favorable to Lessee than would be the case if such transaction had been effected with a non-Affiliate.

(e) *Environmental Laws.*

(1) *Compliance with Law and Permits.* Lessee will use and operate the Subject Property in compliance with all Environmental Laws, keep all necessary permits, approvals, certificates, licenses and other authorizations relating to environmental matters in effect and remain in compliance therewith, and handle all Hazardous Substances in compliance with all applicable Environmental Laws, other than an immaterial violation of which could not reasonably be expected to have a Material Adverse Effect.

(2) *Notice of Claims, Etc.* Lessee will immediately notify each Participant, and provide copies upon receipt, of all written material claims, complaints, notices or inquiries from governmental authorities received by Lessee relating to the condition of the Subject Property or compliance with Environmental Laws. The Lessee will promptly cure and diligently defend any actions and proceedings relating to compliance of the Subject Property with Environmental Laws by the Lessee.

(f) *Payment of Taxes, Etc.* Lessee will file all tax returns required to be filed in any jurisdiction and pay and discharge, before the same become delinquent, (i) all Taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all lawful claims that, if unpaid, might by law become a Lien upon its property; *provided, however,* that unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors, no payment will be required if such Tax, assessment, charge, levy or claim is being contested in good faith and by proper proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof) or where the failure to make such payment would not have a Material Adverse Effect.

(g) *Preservation of Existence, Etc.* Lessee will preserve and maintain (i) its existence, good standing, legal structure and state of incorporation necessary or desirable in the normal conduct of its business and (ii) except as could not be reasonably expected to have a Material Adverse Effect, its rights (charter and statutory), permits, licenses, approvals, privileges and franchises.

(h) *Compliance with Terms of Related Agreements; Notices.* (i) Lessee, on behalf of Lessor, will be responsible for and comply with and perform all obligations agreements and covenants of Lessor set forth in the Related Agreements or as may otherwise be required to be performed by Lessor with respect to the Subject Property pursuant to Applicable Law, Governmental Actions or third parties with respect to the property subject thereto, including without limitation, the payment of all rents and any

other amounts payable by the Lessor thereunder and (ii) upon receipt thereof, Lessee will promptly provide each Participant with copies of any and all (x) notices of default, (y) notices of termination and (z) any other information that could reasonably be expected to have a Material Adverse

Effect, in each case, received by Lessee under any of the Related Agreements.

(i) *Use of Proceeds.* Lessee will use the proceeds of the Advance hereunder exclusively for the purposes set forth herein and as described in the Advance Request.

(j) *Changes in Accounting.* Lessee will not make any material change in accounting treatment or reporting practices, except as required or permitted by GAAP.

(k) *[Intentionally Omitted.]*

(l) *[Intentionally Omitted.]*

(m) *Compliance with ERISA; Notices.* (i) Lessee will, and shall cause each ERISA Group Person to: (A) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law; (B) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; and (C) make all required contributions to any Plan subject to Section 412 of the Code; and

(ii) As soon as possible and in any event within 30 days after receipt thereof by any Lessee or, to the extent Lessee has knowledge thereof, by any ERISA Group Person, the Lessee will deliver to each Participant copies of each notice from the PBGC stating its intention to terminate any Plan or to have a trustee appointed to administer a Plan. As soon as possible and in event within 30 days after receipt thereof by Lessee or, to the extent Lessee has knowledge thereof, by any ERISA Group Person from the sponsor of a Multiemployer Plan, copies of each notice concerning (A) the imposition of withdrawal liability by any such Multiemployer Plan, (B) the reorganization or termination, within the meaning of Title IV of ERISA, of any such Multiemployer Plan, or (C) the amount of liability incurred, or that may be incurred, by Lessee or ERISA Group Person in connection with any event described in clause (A) or (B).

(n) *[Intentionally Omitted.]*

(o) *Consolidation and Merger.* The Lessee will not merge, consolidate, liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); *provided* that notwithstanding the foregoing provisions of this clause (o), if after giving effect to a merger or consolidation no Default or Event of Default exists, the Lessee may merge or consolidate with any other Person if either (A) the Lessee shall be the continuing or surviving corporation or (B) the Lessee shall not be the continuing or surviving corporation and the corporation or other legal entity so continuing or surviving (x) is a corporation or other legal entity organized and duly existing under the law of any state of the United States and (y) executes and delivers to the Collateral Agent and the

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Participants an instrument in form and substance reasonably satisfactory to the Required Participants pursuant to which it expressly assumes all of the obligations of the Lessee under the Operative Documents, and procures for the Collateral Agent and each Participant an opinion in form reasonably satisfactory to the Required Participants and from counsel reasonably satisfactory to the Required Participants in respect of the due authorization, execution, delivery and enforceability of such instrument.

(p) *Cash.* Lessee will not permit its Cash on a consolidated basis at any time to be less than \$75,000,000.

(q) *Funded Debt to EBITDAR.* The Lessee will maintain on a consolidated basis as of the last day of each fiscal quarter a ratio of Funded Debt to EBITDAR for the four consecutive fiscal quarters ended as of such day of not more than 1.50 to 1.00.

ARTICLE X

OTHER COVENANTS AND AGREEMENTS

Section 10.1. *Covenants of the Participants and the Collateral Agent.*

(a) *Lessor Liens.* Each of the Participants (severally and not jointly with any other Participants) and the Collateral Agent hereby agrees that so long as this Participation Agreement is in effect it:

(i) will not create, incur, assume or suffer to exist any Lessor Lien attributable to it upon the Lease or the Leased Property (other than as contemplated by any of the Operative Documents); and

(ii) will remove any Lessor Lien created or incurred by it and use its best efforts to remove any Lessor Lien attributable to it assumed or suffered to exist by it upon the Lease or the Leased Property (other than the Liens of the Security Instruments and such other Liens as are contemplated by any of the Operative Documents); *provided, however,* that any action taken pursuant to this clause (ii) shall not limit the Lessee's rights or remedies under any of the Operative Documents.

(b) *Acceptance of Provisions of Lease.* The Participants and the Collateral Agent hereby acknowledge and accept the terms of the Lease, including the provisions of Sections 15.2, 19.1, 19.2 and 20.1 of the Lease.

(c) *Depreciation.* With respect to any taxable year or portion thereof, prior to the Expiration Date, neither the Lessor nor any Lender shall claim any federal or state or local tax attributes or benefits (including depreciation) relating to the Subject Property or any Modifications or otherwise claim ownership of the Subject Property or any Modifications for federal, state or local tax purposes unless required to do so by an appropriate taxing authority or after a clearly applicable change in Applicable Laws or as a protective response to a proposed adjustment by a Governmental Authority; *provided, however,* that if an appropriate taxing

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authority shall require Lessor or any Lender to claim any such federal or state tax attributes or benefits or if it proposes to claim any such federal or state tax attributes or benefits as a protective response, such Person shall promptly notify Lessee thereof and shall permit Lessee to contest such requirement in a manner similar to the contest rights provided in, and subject to any applicable limitation to a contest contained in, Section 13.4(b).

(d) *Insolvency Proceedings.* Each of the Lenders, Lessor and Collateral Agent, in its individual capacity, the Lessee covenants as to itself, not jointly with any other Person, that it shall not (i) commence or join in any action, proceeding or other case with respect to the Lessor under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, arrangement, winding up, liquidation, dissolution, composition or other relief with respect to indebtedness, (ii) seek appointment of a receiver, trustee, custodian or other similar official with respect to the Lessor and for all or any substantial benefit of the creditors of the Lessor, or (iii) take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in this Section 10.1(h), except in each case, as expressly permitted pursuant to the Loan Agreement upon the occurrence of a Loan Agreement Event of Default.

(e) *Release of Documents.* The Collateral Agent hereby agrees that, upon a sale of the Subject Property pursuant to Sections 15.1, 16.2, 18.1 or 20.1 of the Lease, payment of all amounts due and owing from the Lessee under the Operative Documents or repayment in full of all Loans and Lessor Amount and all other amounts due and owing from Lessee under the Operative Documents to Collateral Agent and the Participants, the Collateral Agent shall execute and deliver to the Lessee a release of any Security Instrument, and releases of all other Liens created by the Operative Documents, and termination statements for any financing statements relating to the Subject Property or any of the Lessor Collateral which are then of record naming the Collateral Agent as secured party or assignee thereof.

(f) *Release of Liens.* Collateral Agent hereby agrees with the Lessee (so long as no Event of Default shall have occurred and be continuing) and the Lenders, except as otherwise expressly authorized or otherwise permitted under the Operative Documents, not to release the Lien of any of the Security Instruments on the Lessor Collateral.

(g) *Requested Information.* From time to time at Lessee's request, Lessor shall provide Lessee with information similar to the information provided by Lessor to Lessee on or before the Closing Date with respect to ownership and control of the Lessor.

ARTICLE XI LESSEE'S RIGHT OF QUIET ENJOYMENT

Notwithstanding anything contained herein to the contrary, the provisions of Section 4.1 of the Lease shall be applicable to the Participants and Collateral Agent under this Participation Agreement and each Participant and Collateral Agent hereby agrees to be bound by the provisions of such Section 4.1 of the Lease and to recognize the Lessee's rights to purchase the Subject Property as set forth in the Lease.

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ARTICLE XII TRANSFERS OF PARTICIPANTS' INTERESTS

Section 12.1. Assignments. (a) All or any part of the interest of any Lender in, to or under this Participation Agreement, the other Operative Documents, the Leased Property and its Notes, Loans and Commitment may be sold, assigned or transferred by such Lender at any time to any Person; *provided, however,* that (i) each such assignment shall be of a constant, and not a varying, percentage of all such rights and obligations being assigned, (ii) unless both parties to the assignment are Participants immediately prior to giving effect to the assignment, the amount of the Commitment of the assigning Lenders being assigned pursuant to each such assignment shall not be less than \$1,000,000 (or if less, the entire amount of such Lender's Commitment) and shall be an integral multiple of \$100,000 (or such Lender's entire Commitment), (iii) each such assignment shall be to an Eligible Assignee, (iv) the Lessor shall have received from the assignee/transferee or the assignor/transferor a transfer fee in the amount of \$1,500, (v) each assignee or transferee shall have complied, as of the date of the transfer or assignment, with the delivery requirements of Section 12.3(a), and (vi) each assignee or transferee shall (A) acknowledge in writing, addressed and delivered to each of the parties to this Participation Agreement, that the obligations otherwise to be performed by the assignor or transferor from and after the date of such transfer or assignment under this Participation Agreement and all other Operative Documents are its obligations, including the obligations imposed by this Section 12.1(a) (and the transferor and transferee Lender shall deliver to the Lessee, the Collateral Agent and the Lessor an Assignment Agreement, in substantially the form of Exhibit F, executed by the assignee or transferee) and (B) represent and warrant to Collateral Agent, each Participant and the Lessee in writing each of the representations and warranties as set forth in Section 8.1 and that:

- (w) it has the requisite power and authority to accept such assignment or transfer and to engage in the Overall Transaction;
- (x) it will not take any action with respect to such Note that would violate any applicable securities laws;
- (y) it will not assign or transfer any interest in its Note except in compliance with this Section 12.1; and
- (z) it will not transfer any Note unless the proposed transferee makes the foregoing representations and covenants.

Any transfer or assignment made in violation of the above requirements shall not be effective against the other parties to this Participation Agreement until such requirements are satisfied. Lessee shall not be responsible for any costs or expenses in connection with any such sale, assignment or other transfer.

(b) Lessor may sell, assign or transfer all, but not less than all, of the Lessor's Interest at any time to any Person; *provided, however,* that (i) each such assignment shall be to an

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Eligible Assignee, (ii) the Lessor shall give the Lessee, Collateral Agent and the Lenders at least thirty (30) days' prior written notice of such transfer, which notice shall be conspicuously captioned "NOTICE OF TRANSFER: URGENT ATTENTION REQUIRED. YOUR FAILURE TO RESPOND TO THIS NOTICE IN A TIMELY MANNER MAY RESULT IN A TRANSFER OF THE LESSOR'S INTEREST IN THE SUBJECT PROPERTY WITHOUT YOUR CONSENT", shall make specific reference to the Lease and this Section 12.1(b) in particular and shall include the name of the assignee or transferee, (iii) each assignee or transferee shall have complied with the delivery requirements of Section 12.3(a), and (iv) each assignee or transferee shall (A) acknowledge in writing, addressed and delivered to each of the parties to this Participation Agreement, that the obligations otherwise to be performed by the assignor or transferor from and after the date of such transfer or assignment under this Participation Agreement and all other Operative Documents are its obligations, including the obligations imposed by this Section 12.1(b) (and the transferor and transferee shall deliver to the Lessee and Collateral Agent an Assignment and Assumption Agreement in the form of Exhibit F, executed by the assignee or transferee) and (B) further represent and warrant to the Lessee, the Collateral Agent and each Participant in writing each of the representations and warranties as set forth in Section 8.1 and that:

- (w) it meets the criteria of an Eligible Assignee, and it has the requisite power and authority to accept such assignment or transfer and to engage in the Overall Transaction;
- (x) it will not take any action with respect to its Lessor's Interest that would violate any applicable securities laws;
- (y) it will not assign or transfer its Lessor's Interest except in compliance with this Section 12.1(b); and
- (z) it will not transfer its Lessor's Interest unless the proposed transferee makes the foregoing representations and covenants.

Notwithstanding anything contained in the foregoing to the contrary, so long as no Event of Default exists, such assignment shall not be made if (1) in the reasonable opinion of Lessee, such assignment would cause Lessee to be required to cease reporting this Lease as an operating lease in Lessee's financial statements and (2) Lessee provides the Collateral Agent and the Participants written notice of such determination within ten (10) Business Days of (A) Lessee's receipt of the notice described in clauses (b)(iii) above and (B) Lessee's receipt of all information needed regarding the proposed assignee as may be reasonably requested by Lessee or Lessee's independent public accountants, which request shall be made within 10 Business Days after Lessee's receipt of the notice described in clause (b)(iii) above. In the event Lessee has objected in writing to the proposed assignee above, Lessee hereby agrees to cooperate with Lessor to restructure the proposed assignment or find a replacement assignee which shall be an Eligible Assignee and which shall comply with the terms and conditions set forth above and to which Lessee shall not have objected in writing pursuant to the terms hereof. The parties hereto and any such assignee will execute such documents and make such filings and recordings as are reasonably requested by the Lessor or the Collateral Agent to maintain the interests of the parties, preserve, protect and perfect the interest of Collateral Agent and Lessor in the Leased

Property, the Lessor Collateral and the Lessee Collateral and/or any Participant's rights under this Participation Agreement and the other Operative Documents. Notwithstanding any of the foregoing, Lessor shall at all times be permitted, without the consent of Lessee, to transfer the Lessor's Interest to an Eligible Assignee to effectuate compliance with any law, rule, regulation or order issued by any federal or state regulatory authority having jurisdiction over the Lessor (other than any such law, rule, regulation or order that was published and effective prior to March 1, 2006). In such event, Lessor shall, to the extent possible in Lessor's sole good faith judgment, notify Lessee of such proposed transfer and shall, to the extent possible in Lessor's sole good faith judgment, work in good faith with Lessee to cause the Lessor's Interest to be transferred to an Eligible Assignee in a manner such that, to the extent possible in Lessee's sole good faith judgment, Lessee shall not be required to cease reporting the Lease as an operating lease.

Any transfer or assignment made in violation of the above requirements shall not be effective against the other parties to this Participation Agreement until such requirements are satisfied.

Section 12.2. Participations. Any Lender may at any time sell to one or more commercial banks or other Persons (each of such commercial banks and other Persons being herein called a "Sub-Participant") participating interests in all or a portion of its rights and obligations under this Participation Agreement, the other Operative Documents and its Notes (including, without limitation, all or portion of the Rent owing to it); *provided, however*, that:

- (a) no participation contemplated in this Section 12.2 shall relieve such Lender from its obligations hereunder or under any other Operative Document;
- (b) such Lender shall remain solely responsible for the performance of its obligations hereunder and under any Operative Document;
- (c) the Lessee, the Lessor and the Collateral Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Participation Agreement and each of the other Operative Documents;
- (d) each such Sub-Participant will make representations and warranties to the Participant that are consistent with Section 8.1, *mutatis mutandis*;
- (e) no Sub-Participant, unless such Sub-Participant is an Affiliate of such Lender, or is itself a Lender, shall be entitled to require such Lender to take or refrain from taking any action hereunder or under any other Operative Document, except for matters requiring consent of all Participants; and
- (f) the Lessee shall not be required to pay any amount under this Participation Agreement that is greater than the amount which it would have been required to pay had no participating interest been sold.

Section 12.3. Withholding Taxes; Disclosure of Information; Pledge Under Regulation A. (a) If any Participant or any assignee of, or Sub-Participant in, any Funding each such assignee or Sub-Participant, a "Transferee") is organized under the laws of any jurisdiction other than the United States or any State thereof, then such Lessor, Lender or Transferee, as applicable, shall (as a condition precedent to acquiring or participating in any Funding) (i) furnish to the Collateral Agent and the Lessee (unless such Participant or Transferee is unable to so furnish due to a Change in Law, first effective after such

Participant or Transferee becomes a Participant or Transferee, as applicable) in duplicate, for each taxable year of such Participant or Transferee during the Term, a properly completed and executed copy of either Internal Revenue Service Form W-8 ECI or Internal Revenue Service Form W-8 BEN and Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9 and any additional form (or such other form) as is necessary to claim complete exemption from United States withholding taxes on all payments hereunder, and (ii) provide to the Lessor, the Collateral Agent and the Lessee a new Internal Revenue Service Form W-8 ECI or Internal Revenue Service Form W-8 BEN and Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9 and any such additional form (or any successor form or forms) upon the expiration or obsolescence of any previously delivered form and comparable statements in accordance with applicable United States laws and regulations and amendments duly executed and completed by such Participant or Transferee, and to comply at all times such Participant or Transferee shall beneficially own a Note or Lessor's Interest with all applicable United States laws and regulations and all provisions of any applicable tax treaty with regard to such withholding tax exemption unless any Change in Law has occurred subsequent to the date such Participant or Transferee became a Participant or Transferee as applicable and prior to the date on which any such delivery otherwise would be required which renders such form inapplicable or which would prevent such Participant or Transferee from duly completing and delivering any such forms and such Lender or Transferee so advises the Lessee; *provided, however*, that if Lessor or any Participant or Transferee is not the beneficial owner of a payment, as defined in Treasury Regulation §1.1441-1(c)(6), and therefore is unable to provide a Form W-8BEN or W-8ECI, then such Person may provide (i) one duly completed and executed copy of Internal Service Form W-8IMY (in lieu of the Form W-8BEN or W-8ECI), and all additional forms or certifications, as provided in Treasury Regulation §1.1441-1(e)(3), required to be attached to such Form W-8IMY, necessary to establish that such party is entitled to receive payments hereunder without deduction or withholding of any United States Federal income taxes, and (ii) any other form for other taxing jurisdictions confirming that such Person is exempt from withholding from such jurisdiction. By its acceptance of a participation or assignment of a Participant's Note or Lessor's Interest, each Transferee shall be deemed bound by the provisions set forth in this Article XII. Notwithstanding anything to the contrary in the Operative Documents, the Lessee shall not be required to gross-up any payment for withholding taxes imposed on any Tax Indemnitee which has failed to comply with its obligations under this Section 12.3 if such compliance would have avoided such withholding taxes, and the Lessee shall be entitled to withhold from any payments to such Tax Indemnitee under this Participation Agreement or any other Operative Document such amounts of withholding taxes as may be required by law to be withheld.

(b) Anything in this Article XII to the contrary notwithstanding, any Participant may, without the consent of the Lessee, assign and pledge all or any portion of the Notes or Lessor's

Interest held by it to any Federal Reserve Bank as collateral security pursuant to Regulation A of the F.R.S. Board.

