

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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): June 22, 2006

LENNOX INTERNATIONAL INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-15149
(Commission File Number)

42-0991521
(IRS Employer
Identification No.)

2140 Lake Park Blvd.
Richardson, Texas 75080
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code:
(972) 497-5000

(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))
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Item 1.01 Entry into a Material Definitive Agreement.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

On June 22, 2006, Lennox Procurement Company Inc. (“Procurement”), a wholly-owned subsidiary of Lennox International Inc. (the “Company”), entered into a Lease Agreement (the “Lease”) with BTMU Capital Corporation (“Lessor”), pursuant to which Lessor is leasing certain property located in Richardson, Texas (the “Leased Property”) to Procurement for a term of seven (7) years (the “Term”). The Leased Property consists of an office building of approximately 192,000 square feet, which includes the Company’s corporate headquarters, and land and related improvements. The Lease replaces the Company’s previous lease agreements with One Lake Park, L.L.C. (“One Lake Park”) covering space in the Leased Property, which agreements have been terminated. As previously reported in the Company’s filings with the Securities and Exchange Commission, certain members of the Company’s Board of Directors, as well as other stockholders of the Company who may be immediate family members of such directors, are, individually or through trust arrangements, members of AOC Land Investment, L.L.C., an affiliate of One Lake Park.

Also on June 22, 2006, Procurement, Lessor, MHC B (USA) Leasing and Finance Corporation (“Lender”) and the Company entered into a Participation Agreement (the “Participation Agreement”), pursuant to which (i) Lessor and Lender agreed to provide funding for Lessor’s acquisition of the Leased Property; (ii) Procurement and Lessor agreed to enter into the Lease; and (iii) Procurement agreed to pay or reimburse and indemnify Lessor, Lender and their affiliates for and against all costs and claims that may arise in connection with the Lease or related documents, in connection with the Leased Property (including environmental claims) or in connection with any accident that may occur on or about the Leased Property during the Term.

During the Term, the Lease requires Procurement to pay base rent in quarterly installments, payable in arrears, which will provide an annual rate of return to Lessor of 6.85% on the amount of \$41,202,994 advanced by or on behalf of Lessor to acquire the Leased Property (the “Lease Balance”). In addition to base rent, Procurement must pay or reimburse Lessor for all operating costs (including property taxes, insurance and utility costs) and must pay any uninsured costs of repairs to the Leased Property which may be required because of fire or other casualty.

At the end of the Term, if Procurement is not in default under the Lease, Procurement may elect to do any of the following and must do one of the following: (i) purchase the Leased Property for a net price equal to the Lease Balance; (ii) make a final supplemental payment to Lessor equal to 81.967576% of the Lease Balance and return the Leased Property to Lessor in good condition; (iii) arrange a sale of the Leased Property to a third party; or (iv) renew the Lease under mutually agreeable terms. If Procurement elects to arrange a sale of the Leased Property to a third party, then Procurement must pay to Lessor the amount (if any) by which the Lease Balance exceeds the net sales proceeds paid by the third party; provided, however, that, absent certain defaults, such amount cannot exceed 81.967576% of the Lease Balance. If the net sales proceeds paid by the third party are greater than the Lease Balance, the excess sales proceeds will be paid to Procurement.

In the event of material damage to the Leased Property by fire or other casualty, or in the event of any taking of all or a substantial portion of the Leased Property by eminent domain, Lessor

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may require Procurement to purchase the remainder of the Leased Property for a price equal to the Lease Balance, less any net insurance or condemnation proceeds received and retained by Lessor. Also, in the case of most defaults by Procurement, the Lease obligates Procurement to purchase the Leased Property for a net price equal to the Lease Balance. Defaults are defined to include customary lease defaults, including the failure to pay rent or other sums due, as well as the following: (i) the Company or its subsidiaries suffer a judgment or judgments in excess of \$25,000,000; (ii) the Company or its subsidiaries default in the payment or performance of other indebtedness of \$25,000,000 or more; (iii) the Company fails to comply with covenants (including financial covenants) incorporated by reference from the Company's existing revolving credit agreement; and (iv) a change of control of the Company.

Procurement's obligations under the Lease, the Participation Agreement and related documents are secured by a pledge of Procurement's interest in the Leased Property pursuant to a Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Memorandum"), dated as of June 22, 2006, by and among Procurement, Lessor and Jeffrey L. Bell, as trustee. Procurement's obligations under such documents are also guaranteed by the Company pursuant to a Guaranty, dated as of June 22, 2006, in favor of Lessor (the "Guaranty").

Absent a default by Procurement, its maximum potential liability (undiscounted) for base rents and for the final supplemental payment, which may be required at the end of the Term, is \$53,481,032. In the event of default by Procurement, such maximum potential liability may be increased to \$60,910,931. In addition, Procurement will be liable for the cost of operating, insuring and maintaining the Leased Property over the Term.

Copies of the Lease, Participation Agreement, Memorandum and Guaranty are filed herewith as Exhibits 10.1, 10.2, 10.3 and 10.4, respectively. The foregoing descriptions of the Lease, Participation Agreement, Memorandum and Guaranty do not purport to be complete, and are qualified in their entirety by reference to the full text of such documents, as applicable, which are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(c) Exhibits.

EXHIBIT NUMBER	DESCRIPTION
10.1	Lease Agreement, dated as of June 22, 2006, by and between BTMU Capital Corporation, as lessor, and Lennox Procurement Company Inc., as lessee.
10.2	Participation Agreement, dated as of June 22, 2006, by and among Lennox Procurement Company Inc., as lessee, Lennox International Inc., as guarantor, BTMU Capital Corporation, as lessor, and MHCB (USA) Leasing and Finance Corporation, as initial holder of all of the notes and administrative agent.

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<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
10.3	Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of June 22, 2006, by and among Lennox Procurement Company Inc., BTMU Capital Corporation and Jeffrey L. Bell, as Deed of Trust Trustee, for the benefit of BTMU Capital Corporation.
10.4	Guaranty, dated as of June 22, 2006, from Lennox International Inc., as guarantor, to BTMU Capital Corporation, as lessor, and the other parties specified therein.

SIGNATURES

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.

LENNOX INTERNATIONAL INC.

Date: June 28, 2006

By: /s/ Kenneth C. Fernandez

Name: Kenneth C. Fernandez

Title: Associate General Counsel

LEASE AGREEMENT

Dated as of June 22, 2006

among

BTMU CAPITAL CORPORATION

as Lessor

and

LENNOX PROCUREMENT COMPANY INC.

as Lessee

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APPENDICES AND EXHIBITS

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APPENDIX A	Definitions and Interpretation
EXHIBIT A	Description of Land

THIS LEASE AGREEMENT (as from time to time amended or supplemented, this "Lease"), dated as of June 22, 2006, is between BTMU CAPITAL CORPORATION, a Delaware corporation (together with its successors and permitted assigns hereunder, "Lessor"), as Lessor, and LENNOX PROCUREMENT COMPANY INC., a Delaware corporation (together with its successors and permitted assigns hereunder, "Lessee"), as Lessee.

PRELIMINARY STATEMENT

A. Lessee and Lessor are entering into this Lease and the Operative Documents. Pursuant to the Operative Documents, Lessor has agreed to purchase the Land and the Improvements and Lender has agreed to provide financing for Lessor's acquisition of the Land and the Improvements.

B. Lessor desires to lease the Land and the Improvements to Lessee, and Lessee desires to lease the Land and the Improvements from Lessor.

In consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE I DEFINITIONS

Unless the context otherwise requires, each capitalized term or phrase used herein and not otherwise defined herein shall have the meaning assigned thereto in Appendix A attached hereto for all purposes hereof and the rules of interpretation set forth in Appendix A shall apply to this Lease.

ARTICLE II LEASE OF LEASED PROPERTY

Section 2.1. Lease. Lessor hereby leases to Lessee for the Basic Lease Term Lessor's interest in the Land and the Improvements (collectively, together with the rights set forth below, the "Leased Property"), and Lessee hereby leases from Lessor for the Basic Lease Term Lessor's interest in the Leased Property. The Leased Property includes all right, title and interest of Lessor, now owned or hereafter acquired, in and to: (1) the Land, including all interests in the Land acquired by Lessor from the Seller; (2) any and all Improvements; (3) all easements and other rights appurtenant to the Land or to the Improvements; and (4) (A) any land lying within the right-of-way of any street, open or proposed, adjoining the Land, (B) any sidewalks and alleys adjacent to the Land, and (C) any strips and gores between the Land and abutting land. To the extent, but only to the extent, that assignable rights or interests in, to or under the following have been or will be acquired by Lessor, Lessor also hereby grants and assigns to Lessee for the term of this Lease the right to use and enjoy (and, in the case of contract rights, to enforce) such rights or interests of Lessor: (a) any goods, equipment, furnishings, furniture and other tangible personal property of whatever nature that are located on the Land and all renewals or replacements of or substitutions for any of the foregoing; (b) the benefits, if any, conferred upon the owner of the Land or the Improvements by the Existing Space Leases or other Permitted

Encumbrances, subject to which Seller conveyed the Land and Improvements to Lessor, and (c) any permits, licenses, franchises, certificates, and other rights and privileges against third parties related to the Land or Improvements. However, the leasehold estate conveyed by this Lease and Lessee's rights hereunder are expressly made subject and subordinate to the terms and conditions of this Lease, to the matters listed in Schedule B to the Title Policy (including the Existing Space Leases) and all other Permitted Encumbrances, and to any other claims or encumbrances not constituting Lessor Liens.

Without limiting the foregoing, it is understood that so long as Lessee continues to be entitled to possession of the Leased Property pursuant to this Lease, Lessee's possession will extend to and include not only the Improvements, but also the Land (subject only to Lessor's limited right of entry on and subject to the terms and conditions set forth in this Lease), and, so long as no Lease Event of Default has occurred and is continuing, Lessee will be entitled to any benefits conferred upon the owner of the Leased Property by the Existing Space Leases, including the right to receive and retain rents as they become due under Existing Space Leases and to otherwise enforce the Existing Space Leases during the Basic Lease Term.

In furtherance thereof, Lessor hereby assigns and conveys to Lessee all of its right, title and interests in the Existing Space Leases and Lessee hereby accepts such right, title and interests and hereby assumes any and all obligations of the lessor/owner pursuant to the Existing Space Leases, the parties hereto agreeing that Lessor shall not have any obligations under any Existing Space Lease. Such enforcement may include, at the election of Lessee but subject to the terms and conditions set forth in the Memorandum of Lease, the right to terminate any Existing Space Lease in the event of a default by the tenant thereunder. Accordingly, it is the intent of the parties that Lessor will not assume or retain responsibility for the condition of the Land or the Improvements or for any obligations undertaken by the lessor/owner pursuant to the Existing Space Leases.

To the extent that the transaction represented by this Lease is treated as a true lease or operating lease and not as a secured financing transaction, as more particularly described in Section 2.4(a) of the Participation Agreement, then Lessor shall be deemed to have appointed Lessee as its agent to perform all of the obligations of the lessor/owner pursuant to the Existing Space Leases and to exercise all of the rights and benefits of the lessor/owner pursuant to the Existing Space Leases, Lessee shall be deemed to have accepted such appointment and agreed to perform all such obligations and exercise such rights and benefits and, in consideration of the foregoing, so long as no Lease Event of Default has occurred and is continuing, Lessor shall allow Lessee to retain all rents and other amounts and proceeds collected from time to time by Lessee from the tenants under the Existing Space Leases as a fee for services rendered by Lessee hereunder.

Lessee hereby covenants that (a) it shall not extend or renew the terms of any of the Existing Space Leases and (b) any future tenancies with any of the tenants under the Existing Space Leases shall be documented as subleases to this Lease in accordance with Article IX hereof.

Section 2.2. Term. The term of this Lease (the "Basic Lease Term") shall commence on the Closing Date and shall end on the first to occur of (a) the seventh (7th) anniversary of the

Closing Date (such date, the “Scheduled Termination Date”) and (b) the date upon which this Lease is terminated pursuant to its terms (the first to occur of (a) and (b), the “Termination Date”). The term of this Lease may be extended pursuant to the terms and conditions set forth in Section 14.8.

Section 2.3. Basic Rent. Lessee shall pay rent, in installments, payable in arrears, on each Payment Date during the Basic Lease Term and on the Termination Date, in the amounts set forth on Schedule 1 attached hereto (as adjusted from time to time as set forth below, “Basic Rent”). The Basic Rent payable by Lessee hereunder is subject to adjustment on each Calculation Date in the event that there is a change in the Guarantor’s Debt to Adjusted EBITDA Ratio that results in a change in the applicable Pricing Level, all as set forth more particularly in Section 2.3 of the Participation Agreement.

Section 2.4. Additional Payment. Unless Lessor notifies Lessee in writing to the contrary at least two (2) Business Days prior to the first Payment Date to occur after the Closing Date, Lessee is required to pay the Additional Payment on such Payment Date.

Section 2.5. Supplemental Rent. (a) Lessee shall pay to Lessor or to the Person entitled thereto as expressly provided herein or in any other Operative Document any and all Supplemental Rent as and when the same shall become due and payable and in the event of any failure on the part of Lessee to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or in equity or otherwise in the case of nonpayment of Basic Rent. All Supplemental Rent to be paid pursuant to this Section 2.5 shall be payable in the type of funds and in the manner set forth in Section 2.6.

(b) Lessee shall pay to 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 Lessor or any Indemnitee not paid when due or demanded by Lessor or any Indemnitee for the period from the due date or the date of any such demand, as the case may be, until the same shall be paid.

(c) Unless expressly provided otherwise in this Lease, if Lessee fails to pay and discharge any Supplemental Rent as and when due, 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. The expiration or other termination of Lessee’s obligations to pay Basic Rent under this Lease shall not limit or modify the obligations of Lessee with respect to Supplemental Rent.

Section 2.6. Method of Payment. Except as otherwise provided in this Lease, each payment of Rent payable to Lessor shall be paid by wire transfer by Lessee prior to 11:00 a.m., New York City time to the accounts identified below in immediately available funds on the scheduled date when such payment shall be due, unless such scheduled date is not 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

11:00 a.m., New York City time on the date due shall, (i) for purposes of Article 12, be deemed received on such day, and (ii) for purposes of Section 2.5, shall be deemed received on the next succeeding Business Day and subject to interest at the Overdue Rate. Unless Lessee is notified in writing otherwise by Lessor, Lessee shall pay Basic Rent to the account of Lessor set forth on Schedule 2 attached hereto.

ARTICLE III
NET LEASE; TAXES

Section 3.1. Net Lease; No Setoff, Etc. This Lease is a net lease and, notwithstanding any other provision of this Lease, Lessee's obligation to pay Rent is absolute and unconditional. Lessee shall pay all Rent without counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Lessee's obligations hereunder shall not be released, discharged or otherwise affected by: (a) any defect in the condition, merchantability, design, quality or fitness for use of the Leased Property or any part thereof, or the failure of the Leased Property to comply with any Applicable Law, including any inability to occupy or use the Leased Property by reason of such non-compliance; (b) any damage to, removal, abandonment, salvage, loss, contamination of or Release from, scrapping or destruction of or any requisition or taking of the Leased Property or any part thereof; (c) any restriction, prevention or curtailment of or interference with any use of the Leased Property or any part thereof including eviction; (d) any defect in title to or rights to the Leased Property or any Lien on such title or rights or on the Leased Property; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by Lessor or Administrative Agent; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Lessee, Guarantor, Lessor, Administrative Agent or any other Person, or any action taken with respect to this Lease by any trustee or receiver of Lessee, Guarantor, Lessor, Administrative Agent or any other Person, or by any court, in any such proceeding; (g) any claim that Lessee has or might have against any Person, including without limitation, Lessor, any vendor, manufacturer, contractor of or for any of the Improvements or any part thereof, or Administrative Agent; (h) any failure on the part of Lessor to perform or comply with any of the terms of this Lease or any other Operative Document or of any other agreement; (i) any invalidity or unenforceability or illegality or disaffirmance of this Lease against or by Lessee or any provision hereof or any of the other Operative Documents or any provision of any thereof whether or not related to the Transaction; (j) the impossibility or illegality of performance by Lessee, Lessor or both; (k) any action by any court, administrative agency or other Governmental Authority; (l) any restriction, prevention or curtailment of or interference with any use of the Leased Property or any part thereof; or (m) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, and regardless of whether Lessee shall have notice or knowledge of any of the foregoing. The parties intend that Lessee's obligations under this Lease shall be covenants and agreements that are separate and independent from any obligations of Lessor under this Lease or under any other Operative Documents and the obligations shall continue unaffected unless such obligations shall have been modified or terminated in accordance with an express provision of this Lease. LESSEE HEREBY WAIVES ALL RIGHT TO TERMINATE OR SURRENDER THIS LEASE (EXCEPT AS EXPRESSLY PROVIDED IN THIS LEASE) OR TO AVAIL ITSELF OF ANY ABATEMENT, SUSPENSION, DEFERMENT, REDUCTION, SETOFF, COUNTERCLAIM OR DEFENSE WITH RESPECT TO ANY RENT. LESSEE SHALL REMAIN OBLIGATED

UNDER THIS LEASE IN ACCORDANCE WITH ITS TERMS AND 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. Lessee assumes sole responsibility for the condition, use, operation, maintenance, and management of the Leased Property and Lessor shall have no responsibility in respect thereof and shall have no liability for damage to the property of either Lessee or any subtenant of Lessee on any account or for any reason whatsoever, other than solely by reason of Lessor's willful misconduct or gross negligence.

Notwithstanding the foregoing Lessee does not waive any right or remedy that it may have if Lessor breaches its obligation to convey the Leased Property to Lessee free and clear of Lessor Liens in accordance with and subject to any conditions precedent set forth in this Lease.

Section 3.2. Impositions. (a) During the Basic Lease Term, Lessee agrees to pay when due without penalty or interest all Impositions imposed upon or levied against the Leased Property. Any tax relating to a fiscal period of any taxing authority falling partially within and partially outside the Basic Lease Term, shall be apportioned and adjusted between Lessor and Lessee. Lessee covenants to furnish Lessor and Administrative Agent, upon Lessor's or Administrative Agent's request, within forty-five (45) days after the last date when any Imposition must be paid by Lessee, official receipts of the appropriate taxing, authority or other proof satisfactory to Lessor and Administrative Agent, evidencing the payment thereof.

(b) With the prior written consent of Lessor, made in its sole discretion, and Administrative Agent, made at the direction of the Required Lenders, Lessee may defer payment of an Imposition so long as (i) the validity or the amount thereof is contested by Lessee with diligence and in good faith; (ii) the commencement and continuation of such proceedings shall suspend the collection thereof from, and suspend the enforcement thereof against, Lessor, Administrative Agent and the Leased Property, (iii) no part of the Leased Property nor any Basic Rent or Supplemental Rent shall be in danger of being sold, forfeited, attached or lost, (iv) there shall not exist because of such contest (x) any interference with the use and occupancy of the Leased Property or any part thereof, or (y) any interference with the payment of Basic Rent or Supplemental Rent (other than the portion subject to the contest), (v) Lessee shall promptly prosecute such contest to a final settlement or conclusion, or if Lessee deems it advisable to abandon such contest, Lessee shall promptly pay or perform the obligation which was the subject of such contest, and (vi) at no time during the permitted contest shall there be a risk of the imposition of criminal liability on Lessor, Administrative Agent or any Indemnitee for failure to comply therewith.

Section 3.3. Costs and Expenses. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the ownership, use or occupancy of the Leased Property during the Basic Lease Term. Lessee agrees to pay or cause to be paid as and when the same are due and payable all charges for gas, water, sewer, electricity, lights, heat, power, telephone or other communication service and all other utility services used, rendered or supplied to, upon or in connection with the Leased Property. Lessee shall be entitled to receive any credits or refunds with respect to any utility charge paid by Lessee in the amount of any credit or refund received by Lessor on account of any utility charges paid by Lessee, net of the actual cost and expenses, if any, reasonably incurred by Lessor in obtaining such credit or refund. It is the intention of Lessee

and Lessor that, to the extent permitted by law and except as specifically provided for in this Lease, Lessor shall not be obligated to pay any expenses in any way related to the Leased Property or to its use and occupancy.

ARTICLE IV
WAIVERS

Lessee acknowledges that Lessor holds legal title to the Leased Property and that Lessee is leasing the Leased Property "AS IS" without representation, warranty or covenants (express or implied) by Lessor and subject to (a) the rights of any parties in possession thereof, (b) the state of the title thereto existing at the time Lessor acquired its interest in the Leased Property, (c) any state of facts which an accurate survey or physical inspection might show (including the survey delivered on the Closing Date), (d) all Applicable Law, and (e) any violations of Applicable Law which may exist upon or subsequent to the commencement of the Basic Lease Term. LESSEE ACKNOWLEDGES THAT, ALTHOUGH LESSOR MAY OWN AND HOLD TITLE TO THE LEASED PROPERTY, LESSOR IS NOT RESPONSIBLE FOR THE DESIGN, DEVELOPMENT, BUDGETING AND CONSTRUCTION OF THE IMPROVEMENTS OR ANY ALTERATIONS. LESSOR HAS NOT MADE NOR SHALL LESSOR BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND LESSOR SHALL NOT BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER, AS TO THE VALUE, MERCHANTABILITY, TITLE, HABITABILITY, CONDITION, DESIGN, OPERATION, OR FITNESS FOR USE OF THE LEASED PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED PROPERTY (OR ANY PART THEREOF), ALL SUCH WARRANTIES BEING HEREBY DISCLAIMED. LESSOR SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN OR THE FAILURE OF THE LEASED PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY APPLICABLE LAW, except that Lessor hereby represents and warrants that the Leased Property is and shall be free of Lessor Liens. As between Lessor and Lessee, Lessee has been afforded full opportunity to inspect the Leased Property, is satisfied with the results of its inspections of the Leased Property and is entering into this Lease solely on the basis of the results of its own inspections and all risks incident to the matters discussed in this Article IV, as between Lessor and Lessee, are to be borne by Lessee. The provisions of this Article IV 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 Lessor, express or implied, with respect to the Leased Property, that may arise pursuant to any law now or hereafter in effect, or otherwise.

ARTICLE V
LIENS; EASEMENTS; PARTIAL CONVEYANCES

Section 5.1. Liens. Except for Permitted Liens, Lessee shall not directly or indirectly create, incur or assume, or permit to exist, any Lien on or with respect to the Leased Property, the title thereto, or any interest therein, including any Liens which arise out of or by reason of (i) the possession, use, occupancy, construction, repair or rebuilding of the Leased Property, (ii) labor or materials furnished or claimed to have been furnished to Lessee, or any of its contractors or agents, (iii) the financing of any personalty or equipment purchased or leased by Lessee from

third parties and not financed by Lessor and (iv) Alterations constructed by Lessee. 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 to discharge, eliminate or bond in a manner reasonably satisfactory to Lessor and Administrative Agent, any such Lien (other than Permitted Liens) if the same shall arise at any time. Nothing contained in this Lease shall be construed as constituting the consent or request of 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 LESSOR, THE ADMINISTRATIVE AGENT AND THE LENDERS IS OR SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE LEASED PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR, THE ADMINISTRATIVE AGENT AND THE LENDERS IN AND TO THE LEASED PROPERTY.

Section 5.2. Easements; Partial Conveyances. Notwithstanding Section 5.1, at the request of Lessee, Lessor shall, from time to time during the Basic Lease Term and upon reasonable advance written notice from Lessee, and receipt of the materials specified in the next succeeding sentence, consent to and join in any (i) grant of easements, licenses, rights of way and other rights in the nature of easements, including, without limitation, utility easements which in each case facilitate Lessee's use, development and construction of the Leased Property, (ii) release or termination of easements, licenses, rights of way or other rights in the nature of easements which release and terminations are for the benefit of the Land or the Improvements or any portion thereof, (iii) dedication or transfer of portions of the Land, not improved with a building, for road, highway or other public purposes, provided the same are for the benefit of the Land or Improvements, (iv) execution of agreements for ingress and egress and amendments to any covenants and restrictions affecting the Land or Improvements or any portion thereof and (v) request to any Governmental Authority for platting or subdivision or replatting or resubdivision approval with respect to the Land or any portion thereof or any parcel of land of which the Land or any portion thereof forms a part or a request for any variance from zoning or other governmental requirements, *provided that*:

(a) any such action shall be at the sole cost and expense of Lessee and Lessee shall pay all out-of-pocket costs of Lessor, Administrative Agent, and the Lenders, in connection therewith (including, without limitation, the reasonable fees of attorneys, architects, engineers, planners, appraisers and other professionals reasonably retained by Lessor, Administrative Agent or the Lenders in connection with any such action);

(b) Lessee shall have delivered to Lessor, and Administrative Agent a certificate of a Responsible Officer of Lessee stating that

(1) such action will not cause the Leased Property, the Land or the Improvements or any portion thereof to fail to comply in any respect with the provisions of the Lease or any other Operative Documents, or in any respect with Applicable Law; and

(2) such action will not materially reduce the Fair Market Value, utility or useful life of the Leased Property, the Land or the Improvements or Lessor's interest therein;

(c) in the case of any release or conveyance, if Lessor or Administrative Agent, acting at the direction of the Required Lenders, so reasonably requests, Lessee will cause to be issued and delivered to Lessor by the Title Insurance Company endorsements to the Title Policies (to the extent available) pursuant to which the Title Insurance Company agrees that its liability for the payment of any loss or damage under the terms and provisions of the Title Policies will not be affected by reason of the fact that a portion of the real property referred to in Schedule A of the Title Policies has been released or conveyed by Lessor; and

(d) there shall be no abatement of Rent as a result thereof.

ARTICLE VI
MAINTENANCE AND REPAIR;
ALTERATIONS, MODIFICATIONS AND ADDITIONS

Section 6.1. Maintenance and Repair; Compliance With Law. Lessee, at its own expense, shall at all times (a) maintain the Leased Property in good repair and condition (subject to ordinary wear and tear), in accordance with prudent industry standards for first class office space and, in any event, in no less a manner as other similar office facilities owned or leased by Lessee or its Affiliates, and (b) make all repairs, replacements and renewals of the Leased Property or any part thereof which may be required to keep the Leased Property in the condition required by the preceding clause (a) and as may be required by Applicable Law and Insurance Requirements, Lessee shall perform the foregoing maintenance obligations regardless of whether the Leased Property is occupied or unoccupied. Lessee waives any right that it may now have or hereafter acquire to (i) require Lessor to maintain, repair, replace, alter, remove or rebuild all or any part of the Leased Property or (ii) make repairs at the expense of Lessor pursuant to any Applicable Law or other agreements or otherwise. LESSOR SHALL NOT BE LIABLE TO LESSEE OR TO ANY CONTRACTORS, SUBCONTRACTORS, LABORERS, MATERIALMEN, SUPPLIERS OR VENDORS FOR SERVICES PERFORMED OR MATERIAL PROVIDED ON OR IN CONNECTION WITH THE LEASED PROPERTY OR ANY PART THEREOF. Lessor shall not be required to maintain, alter, repair, rebuild or replace the Leased Property in any way.

Section 6.2. Alterations. During the Basic Lease Term, Lessee, at Lessee's own cost and expense, shall make all alterations, renovations, improvements, fixtures, modifications and additions to the Leased Property or any part thereof (collectively, "Alterations") that are (i) necessary to repair or maintain the Leased Property in the condition required by Section 6.1 and Article VII; (ii) necessary in order for the Leased Property to be in compliance with Applicable Laws and Insurance Requirements in all material respects; and (iii) necessary or advisable to restore the Leased Property to its condition existing prior to a Casualty or Condemnation to the extent required or permitted pursuant to Article 10 (collectively, the "Required Alterations"). So long as no Lease Event of Default exists, Lessee, at its sole discretion and at its cost and expense, may make other Alterations to the Leased Property so long as such Alterations comply with

Applicable Laws in all material respects and with the following requirements (collectively, the “Permitted Alterations”):

- (a) no Alteration may materially impair the Fair Market Value, utility, or useful life of the Leased Property from that which existed immediately prior to such Alteration;
- (b) each Alteration shall be made in a good and workmanlike manner;
- (c) Lessee shall comply with all Applicable Laws (including all Environmental Laws) and Insurance Requirements applicable to each Alteration;
- (d) Lessee shall pay all costs and expenses and shall discharge (or cause to be insured or bonded over) any Liens arising with respect to each Alteration within 45 days after the same shall be filed (or otherwise become effective);
- (e) Lessee may not make any Alterations that would be in violation, in any material respect, of the terms of any restriction, easement, condition, covenant or other similar matter affecting title to or binding on the Leased Property unless Lessee has obtained, to the extent required from time to time, all material permits, consents and authorizations relating to such Alterations 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); and
- (f) all Alterations shall be located exclusively on the Land unless Lessee (or Lessor) has obtained access rights reasonably satisfactory to Administrative Agent.

Section 6.3. Title to Alterations. All Alterations shall be subject to this Lease and title to all Alterations shall immediately vest in Lessor; provided that Alterations are not subject to this Lease if (a) such Alterations are not Required Alterations, (b) such Alterations were not paid for with insurance proceeds, and (c) such Alterations are readily removable without impairing the Fair Market Value, utility, or remaining useful life of the Leased Property.

ARTICLE VII
USE

Section 7.1. Possession and Use of the Leased Property. The Leased Property shall be used as a corporate office complex in a manner consistent with the standards applicable to properties of a similar nature in the geographic area in which the Leased Property is located and in any event not less than the standards applied by Lessee for other comparable properties owned or leased by Lessee or its Affiliates. Lessee may 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, or that would violate or conflict with Applicable Law or Insurance Requirements. Lessee shall not commit or permit any waste of the Leased Property or any part thereof.

Section 7.2. Risk of Loss. Lessee assumes the risk of loss of, or a decrease in the enjoyment and beneficial use of, the Leased Property as a result of the damage or destruction by

fire, the elements, casualties, thefts, riots, wars or otherwise, and Lessor does not assume, and shall have no liability in respect of, such risk.

Section 7.3. Compliance with Requirements of Law and Insurance Requirements. Subject to the terms of this Lease relating to permitted contests, Lessee, at its sole cost and expense, shall (a) comply in all material respects with all Applicable Laws (including all Environmental Laws) and Insurance Requirements relating to the Leased Property, including the use, construction, operation, maintenance, repair and restoration thereof whether or not compliance therewith shall require structural or extraordinary changes in the Leased Property or interfere with the use and enjoyment of the Leased Property, and (b) procure, maintain and comply with all material licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance, repair, restoration and operation of the Leased Property, in each case, except for any such failure to maintain or procure or comply with any of the foregoing that would not reasonably be expected to result in a Material Adverse Effect.