Section 12.4. Lessee Directions. Each of the Participants and the Lessee hereby agree that:

(a) the Lessee shall have the right to replace any Participant (i) with respect to which, (A) the right to pay Interest or Yield by reference to the LIBO Rate shall be suspended under Section 15.1 or 15.2, or (B) there are or would be any claim to reimbursement or compensation under Section 15.3 or 15.5 or (ii) that fails to consent to any amendment, extension or waiver requested by Lessee, in each case with an Eligible Assignee selected by the Lessee and reasonably acceptable to the Collateral Agent and which Eligible Assignee shall comply with the terms of clause (vi) of Section 12.1(a) or clause (iv) of Section 12.1(b), as applicable;

(b) the Lessee shall have the exclusive right to exercise the right under Section 12.4(a) above upon not less than three (3) Business Days' prior written notice from the Lessee to the Collateral Agent and each Participant ; and

(c) the Collateral Agent and each Participant hereby agree to cooperate with the Lessee, at Lessee's sole cost and expense in Lessee's efforts to arrange one or more replacement Participants as contemplated by Section 12.4(a).

ARTICLE XIII

INDEMNIFICATION

Section 13.1. Indemnification.

(a) *General Indemnification.* Subject to Sections 13.1(b) and 13.3, whether or not any of the transactions contemplated hereby shall be consummated, Lessee shall pay and assume liability for, and does hereby agree to indemnify, protect, defend, save and keep harmless each General Indemnitee on an After Tax Basis from and against any and all Claims that may be imposed on, incurred by or asserted against such General Indemnitee (whether because of action or omission by such General Indemnitee), whether or not such Claim is covered by any other indemnification under this Article XIII or such General Indemnitee shall also be indemnified as to any such Claim by any other Person, and whether or not such Claim arises or accrues after the Expiration Date, in each case under this Section 13.1(a), arising out of or in any way relating to:

(i) any of the Operative Documents, any of the transactions contemplated thereby or any investigation, litigation or proceeding in connection therewith, and any amendment, modification or waiver in respect thereof;

(ii) the Subject Property, or any part thereof or interest therein;

(iii) the purchase, manufacturing, mortgaging, design, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, purchase, ownership, possession, use, rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition or substitution, storage, transfer of title, redelivery, use, financing, refinancing, operation, condition, sale (including, without limitation, any sale or other transfer pursuant to Section 15.1, 16.2, 18.1 or 18.2 of the Lease or any sale or transfer pursuant to Articles XX or XXI of the Lease), return or other disposition of all or any part of any interest in the Subject Property or the imposition of any Lien (or incurring of any liability to refund or pay over any amount as a result of any Lien) thereon, including, without limitation: (A) Claims or penalties arising under any agreements or obligations from any violation of law or in tort (strict liability or otherwise) by Lessee, Collateral Agent, Lessor, any Lender or any other Person or with respect to the use, ownership, possession, operation or maintenance of the Subject Property, (B) any Claim resulting from or related to latent

or other defects, whether or not discoverable relating to the Subject Property, (C) any Claim resulting from or related to the purchase, acquisition, lease or transfer of the Subject Property, (D) any Claim based upon a violation or alleged violation of the terms of any restriction, easement, condition or covenant or other matter affecting title to the Subject Property or (E) the making of any Modifications in violation of any standards imposed by any insurance policies required to be maintained by the Lessee pursuant to the Lease which are in effect at any time with respect to the Subject Property or any part thereof;

(iv) the offer, issuance, sale, transfer or delivery of the Notes or Lessor's Interest in accordance with the terms of the Participation Agreement;

(v) the breach by Lessee of any representation or warranty made by it in any Operative Document or any certificate delivered by it with respect to any agreement relating thereto;

(vi) the transactions contemplated hereby or by any other Operative Document, in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA and any prohibited transaction described in Section 4975(c) of the Code;

(vii) the retaining or employment of any broker, finder or financial advisor by the Lessee to act on its behalf in connection with this Participation Agreement; or

(viii) any other agreement entered into or assumed by Lessee or its Affiliate in connection with the Subject Property (including, in connection with each of the matters described in this Section 13.1 to which this indemnity shall apply, matters based on or arising from the negligence of any General Indemnitee).

It is expressly understood and agreed that the indemnities provided for herein shall, except as otherwise provided in Section 13.1(b), survive the expiration or termination of and shall be separate and independent from any remedy under the Lease or any other Operative Document.

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(b) *Exclusions from Indemnities.* Notwithstanding the foregoing provisions of this Article XIII, Lessee shall not be obligated to indemnify a General Indemnitee under Section 13.1(a) for any Claim to the extent that such Claim is attributable to: (i) acts, events or circumstances occurring after (but only to the extent not attributable to or constituting acts, events or circumstances occurring prior to), (A) the expiration or earlier termination of the Lease and (B) delivery of possession of the Subject Property to Lessee, Lessor pursuant to Article XX of the Lease or, solely with respect to a Limited Recourse Event of Default, Article XVI of the Lease, or to a third party; (ii) criminal acts of such Indemnitee or the gross negligence or willful misconduct of such Indemnitee, *provided* that a default under, or the failure of Lessor to perform any obligation, covenant or agreement in, any Related Agreement or otherwise required by Applicable Law, Governmental Action or third parties with respect to the Subject Property shall not be deemed gross negligence or willful misconduct; (iii) any Claim resulting from the imposition of any Lessor Lien which such Indemnitee is responsible for discharging under the Operative Documents; (iv) any Claim for Taxes or Impositions other than those relating to a Claim of the type described at clause (iv) of Section 13.1(a) above or the obligation of Lessee to pay amounts under this Section 13.1 on an After Tax Basis (it being understood that Claims for Taxes or Impositions are dealt with in Sections 13.4, 13.5 and 15.3 and in such provisions as require payments by Lessee to be made on an After Tax Basis); (v) in the event that the Lessee has exercised the Sale Option in accordance with Article XX of the Lease or Lessor or the Collateral Agent has exercised remedies under Section 16.2 of the Lease solely as a result of a Limited Recourse Event of Default, any Claim for the costs of selling or marketing the Subject Property in excess of the amount of such costs Lessee would be obligated to pay under the Lease in connection with the exercise of the Sale Option and (vi) breach by such General Indemnitee of its representations and warranties in Section 8.1 or 8.4, as the case may be, or the breach by such General Indemnitee of its covenants as set forth in this Participation Agreement or the Lease; *provided, however*, that nothing in the foregoing clauses (i) through (v) shall be deemed to exclude or limit any remedy under or right to damages pursuant to Article XVI of the Lease.

Section 13.2. End of Term Indemnity. In the event that (a) Lessee elects the Sale Option; and (b) after paying to Collateral Agent or Lessor, as the case may be, for the benefit of the Participants, any amounts due under Articles XX, XXI and XXII of the Lease, the Lease Balance shall not have been reduced to zero, then Lessee shall deliver a report from neutral MAI appraiser selected by the Lessor having at least five (5) years of experience in the appraisal of commercial properties comparable to the Leased Property. The report shall be in form and substance satisfactory to the Lessor. The appraisal shall use customary and usual appraisal methods to determine the Fair Market Value of the Leased Property as of the Expiration Date (the "*Expiration Date Fair Market Value*"). If the appraiser concludes in his or her professional judgment that the reasons for the Expiration Date Fair Market Value of the Leased Property being less than the Fair Market Value as of the date of the Appraisal were due to any of the following events, circumstances or conditions, then Lessee shall promptly pay over to Collateral Agent or Lessor, as the case may be, any amount by which the Fair Market Value of the Leased Property as specified in the Appraisal exceeds the Expiration Date Fair Market Value to the extent attributable to any of the following events: (i) excessive use of the Leased Property; (ii) the failure to maintain the Leased Property as required by the Lease and the other Operative Documents, and in at least as good a condition as it was as of the commencement of the Term, ordinary wear and tear excepted; (iii) any Modification to or restoration or rebuilding of the

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Leased Property, whether or not permitted pursuant to the Operative Documents, except for Required Modifications performed in accordance with Article X of the Lease; (iv) the existence on or before the Expiration Date of any adverse environmental condition at or affecting the Leased Property; or (v) any other cause or condition within the power of Lessee or any Affiliate to control or affect, other than ordinary wear and tear.

Section 13.3. Proceedings in Respect of Claims. With respect to any amount that the Lessee is requested by an Indemnitee to pay by reason of Section 13.1(a) or 13.2, such Indemnitee shall, if so requested by the Lessee and prior to any payment, submit such additional information to the Lessee as Lessee may reasonably request and which is in the possession of such Indemnitee to substantiate properly the requested payment.

In case any action, suit or proceeding shall be brought against any Indemnitee, such Indemnitee shall, within a reasonable period notify the Lessee in writing of the commencement thereof provided that failure to notify Lessee shall not alter such Indemnitee's rights under this Section 13.3, except to the extent such failure precludes or materially impairs Lessee's ability to conduct a defense, and the Lessee shall be entitled, at its expense, to participate in, and, to the extent that the Lessee desires to, assume and control the defense thereof through its own counsel, which shall be subject to the reasonable approval of the Indemnitee; *provided, however*, that the Lessee shall have acknowledged in writing its obligation to fully indemnify such Indemnitee in respect of such

action, suit or proceeding and, at the request of the Indemnitee, provide an indemnity and, if requested by such Indemnitee, collateral security, reasonably satisfactory to the Indemnitee, and, the Lessee shall keep such Indemnitee fully apprised of the status of such action, suit or proceeding and shall provide such Indemnitee with all information with respect to such action, suit or proceeding as such Indemnitee shall reasonably request. Lessee must indicate its election to assume such defense by written notice to the Indemnitee within 90 days following receipt of Indemnitee's notice of the Claim, or in the case of a third party claim which requires a shorter time for response then within such shorter period as specified in the Indemnitee's notice of Claim, provided that such Indemnitee has given Lessee notice thereof. Lessee shall not be entitled to assume and control the defense of any such action, suit or proceeding if and to the extent that, (A) in the reasonable opinion of such Indemnitee, (x) such action, suit or proceeding involves any risk of imposition of criminal liability or any material risk of imposition of material civil liability on such Indemnitee or will involve a material risk of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) on the Leased Property unless, in the case of civil liability, the Lessee shall have posted a bond or other security reasonably satisfactory to the relevant Indemnitees in respect to such risk or (y) the control of such action, suit or proceeding would involve an actual or potential conflict of interest, (B) such proceeding involves Claims not fully indemnified by the Lessee which the Lessee and the Indemnitee have been unable to sever from the indemnified Claim(s), or (C) an Event of Default has occurred and is continuing. The Indemnitee may participate in a reasonable manner at its own expense and with its own counsel in any proceeding conducted by the Lessee in accordance with the foregoing. The Lessee shall not enter into any settlement or other compromise with respect to any Claim which is entitled to be indemnified under Section 13.1 or 13.2, as applicable, without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld or delayed in the case of a money settlement not involving an admission of liability of such Indemnitee.

The party controlling the defense shall consult in good faith with the other party and its counsel with respect to the defense and shall keep the non-controlling party reasonably informed as to the progress of the defense. Each Indemnitee shall supply the Lessee with such information and documents reasonably requested by the Lessee as are necessary or advisable for the Lessee to participate in any action, suit or proceeding to the extent permitted by Section 13.1 or 13.2, as applicable, and Lessee shall reimburse the Indemnitee for the reasonable out-of-pocket expenses of supplying such information and documents. Except during the occurrence of an Event of Default where Lessee shall have failed to provide indemnity and, if requested by an Indemnitee, collateral security, both in form, substance and in such amounts reasonably satisfactory to each Indemnitee, no Indemnitee shall enter into any settlement or other compromise with respect to any Claim which is entitled to be indemnified under Section 13.1 or 13.2, as applicable, without the prior written consent of the Lessee, which consent shall not be unreasonably withheld, unless such Indemnitee waives its right to be indemnified under Section 13.1 or 13.2, as applicable, with respect to such Claim, does not admit any criminal liability or civil liability on behalf of the Lessee in connection with such Claim, and uses reasonable efforts to advise the Lessee on the status of proceedings from time to time during the pendency of such Claim.

Upon payment in full or other satisfaction of any Claim by the Lessee pursuant to Section 13.1 or 13.2, as applicable, to or on behalf of an Indemnitee, the Lessee, without any further action, shall be subrogated to any and all claims that such Indemnitee may have relating thereto (other than claims in respect of insurance policies maintained by such Indemnitee at its own expense), and such Indemnitee shall execute such instruments of assignment and conveyance, evidence of claims and payment and such other documents, instruments and agreements as may be necessary to preserve any such claims and otherwise cooperate with the Lessee and give such further assurances as are necessary or advisable to enable the Lessee vigorously to pursue such claims.

Any amount payable to an Indemnitee pursuant to Section 13.1 or 13.2 shall be paid to such Indemnitee promptly upon receipt of a written demand therefor from such Indemnitee, accompanied by a written statement describing in reasonable detail the basis for such indemnity and the computation of the amount so payable.

Section 13.4. General Tax Indemnity.

(a) *Indemnification.* Without limitation on the rights of any Tax Indemnitee under any other indemnification provision of this Article XIII, the Lessee shall pay and assume liability for, and does hereby agree to indemnify, protect and defend the Subject Property and all Tax Indemnitees, and hold it and them harmless against, all Impositions relating to the Subject Property or the Overall Transaction on an After Tax Basis.

(b) *Contests.* If any claim shall be made against any Tax Indemnitee or if any proceeding shall be commenced against any Tax Indemnitee (including a written notice of such proceeding) for any Imposition as to which the Lessee may have an indemnity obligation pursuant to this Section 13.4, or if any Tax Indemnitee shall determine that any Imposition for which the Lessee may have an indemnity obligation pursuant to this Section 13.4 may be payable, such Tax Indemnitee shall promptly and in any event, within 30 days after a

Responsible Officer of such Tax Indemnitee has actual knowledge thereof notify the Lessee in writing provided that failure to so notify the Lessee within 30 days after a Responsible Officer of such Tax Indemnitee has actual knowledge thereof shall not alter such Tax Indemnitee's rights under this Section 13.4, except to the extent such failure precludes or materially adversely affects the ability to conduct a contest of any indemnified Taxes) and shall not take any action with respect to such claim, proceeding or Imposition without the written consent of the Lessee (such consent not to be unreasonably withheld or unreasonably delayed) for 30 days after the receipt of such notice by the Lessee; *provided, however,* that in the case of any such claim or proceeding, if such Tax Indemnitee shall be required by law or regulation to take action prior to the end of such 30-day period, such Tax Indemnitee shall in such notice to the Lessee, so inform the Lessee, and such Tax Indemnitee shall not take any action with respect to such claim, proceeding or Imposition without the consent of the Lessee (such consent not to be unreasonably withheld or unreasonably delayed) for 10 days after the receipt of such notice by the Lessee, unless the Tax Indemnitee shall be required by law or regulation to take action prior to the end of such 10-day period.

The Lessee shall be entitled for a period of 60 days from receipt of such notice from the Tax Indemnitee (or such shorter period as the Tax Indemnitee has notified the Lessee is required by law or regulation for the Tax Indemnitee to commence such contest), subject to the immediately following sentence, to assume control of such contest or if such contest is of a type that must be pursued, if at all, in the name of such Tax Indemnitee, require that such Tax Indemnitee pursue such contest. If (x) such contest can be pursued in the name of the Lessee and independently from any other proceeding involving a Tax liability of such Tax Indemnitee for which the Lessee has not agreed to indemnify such Tax Indemnitee, (y) such contest must be pursued in the name of the Tax Indemnitee, but can be pursued independently from any other proceeding involving a Tax liability of such Tax Indemnitee for which the Lessee has not agreed to indemnify such Tax Indemnitee or (z) the Tax Indemnitee so requests, then the Lessee shall be permitted to control the contest of such claim, provided that in the case of a contest described in any of clause (x), (y) or (z) if the Tax Indemnitee determines reasonably and in good faith that such contest by the Lessee could have a material adverse effect on the business or operations of the Tax Indemnitee and provides a written explanation to the Lessee of

such determination, the Tax Indemnitee may elect to control or reassert control of the contest, and provided, that by taking control of the contest, Lessee acknowledges that it is responsible for the Imposition ultimately determined to be due by reason of such claim, and provided, further, that in determining the application of clauses (x) and (y) of the preceding sentence, each Tax Indemnitee shall take any and all reasonable steps to segregate claims for any Taxes for which the Lessee indemnifies hereunder from Taxes for which the Lessee is not obligated to indemnify hereunder, so that the Lessee can control the contest of the former. In all other claims requested to be contested by the Lessee, the Tax Indemnitee shall control the contest of such claim, acting through counsel of its selection reasonably acceptable to the Lessee. In no event shall the Lessee be permitted to contest (or the Tax Indemnitee required to contest) any claim, (A) if such Tax Indemnitee provides the Lessee with a legal opinion of independent counsel that such action, suit or proceeding involves a risk of imposition of criminal liability or will involve a material risk of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) on the Subject Property or any part of any thereof unless the Lessee shall have posted and maintained a bond or other security reasonably satisfactory to the relevant Tax Indemnitee in respect to such

risk, (B) if an Event of Default has occurred and is continuing, unless the Lessee shall have posted and maintained a bond or other security satisfactory to the relevant Tax Indemnitee in respect of the Taxes subject to such claim and any and all expenses for which Lessee is responsible hereunder, (C) unless the Lessee shall have agreed to pay and shall pay to such Tax Indemnitee on demand all reasonable out-of-pocket costs, losses and expenses that such Tax Indemnitee may incur in connection with contesting such Imposition, including all reasonable legal, accounting and investigatory fees and disbursements as well as the Impositions which are the subject of such claim to the extent the contest is unsuccessful, or (D) if such contest shall involve the payment of the Tax prior to the contest, unless the Lessee shall provide to the Tax Indemnitee an interest-free advance in an amount equal to the Imposition that the Indemnitee is required to pay (with no additional net after-tax costs (including Taxes) to such Tax Indemnitee). In addition for Tax Indemnitee controlled contests and claims contested in the name of the Tax Indemnitee in a public forum, no contest by a Tax Indemnitee shall be required: (1) unless the amount of the potential indemnity (taking into account all similar or logically related claims that have been or could be raised in any audit involving such Tax Indemnitee for which the Lessee may be liable to pay an indemnity under this Section 13.4(b)) exceeds \$50,000 and (2) unless, if requested by the Tax Indemnitee, the Lessee shall have provided to the Tax Indemnitee an opinion from counsel or a tax accountancy firm selected by the Lessee and reasonably acceptable to the Tax Indemnitee confirming that a reasonable basis exists to contest such claim (or in the case of an appeal of an adverse determination, an opinion of such counsel to the effect that it is more likely than not that the determination may be reversed on appeal). In no event shall a Tax Indemnitee be required to appeal an adverse judicial determination to the United States Supreme Court.

The party conducting the contest shall consult in good faith with the other party and its counsel with respect to the contest of such claim for Taxes (or claim for refund). In addition, the controlling party shall keep the noncontrolling party reasonably informed as to the progress of the contest, and shall provide the noncontrolling party with a copy of (or appropriate excerpts from) any reports or claims issued by the relevant auditing agents or taxing authority to the controlling party thereof, in connection with such claim or the contest thereof.

Each Tax Indemnitee shall supply the Lessee with such information and documents reasonably requested by the Lessee as are necessary or advisable for the Lessee to participate in any action, suit or proceeding to the extent permitted by this Section 13.4(b), and the Lessee shall promptly reimburse such Indemnitee for the reasonable out-of-pocket expenses of supplying such information and documents. Except during the occurrence of an Event of Default where Lessee shall have failed to provide indemnity and, if requested by an Indemnitee, collateral security, both in form, substance and in such amounts reasonably satisfactory to each Indemnitee, no Tax Indemnitee shall enter into any settlement or other compromise or fail to appeal an adverse ruling with respect to any claim which is entitled to be indemnified under this Section 13.4 (and with respect to which contest is required under this Section 13.4(b)) without the prior written consent of the Lessee, unless such Tax Indemnitee waives its right to be indemnified under this Section 13.4 with respect to such claim.

Notwithstanding anything contained herein to the contrary, a Tax Indemnitee will not be required to contest (and the Lessee shall not be permitted to contest) a claim with respect to the

imposition of any Tax if (i) such Tax Indemnitee shall waive its right to indemnification under this Section 13.4 with respect to such claim (and any claim with respect to such year or any other taxable year, the contest of which is materially adversely affected as a result of such waiver) or (ii) such Tax is the sole result of a claim of a continuing and consistent nature, which claim has previously been resolved against the relevant Tax Indemnitee (unless a change in law or facts has occurred since such prior adverse resolution and Lessee provides an opinion of independent tax counsel to the effect that it is more likely than not that such change in law or facts will result in a favorable resolution of the claim at issue).

(c) *Payments.*

(i) *To or For the Account of a Tax Indemnitee.* Any Imposition indemnifiable under this Section 13.4 shall be paid directly when the liability of the Tax Indemnitee has been finally determined to the applicable taxing authority if direct payment is practicable and permitted. If direct payment to the applicable taxing authority is not permitted or is otherwise not made, any amount payable to a Tax Indemnitee pursuant to this Section 13.4 shall be paid within thirty (30) days after receipt of a written demand therefor from such Tax Indemnitee, accompanied by a written statement describing in reasonable detail the amount so payable, but not before two Business Days prior to the date that the relevant Taxes are due. Any payments made pursuant to this Section 13.4 shall be made directly to the Tax Indemnitee entitled thereto in immediately available funds at such bank or to such account as specified by the Tax Indemnitee in written directions to the Lessee, or, if no such direction shall have been given, by check of the Lessee payable to the order of the Tax Indemnitee by certified mail, postage prepaid at its address as set forth in this Participation Agreement. Upon the request of any Tax Indemnitee with respect to a Tax that the Lessee is required to pay, the Lessee shall furnish to such Tax Indemnitee the original or a certified copy of a receipt for the Lessee's payment of such Tax or such other evidence of payment as is reasonably acceptable to such Tax Indemnitee.

(ii) *To the Lessee.* (x) If any Tax Indemnitee actually shall realize a Tax benefit (whether by way of deduction, credit, allocation or apportionment or otherwise) with respect to a Tax not indemnifiable hereunder which would not have been realized but for any Tax with respect to which the Lessee has reimbursed or indemnified such Tax Indemnitee pursuant to the Operative Documents, which benefit was not previously taken into account in determining the amount of the Lessee's payment to such Tax Indemnitee, such Tax Indemnitee shall pay to the Lessee an amount equal to the amount of such Tax benefit, increased by any actual Tax savings realized by such Tax Indemnitee and net of any additional Taxes actually borne by such Tax Indemnitee as a result of such payment (a "Grossed-Up Basis"); provided, however, that as long as an Event of Default is continuing any such amounts may be applied

against any amounts due and owing by Lessee under the Lease; *provided further, however*, that no Tax Indemnitee shall be required to pay to the Lessee any Tax benefit to the extent such payment would be greater than the amount of such Taxes in respect of which the reimbursement or indemnification was paid by the Lessee, reduced by all prior payments by such Tax Indemnitee under this Section 13.4(c)(ii)(x) in respect of such amount; any payment to the Lessee which is so limited shall, to the extent of such unpaid excess, be carried over and shall be available to offset any future obligations of the Lessee under this Section 13.4. If such repaid Tax benefit is thereafter

lost, the additional Tax payable shall be treated as a Tax indemnifiable hereunder without regard to the exclusions set forth in clauses (i) through (x) of the definition of Impositions.

(y) Upon receipt by a Tax Indemnitee of a refund or credit of all or part of any Taxes paid or indemnified against by the Lessee, which refund or credit was not previously taken into account in determining the amount of the Lessee's payment to such Tax Indemnitee, such Tax Indemnitee shall pay to the Lessee, on a Grossed-Up Basis, an amount equal to the amount of such refund, plus any interest received by or credited to such Tax Indemnitee with respect to such refund; *provided, however*, that as long as an Event of Default is continuing any such amounts may be applied against any amounts due and owing by Lessee under the Lease; *provided, further, however*, that no Tax Indemnitee shall be required to pay to the Lessee any refund or credit to the extent such refund or credit is greater than the amount of Taxes in respect of which payment or indemnification was made by the Lessee, reduced by all prior payments by such Tax Indemnitee under this Section 13.4(c)(ii)(y) in respect of such amount. If such repaid refund or credit is thereafter lost, the additional Tax payable shall be treated as a Tax indemnifiable hereunder without regard to the exclusions set forth in clauses (i) through (x) of the definition of Impositions.

(d) *Reports.* In the case of any report, return or statement required to be filed with respect to any Taxes that are subject to indemnification under this Section 13.4 and of which the Lessee has knowledge, the Lessee shall promptly notify the Tax Indemnitee of such requirement and, at the Lessee's expense (i) if the Lessee is permitted (unless otherwise requested by the Tax Indemnitee) by Applicable Laws, timely file such report, return or statement in its own name or (ii) if such report, return or statement is required to be in the name of or filed by such Tax Indemnitee or the Tax Indemnitee otherwise requests that such report, return or statement be filed in the name of or by such Tax Indemnitee, the Lessee shall prepare such report, return or statement for filing by such Tax Indemnitee in such manner as shall be satisfactory to such Tax Indemnitee and send the same to the Tax Indemnitee for filing no later than 15 days prior to the due date therefor. In any case in which the Tax Indemnitee will file any such report, return or statement, the Lessee shall, upon written request of such Tax Indemnitee, provide such Tax Indemnitee with such information as is reasonably necessary to allow the Tax Indemnitee to file such report, return or statement.

(e) *Withholding Taxes.*

(i) The Lessor or its agent shall withhold any Taxes required by Applicable Laws to be withheld on any payment to the Lessor or any Lender, except to the extent that the Lessor or any Lender has furnished such information to the Lessor or its agent as set forth in Section 12.3 and such information is sufficient under Applicable Laws to entitle such Person to an exemption from withholding Taxes. Except to the extent set forth in Section 13.6, the amount payable to the Lessor, the Lenders, any other Participant or any Sub-Participant shall be reduced by the amount of any withholding Taxes required to be withheld by the Lessor or its Collateral Agent pursuant to the preceding sentence, and except with respect to such withholding Taxes for which Lessee is liable pursuant to Section 15.3, the Lessee and the Lessor shall have no liability or obligation to the Lessor or the Lenders with respect to any such withholding Taxes. To the extent that the Lessor

is required to withhold such withholding Taxes as the result of a Change in Law (only if such Change in Law occurs after the relevant Participant has become a party to this Participation Agreement), Lessee shall be responsible for, and shall indemnify and hold harmless Lessor (without duplication of any indemnification required in Section 13.4(a)), on an After Tax Basis against, any claims regarding such withholding taxes made against the Lessor, to the extent, but only to the extent, Lessor has actually paid funds to a taxing authority with respect to such withholding Taxes or receives a demand for such payments from any taxing authority. In accepting and carrying out its duties with respect to withholding Taxes pursuant to this Section 13.4(e), Lessor shall act as the duly authorized agent of Lessee under the withholding provisions of Chapter 3 of the Code. Lessee shall file notice of such appointment with the Director of Foreign Operations District of the Internal Revenue Service in accordance with Treas. Reg. §1.1441-7(c). Such agency shall terminate in the event that there is a Change in Law as to release Lessee of the obligation to withhold Taxes with respect to payments made by Lessee under the Lease and in any event upon termination or expiration of the Lease.

(ii) If and to the extent the Lessor or its agent has in good faith reasonably attempted to comply with its obligation to withhold Taxes in accordance with clause (i) and a claim regarding withholding Taxes is made against the Lessor or its agent, as between the Lessee and the Lessor (or its agent), the Lessee shall be responsible for, and the Lessee shall indemnify and hold harmless the Lessor (and its agent) (without duplication of any indemnification required by subsection (a)) on an After Tax Basis against, such claim to the extent, but only to the extent, the Lessor or its agent has actually paid funds to a taxing authority with respect to such withholding taxes or receives a demand for such payment from any taxing authority.

(iii) Each Lender agrees to reimburse the Lessor and Collateral Agent for any withholding Taxes for which the Lessor or Collateral Agent becomes liable and, except with respect to such Taxes for which Lessee is liable pursuant to Section 15.3, to reimburse the Lessee for any Taxes or other amounts paid by the Lessee (A) pursuant to clause (ii) hereof and (B) to the extent Lessee has otherwise paid funds to a taxing authority with respect to any withholding taxes or receives a demand for such payment from any taxing authority.

(iv) For purposes of this Section 13.4(e), it shall be assumed that the Lease constitutes a loan for United States federal income tax purposes (as is the parties' intention).

(f) *Disclosure.* The parties agree that any party to this Participation Agreement (and each employee, representative, or other agent of such party) may disclose the tax aspects of the transactions contemplated by this Participation Agreement and the structural aspects of these transactions as they relate to such tax aspects without limitation of any kind on such disclosure.

(g) *Verification.* At the Lessee's request, the amount of any indemnity payment by the Lessee or any payment by an Indemnitee to the Lessee pursuant to this Section 13.4 shall be verified and certified by an independent public accounting firm mutually acceptable to the

Lessee and such Indemnitee. The costs of such verification shall be borne by the Lessee. In no event shall the Lessee have the right to review such Indemnitee's tax returns or receive any other confidential information from such Indemnitee in connection with such verification. Any information provided to such accountants by any Person shall be and remain the exclusive property of such Person and shall be deemed by the parties to be (and the accountants will confirm in writing that they will treat such information as) the private, proprietary and confidential property of such Person, and no Person other than such Person and the accountants shall be entitled thereto and all such materials shall be returned to such Person. Such accounting firm shall be requested to make its determination within 30 days of the Lessee's request for verifications and the computations of the accounting firm shall be final, binding and conclusive upon the Lessee and such Indemnitee. The parties agree that the sole responsibility of the independent public accounting firm shall be to verify the amount of a payment pursuant to the Lease and that matters of interpretation of the Lease are not within the scope of the independent accounting firm's responsibilities.

Section 13.5. After Tax Basis. If an Indemnitee shall not be entitled to a corresponding and equal deduction with respect to any payment or Tax which Lessee is required to pay or reimburse under any other provision of this Article XIII (each such payment or reimbursement under this Article XIII, an "Original Payment") and which Original Payment constitutes income to such Indemnitee when accrued or received, then Lessee shall pay to, or for the account of, such Indemnitee on demand the amount of such Original Payment on an After Tax Basis.

Section 13.6. Environmental Indemnity. (A) Without limitation of the other provisions of this Article XIII, the Lessee hereby agrees to indemnify, hold harmless and defend each Indemnitee from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings (including informal proceedings) and orders, judgments, remedial action, requirements, enforcement actions of any kind, and all reasonable and documented costs and expenses incurred in connection therewith (including reasonable and documented attorneys', expert consultants', expert witnesses', and/or paralegals' fees and expenses), including all costs incurred in connection with any investigation or monitoring of the condition of the Subject Property or any clean-up, remedial, removal or restoration work by any Governmental Authority relating to the Subject Property (collectively, "Environmental Claims"), and whether or not such Environmental Claim arises or occurs after the Expiration Date, in each case under this Section 13.6, arising in whole or in part, out of:

(a) the presence on, under or around the Subject Property or any portion thereof of any Hazardous Substance, or any releases or discharges of any Hazardous Substance on, under, from, onto or around the Subject Property or any portion thereof,

(b) any activity, including, without limitation, construction carried on or undertaken on or off the Subject Property or any portion thereof, and whether by Lessee or any of its Affiliates or any predecessor in title or any employees, agents, sublessees, contractors or subcontractors of the Lessee, any of its Affiliates or any predecessor in title, or any other Persons (including such Indemnitee), in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substance that at any time are located or present on, under or around, or that

at any time migrate, flow, percolate, diffuse or in any way move onto or under the Subject Property or any portion thereof,

(c) loss of or damage to any property or the environment arising from, or in any way related to, the Subject Property or Lessee or any of its Affiliates (including, without limitation, clean-up costs, response costs, remediation and removal costs, cost of corrective action, costs of financial assurance, fines and penalties and natural resource damages), or death or injury to any Person, and all expenses associated with the protection of wildlife, aquatic species, vegetation, flora and fauna, and any mitigative action required by or under Environmental Laws, in each case arising from, or in any way related to, the Subject Property, Lessee or the Overall Transaction or any portion thereof,

(d) any claim concerning lack of compliance with Environmental Laws in connection with the Subject Property (including, without limitation, any claim arising from the failure or alleged failure to obtain or comply with any permit required by any Environmental Laws for the construction or operation of the Subject Property), or any act or omission causing an environmental condition that requires remediation or would allow any Governmental Authority to record a Lien against the Subject Property or any portion thereof, or

(e) any residual contamination on or under any of the Subject Property, or adversely affecting any natural resources, and any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Substance, in each case arising from, or in any way related to, the Subject Property, Lessee or the Overall Transaction or any portion thereof, and irrespective of whether any of such activities were or will be undertaken in accordance with Applicable Laws.

(B) Notwithstanding the foregoing provisions of this Section 13.6, Lessee shall not be obligated to indemnify an Indemnitee under this Section 13.6 for any Claim or Environmental Claim to the extent that such Claim or Environmental Claim is attributable to (i) the gross negligence or willful misconduct of such Indemnitee; *provided* that a default under, or the failure of Lessor to perform any covenant or agreement in, any Related Agreement or otherwise required by Applicable Law, Governmental Action or third parties with respect to the property subject thereto or (ii) acts, events or circumstances occurring after, and to the extent not attributable to or constituting acts, events or circumstances occurring prior to (1) the expiration or earlier termination of the Lease and (2) delivery of possession of the Subject Property to Lessee, Lessor pursuant to Article XX of the Lease or, solely with respect to a Limited Recourse Event of Default, Article XVI of the Lease, or to a third party or (iii) any breach by such Indemnitee of its representations and warranties in Section 8.1 or 8.4, as the case may be, or the breach by such Indemnitee of its covenants as set forth in this Participation Agreement or the Lease.

ARTICLE XV

CONTINGENT RENT AND OTHER COSTS

Section 15.1. LIBO Rate Lending Unlawful. If, after the Closing Date, any Participant shall reasonably determine (which determination shall, upon notice thereof to the Lessee and the Participants, be conclusive and binding on the Lessee and which notice shall be withdrawn whenever the applicable circumstances no longer exist) that the introduction of or any change in or in the interpretation of any Applicable Law makes it unlawful, or any central bank or other Governmental Authority asserts that it is unlawful, for such Participant to make available, continue or maintain any Loan or Lessor Amount that bears Interest or Yield based upon the LIBO Rate, as the case may be, the obligation of such Participant to make available, continue or maintain any such Loan or Lessor Amount, as the case may be, shall, upon such determination, forthwith be suspended until such Participant shall notify the Lessee and the Lessor that the circumstances causing such suspension no longer exist and, to the extent required by any such introduction of or change in or in the interpretation of any law, all Loans, or Lessor Amount, as the case may be, of such Participant shall automatically bear Interest or accrue Yield at the Alternate Base Rate either (a) on the last day of the then current Interest Period applicable to such Loan or Lessor Amount, as the case may be, if such Participant may lawfully continue to maintain and fund such Loan or Lessor Amount, or (b) immediately if such Participant shall determine that it may not lawfully continue to maintain and fund such Loan or Lessor Amount, as the case may be, to such day thereto or sooner, if required by such law or assertion.

Section 15.2. Deposits Unavailable. If any of the Participants shall have determined that:

(a) Dollar deposits in the relevant amount and for the relevant Interest Period are not available to such Participant in its relevant market; or

(b) by reason of circumstances affecting such Participant's relevant market, adequate means do not exist for ascertaining the LIBO Rate applicable to such Participant's Loans or Lessor Amount,

then, upon notice from such Participant to the Lessee and the other Participants, each outstanding Loan or Lessor Amount, as the case may be, of the affected Participant shall begin to bear Interest or accrue Yield at the Alternate Base Rate on the last day of the then current Interest Period applicable thereto.

Section 15.3. Increased Costs, Etc. If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other Governmental Authority after the Closing Date hereof increases or would increase the cost (other than in respect of Taxes, except for withholding taxes imposed as the

result of any change in law, regulation or treaty first enacted, promulgated or signed after the later of the Closing Date and the date such Participant becomes a Participant (and without limiting the Lessee's obligations pursuant to Sections 13.4, 13.5 or 15.6 hereof)), to any Participant of, or reduces or would reduce the amount of any sum receivable by, such Participant in respect of making available, continuing or maintaining (or of its obligation to make available, continue or maintain) or prevents or would prevent any Participant from being legally entitled to a complete exemption from withholding as described in Section 12.3 with respect to, any Loans or Lessor Amount, as the case may be, then the Lessee shall from time to time, within thirty (30) days of demand by such Participant together with the certificate referred to below (with a copy of such demand and certificate to the Collateral Agent), pay to the Collateral Agent for the account of such Participant additional amounts sufficient to compensate such Participant for such increased cost or reduced amount receivable; *provided*, that no Participant shall be entitled to demand such compensation more than ninety (90) days following the last day of the Interest Period in respect of which such demand is made; *provided further, however*, that the foregoing provision shall in no way limit the right of any Participant to demand or receive such compensation to the extent that such compensation relates to the retroactive application of any law, regulation, guideline or request if such demand is made within ninety (90) days after the implementation of such retroactive law, interpretation, guideline or request. A reasonably detailed certificate as to the nature and amount of such increased cost, submitted to the Lessee and the Collateral Agent by such Participant in good faith, shall be conclusive and binding for all purposes, absent manifest error.

Section 15.4. Funding Losses. In the event any Participant shall incur any loss or out-of-pocket expense (including any Break Costs and any loss or out-of-pocket expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Participant to make available, continue or maintain any portion of the principal amount of any Loan or Lessor Amount, as the case may be) as a result of:

(a) any repayment or prepayment of the principal amount of any Loans or Lessor Amount, as the case may be, on a date other than the scheduled last day of the Interest Period applicable thereto; or

(b) any Loans or Lessor Amount, as the case may be, not being made in accordance with the Advance Request therefor (unless such failure to make such Loans or fund such Lessor Amount, as the case may be, constitutes a breach by the applicable Participant of its obligations under Article III),

then, upon the written notice of such Participant to the Lessee, the Lessee shall, within five days of its receipt thereof, pay directly to such Participant as Supplemental Rent such amount (determined on the basis of such Participant's standard practices) as will reimburse such Participant for such loss or out-of-pocket expense. Such written notice (which shall include calculations in sufficiently reasonable detail to indicate the incurrence and amount of such loss and out-of-pocket expense) shall be presumed correct and binding on the Lessee absent manifest error.