ARTICLE VIII
INSURANCE

Section 8.1. Maintenance of Insurance. Lessee shall maintain insurance as set forth below:

(a) Commercial Liability Insurance. Lessee shall procure and carry or cause to be procured and carried, at Lessee's sole cost and expense, commercial general liability insurance (including contractual liability (specifically covering this Lease), cross liability, legal liability, and premises operations) for damages arising during the Basic Lease Term from the acts or omissions of Lessee while located on, in possession of, or controlling or acting or failing to act with respect to the Land or any of the Leased Property. The terms and amounts of such liability insurance shall be consistent with normal industry practice, but in any event not less than the scope and amount of coverage as are ordinarily procured by Guarantor with respect to properties similar to the Leased Property; provided, however, that such coverage shall be in an amount of at least \$25,000,000 per occurrence limit and aggregate limit, as applicable. In the event that Lessee does not maintain an occurrence basis policy for the foregoing risks, Lessee shall provide thirty (30) days' prior written notice thereof to the insured thereon and shall maintain such insurance on a claims made basis and Lessee shall maintain insurance for a period of three (3) years following the expiration of the Basic Lease Term. The insurance coverage required pursuant to this clause (a) may be provided through a combination of primary, umbrella and excess liability policies.

(b) All-Risk Property Insurance. During the Basic Lease Term, Lessee shall maintain, at its sole cost and expense, as a part of its blanket policies or otherwise, an all-risk property policy or policies with respect to the Improvements insuring the lessor's interest in the Improvements including resulting damage from collapse, coverage for fire, flood, wind damage and earthquakes and coverage against damage or loss caused by machinery accidents and operational and performance testing and start-up and terrorism (if such coverage may be obtained at commercially reasonable rates), with extended coverage in an amount not less than the full replacement cost of the Improvements, including any costs that may be required to cause the Improvements to be restored in accordance with then current Applicable Laws. Such

coverage shall provide coverage for insuring the buildings, non-temporary structures, machinery, equipment, facilities, fixtures, supplies and other property constituting part of the Leased Property, including but not limited to boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, ventilation and air conditioning equipment, and elevator and escalator equipment.

(c) Builders' Risk Insurance. During any construction of any significant Alteration, if required in order to prevent a loss of property insurance coverage for the Improvements, Lessee shall arrange to obtain and keep in force builder's risk insurance with respect to the construction of the Alteration in an amount equal to the greater of the replacement value of such Alterations or Improvements, as applicable, and the aggregate cost for the construction or remodeling of same, including costs that may be required to cause the Leased Property to be reconstructed to then current Applicable Laws.

(d) Other Insurance. Such other insurance, in each case, as is generally carried by Lessee or by Guarantor or any of its Subsidiaries for similar properties owned or leased by any of them or by other owners of similar properties in such amounts and against such risks as are then customary for properties similar in use and to the extent reasonably required by Lessor or Administrative Agent and, to the extent required by Applicable Laws, flood insurance.

Section 8.2. Insurance Coverage. The insurance required to be maintained by Lessee under Section 8.1 may be subject to such deductible amounts or periods, as applicable as is consistent with Guarantor's practice for other properties similar to the Leased Property owned or leased by Guarantor, and may be carried under blanket policies maintained by or on behalf of Lessee so long as such policies otherwise comply with the provisions of this Section 8. All insurance required to be carried pursuant to the requirements of this Article VIII shall be written by reputable insurance companies, authorized to do business in the jurisdiction in which the Leased Property is located, 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 which is rated in Best's Insurance Guide or any successor thereto (or if there be none, an organization having a similar national reputation) shall have a general policyholder rating of "A-" or better and a financial rating of at least "IX" or stronger or, if not rated in Best's Insurance Guide, an S&P rating of "A-" or better on its claims paying ability, or be otherwise reasonably acceptable to Lessor and the Required Lenders.

Section 8.3. Endorsements. All insurance required to be carried or arranged for by Lessee pursuant to the requirements of Section 8.1 shall provide in the policy or by special endorsement that:

(a) in the case of insurance required by Section 8.1(a), Lessor, Administrative Agent, and the Lenders are included as additional insureds as their interest may appear;

(b) in the case of insurance required by Section 8.1(b) and 8.1(c) Administrative Agent is named as the sole loss payee with respect to the real property improvements only and such insurance shall include a standard form mortgagee endorsement in favor of Lessor and Administrative Agent and replacement cost endorsements;

(c) the insurer thereunder waives all rights of subrogation against Lessor, Administrative Agent and the Lenders and any affiliates and waives any right of set-off and counterclaim and any other right to deduction whether by attachment or otherwise;

(d) such insurance shall be primary, shall include coverage for costs of defense of claims, and shall apply to any loss or claim before any contribution of any other insurance carried by or on behalf of Lessor, Administrative Agent or the Lenders;

(e) if the insurers cancel such insurance for any reason whatsoever (other than failure to pay premiums) or any adverse change is made in policy terms or conditions, such cancellation or change shall not be effective as to any additional insured or loss payee for thirty (30) days after receipt by Lessor and Administrative Agent of written notice from such insurers of such cancellation or change, provided that such cancellation or change shall not be effective as to any additional insured or loss payee for ten (10) days after receipt by Lessor and Administrative Agent of such written notice from such insurers; and if such insurance is allowed to lapse for nonpayment of premium, such lapse shall not be effective as to any additional insured for ten (10) days after receipt by the additional insureds of written notice from such insurers of such lapse; and

(f) with respect to all liability insurance, in as much as the policies are written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured, and such insurance shall be endorsed to provide a severability of interest or cross liability clause.

Section 8.4. Adjustment of Losses. Claims under insurance policies required to be carried under Section 8.1(a) shall be adjusted with the insurance companies by Lessee, at Lessee's sole cost and expense. Notwithstanding the foregoing, Lessor and Administrative Agent may participate in any such proceeding, action, negotiation, prosecution or adjustment at Lessor or Administrative Agent's sole cost and expense, unless (x) Lessor or Administrative Agent, as applicable, has been named in such claim or demand, in which case participation shall be at Lessee's sole cost and expense or (y) Lessor or Administrative Agent would be entitled to be indemnified as a result of such claim in which case Lessor's or Administrative Agent's participation in proceedings, actions, negotiations, prosecutions or adjustments relating thereto and costs incurred thereby shall be subject to Section 7 of the Participation Agreement. Losses, if any, under any policies required to be carried under Section 8.1(b) or 8.1(c) shall be adjusted with the insurance companies, including the filing of appropriate proceedings.

Section 8.5. Application of Insurance Proceeds. All proceeds of insurance shall be applied in accordance with Section 3.2 of the Credit Agreement.

Section 8.6. Additional Insurance. Any additional insurance obtained by Lessee, Lessor or Administrative Agent shall provide that it shall not limit the insurance described in Section 8.1, or increase the amount of any premium payable with respect to any such insurance. The proceeds of any additional insurance will be for the account of the party maintaining such additional insurance.

Section 8.7. Delivery of Insurance Certificates. On or before the Closing Date, Lessee shall deliver to Administrative Agent certificates of insurance reasonably satisfactory to Administrative Agent evidencing the existence of all insurance required to be maintained hereunder and setting out the respective coverages, limits of liability, carrier, policy number and period of coverage. Thereafter, throughout the Basic Lease 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 a Lease Event of Default, Lessee shall deliver to Administrative Agent certificates of insurance evidencing that all insurance required by Section 8.1 to be maintained by Lessee is in effect.

ARTICLE IX
ASSIGNMENT AND SUBLEASING

Lessee may not assign this Lease except that Lessee may assign this Lease to a Person that is wholly owned, directly or indirectly, by Guarantor if (i) no Lease Event of Default shall have occurred or be continuing, (ii) Lessee shall cause such assignee to execute and deliver such instruments as may be reasonably requested by Lessor to evidence such assignment and such assignee's agreement to be bound by the terms of the Lease and the other Operative Documents, and (iii) Lessee shall cause Guarantor to execute and deliver its written reaffirmation of the Guaranty and such other instruments as may be reasonably requested by Lessor to evidence Guarantor's continuing liability under the Guaranty with respect to the Leased Property and Lease thereof. Lessee may sublease all or any portion of the Leased Property, provided that (a) no Lease Event of Default shall have occurred or be continuing; (b) Lessee shall remain primarily liable for all obligations hereunder and under the other Operative Documents and all obligations of Lessee shall continue in full effect as obligations of a principal and not of a guarantor or surety, as though no sublease had been made; (c) such sublease shall be expressly subject and subordinate to this Lease; (d) each such sublease shall terminate by its terms on or before the Scheduled Termination Date; (e) Lessee shall cause any such sublessee to execute and deliver such instruments as may be reasonably requested by Lessor to evidence such sublease arrangement; (f) the Guaranty shall remain in full force and effect as though no sublease had been made; and (g) the terms of each such sublease shall be negotiated in good faith by Lessee on an arm's length basis.

This Lease shall not be mortgaged or pledged by Lessee, nor shall Lessee mortgage or pledge any interest in the Leased Property or any portion thereof. Any such mortgage or pledge shall be void.

ARTICLE X
CASUALTY; CONDEMNATION; ENVIRONMENTAL LOSS

Section 10.1. Casualty or Condemnation.

(a) If a Casualty or Condemnation occurs, or Lessee receives notice of a Condemnation, Lessee shall give prompt written notice thereof to Lessor and Administrative Agent. In no event shall a Casualty or Condemnation affect Lessee's obligations to pay Rent, to perform its obligations under this Lease or the other Operative Documents, or to pay any amounts due on the Scheduled Termination Date or otherwise pursuant to this Lease.

(b) If a Significant Casualty or a Significant Condemnation occurs and Lessee elects to terminate this Lease under Section 10.4, then the procedures of Section 10.4 shall apply.

(c) If (i) a Casualty or Condemnation occurs, other than a Significant Casualty or Significant Condemnation, or (ii) a Significant Casualty or a Significant Condemnation occurs and Lessee does not elect to terminate this Lease in accordance with Section 10.4, then

(A) as soon as practicable after such occurrence, Lessee shall repair, restore, or modify the Leased Property (or cause the Leased Property to be repaired, restored, or modified) to the condition required to be maintained under this Lease so that the Fair Market Value and functional capability of such property is restored and is in all material respects at least equivalent to the Fair Market Value and functional capability of such item as in effect immediately prior to such occurrence;

(B) any insurance proceeds relating to such Casualty shall be paid to Lessee for the repair, restoration, or modification of the Leased Property affected by such Casualty, in accordance with clause (A) above, with any excess of such award or compensation being paid to Lessee so long as no Lease Default or Lease Event of Default shall have occurred and be continuing (and otherwise shall be applied in accordance with Section 3.2(d) of the Credit Agreement), *provided that* if any Lease Event of Default exists at the time the insurance proceeds are payable, such insurance proceeds shall be paid directly to Administrative Agent (or if previously received by Lessee, shall be held in trust for Administrative Agent) and shall at the option of Administrative Agent be (1) paid to Lessee for the repair, restoration, or modification of the Leased Property or (2) applied to the Lease Balance; and

(C) if the Leased Property has been damaged as result of such Condemnation, any award or compensation relating to such Condemnation shall be paid to Lessee only to the extent necessary to repair, restore, or modify the damage caused by such Condemnation in accordance with clause (A) above, with any excess of such award or compensation being paid to Lessee so long as no Lease Default or Lease Event of Default shall have occurred and be continuing (and otherwise shall be applied in accordance with Section 3.2(d) of the Credit Agreement), *provided that* if any Lease Event of Default exists at the time such award or compensation is payable, such award or compensation shall be paid directly to Administrative Agent (or if previously received by Lessee, shall be held in trust for Administrative Agent) and shall, at the option of Administrative Agent, be (1) applied to repair, restore, or modify the damage caused by such Condemnation in accordance with clause (A) above, or (2) applied to the Lease Balance in accordance with Section 3.2(d) of the Credit Agreement.

(d) If a Casualty or Condemnation occurs during the Basic Lease Term and it is determined by the independent architect for such project (notice of which such architect shall promptly provide to Lessor and Administrative Agent) that the applicable award, compensation or insurance proceeds are not sufficient to repair, restore, or modify the Leased Property in accordance with Section 10.1(c), Lessee shall pay the shortfall prior to any further payment to Lessee of such award or proceeds.

(e) If the Leased Property is not repaired, restored, or modified within the Permitted Modification Period, as defined below, then, on the earlier of (i) the first Payment Date following the expiration of such period, and (ii) the Termination Date, Lessee shall pay to Administrative Agent, for the benefit of Lessor and the Participants, on such date an amount equal to the Lease Balance, *plus*, without duplication, all unpaid accrued Rent and all other amounts then payable by Lessee under this Lease. Upon receipt of such payment, Lessor shall comply with Section 14.5. As used in this Section 10.1, "Permitted Modification Period" means 120 days after the date of the Casualty or Condemnation necessitating the repair, restoration, or modification of the Leased Property and, in the case of Section 10.1(c)(ii), 180 days after the date of the Significant Casualty or the Significant Condemnation.

(f) Upon completion of such repair, restoration, or modification pursuant to Section 10.1(c), Lessee shall furnish to Lessor a Responsible Officer's Certificate confirming that such restoration has been so completed.

Section 10.2. Environmental Matters. At Lessee's sole cost and expense, Lessee shall in a reasonably prompt and diligent manner undertake 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 10.3. 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 or any Release on, at, under or from the Leased Property, which violation or Release could, in Lessee's reasonable judgment, require costs for Remediation in excess of \$5,000,000, or which could result in the imposition of criminal penalties upon Lessor, Administrative 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 Administrative 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 Administrative 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 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 Scheduled Termination Date unless the Leased Property has been purchased by Lessee in accordance with Section 10.4 or Section 17.22. Nothing in this Article 10 shall reduce or limit Lessee's obligations elsewhere in this Lease.

Section 10.4. Termination of the Lease. If a Significant Casualty, Significant Condemnation or Significant Environmental Event occurs during the Basic Lease Term, Lessee may elect to terminate this Lease by giving Lessor and Administrative Agent written notice (a "Termination Notice") no later than sixty (60) days after Lessee's written notice to Lessor and

Administrative Agent of the occurrence of such event. Following Lessor's receipt of the Termination Notice, Lessee shall purchase Lessor's interest in all, but not less than all, of the Leased Property on or before the next occurring Payment Date (but in no event earlier than thirty (30) days after the date Lessor receives the applicable Termination Notice) by paying to Lessor in cash in immediately available funds an amount equal to the Purchase Amount. Notwithstanding delivery of the Termination Notice, Lessee shall not be relieved of its obligation to remediate until payment of the Purchase Amount pursuant to the following sentence. Upon payment of the Purchase Amount: (i) Lessor and Lessee shall comply with the provisions of Section 14.5; and (ii) Lessor shall convey to Lessee any net proceeds (after deducting all costs and expenses incurred by Lessor, Administrative Agent and the Lenders incident to collecting any such proceeds of a Significant Casualty, Significant Condemnation or Significant Environmental Event, including, without limitation, reasonable fees and expenses for counsel) that it receives with respect to the event giving rise to the termination of this Lease or, at the request of Lessee, to the extent actually received and if acceptable to Lessor in its sole judgment, Lessor shall apply such amounts against sums due under this Lease.

Section 10.5. Verification of Restoration and Rebuilding. In the event of a Casualty or Condemnation, to verify Lessee's compliance with its obligations in Section 10.1(c), Lessor, Administrative Agent and their respective authorized representatives may, (A) upon five (5) Business Days' notice to Lessee, make inspections of the Leased Property with respect to (i) the extent of the Casualty or Condemnation and (ii) the restoration and rebuilding of the Improvements and (B) receive periodic updates at no cost from Lessee's independent architect contracted in connection with such restoration and rebuilding. All reasonable out-of-pocket costs of such inspections incurred by Lessor or Administrative Agent will be paid by Lessee promptly after written request. No such inspection shall unreasonably interfere with Lessee's operations or the operations of any other occupant of the Leased Property. None of the inspecting parties shall have any duty to make any such inspection or inquiry and none of the inspecting parties shall incur any liability or obligation by reason of making or not making any such inspection or inquiry.

Section 10.6. Prosecution of Awards.

(a) Unless a Lease Event of Default shall have occurred and be continuing, Lessee shall control the negotiations with the relevant Governmental Authority with respect to any Condemnation, provided that during the continuance of any Lease Event of Default, (1) Lessor shall control such negotiations; and (2) Lessee hereby irrevocably assigns, transfers and sets over to Lessor all rights of Lessee to any Award made during the continuance of a Lease Event of Default and, if there will not be separate Awards to Lessor and Lessee on account of such Condemnation, irrevocably authorizes and empowers Lessor during the continuance of a Lease Event of Default, with full power of substitution, in the name of Lessee or otherwise (but without limiting the obligations of Lessee under this Article X), to file and prosecute what would otherwise be Lessee's claim for any such Award and to collect, receipt for and retain the same; provided, however, that in any event Lessor and Administrative Agent may participate in such negotiations, and no settlement will be made without the prior consent of Lessor not to be unreasonably withheld.

(b) Notwithstanding the foregoing, Lessee may prosecute, and Lessor shall have no interest in, any claim with respect to Lessee's personal property and equipment not financed by Lessor and Lessee's relocation expenses.

Section 10.7. Application of Certain Payments Not Relating to an Event of Taking. In case of a requisition for temporary use of all or a portion of the Leased Property which is not a Significant Condemnation, this Lease shall remain in full force and effect, without any abatement or reduction of Basic Rent, and the Awards for the Leased Property shall, unless an Event of Default has occurred and is continuing, be paid to Lessee.

Section 10.8. Other Dispositions. Notwithstanding the foregoing provisions of this Article X, so long as a Lease Event of Default shall have occurred and be continuing, any amount that would otherwise be payable to or for the account of, or that would otherwise be retained by, Lessee pursuant to this Article X shall be paid to Lessor as security for the obligations of Lessee under this Lease and, at such time thereafter as no Lease Event of Default shall be continuing, such amount shall be paid promptly to Lessee to the extent not previously applied by Lessor or Administrative Agent in accordance with the terms of this Lease or the other Operative Documents.

Section 10.9. No Rent Abatement. Rent shall not abate hereunder by reason of any Casualty, Condemnation, Significant Casualty or Significant Condemnation, and Lessee shall continue to perform and fulfill all of Lessee's obligations, covenants and agreements hereunder notwithstanding such Casualty, Condemnation, Significant Casualty or Significant Condemnation until the Termination Date.

ARTICLE XI
INTEREST CONVEYED TO LESSEE

Lessor and Lessee intend that this Lease be treated, for financial accounting purposes, as an operating lease. For all other purposes, Lessee and Lessor intend that the transaction represented by this Lease be treated as a secured financing transaction; as more particularly described in Section 2.4(a) of the Participation Agreement. Accordingly, for purposes of applicable state law, this Lease and the Memorandum of Lease will be treated as a mortgage, deed of trust and security agreement, encumbering the Leased Property and the other property described therein, between Lessee, as grantor, and Lessor, as mortgagee or beneficiary and secured party, or any successor thereto, creating a first and paramount Lien on the Leased Property, and when any Lease Event of Default has occurred and is continuing, Lessor shall have all of the rights, powers and remedies of a mortgagee or deed of trust beneficiary available under Applicable Law to take possession of and sell (whether by foreclosure or otherwise) the Leased Property. The effective date of such mortgage or deed of trust shall be the effective date of this Lease. The recording of this Lease (or a memorandum thereof) shall be deemed to be the recording of such mortgage and deed of trust. The obligations secured by such mortgage or deed of trust shall include all Basic Rent and Supplemental Rent hereunder and all other obligations of and amounts due from Lessee hereunder and under the other Operative Documents.

ARTICLE XII
EVENTS OF DEFAULT

The following events shall constitute Events of Default (whether any 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):

(a) Lessee shall fail to make any payment of Basic Rent when due and such failure shall continue for more than three (3) Business Days;

(b) Lessee shall fail to make any payment of Supplemental Rent (other than Supplemental Rent referred to in clause (c) below), and such failure shall continue for more than ten (10) days after Lessor notifies Lessee thereof;

(c) Lessee shall fail to pay the Purchase Amount when due pursuant to Section 10.4, 14.1 or 17.22 or shall fail to pay Lessee Obligation when required pursuant to Article XIV;

(d) Lessee shall fail to maintain insurance as required by Article VIII hereof;

(e) the occurrence of any breach of the provisions of Section 5.3(d) of the Participation Agreement;

(f) Guarantor, Lessee or any Subsidiary of Guarantor (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; provided, however, that, except with respect to Lessee, this clause (f) shall not apply to any Subsidiary of the Guarantor the book value of whose total assets (determined in accordance with GAAP) is less than \$10,000,000;

(g) a court or Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Guarantor, Lessee or any of Guarantor's Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Guarantor, Lessee or any of Guarantor's Subsidiaries, or any such petition shall be filed against the Guarantor, Lessee or any of Guarantor's Subsidiaries and such petition shall not be dismissed within 60 days; provided, however, that, except with respect to Lessee, this clause (g) shall not apply to any Subsidiary of Guarantor the book value of whose total assets (determined in accordance with GAAP) is less than \$10,000,000;

(h) any representation or warranty by Lessee or Guarantor in any Operative Document or in any certificate or document delivered by either of them to Lessor or Administrative Agent pursuant to any Operative Document shall have been incorrect in any material respect when made;

(i) Guarantor shall repudiate or terminate the Guaranty, or the Guaranty shall at any time cease to be in full force and effect or cease to be the legal, valid and binding obligation of Guarantor by reason of any change in Applicable Laws or acts of Guarantor or Lessee;

(j) either Lessee or Guarantor shall fail in any respect to timely perform or observe any covenant, condition or agreement (other than the covenants, conditions and agreements referenced in the other clauses of this Article XII) to be performed or observed by it hereunder or under any other Operative Document and such failure shall continue for a period of thirty (30) days after the earlier of (i) written notice thereof from Lessor or Administrative Agent and (ii) knowledge of such breach by an officer of Lessee or Guarantor provided, however, that the period within which such failure may be cured by Lessee will be extended for a further period (not to exceed an additional ninety (90) days) as is necessary for the curing thereof with diligence, if (but only if) (x) such failure is susceptible of cure but cannot with reasonable diligence be cured within such thirty day period, (y) Lessee promptly commences to cure such failure and thereafter continuously prosecutes the curing thereof with reasonable diligence and (z) the extension of the period for cure will not, in any event, cause the period for cure to extend to or beyond the Termination Date;

(k) a final judgment or judgments for the payment of money aggregating in excess of \$25,000,000 are rendered against one or more of Guarantor and its Subsidiaries and which judgments are not, within sixty (60) days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within sixty (60) days after the expiration of such stay;

(l) Guarantor or any Subsidiary: (i) is in default (as principal or as guarantor or other surety) in the payment of any principal of, or premium or make-whole amount or interest on, or other amount in respect of, any Subject Indebtedness or (ii) is in default in the performance of or compliance with any term of any evidence of any Subject Indebtedness or of any mortgage, indenture, or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition, such Subject Indebtedness: (A) has become, or has been declared, due and payable before its stated maturity or before its regularly scheduled dates of payment; or (B) the holder or holders of any such Indebtedness or any trustee or agent acting on its or their behalf is permitted (with or without the giving of notice, the lapse of time or both) to declare such Indebtedness due and payable before its stated maturity or before its regularly schedule dates of payment or to terminate any commitment relating thereto;

(m) a Change of Control of Guarantor, as such term is defined in the Lennox Revolver, shall have occurred.

ARTICLE XIII
ENFORCEMENT

Section 13.1. Remedies. If a Lease Event of Default shall occur, Lessor may declare this Lease to be in default, and in the event of the occurrence of a Lease Event of Default specified in Sections 12 (f) or (g) this Lease shall automatically and without declaration or other action by Lessor or any other Person be in default, and in any such event, subject to Section 13.3, Lessee will immediately pay to Lessor the Purchase Amount, upon which payment Lessor will be obligated to convey its interest in the Leased Property to Lessee. Payment of the Purchase Amount shall not affect Lessee's obligations in respect of Supplemental Rent, which shall survive. Lessor also may exercise at any time one or more of the following remedies as Lessor in its sole discretion shall determine, without limiting any other right or remedy hereunder:

(a) Lessor may, by notice to Lessee, rescind or terminate this Lease as of the date specified in such notice; however, (A) no reletting, reentry or taking of possession of the Leased Property by Lessor will be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee, (B) notwithstanding any reletting, reentry or taking of possession, Lessor may at any time thereafter elect to terminate this Lease for a continuing Lease Event of Default, and (C) no act or thing done by 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 Lessor;

(b) Lessor may (i) demand that Lessee, and Lessee shall upon the written demand of Lessor, return the Leased Property promptly to Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Articles VI and XIV hereof as if the Leased Property were being returned at the end of the Basic Lease Term, and Lessor shall not be liable for the reimbursement of Lessee for any costs and expenses incurred by Lessee in connection therewith and (ii) without prejudice to any other remedy which Lessor may have for possession of the Leased Property, and to the extent and in the manner permitted by Applicable Law, enter upon the Leased Property and take immediate possession of (to the exclusion of Lessee) the Leased Property or any part thereof and expel or remove Lessee and any other person who may be occupying the Leased Property, by summary proceedings or otherwise, all without liability to Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise and, in addition to Lessor's other damages, Lessee shall be responsible for the reasonable costs and expenses of reletting, including brokers' fees and the reasonable costs of any alterations or repairs made by Lessor;

(c) Lessor may (i) sell all or any part of the Leased Property at public or private sale, as Lessor may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or any proceeds with respect thereto (except to the extent required by clause (ii) below if Lessor shall elect to exercise its rights thereunder) in which event Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated or proportionately reduced, as the case may be; and (ii) if Lessor shall so elect, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (the parties agreeing that Lessor's actual damages would be difficult to predict, but the

aforementioned liquidated damages represent a reasonable approximation of such amount) (in lieu of Basic Rent due for periods commencing on or after the Payment Date 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 sum of (A) all Rent and other sums payable including Breakage Costs, if any, due and unpaid to and including such Payment Date and (B) the Lease Balance, computed as of such date, over (2) the net proceeds of such sale (that is, after deducting all costs and expenses incurred by Lessor, Administrative Agent, or the Lenders incident to such conveyance (including, without limitation, all costs, expenses, fees, premiums and taxes described in Section 14.5)); plus (b) interest at the Overdue Rate on the foregoing amount from such Payment Date until the date of payment;

(d) Lessor may, at its option, not terminate this Lease, and continue to collect all Basic Rent, Supplemental Rent, and all other amounts due Lessor (together with all costs of collection) and enforce Lessee's obligations under this Lease as and when the same become due, or are to be performed, and at the option of Lessor, upon any abandonment of the Leased Property by Lessee or re-entry of same by Lessor, Lessor may, in its sole and absolute discretion, elect not to terminate this Lease with respect thereto and may make such reasonable alterations and necessary repairs in order to relet the Leased Property, and relet the Leased Property or any part thereof 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 Lessor in its reasonable discretion may deem advisable; and upon each such reletting all rentals actually received by Lessor from such reletting shall be applied to Lessee's obligations hereunder in such order, proportion and priority as Lessor may elect in Lessor's sole and absolute discretion; it being agreed that under no circumstances shall Lessee benefit from its default from any increase in market rents. If such rentals received from such reletting during any Rent Period are less than the Rent to be paid during that Rent Period by Lessee hereunder, Lessee shall pay any deficiency, as calculated by Lessor, to Lessor on the Payment Date for such Rent Period;

(e) At the option of Lessor exercised at any time and whether or not Lessor has re-entered or taken possession of the Leased Property, Lessor forthwith shall be entitled to recover from Lessee as liquidated damages, in addition to any other proper claims but in lieu of and not in addition to any amount which would thereafter have become payable under the preceding clauses (c) or (d), the Lease Balance for the date on which Lessor demands such payment, together with any accrued and unpaid Basic Rent, Supplemental Rent and other sums payable as of the date of such demand, by Lessee under this Lease and the other Operative Documents, plus the Breakage Costs, if any, and, so long as Lessor has received payment in full of the foregoing amounts (without any limitation thereon by reason of Section 13.3 hereof), then Lessor shall transfer and convey to Lessee the Leased Property in accordance with the provisions of Section 14.5;

(f) Lessor may exercise any other right or remedy that may be available to it under the Memorandum of Lease or under Applicable Law, 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 be brought to collect any such damages for any Rent Period(s), and such suits shall not in any manner prejudice Lessor's right to collect any such damages for any subsequent Rent Period(s), or Lessor may defer any such suit until after the expiration of the

Basic Lease Term, in which event such suit shall be deemed not to have accrued until the expiration of the Basic Lease Term; or

(g) Lessor may retain and apply against Lessor's damages all sums which Lessor would, absent such Lease Event of Default, be required to pay to, or turn over to, Lessee pursuant to the terms of this Lease.

Section 13.2. Lessee's Purchase Option. Notwithstanding anything herein or in the Operative Documents to the contrary Lessee shall have the right to cure a Lease Event of Default by purchasing the Leased Property by paying the Purchase Amount due on the date of purchase on or before the earliest of (i) ten (10) Business Days after the declaration of the Lease Event of Default, (ii) the sale of the Leased Property pursuant to a foreclosure of the Leased Property by Lessor under the Memorandum of Lease or Administrative Agent under the Mortgage, and (iii) delivery to Lessor or Administrative Agent of a deed in lieu of foreclosure. Payment of the Purchase Amount shall not affect Lessee's obligations in respect of Supplemental Rent, which shall survive.

Section 13.3. Liquidated Damages.

(a) In the event that a Lease Event of Default is declared (or deemed declared) solely and exclusively on the basis of a Limiting Event, a claim or demand by Lessor for payment by Lessee of the Purchase Amount or Lease Balance under the first paragraph of Section 13.1, and in such event no sale or transfer under such Sections shall be required under Section 13.1(c)(ii)(a) or Section 13.1(e) hereof shall be limited to an amount equal to Lessee Obligation. The foregoing limitation shall not limit or affect any other rights of Lessor as Lessor shall have all rights and remedies available under the Operative Documents or available at law, equity or otherwise including, without limitation, the right to demand the payment of Supplemental Rent and the right to require surrender and return or sale to a third party of the Leased Property all as set forth herein. In the event that Lessor requires the surrender and return or sale to a third party of the Leased Property, Lessee covenants to peaceably dispossess itself thereof in satisfaction of the Limiting Lessee Risk Conditions and other terms and conditions set forth in Section 14.7 hereof. Lessee nonetheless acknowledges and agrees that even though the maximum aggregate recovery from it is limited as aforesaid, Lessor's right of recovery from the Leased Property (as opposed to any recovery from Lessee) is not so limited and Lessor shall retain title to the Leased Property and Lessor, the Lenders and each other Indemnitee, as applicable, shall be entitled to recover one hundred percent (100%) of the amounts due or to become due to such Person in accordance with the Operative Documents from its interest in the Leased Property.