Section 15.5. Increased Capital Costs. If any Participant reasonably determines that compliance with any law or regulation or any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) issued, promulgated or made, as the case may be, after the Closing Date (or, if later, the date on which such Participant becomes a Participant) affects or would affect the amount of capital required or expected to be maintained by such Participant or any corporation controlling such Participant and that the amount of such capital is increased by or based upon the

existence of such Participant's commitment hereunder or under the Loan Agreement and other commitments of this type or the Loans or Lessor Amount, then, within 30 days of demand by such Participant together with the certificate referred to below (with a copy of such demand and certificate to the Collateral Agent), the Lessee shall pay to the Collateral Agent for the account of such Participant, from time to time as specified by such Participant, additional amounts sufficient to compensate such Participant or such corporation in the light of such circumstances, to the extent that such Participant determines such increase in capital to be allocable to the existence of such Participant's commitment hereunder or under the Loan Agreement or the Fundings made by such Participant hereunder, provided, that no Participant shall be entitled to demand such compensation more than 90 days following the last day of the fiscal year of such Participant during which such capital requirement was applicable and in respect of which such Participant is seeking compensation; *provided further, however*, that the foregoing proviso shall in no way limit the right of any Participant to demand or receive such compensation to the extent that such compensation relates to the retroactive application of any law, regulation, guideline or request described above if such demand is made within 90 days after the implementation of such retroactive law, interpretation, guidelines or request. A reasonably detailed certificate as to such amounts submitted to the Lessee and the Collateral Agent by such Participant in good faith shall be conclusive and binding for all purposes, absent manifest error.

Section 15.6. After Tax Basis. Lessee shall pay all amounts owing under this Article XV on an After Tax Basis.

Section 15.7. Applicability of Certain Sections and Payments. The provisions of Sections 15.1 through 15.6 are applicable to the Lenders and the Lessor in connection with any funding by reference to the LIBO Rate, and not otherwise.

Section 15.8. Funding Office; Mitigation of Costs. If the Lessee is required to pay additional amounts to or for the account of any Participant pursuant to Sections 15.1 through 15.3, and 15.5 to the extent applicable, then such Participant will agree to use reasonable efforts to reduce or eliminate any claim for compensation thereunder, including, without limitation, to change the jurisdiction of its Applicable Lending Office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the sole judgment of such Participant, is not otherwise disadvantageous to such Participant.

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ARTICLE XVI

MISCELLANEOUS

Section 16.1. Survival of Agreements. The representations and warranties made as of the date hereof and as of the Closing Date and the parties' obligations under any and all the covenants, indemnities and agreements of the parties provided for in the Operative Documents, arising from events commencing prior to the expiration or earlier termination of this Participation Agreement and any other Operative Document, shall survive the execution and delivery and the termination or expiration of this Participation Agreement and any of the other Operative Documents, the transfer of the interest in the Leased Property as provided herein or in any other Operative Documents (and shall not be merged into any conveyance or transfer document), any disposition of any interest of Lessor in the Leased Property, the purchase and sale of the Notes or Lessor's Interest, payment therefor and any disposition thereof, and shall be and continue in effect notwithstanding any investigation made by any party hereto or to any of the other Operative Documents and the fact that any such party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Documents.

Section 16.2. No Broker, Etc. Except for the Lessee's dealing with Banc of America Leasing & Capital, LLC, as Arranger, each of the parties hereto represents to the others that it has not retained or employed any arranger, broker, finder or financial advisor to act on its behalf in connection with this Participation Agreement, nor has it authorized any arranger, broker, finder or financial adviser retained or employed by any other Person so to act, nor has it incurred any fees or commissions to which Collateral Agent or any Participant might be subjected by virtue of their entering into the Overall Transaction. Any party who is in breach of this representation shall indemnify and hold the other parties harmless from and against any liability arising out of such breach of this representation.

Section 16.3. Notices. Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be in writing and shall be deemed to have been duly given and shall be effective: (i) in the case of notice by letter, the earlier of when delivered to the addressee by hand or courier if delivered on a Business Day and, if not delivered on a Business Day, the first Business Day thereafter or on the third Business Day after depositing the same in the mails, registered or certified mail, postage prepaid, return receipt requested, (ii) in the case of a prepaid delivery to a reputable national overnight air courier service, on the Business Day following such date of delivery, and (iii) in the case of notice by facsimile or bank wire, when receipt is confirmed if delivered on a Business Day and, if not delivered on a Business Day, the first Business Day thereafter, addressed as provided on Schedule III hereto, or to such other address as any of the parties hereto may designate by written notice.

Section 16.4. Counterparts. This Participation Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

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Section 16.5. Amendments. No Operative Document (other than the Related Agreements pursuant to and in accordance with Section 6.2 of the Lease) nor any of the terms thereof may be terminated, amended, supplemented, waived or modified without the written agreement or consent of Lessor and the Required Participants; *provided* that Section 16.20 hereof may not be terminated, amended, supplemented, waived or modified without the written agreement or consent of the Arranger; *provided, further*, that such termination, amendment, supplement, waiver or modification shall require the written agreement or consent of each Participant if such termination, amendment, supplement, waiver or modification would:

(a) modify any of the provisions of this Section 16.5, change the definition of "Required Participants" or "Required Lenders" or modify or waive any provision of an Operative Document requiring action by each Participant (including, without limitation, Section 4.7 hereof);

(b) (i) amend, modify, waive or supplement any of the provisions of Section 4.1, 4.2 or 5.3 hereof or Section 2.5, 2.6 or 2.7 of the Loan Agreement or (ii) extend the maturity date of any Note or extend the Expiration Date;

(c) reduce, modify, amend or waive any fees or indemnities in favor of any Participant, including without limitation amounts payable pursuant to Article XIII (except that any Person may consent to any reduction, modification, amendment or waiver of any indemnity payable to it);

(d) modify, postpone, reduce or forgive, in whole or in part, any payment of Rent (other than pursuant to the terms of the Operative Documents), any Loan or Lessor Amount or any amount payable in respect of the Lease Balance, the Loan Balance, Sale Option Recourse Amount, amounts due pursuant to Article XX of the Lease, Interest or Yield, subject to clause (c) above, any other amount payable to it under the Lease or this Participation Agreement, or modify the definition or method of calculation of Rent (other than pursuant to the terms of the Operative Documents), Loans or Lessor Amount, Lease Balance, Loan Balance, Lessor Balance, Sale Option Recourse Amount, Participant Balance or any other definition which would affect the amounts to be advanced or which are payable under the Operative Documents;

(e) consent to any assignment of the Lease by the Lessee, releasing the Lessee from its obligations in respect of the payments of Rent, Loan Balance, Lessor Balance or Lease Balance or changing the absolute and unconditional character of such obligations; or

(f) release of any Lien granted by the Lessee or the Lessor under the Operative Documents, except as provided in the Operative Documents.

Section 16.6. Loan Agreement and Related Obligations. The Lessee shall pay, as Supplemental Rent, when due, all costs, expenses and other amounts (other than principal and Interest on the Loans which are payable to the extent otherwise required by the Operative

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Documents) required to be paid by the Lessor under the Loan Agreement and any Security Instrument.

Section 16.7. Headings, Etc. The Table of Contents and headings of the various Articles and Sections of this Participation Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

Section 16.8. Parties in Interest. Except as provided in Section 16.20 and as otherwise expressly provided herein, none of the provisions of this Participation Agreement is intended for the benefit of any Person except the parties hereto. Except as otherwise specifically provided for in the Lease or any Operative Document, the Lessee shall not assign or transfer any of its rights or obligations under the Operative Documents without the prior written consent of the Required Participants. Except as provided in Section 12.1, the Participants shall not assign or transfer any of their respective rights or obligations under the Operative Documents.

Section 16.9. Governing Law. This Participation Agreement shall in all respects be governed by the internal law of the State of New York as to all matters of construction, validity and performance, without regard to conflicts of law principles to the extent permitted by Applicable Law.

Section 16.10. Severability. Any provision of this Participation Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 16.11. Liability Limited. No Participant shall have any obligation to any other Participant or to the Lessee or the Collateral Agent with respect to the Overall Transaction, except those obligations of such Participant expressly set forth in the Operative Documents or except as set forth in the instruments delivered in connection therewith, and no Participant shall be liable for performance by any other party hereto of such other party's obligations under the Operative Documents, except as otherwise so set forth.

Section 16.12. Further Assurances. The parties hereto shall promptly cause to be taken, executed, acknowledged or delivered, at the sole expense of the Lessee, all such further acts, conveyances, documents and assurances as the other parties may from time to time reasonably request in order to carry out more effectively the intent and purposes of this Participation Agreement and the other Operative Documents and the Overall Transaction, including, without limitation to establish, preserve, protect and perfect the interest of Lessor in the Subject Property and the Lessee Collateral, the Lien of Lessor in the Lessee Collateral and Collateral Agent in the Lessor Collateral and Lessee Collateral, and/or any Participant's rights under this Participation Agreement and the other Operative Documents (including, without limitation, the preparation, execution and filing of any and all UCC Financing Statements (including precautionary financing statements) and other filings or registrations which the parties hereto may from time to time reasonably request to be filed or effected). The Lessee, at its own expense and without the need of any prior request from any other party, shall take such action as may be necessary

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(including any action specified in the preceding sentence), or (if the Lessor shall so request) as so requested, in order to maintain and protect all Liens and security interests provided for hereunder or under any other Operative Document.

Section 16.13. Submission to Jurisdiction. Lessee hereto irrevocably and unconditionally:

(a) submits to the nonexclusive jurisdiction of the state courts of the State of New York and to the nonexclusive general jurisdiction of the United States District Court for the Southern District of New York and of any New York state court sitting in the borough of Manhattan, and appellate courts from any thereof, for the purpose of any suit, action or other proceeding relating to or arising out of this Participation Agreement or any other Operative Documents, or for recognition and enforcement of any judgment in respect thereof; and

(b) consents that any such action or proceedings may be brought to such courts, and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same.

SECTION 16.14. WAIVER OF JURY TRIAL. THE PARTIES HERETO VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS PARTICIPATION AGREEMENT OR ANY OTHER OPERATIVE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY OF THE PARTIES HERETO AND THERETO. THE PARTIES HERETO HEREBY AGREE THAT THEY WILL NOT SEEK TO CONSOLIDATE ANY SUCH LITIGATION WITH ANY OTHER

LITIGATION IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THE PROVISIONS OF THIS SECTION 16.14 HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO AND SHALL BE SUBJECT TO NO EXCEPTIONS. THE LESSEE ACKNOWLEDGES AND AGREES THAT THEY HAVE RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER OPERATIVE DOCUMENT TO WHICH THEY ARE A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTICIPANTS ENTERING INTO THIS PARTICIPATION AGREEMENT AND EACH OTHER OPERATIVE DOCUMENT.

Section 16.15. Confidentiality. Each party hereto shall keep confidential, and shall not disclose, any information not otherwise publicly available it obtains about the Lessee or the books and records of Lessee and each of its Affiliates or relating to the Leased Property, except that such party may disclose such information (i) as required by Applicable Laws, (ii) to its attorneys, auditors, accountants and other professional advisors which have been informed as to the confidential nature of such information, (iii) in connection with the enforcement of the Operative Documents, (iv) to any transferee or potential transferee permitted by the Operative Documents, provided such transferee or potential transferee agrees to the terms of this sentence and (v) to any federal or state banking authority or other regulatory authority having jurisdiction over any Participant or Collateral Agent or any of their respective Affiliates.

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Section 16.16. Limited Liability of Lessor. The parties hereto agree that Lessor shall have no liability whatsoever to Lessee, the Lenders, Collateral Agent or any of their respective successors and assigns or any other Person for any Claim based on or in respect of this Participation Agreement or any of the other Operative Documents or arising in any way from the Overall Transaction; *provided, however*, that Lessor shall be liable: (a) for its own willful misconduct or gross negligence (or negligence in the handling of funds), provided that a default under or, the failure of Lessor to perform any obligation, covenant or agreement in, any Related Agreement or otherwise required by Applicable Law, Governmental Action or third parties with respect to the Subject Property shall not be deemed gross negligence or willful misconduct, (b) any Lessor Lien attributable to it, (c) for liabilities that may result from the inaccuracy or incorrectness of any representation or warranty expressly made by it in Section 8.4 of this Participation Agreement or (d) for the failure of Lessor to perform the covenants and agreements set forth in the Lease and this Participation Agreement.

Section 16.17. Limited Liability of Collateral Agent. The parties hereto agree that Collateral Agent, in its individual capacity, shall have no personal liability whatsoever to Lessee, the Lessor, the Lenders or any of their respective successors and assigns for any Claim based on or in respect of this Participation Agreement or any of the other Operative Documents or arising in any way from the Overall Transaction; *provided, however*, that Collateral Agent shall be liable in its individual capacity: (a) for its own willful misconduct or gross negligence (or negligence in the handling of funds) and, to each Participant for the breach of its obligations to such Participant in respect of the Operative Documents and the Leased Property, (b) for liabilities that may result from the incorrectness of any representation or warranty expressly made by it in this Participation Agreement or from its failure to perform the covenants and agreements set forth in this Participation Agreement or any other Operative Document, or (c) for any Tax based on or measured by any fees, commission or compensation received by it for actions contemplated by the Operative Documents. It is understood and agreed that, except as provided in the preceding proviso, Collateral Agent shall have no personal liability under any of the Operative Documents as a result of acting pursuant to and consistent with any of the Operative Documents.

Section 16.18. Payment of Transaction Expenses and Other Costs

(a) *Transaction Expenses and Continuing Expenses.* Subject to clause (b) below, as and when any portion of Transaction Expenses becomes due and payable, including the continuing fees, expenses and disbursements (including reasonable counsel fees and expenses) of Lessor, as Lessor under the Lease, with respect to the Collateral Agent under the Operative Documents, such Transaction Expenses shall be paid by Lessee as Supplemental Rent.

(b) *Amendments, Supplements and Appraisal.* In accordance with the terms herein applicable to the payment of Transaction Expenses, Lessee agrees to pay to the Participants and Collateral Agent all reasonable costs and expenses (including reasonable legal fees and expenses of one special counsel to the Collateral Agent and one special counsel to Lessor and one special counsel for the Lenders) incurred by any of them in connection with: (i) the considering, evaluating, investigating, negotiating and entering into or giving or withholding of any amendments or supplements or waivers or consents with respect to any Operative Document (other than with respect to amendments, supplements, waivers or consents not requested by

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Lessee); (ii) any Event of Loss or termination of the Lease or any other Operative Document; (iii) the negotiation and documentation of any restructuring or "workout", whether or not consummated, of any Operative Document; (iv) the enforcement of the rights or remedies under the Operative Documents; or (v) any transfer by Lessor or a Lender of any interest in the Operative Documents during the continuance of an Event of Default.

Section 16.19. Reproduction of Documents. This Participation Agreement, all documents constituting an Appendix, Schedule or Exhibit hereto, and all documents relating hereto received by a party hereto, including, without limitation: (a) consents, waivers and modifications that may hereafter be executed; (b) documents received by the Participants in connection with the receipt and/or acquisition of the Leased Property; and (c) financial statements, certificates, and other information previously or hereafter furnished to Lessor, Collateral Agent or any Lender may be reproduced by the party receiving the same by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. Each of the parties hereto agrees and stipulates that, to the extent permitted by law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such party in the regular course of business) and that, to the extent permitted by law, any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 16.19 shall not prohibit the Lessee or any other party hereto from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

Section 16.20. Role of Banc of America Leasing & Capital, LLC. Each party hereto acknowledges hereby that it is aware of the fact that Banc of America Leasing & Capital, LLC has acted and is acting as an "arranger" with respect to the Overall Transaction. The parties hereto acknowledge and agree that Arranger and its Affiliates, including Bank of America, have not made any representations or warranties concerning, and that they have not relied upon Arranger as to, the tax, accounting or legal characterization or validity of (i) the Operative Documents or (ii) any aspect of the Overall Transaction. The parties hereto acknowledge and agree that Arranger has no duties, express or implied, under the Operative Documents in its capacity as Arranger. The parties hereto further agree that Section 5.1, Section 17.6, Section 16.2, the first proviso in the first sentence of Section 16.5, Section 16.18(a) and this Section 16.20 are for the express benefit of Arranger, and Arranger shall be entitled to rely thereon as if it were a party hereto.

Section 16.21. Deliveries to Participants. Lessee may fulfill its obligations hereunder and under each of the other Operative Documents to provide any item (other than any notices) to any Participant or other party hereto by providing sufficient copies of such item directly to the Collateral Agent, with instructions to the Collateral Agent to deliver such item to such Participant.

ARTICLE XVII

THE COLLATERAL AGENT

Section 17.1. Appointment. Each Participant hereby irrevocably designates and appoints the Collateral Agent as the Collateral Agent of such Participant under this Participation Agreement and the other Operative Documents, and each such Participant irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Participation Agreement and the other Operative Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Participation Agreement and the other Operative Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Participation Agreement, the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein and in the other Operative Documents, or any fiduciary relationship with any Participant or any other party to the Operative Documents, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Participation Agreement or any other Operative Document or otherwise exist against the Collateral Agent.

Section 17.2. Delegation of Duties. The Collateral Agent may execute any of its duties under this Participation Agreement and the other Operative Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties.

Section 17.3. Exculpatory Provisions. Except as provided in Section 16.17, neither the Collateral Agent (in its capacity as such) nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Participation Agreement or any other Operative Document, except for its or such Person's own willful misconduct or gross negligence (or negligence in the handling of funds) or (b) responsible in any manner to any of the Participants or any other party to the Operative Documents for any recitals, statements, representations or warranties made by the Lessor or the Lessee or any officer thereof contained in this Participation Agreement or any other Operative Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Participation Agreement or any other Operative Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Participation Agreement or any other Operative Document or for any failure of the Lessor or the Lessee to perform their respective obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to any Participant or any other party to the Operative Documents to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Participation Agreement or any other Operative Document, or to inspect the properties, books or records of the Lessor or the Lessee.

Section 17.4. Reliance by Collateral Agent. The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any Note, Lessor's Interest, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile message, statement, order or other

document or other written communication believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Lessor or the Lessee), independent accountants and other experts selected by the Collateral Agent. The Collateral Agent may deem and treat the payee of any Note or Lessor's Interest as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Collateral Agent, in accordance with the Loan Agreement. The Collateral Agent shall be fully justified in failing or refusing to take any action under this Participation Agreement or any other Operative Document unless it shall first receive the advice or concurrence of the Required Participants and it shall first be indemnified to its satisfaction by the applicable Participants against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Participation Agreement and the other Operative Documents in accordance with a request of the Required Participants, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Participants and all future holders of the applicable Notes or Lessor's Interest. Wherever in the Operative Documents the consent or approval of the Collateral Agent is required, in giving any such consent or approval the Collateral Agent may rely upon, or make its approval subject to, and if the Required Participants provide direction then Collateral Agent shall consent or approve or withhold its consent or approval consistent with, the directions of or consent or approval from the Required Participants.

Section 17.5. Notice of Default. The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Collateral Agent has received notice from a Participant or the Lessor referring to this Participation Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Collateral Agent receives such a notice, the Collateral Agent shall promptly give notice thereof to the Participants, the Lessor and the Lessee. The Collateral Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Required Participants or, except as set forth in Section 5.2 of the Loan Agreement, the Required Lenders; *provided, however*, that unless and until the Collateral Agent shall have received such directions, the Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Participants.

Section 17.6. Non-Reliance on Collateral Agent and Other Participants. Each Participant expressly acknowledges that neither the Collateral Agent, nor the Arranger, nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates, has made any representations or warranties to it and that no act by the Collateral Agent or the Arranger hereinafter taken, including any review of the affairs of the Lessor or the Lessee, shall be deemed to constitute any representation or warranty by the Collateral Agent or the Arranger to any Participant. Each Participant represents to the Collateral Agent and the Arranger that it has, independently and without reliance upon the Collateral Agent, the Arranger or any other Participant, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Lessor and the Lessee and made its own decision to enter

into this Participation Agreement. Each Participant also represents that it will, independently and without reliance upon the Collateral Agent, the Arranger or any other Participant, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Participation Agreement and the other Operative Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Lessor and the Lessee. Except for notices, reports and other documents expressly required to be furnished to the Participants by the Collateral Agent hereunder, neither the Collateral Agent nor the Arranger shall have any duty or responsibility to provide any Participant with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Lessor or the Lessee which may come into the possession of the Collateral Agent, the Arranger or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

Section 17.7. Indemnification. Other than with respect to indemnification provided to the Collateral Agent in accordance with Section 17.4, the Collateral Agent agrees to look solely to the Lessee under Article XIII, and not to any other party hereto, for any claim for indemnification which may arise hereunder or under any other Operative Document.