(b) "Limiting Event" means a Lease Event of Default arising (i) under Section 12.1(i) hereof solely as a result of a failure of the Guaranty to be in full force and effect following a change in Applicable Law and following the taking of best efforts by Guarantor and Lessee to maintain the effectiveness of the Guaranty and recourse to Guarantor including, without limitation, the filing of an action by such parties to prevent such change from affecting the enforceability and effectiveness of the Guaranty; or (ii) under Section 12.1(e) hereof with respect to which the default or condition relating to the Subject Indebtedness which gives rise to the Lease Event of Default hereunder consists solely of one or more of the following: (x) a

default, the existence of which depends upon the determination that a material adverse change has occurred, or (y) a failure of any guaranty of Guarantor of any Subject Indebtedness to be in full force and effect following a change in Applicable Law *provided that* Guarantor shall have used its best efforts to maintain the effectiveness of such guaranty and the recourse against it under such guaranty including, without limitation, the filing of an action to prevent such change from affecting the enforceability and effectiveness of such guaranty which efforts have failed and *provided, further*, that Guarantor shall have failed to assume the obligations of the obligor under such Subject Indebtedness on a fully recourse basis, or (iii) pursuant to clause (i) of Section 12.1(f) solely by reason of Lessee or Guarantor's failure generally to pay its debts as they become due or (iv) pursuant to clause 12.1(m) solely by reason of an unsolicited tender offer for a controlling interest in Guarantor, which tender offer results in acquisition of such controlling interest by a third party which did not receive the approval of the board of directors of Guarantor. Notwithstanding the foregoing, Lessee agrees and acknowledges that if together with or following the declaration of a Lease Event of Default that is a Limiting Event, a separate Lease Event of Default shall occur hereunder, the limitation on damages contained in this Section 13.3 shall be void and of no further effect without the need of any other actions of the parties.

Section 13.4. Remedies Cumulative; No Waiver; Consents. To the extent permitted by, and subject to the mandatory requirements of, Applicable Law, each and every right, power and remedy herein specifically given to Lessor or otherwise in this Lease shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Lessor, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy. No delay or omission by Lessor in the exercise of any right, power or remedy or in the pursuit of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of Lessee or to be an acquiescence therein. Lessor's consent to any request made by Lessee shall not be deemed to constitute or preclude the necessity for obtaining Lessor's consent, in the future, to all similar requests. No express or implied waiver by Lessor of any Lease Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Lease Default or Lease Event of Default. To the extent permitted by Applicable Law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise that may require Lessor to sell, lease or otherwise use the Leased Property or part thereof in mitigation of Lessor's damages upon the occurrence of a Lease Event of Default or that may otherwise limit or modify any of Lessor's rights or remedies under this Article XIII.

ARTICLE XIV
SALE, RETURN OR PURCHASE OF LEASED PROPERTY; RENEWAL

Section 14.1. Purchase Option. (a) If no Lease Default or Lease Event of Default hereunder shall have occurred and be continuing, Lessee shall have the option (the "Purchase Option"), after irrevocable written notice to Lessor as hereinafter provided, to purchase the Leased Property on or prior to but not later than the Scheduled Termination Date for an amount equal to the Purchase Amount as of such date. If Lessee intends to exercise its purchase option

granted hereunder, it shall give an irrevocable written notice (the "Termination Notice") to Lessor and Administrative Agent (with a copy to each Lender) of its intention to purchase the Leased Property, at least 150 days prior to the Scheduled Termination Date; *provided, however*, that Lessee shall be deemed to have elected the Purchase Option at the end of the Basic Lease Term if, at least 150 days prior to the Scheduled Termination Date, Lessee shall not have notified Lessor and Administrative Agent (with a copy to each Lender) stating its intention to either remarket or return the Leased Property pursuant to Section 14.2 and if the Lease shall not be renewed in accordance with Section 14.8. If Lessee gives a Termination Notice to Lessor and Administrative Agent (with a copy to each Lender), or is deemed to have given a Termination Notice, the same shall constitute a binding obligation of Lessee to purchase the Leased Property and to pay to Lessor the Purchase Amount on or prior to but not later than the Scheduled Termination Date. Any such purchase of the Leased Property by Lessee pursuant to this Section 14.1 shall be consummated in accordance with the terms of Section 14.5 hereof.

(b) Any Termination Notice given by Lessee as provided by Lessee in the preceding subsection shall (i) refer specifically to this Section 14.1, (ii) state that Lessee shall purchase the Leased Property in accordance with the provisions of Section 14.5 hereof by paying to Lessor the Purchase Amount due on the date set forth in clause (iii), and (iii) specify the date for such purchase, which shall be a Payment Date no less than 30 days nor later than the Scheduled Termination Date.

(c) If Lessee has elected to purchase the Leased Property in accordance with paragraph (a), on the date of purchase, Lessee must pay in cash or immediately available federal funds, as the purchase price therefor, an amount equal to the Purchase Amount. Upon payment of the Purchase Amount, this Lease shall terminate and the Leased Property shall be conveyed to Lessee pursuant to Section 14.5 hereof and in accordance with the terms and conditions thereof. If Lessee fails to purchase the Leased Property on the designated purchase date in accordance with the terms hereof, such failure shall immediately constitute a Lease Event of Default hereunder. Time is of the essence with regard to Lessee's obligations under this Section 14.1.

(d) Any conveyance made to consummate a sale of the Leased Property to Lessee pursuant to this Section 14.1 will cut off and terminate all interests in the Leased Property claimed by, through or under Lessor, including Lessor Liens (including any interests conveyed by Lessor to third parties, even if conveyed in the ordinary course of Lessor's business, and including any judgment liens established against the Leased Property because of a judgment rendered against Lessor), but not personal obligations of Lessee under this Lease or any of the other Operative Documents (including, without limitation, obligations of Lessee arising under the indemnities in the Participation Agreement, which indemnities will survive any such sale).

(e) If (contrary to the intent of the parties as expressed in Section 2.4 of the Participation Agreement) it is determined that Lessee is not, under applicable state law as applied to the Operative Documents, the equitable owner of the Leased Property and the borrower from Lessor in a financing arrangement, but rather is a tenant under the Lease with an option to purchase from Lessor as provided in this Section 14.1 or in Section 17.22 (as the case may be, the "Payoff Option"), then the parties intend that the Payoff Option be secured by a lien and security interest against the Leased Property. Accordingly, Lessor does hereby grant to Lessee a lien and security interest against the Leased Property, including all rights, title and interests of

Lessor from time to time in and to the Land and Improvements, for the sole purpose of securing (1) Lessor's obligation to convey the Leased Property to Lessee if Lessee exercises the Payoff Option and tenders payment of the Purchase Amount to Lessor as provided herein, and (2) Lessee's right to recover any damages from Lessor caused by a breach of such obligation, including any such breach caused by a rejection or termination of the Payoff Option in any bankruptcy or insolvency proceeding instituted by or against Lessor, as debtor. Lessee may enforce such lien and security interest judicially after any such breach by Lessor, but not otherwise. The foregoing grant shall terminate without further action upon the termination, expiration of the Payoff Option.

Section 14.2. Sale of Leased Property to Third Party; Return Option.

(a) Remarketing Obligations. If, 150 days or more prior to the Scheduled Termination Date, Lessee notifies Lessor and Administrative Agent (with a copy to each Lender) in writing of Lessee's election not to exercise the Purchase Option as set forth in Section 14.1 and not to renew the Basic Lease Term pursuant to Section 14.8 hereof, but instead to remarket the Leased Property (the "Remarketing Option") then Lessor shall have the right, and Lessee shall have the obligation, as agent for Lessor, during the period commencing on the giving of such notice and ending on the last day of the Basic Lease Term (the "Remarketing Period"), to use its best efforts to obtain bona fide cash bids to purchase the Leased Property from prospective purchasers that are financially capable of purchasing the Leased Property for cash in accordance with the terms of Section 14.5 of this Lease. Upon the request of Lessor and at Lessee's sole cost and expense, Lessee shall provide Lessor with a written report describing in reasonable detail Lessee's efforts during the Remarketing Period to obtain bona fide bids for the purchase of the Leased Property, including, without limitation, a list of all brokers retained and Persons approached for the purpose of soliciting bids to purchase the Leased Property. Each of Lessor and Lessee shall notify the other promptly of all bids received prior to the Scheduled Termination Date by Lessor or Lessee, as the case may be, and such notice shall certify the amount of the bid and state the name and address of the bidder.

(b) Sale of Leased Property to Third Party Buyer. If Lessee has elected the Remarketing Option, then not later than the Scheduled Termination Date, Lessor agrees to sell the Leased Property to the cash bidder submitting the highest bid during the Remarketing Period, in accordance with the terms of Section 14.5 of this Lease, with such changes as are necessary to reflect that the sale was to a third party and not Lessee, *provided, however*, that (x) any such sale to a third party shall be consummated, and the sales price for the Leased Property shall be tendered to Lessor in immediately available funds, on or before the Scheduled Termination Date; (y) Lessor shall not without the prior written consent of Administrative Agent consummate any proposed sale of the Leased Property if Lessor has not received the amounts, if any, payable by Lessee pursuant to Section 14.4(a); and (z) if the Net Proceeds of the proposed sale of the Leased Property are less than the Lessor Residual Risk Amount as of the date of the proposed sale, then Lessor shall not be obligated to sell the Leased Property and shall have the option to require that Lessee return possession of the Leased Property to Lessor in accordance with Section 14.7. After any such sale with respect to the Leased Property, the provisions of Section 14.4(a) shall apply.

(c) Return Option. If, 150 days or more prior to the Scheduled Termination Date, Lessee notifies Lessor and Administrative Agent (with a copy to each Lender) in writing of Lessee's election not to exercise the Purchase Option as set forth in Section 14.1 and not to renew the Basic Lease Term pursuant to Section 14.8 hereof, but instead to return the Leased Property (the "Return Option"), then upon the expiration or earlier termination of the Basic Lease Term, Lessee shall surrender and return the Leased Property in accordance with Section 14.7. The period commencing on the giving of such notice and ending on the last day of the Basic Lease Term shall be referred to herein as the "Return Period".

Section 14.3. Signs; Showing. If Lessee has not given timely notice pursuant to Section 14.1 of its intention to purchase the Leased Property on the Scheduled Termination Date, during the Remarketing Period or the Return Period, whichever is applicable, Lessor may, subject to all Applicable Laws, restrictive covenants, rules and regulations and without unreasonably interfering with Lessee's business operations, (a) place signs in, on and around the Leased Property advertising that the same will be available for rent or purchase, and (b) upon not less than 48 hours prior notice to Lessee, show the Leased Property to prospective lessees or purchasers at such reasonable times during normal business hours as Lessor may elect. During the Remarketing Period or the Return Period, whichever is applicable, Lessee will be responsible for making the Leased Property available for inspection by prospective purchasers and shall promptly, upon notice, permit inspections of the Leased Property and any maintenance records relating to the Leased Property by Lessor, any Lender, or any potential purchasers, during normal business hours or otherwise upon reasonable request. If Lessee has elected the Remarketing Option, then Lessee shall be responsible for hiring one or more brokers, whose services shall be compensated on a commission basis, and shall otherwise do all things necessary to sell and deliver possession of the Leased Property to any purchaser and all such marketing fees, commissions, costs and expenses of the Leased Property shall be included among the deductions set forth in clause (ii) of the definition of Net Proceeds.

Section 14.4. End of Term Adjustment.

(a) Third Party Sale of Leased Property. This Section 14.4(a) shall apply only if a sale of the Leased Property to a third party has been consummated on or before the Scheduled Termination Date. If the Net Proceeds (as hereinafter defined) received in connection with a sale of the Leased Property are less than the Lease Balance as of such date, then Lessee shall, on such date prior to the consummation of such sale, pay to Lessor, as an adjustment to the Basic Rent payable under this Lease, by wire transfer of immediately available federal funds, an amount equal to such deficiency (a "Deficiency") as an adjustment to the Rent payable under this Lease, plus the other Basic Rent, if any, due and payable on such date, plus any Supplemental Rent then due and owing to Lessor hereunder; *provided, however*, that if all of the Limited Lessee Risk Conditions (as hereinafter defined) have been satisfied, the amount of the Deficiency payable by Lessee shall not exceed the then applicable Lessee Obligation; otherwise, if any Limited Lessee Risk Condition is not satisfied, Lessee shall make the payments specified under Section 14.4(b)(ii) hereof. If the Net Proceeds of such a sale exceed the applicable Lease Balance and Lessee shall have paid to Lessor all Rent owing by Lessee herewith, then concurrently with such sale Lessor shall pay to Lessee by wire transfer of immediately available funds an amount equal to such excess, as an adjustment to the Basic Rent payable under this Lease; *provided, however*, that Lessor shall have the right to offset against such adjustment

payable by Lessor any amounts then due and payable from Lessee to Lessor or any Indemnified Party hereunder.

(b) Lessee Obligation. If a sale of the Leased Property to a third party has not been consummated on or prior to the Scheduled Termination Date for any reason, then on the Scheduled Termination Date, Lessee shall pay to Lessor, by wire transfer of immediately available funds to Administrative Agent, as an adjustment to the Rent payable under this Lease for the Leased Property (the "End of Term Adjustment"), an amount equal to (i) if all of the Limited Lessee Risk Conditions have been satisfied as of such Scheduled Termination Date, Lessee Obligation and (ii) if one or more of the Limited Lessee Risk Conditions have not been satisfied as of such Scheduled Termination Date, the Lease Balance, plus, in either case, the Basic Rent due and payable on the Scheduled Termination Date, plus all Supplemental Rent then due and owing for the Leased Property, and Lessee shall promptly vacate the Leased Property and surrender and return the Leased Property to Lessor upon the Scheduled Termination Date in accordance with the provisions of this Lease, including Section 14.7 hereof. In such event, if Lessor shall subsequently sell the Leased Property to a third party after the Lease Termination Date, Lessor shall retain the full amount of the sales proceeds thereof.

(c) Applicable Definitions. As used in this Section 14, the term "Net Proceeds" means, upon the sale of all of the Leased Property to one or more third parties, the net amount of the cash proceeds actually received from such sale, after deducting from the gross proceeds of such sale (i) all sales taxes and other taxes (excluding any net income or profit taxes on or measured by Lessor's income) as may be applicable to the sale or transfer of the Leased Property, (ii) all fees, costs and expenses of the Sale Transaction (as hereinafter defined) incurred by Lessor, Administrative Agent, any Lender or by Lessee, as Lessor's agent, unless separately paid or reimbursed by Lessee, and (iii) any other amounts for which, if not paid, Lessor would be liable or which, if not paid, would constitute a Lien on the Leased Property. For purposes of the foregoing, the term "Sale Transaction" means the sale or transfer of the Leased Property in accordance with Section 14.2 hereof. As used in this Section 14, "Limited Lessee Risk Conditions" means, collectively, the following: (A) no Lease Default (other than a Lease Default that would, with the giving of notice or passing of time or both, become a Limiting Event) or Lease Event of Default (other than a Limiting Event) shall have occurred and be continuing hereunder; (B) Lessee has not exercised its purchase options under Sections 14.1 or 17.22 hereof; (C) either (x) a sale to a third party of the Leased Property has been consummated and Lessor has received the Net Proceeds plus payment of Lessee Obligation and any Supplemental Rent then due and owing hereunder with respect to the Leased Property, or (y) a sale to a third party of the Leased Property has not been consummated, Lessee has vacated the Leased Property and surrendered and returned the Leased Property to Lessor in the condition required by Section 14.7 hereof, and Lessor has received, payment of Lessee Obligation and any Supplemental Rent then due and owing hereunder with respect to the Leased Property; (D) this Lease has not been terminated prior to the Scheduled Termination Date (except solely by reason of Lessor's exercise of remedies solely because of a Limiting Event); and (E) the Leased Property is free and clear of all Liens other than the Lien of the Mortgage and Lessor Liens.

Section 14.5. Purchase Procedure.

(a) In the event of the purchase of the Leased Property by Lessee pursuant to any provision of this Lease or by a third party pursuant to Section 14.2 hereof, the terms and conditions of this Section 14.5 shall apply.

(b) On the closing date fixed for the purchase of the Leased Property:

(i) The required purchase price (which in the case of a purchase by Lessee will equal the Purchase Amount) shall be paid to Administrative Agent, in lawful money of the United States in immediately available funds, at Administrative Agent's address hereinabove stated or at any other place in the United States which Administrative Agent may designate;

(ii) Lessor shall execute and deliver to Lessee good and sufficient deeds warranting title only against Lessor Liens and such other instrument or instruments as may be appropriate, which shall transfer the Leased Property including, without limitation, any rights of Lessor against any party through whom Lessor derived its title to the Leased Property subject to (A) any encumbrances existing on the Closing Date, (B) Permitted Liens, (C) all liens, encumbrances, charges, exceptions and restrictions attaching to the Leased Property after the Closing Date (other than Lessor Liens), and (D) Applicable Laws, but in any event, in each case free and clear of all Lessor Liens provided that the Leased Property shall be conveyed "AS IS, WHERE IS" and its then present physical condition;

(iii) All out of pocket costs and charges incident to such transfer, including but not limited to all transfer taxes, recording fees, title insurance premiums, reasonable attorneys fees and federal, state and local taxes, (but not including Excluded Taxes) of Lessor, Administrative Agent and the Lenders will be paid from sale proceeds and deducted in computing Net Proceeds;

(iv) Lessee shall pay to Administrative Agent all Basic Rent, and to Administrative Agent or whichever party is entitled thereto all Supplemental Rent, Breakage Costs, if any, and other sums payable by Lessee under this Lease or under any other Operative Document, due and payable through the date Lessee purchases the Leased Property; and

(v) Except as otherwise provided herein, this Lease shall terminate and be of no further force and effect with respect to the Leased Property following satisfaction of the foregoing and the applicable provisions hereof.

Section 14.6. Essence of the Lease; Interpretation. The provisions of Sections 13.2, 14 and 17.22 are of the essence of this Lease, and time is of the essence for payment and performance of the obligations of Lessee set forth therein.

Section 14.7. Surrender and Return.

(a) Upon the expiration or earlier termination of the Basic Lease Term, and provided that Lessee, if so entitled, has not exercised its option to purchase the Leased Property or renew this Lease pursuant to Section 14.8 hereof or if Lessor shall have elected to require

Lessee to return the Leased Property pursuant to Section 14.2(b) or if Lessee shall have elected to return the Leased Property pursuant to Section 14.2(c), then Lessee shall peaceably leave and surrender and return the Leased Property to Lessor (the "Surrender Obligation") in good condition, ordinary wear and tear excepted, and in compliance with the provisions of this Lease. Lessee shall remove from the Leased Property on or prior to such expiration or earlier termination all property situated thereon which is not the property of Lessor, and the Leased Property shall be broom clean and Lessee shall repair any damage caused by such removal. Property not so removed shall become the property of Lessor, and Lessor may cause such property to be removed from the Leased Property and disposed of, and Lessee shall pay the reasonable cost of any such removal and disposition and of repairing any damage caused by such removal.

(b) Except for surrender upon the expiration or earlier termination of the Basic Lease Term hereof, no surrender to Lessor of this Lease or of the Leased Property shall be valid or effective unless agreed to and accepted in writing by Lessor.

(c) Without limiting the generality of the foregoing, upon the surrender and return of the Leased Property to Lessor pursuant to this Section 14.7, the Leased Property shall be (i) capable of being immediately utilized by a third-party purchaser or third-party lessee without further inspection, repair, replacement, alterations or improvements, licenses, permits, or approvals, except for any of the foregoing required solely by virtue of the change in ownership (other than to Lessor or Administrative Agent), use or occupancy of the Leased Property, (ii) in accordance and compliance with all Applicable Laws including, without limitation, any of the foregoing required by virtue of a change in ownership, use or occupancy of the Leased Property other than to Lessee, and (iii) free and clear of any Lien. Until the Leased Property has been surrendered and returned to Lessor in accordance with the provisions of this Section 14.7 and subject to Article XIII hereof, Lessee shall continue to pay Lessor all Basic Rent and Supplemental Rent due hereunder.

(d) After receipt of notice of Lessee's exercise of the Remarketing Option or the Return Option, Lessor or Administrative Agent an environmental assessment of the Leased Property dated not later than forty-five (45) days prior to the scheduled date of such surrender and return. Such environmental assessment shall be prepared by an independent environmental consultant selected by Lessor, shall be in form, detail and substance reasonably satisfactory to Lessor, and shall otherwise indicate the environmental condition of the Leased Property to be the same as described in the related Environmental Audit, and if such environmental assessment reveals the need for additional review or testing, then Lessee shall pay for the cost of such report and any additional review and provide all such additional information or environmental assessments as are recommended and, subject to Section 5.1(h) of the Participation Agreement, perform any remediation recommended therein, and provide evidence of compliance with Section 14.7(c)(ii) above to Lessor and Lenders. If such report does not recommend any additional review as testing, then Lessee shall not be obligated to pay for the report as a cost in addition to the payment required of Lessee by Section 14.4(b).

(e) Lessee acknowledges and agrees that a breach of any of the provisions of this Section 14.7 may result in damages to Lessor that are difficult or impossible to ascertain and that may not be compensable at law. Accordingly, upon application to any court of equity

having jurisdiction over the Leased Property or Lessee, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee set forth in this Section 14.7.

(f) Upon the request of Lessor, Lessee shall continue to maintain its insurance policies for the Leased Property, to the extent permitted by such policies, provided that Lessor pays or reimburses Lessee for the pro rata cost thereof.

Section 14.8. Renewal. Subject to the conditions set forth herein, Lessee may, by written notice to Lessor and Administrative Agent given not later than 150 days and not earlier than twelve (12) months, prior to the Scheduled Termination Date, give notice that Lessee shall renew this Lease subject to the consent of Lessee and the Lenders, which consent may be withheld in their sole discretion, for a term and upon conditions mutually agreeable to Lessee and such parties. No later than the date that is forty five (45) days after the date the request to renew has been delivered to each of Lessor and Administrative Agent, Administrative Agent will notify Lessee whether or not Lessor and the Lenders consent to such renewal request (which consent, may be granted or denied in their sole discretion, and may be conditioned on such conditions precedent as may be specified by such parties). If Administrative Agent fails to respond within such time frame, such failure shall be deemed to be a rejection of such request. If Administrative Agent notifies Lessee that Lessor and the Lenders have consented to such renewal, such renewal shall be effective upon agreement by Lessee and such parties in writing prior to the date upon which such renewal becomes effective of terms and conditions mutually agreeable. A failure of the parties to reach agreement on such renewal 90 days prior to the applicable Scheduled Termination Date shall constitute and be deemed an election by Lessee to purchase the Leased Property pursuant to Section 14.1 hereof.

ARTICLE XV
LESSEE'S EQUIPMENT

After any repossession of the Leased Property (whether or not this Lease has been terminated), Lessee, at its expense and so long as the removal of Lessee's trade fixtures, personal property and equipment shall not result in a violation of Applicable Law, shall, within a reasonable time after such repossession or within sixty (60) days after Lessee's receipt of Lessor's written request (whichever shall first occur), remove all of Lessee's trade fixtures, personal property and equipment from the Leased Property (to the extent that the same can be readily removed from the Leased Property without causing material damage to the Leased Property); provided, however, that Lessee shall not remove any such fixtures that constitute Leased Property (or that constitute a replacement of Leased Property). Any of Lessee's trade fixtures, personal property and equipment not so removed by Lessee within such period shall be considered abandoned by Lessee, and title thereto shall without further act vest in Lessor, and may be appropriated, sold, destroyed or otherwise disposed of by Lessor without notice to Lessee and without obligation to account therefor and Lessee will pay Lessor, upon written demand, all reasonable costs and expenses incurred by Lessor in removing, storing or disposing of the same and all costs and expenses incurred by Lessor to repair any damage to the Leased Property caused by such removal. Lessee will immediately repair at its expense all damage to the Leased Property caused by any such removal (unless such removal is effected by Lessor, in which event Lessee shall pay all reasonable costs and expenses incurred by Lessor for such repairs). Lessor

shall have no liability in exercising Lessor's rights under this Article XV, nor shall Lessor be responsible for any loss of or damage to Lessee's personal property and equipment.

ARTICLE XVI
RIGHT TO PERFORM FOR LESSEE

If a Lease Event of Default results from any failure of Lessee to perform or comply with any of its agreements contained herein, then so long as such Lease Event of Default continues, Lessor may perform or comply with such agreement, and Lessor shall not thereby be deemed to have waived any default caused by such failure, and all expenses of Lessor (including reasonable attorney's fees and expenses) incurred in connection with such performance or compliance with such agreement, as the case may be, shall be deemed Supplemental Rent, payable by Lessee to Lessor within thirty (30) days after written demand therefor.

ARTICLE XVII
MISCELLANEOUS

Section 17.1. Reports. To the extent required under Applicable Law and to the extent it is reasonably practical for Lessee to do so, Lessee shall prepare and file in timely fashion, or, where such filing is required to be made by Lessor or it is otherwise not reasonably practical for Lessee to make such filing, Lessee shall prepare and deliver to Lessor (with a copy to Administrative Agent) within a reasonable time prior to the date for filing and Lessor shall file, any material reports with respect to the condition or operation of the Leased Property that shall be required to be filed with any Governmental Authority.

Section 17.2. Binding Effect; Successors and Assigns; Survival. The terms and provisions of this Lease, and the respective rights and obligations hereunder of Lessor and Lessee, shall be binding upon their respective successors, legal representatives and assigns (including, in the case of Lessor, any Person to whom Lessor may transfer the Leased Property or any interest therein in accordance with the provisions of the Operative Documents), and inure to the benefit of their respective permitted successors and assigns, and the rights hereunder of Administrative Agent shall inure (subject to such conditions as are contained herein) to the benefit of their respective permitted successors and assigns. Lessee hereby acknowledges that Lessor has assigned all of its right, title and interest to, in and under this Lease to Administrative Agent, and that all of Lessor's rights hereunder may be exercised by Administrative Agent and that Administrative Agent is an express third party beneficiary hereof.

Section 17.3. Quiet Enjoyment. Lessor covenants that it will not interfere in Lessee's or any of its permitted sublessees' quiet enjoyment of the Leased Property in accordance with this Lease during the Basic Lease Term, so long as no Lease Event of Default has occurred and is continuing. Such right of quiet enjoyment is independent of, and shall not affect, Lessor's rights otherwise to initiate legal action to enforce the obligations of Lessee under this Lease.

Section 17.4. Notices. Unless otherwise specified herein, all notices, offers, acceptances, rejections, consents, requests, demands or other communications to or upon the respective parties hereto shall be in writing and shall be deemed to have been given as set forth in Section 8.2 of the Participation Agreement. All such notices, offers, acceptances, rejections,

consents, requests, demands or other communications shall be addressed as follows or to such other address as any of the parties hereto may designate by written notice:

If to Lessor:

BTMU Capital Corporation
111 Huntington Avenue
Boston, MA 02199
Attn: Senior Vice President – Portfolio Servicing
Phone: 617-345-5727
Fax: 617-345-1444
Email: cbehan@btmucc.com

If to Lessee:

Lennox Procurement Company Inc.
2140 Lake Park Boulevard
Richardson, TX 75080
Attn: Gregg Moseman
Phone: 972-497-6935
Fax: 972-497-6940
Email: gregg.moseman@lennoxintl.com

If to any other party to the Transaction, to the address provided in the Participation Agreement.

Section 17.5. Severability. Any provision of this Lease that shall be 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, and Lessee shall remain liable to perform its obligations hereunder except to the extent of such unenforceability. To the extent permitted by Applicable Law, Lessee hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect .

Section 17.6. Amendment; Complete Agreements. Neither this Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, except by an instrument in writing signed by Lessor and Lessee in accordance with the provisions of Section 8.4 of the Participation Agreement. This Lease, together with the other Operative Documents, is intended by the parties as a final expression of the lease financing agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein and therein. No course of prior dealings between the parties or their officers, employees, agents or Affiliates shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease or any other Operative Document. Acceptance of, or acquiescence in, a course of performance rendered under

this or any prior agreement between the parties or their Affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease or any other Operative Document. No representations, undertakings, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth in the Operative Documents.

Section 17.7. Construction. This Lease shall not be construed more strictly against any one party, it being recognized that both of the parties hereto have contributed substantially and materially to the preparation and negotiation of this Lease.

Section 17.8. Headings. The Table of Contents and headings of the various Articles and Sections of this Lease are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

Section 17.9. Counterparts. Lease 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.

Section 17.10. GOVERNING LAW.

(a) THIS LEASE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, EXCEPT AS TO MATTERS RELATING TO THE CREATION OF THE LEASEHOLD ESTATE HEREUNDER, AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE IN WHICH SUCH ESTATE IS LOCATED.

(b) ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS LEASE OR ANY OTHER OPERATIVE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF LESSEE, GUARANTOR OR LESSOR SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY PROPERTY MAY BE BROUGHT, AT THE OPTION OF LESSOR OR ADMINISTRATIVE AGENT ACTING AT THE DIRECTION OF THE REQUIRED LENDERS, IN THE COURTS OF ANY JURISDICTION WHERE SUCH PROPERTY MAY BE FOUND. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. EACH PARTY HERETO IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH

PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT EACH PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS LEASE AND THE OTHER OPERATIVE DOCUMENTS.

(c) EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS LEASE OR ANY OTHER OPERATIVE DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY OTHER PARTY HERETO. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH SUCH PARTY ENTERING INTO THIS LEASE AND THE OTHER OPERATIVE DOCUMENTS.

Section 17.11. Discharge of Lessee's Obligations by its Affiliates. Lessor agrees that performance of any of Lessee's obligations hereunder by one or more of Lessee's Affiliates or one or more of Lessee's sublessees of the Leased Property or any part thereof shall constitute performance by Lessee of such obligations to the same extent and with the same effect hereunder as if such obligations were performed by Lessee, but no such performance shall excuse Lessee from any obligation not performed by it or on its behalf under the Operative Documents.

Section 17.12. Liability of Lessor Limited. The liability of each of Lessor and its Affiliates and their respective officers, directors, employees or agents, individually and personally, with respect to the performance of any obligation under this Lease and under the Operative Documents is limited as set forth in Section 8.10 of the Participation Agreement, the provisions of which are hereby incorporated by reference as if fully set forth herein.

Section 17.13. Estoppel Certificates. Lessee agrees that at any time and from time to time during the Basic Lease Term, it will promptly, but in no event later than fifteen (15) days after request by Lessor, execute, acknowledge and deliver to Lessor, Administrative Agent, or to any prospective purchaser (if such prospective purchaser has signed a commitment or letter of intent to purchase the Leased Property or any part thereof or any Note), assignee or mortgagee or third party designated by such other party, a certificate stating (a) that this Lease is unmodified and in force and effect (or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements); (b) the date to which Basic Rent has been paid; (c) whether or not there is any existing default by Lessee in the payment of Basic Rent or any other sum of money hereunder, and whether or not there is any other existing default by

either party with respect to which a notice of default has been served, and, if there is any such default, specifying the nature and extent thereof; (d) whether or not, to the knowledge of the signer after due inquiry and investigation, there are any setoffs, defenses or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of the party executing such certificate and (e) other items that may be reasonably requested; provided that no such certificate may be requested unless the requesting party has a good faith reason for such request.

Section 17.14. No Joint Venture. Any intention to create a joint venture or partnership relation between Lessor and Lessee is hereby expressly disclaimed.

Section 17.15. No Accord and Satisfaction. The acceptance by Lessor of any sums from Lessee (whether as Basic Rent or otherwise) in amounts which are less than the amounts due and payable by Lessee hereunder is not intended, nor shall be construed, to constitute an accord and satisfaction of any dispute between Lessor and Lessee regarding sums due and payable by Lessee hereunder, unless Lessor specifically deems it as such in writing.

Section 17.16. No Merger. In no event shall the leasehold interests, estates or rights of Lessee hereunder, or of the holder of any Notes secured by a security interest in this Lease, merge with any interests, estates or rights of Lessor in or to the Leased Property, it being understood that such leasehold interests, estates and rights of Lessee hereunder, and of the holder of any Notes secured by a security interest in this Lease, shall be deemed to be separate and distinct from Lessor's interests, estates and rights in or to the Leased Property, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same person, corporation or other entity.

Section 17.17. Survival. The obligations of Lessee to be performed under this Lease on or prior to the Termination Date and the obligations of Lessee arising or accruing on or prior to the Termination Date pursuant to Article III, Articles X, XI, XIII, Sections 14.2, 14.3, 14.4, 14.5, 14.7, Articles XV, and XVI, and Sections 17.10, 17.12 and 17.19 shall survive the expiration or termination of this Lease. The extension of any applicable statute of limitations by Lessor, Lessee, Administrative Agent or any Indemnitee shall not affect such survival.

Section 17.18. Chattel Paper. To the extent that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code in any applicable jurisdiction), no security interest in this Lease may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the original counterpart by the receipt of Administrative Agent.

Section 17.19. Time of Essence. Time is of the essence of this Lease.

Section 17.20. Recordation of Lease. Lessee will, at its expense, cause this Lease or memorandum of lease (if permitted by Applicable Law) to be recorded in the proper office or offices in the State of Texas.

Section 17.21. Investment of Security Funds. Any amounts not payable to Lessee pursuant to any provision of Article VIII, X or XIV or this Section 17.21 solely because a Lease Event of Default shall have occurred and be continuing shall be held by Lessor as security for the

obligations of Lessee under this Lease and the Participation Agreement. At such time as no Lease Event of Default shall be continuing, such amounts, net of any amounts previously applied to Lessee's obligations hereunder or under the Participation Agreement, shall be paid to Lessee. Any such amounts which are held by Lessor or Administrative Agent pending payment to Lessee shall until paid to Lessee, as provided hereunder or, as long as the Credit Agreement is in effect, until applied against Lessee's obligations herein and under the Participation Agreement or distributed to Lessee as provided herein be invested by Administrative Agent or Lessor, as the case may be as directed from time to time in writing by Lessee (provided, however, if a Lease Event of Default has occurred and is continuing it will be directed by Required Lenders or, if the Funded Amounts have been fully paid, Lessor) and at the expense and risk of Lessee, in Permitted Investments. Any gain (including interest received) realized as the result of any such investment (net of any fees, commissions and other expenses, if any, incurred in connection with such investment) shall be applied in the same manner as the principal invested.

Section 17.22. Early Termination Option.

(a) So long as no Lease Default or Lease Event of Default has occurred and is continuing hereunder, at any time during the Basic Lease Term, Lessee may give Lessor, the Lenders and Administrative Agent an irrevocable written notice (the "Early Termination Notice") of Lessee's intention to terminate this Lease and purchase the Leased Property pursuant to this Section 17.22. Such notice shall (i) refer specifically to this Section 17.22, (ii) state that Lessee shall purchase the Leased Property in accordance with the provisions of Section 14.5 hereof by paying to Lessor the Purchase Amount due on the date set forth in clause (iii), and (iii) specify the date for such purchase, which shall be the first Payment Date no less than 30 nor more than 90 days after the date of delivery the Purchase Notice, but in any event shall not be later than the Termination Date. Upon such election, Lessee shall purchase the Leased Property in accordance with the provisions of Section 14.5 hereof on such purchase date at such purchase price.

(b) If Lessee has elected to purchase the Leased Property in accordance with paragraph (a), on the date of purchase, Lessee shall pay in cash or immediately available federal funds, as the purchase price therefor, an amount equal to the Purchase Amount.

(c) Upon payment of the Purchase Amount, this Lease shall terminate and the Leased Property shall be conveyed to Lessee pursuant to Section 14.5 hereof and in accordance with the terms and conditions thereof. If Lessee fails to purchase the Leased Property on the designated purchase date in accordance with the terms hereof, such failure shall immediately constitute a Lease Event of Default hereunder. Time is of the essence with regard to Lessee's obligations under this Section 17.22.

[balance of page left blank/signatures follow]

IN WITNESS WHEREOF, the undersigned have each caused this Lease Agreement to be duly executed and delivered and attested by their respective officers thereunto duly authorized as of the day and year first above written.

BTMU CAPITAL CORPORATION, as Lessor

By: /s/ Cheryl A. Behan

Name: Cheryl A. Behan

Title: Senior Vice President

LENNOX PROCUREMENT COMPANY INC.,

as Lessee

By: /s/ Gregory A. Moseman

Name: Gregory A. Moseman

Title: Assistant Treasurer

APPENDIX A
to
Participation Agreement,
Lease and Credit 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 each other gender;

(iv) reference to any agreement (including any Operative Document), document or instrument means such agreement, document or instrument as amended, supplemented 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 Law means such Applicable Law 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 Law means that provision of such Applicable Law 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 hereof;

(viii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(ix) "or" is not exclusive; and

(x) relative to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”.

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, in accordance with GAAP.

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 set forth below when used in each Operative Document:

“Acceleration” is defined in Section 4.3(b) of the Credit Agreement.

“Actual Knowledge” by a Person or Persons with respect to the occurrence or non-occurrence of an event, means knowledge of such occurrence or non-occurrence by the officer of such Person or Persons in the best organizational position to have such knowledge.

“Additional Payment” means an amount equal to Eight Hundred Twenty Four Thousand Fifty Nine and 89/100 (\$824,059.89).

“Address” means with respect to any Person, its address set forth in Schedule 8.2 to the Participation Agreement or such other address as it shall have identified to the parties to the Participation Agreement in writing.

“Adjusted EBITDA” means, for any period (the “Subject Period”), the sum of (a) EBITDA plus (b), to the extent not included in EBITDA, all Acquired EBITDA (as defined below). If at any time during the Subject Period the Guarantor or any Subsidiary shall have made any Material Disposition (as defined below), the Adjusted EBITDA for such Subject Period shall be reduced by an amount equal to the Adjusted EBITDA (if positive) attributable to the property that is the subject of such Material Disposition for such Subject Period or increased by an amount equal to the Adjusted EBITDA (if negative) attributable thereto for such Subject Period. The term “Material Disposition” means any disposition of all of the Equity Interests in any Subsidiary or all or substantially all of the assets of any Subsidiary that yields gross proceeds to the Guarantor or any of its Subsidiaries in excess of \$25,000,000. The term “Acquired EBITDA” means, with respect to any Person acquired, or substantially all of whose assets have been acquired, by the Guarantor or any Subsidiary during the Subject Period (herein a “Target”), the total of the following for the portion of the Subject Period prior to the acquisition of such Person or its assets (the “Test Period”) determined on a consolidated basis in accordance with GAAP consistently applied from financial statements audited by a certified public accountant

satisfactory to the Revolver Administrative Agent and covering the Test Period (provided that audited financial statements are not required if the annual earnings before interest, taxes, depreciation and amortization of the Target for the completed twelve month period prior to its acquisition is less than \$5,000,000, calculated in the same manner as set forth in the definition of Acquired EBITDA but for such twelve month period) and otherwise on a basis acceptable to the Administrative Agent:

(i) the consolidated net income (or net loss) of the Target from operations, excluding the following:

- (a) the proceeds of any life insurance policy;
- (b) any gain arising from (1) the sale or other disposition of any assets (other than current assets) to the extent that the aggregate amount of gains exceeds the aggregate amount of losses from the sale, abandonment or other disposition of assets (other than current assets), (2) any write-up of assets, or (3) the acquisition by the Target of its outstanding securities constituting Indebtedness;
- (c) any amount representing the interest of the Target in the undistributed earnings of any other Person;
- (d) any earnings of any other Person accrued prior to the date it becomes a Subsidiary of the Target or is merged into or consolidated with the Target or a Subsidiary of the Target and any earnings, prior to the date of acquisition, of any other Person acquired in any other manner; and
- (e) any deferred credit (or amortization of a deferred credit) arising from the acquisition of any Person; plus

(ii) the sum of (a) any deduction for (or less any gain from) income or franchise taxes included in determining such consolidated net income (or loss); plus (b) Interest Expenses deducted in determining such consolidated net income (or loss); plus (c) amortization and depreciation expense deducted in determining such consolidated net income (or loss) plus (d) any non-recurring and non-cash charges resulting from the application of GAAP that requires a charge against earnings for the impairment of goodwill to the extent not already added back or not included in determining such consolidated net income (or loss), all calculated without duplication; minus,

(iii) to the extent added in computing such consolidated net income (or loss), all income that has been included in the calculation of such net income for such period that will be eliminated in the future after the acquisition of such Target, as approved by the Administrative Agent.

“Administrative Agent” means MHC B (USA) Leasing and Finance Corporation, a New York corporation, in its capacity as such under the Operative Documents, and any successor Administrative Agent appointed pursuant thereto.

“Affiliate” of any Person shall mean any other Person directly or indirectly controlling, controlled by or under common control with, such Person. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise, provided (but without limiting the foregoing) that no pledge of voting securities of any Person without the current right to exercise voting rights with respect thereto shall by itself be deemed to constitute control over such Person.

“After-Tax Basis” means, with respect to any payment to be received (in the definition, the “Initial Payment”), the amount of such Initial Payment increased so that, after deduction of the amount of all Taxes (other than Excluded Taxes) withheld from, imposed upon or otherwise required to be paid by the recipient with respect to the receipt or accrual of such amounts (in this definition, the “Relevant Taxes”), such increased payment (after such deductions) is equal to the Initial Payment otherwise required to be made; provided, however, for the purposes of this definition, and for purposes of any payment to be made to either Lessee or an Indemnitee on an after-tax basis, it shall be assumed that federal, state and local income taxes are payable at the highest combined marginal federal and state statutory income tax rate (taking into account the deductibility of state income taxes for federal income tax purposes) applicable to corporations from time to time.

“Alterations” is defined in Section 6.2 of the Lease.

“Alternative Rate” means, for any period, an interest rate per annum equal to the Prime Rate (calculated for any period on the basis of the actual number of days elapsed during such period and a 365-days (or 366-day, if appropriate) year).

“Applicable Law” means all existing and future applicable laws (including Environmental Laws), rules, regulations (including proposed, temporary and final income tax regulations), 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) and those pertaining to the construction, use or occupancy of the Leased Property) and any restrictive covenant or deed restriction or easement of record affecting the Leased Property, and additionally, as to any Person, the charter and by-laws or other organizational or governing documents of such Person, and any law, rule or regulation, permit, approval, authorization, license or variance, order or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, including, without limitation, the Securities Act, the Securities Exchange Act, Regulations T, U and X.

“Applicable Margin”, with respect to interest on the Loan and Yield on the Equity Investment, shall mean the applicable basis point spread set forth below corresponding to the Debt to Adjusted EBITDA Ratio of Guarantor in effect as of the most recent Calculation Date:

<i>Pricing Level</i>	<i>Debt to Adjusted EBITDA Ratio</i>	<i>Applicable Margin on Notes (basis points)</i>	<i>Applicable Margin on Equity Investment (basis points)</i>
I	Less than or equal to 1.00 to 1.00	75	150
II	Less than or equal to 1.50 to 1.0 but greater than 1.00 to 1.0	82.5	150
III	Less than or equal to 2.00 to 1.0 but greater than 1.50 to 1.0	90	200
IV	Less than or equal to 2.50 to 1.0 but greater than 2.00 to 1.0	98	275
V	Less than 3.00 to 1.00 but greater than 2.50 to 1.0	110	300
VI	Greater than 3.00 to 1.00	125	325

The Applicable Margin for interest on the Loan and Yield on the Equity Investment shall, in each case, be determined and adjusted as of each Calculation Date. Each Applicable Margin shall be effective from one Calculation Date until the next Calculation Date. The initial Applicable Margin, in each case, shall be based on Pricing Level II (as shown above) and shall remain at Pricing Level II until the first Calculation Date after the Closing Date and, thereafter, the Pricing Level shall be determined as set forth herein.

“Appraisal” means an Appraisal as defined in Section 3.1 of the Participation Agreement and which complies with 12 C.F.R.¶ 323 et seq. and FIRREA.

“Appraiser” means an MAI appraiser satisfactory to each Lender and Lessor and which Appraiser complies with 12 C.F.R.¶ 323 et seq.

“Appurtenant Rights” is defined in Section 1 of the Memorandum of Lease.

“Assignment of Lease” means the Assignment of Lease dated as of the Closing Date, from Lessor to Administrative Agent.

“Assignment of Guaranty” means the Assignment of Guaranty, dated as of the Closing Date, from Lessor to Administrative Agent, and consented to by Guarantor.

“Assignment of Purchase Agreement” means the Assignment of Purchase Agreement dated as of the Closing Date from Buyer to Lessor.

“Awards” means any award or payment received by or payable to Lessor or Lessee on account of any Condemnation or Significant Condemnation (less the actual costs, fees and expenses incurred in the collection thereof, for which the Person incurring the same shall be reimbursed from such award or payment).

“Bankruptcy Laws” means Title 11 of the United States Code or any other Federal or state bankruptcy, insolvency or similar law, now or hereafter in effect in the United States relating to bankruptcy, insolvency, reorganization winding up or adjustment of debts of any Person.

“Basic Rent” is defined in Section 2.3 of the Lease.

“Basic Lease Term” is defined in Section 2.2 of the Lease.

“Board of Directors”, with respect to a corporation, means either the Board of Directors or any duly authorized committee of that Board which pursuant to the by-laws of such corporation has the same authority as that Board as to the matter at issue.

“Breakage Costs” means all losses, costs or expenses sustained or incurred by Lessor or any Lender as a consequence of (i) the failure of Lessor to complete any borrowing on the Closing Date, (ii) any payment, prepayment or conversion of any borrowing or Rent required by any provision of the Credit Agreement, the Participation Agreement or otherwise (and whether by reason of an Event of Default or otherwise) made or deemed to be made on a date other than a Payment Date or other than in an amount, if any, specified as regularly scheduled payments on the Lease Balance pursuant to the terms of the Operative Documents, (iii) any default in payment or prepayment of the principal amount of any borrowing or Rent or any part thereof, as and when due or payable (at the due date thereof, whether by scheduled maturity, acceleration or otherwise) including, without limitation, all losses, costs or expenses incurred by reason of the termination in whole or in part of any Interest Rate Swap Agreement or of any hedging arrangement entered into or the liquidation or reemployment of deposits or other funds acquired by Lessor or a Lender to fund or maintain its portion of such borrowing or such Rent (or its funding, or its participation in the funding thereof) and (iv) any modification of an Interest Rate Swap Agreement because of a change in the Pricing Level.

“Business Day” means any day other than a Saturday, Sunday or other day on which banks are required or authorized to be closed for business in the New York, New York, Dallas, Texas or Boston, Massachusetts, or on which dealings or exchange operations in respect of U.S. Dollar deposits are not conducted by and between banks in the London interbank eurodollar market.

“Buyer” means Lennox Industries Inc., an Iowa corporation.

“Calculation Date” means the last day of each fiscal year of Guarantor, commencing with the fiscal year ending on December 31, 2006.

“Capital Lease” means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

“Casualty” means an event of damage or casualty relating to all or part of any Leased Property that does not constitute a Significant Casualty.

“Claims” means liabilities, obligations, damages, losses, demands, penalties, fines, claims, actions, suits, judgments, proceedings, settlements, utility charges, costs, expenses and disbursements (including, without limitation, reasonable legal fees and expenses) of any kind and nature whatsoever.

“Closing Date” means June 22, 2006, the date upon which such Land and Leased Property is acquired by Lessor and the Loans and Equity Investment are made pursuant to the Participation Agreement and the other Operative Documents.

“Code” means the Internal Revenue Code of 1986, as amended.

“Condemnation” means any condemnation, requisition, confiscation, seizure or other taking or sale of the use, occupancy or title to the Leased Property or any part thereof in, by or on account of any actual eminent domain proceeding or other action by any Governmental Authority or other Person 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, occupancy or title is taken.

“Consolidated Indebtedness” means, as of any date of determination, all Indebtedness and all Receivable Securitization Outstandings of Guarantor and its Subsidiaries outstanding on such date, after eliminating all offsetting debits and credits between Guarantor and its Subsidiaries and all other items required to be eliminated in the course of the preparation of consolidated financial statements of Guarantor and its Subsidiaries in accordance with GAAP.

“Consolidated Net Income” means, for any period, the net income (or net loss) of the Guarantor and its Subsidiaries for such period, determined in accordance with GAAP, excluding:

- (a) the proceeds of any life insurance policy;
- (b) any gain arising from (1) the sale or other disposition of any assets (other than current assets) to the extent that the aggregate amount of gains exceeds the aggregate amount of losses from the sale, abandonment or other disposition of assets (other than current assets), (2) any write-up of assets, or (3) the acquisition by the Borrower or any Subsidiary of its outstanding securities constituting Indebtedness;
- (c) any amount representing the interest of the Guarantor or any Subsidiary in the undistributed earnings of any other Person;
- (d) any earnings of any other Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Guarantor or a Subsidiary and any earnings, prior to the date of acquisition, of any other Person acquired in any other manner;
- (e) any deferred credit (or amortization of a deferred credit) arising from the acquisition of any Person;
- (f) any non-recurring and non cash charges resulting from the application of GAAP that requires a charge against earnings for the impairment of goodwill; and
- (g) any non-recurring charges deducted in determining net income for such period which relate to the discontinuance of Subsidiary operations other than the domestic heating (with the exception of the hearth products division) and cooling manufacturing segment and the domestic refrigeration segment.

“Consolidated Subsidiaries” means Subsidiaries of Guarantor consolidated onto its financial statements in accordance with GAAP.

“Contractual Obligation”, as applied to any Person, means any provision of any Securities issued by that Person or any indenture, mortgage, deed of trust, contract, undertaking, agreement, instrument or other document to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject (including, without limitation, any restrictive covenant affecting any of the properties of such Person).

“Controlled Group” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Guarantor or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

“Credit Agreement” means the Credit Agreement, dated as of June 22, 2006, among Lessor, Administrative Agent and each of the Lenders.

“Credit Parties” means, collectively, Lessee and Guarantor.

“Debt to Adjusted EBITDA Ratio” means, as of the last day of any fiscal quarter, the ratio of Consolidated Indebtedness outstanding as of such day to Adjusted EBITDA for the four (4) fiscal quarters then ended.

“Deed” means a deed, dated as of the Closing Date, from the Seller to Lessor, as assignee of Buyer, conveying the Property, in a form reasonably acceptable to Lessor.

“Deed of Trust” means the Deed of Trust, Security Agreement and Fixture Filing, dated as of June 22, 2006 among Lessor, as grantor, and Administrative Agent, as beneficiary.

“Default” means any event, condition or failure which, with notice or lapse of time or both, would become an Event of Default.

“Deficiency” is defined in Section 14.4(a) of the Lease.

“EBITDA” means, for any period, the total of the following calculated for Guarantor and the Subsidiaries without duplication on a consolidated basis in accordance with GAAP consistently applied for such period: (a) Consolidated Net Income from operations; plus (b) any deduction for (or less any gain from) income or franchise taxes included in determining Consolidated Net Income; plus (c) Interest Expenses deducted in determining Consolidated Net Income; plus (d) amortization and depreciation expense deducted in determining Consolidated Net Income; plus (e) any non-recurring and non-cash charges resulting from application of GAAP that requires a charge against earnings for the impairment of goodwill to the extent not already added back in determining Consolidated Net Income; plus (f) any non-cash expenses that arose in connection with the grant of stock options to officers, directors and employees of the Guarantor and the Subsidiaries and were deducted in determining Consolidated Net Income; minus (g) any cash payments made in such period related to a non-cash expense added to Consolidated Net Income in a previous period pursuant to part (e) or part (f), hereof or pursuant to part (f) of the definition of Consolidated Net Income.

“End of Term Adjustment” is defined in Section 14.4 of the Lease.

“Environmental Audit” means a Phase I Environmental Assessment, dated no more than ninety (90) days prior to the Closing Date, satisfying 2005 ASTM Form 1527 standards, by Terracon Consultants, Inc. or another environmental services firm reasonably satisfactory to Lessor and the Lenders.

“Environmental Laws” means and include the Resource Conservation and Recovery Act of 1976, (RCRA) 42 U.S.C. §§ 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601-9657, (CERCLA), the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq., the Texas Water Code, the Texas Health and Safety Code, and all similar federal, state and local environmental laws, ordinances, rules, orders, statutes, decrees, judgments, injunctions, codes and regulations, and any other federal, state or local laws, ordinances, rules, codes and regulations, and any other federal, state or local laws, ordinances, rules, codes and regulations relating to the environment, human health or natural resources or the regulation or control of or imposing liability or standards of conduct concerning human health, the environment, Hazardous Materials or the clean-up or other remediation of any Leased Property, or any part thereof, as any of the foregoing may have been from time to time amended, supplemented or supplanted.

“Environmental Permits” means all permits, licenses, authorizations, certificates and approvals of Governmental Authorities required by Environmental Laws.

“Environmental Violations” means, with respect to the Leased Property, any activity, occurrence or condition that violates or results in non-compliance with any Environmental Law.

“Equity Interests” means shares of the capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in a Person or any warrants, options or other rights entitling the holder thereof to purchase or acquire such interests.

“Equity Investment” is defined in Section 2.2(a) of the Participation Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time or any successor federal statute.

“Escrow Agreement” means the Escrow Agreement dated as of June 22, 2006 among Seller, Title Company, Lessee, Lessor, Lenders and Administrative Agent.

“Event of Loss” means a Significant Casualty or a Significant Condemnation.

“Excluded Payments” means (i) indemnity payments payable directly to Lessor, Indemnitee or Lender by Lessee or Guarantor pursuant to the Lease or the Participation Agreement, as the case may be, (ii) amounts payable directly to Lessor or Lender under the

Lease in respect of public liability insurance proceeds, and (iii) any right to enforce the payment against Lessee of any amount described in clauses (i) or (ii).

“Excluded Taxes” means, except as provided in the final paragraph of this definition:

(i) Taxes and impositions imposed upon an 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 Leased 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 of such Indemnitees (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 or items of tax preference); *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 imposed on an Indemnitee only by reason of Lessee’s activities or the location of the Leased 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 Leased 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 7.4(b) of the Participation Agreement, *provided that* the foregoing shall not limit the Lessee’s obligation under Section 7.4(b) of the Participation Agreement to advance to such Indemnitee amounts with respect to Taxes or impositions that are being contested in accordance with Section 7.4(b) of the Participation Agreement or any expenses incurred by such Indemnitee in connection with such contest;

(iv) any Taxes or impositions imposed upon an Indemnitee with respect to any transfer, sale, financing or other disposition of any interest in the Leased Property or any part thereof, or any interest therein or any interest or obligation under the Operative Documents or any Note or the Leased Property itself, or from any sale, assignment, transfer or other disposition of any interest in an 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 Leased Property by the Lessee or the exercise by Lessee of the Remarketing Obligation, (2) the occurrence of an Event of Default, (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 an Indemnitee to the extent such 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 an Indemnitee resulting from, or that would not have been imposed but for, the gross negligence or willful misconduct of such Indemnitee or its Affiliates;

(vii) Taxes to the extent resulting from an Indemnitee's failure to comply with the provisions of Section 7.4(b) of the Participation Agreement, which failure precludes the ability to conduct a contest pursuant to Section 7.4(b) of the Participation Agreement (unless such failure is caused by the Lessee's breach of its obligations);

(viii) Taxes imposed on or with respect to or payable as a result of activities or assets of an Indemnitee unrelated to the Transaction;

(ix) 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 7.4(d) of the Participation Agreement on a timely basis; *provided that* this clause (x) 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 7.4(b) of the Participation Agreement;

(x) 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, unless caused by acts or omissions of Lessee or Guarantor;

(xi) any withholding taxes which would not have been imposed but for a failure of any Indemnitee to comply with subsection 7.4(d) of the Participation Agreement;

(xii) Taxes imposed by any taxing authority outside the United States; and

(xiii) franchise taxes based upon gross or net income, except those, if any, imposed by taxing authorities in Texas upon an Indemnitee arising from its participation in the Transaction.

Notwithstanding the foregoing, Taxes or increases of Taxes imposed on any Indemnitee will not constitute Excluded Taxes by reason of the preceding clauses (i), (ii), (iv) or (xiii) (but may constitute Excluded Taxes by reason of other clauses listed above) except to the extent that such Taxes or increases in Taxes would have been incurred (and would not been offset by any resulting decrease in Taxes realized by such Indemnitee) if, in lieu of the Transaction, the Lessor and the Lender had advanced funds to the Lessee in the form of a loan secured by the Leased Property in an amount equal to the Lease Balance, 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 Equity Investment at the end of the Basic Lease Term.

“Existing Lennox Leases” means the following leases, each of which covers space in the Improvements and was executed before Lessor acquired the Land and the Improvements: (i) Lease, dated January 15, 1998, between AOC Development II, L.L.C. and Guarantor; and (ii) Storage Space Lease, dated January 15, 1998, between AOC Development II, L.L.C. and Guarantor.

“Existing Space Leases” means the following leases, each of which covers space in the Improvements and was executed before Lessor acquired the Land and the Improvements: (i) One Lake Park Lease Agreement, dated March 27, 2002, between Seller and Forum Financial Services, Inc., as amended; (ii) One Lake Park Lease Agreement, dated November 9, 2005, between Seller and Glow Networks, Inc., as amended; (iii) One Lake Park Lease Agreement dated May 17, 2000, between AOC Development II, L.L.C. and Datatrac Information Services, Inc., as amended; (iv) One Lake Park Lease Agreement, dated March 29, 2000, between AOC Development II, L.L.C. and Philips Semiconductors, Inc., as amended; (v) One Lake Park Lease Agreement, dated March 4, 2003, between Seller and Vining Sparks IBG, L.P., as amended; (vi) One Lake Park Lease Agreement, dated September 1, 2005, between Seller and Axes Technology, Inc., as amended; and (vii) the Existing Lennox Leases.

“Fair Market Value” means, with respect to the Leased Property or any portion thereof, the fair market sales value as determined by an independent appraiser chosen by Lessor or, so long as the Loan is outstanding, Lender that would be obtained in an arm’s-length transaction between an informed and willing buyer (other than a lessee currently in possession) and an informed and willing seller, under no compulsion, respectively, to buy or sell and neither of which is related to Lessor or Lessee, for the purchase of the Leased Property. Such fair market sales value shall be calculated as the value for the use of the Leased Property, assuming the Leased Property is in the condition and repair required to be maintained by the terms of this Lease (unless such fair market sales value is being determined for purposes of Section 13.1 of the Lease and except as otherwise specifically provided in the Lease or the Participation Agreement, in which case this assumption shall not be made).

“FIN 46” means FASB Interpretation No. 46, *Consolidation of Variable Interest Entities*, as revised.

“FIRREA” means Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and 12 C.F.R. Section 34, each as amended and revised from time to time.

“Fiscal Year” means the fiscal year of Guarantor and its Subsidiaries, which shall be the twelve (12) months ending on December 31 in each year.

“Fixtures” is defined in Section 1 of the Memorandum of Lease.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Governmental Action” means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental

Authority, or required by any Applicable Law and shall include, without limitation, all citations, environmental and operating permits and licenses that are required for the use, occupancy, zoning and operation of any Leased Property.

“Governmental Authority” means any foreign or domestic federal, state, county, municipal or other governmental or regulatory authority, agency, board, body, commission, instrumentality, court or any political subdivision thereof.

“Guarantor” means Lennox International Inc., a Delaware corporation.

“Guarantor Document” is defined in Section 5.3(a) of the Participation Agreement.

“Guaranteed Obligations” is defined in Section 1 of the Guaranty.

“Guaranty” means the Guaranty, dated as of June 22, 2006 by Guarantor in favor of Lessor, the Lenders, Administrative Agent and the Indemnitees.

“Guaranty Beneficiary” and “Guaranty Beneficiaries” are defined in the initial paragraph of the Guaranty.

“Hazardous Material” means any substance, waste or material which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, including petroleum, crude oil or any fraction thereof, petroleum derivatives, by products and other hydrocarbons, or which is or becomes regulated by any Governmental Authority, including any agency, department, commission, board or instrumentality of the United States, any jurisdiction in which a Leased Property is located or any political subdivision thereof and also including, without limitation, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls (“PCBs”) and radon gas.

“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 (a “Tax” or “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 Leased Property, 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 Indemnitee, the Leased Property or any part thereof or interest therein, or the Lessee or any sublessee or user of the Leased 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 Leased Property or any part thereof or interest therein; (c) the Notes or the Equity Investment or

other indebtedness with respect to the Leased Property or any part thereof or interest therein or transfer thereof; (d) the rentals, receipts or earnings arising from the Leased 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 Leased Property or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract relating to the construction, acquisition or delivery of the Leased Property or any part thereof or interest therein; (h) the issuance of the Notes and the Equity Investment; or (i) otherwise in connection with the Transaction.

Notwithstanding anything in the first paragraph of this definition the term "Impositions" shall not mean or include Excluded Taxes.

"Improvements" is defined in Section 1 of the Memorandum of Lease.

"Indemnitee" means each of the Administrative Agent, each Lender, Lessor, and their respective Affiliates, successors, permitted assigns, permitted transferees, employees, officers, directors and agents and in both their trust and individual capacities, as applicable; provided, however, that in no event shall Lessee or Guarantor be an Indemnitee.

"Indemnitee Group" means the respective Affiliates, employees, officers, directors and agents of each Indemnitee, as applicable; provided, however, that in no event shall Lessee or Guarantor be a member of the Indemnitee Group.

"Insurance Subsidiary" means Lake Park Insurance, Ltd., a Bermuda corporation.

"Insurance Requirements" means all requirements, duties and obligations necessary under the insurance policies which are required under Section 8 of the Lease in order to maintain such policies in full force and effect as against the insured party named therein.

"Interest Expenses" means, for any period and any Person, the sum of the following calculated on a consolidated basis without duplication in accordance with GAAP: (a) total cash interest expense (including the cash interest portion of Capital Leases but excluding interest expense derived from amortization of fees); plus (b) that portion of the difference between the face amount of accounts receivables sold in connection with securitization transactions and the purchase price paid in connection therewith that is representative of the interest expense that would have been paid if such transaction were accounted for as a financing (as calculated in a manner acceptable to the Administrative Agent); plus (c) that portion of amounts paid under Synthetic Lease Obligations that is representative of the interest expense that would have been paid if such transaction were accounted for as a Capital Lease or otherwise as a financing (as calculated in a manner acceptable to the Administrative Agent).

"Interest Rate" is defined in Section 2.3(b) of the Participation Agreement.

"Interest Rate Swap Agreement" means each interest rate swap agreement entered into by Lessor or any Lender in connection with the Transaction in order to convert payments of Rent that are based on a fixed rate to payments of interest and yield based upon variable interest rates.

"Land" means the land described in Exhibit A to the Lease.

“Lease” means the Lease Agreement, dated as of June 22, 2006, between Lessor and Lessee.

“Lease Balance” means, as of any date of determination and subject to Section 2.5(c) of the Participation Agreement, an amount equal to the aggregate sum of the outstanding principal amount of the Equity Investment and the Loans. The Lease Balance as of the Closing Date equals \$41,202,994.25.