Section 17.8. Collateral Agent in Its Individual Capacity. Each Participant acknowledges that Wells Fargo Bank Northwest, National Association is acting as Collateral Agent hereunder. Wells Fargo Bank Northwest, National Association and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Lessor, the Lessee and their Affiliates as though it was not the Collateral Agent hereunder and under the other Operative Documents and without notice to or consent of the Participants. Each Participant acknowledges that, pursuant to such activities, Wells Fargo Bank Northwest, National Association or its Affiliates may receive information regarding the Lessee, the Lessor or their respective Affiliates (including information that may be subject to confidentiality obligations in favor of the Lessee, the Lessor or their respective Affiliates) and acknowledges that such Persons shall be under no obligation to provide such information to them.

Section 17.9. Successor Collateral Agent. The Collateral Agent may resign at any time by giving not less than 30 days' prior written notice thereof to the Participants and the Lessee and may be removed at any time with or without cause by the Required Participants. Upon any such resignation or removal, the Required Participants shall have the right to appoint a successor Collateral Agent. If no successor Collateral Agent shall have been so appointed by the Required Participants, and shall have accepted such appointment, within thirty (30) days after the retiring Collateral Agent's giving of notice of resignation or the Required Participants' removal of the retiring Collateral Agent, then the retiring Collateral Agent may, on behalf of the Participants, appoint a successor Collateral Agent, which shall be a commercial bank described in clause (i) or (ii) of the definition of "Eligible Assignee" and having a combined capital and surplus of at least \$150,000,000. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations under this

Participation Agreement. After any retiring Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Article XVII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement. Notwithstanding the foregoing if no Event of Default and no Default, shall have occurred and be continuing, then no successor Collateral Agent shall be appointed under this Section 17.9 without the prior written consent of the Lessee, which consent shall not be unreasonably withheld or delayed.

Section 17.10. Release of Collateral. Collateral Agent and the Participants acknowledge and agree that Lessee shall be a third party beneficiary of Section 6.2 of the Loan Agreement, pursuant to which the Subject Property shall be released from all Liens in favor of the Collateral Agent or any Participant upon Lessee's purchase of the Subject Property in accordance with the Lease.

[END OF PAGE]
[SIGNATURE PAGES FOLLOW]

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

LESSEE: SILICON LABORATORIES INC., as Lessee

By: /s/ Jonathan D. Ivester
Name: Jonathan D. Ivester
Title: Vice President of Worldwide Operations

LESSOR: BAL INVESTMENT & ADVISORY INC.

By: /s/ Sonia T. Delen
Name: Sonia T. Delen
Title: Principal

LENDERS:

COMERICA BANK, as Lender

By: /s/ Charles T. Johnson
Name: Charles T. Johnson
Title: Vice President

HSBC BANK USA, NATIONAL ASSOCIATION, as
Lender

By: /s/ Stewart Kapnick
Name: Stewart Kapnick
Title: Senior Vice President

MIZUHO CORPORATE BANK, LTD., as Lender

By: /s/ Betram Tang
Name: Betram Tang
Title: Senior Vice President & Team Leader

BANK HAPOALIM B.M., as Lender

By: /s/ Shaun Breidbart
Name: Shaun Breidbart
Title: Vice President

By: /s/ Charles McLaughlin
Name: Charles McLaughlin
Title: Senior Vice President

COLLATERAL AGENT:

WELLS FARGO BANK NORTHWEST, NATIONAL
ASSOCIATION, not in its individual capacity,
except as expressly stated herein, but solely
as Collateral Agent

By: /s/ Val T. Orton
Name: Val T. Orton
Title: Vice President

DEFINITIONS

APPENDIX 1
(to Participation Agreement)

LESSOR COMMITMENT

<u>LESSOR</u>	<u>COMMITMENT AMOUNT</u>
BAL Investment & Advisory, Inc.	\$ 9,000,000

SCHEDULE I
(to Participation Agreement)

LENDERS' COMMITMENTS

<u>Lender</u>	<u>Commitment Amounts</u>
Bank Hapoalim B.M.	\$ 5,000,000.00
Comerica	\$ 5,000,000.00
HSBC Bank USA, National Association	\$ 15,250,000.00
Mizuho Corporate Bank, Ltd.	\$ 10,000,000.00
Total Loan Commitments:	\$ 35,250,000.00

SCHEDULE II
(to Participation Agreement)

**NOTICE INFORMATION, PAYMENT OFFICES
AND APPLICABLE LENDING OFFICES**

LESSEE

SILICON LABORATORIES INC.
4635 Boston Lane
Austin, TX 78735
Attention: Corporate Treasurer
Telephone: 512-464-9422
Facsimile: 512-464-9479

With a copy to:

SILICON LABORATORIES INC.
Attention: Chief Financial Officer
4635 Boston Lane
Austin, TX 78735
Telephone: 512-464-9260
Facsimilie: 512-428-1666

SILICON LABORATORIES INC.
Attention: Chief Legal Counsel
4635 Boston Lane
Austin, TX 78735
Telephone: 512-464-9295
Facsimile: 512-428-1504

SILICON LABORATORIES INC.
Attention: Worldwide Facilities Manager
4635 Boston Lane
Austin, TX 78735
Telephone: 512-464-9448
Facsimile: 512-464-9341

Wire Instructions:

Bank Name: Bank of America, N.A.
ABA No.: 0260-0959-3
Account No.: 004797976867
Account Name: Silicon Laboratories Inc.
Swift Code: BOFAUS3N
Reference: 400 West Ceasar Chavez

SCHEDULE III
(to Participation Agreement)

LESSOR

BAL INVESTMENT & ADVISORY, INC.
One Financial Plaza
RI1-537-02-02
Providence, RI 02903
Attention: Cheryl Valcourt SVP-Operations
Telephone: 401-278-7241
Facsimile: 401-278-7207

Wire Instructions:

Bank of America
Concord, Ca
ABA No.: 026-009-593
Account Of: Banc of America Leasing & Capital LLC
Account No. 12334-01992
Reference: Silicon Labs

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COLLATERAL AGENT

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION
299 South Main Street, 12th Floor
Corporate Trust Services
Salt Lake City, Utah 84111
Attention: DeAnn Madsen
Telephone: (801) 246-5809
Facsimile: (801) 246-5053

Wire Instructions:

Wells Fargo Bank, N.A.
ABA No.: 12100248
CR: Corporate Trust Department
A/C.: 0510922115
Re: Silicon Laboratories

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LENDERS

BANK HAPOALIM B. M.

New York Branch
1177 Avenue of the Americas
New York, NY 10036

Credit Contact:

Attention: Sean Breidbart
Telephone: (212) 782-2186
Facsimile: (212) 782-2382

Operations Contact:

Attention: Donna Gindoff
Telephone: (212) 782-2179
Facsimile: (212) 782-2187

Wire Instructions:

Bank: Federal Reserve Bank of New York
ABA No.: 026-008-866
Account No.: 011756-00000
Tax I.D.# 13-2775750
Attention: Commercial Loan Operations
Reference: Silicon Labs

COMERICA BANK

Credit Contacts:

910 Louisiana St, Suite 400
Houston, TX 77002
Attention: Charles T. Johnson
Telephone: (713) 220-5662
Fax: (713) 220-5631

Administrative Contacts:

4100 Spring Valley Road, Suite 400
Dallas, TX 75265-0282
Attention: Pat Britton
Telephone: (972) 361-2598
Fax: (972) 361-2519

Loan Wire Instructions:

Bank: Comerica Bank
ABA No.: 072000096

Account No.: 21585-90010
Account Name: Commercial Loan Servicing
Reference: Silicon Laboratories Inc.
Tax I.D. # 38-0477375

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HSBC BANK USA, NATIONAL ASSOCIATION

Credit Contacts:

425 Fifth Avenue, Tower 5
New York, NY 10018
Attention: Stewart Kapnick
Telephone: (212) 525-5266
Facsimile: (212) 525-8370

Administrative Contact:

One HSBC Center, 29th Floor
Buffalo, New York 14203
Attention: Maria Moncada
Telephone: (212) 525-8786
Facsimile: (212) 525-8370

Wire Instructions:

Bank: HSBC Bank USA, National Association
ABA No.: 021001088
Account No.: 713-006-382
Account Name: AFS Wire Account
Attention: Stewart Kapnick
Reference: Silicon Labs
Tax I.D. # 20-1177241

MIZUHO CORPORATE BANK, LTD.

Credit Contacts:

1251 Avenue of the Americas
New York, NY 10020-1104
Attention: Paulo Ferrera - AVP
Telephone: (212) 282-4390
Facsimile: (212) 282-4488

Administrative Contacts:

1800 Plaza Ten
Harbor Financial Center
Jersey City, NJ 07311
Attention: Noreen Young
Telephone: (202) 626-9341
Facsimile: (202) 626-9941

Secondary

Attention: Bertram Tang - SVP
Telephone: (212) 282-3486
Facsimile: (212) 282-4488

Secondary

Attention: Shirley Wu
Telephone: (202) 626-9416
Facsimile: (202) 626-9941

Wire Instructions:

Bank: Mizuho Corporate Bank, Ltd., New York Branch
Address: 1251 Avenue of the Americas, New York, NY 10020-1104
ABA No.: 026 004 307
Account No.: H79-740-222205
Account Name: LAU-ISA
Attention: Noreen Young
Reference: Banc of America Leasing & Capital / Silicon Laboratories
Tax I.D. # TBD

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CERTAIN FILINGS AND RECORDINGS

1. The Memorandum of Second Amendment to Ground Lease Agreement dated March 30, 2006 between the City of Austin and Computer Sciences Corporation for filing in the appropriate offices of the County of Travis, Texas;
2. The Memorandum of Sixth Amendment to the Master Agreement dated March 30, 2006 between City of Austin and Computer Sciences Corporation for filing in the appropriate offices of the County of Travis, Texas;
3. The Special Warranty Deed dated March 30, 2006 from Computer Sciences Corporation to BAL Investment & Advisory, Inc. for filing in the appropriate offices of the County of Travis, Texas;
4. The Assignment and Assumption of Ground Lease dated March 30, 2006 from Computer Sciences Corporation to BAL Investment & Advisory, Inc. for filing in the appropriate offices of the County of Travis, Texas;
5. The General Assignment dated March 30, 2006 from Computer Sciences Corporation to BAL Investment & Advisory, Inc. for filing in the appropriate offices of the County of Travis, Texas;
6. The Assignment of Leases, Security Deposits and Prepaid Rents dated March 30, 2006 from Computer Sciences Corporation to BAL Investment & Advisory, Inc. for filing in the appropriate offices of the County of Travis, Texas;

7. The Memorandum of Lease, Deed of Trust and Security Agreement dated as of March 30, 2006 between BAL Investment & Advisory, Inc., as Lessor, and Silicon Laboratories Inc., as Lessee for filing in the appropriate offices of the County of Travis, Texas;

8. The Leasehold Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents dated as of March 30, 2006 from BAL Investment & Advisory, Inc., as Lessor, to Gary S. Farmer, as Trustee, the Deed of Trust Trustee named therein, for the benefit of Wells Fargo Bank Northwest, National Association, as Collateral Agent, as beneficiary, with Joinder by Silicon Laboratories Inc. for filing in the appropriate offices of the County of Travis, Texas;

9. The Assignment of Leases and Rents and Security Agreement dated as of March 30, 2006 from BAL Investment & Advisory, Inc., to Wells Fargo Bank Northwest, National Association, as Collateral Agent, with Joinder by Silicon Laboratories Inc. for filing in the appropriate offices of the County of Travis, Texas;

10. The Assignment of Purchase Agreement dated as of March 30, 2006 from Silicon Laboratories Inc. to BAL Investment & Advisory, Inc. for filing in the appropriate offices of the County of Travis, Texas;

SCHEDULE 6.1(s)
(to Participation Agreement)

11. One (1) UCC-1 Financing Statement from the Lessee, as debtor to the Lessor, as secured party (relating to the Lease) for filing with the Secretary of State of the State of Delaware; and

12. One (1) UCC-1 Financing Statement from the Lessor, as debtor to the Collateral Agent, as secured party (relating to the Assignment of Leases and Rents) for filing with the Secretary of State of the State of Delaware.

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DISCLOSURE SCHEDULE

Notwithstanding anything to the contrary contained in Section 8.2(h) of the Participation Agreement, the Lessee hereby acknowledges that it may reclassify approximately \$155 million of variable rate demand notes from "Cash and Cash Equivalents" to "Short-term Investments" and make the related adjustments to the consolidated statement of cash flows.

SCHEDULE 8.2
(to Participation Agreement)

AGREEMENTS TO BE TERMINATED

1. Office Lease dated February 11, 2002 between Seller and Microsoft Corporation.
2. Amended and Restated Underground Tunnel Agreement dated as January 31, 2002 between Seller and the City of Austin, Texas.
3. View Corridor Easement Agreement dated as of February 15, 2000 between the City of Austin, Texas and the Seller.

SCHEDULE 8.2(ff)
(to Participation Agreement)

FORM OF ADVANCE REQUEST

EXHIBIT A
(to Participation Agreement)

FORM OF OPINION OF SPECIAL COUNSEL TO THE PARTICIPANTS

EXHIBIT B-1
(to Participation Agreement)

FORM OF OPINION OF SPECIAL COUNSEL TO LESSEE

EXHIBIT B-2
(to Participation Agreement)

FORM OF ASSIGNMENT OF LEASE AND RENT AND SECURITY AGREEMENT

EXHIBIT C
(to Participation Agreement)

FORM OF RESPONSIBLE OFFICER'S CERTIFICATE OF LESSEE

EXHIBIT D
(to Participation Agreement)

FORM OF ASSIGNMENT AGREEMENT

EXHIBIT F
(to Participation Agreement)

[INTENTIONALLY OMITTED]

EXHIBIT G
(to Participation Agreement)

FORM OF OFFICER'S CERTIFICATE OF LESSEE

EXHIBIT H-1
(to Participation Agreement)

FORM OF OFFICER'S CERTIFICATE OF LESSOR

EXHIBIT H-2
(to Participation Agreement)

FORM OF OFFEREE LETTER

EXHIBIT L
(to Participation Agreement)

FORM OF GROUND LESSOR ESTOPPEL CERTIFICATE

EXHIBIT M
(to Participation Agreement)

**APPENDIX 1
TO
PARTICIPATION AGREEMENT**

DEFINITIONS AND INTERPRETATION

A. *Interpretation.* In each Operative Document, unless a clear contrary intention appears:

- (i) the singular number includes the plural number and *vice versa*;
- (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Operative Documents, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (iii) reference to any gender includes the other gender;
- (iv) reference to any agreement (including any Operative Document), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Operative Documents, and reference to any promissory note includes any promissory note which is an extension or renewal thereof or a substitute or replacement therefor;
- (v) reference to any Applicable Laws means such Applicable Laws as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any Applicable Laws means that provision of such Applicable Laws from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;
- (vi) reference in any Operative Document to any Article, Section, Appendix, Schedule or Exhibit means such Article or Section thereof or Appendix, Schedule or Exhibit thereto;
- (vii) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to an Operative Document as a whole and not to any particular Article, Section or other provision thereof;
- (viii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

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(ix) relative to the determination of any period of time, "from" means "from and including," "to" and "until" each mean "to but excluding;" and

(x) with respect to any rights and obligations of the parties under the Operative Documents, all such rights and obligations shall be construed to the extent permitted by Applicable Law.

B. *Accounting Terms.* In each Operative Document, unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determinations and computations shall be made, and all financial statements required to be delivered thereunder shall be prepared, in accordance with GAAP, applied on a basis consistent (except for changes concurred in by the Lessee's independent public accountants or otherwise required by a change in GAAP) with the most recent audited consolidated financial statements of the Lessee and its Consolidated Subsidiaries delivered to the Participants.

C. *Conflict in Operative Documents.* If there is any conflict between any Operative Documents, such Operative Document shall be interpreted and construed, if possible, so as to avoid or minimize such conflict, but, to the extent (and only to the extent) of such conflict, the Participation Agreement shall prevail and control.

D. *Legal Representation of the Parties.* The Operative Documents were negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring the Operative Document to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

E. *Defined Terms.* Unless a clear contrary intention appears, terms defined herein have the respective indicated meanings when used in each Operative Document.

"Acceleration" is defined in Section 5.2(a)(ii) of the Loan Agreement.

"Advance" means the advance by the Collateral Agent (on behalf of the Lessor) to the Seller to purchase the Subject Property and of funds to pay Transaction Expenses, which shall be Funded by the Participants pursuant to Article III of the Participation Agreement.

"Advance Request" is defined in Section 3.3(a) of the Participation Agreement.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, "control", when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"After Tax Basis" means, with respect to any payment to be received (to the extent the receipt of such payment constitutes taxable income to such recipient), the amount of such payment increased so that, after deduction of the amount of all Taxes (including any Taxes

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payable by reason of inclusion of such amount in income otherwise excluded by the definition of Impositions, and assuming for this purpose that the recipient of such payment is subject to taxation at the highest Federal and applicable state and local marginal rates applicable to such recipient for the year in which such income is taxable) required to be paid by the recipient (less any tax savings, credits, deductions or other quantifiable tax benefits realized, utilizing the same tax rate assumptions as set forth in the immediately preceding parenthetical phrase, and the present value of any tax savings projected, utilizing the same tax rate assumptions as set forth in the immediately preceding parenthetical phrase, to be realized by the recipient as a result of such payment) with respect to the receipt by the recipient of such amounts, such increased payment (as so reduced) is equal to the payment otherwise required to be made.

“*Aggregate Commitment Amount*” means \$44,250,000.

“*ALTA*” means the American Land Title Association.

“*Alternate Base Rate*” means, on any date with respect to any Loan or Lessor Amount, a fluctuating rate of interest per annum equal to the higher of (A) the rate of interest most recently announced by Bank of America at its principal lending office in the United States from time to time as its “prime rate,” which need not be the lowest interest rate charged by Bank of America, and (B) the Federal Funds Effective Rate most recently determined by Bank of America plus .50% per annum. If either of the aforesaid rates or their equivalent changes from time to time after the Closing Date, the Alternate Base Rate shall be automatically increased or decreased, if appropriate and as the case may be, without notice to Lessee or the Lessor, as of the effective time of each change.

“*Applicable Lessor Margin*” means, at any time of determination of the LIBO Rate, 2.00%.

“*Applicable Laws*” at any time means all then existing applicable laws, rules, regulations (including Environmental Laws) statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by any Governmental Authority, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety or the environment (including, without limitation, wetlands)).

“*Applicable Lender Margin*” means, at any time of determination of the LIBO Rate, 0.875%.

“*Applicable Lending Office*” means, for each Participant, the office of such Participant set forth as the Applicable Lending Office for such Participant on Schedule III to the Participation Agreement, or such other office of such Participant (or of an Affiliate of such Participant) as such Participant may from time to time specify to the Collateral Agent and Lessee by written notice as the office from which its Loans or Lessor Amount, as applicable, accruing Interest or Yield, as applicable, at the LIBO Rate (Reserve Adjusted) are made available and maintained.

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“*Appraisal*” means the “Appraisal” as defined in Section 6.1(j) of the Participation Agreement.

“*Appraiser*” means the AEGIS Group, Inc. or any independent MAI appraiser selected by the Collateral Agent.

“*Appurtenant Rights*” means, with respect to the Land, (i) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, and other rights and benefits at any time belonging or pertaining to the Land or the Improvements thereon, including, without limitation, the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to the Land and (ii) all permits, licenses and rights, whether or not of record, appurtenant to the Land.