“Lease Default” means a Default under the Lease which, with the giving of notice or passage of time or both, shall constitute a Lease Event of Default.

“Lease Event of Default” means an Event of Default as defined in Article XII of the Lease.

“Leased Property” is defined in Section 2.1 of the Lease.

“Lender” means MHC B (USA) Leasing and Finance Corporation, a New York corporation, together with its successors and assigns and any other party that becomes a Lender under the Credit Agreement and, collectively, the “Lenders”.

“Lender Operative Document” means each document relevant to the Transaction to which Lender is a party.

“Lennox Revolver” means the Second Amended and Restated Revolving Credit Facility Agreement dated as of July 8, 2005 among Guarantor, as borrower, Bank of America, N.A., as administrative agent J.P. Morgan Chase Bank, N.A., as syndication agent, Banc of America Securities LLC and J.P. Morgan Securities, Inc., as joint lead arrangers, and the lenders party thereto.

“Lessee” means Lennox Procurement Company Inc., a Delaware corporation.

“Lessee Obligation” means an amount equal to the Lease Balance; plus all other amounts owing to the Lessor, Administrative Agent and the Lenders by Lessee or Guarantor under the Operative Documents including accrued and unpaid Basic Rent required to pay interest on the Loans and Yield on the Equity Investment and all unpaid fees owing to the Lessor, Administrative Agent and the Lenders under the Operative Documents, minus the Lessor Residual Risk Amount.

“Lessor” means BTMU Capital Corporation, a Delaware corporation.

“Lessor Collateral” is defined in the Deed of Trust.

“Lessor Liens” means Liens on or against any Leased Property, the Lease or any payment of Rent (a) which result from any act or omission of, or any Claim against, Lessor unrelated to the transactions contemplated by the Operative Documents or (b) which result from any Tax owed by Lessor, except any Tax for which Lessee is obligated to indemnify.

“Lessor Remarketing Period” is defined in Section 4.3 of the Credit Agreement.

“Lessor Residual Risk Amount” means, as of any date of determination, an amount equal to the product of 18.032424% and the Lease Balance as of such date of determination.

“LIBOR Rate” means for each Rent Period, a per annum interest rate equal to a fraction, expressed as a percentage, the numerator of which is equal to a rate per annum determined by the Administrative Agent to be the offered rate for deposits in Dollars with a term comparable to such Rent Period that appears on Bloomberg Page “BBAM 1” as of approximately 11:00 a.m., London time, two Business Days prior to the beginning of such Rent Period and the denominator of which is equal to 100% minus the LIBOR Reserve Percentage, if any, provided, however, that if at any time for any reason such offered rate does not appear on Bloomberg Page “BBAM 1,” “LIBOR Rate” shall mean for the applicable Rent Period, a per annum interest rate equal to a fraction, expressed as a percentage, the numerator of which is equal to the rate per annum equal to the average of the rates at which the Administrative Agent is offered deposits in Dollars at or about 11:00 a.m., London time, two Business Days prior to the beginning of such Rent Period in the London interbank market for delivery on the first day of such Rent Period for the number of days comprised therein and the denominator of which is equal to 100% minus the LIBOR Reserve Percentage, if any; provided, further, that if no such offers or quotes are generally available for such amount, then Administrative Agent shall be entitled to determine the LIBOR Rate from another recognized service or interbank quotation, or by estimating in its reasonable judgment the per annum rate (as described above) that would be applicable if such quote or offers were generally available.

“LIBOR Reserve Percentage” means for any day, the aggregate (without duplication) of the maximum rates (expressed as a decimal) of reserve requirements in effect on such day (including without limitation basic, supplemental, marginal and emergency reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto) dealing with reserve requirements prescribed on eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D) maintained by a member bank of the Federal Reserve System.

“Lien” means any mortgage, deed of trust, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including, without limitation, any irrevocable license, 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 (including, without limitation, the interest of a vendor or lessor under any conditional sale, Capitalized Lease or other title retention agreement), whether or not filed or recorded, or the filing of, or agreement to execute as “debtor”, any financing or continuation statement under the Uniform Commercial Code of any jurisdiction or any federal, state or local lien imposed pursuant to any Environmental Law.

“Lien” means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of Equity Interests, stockholder agreements, voting trust agreements and all similar arrangements).

“Limited Lessee Risk Conditions” is defined in Section 14.4 of the Lease.

“Limiting Event” is defined in Section 13.3 of the Lease.

“Limiting Event Obligation” means the payment and performance obligations set forth in Section 13.3 of the Lease.

“Loan” is defined in Section 2.2 of the Participation Agreement.

“Loan Default” means any event, condition or failure which, with notice or lapse of time or both, would become a Loan Event of Default.

“Loan Event of Default” means any of the events specified in Section 5.1 of the Credit Agreement, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, event or act has been satisfied.

“Material Subsidiary” means any subsidiary of Guarantor (except LPAC Corp., LPAC Corp. II and the Insurance Subsidiary) the book value (determined in accordance with GAAP) of whose total assets equals or exceeds ten percent (10%) of the book value (determined in accordance with GAAP) of the consolidated total assets of Borrower and all Subsidiaries as determined as of the last day of each fiscal quarter.

“Material Adverse Effect” means a material adverse effect on (i) the business, Property, condition (financial or otherwise), results of operations, or prospects of Guarantor and its Subsidiaries taken as a whole, (ii) the ability of Guarantor or Lessee to perform their respective obligations under the respective Operative Documents to which each is a party, or (iii) the validity or enforceability of any of the Operative Documents or the rights or remedies of Administrative Agent, Lessor or the Lenders thereunder.

“Material Environmental Violation” is defined in Section 10.3 of the Lease.

“Maximum Rate” means the maximum interest rate permitted by Applicable Law.

“Memorandum of Lease” means the Memorandum of Lease, Deed of Trust and Security Agreement, dated as of June 22, 2006 between Lessor and Lessee.

“Moody’s” means Moody’s Investors Service, Inc.

“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 Proceeds” is defined in Section 14.4(c) of the Lease.

“Note” or “Notes” means the Notes issued by the Lessor pursuant to and in the form attached to the Credit Agreement.

“Officer’s Certificate” of a Person means a certificate signed by the Chairman of the Board or the President or any Executive Vice President or any Senior Vice President or any other Vice President of such Person signing with the Treasurer or any Assistant Treasurer or the Controller or any Assistant Controller or the Secretary or any Assistant Secretary of the such Person, or by any Vice President who is also Controller or Treasurer signing alone.

“Operative Documents” means the Participation Agreement, the Guaranty, the Deed, the Purchase Agreement, the Lease, the Memorandum of Lease, the Notes, the Credit Agreement, the Assignment of Lease, the Assignment of Guaranty, the Mortgage, the Assignment of Purchase Agreement, the Existing Space Leases, the Escrow Agreement, the Interest Rate Swap Agreements, the Subordination Agreements, the Purchase Agreement Documents and each other document executed and delivered by either Lessee or Guarantor in connection with the transactions contemplated by the Participation Agreement including any funding notice or request.

“Overdue Rate” means the lesser of (a) the highest interest rate permitted by Applicable Law and (b) an interest rate per annum (calculated for any period on the basis of the actual number of days elapsed during such period and a 365-day (or 366- day, if appropriate) year) equal to 2.0% above the Alternative Rate in effect from time to time.

“Participation Agreement” means the Participation Agreement, dated as of June 22, 2006 among Lessee, Guarantor, Lessor, the Lenders and Administrative Agent.

“Participation Fee” means a non-refundable fee payable to Lender on the Closing Date in an amount equal to \$49,138.93.

“Payment Date” means (a) the 22nd day of each third succeeding calendar month beginning with September 22, 2006, and if such 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 the next preceding Business Day and (b) in any case, the Termination Date.

“Payoff Option” is defined in Section 14.1(e) of the Lease.

“PBGC” means the Pension Benefit Guaranty Corporation, and any successor thereto.

“Permitted Allocation” is defined in Section 6.2(b) of the Lease.

“Permitted Investments” means any one or more of the following:

- (a) direct obligations of, or obligations guaranteed as to timely payment of principal and interest by, the United States of America (“USA”) or any agency or instrumentality thereof provided that such obligations are backed by the full faith and credit of the USA;
- (b) repurchase obligations with respect to any security described in clause (a) above entered into with a depository institution or trust company (acting as principal) whose long-term unsecured debt obligations have

received one of the two highest ratings available for such securities by at least two of the Rating Agencies;

- (c) units of taxable money market funds which funds are regulated investment companies, seek to maintain a constant net asset value per share and invest solely in obligations backed by the full faith and credit of the United States of America, and have been designated in writing by at least two of the Rating Agencies in one of the two highest credit rating categories as Permitted Investments with respect to this definition; provided in each case, that no such investment shall be purchased at a premium to its face value (disregarding interest accrued to the date of acquisition) and that no such investment shall have a maturity later than the earlier of (x) the Business Day before the proceeds of such investment are anticipated to be needed pursuant to Section 5.1 or otherwise, or (y) one year from the date of acquisition;
- (d) commercial paper which is (i) rated at least "AA-1" by S&P Ratings Service and, if rated by Fitch Inc., "AF-1", (ii) issued by a corporation or company (other than any Mortgagor or affiliate thereof) and (iii) in certificated form; and
- (e) investments in money market funds rated at least AAm@ or AAm-G@ or its equivalent from any Rating Agency (provided that, for purposes of this definition, such investments may include money market funds sponsored by Mortgagee making such investment that have the required credit rating from any Rating Agency).

"Permitted Liens" means the following with respect to the Leased Property: (a) the respective rights and interests of Lessee, Lessor, and Administrative Agent, as provided in the Operative Documents, (b) Liens for Taxes not yet due or payable or being contested in good faith pursuant to the second paragraph of Section 3.8 of the Lease, (c) materialmen's, mechanics', workers', repairmen's, employees' or other like Liens arising after the related Closing Date in the ordinary course of business for amounts either not yet due or being contested in good faith in accordance with such paragraph of Section 3.8 of the Lease, (d) Liens arising after such Closing Date out of judgments or awards with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith, so long as the enforcement thereof has been stayed pending such appeal or review and the entire amount of the award or judgment is bonded by sureties acceptable to each Lender and Lessor, (e) easements, rights of way, reservations, servitudes and rights of others against the Land which are listed on Schedule B to the Title Policy, (f) the Existing Space Leases and (g) assignments, leases and subleases expressly permitted by the Operative Documents or consented to by Administrative Agent and the Lessor.

Notwithstanding the inclusion of the Mortgage or Assignment of Lease that secure the Loan as Permitted Liens, the Liens against the Leased Property created in favor of Lender thereunder to secure the Loan will be subject and subordinate to the Lessee's rights in and to the Leased Property pursuant to the Lease (including its options to purchase the Leased Property).

“Permitted Modification Period” is defined in Section 10.1(e) of the Lease.

“Person” means any natural person, corporation, firm, joint venture, partnership, limited liability company, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.

“Plan” means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the 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.

“Pricing Level” means, as of any determination date, the applicable “pricing level” as set forth in the definition of Applicable Margin that relates to Guarantor’s Debt to Adjusted EBITDA Ratio as of such determination date.

“Prime Rate” means the rate per annum announced from time to time in New York City by Mizuho Corporate Bank as its prime rate, changing as and when said prime rate shall change.

“Property” means, collectively, the Land, the Improvements, the Fixtures and the Appurtenant Rights.

“Purchase Agreement” means the Purchase and Sale Agreement and Joint Escrow Instructions, dated as of March 30, 2006 with respect to the Property between Seller and Buyer and Joint Escrow Instructions.

“Purchase Agreement Documents” means collectively the Third Amendment to and Assignment and Assumption of Purchase and Sale Agreement and Joint Escrow Instructions, the Assignment and Assumption of Leases between Seller and Lessor and the General Assignment and Bill of Sale.

“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 interest and Yield, Supplemental Rent, and any amounts due and owing pursuant to Article VII of the Participation Agreement.

“Purchase Option” is defined in Section 14.1 of the Lease.

“Rating Agency” means any of S&P, Moody’s or another nationally recognized rating agency acceptable to Lender.

“Receivable Securitization” means, with respect to a Person, a transaction or group of transactions typically referred to as a securitization in which the Person sells its accounts receivable in a transaction accounted for as a true sale to a special purpose bankruptcy remote entity that obtains debt financing to finance the purchase price.

“Receivable Securitization Outstanding” means, with respect to a Person, the aggregate amount outstanding (i.e., advanced as the purchase price and not repaid from collections) under all Receivable Securitization transactions of such Person that is representative of the principal amount that would be outstanding if such transaction were accounted for as a financing.

“Regulations” means the income tax regulations promulgated from time to time under and pursuant to the Code.

“Regulatory Change” means (I) with respect to Lessor or any Lender, any change in (or the adoption, implementation, change in phase-in or commencement of effectiveness of) any (A) United States federal or state law or foreign law applicable to Lessor or any Lender; (B) regulation, interpretation, directive, requirement or request (whether or not having the force of law) applicable to any such party of any court, Governmental Authority charged with the interpretation of administration of any law referred to in clause (I)(A); or (C) generally accepted accounting principles or regulatory accounting principles applicable to any such party and affecting the application to Lessor or any Lender of any law, regulation, interpretation, directive, requirement or request referred to in clause (I)(A) or (I)(B) above; or (II) any change in the application to Lessor or any Lender of any existing law, regulation, interpretation, directive, requirement, request or accounting principles referred to in clause (I)(A), (I)(B) or (I)(C) above.

“Release” means the release, deposit, disposal or leak of any Hazardous Material into or upon or under any land or water or air, or otherwise into the environment, including, without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement and the like.

“Remarketing Option” is defined in Section 14.2(a) of the Lease.

“Remarketing Period” is defined in Section 14.2(a) of the Lease.

“Remediation” is defined in Section 10.2 of the Lease.

“Rent” means Basic Rent and Supplemental Rent, collectively.

“Rent Period” means initially the period commencing on the Closing Date and ending on day immediately preceding the first Payment Date, and thereafter each period commencing on a Payment Date and ending on day immediately preceding the next following Payment Date.

“Reportable Event” means a reportable event as defined in Section 4043 of ERISA and the regulations issued under such section, with respect to a Plan, excluding, however, such events as to which the PBGC has by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, provided, however, that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either Section 4043(a) of ERISA or Section 412(d) of the Code.

“Required Alteration” is defined in Section 6.2(a) of the Lease.

“Required Lenders” means the Lenders holding 51% or more of the outstanding principal amount of the Notes.

“Responsible Officer” means the Chairman or Vice Chairman of the Board of Directors, the Chairman or Vice Chairman of the Executive Committee of the Board of Directors, the President, any Senior Vice President or Executive Vice President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, or any Assistant Treasurer.

“Return Option” is defined in Section 14.2(c) of the Lease.

“Return Period” is defined in Section 14.2(c) of the Lease.

“Revolver Administrative Agent” means Bank of America, N.A., in its capacity as administrative agent pursuant to the Lennox Revolver; provided, that after any termination or expiration of the Lennox Revolver, references to the Revolver Administrative Agent will be deemed to mean the Administrative Agent.

“S&P” means Standard & Poor’s Rating Services, a division of the McGraw Hill Companies, Inc.

“Scheduled Termination Date” is defined in Section 2.2 of the Lease.

“SEC” means the United States Securities and Exchange Commission.

“Securities” means any stock, shares, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities”, or any certificates of interest, shares, or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Seller” means One Lake Park, L.L.C., a Delaware limited liability company.

“Significant Casualty” means a Casualty with respect to the Leased Property that in the reasonable good faith judgment of Lessee (as evidenced by a certificate of a Responsible Officer of Lessee) either (a) renders the Leased Property unsuitable for continued use as a commercial property of the type of the Leased Property immediately prior to such Casualty, or (b) is so substantial in nature that restoration of the Leased Property to substantially its condition as existed immediately prior to such Casualty would be impracticable or impossible.

“Significant Condemnation” means a Condemnation with respect to the Leased Property that in the reasonable good faith judgment of Lessee (as evidenced by a certificate of a Responsible Officer of Lessee) either (a) renders the Leased Property unsuitable for continued use as a commercial property of the type of the Leased Property immediately prior to such Condemnation, or (b) is so substantial in nature that restoration of the Leased Property to

substantially its condition as existed immediately prior to such Casualty would be impracticable or impossible.

“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 \$25,000,000.

“Single Employer Plan” means a Plan maintained by the Company or any member of the Controlled Group for employees of the Company or any member of the Controlled Group.

“Solvent” shall mean, with respect to any Person, that:

(I) the assets of such Person, at a fair valuation, exceed the total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person;

(II) based on current expectations, which are based on underlying assumptions which provide a reasonable basis for the projections and which reflect such Person’s judgment based on present circumstances of the most likely set of conditions and such Person’s most likely course of action for the period projected, such Person believes it has sufficient cash flow to enable it to pay its debts as they mature;

(III) such Person does not have an unreasonably small capital with which to engage in its anticipated business; and

(IV) the obligations of such Person, if any, are not in default as to principal and interest or any other payment.

For purposes of this definition, the “fair valuation” of the assets of any Person shall be determined on the basis of the amount which may be realized within a reasonable time, either through collection or sale of such assets at the regular market value, conceiving the latter as the amount which could be obtained for the property in question within such period by a capable and diligent businessman from an interested buyer who is willing to purchase under ordinary selling conditions.

“Structuring Fee” means a non-refundable fee payable to Lessor on the Closing Date in the amount set forth in a separate writing.

“Subject Indebtedness” means (i) Indebtedness that is outstanding in an aggregate principal amount the Dollar Equivalent of which is at least \$25,000,000; or (ii) any Receivable Securitization in respect of which the Receivable Securitization Outstanding is at least \$25,000,000.

“Subordination Agreement” means, collectively, the Subordination, Non-Disturbance and Attornment Agreement, if any, entered into by and among Lessor, Administrative Agent, Lessee and each of the tenants under the Existing Space Leases (other than Lennox).

“Subsidiary” means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Guarantor.

“Supplemental Rent” means any and all amounts, liabilities and obligations other than Basic Rent which Lessee assumes or agrees or is otherwise obligated to pay under this Lease or any other Operative Document (whether or not designated as Supplemental Rent) to the Lessor, Lender, any other party or to the Person entitled thereto, including, without limitation, amounts under Article XVI of the Lease, indemnities and damages for breach of any covenants, representations, warranties or agreements, and all overdue or late payment charges in respect of any installment of Basic Rent.

“Surrender Obligation” is defined in Section 14.7 of each Lease.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Guarantor or the Subsidiaries shall be a Swap Agreement.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Tax” and “Taxes” shall have the meaning set forth in the definition of Impositions.

“Termination Date” is defined in Section 2.2 of the Lease.

“Termination Notice” is defined in Section 14.1(a) of the Lease.

“Title Insurance Company” means the company that has or will issue the title policies with respect to the Leased Property, which company shall be reasonably acceptable to Lessor and the Lender.

“Title Policy” is defined in Section 3.1 of the Participation Agreement.

“Transaction” means all the transactions and activities referred to in or contemplated by the Operative Documents, including, without limitation, the purchase, ownership, financing, leasing, operation, management, return, disposition or sale of the Leased Property.

“Transfer Office” is defined in Section 2.5 of the Credit Agreement.

“UCC” means the Uniform Commercial Code of any particular state, as in effect from time to time.

“Unfunded Liabilities” means the amount (if any) by which the present value of all vested and unvested accrued benefits under all Single Employer Plans exceeds the fair market value of all such Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plans using PBGC actuarial assumptions for single employer plan terminations.

“Wholly-Owned Subsidiary” or “Wholly-Owned” when used in reference to a Subsidiary, means, at any time, any Subsidiary, one hundred percent (100%) of all of the Equity Interests of (except directors’ qualifying shares), and voting interests in, which are owned by any one or more of Guarantor and Guarantor’s other Wholly-Owned Subsidiaries at such time.

“Yield” is defined in Section 2.3 of the Participation Agreement.

PARTICIPATION AGREEMENT

Dated as of June 22, 2006

among

LENNOX PROCUREMENT COMPANY INC.,
as Lessee,

LENNOX INTERNATIONAL INC., as Guarantor,

BTMU CAPITAL CORPORATION, as Lessor,

MHCB (USA) LEASING AND FINANCE CORPORATION,
as initial holder of all of the Notes,

and

MHCB (USA) LEASING AND FINANCE CORPORATION,
Administrative Agent

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PARTICIPATION AGREEMENT

THIS AGREEMENT, dated as of June 22, 2006 (as it may be amended or modified from time to time in accordance with the provisions hereof, this "Agreement"), is among LENNOX PROCUREMENT COMPANY INC., a Delaware corporation (together with its successors and permitted assigns, "Lessee"), LENNOX INTERNATIONAL, INC., a Delaware corporation (together with its successors and permitted assigns, "Guarantor"), BTMU CAPITAL CORPORATION, a Delaware corporation, as Lessor (together with its successors and assigns, the "Lessor"), MHCB (USA) LEASING AND FINANCE CORPORATION, a New York corporation ("MHCB"), as initial holder of all of the Notes (together with its successors and assigns, "Lender"), and MHCB, as administrative agent (together with its successors and permitted assigns, "Administrative Agent").

PRELIMINARY STATEMENT

In accordance with the terms and provisions of this Agreement, the Lease, the Credit Agreement and the other Operative Documents, (i) Lessor contemplates acquiring the Property, and leasing the Property to Lessee, (ii) Lessor wishes to obtain, and each of the Lenders are willing to provide, financing of a portion of the funding of the acquisition of the Property, (iii) Lessee wishes to lease the Property from Lessor, and (iv) Guarantor is willing to provide its Guaranty to the beneficiaries named therein.

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

SECTION I DEFINITIONS; INTERPRETATION

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

SECTION II ACQUISITION AND LEASE; NATURE OF TRANSACTION

SECTION 2.1. Agreement To Acquire And Lease. The Seller and the Buyer have entered into the Purchase Agreement, pursuant to which Seller has agreed to sell the Property to the Buyer and the Buyer has agreed to purchase the Property, subject, each case, to satisfaction of certain conditions precedent. Effective as of the effective date of this Agreement (also sometimes herein referred to as the Closing Date), subject to all conditions precedent in this Agreement, (i) Buyer is assigning its rights under the Purchase Agreement to Lessor, (ii) Lessor is advancing the purchase price required by the Purchase Agreement for the Property using the proceeds of the Loan and the Equity Investment, and thereby acquiring fee simple interest in the Property, subject to the Permitted Liens, (iii) Lessor is leasing the Property to Lessee pursuant to the Lease, and (iv) Lessee is leasing the Property from Lessor pursuant to the Lease. Also effective as of the Closing Date, the parties to this Agreement are joining with Seller in

executing the Escrow Agreement which will supplement the Purchase Agreement to establish the terms and conditions of (A) the release from escrow and delivery of (i) Seller's deed, which will convey the Property to Lessor, and of the Operative Documents to Lessor, (B) the delivery of the purchase price for the Property required by the Purchase Agreement, and (C) the release (defeasance) of a lien against the Property, which was granted by Seller to secure financing previously obtained. As provided in the Escrow Agreement, the rights and obligations of the parties thereunder will not be subject to any conditions precedent set forth herein, nor will they be contingent upon any delivery or release from escrow of this Agreement or other Operative Documents. In connection with the Purchase Agreement (as modified and supplemented by the Escrow Agreement), Lessee will be acting and is hereby authorized to act as Lessor's agent to perform on its behalf any obligations that may arise under such Agreement, including execution and delivery of the Purchase Agreement Documents, other than the acceptance of the conveyance of the Property and payment of the purchase price therefor.

SECTION 2.2. Funding Of Acquisition Costs

(a) Funding and Payment of Purchase Price for Property on Closing Date. Subject to the terms and conditions of this Agreement and the other Operative Documents, on the Closing Date, the Lenders shall, make a term loan to Lessor in an amount equal to \$32,962,395.40 (the "Loan") and the Lessor, together with its own funds in the amount of \$8,240,598.85 (such amount, *less* any Additional Payment made pursuant to the Lease, *plus* all Yield capitalized pursuant to Section 2.3(a), the "Equity Investment"), shall acquire the Property from the Seller and lease the Property to Lessee pursuant to the Lease. Guarantor shall guaranty the obligations of Lessee under the Lease and the other Operative Documents to which it is a party pursuant to the Guaranty.

(b) Adjustments Following any Additional Payment. If, pursuant to the Lease, Lessor requires that Lessee pay the Additional Payment and Lessee complies with its obligation to pay the Additional Payment, then commencing on each Payment Date after payment by Lessee of the Additional Payment, the Yield payable with respect to the Equity Investment shall not be paid by Lessee, but rather shall be capitalized and added to the outstanding principal of the Equity Investment on the applicable Payment Date, until (but only until) all such amounts capitalized and added to the principal of the Equity Investment equals the Additional Payment. In no event will any payment of accrued Yield in excess of the Additional Payment be excused by this provision, and all Yield capitalized pursuant to this provision will be included in the principal balance of the Equity Investment used to compute subsequently accruing Yield.

SECTION 2.3. Equity Investment Yield, Interest Fees; Adjustment of Basic Rent

(a) Yield on Equity Investment. The Equity Investment outstanding from time to time shall accrue yield ("Yield") at a rate equal to the LIBOR Rate plus the Applicable Margin computed using the actual number of days elapsed and a 360-day year. As provided in the preceding section, however, any payment of the Additional Payment shall be applied to the reduction of the Equity Investment on the date received, and on each Payment Date thereafter Yield shall not be payable, but rather shall be capitalized and added to the Equity Investment, until the first Payment Date after all such capitalized Yield equals or exceeds the Additional

Payment. No Yield shall be payable on such Additional Payment. If all or a portion of the principal amount of or Yield on the Equity Investment shall not be paid when due then, without limiting the rights of Lessor under the Lease, such overdue amount shall, accrue yield at the Overdue Rate from the initial due date until paid in full (as well after as before judgment).

(b) Interest on the Loan. The outstanding principal amount of the Loan shall accrue interest at a rate equal to the LIBOR Rate plus the Applicable Margin (the "Interest Rate"), computed using the actual number of days elapsed and a 360-day year. If all or a portion of the principal amount of or interest on a Loan shall not be paid when due, such overdue amount shall accrue interest at the Overdue Rate from the initial due date until paid in full (as well as before judgment).

(c) Fees. Lessee agrees to pay the Structuring Fee to Lessor and the Participation Fee to Lender, in each case, on the Closing Date.

(d) Rate Determinations. Unless Administrative Agent shall notify the parties hereto to the contrary, on or prior to the commencement of each Rent Period, Lessor, on behalf of Administrative Agent, shall determine the LIBOR Rate or Alternative Rate, as applicable, and on each Calculation Date, any change in the Applicable Margin, which determinations shall be conclusive absent manifest error, and shall provide notice to the Lenders of such determination of the LIBOR Rate or Alternative Rate, and notice to Lessee and the Lenders of any change in the Applicable Margin.

(e) Adjustment of Basic Rent. The parties hereto acknowledge that on the Closing Date Lessor will enter into an Interest Rate Swap Agreement pursuant to which Lessor will agree to pay to the counterparty thereunder the fixed payments of Basic Rent due from Lessee pursuant to the Lease and the swap counterparty will agree to make floating payments to the order of Lessor in amounts that are intended to be sufficient to pay the interest due on the outstanding principal amount of the Loan and Yield payable on the Equity Investment. The Basic Rent payable by Lessee pursuant to the Lease was calculated on the Closing Date by reference to, among other things, the applicable Pricing Level and such Interest Rate Swap. The parties intend and agree that, to the extent that the Pricing Level changes on a Calculation Date due to a change in Guarantor's Debt to Adjusted EBITDA Ratio, the Basic Rent due and payable by Lessee pursuant to the Lease shall be recalculated as of such Calculation Date by reference to, among other things, such Interest Rate Swap Agreement and the then applicable Pricing Level, and Lessor shall produce a new schedule of Basic Rent that will be subject to the reasonable approval of each of Lessor, Lessee, Guarantor and all of the Lenders. Following approval of the adjusted schedule of Basic Rent, the Lease will be modified or supplemented to include the adjusted schedule and thereafter Lessee shall be obligated to pay Basic Rent in accordance with such adjusted schedule.

SECTION 2.4. Characterization of the Lease.

(a) Intent of the Parties. It is the intent of Lessee, Lessor and Lender that (1) for the purposes of determining the proper accounting for the Lease by Lessee, Lessor will be treated as the owner and landlord of the Leased Property and Lessee will be treated as the tenant of the Leased Property; and (2) for income and other tax purposes and for real estate, commercial

law (including bankruptcy) and regulatory purposes, (A) Lessee owns the Leased Property and will be entitled to all tax benefits ordinarily available to an owner of property similar to the Leased Property, (B) the Lease will be treated as a financing arrangement, (C) Lessor will be treated as a lender making a loan to Lessee in a principal amount equal to the Lease Balance, which loan is secured by the Leased Property, and (D) the Lender will be treated as a lender making a loan to Lessor, which will constitute indebtedness for purposes of federal income taxation in an aggregate principal amount equal to the aggregate principal amount of the Note. Consistent with such intent, by the provisions set forth in the Memorandum of Lease, Lessee is granting to Lessor a lien upon and warranting title to the Land and the Improvements and all rights, titles and interests of Lessee in and to other Leased Property, WITH POWER OF SALE, to secure all obligations (monetary or otherwise) of Lessee arising under or in connection with any of the Operative Documents. Without limiting the generality of the foregoing, the parties to this Agreement desire that their intent as set forth in this subparagraph be given effect both in the context of any bankruptcy, insolvency or receivership proceedings concerning Lessee or Lessor and in other contexts. Accordingly, the parties expect that in the event of any bankruptcy, insolvency or receivership proceedings affecting Lessee or Lessor or any enforcement or collection actions arising out of such proceedings, the transactions evidenced by the Lease will be characterized and treated as loans made to Lessee by Lessor, as an unrelated third party lender to Lessee, secured by the Leased Property.

(b) Responsibility for Proper Characterization. Notwithstanding the foregoing, Lessee acknowledges and agrees that neither Lessor nor Lender has made any representations or warranties concerning the tax, financial, accounting or legal characteristics or treatment of the Lease or other Operative Documents and that Lessee has obtained and relied solely upon the advice of its own tax, accounting and legal advisors concerning the Operative Documents and the accounting, tax, financial and legal consequences of the transactions contemplated therein.

(c) The parties intend that Lessee's obligations not be reduced by reason of any prepayment of the principal amount the Loan by Lessor or any foreclosure under the Mortgage if the foreclosure is made subject to Lessee's rights under the Lease. Therefore, for purposes of computing all payments of Basic Rent following any such prepayment or foreclosure, in the case of a foreclosure, the Loan, the Equity Investment and the Lease Balance will be deemed not to be reduced by any proceeds of a foreclosure sale (be it in the form of a credit bid or otherwise) received upon any foreclosure of the lien of the Mortgage if the sale is made subject to the rights of Lessee under the Lease and, in the case of any prepayment of the principal of the Loan, the Loan and the Lease Balance will be deemed not to have been reduced by the amount of such principal prepayment.

SECTION 2.5. Amounts Due Under Lease. Notwithstanding anything else to the contrary herein, it is the intention of Lessee, Lessor, Lender and Guarantor that, subject to the exceptions listed below in this section: (i) the amount and timing of Basic Rent due and payable from time to time from Lessee under the Lease, as converted into floating payments pursuant to the Interest Rate Swap Agreement entered into by Lessor on the Closing Date, shall be equal to the aggregate payments due and payable on each Payment Date with respect to interest on, and any principal of, the Loan and Yield on, and any principal of, the Equity Investment; (ii) if Lessee elects the Purchase Option or becomes obligated to purchase the Leased Property, the

outstanding principal amount of the Loan and the Equity Investment, all interest and Yield thereon, plus all costs and any other amounts payable by Lessee under any Operative Document and all other obligations of Lessee owing to Lessor and Lender shall be paid in full by Lessee; (iii) if Lessee properly elects the Remarketing Option or the Surrender Option, the principal amount of, and accrued interest on, the Loan and the Equity Investment plus all costs and any other amounts payable by Lessee under any Operative Document will be paid out of the Lessee Obligation; and (iv) upon any acceleration of the Termination Date and Lessee's obligation to purchase the Leased Property under the Lease as a result of a Lease Event of Default that did not arise solely from a Limiting Event, the amounts then due and payable by Lessee under the Lease shall include all amounts necessary to pay in full the Loan, and accrued interest thereon, the Equity Investment and accrued Yield thereon and all other obligations of Lessee owing to Lessor and Lender. The understanding set forth in the preceding sentence is subject to the following exceptions:

(a) After any Additional Payment, Basic Rent will not be sufficient to cover Yield as it accrues on the Equity Investment to the extent that such Yield is to be capitalized and added to the Equity Investment as provided in Sections 2.2(b) and 2.3(a).

(b) Lessee's obligations (including its obligations to pay Basic Rent) will not be accelerated or increased by reason of (1) any Default or Event of Default on the part of Lessor under the Credit Agreement (*e.g.*, a failure of Lessor to maintain its corporate existence as required by the Operative Documents or the existence of judgment lien against Lessor which constitutes a Lessor Lien) unless such Default or Event of Default is caused by a corresponding Lease Default or Lease Event of Default on the part of Lessee (*e.g.*, a failure by Lessee to rectify any lien against the Leased Property other than a Lessor Lien within the period for cure allowed by the Lease) or (2) any modifications to the Notes, the Credit Agreement, the Deed of Trust or other documents that evidence or secure the Loan made without Lessee's prior written approval or consent.

SECTION III CONDITIONS PRECEDENT

The obligations of Lessor, and Lender shall be subject to the fulfillment to the satisfaction of, or waiver by, each such party hereto (acting directly or through its counsel) on or prior to the Closing Date of the following conditions precedent, provided that the obligations of Lessor and Lender, respectively, shall not be subject to any conditions contained in this Section 3 which are required to be performed by Lessor and Lender, respectively:

(a) Documents. The following documents shall have been executed and delivered by the respective parties thereto:

(i) Deed and Purchase Agreement. The form of the original Deed to be duly executed by the applicable Seller and in recordable form, and copies of the Purchase Agreement and the Purchase Agreement Documents, duly executed by such Seller and Buyer and assigned to Lessor, shall each have been delivered to Lessor and Lender.

(ii) Memorandum of Lease. The original of the Memorandum of Lease, if any, duly executed by Lessee and Lessor and in recordable form, shall have been delivered to Administrative Lessor and Lender.

(iii) Mortgage and Assignment of Lease. Counterparts of the Mortgage in the form of Exhibit A attached hereto, duly executed by Lessor and in recordable form, and the Assignment of Lease in the form of Exhibit B attached hereto related to the Leased Property in recordable form, duly executed by Lessor, shall have been delivered to Lender.

(iv) Guaranty. Counterparts of the Guaranty, duly executed by Guarantor, shall have been delivered to Lender, Lessor and Administrative Agent.

(v) Credit Agreement; Notes. Counterparts of the Credit Agreement, duly executed by Lessor, Administrative Agent and Lender shall have been delivered to each of Lessor, Administrative Agent and Lender. The Notes, duly executed by Lessor, shall have been delivered to Lender.

(vi) This Agreement. Counterparts of this Agreement, duly executed by the parties hereto, shall have been delivered to each of the parties hereto.

(vii) Lease. Counterparts of the Lease, duly executed by the parties thereto shall have been delivered to each of the parties hereto.

(viii) Assignment of Guaranty. Counterparts of the Assignment of Guaranty, duly executed by the parties thereto shall have been delivered to each of the parties hereto.

(ix) Escrow Agreement. Counterparts of the Escrow Agreement, duly executed by Seller, Title Company, Lessee, Lessor, Lenders and Administrative Agent shall have been delivered to each of the parties hereto.

(x) Other Operative Document. Each other Operative Document, other than the Subordination Agreements, shall have been executed and delivered to the parties thereto.

(b) Credit Agreement. All conditions specified in the Credit Agreement shall have been, and shall remain, satisfied in full to the satisfaction of Administrative Agent and Lender.

(c) Survey. Lessee shall have delivered, or shall have caused to be delivered, to Lessor, Administrative Agent and Lender, at Lessee's expense, sufficient copies of an accurate survey prepared in accordance with the 2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys certified to Lessor, each of the Lenders and Administrative Agent in a form satisfactory to Lessor, Lender and Administrative Agent and showing no state of facts reasonably unsatisfactory to Lessor, Lender or Administrative Agent and prepared within ninety (90) days of the Closing Date by a Person reasonably satisfactory to Lessor, Lender and Administrative Agent. Such survey shall (1) be acceptable to the Title Insurance Company, (2) show no encroachments on the Land by structures owned by others, and no encroachments from

any part of the Leased Property onto any land owned by others, and (3) disclose no state of facts reasonably objectionable to Lessor, Lender, Administrative Agent or the Title Insurance Company, and be reasonably acceptable to each such Person.

(d) Title and Title Insurance. On the Closing Date, Lessor shall receive from the Title Insurance Company an Owner's Policy of Title Insurance and an alternative Mortgagee Policy of Title Insurance (insuring the lien of the mortgage contained in the Memorandum of Lease) issued to Lessor and its successors and assigns including Administrative Agent, and Administrative Agent shall receive from the Title Insurance Company a Mortgagee Policy of Title Insurance issued by Title Insurance Company for the Mortgage, in each case, reasonably acceptable in form and substance to Lessor and Administrative Agent, respectively (collectively, the "Title Policy"). The Title Policy shall be dated as of the Closing Date, and, to the extent permitted under Applicable Law, shall include coverage over the creditors' rights exclusion and the general exceptions to such policy and shall contain such affirmative endorsements as to mechanic's liens, easements and rights-of-way, encroachments, the non-violation of covenants and restrictions, zoning, survey matters and other matters as Lessor or Administrative Agent shall reasonably request, including, without limitation, an appropriate "re-characterization" endorsement.

(e) Appraisal. At least ten (10) days prior to the Closing Date, Lessor and Administrative Agent shall have received sufficient copies of a report of the Appraiser (an "Appraisal"), paid for by Lessee, which shall meet the requirements of FIRREA, shall be satisfactory to each of Lessor and Lender in their sole discretion, and shall state in a manner satisfactory to each of Lessor and Lender in their sole discretion, the estimated "as vacant" value of the Leased Property.

(f) Environmental Audit and Related Reliance Letter. Lessor, Administrative Agent and Lender shall have received sufficient copies of an Environmental Audit (from Terracon Consultants, Inc. or a firm selected by Lessor and Lender and acceptable to Lessee) for the Leased Property showing that no Hazardous Materials are present and otherwise satisfactory to Lessor and Lender; and the firm that prepared the Environmental Audit for the Leased Property shall have delivered to Lessor and Lender and Administrative Agent a letter substantially in the form set forth on Exhibit C hereto stating that each of Lessor, Administrative Agent and Lender may rely upon such firm's Environmental Audit of the Land, it being understood that acceptance of any such Environmental Audit shall not release or impair Lessee's or Guarantor's obligations under the Operative Documents with respect to any environmental liabilities relating to the Leased Property.

(g) Evidence of Insurance. Lessor and Administrative Agent shall have received from Lessee certificates of insurance evidencing that the Insurance Requirements have been fully complied with (including the naming each Lessor, Administrative Agent and Lender as additional insured with respect to liability insurance and the naming of Administrative Agent, on behalf of each of the Lenders, as loss payee and mortgagee with respect to property and casualty insurance), in form and substance satisfactory to Lessor, Administrative Agent and Lender.

(h) Lien Searches, Financing Statements. Uniform Commercial Code lien searches shall have been performed and sufficient copies thereof delivered to Lessor and Administrative Agent, which shall indicate to each of such party's reasonable satisfaction that there are no Liens (regardless of whether senior, pari passu or junior) in effect with respect to any collateral which would be subject to the security interest granted to (x) the Administrative Agent pursuant to the Credit Agreement and (y) Lessor pursuant to the Memorandum of Lease and UCC-1 financing statements covering such collateral shall have been prepared, executed by the parties thereto and copies thereof delivered to Lessor, Administrative Agent and Lender, all of which shall be in form and substance reasonably acceptable to such recipients.

(i) Recording Fees; Transfer Taxes. Each of Lessor and Administrative Agent shall have received satisfactory evidence of the payment of all recording and filing fees and taxes with respect to any recordings or filings made of the Deed, the Lease (or memorandum thereof), the Mortgage, the Assignment of Lease and any UCC financing statements to be filed with the Secretary of State of Delaware (or other appropriate filing office) as either Lessor or Administrative Agent deems necessary or desirable in order to protect such party's interests.

(j) Lessee and Guarantor Opinions. The opinion of Counsel to Lessee and Guarantor, dated the Closing Date, in form reasonably acceptable to each of Lessor, Administrative Agent and Lender.

(k) Litigation. No action or proceeding shall have been instituted or threatened nor shall any governmental action, suit, proceeding or investigation be instituted or threatened before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority, to set aside, restrain, enjoin or prevent the performance of this Agreement or any transaction contemplated hereby or by any other Operative Document or which is reasonably likely to materially adversely affect the Leased Property or any transaction contemplated by the Operative Documents or which could reasonably be expected to result in a Material Adverse Effect.

(l) Legality. In the opinion of Lessor or Lender or their respective counsel, the transactions contemplated by the Operative Documents shall not violate any Applicable Law, and no change shall have occurred or been proposed in Applicable Law that would make it illegal for Lessor or Lender to participate in any of the transactions contemplated by the Operative Documents.

(m) No Events. (i) No Event of Default, Default, Significant Casualty or Significant Condemnation shall have occurred and be continuing, (ii) no action shall be pending or threatened by a Governmental Authority to initiate a Condemnation or a Significant Condemnation, and (iii) there shall not have occurred any event that could reasonably be expected to have a Material Adverse Effect.

(n) Representations. Each representation and warranty of the parties hereto or to any other Operative Document contained herein or in any other Operative Document shall be true and correct in all material respects as though made on and as of the Closing Date.

(o) Zoning. The Leased Property complies with all applicable zoning ordinances or similar land use restrictions.

(p) Governmental Authorizations. All authorizations, if any, required by any Governmental Authority for the operation of the Leased Property as an office or distribution facility, as applicable, which are presently procurable shall have been obtained.

(q) Taxes. All Taxes payable on or prior to the Closing Date in connection with the Property shall have been paid in full or otherwise provided for by Lessee. All sales taxes and duties related to the transactions contemplated by the Operative Documents due and payable as of the Closing Date have been paid or otherwise provided for by Lessee.

(r) Utilities. All utility services necessary for use of the Property (including without limitation, electric, gas, telephone, water and sewer service) are available to the Leased Property, and Lessee has the right to connect to and use all utility services without restriction; and that all necessary easements appurtenant to the Land to provide such utility services to the Property have been obtained

(s) Lessee's Resolutions and Incumbency Certificate, etc. Lessor and Administrative Agent shall have received (x) a certificate of the Secretary or an Assistant Secretary of Lessee, dated as of the Closing Date, attaching and certifying as to (i) the Board of Directors' resolution duly authorizing the execution, delivery and performance by it of each Operative Document to which it is or will be a party, (ii) the incumbency and signatures of persons authorized to execute and deliver such documents on its behalf, (iii) its certificate of incorporation, certified as of a recent date by the Secretary of State of the state of its organization, (iv) its by-laws, and (v) good standing certificates for Lessee, dated within thirty (30) days of the Closing Date, from the appropriate offices of (i) the state of Lessee's organization, and (ii) the state where subject Leased Property is located.

(t) Guarantor's Resolutions and Incumbency Certificate, etc. Each of Lessor and Administrative Agent shall have received (x) a certificate of the Secretary or an Assistant Secretary of Guarantor, dated as of the Closing Date, attaching and certifying as to (i) the Board of Directors' resolution duly authorizing the execution, delivery and performance by it of each Operative Document to which it is or will be a party, (ii) the incumbency and signatures of persons authorized to execute and deliver such documents on its behalf, (iii) its certificate of incorporation, certified as of a recent date by the Secretary of State of the state of its incorporation, (iv) its by-laws, and (v) good standing certificates for Guarantor, dated within thirty (30) days of the Closing Date, from the appropriate offices of the state or states of Guarantor's incorporation and principal place of business.

(u) Transaction Expenses. To the extent (if any) not paid from proceeds of the Loan or the Equity Investment, Lessee shall have paid the costs associated with the Transaction then accrued and invoiced which Lessee has agreed to pay pursuant to Section 8.8 hereof to the Persons entitled thereto.

(v) Lien Status. On the Closing Date, Lessor shall be the owner of the collateral securing the Note, free and clear of any Liens (senior, pari passu or junior) other than

Permitted Liens, and all financing statements, assignments of real property interests and other documents reasonably requested by the Administrative Agent to be recorded or filed in order to perfect and protect such collateral against all creditors of and purchasers from Lessor will have been delivered to the Title Insurance Company for filing in each filing office necessary for such purpose and all filing fees and taxes, if any, payable in connection with such filings shall have been paid in full.

(w) Existing Space Leases. Lessor and Lenders shall have received evidence that each of the tenants under the Existing Space Leases has been notified of the sale of the Property to Lessor, Lessor's lease of the Leased Property to Lessee pursuant to the Lease and the assignment to and assumption by Lessee of all of the rights and obligations of the owner of the Leased Property pursuant to the Existing Space Leases and that each of such tenants has acknowledged the same:

(x) Lessor Confirmation. On the Closing Date, Lessor shall deliver to Lessee the certificate in the form attached hereto as Exhibit D.

SECTION IV REPRESENTATIONS

SECTION 4.1. Representations of Lessee. Effective as of the date of execution hereof, and as of the Closing Date, Lessee represents and warrants to each of the other parties hereto as follows:

(a) Organization; Corporate Powers. Lessee (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) is duly qualified as a foreign corporation and in good standing (A) in the jurisdiction where the Leased Property is located and (B) under the laws of each jurisdiction where such qualification is required and where the failure to be duly qualified and in good standing would have a Material Adverse Effect and (iii) has all requisite corporate power and authority to own, operate and encumber its property and assets and to conduct its business as presently conducted and as proposed to be conducted in connection with and following the consummation of the transactions contemplated by the Operative Documents.

(b) Authority.

(i) Lessee has the requisite corporate power and authority to execute, deliver and perform the Operative Documents executed by it, or to be executed by it.

(ii) The execution, delivery and performance (or recording or filing, as the case may be) of the Operative Documents and the consummation of the transactions contemplated thereby, have been duly approved by the Board of Directors of Lessee and no other corporate proceedings on the part of Lessee are necessary to consummate the transactions so contemplated.

(c) Enforceability of Operative Documents. The Operative Documents executed by Lessee, have been duly executed and delivered (or recorded or filed, as the case may be) by Lessee, and constitute its legal, valid and binding obligation, enforceable against it in

accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally or by equitable principles generally.

(d) Conflicts. Lessee is not subject to any Contractual Obligation or restriction or to any order, rule, regulation, writ, injunction or decree of any court or Governmental Authority or to any Applicable Law which materially and adversely affects its ability to perform its obligations under the Operative Documents. The execution, delivery and performance by Lessee of each Lessee Document do not and will not (i) conflict or result in a breach of or constitute a default under (A) any Applicable Law in effect as of the date of delivery of the Lessee Documents, (B) the articles of incorporation or by-laws of Lessee, (C) any material agreement or instrument to which Lessee is a party or by which it is bound, or (D) any order, writ, injunction or decree of any court or other Governmental Authority, or (ii) result in the creation or imposition of any Lien upon Lessee's property pursuant to such agreement or instrument.

(e) Approvals. Except as have been made, obtained or given, and are in full force and effect, no filing or registration with, consent or approval of, or notice to, with or by any Governmental Authority, is required to authorize, or is required in connection with, the execution, delivery and performance by Lessee of the Operative Documents or the legality, validity, binding effect or enforceability of any Operative Document. The execution, delivery and performance by Lessee of each of the Operative Documents to which it is a party do not require any consent or approval from any of Lessee's creditors (except as have already been obtained in writing).

(f) Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending against or, to the knowledge of the Lessee, threatened against or affecting the Lessee or any of its Subsidiaries (A) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (B) which in any manner draws into question the validity or enforceability of this Agreement or any other Operative Document.

(g) Ownership of Property. As of the Closing Date, each of Lessee and its Subsidiaries has good title to, or valid leasehold or other appropriate legal interests in, all of its real and personal property material to the operation of its business, free and clear of any Liens except those Liens which would, individually or in the aggregate, not have a Material Adverse Effect. Each of Lessee and its Affiliates owns, or is licensed, or otherwise has the right, to use, all patents, trademarks, service marks, trade names, copyrights, franchises, licenses, and other intellectual property material to its business, and the use thereof by Lessee and its Affiliates does not infringe on the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not have a Material Adverse Effect.

(h) Investment Company. Neither Lessee nor any of its Affiliates is required, and will not be required as a result of the Transaction or the offer and sale of the Notes under the circumstances contemplated by the Credit Agreement and this Agreement or the other transactions contemplated by this Agreement and the other Operative Documents, to register as

an “investment company” under the Investment Company Act of 1940, as amended, and Lessee is not “controlled” by an “investment company” as defined in the Investment Company Act of 1940, as amended.

(i) Applicable Law and Agreements. Lessee and each of its Subsidiaries and each Person acting on behalf of any of them is in compliance with (i) all Applicable Law applicable to them and their respective businesses, and (ii) all indentures, agreements or other instruments binding upon it or its properties, in each case where the failure to so comply would have a Material Adverse Effect, either individually or together with other such cases.

(j) Rights in Respect of the Leased Property. Neither Lessee nor any Affiliate of Lessee is a party to any contract or agreement to sell any interest in the Leased Property or any part thereof, other than pursuant to this Agreement and the Lease.

(k) Hazardous Materials.

(i) To the best knowledge of Lessee, there are no Hazardous Materials present at, upon, under or within the Leased Property or released or transported to or from the Leased Property (except in full compliance with all Applicable Law).

(ii) No Governmental Actions have been taken or are in process or, to the best knowledge of Lessee, have been threatened with regard to the Leased Property, which could reasonably be expected to subject the Leased Property, Administrative Agent, Lender or Lessor to any Claims or Liens under any Environmental Law which would have a Material Adverse Effect on Lessee or a material adverse effect on, Lessor, Administrative Agent, Lender or the Leased Property.

(iii) Lessee has, or will obtain on or before the date required by Applicable Law, all Environmental Permits necessary to operate the Leased Property in accordance with Environmental Laws and is complying with and has at all times complied with all such Environmental Permits, except to the extent the failure to so comply would not have a Material Adverse Effect.

(iv) No notice, notification, demand, request for information, citations, summons, complaint or order has been issued to or filed with or has been received by Lessee, no penalty has been assessed on Lessee and, to its best knowledge, no investigation or review is pending or threatened by any Governmental Authority or other Person in each case relating to the Leased Property with respect to any alleged violation or liability of Lessee under any Environmental Law. No material notice, notification, demand, request for information, citations, summons, complaint or order has been issued to or filed with or has been received by any other Person, no material penalty has been assessed on any other Person and no investigation or review is pending or, to its best knowledge, threatened by any Governmental Authority or other Person relating to the Leased Property with respect to any alleged material violation or liability under any Environmental Law by any other Person.

(v) The Leased Property is presently in compliance in all material respects with all Environmental Laws, and there are no present or, to Lessee’s best knowledge, past facts, circumstances, activities, events, conditions or occurrences regarding the Leased

Property (including without limitation the release or presence of Hazardous Materials) that could reasonably be anticipated to (A) form the basis of a material Claim against the Leased Property, Lessor, Administrative Agent, Lender or Lessee, (B) cause the Leased Property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law, (C) require the filing or recording of any notice or restriction relating to the presence of Hazardous Materials in the real estate records in the county or other appropriate municipality in which the Leased Property is located, or (D) prevent or interfere with the continued operation and maintenance of the Leased Property as contemplated by the Operative Documents.

(l) Leased Property. The present condition and use of the Leased Property conforms in all material respects with all conditions or requirements of all existing permits and approvals issued with respect to the Leased Property, and the present use of the Leased Property and Lessee's future intended use of the Leased Property under the Lease does not, in any material respect, violate any Applicable Law. No notices, complaints or orders of violations or non-compliance have been issued or, to Lessee's best knowledge, threatened or contemplated by any Governmental Authority with respect to the Leased Property or any present or intended future use thereof or with respect to any Significant Condemnation or Condemnation of the Leased Property, proposed or otherwise. All agreements, easements and other rights, public or private, which are necessary to permit the lawful use and operation of the Leased Property as Lessee intends to use the Leased Property under the Lease and which are necessary to permit the lawful intended use and operation of all presently intended utilities, driveways, roads and other means of egress and ingress to and from the same have been, or to Lessee's best knowledge will be, obtained and are in full force and effect, and Lessee has no knowledge of any pending modification or cancellation of any of the same.

(m) Conditions Precedent contained in the Operative Documents; Default. All conditions precedent contained in this Agreement and in the other Operative Documents to be satisfied by Lessee have been satisfied in full or waived in accordance with such Operative Documents. No event has occurred or would occur after giving effect to the transactions contemplated hereby with respect to Lessee which would constitute a Default or Event of Default under the Lease.

(n) Offering of Notes. Neither Lessee nor anyone acting on behalf of Lessee, has offered, transferred, pledged, sold or otherwise disposed of any Note or any interest in any Note to, or solicited any offer to buy or accepted a transfer, pledge or other disposition of any Note or any interest in any Note from, or otherwise approached or negotiated with respect to any Note or any interest in any Note with, any person in any manner, or made any general solicitation by means of general advertising or in any other manner, or taken any other action, which would constitute a public distribution of the Notes under the Securities Act, or which would render the disposition of any Note a violation of Section 5 of the Securities Act or any state securities laws, or require registration or qualification pursuant thereto or require registration of Lessee under the Investment Company Act of 1940, as amended, nor will Lessee act, nor has Lessee authorized or will it authorize any Person to act, in such manner with respect to any Note.

(o) Trust Indenture Act. The initial offer and sale of the Note to Lender, in the manner contemplated in the Credit Agreement, are transactions exempt from the registration requirements of the Securities Act and no indenture with respect to the Notes is required to be qualified under the Trust Indenture Act of 1939, as amended.

(p) Solvency. Lessee is and, upon consummation of the transactions, contemplated by this Agreement, will be Solvent.

(q) Indebtedness. The Notes constitute indebtedness for purposes of federal income taxation.

(r) Foreign Assets Control Regulations, etc. The use of the proceeds of the Loans and the Equity Investment will not violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

SECTION 4.2. Representations Of Lessor. Effective as of the date of execution hereof and as of the Closing Date, Lessor represents and warrants to each of the other parties hereto as follows:

(a) Employee Benefit Plans. Lessor is not and will not be making its Equity Investment 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 of a "plan" (as defined in Section 4975(e)(1) of the Code).

(b) Representations and Warranties; No Default. The representations and warranties of Lessor set forth herein and in each of the other Operative Documents are true and correct in all respects on and as of the Closing Date as if made on and as of the Closing Date. Lessor not in default with its respective obligations under the Operative Documents.

(c) Authority of Lessor. The execution and delivery of each Operative Document delivered by Lessor on such date and the performance of the obligations of Lessor under each Operative Document has been duly authorized by all requisite action of Lessor.

(d) Execution and Delivery by Lessor. Each Operative Document delivered by Lessor on such date has been duly executed and delivered by Lessor.

(e) Valid and Binding Obligations of Lessor. Each Operative Document delivered by Lessor on such date is a legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms.

(f) No Conflict. The execution and delivery by Lessor of the Lease, this Agreement and each other Operative Document to which Lessor is or will be a party, are not or will not be, and the performance by Lessor of its obligations under each will not be, inconsistent with its organizational documents, do not and will not contravene any Applicable Law and do not and will not contravene any provision of, or constitute a default under, any contractual obligation of Lessor, do not and will not require the consent or approval of, the giving of notice

to, the registration with or taking of any action in respect of or by, any Governmental Authority, except such as have been obtained, given or accomplished, and Lessor possesses all requisite regulatory authority to undertake and perform its obligations under the Operative Documents.

(g) Litigation. There are no pending or, to the knowledge of Lessor, threatened actions or proceeds against Lessor before any Governmental Authority with respect to any Operative Documents or that would have a material adverse effect upon the ability of Lessor to perform its obligations under this Agreement or any other Operative Documents to which it is or will be a party.

(h) Lessor Liens. No Lessor Liens exist on the Closing Date, and the execution, delivery and performance by Lessor of this Agreement or any other Operative Document to which it is or will be a party will not subject the Leased Property, or any portion thereof, to any Lessor Liens.

SECTION 4.3. Representations of Guarantor. Effective as of the date of execution hereof, and as of the Closing Date, Guarantor represents and warrants to each of the other parties hereto as follows:

(a) Organization; Corporate Powers. Guarantor (i) is a corporation duly organized and validly existing under the laws of the State of Delaware, and (ii) has all requisite legal power and authority to enter into this Agreement, the Guaranty and each other Operative Document to which it is a party (the "Guarantor Documents"), to perform and observe the terms and conditions hereof, and has all requisite legal power and authority to own its properties and conduct its business as currently conducted except for such licenses, permits and approvals which would not, individually or in the aggregate, have a material adverse effect on Guarantor's ability to perform the Guaranteed Obligations. Guarantor is qualified to do business as a foreign corporation in all jurisdictions where its ownership of property or the nature of its business required such qualification except where the failure to do so could not reasonably be expected to have a Material Adverse Effect on Guarantor. Each Guarantor Document has been duly authorized, executed and delivered by Guarantor and constitutes the legal, valid and binding obligation by Guarantor enforceable against Guarantor in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization and other laws of general application relating to or affecting the enforcement of creditors' rights and general principles of equity.

(b) Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending against or, to the knowledge of the Guarantor, threatened against or affecting the Guarantor or any of its Subsidiaries (A) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (B) which in any manner draws into question the validity or enforceability of this Agreement or any other Operative Document.

(c) Conflicts. Guarantor is not subject to any Contractual Obligation or restriction or to any order, rule, regulation, writ, injunction or decree of any court or Governmental Authority or to any Applicable Law which materially and adversely affects its

ability to perform the Guaranteed Obligations. The execution, delivery and performance by Guarantor of each Guarantor Document do not and will not (i) conflict or result in a breach of or constitute a default under (A) any Applicable Law in effect as of the date of delivery of the Guarantor Documents, (B) the articles of incorporation or by-laws of Guarantor, (C) any material agreement or instrument to which Guarantor is a party or by which it is bound, or (D) any order, writ, injunction or decree of any court or other Governmental Authority, or (ii) result in the creation or imposition of any Lien upon Guarantor's property pursuant to such agreement or instrument.

(d) Approvals. The execution, delivery and performance by Guarantor of each Guarantor Document do not require (i) any stockholder approval or the consent or approval of any of Guarantor's creditors (except as have already been obtained in writing), or (ii) any authorization, consents, or approvals, or of filings with any Governmental Authority, except for such authorization, consents, approvals or filings which have been obtained and are in full force and effect.

(e) Event of Default. No event has occurred or would occur after giving effect to the transactions contemplated hereby and by the Guaranty with respect to Guarantor which would constitute a Default or Event of Default under the Guaranty. Neither Lessee nor Guarantor is in default in the payment of the principal or interest on any indebtedness for borrowed money or for its deferred purchase of property or in default under any instrument or agreement under and subject to which any such indebtedness has been issued or under any lease, in any case involving the likelihood of any actions or proceedings against it which would not have a Material Adverse Effect on Guarantor.

(f) Compliance with ERISA.

(i) Guarantor and each ERISA Affiliate 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. Neither Guarantor nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3(3) of ERISA), and no event, transaction or condition has occurred or exists that would reasonably be expected to result in the incurrence of any such liability by Guarantor or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of Guarantor or any ERISA Affiliate, 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 be, individually or in the aggregate, Material.

(ii) As of the Closing Date, the present value of the accumulated benefit obligations under each of the Plans that are subject to Title IV of ERISA (other than Multiemployer Plans), determined in accordance with Financial Accounting Standards Board Statement No. 87 as of the end of such Plan's most recently ended plan year 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 the amounts reported in the most recent Form 10-K filed by Guarantor with the SEC.

(iii) Guarantor and its ERISA Affiliates 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 Borrower'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 Guarantor and its Subsidiaries was approximately \$14,235,000 as of December 31, 2005.

(g) Solvency. Guarantor is and, upon consummation of the transactions contemplated by this Agreement and the Guaranty will be Solvent. Transactions are in furtherance of Guarantor's ordinary business purposes and in furtherance of its corporate purposes with no contemplation of insolvency and with no intent to hinder, delay or defraud any of its present or future creditors.

(h) Financial Information. None of the consolidated financial statements for Guarantor's Fiscal Year ending at December 31, 2005, contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained therein not misleading, provided, however, that to the extent any such information includes or incorporates by reference any forward-looking statement which reflects the Guarantor's current view (as of the date such Forward-Looking Statement is made) with respect to future events, prospects, projections or financial performance (each, a "Forward-Looking Statement"), such Forward-Looking Statement is subject to uncertainties and other factors which could cause actual results to differ materially from such Forward-Looking Statement. Guarantor represents that the consolidated financial statements specified above (i) are complete and correct in all material respects, and (ii) have been prepared in accordance with GAAP consistently applied, except as otherwise disclosed therein.

(i) Financial Statements; No Material Adverse Change. Guarantor has furnished to Administrative Agent, Lender and Lessor the audited consolidated balance sheet of Guarantor, Lessee and its Consolidated Subsidiaries as of December 31, 2005 and the related consolidated statements of income, shareholders' equity and cash flows for the Fiscal Year then ended. Such financial statements fairly present the consolidated financial condition of Guarantor, Lessee and its Consolidated Subsidiaries as of such dates and the consolidated results of operations for such periods in conformity with GAAP consistently applied. Since December 31, 2005, there have been no changes with respect to Guarantor, Lessee or its Subsidiaries which have had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(j) Disclosure. Guarantor has disclosed to Administrative Agent, Lender and the Lessor all agreements, instruments, and corporate or other restrictions to which Lessee is subject, and all other matters known to any of them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports (including

without limitation all reports that Guarantor is required to file with the Securities and Exchange Commission), written statements contemplated hereby or by the Guaranty, representation of Guarantor or Lessee contained in any Operative Document, certificates or other information furnished by or on behalf of Guarantor or Lessee to Administrative Agent, Lender or Lessor, or anyone on their behalf, in connection with the negotiation or syndication of this Agreement or any other Operative Document or delivered hereunder or thereunder (as modified or supplemented by any other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary, provided, however, that to the extent any such information includes or incorporates by reference any Forward-Looking Statement, such Forward-Looking Statement is subject to uncertainties and other factors which could cause actual results to differ materially from such Forward-Looking Statement.