“*Arrangement Fee Letter*” means that certain letter agreement dated February 28, 2006, between Arranger and Lessee.

“*Arranger*” means Banc of America Leasing & Capital, LLC.

“*Assignee*” is defined in the caption of the Assignment of Leases and Rents to mean the Collateral Agent.

“*Assignment Agreement*” means an Assignment Agreement, substantially in the form of Exhibit F to the Participation Agreement, as amended or modified from time to time.

“*Assignment of Ground Lease*” means the Assignment and Assumption of Ground Lease dated as of March 30, 2006 from the Seller to Lessor.

“*Assignment of Related Agreements*” means the General Assignment in the form of Exhibit M to the Purchase Agreement dated as of March 30, 2006 and executed by Seller and Lessor.

“*Assignment of Leases and Rents*” means the Assignment of Leases and Rents and Security Agreement dated as of March 30, 2006 from Lessor to Collateral Agent, as amended, modified or other supplemented from time to time.

“*Assignment of Purchase Agreement*” means the Assignment of Purchase Agreement dated as of March 30, 2006 between the Lessee and the Lessor.

“*Assignment of Subleases*” means the Assignment of Leases, Security Deposits and Prepaid Rents in the form of Exhibit L to the Purchase Agreement dated as of March 30, 2006 and executed by Seller and Lessor.

“*Assignor*” is defined in the caption of the Security Agreement to mean the Lessor.

“*Authorized Officer*” means any officer of Lessor who shall be duly authorized to execute the Operative Documents.

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“*Bank of America*” means Bank of America, National Association.

“*Bankruptcy Code*” means the Bankruptcy Reform Act of 1978, as amended.

“*Basic Rent*” means, for any Payment Date on which Basic Rent is due, an amount equal to the sum of the aggregate amount of Interest and Yield payable under the Operative Documents on such date on the Notes and the Lessor Amount in respect of the applicable Interest Period.

“*Benefited Lender*” is defined in Section 8.6 of the Loan Agreement.

“*Benefited Participant*” is defined in Section 5.4 of the Participation Agreement.

“*Borrower*” means Lessor, in its capacity as borrower under the Loan Agreement.

“*Break Costs*” means an amount equal to the amount, if any, required to compensate Lessor or any Lender for any additional losses (including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or funds acquired by Lessor or any Lender to fund its obligations under the Operative Documents) it may reasonably incur as a result of (x) the Lessee’s payment of Basic Rent other than on a Payment Date, (y) the Advance not being made on the date specified therefor in the Advance Request (other than as a result of a breach by Lessor or such Lender, as the case may be, of its obligation under Section 3.1 of the Participation Agreement to make the Advance to the Lessee or make Lessor Amount or Loans available to the Lessor) or (z) any conversion of the LIBO Rate during an Interest Period pursuant to and in accordance with the Operative Documents. A statement as to the amount of such loss, cost or expense, prepared in good faith and in reasonable detail and submitted by Lessor or any Lender, as the case may be, to the Lessee, shall be presumed correct absent demonstrable error.

“*Business Day*” means (i) each Monday, Tuesday, Wednesday, Thursday and Friday, which is not a day on which banks in New York, New York, Austin, Texas, Salt Lake City, Utah or Providence, Rhode Island are generally authorized or obligated, by law or executive order, to close and (ii) in connection with the LIBO Rate, any day which is a Business Day under clause (i) and is also a day on which dealings in Dollars are carried on in the London interbank eurodollar market.

“*Bylaws*” means all written bylaws, rules, regulations and all other documents relating to the management, governance or internal regulation of any Person other than an individual or interpretive of the Charter of such Person, all as from time to time in effect.

“*Capitalized Leases*” means, in the case of any Person, (a) all leases that have been, should be or are expected to be recorded as capital leases on a balance sheet of such Person in accordance with GAAP, and (b) the principal balance outstanding under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off balance sheet financing transaction where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP.

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“*Cash*” means the sum of (i) cash and cash equivalents, plus (ii) short-term investments as stated on Lessee’s financial statements rated at least A/A2 by S&P and Moody’s, respectively, that are included as current assets in the Lessee’s financial statements prepared in accordance with GAAP, in each case, which are not subject to any Lien of any kind.

“*Casualty*” means an event of damage or destruction relating to all or any portion of the Leased Property.

“*CERCLA*” means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“*Certificate of Deposit Rate*” means the highest rate of return for certificates of deposit issued by Bank of America and having a maturity of one month.

“*Change in Law*” means any change or proposed change in or any introduction of or interpretation (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) after the Closing Date of Applicable Law or any regulations, policies, directives or guidelines issued by any governmental body, central bank or other fiscal or monetary or accounting authority or other national, international, state or local organization which purports to regulate or otherwise affects a Participant.

“*Charter*” means the articles of organization, certificate of incorporation, statute, constitution, joint venture agreement, partnership agreement, trust indenture, limited liability company agreement or other charter document of any Person other than an individual, each as from time to time in effect.

“*City of Austin*” means the City of Austin, Texas, a home rule city and municipal corporation.

“*Claims*” means any and all obligations, liabilities, losses, actions, suits, judgments, penalties, fines, claims, demands, settlements, costs and expenses (including, without limitation, reasonable legal fees and expenses) of any nature whatsoever; *provided, however*, “*Claims*” shall not include Taxes.

“*Closing Date*” is defined in Section 2.1 of the Participation Agreement.

“*Code*” means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time, or any successor statute thereto.

“*Collateral Agent*” means Wells Fargo Bank Northwest, National Association, in its capacity as Collateral Agent, or any successor Collateral Agent designated in accordance with the Operative Documents.

“*Collateral Agent Fee Letter*” means the fee letter dated March 30, 2006, between Lessee and Collateral Agent.

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“Commitment” means (i) as to any Lender, its Loan Commitment, and (ii) as to Lessor, its Lessor Commitment.

“Condemnation” means any condemnation, requisition, confiscation, seizure or other taking or sale of the use or title to the Subject Property or any part thereof (temporarily or permanently) in, by or on account of any eminent domain proceeding or other action by any Governmental Authority under the power of eminent domain or otherwise or any transfer in lieu of or in anticipation thereof. A Condemnation shall be deemed to have “occurred” on the earliest of the dates that use or title is taken or transferred.

“Consolidated” means, with respect to any Person’s accounts, the accounts of the Person and all of its Subsidiaries, or such of its Subsidiaries as may be specified, consolidated (or combined) in accordance with GAAP.

“Credit Exposure” means (i) in the case of a Participant that is the Lessor, the outstanding amount of the Lessor Amount owed to the Lessor, and (ii) in the case of a Participant that is a Lender, the aggregate outstanding amount of Loans made by such Lender.

“Deed” is defined in Section 6.1(o) of the Participation Agreement.

“Deed of Trust” means the Leasehold Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents dated as of March 30, 2006, from Lessor in favor of the Deed of Trust Trustee for the benefit of Collateral Agent.

“Deed of Trust Trustee” means Gary S. Farmer, together with his successor in trust pursuant to the Deed of Trust.

“Default” means any condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

“Dollars” and “\$” mean dollars in lawful currency of the United States of America.

“Early Termination Option” means the Lessee’s option to purchase the Subject Property in accordance with the provisions of Section 18.1 of the Lease.

“EBITDAR” means, for any period, the sum of (a) Net Income for such period (excluding the effect of any extraordinary gains), plus (b) an amount which, in the determination of Net Income for such period, has been deducted for (i) Interest Expense for such period, and (ii) total federal, state and other income taxes for such period, and (iii) all depreciation and amortization for such period, and (iv) total expenses associated with the non-cash portion of all employee bonus plans for such period, and (v) stock compensation expense in connection with stock options or stock awards, and (vi) write-offs of in-process or acquired research and development costs, and (vii) impairment charges related to intangible assets, and (viii) impairment of tangible assets other than investments, and (ix) restructuring charges (other than cash costs relating to such charges), and (x) Lease Expense for such period, all as determined in accordance with GAAP.

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“EDGAR” means the SEC’s Electronic Data Gathering, Analysis and Retrieval System or any successor system.

“Eligible Assignee” means (i) a commercial bank organized under the laws of the United States, or any State thereof; (ii) a commercial bank organized under the laws of any other country that is a member of the OECD or has concluded special lending arrangements with the International Monetary Fund associated with its general arrangements to borrow, or a political subdivision of any such country, *provided* that such bank is acting through a branch or agency located in the United States; (iii) a finance company, leasing company or other financial institution or fund (whether a corporation, partnership or other entity) primarily engaged in making, purchasing or otherwise investing in commercial loans or lease transactions in the ordinary course of its business; (iv) the central bank of any country that is a member of the OECD; or (v) any Affiliate of any Participant; *provided, however*, that any such Person described in clause (i), (ii), (iii), (iv) or (v) above shall have, or be a subsidiary of an entity (and such entity shall guarantee such subsidiary’s obligations under the Operative Documents) that has, a combined capital and surplus (as established in its most recent report of condition to its primary regulator) of not less than \$75,000,000 (or its equivalent in foreign currency).

“Environmental Audit” means a Phase One environmental site assessment (the scope and performance of which meets or exceeds ASTM Standard Practice E1527-00 Standard Practice for Environmental Site Assessments: Phase One Environmental Site Assessment Process) of the Land.

“Environmental Claims” is defined in Section 13.6 of the Participation Agreement.

“Environmental Laws” means any and all applicable federal, state and local statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, injunctions, permits, concessions, grants, licenses, agreements and other governmental restrictions relating to the environment, the effect of the environment on human health or to emissions, discharges or releases of pollutants, contaminants, Hazardous Substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, Hazardous Substances or wastes or the clean-up or other remediation thereof in effect in any jurisdiction in which the Lessee is conducting or have conducted business or where the Subject Property is located.

“Environmental Violation” means, with respect to the Subject Property, any activity, occurrence or condition that violates or results in non-compliance with any Environmental Law.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder, each as in effect and amended and modified from time to time.

“ERISA Event” means (a) a Reportable Event with respect to a Plan; (b) a withdrawal by an ERISA Group Person from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation

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of operations which is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by an ERISA Group Person from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing, of a notice of intent to terminate under Section 4041(c) of ERISA, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan; (e) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon an ERISA Group Person.

“*ERISA Group*” means the Lessee and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Lessee, are treated as a single employer under Section 414 of the Internal Revenue Code.

“*Escrow*” is defined in Section 3 of the Purchase Agreement.

“*Escrow Agent*” means Heritage Title Insurance Company of Austin, Inc.

“*Estoppel Certificate*” means the Ground Lessor Estoppel Certificate dated the Closing Date and executed by the City of Austin in the form of Exhibit M to the Participation Agreement.

“*Event of Default*” is defined at Section 16.1 of the Lease.

“*Event of Loss*” means any Significant Casualty or Significant Condemnation.

“*Excepted Payments*” means:

(a) all indemnity payments (including indemnity payments made pursuant to Article XIII of the Participation Agreement) to which any Participant or any of their respective Affiliates, agents, officers, directors or employees is entitled pursuant to the Operative Documents;

(b) any amounts (other than Basic Rent or amounts payable by Lessee pursuant to Section 15.2 or Articles XVI, XVIII, XIX or XX of the Lease) payable under any Operative Document to reimburse the Lessor or any of its respective Affiliates (including the reasonable expenses of the Lessor or such Affiliates incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any Operative Document;

(c) any amount payable to any Participant by any transferee permitted under the Operative Documents of the interest of any Participant as the purchase price of the Participant’s interest (or a portion thereof);

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(d) any insurance proceeds (or payments with respect to self-insured risks or policy deductibles) under liability policies, other than such proceeds or payments payable to any Participant or Collateral Agent;

(e) any insurance proceeds under policies maintained by the Collateral Agent or any Participant in accordance with Section 13.4 of the Lease;

(f) Transaction Expenses, Contingent Rent or Fees paid or payable to or for the benefit of the Collateral Agent, Arranger or any Participant;

(g) all right, title and interest of the Lessor to the Subject Property or any portion thereof or any other property to the extent any of the foregoing has been released from the Liens of the Security Instruments following the payment of the Lease Balance; and

(h) any payments in respect of interest to the extent attributable to payments referred to in clauses (a) through (g) above.

“*Excess Sales Proceeds*” means proceeds received upon a sale of any or all of the Subject Property in excess of the amounts required to pay the Lease Balance and other amounts then due and owing under the Participation Agreement and the other Operative Documents.

“*Exchange Act*” means the Securities Exchange Act of 1934, and the regulations promulgated thereunder, in each case as amended from time to time.

“*Expiration Date*” means the date which is eighty-four (84) months after the Closing Date.

“*Extended Remarketing Period*” is defined in Section 20.3 of the Lease.

“*Facility*” means (i) the six story, approximately 220,000 square foot, office and retail building located at 400 W. Cesar Chavez in Austin, Texas, (ii) the other Improvements and (iii) the Appurtenant Rights.

“*Fair Market Value*” means with respect to the Subject Property or any portion thereof, as of the date of the determination, the amount (which in any event shall not be less than zero) as determined by an independent MAI appraiser chosen by the Collateral Agent (at the direction of the Lessor) and reasonably acceptable to Lessee that would be paid in an arm’s-length transaction between an informed and willing buyer (other than a buyer currently in possession) and an informed and willing seller, neither of whom is under any compulsion to buy or sell, and neither of which is related to Lessor, Collateral Agent, Lessee or any Affiliate thereof, for the purchase of the Subject Property or such portion thereof, as applicable. Such Fair Market Value shall be calculated assuming that the Leased Property is in the condition and state of repair required to be maintained by the terms of the Lease (unless such Fair Market Value is being determined for purposes of evaluating the items described in the End of Term Indemnity in Section 13.2 of the Participation Agreement, in which case this assumption shall not be made).

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“*FASB Statement No. 13*” means Statement of Financial Accounting Standards No. 13, Accounting for Leases, of the Financial Accounting Standards Board or any applicable successor provision or regulating body for purposes of establishing standards of financial accounting and reporting for Leases by Lessees.

“*Federal Funds Effective Rate*” means, for any day, the rate set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Federal Reserve Bank of New York (including any such successor, “H.15(519)”) on the preceding Business Day opposite the caption “Federal Funds (Effective)”; or, if for any relevant day such rate is not so published on any such preceding Business Day, the rate for such day will be the arithmetic mean as determined by the Collateral Agent, of the rate for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that day by each of three leading brokers of Federal funds transactions in New York City selected by Collateral Agent.

“*Fee Letters*” means, collectively, the Arrangement Fee Letter and the Collateral Agent Fee Letter.

“*Fees*” is defined in Section 4.5 of the Participation Agreement.

“*Financial Officer*” means the Lessee’s chief executive officer, chief financial officer, chief operating officer, controller, assistant treasurer, president, treasurer or any of its vice presidents whose primary responsibility is for its financial affairs, all of whose incumbency and signatures have been certified to the Participants by the secretary or other appropriate attesting officer of the Lessee.

“*Funded Debt*” means any of the following items:

- (a) borrowed money;
- (b) Capitalized Lease obligations;
- (c) all scheduled payment obligations under any operating lease having a term of greater than one year;
- (d) reimbursement obligations, whether contingent or matured, with respect to letters of credit, bankers acceptances, other financial guarantees and interest rate protection agreements (without duplication of other Funded Debt supported or guaranteed thereby); and
- (e) all Guarantees in respect of Funded Debt of the type described in clauses (a) through (d) above.

“*FIRREA*” means the Financial Institution Reform, Recovery and Enforcement Act of 1989, as amended, and all regulations promulgated pursuant thereto.

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“*F.R.S. Board*” means the Board of Governors of the Federal Reserve System or any successor thereto.

“*Fund*,” “*Funded*” or “*Funding*” means each funding by a Participant of a portion of the principal under its Note or a portion of its Lessor Amount (as the case may be) constituting a portion of the Advance as described in Article III of the Participation Agreement.

“*Funding Indemnity Letter*” is defined in Section 6.1(e) of the Participation Agreement.

“*GAAP*” means United States generally accepted accounting principles (including principles of consolidation), in effect from time to time.

“*General Indemnitee*” or “*Tax Indemnitee*” means each Lender, the Lessor, the Collateral Agent (in its individual capacity and as agent), the Arranger, any additional, separate or co-trustee or co-agent appointed in accordance with the terms of the Participation Agreement and the respective Affiliates, successors, permitted assigns, permitted transferees, employees, officers, directors, shareholders, partners, participants, representatives and agents of each of the foregoing Persons; *provided, however*, that in no event shall Lessee or any of its Affiliates be a General Indemnitee or Tax Indemnitee.

“*Governmental Action*” means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Applicable Laws, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use and operation of the Subject Property.

“*Governmental Authority*” means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, the City of Austin, Texas (each, an “*Authority*”), and having jurisdiction over the Subject Property, the Lessee or any Indemnitee or the Operative Documents, as applicable; *provided, however*, with respect to Impositions and Tax indemnification obligations, the term “*Governmental Authority*” shall not include any Authority of a jurisdiction outside of the United States of America.

“*Grossed-Up Basis*” is defined in Section 13.4(c)(ii) of the Participation Agreement.

“*Gross Proceeds*” means the gross proceeds realized from the sale of the Subject Property pursuant to Article XX of the Lease (*i.e.*, without deductions for any marketing, closing, sales or other costs, taxes, expenses, fees, prorations or commissions).

“*Ground Lease*” means the Ground Lease Agreement dated as of February 15, 2000 between Seller, as ground lessee and the Ground Lessor, as the same has been and may be amended, modified or supplemented from time to time.

“*Ground Lessor*” means the City of Austin.

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“*Guarantee*” means, with respect to a specified Person:

- (a) any guarantee by the specified Person of the payment of any Funded Debt of any primary obligor;
- (b) any other arrangement whereby credit is extended to a primary obligor on the basis of any obligation of the specified Person to a creditor or prospective creditor of such primary obligor, to pay the Funded Debt of such primary obligor; and
- (c) reimbursement obligations, whether contingent or matured, of the specified Person with respect to letters of credit, bankers acceptances, other financial guarantees and interest rate protection agreements;

in each case whether or not any of the foregoing are reflected on the balance sheet of the specified Person or in a footnote thereto.

“*Hazardous Substances*” means any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics to the extent such substance is regulated under applicable Environmental Laws.

“*Highest Lawful Rate*” is defined in Section 4.6(b) of the Participation Agreement.

“*Impositions*” means any and all liabilities, losses, expenses and costs of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever and imposed by a Governmental Authority (“*Taxes*”) (including (i) real property taxes and personal property taxes on any property covered by the Lease that is classified by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes; (iii) any excise taxes; (iv) real estate transfer taxes, conveyance taxes, mortgage taxes, intangible taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added, gross receipts, privilege and doing business taxes, license and registration fees; and (vi) assessments on the Land, including all assessments for public improvements or benefits, whether or not such improvements are commenced or completed within the Term), and in each case all interest, additions to tax and penalties thereon, which at any time may be levied, assessed or imposed by a Governmental Authority upon or with respect to (a) any Tax Indemnitee, the Subject Property or any part thereof or interest therein, or the Lessee or any sublessee or user of the Subject Property; (b) the financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, servicing, maintenance, repair, ownership, possession, purchase, rental, lease, activity conducted on, delivery, insuring, use, operation, improvement, transfer, return or other disposition of the Subject Property or any part thereof or interest therein; (c) the Notes or Lessor’s Interest or other indebtedness with respect to the Subject Property or any part thereof or interest therein or transfer thereof; (d) the rentals, receipts or earnings arising from the Subject Property or any part thereof or interest therein; (e) the Operative Documents or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to the Subject Property or any part thereof or

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interest therein upon the sale or disposition thereof; (g) any contract relating to the construction, acquisition or delivery of the Subject Property or any part thereof or interest therein; (h) the issuance of the Notes and Lessor’s Interest; or (i) otherwise in connection with the Overall Transaction.