(k) Offering of Notes. Neither Guarantor nor any Person acting on behalf of Guarantor, has offered, transferred, pledged, sold or otherwise disposed of any Note or any interest in any Note to, or solicited any offer to buy or accepted a transfer, pledge or other disposition of any Note or any interest in any Note from, or otherwise approached or negotiated with respect to any Note or any interest in any Note with, any person in any manner, or made any general solicitation by means of general advertising or in any other manner, or taken any other action, which would constitute a public distribution of the Notes under the Securities Act, or which would render the disposition of any Note a violation of Section 5 of the Securities Act or any state securities laws, or require registration or qualification pursuant thereto or require registration of Guarantor under the Investment Company Act of 1940, as amended, nor will Guarantor act, nor has Guarantor authorized or will it authorize any person to act, in such manner with respect to any Note.

(l) Trust Indenture Act. The initial offer and sale of the Notes to each of the Lenders in the manner contemplated in the Credit Agreement are transactions exempt from the registration requirements of the Securities Act and (ii) no indenture with respect to the Note is required to be qualified under the Trust Indenture Act of 1939, as amended.

(m) Investment Company. Neither Guarantor nor any of its Subsidiaries is required, and will not be required as a result of the Transaction or the offer and sale of the Notes under the circumstances contemplated by the Credit Agreement and this Agreement or the other transactions contemplated by this Agreement and the other Operative Documents, to register as an “investment company” under the Investment Company Act of 1940, as amended, and Guarantor is not “controlled” by an “investment company” as defined in the Investment Company Act of 1940, as amended.

(n) Conditions Precedent contained in the Operative Documents; Default. All conditions precedent contained in this Agreement and in the other Operative Documents to be satisfied by Guarantor have been satisfied in full or waived in accordance with such Operative Documents. No event has occurred or would occur after giving effect to the transactions contemplated hereby with respect to Guarantor which would constitute a Default or Event of Default under the Lease.

(o) Indebtedness. The Notes constitute indebtedness for purposes of federal income taxation.

(p) Taxes. Guarantor and its Subsidiaries and each other Person for whose taxes Lessee or any Subsidiaries could become liable have timely filed or caused to be filed all Federal income tax returns and all other material tax returns that are required to be filed by them, and have paid all taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except (i) to the extent the failure to do so would not have a Material Adverse Effect or (ii) where the same are currently being contested in good faith by appropriate proceedings and for which Lessee or such Subsidiaries, as the case may be, has set aside on its books adequate reserves in accordance with GAAP. As of the Closing Date, the charges, accruals and reserves on the books of Lessee and its Subsidiaries in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated.

(q) Relationship with Lessee. Lessee is Wholly Owned Subsidiary of Guarantor.

SECTION 4.4. Representations of Administrative Agent. Effective as of the Closing Date, Administrative Agent represents and warrants (in its individual capacity) to each of the other parties hereto as follows:

(a) Organization; Authority. Administrative Agent (i) is a duly organized and validly existing corporation organized under the laws of the State of New York, and (ii) has all requisite power and authority to execute, deliver and perform the Operative Documents executed by it, or to be executed by it.

(b) Authority of Lessor. The execution and delivery of each Operative Document delivered by Administrative Agent on such date and the performance of the obligations of Administrative Agent under each Operative Document has been duly authorized by all requisite action of Administrative Agent.

(c) Execution and Delivery by Administrative Agent. Each Operative Document delivered by Administrative Agent on such date has been duly executed and delivered by Administrative Agent.

(d) Valid and Binding Obligations of Administrative Agent. Each Operative Document delivered by Administrative Agent on such date is a legal, valid and binding obligation of Administrative Agent, enforceable against Administrative Agent in accordance with its terms.

SECTION 4.5. Representations of Lenders. Effective as of the date of execution hereof and as of the Closing Date, each Lender represents and warrants to each of the other parties hereto as follows:

(a) Employee Benefit Plans. No Lender is nor will be making its Loan hereunder 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 of a "plan" (as defined in Section 4975(e)(1) of the Code).

(b) Securities Laws. Lender is purchasing the Notes for its own account for investment only and not with a view towards the resale or distribution thereof in violation of the Securities Act. Lender is not participating and does not have a participation in any such distribution or the underwriting of such distribution. All subsequent offers and sales, if any, of the Notes by Lender shall be made pursuant to registration of the Notes being offered and sold under the Securities Act or pursuant to an exemption from registration; Lender has no present intention of selling or otherwise disposing of any of the Notes in violation of applicable securities laws and any such sales may only be made in conformity with all applicable federal and state securities laws.

SECTION V
COVENANTS

SECTION 5.1. Covenants of Lessee

(a) Qualification to do Business. Lessee shall remain qualified to do business in the state where the Leased Property is located.

(b) Existence; Conduct of Business. Lessee will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and its respective rights, licenses, permits, privileges and franchises related to the Lease or the Leased Property and will continue to engage in the same business as presently conducted or such other businesses that are reasonably related thereto.

(c) Compliance with Laws, Etc. Lessee will, and will cause each of its Subsidiaries to, comply with all Applicable Laws of any Governmental Authority applicable to its business and properties, including without limitation, all Environmental Laws and ERISA, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. If at any time an event or condition shall have occurred and be continuing which results in any Leased Property being in violation of any Environmental Law, or a notice, complaint, or order or finding of violation or non-compliance with any Environmental Law shall have been received by Lessee with respect to any Leased Property, Lessee shall, at its option, promptly commence and diligently perform all remedial work, at Lessee's own cost and expense, necessary or desirable to bring the Leased Property into full compliance with Environmental Laws by not later than the earlier of (i) twelve months after the date of discovery of such event or condition and (ii) the end of the initial term of the Lease with respect to the Leased Property.

(d) Maintenance of Property; Insurance (other than of the Leased Property). Lessee will, and will cause each of its Subsidiaries to, (a) keep and maintain good and marketable title to all property owned by it subject to no Liens except Permitted Liens and keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear except where the failure to do so, either individually or the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (b) maintain as part of a self-insurance program or with financially sound and reputable insurance companies, insurance with respect to its properties and business, and the properties and business of its Subsidiaries (other than the Leased Property), against loss or damage of the kinds

customarily insured against by companies in the same or similar businesses operating in the same or similar locations.

(e) Payments. Lessee covenants that (A) subject to the exceptions listed in Section 2.5, Basic Rent as defined in and payable under the Lease shall be in amounts sufficient from time to time to pay (together with the Supplemental Rent) all interest, costs and other charges due under this Agreement (including, without limitation, amounts payable on the Notes, Taxes, all other charges and costs payable pursuant to Sections 2 and 7 of this Agreement) on the dates when any such interest or other charges are due thereunder; (B) the Lease Balance from time to time shall not be less than the sum of the aggregate amount of (1) the Equity Investment, plus (2) the outstanding principal amount of the Note; and (C) the sum of the Lessee Obligation and Lessor Residual Risk Amount shall at all times during the term of the Lease be sufficient to pay the entire outstanding principal amount of the Notes and the Equity Investment.

(f) Use of Purchase Amount. The proceeds of the Loan and the Equity Investment shall be used for the purchase of the Leased Property, and for transaction and closing costs related thereto. No part of the proceeds of the Loan and the Equity Investment will be used, whether directly or indirectly, for the purchase or carrying of any "margin stock" or to extend credit to others for such purpose or for any purpose that would violate any rule or regulation of the Board of Governors of the Federal Reserve System, including Regulations T, U or X.

(g) Additional Required Appraisals. If, as a result of any change in Applicable Law after the date hereof applicable to Lessor or any Lender, an appraisal of the Leased Property is required during the Basic Lease Term under Applicable Law with respect to Lessor's or any Lender's interest therein, or the Operative Documents then Lessee shall pay the cost of such appraisal.

(h) Books and Records. Lessee will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of Guarantor in conformity with GAAP.

(i) Visitation, Inspection, Etc. Lessee will, and will cause each of its Subsidiaries to, permit any representative of Administrative Agent, any of the Lenders or Lessor, at such Person's expense except following a Lease Default or Lease Event of Default, to visit and inspect its properties, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants, all at such reasonable times and as often as Administrative Agent, any of the Lenders or Lessor may reasonably request after reasonable prior notice to the Lessee; provided, however, if a Lease Event of Default has occurred and is continuing, no prior notice shall be required.

(j) Information. Lessee will furnish to Lessor, Administrative Agent and Lender such information relating to the business, affairs and financial condition of Lessee and its Subsidiaries as Lessor, Administrative Agent and any of the Lenders may from time to time reasonably request, provided, however, that until Lessee's financial information is reported

separately from Guarantor's consolidated financial statements, Lessee shall not be required to provide separate financial statements from those of Guarantor's.

(k) Further Assurances. Upon the written request of Lessor or Administrative Agent, Lessee, at its own cost and expense, will cause all financing statements (including precautionary financing statements), fixture filings and other similar documents, to be recorded or filed at such places and times in such manner, as may be necessary to preserve, protect and perfect the interest of Lessor, Administrative Agent and Lender in the Leased Property as contemplated by the Operative Documents.

(l) Limiting Event. Immediately following the occurrence of a Limiting Event described in clause (i) of the definition thereof and request by Lessor, Lessee agrees to assign to Guarantor all of the obligations of Lessee hereunder, under the Lease and the other Operative Documents on a full recourse basis by written instrument between Lessee and Guarantor pursuant to which all of the rights, duties and obligations of Lessee are assigned by Lessee to Guarantor and all of such rights, duties and obligations of Lessee are assumed by Guarantor. Such instrument shall be accompanied by such certificates of the Lessee Parties, opinions of counsel and amendments and supplements to the other Operative Documents as Lessor and each of the Lenders shall deem necessary to consummate the foregoing. In furtherance of the foregoing, Lessee shall, and shall cause the Lessee Parties to, execute, deliver and perform such other agreements, instruments and documents and make such filings, notices and recordings as may be necessary to preserve the interests of Lessor, and each of the Lenders, and the other Indemnitees and shall otherwise cooperate with such parties and give such further assurances as are reasonably necessary or advisable to effectuate the foregoing.

(m) Subordination Agreements. Not later than forty-five (45) days after the Closing Date, Lessee shall obtain and deliver to Lessor and the Lenders fully executed Subordination Agreements in the form attached hereto as Exhibit E, provided however that failure of Lessee to deliver the Subordination Agreements as required hereby shall not constitute a Lease Event of Default.

SECTION 5.2. Covenants of Lessor

(a) Purchase Amount. The proceeds of the Loan will be used by Lessor solely to acquire the Leased Property and to pay Lessee for certain closing and transaction costs associated therewith. No portion of the proceeds of the Loan will be used by Lessor (i) in connection with, whether directly or indirectly, any tender offer for, or other acquisition of, stock of any corporation with a view towards obtaining control of such other corporation, (ii) directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any margin stock (or of extending credit to others for such purpose), or (iii) for any purpose in violation of any Applicable Law.

(b) Books and Records. Upon ten (10) days' prior written notice, Lessor will permit Administrative Agent, each of the Lenders and their respective representatives to examine, and make copies from, Lessor's books and records solely with respect to this Transaction and not generally, and to visit the offices and properties of Lessor for the purpose of examining such materials, and to discuss Lessor's performance hereunder with any of its officers

and employees provided, however, if an Event of Default shall have occurred that is not the result of a Lease Event of Default, one (1) Business Day prior notice shall be required.

(c) Liens. Lessor shall not consent to or suffer or permit any Lessor Lien against the Leased Property, and Lessor shall promptly discharge each Lessor Lien and shall indemnify Administrative Agent, each of the Lenders and Lessee for any diminution in value of the Leased Property resulting from such Lessor Liens.

(d) Certificate Concerning Accounting. With respect to any Lessor other than the original Lessor hereunder, such Lessor covenants that, as reasonably requested by Lessee from time to time with respect to any accounting period during which the Lease is or was in effect, Lessor will provide to Lessee confirmation of facts concerning Lessor and its assets as is necessary to permit Lessee to determine the proper accounting for the Lease (including updates of the facts set forth in the representations set forth on Exhibit F hereto); except that such Lessor will not be required by this provision to (w) provide any information that is not in the possession or control of Lessor or its Affiliates, (x) disclose the specific terms and conditions of its leases or other transactions with other parties or the names of such parties, (y) make disclosures prohibited by any law applicable to Lessor or The Bank of Tokyo-Mitsubishi UFJ, Ltd., or (z) disclose any other information that is protected from disclosure by confidentiality provisions in favor of such other parties or would be protected if their agreements with Lessor contained confidentiality provisions similar in scope and substance to any confidentiality provisions set forth in the Operative Documents for the benefit of Lessee or its Affiliates. Lessor will represent that information provided by it pursuant to this clause is true and complete in all material respects, but only to the knowledge of Lessor as of the date it is provided.

(e) Further Assurances. During the term of the Lease, Lessor will take certain actions set forth in clauses (I) – (X) below to facilitate the use of the Leased Property permitted by the Lease; subject, however, to the following terms and conditions:

(i) This subsection (e) will not impose upon Lessor the obligation to take any action that can be taken by Lessee, Lessee's Affiliates or anyone else other than Lessor in its capacity as the owner of record title to the Leased Property.

(ii) Lessor will not be required by this subsection (e) to incur any expense or to make any payments to another Person unless Lessor has received funds from Lessee, in excess of any other amounts due from Lessee under any of the Operative Documents, sufficient to cover all such expenses or payments or other Persons.

(iii) Lessor will not be required by this subsection (e) to incur or assume any potential liability to another Person.

(iv) Lessor will have no obligations whatsoever under this subsection (e) at any time when a Lease Default or a Lease Event of Default has occurred and is continuing.

(v) Lessee must request any action to be taken by Lessor pursuant to this subsection (e), and such request must be specific and in writing delivered to Lessor, Administrative Agent and each Lender.

(vi) No action may be required of Lessor pursuant to this subsection (e) that could constitute a violation of any Applicable Laws or compromise or constitute a waiver of Lessor's rights under other provisions of this Agreement or any of the other Operative Documents or that for any other reason is reasonably objectionable to Lessor.

(vii) The Required Lenders shall have received prior notice of such action and shall have consented thereto, which consent will not be unreasonably withheld if the other conditions above have been satisfied.

During the Basic Lease Term, if reasonably requested by Lessee and subject to the conditions listed above, Lessor will execute or consent to, or exercise or assist Lessee to exercise rights under any: (I) grant of easements, licenses, rights of way, and other rights in the nature of easements encumbering the Land or the Improvements, (II) release, relocation or termination of easements, licenses, rights of way or other rights in the nature of easements which are for the benefit of the Land or Improvements or any portion thereof, (III) dedication or transfer of portions of the Land not improved with a building, for road, highway or other public purposes, (IV) agreements (other than with Lessee or its Affiliates) for the use and maintenance of common areas, for reciprocal rights of parking, ingress and egress and amendments to any covenants and restrictions affecting the Land or any portion thereof, (V) documents required to create or administer a governmental special benefit district or assessment district for public improvements and collection of special assessments, (VI) instruments necessary or desirable for the exercise or enforcement of rights or performance of obligations under any Permitted Liens or any contract, permit, license, franchise or other right included within the term "Leased Property", (VII) modifications of Permitted Encumbrances, (VIII) permit applications or other documents required to accommodate any construction permitted by the Lease, (IX) confirmations of Lessee's rights under any particular provisions of the Operative Documents which Lessee may wish to provide to a third party, or (X) tract or parcel map subdividing the Land into lots or parcels or adjusting boundaries between lots. However, the determination of whether any such action is reasonably requested or reasonably objectionable to Lessor may depend in whole or in part upon the extent to which the requested action may result in a lien to secure payment or performance obligations against Lessor's interest in the Leased Property, may cause the value of the Leased Property to be less than the Lease Balance (after taking into account any payments made against the Lease Balance that may result from such action), or may impose upon Lessor any present or future obligations greater than the obligations Lessor is willing to accept, despite the indemnifications provided by Lessee herein.

Any and all Claims incurred by Lessor because of any action taken pursuant to this subsection (e) will be the responsibility of Lessee.

(f) Actions Permitted by Lessee Without Lessor's Consent. No refusal by Lessor to execute or join in the execution of any agreement, application or other document requested by Lessee pursuant to the preceding subsection (e) will prevent Lessee from itself executing such agreement, application or other document, so long as Lessee is not purporting to act for Lessor and does not thereby create or expand any obligations or restrictions that encumber Lessor's title to the Leased Property. Further, so long as no Lease Default or Lease Event of Default has occurred and is continuing, Lessee shall do the following in Lessee's own name and to the exclusion of Lessor during the Basic Lease Term:

(i) perform obligations arising under and exercise and enforce the rights of Lessee or the owner of the Leased Property under the Purchase Agreement or under Permitted Liens that existed prior to the execution and delivery of the Operative Documents (including the right to receive rents payable pursuant to the Existing Space Leases and to enforce or terminate any Existing Space Lease in the event of any default by the tenant thereunder and including all obligations of the lessor under the Existing Space Leases); and

(ii) perform obligations arising under and exercise and enforce the rights of Lessee or the owner of the Leased Property with respect to any warranty given by any contractor who has in the past or may during the term of the Lease construct, repair, replace or service any Improvements (including roof, HVAC and elevators) or any building permits given with respect to the Leased Property.

(g) Waiver of Landlord's Liens. Lessor waives any security interest, statutory landlord's lien or other interest Lessor may have in or against computer equipment and other tangible personal property placed on the Land from time to time that Lessee or its Affiliates own or lease from other lessors and which do not constitute Leased Property; however, Lessor does not waive its interest in or rights with respect to equipment or other property included within the "Improvements" as described in the definition thereof. Although computer equipment or other tangible personal property may be "bolted down" or otherwise firmly affixed to Improvements, it will not by reason thereof become part of the Improvements if it can be removed without causing structural or other material damage to the Improvements and without rendering HVAC or other major building systems inoperative and if it does not otherwise constitute Improvements as provided in the definition thereof.

Without limiting the foregoing, Lessor acknowledges that Lessee may obtain financing from other parties for inventory, furnishings, equipment, machinery and other personal property that is located in or about the Improvements, but that is not included in or integral to the Leased Property, and to secure such financing Lessee may grant a security interest under the Texas Uniform Commercial Code in such inventory, furnishings, equipment, machinery and other personal property. Further, Lessor acknowledges that the lenders providing such financing may require confirmation from Lessor of its agreements concerning landlord's liens and other matters set forth in this subclause (g), and if reasonably requested by Lessee, Lessor will provide such confirmation.

(h) Confirmation by Lessor. Upon reasonable advance request by Guarantor in connection with Guarantor's preparation of its annual audited financial statements, Lessor shall deliver to Guarantor a confirmation in the form attached hereto as Exhibit D.

SECTION 5.3. Covenants of Guarantor

(a) Certificates. Guarantor agrees that from time to time so long as this Agreement and the other Guarantor Documents are in effect but not more frequently than annually, except upon and after the occurrence and continuance of a Lease Default or Event of Default, it will promptly, but in no event later than fifteen (15) days after request by Administrative Agent, any of the Lenders or Lessor, execute, acknowledge and deliver to Lessor, Administrative Agent, and each of the Lenders a certificate stating: (i) that the Guaranty is

unmodified and in full force and effect (or if there have been modifications, that the Guaranty is in full force and effect as modified, and identifying such modification agreements); (ii) whether or not there is an existing Lease Default or Lease Event of Default and, if there is any such Default or Event of Default, specifying the nature and extent thereof and actions, if any, that are being taken to cure such Default or Event of Default; and (iii) whether or not Guarantor believes there to be any setoffs, defenses or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of Guarantor.

(b) Limiting Event. Immediately following the occurrence of a Limiting Event described in clause (i) of the definition thereof and request by Lessor, Guarantor agrees to assume all of the obligations of Lessee hereunder, under the Lease and the other Operative Documents on a full recourse basis by written instrument between Lessee and Guarantor pursuant to which all of the rights, duties and obligations of Lessee are assigned by Lessee to Guarantor and all of such rights, duties and obligations of Lessee are assumed by Guarantor. Such instrument shall be accompanied by such certificates of the Lessee Parties, opinions of counsel and amendments and supplements to the other Operative Documents as Lessor and each of the Lenders shall deem necessary to consummate the foregoing. In furtherance of the foregoing, Guarantor shall, and shall cause the Lessee Parties to, execute, deliver and perform such other agreements, instruments and documents and make such filings, notices and recordations as may be necessary to preserve the interests of Lessor, each of the Lenders, and the other Indemnitees and shall otherwise cooperate with such parties and give such further assurances as are reasonably necessary or advisable to effectuate the foregoing.

(c) Relationship of Guarantor and Lessee. Guarantor shall at all times cause Lessee to remain a wholly owned Subsidiary of Guarantor.

(d) Provisions of the Lennox Revolver Incorporated by Reference. Guarantor shall at all times comply with the following Sections of the Lennox Revolver (as construed for purposes of this subsection in accordance with the provisions set forth below), all of which Sections are hereby incorporated by reference:

- (1) Section 5.01 (which is titled, "Compliance with Laws");
- (2) Section 5.02 (which is titled, "Insurance");
- (3) Section 5.03 (which is titled, "Maintenance of Properties and Lines of Business");
- (4) Section 5.04 (which is titled, "Payment of Taxes");
- (5) Section 5.05 (which is titled, "Corporate Existence, etc.");
- (6) Section 5.08 (which is titled, "Environmental Matters");
- (7) subject to the qualification set out below, Section 5.09 (which is titled, "Transactions with Affiliates");
- (8) Section 5.10 (which is titled, "Mergers, Consolidation, etc..");

- (9) Section 5.15 (which is titled, "Financial Covenants");
- (10) Section 5.18 (which is titled, "Financial and Business Information");
- (11) Section 5.19 (which is titled, "Inspection; Confidentiality"); and
- (12) Section 5.20 (which is titled, "Books and Records").

Notwithstanding the incorporation of Section 5.09 of the Lennox Revolver into this Agreement by reference, for purposes of this Agreement, those Sections will not be construed to restrict any payments or transactions between Guarantor and any Subsidiary or between any Subsidiaries of Guarantor that, according to Section 5.16 of the Lennox Revolver (which is titled, "Limitation on Restrictive Agreements"), are not to be restricted.

For purposes of determining requirements, calculations, Lease Defaults or Lease Events of Defaults established in this Agreement or other Operative Documents by reference to the Lennox Revolver, the Lennox Revolver will be construed as if:

- the Lennox Revolver continued indefinitely (and obligations of Guarantor remained outstanding thereunder) notwithstanding any expiration or termination thereof;
- no modification of, or waiver under, the Lennox Revolver had been executed or granted after the Closing Date other than written modifications or waivers approved in writing by Lessor and the Required Lenders;
- the Lennox Revolver required Lessee to deliver to Lessor and Administrative Agent copies of the notices and certificates required by the provisions listed above contemporaneously with the delivery of the original notices and certificates to any agent or lender under the Lennox Revolver (except that (i) in cases where the Lennox Revolver requires notice of any Default or Event of Default, such requirement will be construed to require notice of a Lease Default or Lease Event of Default, and (ii) any certificate of compliance or similar notice required of Guarantor by the Lennox Revolver will include such modifications as may be appropriate to allow Lessor and Lessee to determine compliance with the Operative Documents by Lessee and Guarantor, rather than Guarantor's compliance with the Lennox Revolver);
- the Lennox Revolver required Lessor's and Required Lender's approval or consent to anything for which the Lennox Revolver requires the consent or approval of any Agent or Lender thereunder, including any document, instrument or provision that any of the Sections listed above describes as being "in form and substance satisfactory to" (or by words of like effect) any Agent or Lender thereunder.

(e) Notices. Financials. Guarantor agrees to deliver copies of all financial information that is required to deliver pursuant to clause (d) above to each Lender and to Lessor.

SECTION VI
TRANSFERS BY LESSOR AND LENDERS

SECTION 6.1. Transfers by Lessor or Lender. Neither Lessor nor Lender shall assign, convey or otherwise transfer all or any portion of its right, title or interest in, to or under the Operative Documents or the Leased Property except (a) as provided in the Operative Documents or (b) to The Bank of Tokyo-Mitsubishi UFJ, Ltd., to Mizuho Corporate Bank, or to another bank, investment bank, trust company, capital company, leasing company, insurance company, finance company, commercial credit corporation, pension fund, “qualified institutional buyer” or accredited investors as each are defined under the Securities Act, or other financial institution, or (c) to any of successors or Affiliates of the entities listed in the preceding clause (b) that (1) is organized under the laws of the United States, any state thereof or the District of Columbia, (2) that has a combined capital and surplus (after deduction of the amount of intangible assets) or, if applicable, consolidated tangible net worth, of not less than \$50,000,000, (3) in the case of a transfer by Lessor, can make and does make the representations to Lessee set forth on Exhibit D attached hereto, and/or evidences to Lessee’s reasonable satisfaction that it is a “business” as defined under FIN 46 and (4) in the case of a transfer by Lender, can make and does make the representations to Lessee which Lender has made in Section 4.5; *provided, however*, that if any such transfer includes the transfer of legal title to the Leased Property, Lessor shall have provided Lessee with at least fifteen (15) days prior notice of its intention to convey such title to the Leased Property, together with such information regarding the proposed transferee as is reasonably requested by Lessee, and Lessee shall not have elected to exercise its purchase option as provided in the Lease. However, nothing in this provision will be construed to prevent Lessor or Lender from contractually sharing risks or rewards of the Transaction with third parties (participants) that are not made parties to the Operative Documents.

SECTION VII
INDEMNIFICATION

SECTION 7.1. General Indemnification. Subject to Section 7.6 hereof, Lessee and Guarantor jointly and severally agree, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and to indemnify, protect, defend, save and hold harmless each Indemnitee, on an After-Tax Basis, from and against, any and all Claims that may be imposed on, incurred by or asserted, or threatened to be asserted, against such Indemnitee (whether because of action or omission by such Indemnitee or otherwise), whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person and whether or not such Claim arises or accrues prior to any Closing Date or after the Termination Date, in any way relating to or arising out of:

- (a) the Transaction, any of the Operative Documents or any of the transactions, agreements or instruments contemplated thereby, and any amendment, modification or waiver in respect thereof; or
- (b) the Leased Property or any part thereof or interest therein;
- (c) the purchase, design, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, ownership, management, possession, operation,

rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition, substitution, storage, transfer of title, redelivery, use, financing, refinancing, disposition, operation, condition, sale (including, without limitation, any sale pursuant to the Lease), return or other disposition of all or any part of any interest in the Leased 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 or on any other collateral securing the Notes, including, without limitation: (1) Claims or penalties arising from any violation or alleged violation of law or in tort (strict liability or otherwise), (2) latent or other defects, whether or not discoverable, (3) 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 Leased Property or any part thereof, (4) the making of any Alterations in violation of any standards imposed by any insurance policies required to be maintained by Lessee pursuant to the Lease which are in effect at any time with respect to the Leased Property or any part thereof, (5) any Claim for patent, trademark or copyright infringement, (6) Claims arising from any public improvements with respect to the Leased Property resulting in any charge or special assessments being levied against the Leased Property or any Claim for utility "tap-in" fees, and (7) Claims for personal injury or real or personal property damage occurring, or allegedly occurring, on the Land, Improvements or Leased Property;

(d) the offer, issuance, sale or delivery of the Equity Investment and Notes;

(e) the breach or alleged breach by Lessee or Guarantor of any representation or warranty made by it or deemed made by it in any Operative Document or any certificate required to be delivered by any Operative Document;

(f) the retaining or employment of any broker, finder or financial advisor by Lessee or Guarantor to act on its behalf in connection with this Agreement, or the incurring of any fees or commissions to which Lessor, Administrative Agent or any of the Lenders might be subjected by virtue of their entering into the transactions contemplated by this Agreement;

(g) the existence of any Lien on or with respect to the Leased Property, any Basic Rent or Supplemental Rent, title thereto, or any interest therein, including any Liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of the Leased Property or by reason of labor or materials furnished or claimed to have been furnished to Lessee, or any of its contractors or agents or by reason of the financing of any personalty or equipment purchased or leased by Lessee or Alterations constructed by Lessee, except in all cases the Liens listed as item (a) in the definition of Permitted Liens;

(h) 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;

(i) any act or omission by Buyer under the Purchase Agreement or any other Operative Document, and any breach of any requirement, condition, restriction or limitation in any Deed; or

(j) any Breakage Costs;

provided, however, neither Lessee nor Guarantor shall be required to indemnify any Indemnitee under this Section 7.1 for any of the following: (1) any Claim to the extent that such Claim results from the willful misconduct or gross negligence of such Indemnitee, (2) any Claim resulting from Lessor Liens which Lessor is responsible for discharging under the Operative Documents, (3) without limiting the provisions of Section 7.2, any Claim related to the Leased Property to the extent attributable to acts or events occurring after the expiration of the Basic Lease Term and the return of the Leased Property to Lessor so long as Lessor, Administrative Agent, each of the Lenders are not exercising remedies against Lessee or Guarantor in respect of the Operative Documents, (4) any Claim to the extent that such Claim results from the breach by Lessor of any covenant, representation or warranty made by it in any Operative Document, (5) any Claim to the extent that such Claim results from the breach of Lender of any covenant, representation or warranty made by it in any Operative Document and (6) Taxes (in being understood that Section 7.4, rather than this Section 7.1, will govern Lessee's obligations in regard to Taxes). It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of, and shall be separate and independent from any other remedy under this Agreement, the Lease or any other Operative Document.