Notwithstanding anything in the first paragraph of this definition (except as provided in the final paragraph of this definition) the term “*Impositions*” shall not mean or include:

- (i) Taxes and impositions imposed upon a Tax Indemnitee (other than Taxes that are, or are in the nature of, sales, use, value added, rental, transfer, property or ad valorem taxes with respect to the Subject Property or any transfer thereof) that are imposed by any Governmental Authority and that are based upon or measured by the gross or net income or gross or net receipts (including, without limitation, any minimum taxes, income or capital gains taxes, or taxes on, measured by, with respect to, or in the nature of capital, net worth, excess profits, items of tax preference, capital stock, franchise, business privilege or doing business taxes or any taxes in the nature of an intangibles tax, an ad valorem tax or property tax imposed on a Participant, Subparticipant, or any holder of a Note or Lessor’s Interest by reason of owning or holding a Note or Lessor’s Interest); *provided* that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if the payment is otherwise required to be so made; *provided further* that this clause (i) shall not apply to Taxes and Impositions imposed on a Tax Indemnitee as a result of Lessee’s activities or the location of the Subject Property in the jurisdiction imposing such Taxes or Impositions;
- (ii) any Tax or imposition to the extent, but only to such extent, it relates to any act, event or omission that occurs, or relates to a period, after the termination of the Lease (but not any Tax or imposition to the extent, but only to such extent, that it relates to any period prior to the termination of the Lease with respect to the Subject Property to which such Tax or Imposition relates);
- (iii) any Tax or imposition for so long as, but only for so long as, it is being contested in accordance with the provisions of Section 13.4(b) of the Participation Agreement, *provided* that the foregoing shall not limit the Lessee’s obligation under Section 13.4(b) of the Participation Agreement to advance to such Tax Indemnitee amounts with respect to Taxes or impositions that are being contested in accordance with Section 13.4(b) of the Participation Agreement or any expenses incurred by such Tax Indemnitee in connection with such contest;
- (iv) any Taxes or impositions imposed upon a Tax Indemnitee with respect to any transfer, sale, financing or other disposition of any interest in the Subject Property or any part thereof, or any interest therein or any interest or obligation under the Operative Documents or any Note or Lessor’s Interest, or from any sale, assignment, transfer or other disposition of any interest in a Tax Indemnitee or any Affiliate thereof, (other than any transfer in connection with (1) the exercise by the Lessee of its Early Termination Option or any termination option or other purchase of the Subject Property by the Lessee or the exercise by Lessee of the Sale Option, (2) the occurrence of an Event of Default,

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(3) a Casualty or Condemnation affecting the Leased Property or (4) any assignment, sublease, modification or addition of or to the Leased Property by the Lessee);

(v) any Taxes or impositions imposed on a Tax Indemnitee to the extent such Tax Indemnitee actually receives a credit (or otherwise has a reduction in a liability for Taxes) in respect thereof against Taxes that are not indemnified under the Participation Agreement (but only to the extent such credit is not taken into account in calculating the indemnity payment on an After Tax Basis);

(vi) any Taxes imposed against or payable by a Tax Indemnitee resulting from, or that would not have been imposed but for, the gross negligence or willful misconduct of such Tax Indemnitee or its Affiliates, provided that a default under, or the failure of Lessor to perform any obligation, covenant or agreement in, any Related Agreement or otherwise required by Applicable Law, Governmental Action or third parties with respect to the Subject Property shall not be deemed gross negligence or willful misconduct;

(vii) Taxes imposed on or payable by a Tax Indemnitee to the extent such Taxes would not have been imposed but for a breach by such Tax Indemnitee or any Affiliate thereof of any representations, warranties contained in Section 8.1 or 8.4 of the Participation Agreement or covenants set forth in the Participation Agreement or the Lease (unless such breach is caused by the Lessee's breach of its representations, warranties or covenants set forth in the Operative Documents);

(viii) Taxes to the extent resulting from a Tax Indemnitee's failure to comply with the provisions of Section 13.4(b) of the Participation Agreement, which failure precludes the ability to conduct a contest pursuant to Section 13.4(b) of the Participation Agreement (unless such failure is caused by the Lessee's breach of its obligations);

(ix) [Intentionally Omitted];

(x) Taxes imposed on or with respect to or payable as a result of activities of a Tax Indemnitee unrelated to the Overall Transaction;

(xi) any interest, additions to tax or penalties imposed on an Indemnitee as a result of such Indemnitee's or an Affiliate's failure to file any return or other documents provided to it pursuant to Section 13.4(d) of the Participation Agreement on a timely basis; provided that this clause (xi) shall not apply if such interest or penalties arise as a result of a position taken (or requested to be taken) by the Lessee in a contest controlled by the Lessee under Section 13.4(b) of the Participation Agreement;

(xii) Taxes imposed on or with respect to or payable by an Indemnitee resulting directly from, or that would not have been imposed but for the existence of, any Lessor Lien created by or through such Indemnitee or an Affiliate thereof, unless caused by acts or omissions of Lessee;

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(xiii) any Tax imposed against or payable by an Indemnitee that is a transferee from another Indemnitee to the extent that, under the law in effect on the date of transfer, the amount of such Tax exceeds the amount of such Tax that would have been imposed against or payable by the transferor; *provided, however*, that this exclusion (xiii) shall not apply to any transferee that acquires its interest while an Event of Default is continuing; and

(xiv) Taxes imposed on or with respect to or payable by an Indemnitee that would not have been imposed but for an amendment, supplement, modification, consent or waiver to any Operative Document not initiated, requested or consented to by Lessee unless such amendment, supplement, modification, consent or waiver (1) arises due to, or in connection with there having occurred, an Event of Default or (2) is required by the terms of the Operative Documents or is executed in connection with any amendment to the Operative Documents required by law.

Notwithstanding the foregoing, the exclusions from the definition of "Impositions" set forth in clauses (i), (ii), (iv) and (x) shall not apply (but the other exclusions shall apply) to any Taxes or any increase in Taxes imposed on a Tax Indemnitee net of any decrease in Taxes realized by such Tax Indemnitee, to the extent that such tax increase or decrease would not have occurred if on the Closing Date the Participants had advanced funds to the Lessee in the form of a loan secured by the Subject Property in an amount equal to the amount Funded on the Closing Date, with debt service for such loan equal to the Basic Rent payable on each Payment Date and a principal balance at the maturity of such loan in an amount equal to the then outstanding amount of the Loans and Lessor Amount at the end of the Term of the Lease.

"Improvements" means all buildings, structures, facilities, fixtures, tunnels, parking areas, garages and lots, plaza, common areas and other improvements of every kind existing at any time and from time to time on or under the Land and within any easements for offsite improvements benefiting the Land, including, without limitation, related attached heating, electrical, switch gear, uninterrupted power supply, and mechanical equipment, lighting, switchboards, plumbing, ventilation, air conditioning and air-cooling apparatus, refrigerating and incinerating equipment, escalators, generators, elevators, loading and unloading equipment and systems, communications systems (including satellite dishes and antennae), sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, fittings, fixtures, HVAC and other building systems attached to any buildings or improvements presently existing on the Land or to the Subject Property, and including all modifications and other additions to or changes in the Improvements at any time.

"Indemnitee" means any General Indemnitee or a Tax Indemnitee, as applicable.

"Industry Standards" means the latest edition or revision of all industry codes, standards or regulations (hereinafter referred to collectively in this definition as "codes") applicable to the operation, use, maintenance, repair or modification of the Subject Property or any portion thereof, as such codes may be changed from time to time.

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"Insolvency Event" means an event described in Section 16.1(g) of the Lease.

"Inspecting Parties" is defined in Section 4.2(a) of the Lease.

“*Insurance Requirements*” means all terms and conditions of any insurance policy required by Article XIII of the Lease to be maintained by the Lessee.

“*Interest*” means the interest accruing on the Loans as computed and payable in accordance with the terms of the Loan Agreement and the Participation Agreement.

“*Interest Expense*” means, for any period, total interest expense (including the interest component of any Capitalized Leases) of the Lessee, determined in accordance with GAAP.

“*Interest Period*” means with respect to any Loan or Lessor Amount bearing Interest or Yield, respectively, by reference to the LIBO Rate or the Alternate Base Rate, initially the period commencing on (and including) the Closing Date and ending on (but excluding) the next succeeding Payment Date thereafter, and thereafter each period commencing on (and including) a Payment Date and ending on (but excluding) the next succeeding Payment Date.

“*Interest Rate*” means (i) with respect to any Loan, for each Interest Period, a rate per annum equal to the LIBO Rate plus the Applicable Lender Margin, and (ii) with respect to any Loan at any time that any Lender shall not have received two (2) Business Days advance notice of the Advance Request or sale or funding or the provisions of Section 15.1 or Section 15.2 of the Participation Agreement shall apply, the Alternate Base Rate until the date which is three (3) Business Days after such Lender has received such notice or Section 15.1 or Section 15.2 of the Participation Agreement shall not apply, as the case may be.

“*Investment Company Act*” means the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.

“*Land*” means the approximately 1.773 acres of real property in Austin, Texas described on Exhibit A to the Lease, and the Appurtenant Rights.

“*Lease*” means the Lease, Deed of Trust and Security Agreement dated as of March 30, 2006, among the Lessor, the Lessee and the Deed of Trust Trustee, as amended, supplemented or modified from time to time.

“*Lease Balance*” means, as of any date of determination, an amount equal to the sum, without duplication, of the Loan Balance and the Lessor Balance and all other amounts owing by the Lessee under the Operative Documents (including, without limitation, accrued and unpaid Rent).

“*Lease Expense*” means, for any period, total lease expense under all operating and capital leases of the Lessee, determined in accordance with GAAP.

“*Leased Property*” means the Subject Property, but excluding (i) any Improvements owned by the sublessee (or its successors, assigns or sublessees) under the Schneider Lease or the Retail Sublease, (ii) the Schneider Building and the portion of the Land on which the Schneider Building is located and (iii) the portion of the ground floor of the Facility that is subject to the Retail Sublease.

“*Leased Property Records*” means those maintenance and other records relating to the maintenance and operation of the Leased Property in the possession of Lessee.

“*Lenders*” means the financial institutions party to the Loan Agreement and the Participation Agreement and listed as Lenders on the signature pages thereto and their permitted successors and assigns.

“*Lenders’ Policy*” is defined in Section 6.1(r) of the Participation Agreement.

“*Lessee*” means Silicon Laboratories, Inc., a Delaware corporation, together with its permitted successors and assigns, in its capacities as Lessee under the Lease.

“*Lessee Collateral*” is defined in Section 24.2 of the Lease.

“*Lessee Improvement*” is defined in Section 10.2(b) of the Lease.

“*Lessee Interest Rate*” means the Certificate of Deposit Rate for the Interest Period commencing as of the Closing Date.

“*Lessor*” means BAL Investment & Advisory, Inc., a Delaware corporation.

“*Lessor Amount*” means, with respect to Lessor as of any date of determination, the aggregate amount advanced by Lessor from its Lessor Commitment pursuant to Section 3.1 of the Participation Agreement, net of any distributions (other than distributions of Yield) with respect thereto, in an aggregate principal amount, with respect to Lessor, not to exceed Lessor’s Commitment.

“*Lessor Balance*” means as of any date of determination an amount equal to the sum of the outstanding Lessor Amount of Lessor, together with all accrued and unpaid Yield thereon.

“*Lessor Collateral*” is defined in Section 2 of the Security Agreement.

“*Lessor Commitment*” means the Commitment of the Lessor to make available funds in an aggregate principal amount not to exceed the amount set forth on Schedule I of the Participation Agreement, as revised pursuant to Article XI or Article XII of the Participation Agreement.

“*Lessor Lien*” means any Lien, true lease or sublease or disposition or other transfer of title to or any interest in the Leased Property or rights in the Operative Documents arising as a result of (a) any claim against the Collateral Agent or any Participant not resulting from the

Overall Transaction or otherwise contemplated by the Operative Documents, (b) any act or omission of the Collateral Agent or any Participant which is not required or permitted by the Operative Documents or is in violation of any of the terms of the Operative Documents, (c) any claim against the Collateral Agent or any Participant with respect to Taxes or Transaction Expenses against which Lessee is not required to indemnify or has indemnified the Collateral Agent or any Participant, in its individual capacity, pursuant to Article XIII of the Participation Agreement, (d) any claim against the Lessor or the Collateral Agent arising out of any transfer by the Lessor or the Collateral Agent of all or any portion of the interest of the Lessor or the Collateral Agent in the Subject Property or the Operative Documents other than the transfer of title to or possession of the Subject Property by the Lessor pursuant to and in accordance with the Lease or the other Operative Documents or pursuant to the exercise of the remedies set forth in the Operative Documents, or (e) any claim against any Participant arising out of any transfer by such Participant of any Note or Lessor's Interest, or any interest therein, other than in accordance with the Participation Agreement and, in the case of a transfer of any Note, the Loan Agreement, in all cases, excluding, all rights, title and interest of the other parties under the Related Agreements and any Liens created or suffered to exist by such parties.

"*Lessor Marketing Costs*" means all Marketing Costs incurred by Collateral Agent or Lessor in an aggregate amount not to exceed \$50,000.

"*Lessor's Interest*" means all rights and interests of Lessor in the Subject Property, the Operative Documents, the Lessor Amount and the Excepted Payments.

"*LIBO Rate*" means with respect to any Interest Period at any time, the applicable London interbank offered rate per annum for deposits in Dollars appearing on Bloomberg LIBO Page as of 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, and having a maturity approximately equal to such Interest Period; or if no London interbank offered rate of such maturity then appears on Bloomberg LIBO Page, then the rate equal to the London interbank offered rate per annum for deposits in Dollars maturing immediately before or immediately after such maturity, whichever is higher, as determined by the Collateral Agent from Bloomberg LIBO Page; or if Bloomberg LIBO Page is not available, the applicable LIBO Rate for the relevant Interest Period shall be the rate per annum determined by the Collateral Agent to be the arithmetic average of the rates at which Bank of America offers to place deposits in Dollars with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, in the approximate amount of Bank of America's or its Affiliate's relevant portion of the aggregate outstanding principal amount of the Notes and Lessor Amount and having a maturity approximately equal to such Interest Period.

"*LIBO Rate (Reserve Adjusted)*" means, relative to any Loan or Lessor Amount for any Interest Period, a rate per annum (rounded up and to the nearest 1/100 of 1%) determined pursuant to the following formula:

$$\text{LIBO Rate (Reserve Adjusted)} = \frac{\text{LIBO Rate}}{1.00 - \text{LIBOR Reserve Percentage}}$$

The LIBO Rate (Reserve Adjusted) for any Interest Period will be determined by the Collateral Agent, on the basis of the LIBOR Reserve Percentage in effect on, and the applicable LIBO Rate obtained by the Collateral Agent, two Business Days before the first day of such Interest Period.

"*LIBOR Reserve Percentage*" means, relative to any Interest Period, the reserve percentage (expressed as a decimal) equal to the maximum aggregate reserve requirements for a member bank of the Federal Reserve System (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) specified under regulations issued from time to time by the F.R.S. Board and then applicable to assets or liabilities consisting of and including "Eurocurrency Liabilities", as currently defined in Regulation D of the F.R.S. Board, having a term approximately equal or comparable to such Interest Period.

"*Lien*" means any mortgage, hypothecation, deed of trust, pledge, security interest, encumbrance, lien, easement, declaration or servitude of any kind, including, without limitation, any irrevocable license, interest of a vendor, conditional sale or other title retention agreement, any lease in the nature thereof, or any other right of or arrangement with any creditor to have its claim satisfied out of any specified property or asset with the proceeds therefrom prior to the satisfaction of the claims of the general creditors of the owner thereof, whether or not filed or recorded; *provided* that, solely for purposes of Section 9.1 of the Participation Agreement, the term "*Lien*" means with respect to any specified Person, (a) any lien, encumbrance, mortgage, pledge, charge or security interest of any kind upon any property or assets of the specified Person, whether now owned or hereafter acquired, or upon the income or profits therefrom, (b) the purchase of, or the agreement to purchase, any property or asset upon conditional sale or subject to any other title retention agreement device or arrangement (including a Capitalized Lease), and (c) the sale, assignment, pledge or transfer for security of any accounts, general intangibles or chattel paper of the specified Person, with or without recourse.

"*Limited Recourse Default*" means any condition, occurrence or event which, after notice or lapse of time or both, would constitute a Limited Recourse Event of Default.

"*Limited Recourse Event of Default*" means any of the following Events of Default:

(a) an Event of Default occurring under Section 16.1(f) of the Lease solely as a result of a breach by Lessee of the representations set forth in (1) Section 8.2(h)(ii), (2) Section 8.2(k)(A)(iii), (3) Section 8.2(k)(A)(iv), (4) Section 8.2(k)(A)(v), (5) 8.2(k)(B), (6) 8.2(k)(C), (7) Section 8.2(s) or (8) Section 8.2(ff)(ii) of the Participation Agreement;

(b) an Event of Default occurring under Section 16.1(e) of the Lease solely as a result of a breach of the covenant set forth in (1) Sections 9.1(c)(iv)(A)(y) of the Participation Agreement or (2) Section 9.1(c)(iv)(B) (but only to the extent such Event of Default is based solely upon the failure by Lessee to provide notice of any Limited Recourse Event of Default) of the Participation Agreement; or

(c) an Event of Default occurring under Section 16.1(j)(ii) of the Lease.

“*Loan*” or “*Loans*” is defined in Section 2.1(b) of the Loan Agreement.

“*Loan Agreement*” means the Loan Agreement dated as of March 30, 2006, among Lessor, as Borrower thereunder, Collateral Agent and the Lenders, as amended, supplemented or otherwise modified from time to time.

“*Loan Agreement Event of Default*” is defined in Section 5.1 of the Loan Agreement.

“*Loan Balance*” means, as of any date of determination, an amount equal to the sum of the principal amount outstanding under all the Loans of all Lenders, together with all accrued and unpaid Interest thereon.

“*Loan Commitment*” means with respect to a Lender, the Commitment of such Lender to make a Loan to the Lessee on the Closing Date in an aggregate principal amount not to exceed the amount opposite such Lender’s name on Schedule II to the Participation Agreement, as it may be revised pursuant to Articles XI or XII of Participation Agreement.

“*Loan Documents*” means the Loan Agreement, the Note and the Security Instruments.

“*Loan Termination Date*” is defined in Section 2.1(b) of the Loan Agreement.

“*Marketing Costs*” means, with respect to the Subject Property to be sold pursuant to Article XX of the Lease, all charges, costs and expenses incurred in marketing and preparing for sale all or any portion of the Subject Property, including without limitation, all legal fees and expenses and all advertising costs and all costs incurred in connection with the delivery of an appraisal, a survey and an environmental audit, but excluding (i) any Sales Costs and (ii) any costs incurred to bring the Leased Property to the condition required by the Lease.

“*Marketing Costs Cap*” is defined Section 20.1(h) of the Lease.

“*Master Agreement*” means the Master Agreement dated February 1, 2000 between the Seller and the City of Austin, as the same has been or may be amended, modified or supplemented from time to time.

“*Material Adverse Effect*” means a materially adverse effect on (i) the assets, business, operations, properties, income or financial condition or prospects of the Lessee, (ii) the validity or enforceability of any of the Operative Documents of the type described in clauses (a) through (h), inclusive, and clauses (j) through (k), inclusive and (m) through (q), inclusive, of the definition thereof or any rights or remedies under any thereof, (iii) the rights or interests of Lessor, the Collateral Agent or any Lender in and to the Subject Property or (iv) the Fair Market Value, use, utility, useful life or residual value of the Subject Property.

“*Material Environmental Violation*” is defined in Section 14.3 of the Lease.

“*Material Plan*” means at any time a Plan or Plans having aggregate Unfunded Liabilities in excess of \$5,000,000.

“*Material Subsidiary*” means any Subsidiary representing not less than 5% of the Lessee’s Consolidated Net Income, total stockholders’ equity, or EBITDAR, all as determined as of the last day of each fiscal quarter, for the four consecutive fiscal quarters ended as of such day.

“*Maturity Date*” means the Expiration Date.

“*Memorandum of Lease*” means the Memorandum of Lease dated as of March 30, 2006, among the Lessor, the Lessee and the Deed of Trust Trustee, as amended, supplemented or modified from time to time.

“*Modifications*” is defined in Section 10.1(a) of the Lease.

“*Moody’s*” means Moody’s Investor Service, Inc., or any successor thereto.

“*Multiemployer Plan*” means at any time an employee pension benefit plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such five year period.

“*Net Income*” means, for any period, the net income (or loss) after taxes for such period of the Lessee, determined in accordance with GAAP.

“*Net Sales Proceeds*” means the difference between (i) Gross Proceeds and (ii) Sales Costs.

“*Nonseverable*” means a Modification or part of a Modification the removal of which from the Leased Property would materially impair the Fair Market Value, utility, useful life or residual value thereof as set forth in the Appraisal.

“*Notes*” is defined in Section 2.2(b) of the Loan Agreement.

“*Obligations*” means all obligations (monetary or otherwise) of the Lessee arising under or in connection with any of the Operative Documents.

“*OECD*” means the Organization for Economic Cooperation and Development.

“*Offeree Letter*” is defined in Section 6.1(m) of the Participation Agreement.

“Operative Documents” means the following:

(a) the Participation Agreement;

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(b) the Lease and any memoranda thereof;

(c) the Deed of Trust;

(d) the Ground Lease and any memoranda thereof;

(e) the Loan Agreement;

(f) the Notes;

(g) the Security Instruments;

(h) the Assignment of Ground Lease and any memoranda thereof;

(i) the Related Agreements;

(j) the Assignment of Related Agreements and any memoranda thereof;

(k) the Assignment of Leases and Rents and any memoranda thereof;

(l) the Purchase Agreement;

(m) the Estoppel Certificate;

(n) the Fee Letters;

(o) the Deed;

(p) the Assignment of Subleases; and

(q) the Assignment of Purchase Agreement.

“Overall Transaction” means all the transactions and activities referred to in or contemplated by the Operative Documents.

“Overdue Rate” means, with respect to any Loan or Lessor Amount, the LIBO Rate or Alternate Base Rate then in effect for such Loan or Lessor Amount, plus 2.0% per annum.

“Owner’s Policy” is defined in Section 6.1(r) of the Participation Agreement.

“Participant Balance” means, with respect to any Participant as of any date of determination: (i) with respect to any Lender, the Loan Balance held by such Lender or (ii) with respect to the Lessor, the Lessor Balance.

“Participants” means, collectively, the Lessor and the Lenders.

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“Participation Agreement” means the Participation Agreement dated as of March 30, 2006, among the Lessee, as Lessee; the Lessor; the Lenders; and the Collateral Agent; as amended, supplemented or otherwise modified from time to time.

“Payment Date” means (i) the 30th day of each March, June, September and December, or, in each case, if such 30th day is not a Business Day, the next succeeding Business Day unless the result would be that the Payment Date would be in the next succeeding calendar month, in which case such Payment Date shall be on the next preceding Business Day, and (ii) in any case, the Maturity Date.

“Payment Default” means the failure of Lessee to make any payment of (i) Basic Rent when due and such failure shall continue for a period of five (5) days or (ii) any amounts due pursuant to Sections 15.1, 18.1, 18.2, 19.1(b) or Article XX of the Lease when due.

“Payment Office” means the office of each Participant and the Collateral Agent identified on Schedule III to the Participation Agreement as its Payment Office.

“PBGC” means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

“Permitted Investments” means (i) full faith and credit obligations of the United States of America, or fully guaranteed as to interest and principal by the full faith and credit of the United States of America, maturing in not more than one year from the date such investment is made, (ii) certificates of deposit having a final maturity of not more than one year after the date of issuance thereof of a Participant or of any other commercial bank incorporated under the laws of the United States of America or any state thereof or the District of Columbia, which bank is a member of the Federal Reserve System and has a combined capital and surplus of not less than \$100,000,000 and with a senior unsecured debt credit rating of at least “P-1” by Moody’s and “A” by S&P,

(iii) commercial paper of the Participants having a remaining term until maturity of not more than 180 days from the date such investment is made, (iv) commercial paper of companies, banks, trust companies or national banking associations (in each case excluding Lessee and its Affiliates) incorporated or doing business under the laws of the United States or one of the States thereof, in each case having a remaining term until maturity of not more than 180 days from the date such investment is made and rated "P-1" by Moody's or at least "A-1" by S&P, (v) repurchase agreements maturing within one year with any financial institution having combined capital and surplus of not less than \$100,000,000 with any of the obligations described in clauses (i) through (iv) as collateral so long as title to the underlying obligations pass to Collateral Agent and such underlying securities shall be segregated in a custodial or trust account for the benefit of Collateral Agent and (vi) investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940, as amended, which are administered by any financial institution having a combined capital and surplus of not less than \$100,000,000 or an Affiliate of any such financial institution and the portfolios of which are limited to any of the obligations described in clauses (i) through (iv). The Lessor and the Collateral Agent, as applicable, are hereby authorized in making or disposing of any Permitted Investment to deal with themselves (in their individual capacities) or with any one or more of their Affiliates whether or not they or such Affiliates are acting as an

agent of the Lessor or Collateral Agent or for any third person or dealing as a principal for their own accounts.

"Permitted Liens" means any of the following:

- (i) the respective rights and interests of the parties to the Operative Documents as provided in the Operative Documents;
- (ii) the rights of any sublessee under a sublease permitted by the terms of the Lease;
- (iii) Liens for Taxes that either are not yet subject to interest or penalties or are being contested in accordance with the provisions of Section 12.1 of the Lease;
- (iv) Liens arising by operation of law, materialmen's, mechanics', workers', repairmen's, employees', carriers', warehousemen's and other like Liens relating to the construction of the Improvements or in connection with any Modifications or arising in the ordinary course of business for amounts that either are not more than 60 day past due or are being diligently contested in good faith by appropriate proceedings, so long as such proceedings to contest satisfy all applicable conditions for the continuation of proceedings set forth in Section 12.1 of the Lease;
- (v) Liens of any of the types referred to in clause (iv) above that have been bonded for not less than the full amount in dispute (or as to which other security arrangements satisfactory to the Lessor have been made), which bonding (or arrangements) shall comply with Applicable Laws, and has effectively stayed any execution or enforcement of such Liens;
- (vi) Liens arising out of judgments or awards with respect to which appeals or other proceedings for review are being prosecuted in good faith and for the payment of which adequate reserves have been provided as required by GAAP or other appropriate provisions have been made, so long as such proceedings have the effect of staying the execution of such judgments or awards and satisfy the conditions for the continuation of proceedings set forth in Section 12.1 of the Lease;
- (vii) easements, rights of way and other encumbrances on title to real property pursuant to Section 11.2 of the Lease;
- (viii) Lessor's Liens; and
- (ix) Liens described on the title insurance policy delivered with respect to the Subject Property pursuant to Section 12.1 of the Participation Agreement, other than Liens described in clause (iv) or (vi) above that are not removed within forty (40) days of their discovery by the Lessee.

"Permitted Modifications" is defined in Section 10.1(a) of Lease.

"Person" means an individual, partnership, limited liability company, corporation (including a business trust), firm, joint stock company, trust, unincorporated association, enterprise, joint venture or other entity, or a government or any political subdivision or agency thereof.

"Plan" means at any time an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (i) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (ii) has at any time within the preceding five years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

"Post-Closing Sales Costs" means the actual costs and expenses incurred by or charged to the Lessor, the Collateral Agent or any Lender to sell all or any portion of the Subject Property, including all broker or sales commissions and fees, transfer, filing and document taxes and fees, legal fees, escrow fees, fees and costs incurred for any reports required to be delivered to the purchaser of such property, and any other costs incurred and which would customarily be charged to a seller and reflected in a closing statement produced in consummating a sale of real property located in the State of Texas.

"Post-Expiration Date Balance" means the sum of (i) the aggregate of the remaining Lease Balance, after application of the Sale Option Recourse Amount actually paid to Lessor on the Expiration Date pursuant to Section 20.3 of the Lease, plus (ii) all reasonable costs and expenses incurred by or payable to Lessor (including management, supervisory or any remarketing fees payable to any Person) following the Expiration Date to maintain, lease or sell the Subject Property (including any allocated internal costs of Lessor), plus (iii) an amount equal to the amount of Property Carrying Costs accruing during the period following the Expiration Date through the date Lessor recovers Gross Proceeds equal to the sum of items (i) and (ii) above.

"Proceeds Account" is defined in Section 14.1(a) of the Lease.

“*Property Carrying Costs*” means, as of any date of determination, for the period commencing on the Expiration Date and ending on the date of such determination, (i) the product of (A) the Yield Rate and (B) the outstanding Lessor Amount as of the Expiration Date, in each case after giving effect to the amount of Basic Rent paid by Lessee on the Expiration Date and actually distributed to the Lessor by the Collateral Agent pursuant to Section 5.3 of the Participation Agreement and (ii) the number of days in such period.

“*Purchase Acceleration Notice*” is defined at Section 18.1 of the Lease.

“*Purchase Agreement*” means the Purchase Agreement With Joint Escrow Instructions dated as of February 10, 2006 by and between Seller and Lessee, as the same may be amended, supplemented or otherwise modified from time to time.

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“*Purchase Amount*” means, as of any date of determination, the sum of (a) the Lease Balance, plus (b) other sums then due and payable under the Operative Documents by Lessee, including, without limitation, all accrued and unpaid Supplemental Rent and any liquidated amounts of money due and owing pursuant to Article XIII of the Participation Agreement.

“*Purchase Notice*” means an irrevocable written notice by the Lessee delivered to the Lessor pursuant to Section 18.1 of the Lease, notifying the Lessor of the Lessee’s intention to exercise its Early Termination Option, and the proposed purchase date therefor.

“*Purchase Option*” is defined in Section 19.1(b) of the Lease.

“*Regulation U, T, or X*” means Regulation U, T, or X, respectively, of the F.R.S. Board as from time to time in effect and any successor to all or a portion thereof.

“*Related Agreements*” means, collectively, the agreements listed on Schedule I to the Assignment of Leases and Rents.

“*Release*” means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance into the environment, including, without limitation, ambient air, surface water, ground water or land.

“*Remediation*” is defined in Section 14.2 of the Lease.

“*Rent*” means, collectively, the Basic Rent and the Supplemental Rent, in each case payable under the Lease.

“*Replacement Participant*” means Persons who become Participants pursuant to the terms of Section 12.4 of the Participation Agreement.

“*Reportable Event*” means an event that is reportable under Section 4043(c)(1), (2), (3), (4), (5), (6), (7), (10), (11), (12) or (13) of ERISA and for which a waiver is not available.

“*Required Lenders*” means Lenders whose aggregate Credit Exposures constitute more than 51% of the aggregate Credit Exposure of all Lenders at such time.

“*Required Modifications*” is defined in Section 10.1(a) of the Lease.

“*Required Participants*” means Participants whose aggregate Credit Exposures constitute more than 51% of the aggregate Credit Exposure of all Participants at such time.

“*Requirement of Law*” means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject, including without limitation Environmental Laws.

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“*Responsible Officer*” means, (i) relative to the Lessee, those of its officers responsible for the Leased Property whose signature and incumbency or position shall have been certified to the Participants and the chief financial officer, vice president of worldwide operations or the corporate treasurer, (ii) relative to the Collateral Agent, any officer within the corporate trust department of the Collateral Agent, including any vice president, assistant vice present, assistant secretary, assistant treasurer, trust officer or any other officer of the Lessor who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporation trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Participation Agreement or Operative Documents relating thereto and (iii) relative to any other Person, including Lessor, the President, the Treasurer or comptroller of such Person.

“*Responsible Officer’s Certificate*” means a certificate signed by an applicable Responsible Officer, which certificate shall certify as true and correct the subject matter being certified to in such certificate.

“*Retail Sublease*” means the Retail Sublease Agreement dated as of February 15, 2000 between Seller and the City of Austin, Texas, as the same may be amended, supplemented, assigned, transferred or otherwise modified from time to time.

“*S&P*” means Standard & Poor’s Rating Services, a division of the McGraw-Hill Companies, Inc. or any successor thereto.

“*Sale Option*” is defined in Section 19.1(b) of the Lease.

“*Sale Option Recourse Amount*” means, as of any date of determination, the product of (i) 79.66% multiplied by (ii) Lease Balance.

“*Sales Costs*” means the actual expenses, credits, costs, fees and Impositions incurred by or charged to the Subject Property, Lessor, Collateral Agent, any Lender, Lessee or any other Person arising from the sale of the Subject Property, including, without limitation, all broker or sales commissions, recording fees, escrow fees, filing fees, title insurance fees and any and all document, documentary, transfer, sale and other taxes incurred as a result of the actual sale of the Subject Property.

“*Schneider Building*” is defined in Exhibit C to the Schneider Sublease.

“*Schneider Sublease*” is defined in clause (iv) of the Recitals of the Purchase Agreement.

“*SEC*” means the Securities and Exchange Commission.

“*Secured Obligations*” is defined in Section 2.2 of the Security Agreement.

“*Securities Act*” means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

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“*Security Instruments*” means the Deed of Trust, the Assignment of Leases and Rents, the related UCC filings and any other documents granting a Lien to the Collateral Agent or any Participant.

“*Seller*” means Computer Sciences Corporation, a Nevada corporation.

“*Significant Casualty*” means that the Leased Property shall suffer (i) damage or destruction resulting in an insurance settlement on the basis of an actual, constructive or compromised total loss, (ii) destruction or damage beyond repair, or (iii) damage which, in Lessee’s good faith judgment, makes repair uneconomic or renders the Leased Property unfit for commercial use.

“*Significant Condemnation*” means that (i) (x) title to all or any material portion of the Leased Property shall be taken or appropriated by a Governmental Authority under the power of eminent domain or otherwise, (y) all or any material portion of the Leased Property shall be taken, confiscated, seized or requisitioned for use by any Governmental Authority under the power of eminent domain or otherwise, and such taking, confiscation, seizure or requisition for use pursuant to this clause (y) is for a period that exceeds 180 days or, if less, the remaining portion of the Term, or (ii) as a result of any rule, regulation, order or other action by any Governmental Authority, the use of the Leased Property in commercial operation shall have been prohibited, directly or indirectly, for a period of 60 days.

“*Significant Environmental Event*” means an Environmental Violation the cost of Remediation of which, in the reasonable judgment of an independent environmental legal counsel would exceed \$2,000,000.

“*Solvent*” means with respect to any Person on a particular date, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities of such Person, (ii) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (iv) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (v) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability taking into account any subrogation and contribution rights.

“*Subject Property*” means, collectively, (i) the Facility and (ii) Lessor’s rights in and to (x) the Land, (y) the Ground Lease and (z) the other Related Agreements.

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“*Sub-Participant*” is defined in Section 12.2 of the Participation Agreement.

“*Subsidiary*” means, for any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through one or more other Subsidiaries, and (ii) any partnership, association, joint venture or other entity in which such Person, directly or indirectly through one or more other Subsidiaries has a greater than 50% equity interest at the time.

“*Supplemental Rent*” means all amounts, liabilities and obligations for the payment of money (other than Basic Rent) which Lessee assumes or agrees to pay or is otherwise obligated to pay under the Lease or any other Operative Document (whether or not designated as Supplemental Rent) to Collateral Agent, any Participant or any other Person, including, without limitation, Break Costs, any Sale Option Recourse Amount and any Lease Balance.

“*Tax Indemnitee*” or “*General Indemnitee*” means each Participant, the Collateral Agent (in its individual capacity and as agent), the Arranger, any additional, separate or co-trustee or co-agent appointed in accordance with the terms of the Participation Agreement, and the respective Affiliates, successors, permitted assigns, permitted transferees, employees, officers, directors, shareholders, partners, participants, representatives and agents of each of the foregoing Persons; *provided, however*, that in no event shall Lessee or any of its Affiliates be a General Indemnitee or Tax Indemnitee.

“*Taxes*” is defined in the definition of Impositions.

“Term” is defined in Section 2.2 of the Lease.

“Termination Date” means such date as the Lease may be terminated pursuant to the terms thereof, including without limitation, of Sections 15.2 or 18.1 of the Lease.

“Termination Notice” is defined in Section 15.1(a) of the Lease.

“Title Insurance Company” means Chicago Title Insurance Company or another a title insurance company selected by Lessee and satisfactory to the Collateral Agent.

“Title Policies” is defined in Section 6.1(r) of the Participation Agreement.

“Transaction Expenses” means all reasonable costs and expenses incurred in connection with the preparation, execution and delivery of the Operative Documents and the transactions contemplated by the Operative Documents including without limitation:

- (a) the reasonable fees and expenses of Chapman and Cutler LLP, as special document counsel;

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- (b) the Arranger’s Fee (which shall be payable if and only if the Advance is made and the transactions contemplated by the Operative Documents are consummated) and Arranger’s reasonable costs and expenses, in connection with the consummation of the Overall Transaction on the Closing Date and distribution and syndication costs;

- (c) the initial and ongoing fees and reasonable expenses of the Collateral Agent and its special counsel;

- (d) all title insurance premiums and applicable appraisal fees and reasonable expenses;

- (e) search fees, recording fees and filing fees incurred in connection with Lien searches and the filing of UCC Financing Statements, memoranda of lease and ground lease, and any and all mortgages or deeds of trust, including fees and expenses of the title company;

- (f) the fees and costs of the environmental consultant;

- (g) insurance premiums with respect to the residual value insurance obtained by the Lessor to insure Lessor’s capital lease treatment of the Overall Transaction;

- (h) costs and expenses for the survey of the Land; and

- (i) any other reasonable out-of-pocket expenses of the Collateral Agent and the Lessor incurred in connection with the consummation of the Overall Transaction on the Closing Date.

“Transferee” is defined in Section 12.3(a) of the Participation Agreement.

“UCC Financing Statements” means UCC financing statements appropriately completed and executed for filing in the applicable jurisdiction in order to (i) protect the Lessor’s interest in the Lessee Collateral under the Lease to the extent the Lease is a security agreement and (ii) perfect (assuming compliance with the UCC) a security interest in favor of the Collateral Agent for the benefit of the Participants in the Lessor Collateral.

“Unfunded Liabilities” means, with respect to any Plan at any time, the amount (if any) by which (i) the value of all benefit liabilities under such Plan, determined on a plan termination basis using the assumption prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds (ii) the fair market value of all Plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions), all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the ERISA Group to the PBGC or any other Person under Title IV of ERISA.

“Uniform Commercial Code” and “UCC” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

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“United States” means the United States of America.

“Upfront Fees” means fees referred to in Section 4.4(i) of the Participation Agreement.

“Yield” means, with respect to each day of the applicable Interest Period (a) the Yield Rate for such Interest Period multiplied by (b) the aggregate Lessor Amount outstanding divided by 360 or 365, as determined in accordance with Section 4.1 of the Participation Agreement.

“Yield Rate” means, with respect to any Interest Period, (a) the sum of the LIBO Rate (Reserve Adjusted) for such Interest Period, plus the Applicable Lessor Margin, or (b) if the Lessor Amount accrues Yield pursuant to Section 15.1 or 15.2 of the Participation Agreement, at the Alternative Base Rate.

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