SECTION 7.2. Environmental Indemnity. In addition to and without limitation of Section 7.1, Lessee and Guarantor jointly and severally agree to indemnify, hold harmless and defend each Indemnitee from and against any and all claims (including without limitation third party claims for personal injury or real or personal property damage), losses (including but not limited to any loss of value of the Leased Property), damages, liabilities, fines, penalties, charges, suits, settlements, demands, administrative and judicial proceedings (including informal proceedings) and orders, judgments, remedial action, requirements, enforcement actions of any kind, and all reasonable costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorneys' and/or paralegals' fees and expenses), including, but not limited to, all costs incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work by any federal, state or local government agency, arising directly or indirectly, in whole or in part, out of

(i) the presence in, on or under the Leased Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials in, on, under, from or onto the Leased Property,

(ii) any activity, including, without limitation, construction, carried on or undertaken on or off the Leased Property, and whether by a Lessee, Guarantor or any predecessor in title or any employees, agents, contractors or subcontractors of a Lessee, Guarantor or any predecessor in title, or any other Persons, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Materials that at any time are located or present on or under or that at any time migrate, flow, percolate, diffuse or in any way move onto or under the Leased Property,

(iii) to the extent related in any way to the Leased Property, loss of or damage to any property or the environment (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,

(iv) to the extent related in any way to the Leased Property any claim concerning lack of compliance with Environmental Laws, or any act or omission causing an environmental condition that requires remediation or would allow any governmental agency to record a lien or encumbrance on the land records, or

(v) any residual contamination in, on or under the Leased Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials; in each case irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances; in any case with respect to the matters described in the foregoing clauses (i) through (v) that arise or occur prior to or during the Basic Lease Term, at any time during which Lessee or any Affiliate thereof owns any interest in or otherwise occupies or possesses the Leased Property or any portion thereof, or during any period after and during the continuance of any Lease Event of Default;

provided, however, neither Lessee nor Guarantor shall be required to indemnify any Indemnitee under this Section 7.2 for (1) any Claim to the extent that such Claim results from the willful misconduct or gross negligence of such Indemnitee and (2) any Claim to the extent attributable to acts or events occurring after the expiration of the Basic Lease Term and the return of the Leased Property to Lessor pursuant to the Basic Lease. It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any other remedy under this Agreement, the Lease or any other Operative Document.

SECTION 7.3. Proceedings In Respect Of Claims. With respect to any amount that a Lessee or Guarantor is requested by an Indemnitee to pay by reason of Section 7.1 or 7.2, such Indemnitee shall, if so requested by Lessee or Guarantor and prior to any payment, submit such additional information to Lessee or Guarantor as Lessee or Guarantor 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 notify Lessee or Guarantor of the commencement thereof, and Lessee shall be entitled, at its expense, to participate in, and, to the extent that Lessee desires to, assume and control the defense thereof with counsel reasonably satisfactory to such Indemnitee; provided, however, that such Indemnitee may pursue a motion to dismiss such Indemnitee from such action, suit or proceeding with counsel of such Indemnitee's choice at Lessee's expense; and provided further that Lessee and Guarantor jointly and severally may assume and control the defense of such proceeding only if Lessee and Guarantor shall have acknowledged in writing their obligations to fully indemnify such Indemnitee (on and subject to the terms and conditions hereof) in respect of such action, suit or proceeding, Lessee and Guarantor jointly and severally shall pay all costs and expenses related to such action, suit or proceeding as and when incurred and 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; and, provided further, that 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 material civil liability (in excess of the amount of any liability insurance coverage maintained in favor of such Indemnitee) on such Indemnitee or (y) such action, suit or proceeding will involve a material risk of the sale, forfeiture or loss of, the Leased Property or any material part thereof unless Lessee shall have posted a bond or other security satisfactory to the relevant Indemnitees in respect to such risk or (z) the control of such action, suit or proceeding would involve an actual or potential conflict of interest, or (B) such proceeding involves Claims not fully indemnified by Lessee which 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 a Lessee in accordance with the foregoing.

If Lessee fails to fulfill the conditions to Lessee's assuming the defense of any claim on or prior to the date that is fifteen (15) days prior to the date that an answer or response is required, the Indemnitee may undertake such defense, at Lessee's and Guarantor's joint and several expense.

Lessee shall not enter into any settlement or other compromise with respect to any Claim which is entitled to be indemnified under Section 7.1 or 7.2 without the prior written consent of the related Indemnitee, which consent shall not be unreasonably withheld. Unless a Lease Event of Default shall have occurred and be continuing, no Indemnitee shall enter into any settlement or other compromise with respect to any claim which is entitled to be indemnified under Section 7.1 or 7.2 without the prior written consent of Guarantor, which consent shall not be unreasonably withheld, unless such Indemnitee waives its right to be indemnified under Section 7.1 or 7.2 with respect to such Claim.

Upon payment in full of any Claim by Lessee or Guarantor pursuant to Section 7.1 or 7.2 to or on behalf of an Indemnitee, Lessee and Guarantor, 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 reasonably necessary to preserve any such claims and otherwise cooperate with Lessee and Guarantor and give such further assurances as are reasonably necessary or advisable to enable Lessee and Guarantor vigorously to pursue such claims.

Any amount payable to an Indemnitee pursuant to Section 7.1 or 7.2 shall be paid to such Indemnitee promptly upon, but in no event later than thirty (30) days after, 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.

If for any reason the indemnification provided for in Section 7.1 or 7.2 is unavailable to an Indemnitee or is insufficient to hold an Indemnitee harmless from any Claim intended to be covered thereby, then Lessee and Guarantor jointly and severally agree to contribute to the amount paid or payable by such Indemnitee as a result of such Claim in such proportion as is

appropriate to reflect not only the relative benefits received by such Indemnitee on the one hand and by Lessee and Guarantor on the other hand but also the relative fault of such Indemnitee as well as any other relevant equitable considerations. It is expressly understood and agreed that the right to contribution provided for herein shall survive the expiration or termination of and shall be separate and independent from any other remedy under this Agreement, the Lease or any other Operative Document.

SECTION 7.4. General Tax Indemnity

(a) Lessee and Guarantor jointly and severally agree, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, pay or cause to be paid, indemnify and save each Indemnitee, on an After Tax Basis, harmless from and against any and all Impositions.

(b) Contests. If a written claim for payment is made by any taxing authority against an Indemnitee for any Imposition with respect to which Lessee or Guarantor may be liable for indemnity pursuant to this Section 7.4, such Indemnitee shall give Lessee and Guarantor written notice of such claim promptly after its receipt, and shall furnish Lessee and Guarantor with copies of such claim and all other writings received from the taxing authority to the extent relating to such claim. The Indemnitee shall not pay such claim until at least thirty (30) days after providing Lessee and Guarantor with such written notice, unless required to do so by law or regulation. Subject to the conditions set forth in the following paragraph, Lessee and Guarantor shall be entitled to contest (acting through counsel selected by Lessee and Guarantor and reasonably acceptable to the Indemnitee), and control the contest of, any such claim with respect to an Imposition (a "Tax Claim") if (i) the contest of the Tax Claim may be pursued in the name of Lessee or Guarantor; (ii) the contest of the Tax Claim must be pursued in the name of the Indemnitee but can be pursued independently from any other proceeding involving a tax liability of such Indemnitee for which Lessee and Guarantor are not responsible or (iii) the Indemnitee requests that Lessee and Guarantor control such contest. In the case of all other Tax Claims, subject to the conditions set forth in the following paragraph, the Indemnitee shall contest the Tax Claim if Lessee and Guarantor shall request that the Imposition be contested, and the following rules shall apply with respect to such contest:

(1) the Indemnitee shall control the contest of such Tax Claim in good faith taking into account any and all tax consequences to the Indemnitee, including, without limitation, those associated with a recharacterization of the transaction contemplated by the Operative Documents by any taxing authority (acting through counsel selected by the Indemnitee and reasonably acceptable to Lessee and Guarantor),

(2) the Indemnitee shall not otherwise settle, compromise or abandon such contest without Lessee's and Guarantor's prior written consent except as provided in the concluding paragraph to this Section 7.4(b).

In either case, the party conducting such contest shall consult with and keep reasonably informed the other party and its designated counsel with respect to such Tax Claim, shall provide the other party with copies of any reports or claims issued by the relevant auditing agents or taxing authority as well as related portions of tax returns, and shall consider and consult in good

faith with the other party regarding any request, including but not limited to requests (a) to resist payment of Impositions if practical and (b) not to pay such Impositions except under protest if protest is necessary and proper (but the decisions regarding what actions are to be taken shall be made by the controlling party in its sole judgment).

Notwithstanding the foregoing, no contest with respect to a Tax Claim shall be required or permitted and Lessee and Guarantor shall be required to pay the applicable Impositions without contest, unless:

(1) within thirty (30) days after notice by the Indemnitee to Lessee and Guarantor of such Tax Claim, Lessee and Guarantor shall request in writing to the Indemnitee that such Tax Claim be contested; provided that if a shorter period is required for taking action with respect to such Tax Claim and the Indemnitee notifies Lessee and Guarantor of such requirement, Lessee and Guarantor shall use reasonable efforts to request such contest within such shorter period,

(2) no Event of Default has occurred and is continuing,

(3) there is no risk of sale, forfeiture or loss of, or, except in the case of a Tax Claim involving only disputed state or local property or ad valorem taxes, the creation of a Lien on Lessee's interest in, the Leased Property as a result of such Tax Claim (other than a Permitted Lien); provided that this clause (3) shall not apply if the Lessee and Guarantor post security satisfactory to the Indemnitee in its sole discretion, or the Imposition is fully paid in either manner specified in clause (5) below,

(4) there is no risk of imposition of any criminal penalties,

(5) if such contest involves payment of such Imposition, Lessee and Guarantor shall either advance to the Indemnitee on an interest-free basis, and with no after-tax cost to such Indemnitee, the amount of the Imposition (a "Tax Advance") or pay such Indemnitee the amount payable by Lessee and Guarantor pursuant to this Section 7.4 with respect to such Imposition,

(6) Lessee and Guarantor agree to pay (and pay on demand) and with no after-tax cost to such Indemnitee, all reasonable costs, losses and expenses incurred by the Indemnitee in connection with the contest of such claim (including all reasonable legal, accounting and investigatory fees and disbursements),

(7) except in the case of a Tax Claim involving only disputed state or local property or ad valorem taxes, (A) the Indemnitee has been provided at Lessee's and Guarantor's sole expense with an opinion, reasonably acceptable to such Indemnitee, of independent tax counsel of recognized standing selected by Lessee and Guarantor and reasonably acceptable to the Indemnitee to the effect that there is a reasonable basis for contesting such Tax Claim; and (B) the amount of the disputed federal Taxes in controversy, taking into account the amount of all similar and logically related Impositions with respect to the transactions contemplated by the Operative Documents that could be raised in any other year (including any future year) not barred by the statute of limitations, exceeds \$50,000;

(8) Lessee and Guarantor shall acknowledge in writing their liability to indemnify the Indemnitee hereunder, on and subject to the terms and conditions hereof, in respect of such claim if the contest is not successful, and

(9) in the case of a judicial appeal, no appeal to the U.S. Supreme Court shall be required of the Indemnitee or shall be permitted by Lessee and Guarantor.

Notwithstanding anything to the contrary contained in this Section 7.4, the Indemnitee at any time may elect to decline to take any action or any further action with respect to a Tax Claim and may in its sole discretion settle or compromise any contest with respect to such Tax Claim without Lessee's and Guarantor's consent if the Indemnitee:

(1) waives its right to any indemnity payment by Lessee and Guarantor pursuant to this Section 7.4 in respect of such Tax Claim (and any other claim for Impositions with respect to any other taxable year and/or with respect to any other claim, the contest of which is effectively precluded by the Indemnitee's declination to take action with respect to the Tax Claim), and

(2) promptly repays to Lessee and Guarantor any Tax Advance and any amount paid to such Indemnitee under this Section 7.4 in respect of such Taxes, but not any costs or expenses with respect to any such contest.

Except as provided in the preceding sentence, any such waiver shall be without prejudice to the rights of the Indemnitee with respect to any other Tax Claim.

(c) Reports. In the case of any report, return or statement required to be filed with respect to any Impositions that are subject to indemnification under this Section 7.4 and of which the Guarantor or the Lessee has knowledge, the Guarantor or the Lessee, as the case may be, shall promptly notify such Indemnitee of such requirement and, at the expense of the Guarantor and the Lessee (i) if the Guarantor or the Lessee, as the case may be, is permitted (unless otherwise requested by such Indemnitee) by Applicable Law, 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 Indemnitee or such Indemnitee otherwise requests such report, return or such statement for filing by such Indemnitee in such manner as shall be satisfactory to such Indemnitee and send the same to such Indemnitee for filing no later than fifteen (15) days prior to the due date therefor. In any case in which such Indemnitee will file any such report, return or statement, the Guarantor or the Lessee shall, upon written request of such Indemnitee, provide such Indemnitee with such information as is reasonably necessary to allow such Indemnitee to file such report, return or statement.

(d) Forms. If any Indemnitee is not created or organized under the laws of the United States or any state or political subdivision thereof, such Indemnitee will furnish to the Agent upon the request of the Lessee, to the extent required for U.S. federal income tax purposes, Internal Revenue Service Form W-8 BEN or Form W-8 ECI or any subsequent versions of such forms or successors thereto as evidence of such Indemnitee's complete exemption from the withholding of U.S. federal income tax with respect to indebtedness of the Lessee for federal income tax purposes. Such forms shall be delivered by such Indemnitee (i) on

or before the date such Indemnitee becomes a party to any of the Operative Documents and promptly before the expiration, obsolescence or invalidity of any form previously delivered by such Indemnitee and (ii) before or promptly after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Lessee pursuant to this Section 7.4, unless, in the case of either clause (i) or (ii), as a result of the adoption of or a change in applicable law, regulation or, in each case, the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof (whether or not having the force of law) (including any statute, treaty, ruling or regulation by a governmental, judicial or taxing authority), such Indemnitee is not entitled to provide such a form. The Agent and the Lessee shall be entitled to rely on such forms in its possession until receipt of any revised or successor form pursuant to the preceding sentence.

SECTION 7.5. Increased Costs, Etc.

(a) Alternate Rate. Notwithstanding any other provisions herein, if any requirement of law, regulation, order or decree or any change therein or in the interpretation or application thereof shall make it unlawful for Lessor or Lenders to make or maintain or supply the Equity Investment or the Loan respectively, at a rate based on the LIBOR Rate as contemplated by the Operative Documents, then the Loans and Equity Investment outstanding, if any, shall, if and when required by such law, be converted automatically to bear interest at a rate reasonably comparable to the applicable LIBOR Rate, plus the Applicable Margin or other applicable amount pursuant hereto or, if such rate is not available, at the Alternative Rate. If any such conversion of the interest or yield rate applicable to the Loans and Equity Investment is made on a day which is not the end of a Rent Period, Lessee shall pay, on a pro rata basis, to Lessor and each of the Lenders, as applicable, on such conversion date interest at the related LIBOR Rate, plus the Applicable Margin or other applicable amount pursuant hereto on the outstanding principal amount of the Loan and the Equity Investment to the date of such automatic conversion and, upon the request of Lessor or any Lender, shall pay to Lessor or such Lender such other amount or amounts as may be necessary to compensate such party for any loss or expense which such party deems to be material and which has been sustained or incurred by such party as a result of such conversion. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by a Lessor or any Lender to Guarantor shall be conclusive absent manifest error. As soon as practicable, each of the Lenders and Lessor shall notify Guarantor of any event of which it has knowledge occurring after the date of this Agreement, which will cause or is likely to cause a conversion of the interest or yield rate applicable to the Loan or the Equity Investment, as applicable, pursuant to this Section 7.5, and each of the Lenders or such Funding Party shall designate a different funding office or take such other action to avoid the need for, or to reduce the amount of compensation related to, such conversion of the interest or yield rate applicable to Purchase Amounts which would not, in the sole opinion of Lender or Lessor, be otherwise disadvantageous to each of the Lenders or the Funding Parties.

(b) Regulatory Changes. If any Regulatory Change occurring after the date hereof:

(i) shall subject any of the Lenders to any tax, duty or other charge with respect to any Note (or its participation therein) or the Equity Investment, or any of

Lenders' or Lessor's obligations or right to acquire or hold any Note or the Equity Investment, as applicable or to provide funding, liquidity, credit or asset purchase support to a commercial paper conduit in respect of any of the foregoing (or with respect to its participation in any of the foregoing) or shall change the basis of taxation of payments to each of the Lenders of the principal or interest on any Note (or its participation in any of the foregoing) or to Lessor of the principal or yield on the Equity Investment, or any other amounts due hereunder or under any funding, liquidity, or credit support agreement it may have with a commercial paper conduit (collectively, a "Covered Document") or Lenders' or Lessor's obligations or rights, if any, to acquire or participate in any Note or the Equity Investment, as applicable or to provide funding, liquidity, credit or asset purchase support to a commercial paper conduit in respect of any of the foregoing (or with respect to its participation in any of the foregoing) (except for changes in the rate of tax on or determined by reference to the overall net income of each of the Lenders or Lessor or franchise tax based on capital or net income of each of the Lenders or Lessor imposed by the United States of America or any state); or

(ii) shall impose upon any of the Lenders or Lessor, modify or deem applicable any reserve, special deposit or similar requirement against assets of any of the Lenders or Lessor, deposits or obligations with or for the account of any of the Lenders or Lessor or with or for the account of any Affiliate (or entity deemed by the Federal Reserve Board to be an Affiliate) of any of the Lenders or Lessor, as applicable or credit extended by any of the Lenders or Lessors; or

(iii) shall change the amount of capital maintained or required or requested or directed to be maintained by any of the Lenders or Lessor; or

(iv) shall impose any other condition affecting any Note (or its participation therein) or the Equity Investment or any of Lenders' or Lessor's obligations or right to acquire or hold any Note or the Equity Investment, as applicable or to provide funding, liquidity, credit or asset purchase support to a commercial paper conduit in respect of any of the foregoing (or with respect to its participation in any of the foregoing);

and the result of any of the foregoing is or would be

(I) to increase the cost to (or impose a cost on) each of the Lenders funding or acquiring or holding any Note or to Lessor, or loans or other extensions of credit under any Covered Document or any obligation or commitment of such Lenders or Lessor with respect to any of the foregoing,

(II) to reduce the amount of any sum received or receivable by a Lender or Lessor as successor in interest to a commercial paper conduit under this Agreement or under any Covered Document (or its participation in any of the foregoing), or

(III) to reduce the rate of return on the capital of a Lender or Lessor as a consequence of its obligations under the Covered Documents (or its participation therein) to a level below that which such Lender or Lessor, as applicable, could otherwise have achieved,

in each such case by an amount reasonably deemed by such Lenders or Lessor to be material, then prior to the next scheduled Payment Date, and in any case within 30 days after demand by such Lenders or Lessor (which demand shall be accompanied by a statement setting forth in reasonable detail the basis of such demand), then Lessee shall pay directly to such Lenders and Lessor, as applicable, such additional amount or amounts as will compensate each of the Lenders for such additional or increased cost (net of any savings) or such reduction (the "Yield Protection Amount").

In determining any amount provided for or referred to in this Section 7.5(b), such affected Lenders and Lessor may use any reasonable averaging and attribution method that each (in its sole discretion) shall deem applicable. Any of the Lenders or Lessor when making a claim under this Section 7.5(b) shall submit to Lessee a statement as to such increased cost or reduced return (including calculation thereof in reasonable detail), which statement shall, in the absence of error, be conclusive and binding upon Lessee. None of the Lenders or Lessor shall be entitled to recover any Yield Protection Amount under this Section 7.5(b), incurred or accrued more than 180 days prior to the notice described in this Section 7.5(b), unless the Regulatory Change giving rise to such Yield Protection Amount is retroactive in its application to such Lenders or Lessor, as applicable.

(c) Compliance with Laws. If Lessor or any Lender (each, a "Funding Party") shall have determined that compliance by such Funding Party with any applicable law, governmental rule, regulation or order regarding capital adequacy of banks or bank holding companies, or any interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by such Funding Party with any request or directive regarding capital adequacy (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Funding Party's capital as a consequence of such Funding Party's obligations hereunder to a level below that which such Funding Party could have achieved but for such compliance (taking into consideration such Funding Party's policies with respect to capital adequacy immediately before such compliance and assuming that such Funding Party's capital was fully utilized prior to such compliance) by an amount deemed by such Funding Party to be material, then, within thirty (30) days after demand on Lessee, Lessee shall pay, on a pro rata basis, to such Funding Party as are so affected such additional amounts as shall be sufficient to compensate such Funding Parties for such reduced return. A certificate of an officer of any such Funding Party setting forth the amount to be paid to it and the basis for computation thereof hereunder shall, in the absence of manifest error, be conclusive. In determining such amount, such Funding Party may use any reasonable averaging and attribution methods.

(d) Calculation of Amounts Owed. If a Funding Party becomes entitled to claim any additional amounts pursuant to this Section 7.5, it shall promptly notify Guarantor thereof. A certificate as to any additional amounts payable pursuant to the foregoing submitted by a Funding Party to Guarantor shall be conclusive absent manifest error. For purposes of the application of this Section 7.5, and in calculating the amount necessary to compensate such Funding Party for any imposition of or increase in capital requirements, such Funding Party shall determine the applicability of this provision and calculate the amount payable to it hereunder in a

manner consistent with the manner in which it shall apply and calculate similar compensation payable to it by other borrowers having provisions in their credit agreements comparable to this Section.

(e) Reserve Requirements. If any Funding Party shall, at any time, incur costs associated with reserve requirements pursuant to Regulation D in connection with the making or maintenance of any Purchase Amount, and if such costs are not already reflected in the formula for the computation of LIBOR as set forth in the definition thereof, then Lessee shall immediately pay, on a pro rata basis, such costs to such Funding Party in accordance with Section 7.5(d).

(f) Failure to Accept Purchase Amounts. Each of Lessee and Guarantor, jointly and severally, shall indemnify each Funding Party against any loss, funding cost, expense or loss of earnings, which such Funding Party may, as a consequence of Lessee's failure to accept the proceeds of the Loan and the Equity Investment on the Closing Date, failure to make a payment on the due date thereof or the payment, prepayment or conversion of the Loan or the Equity Investment (including pursuant to Article XIV of the Lease) subject to LIBOR Rate options hereunder on a day other than a Payment Date, sustain or incur in liquidating or employing deposits from third parties acquired to effect, fund or maintain such or any part thereof. If a Funding Party becomes entitled to claim any additional amounts pursuant to this Section, it shall promptly notify Administrative Agent, which shall promptly notify each of the Lenders and Guarantor thereof.

SECTION VIII MISCELLANEOUS

SECTION 8.1. Survival of Agreements. The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Documents, and the parties' obligations under any and all thereof, shall survive the execution and delivery and the termination or expiration of this Agreement and any of the Operative Documents, the transfer of the Leased Property to Lessor as provided herein (and shall not be merged into any Deed), any disposition of any interest of Lessor in the Leased Property, the purchase and sale of the Notes, 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 8.2. Notices. Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be addressed to such parties at the addresses therefor as set forth in Schedule 8.2, as such other address as any such party shall specify to the other parties hereto, and shall be deemed to have been given (i) the Business Day after being sent, if sent by overnight courier service; (ii) the Business Day sent, if sent by messenger; (iii) the day sent, if sent by facsimile or electronically during business hours of a Business Day (or on the next Business Day if otherwise sent by facsimile after business hours) and confirmed in writing via the means set forth in clauses (i) and (ii) hereof; or (iv) three (3) Business Days after being sent, if sent by registered or certified mail, postage prepaid.

SECTION 8.3. Counterparts. This 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.

SECTION 8.4. Amendments; Release. No Operative Document may be terminated, amended, supplemented, waived or modified with respect to Lessee, Guarantor or any Funding Party, except (a) in the case of a termination, amendment, supplement, waiver or modification to be binding on the Lessee or Guarantor, with the written agreement or consent of Lessee or Guarantor, and (b) in the case of a termination, amendment, supplement, waiver or modification to be binding on the Funding Parties, with the written agreement or consent of each of the Funding Parties; provided, however, that subject to Sections 7.1 and 7.2 of the Credit Agreement, no such termination, amendment, supplement, waiver or modification shall, without the written agreement or consent of Lessor, Administrative Agent and each of the Lenders, be made hereto or to the Lease, the Credit Agreement or the Guaranty. Notwithstanding anything contained herein or in any other Operative Document to the contrary, no Operative Document, or portion thereof, may be amended, modified, supplemented or waived except by a written instrument and any such amendment, modification, supplement or waiver other than in writing shall be unenforceable and ineffective.

SECTION 8.5. Headings, etc. The Table of Contents and headings of the various Articles and Sections of this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

SECTION 8.6. Parties in Interest. Except as expressly provided herein, none of the provisions of this Agreement is intended for the benefit of any Person except the parties hereto, the Authorities and their respective successors and permitted assigns.

SECTION 8.7. GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVERS

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK. THIS AGREEMENT AND THE OTHER OPERATIVE DOCUMENTS CONSTITUTE THE ENTIRE UNDERSTANDING AMONG THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ANY PRIOR AGREEMENTS, WRITTEN OR ORAL, WITH RESPECT THERETO.

(b) ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER OPERATIVE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF TRUSTEE, LENDERS, HOLDER, LESSEE, GUARANTOR OR LESSOR SHALL BE BROUGHT AND MAINTAINED IN THE

COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY PROPERTY MAY BE BROUGHT, AT THE OPTION OF LESSOR OR TRUSTEE ACTING AT THE DIRECTION OF THE REQUIRED LENDERS, IN THE COURTS OF ANY JURISDICTION WHERE SUCH PROPERTY MAY BE FOUND. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. EACH PARTY HERETO IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT EACH PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER OPERATIVE DOCUMENTS.

(c) EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER OPERATIVE DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY OTHER PARTY HERETO. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH SUCH PARTY ENTERING INTO THIS AGREEMENT AND THE OTHER OPERATIVE DOCUMENTS.

SECTION 8.8. Expenses. To the extent not paid from the proceeds of the Loan or the Equity Investment in the event Lessee and Guarantor, jointly and severally, agree to pay, as Supplemental Rent, all reasonable and documented out-of-pocket costs and expenses of Lessor, Administrative Agent and each of the Lenders in connection with the preparation, execution and delivery of the Operative Documents and the documents and instruments referred to therein and any amendment, waiver or consent relating thereto (including, without limitation, the reasonable fees and disbursements of counsel to such parties) and of Lessor, Administrative Agent and each of the Lenders in connection with the enforcement of the Operative Documents and the

documents and instruments referred to therein (including, without limitation, the reasonable fees and disbursements of counsel to such parties). All references in the Operative Documents to “attorneys’ fees” or “reasonable attorneys fees” shall mean reasonable attorneys’ fees actually incurred, without regard to any statutory definition thereof.

SECTION 8.9. Severability. Any provision of this 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 8.10. Limited Liability of Lessor. Notwithstanding anything to the contrary herein or in any of the other Operative Documents, each of Administrative Agent, Lessee, Guarantor and each of the Lenders agrees that, except as expressly set forth below, (a) all payments to be made by Lessor in respect of the Loan, the Notes, the Participation Agreement and the other Operative Documents shall be made solely from certain payments received pursuant to the Lease and the Guaranty and proceeds of the Leased Property and only to the extent that Lessor or Administrative Agent shall have received sufficient payments from such sources to make payments in respect of the Loan in accordance with Section 3 of the Credit Agreement; (b) none of Lessor, each Affiliate of Lessor and each shareholder, partner, officer, director and employee of Lessor and each Affiliate of Lessor (collectively, the “Lessor Related Parties”) shall have any personal liability to Lessee, Guarantor, Administrative Agent, any Lender or any other Person or any successor or assign of any of the foregoing persons for any claim or obligation based on or in respect of any of the Operative Documents (including, without limitation, the repayment of the Loan) or arising in any way from the transactions contemplated by the other Operative Documents, and (c) no such party shall have any recourse to Lessor or any Lessor Related Party, except that this provision will not excuse or limit the personal liability of Lessor or any Lessor Related Party with respect to (i) Lessor’s Liens claimed by, through or under Lessor or such Lessor Related Party, (ii) its gross negligence or willful misconduct, and (iii) solely in favor of the Administrative Agent and Lenders with respect to the Loan, any interest the Administrative Agent and Lenders may have in or claim to the Lessor Collateral; provided, however, that nothing in this Section 8.10 shall prevent recourse by Lessee to all estate, right, title and interest of Lessor in and to the Leased Property with respect to breaches by Lessor of its express obligations in the Lease.

SECTION 8.11. Closing. If this Agreement is executed and delivered prior to the Closing Date, the parties hereto agree that neither Lessor nor any Lender shall be obligated to close the transaction and fund the Loan and the Equity Investment, as applicable, after July 30, 2006.

SECTION 8.12. Existing Lennox Leases. The parties hereto agree that, effective as of the Closing Date, each of the Existing Lennox Leases shall terminate and be deemed to have been replaced in its entirety by the Lease.

[balance of page intentionally left blank/signatures follow]

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

LENNOX PROCUREMENT COMPANY INC.,
as Lessee

By: /s/ Gregory A. Moseman

Name: Gregory A. Moseman
Title: Assistant Treasurer

LENNOX INTERNATIONAL, INC.,
as Guarantor

By: /s/ Gary A. Larson

Name: Gary A. Larson
Title: Vice President, Treasurer

BTMU CAPITAL CORPORATION,
as Lessor

By: /s/ Cheryl A. Behan

Name: Cheryl A. Behan
Title: Senior Vice President

MHCB (USA) LEASING AND FINANCE
CORPORATION, as Lender and
Administrative Agent

By: /s/ Victor Mora

Name: Victor Mora
Title: Vice President

This instrument was prepared by
and when recorded return to:

Bruce D. Hickey, Esq.
Dechert LLP
200 Clarendon Street, 27th Floor
Boston, MA 02110

MEMORANDUM OF LEASE, DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE
FILING

Dated as of June 22, 2006

by and between

LENNOX PROCUREMENT COMPANY INC.

and

BTMU CAPITAL CORPORATION

and

JEFFREY L. BELL, as Deed of Trust Trustee

for the benefit of

BTMU CAPITAL CORPORATION

This Memorandum of Lease has been executed in several counterparts. To the extent, if any, that this document constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no lien on this document may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by Administrative Agent on or following the signature page of this Memorandum of Lease.

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**MEMORANDUM OF LEASE, DEED OF TRUST,
ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

This Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing is made as of June 22, 2006 (this "Memorandum of Lease"), by and between LENNOX PROCUREMENT COMPANY INC., as Lessee (together with its successors and assigns, "Lessee"), and BTMU CAPITAL CORPORATION, a Delaware corporation, as Lessor (together with its successors and assigns, "Lessor") to JEFFREY L. BELL, an individual, as Deed of Trust Trustee ("Deed of Trust Trustee") for the benefit of Lessor and its successors and assigns including, without limitation, the Administrative Agent (as defined below), having an address at 111 Huntington Avenue, Boston, Massachusetts 02199, Attention: Senior Vice President – Portfolio Servicing.

RECITALS

A. Lessee and Lessor have entered into that certain Lease Agreement dated the same date as this Memorandum of Lease (as amended, restated, or supplemented from time to time, the "Lease").

B. That certain Participation Agreement (as amended, restated, or supplemented from time to time, the "Participation Agreement") dated the same date as this Memorandum of Lease has been entered into by and among Lessee, as Lessee; Lennox International Inc., a Delaware corporation, as Guarantor; Lessor, as Lessor; and MHCB (USA) Leasing and Finance Corporation, as Lender and as Administrative Agent for the Lenders (in such capacity, "Administrative Agent").

C. Pursuant to that certain Credit Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the "Credit Agreement") dated the same date as this Memorandum of Lease, by and among Lessor, Administrative Agent and Lender, Lender has agreed to make a Loan to Lessor in the amount of \$32,962,395.40 upon the terms and subject to the conditions set out in the Credit Agreement and the Participation Agreement, to be evidenced by the notes (as the same may be amended, extended or restated from time to time, together with any notes issued in replacement thereof or substitution therefor, collectively, the "Notes") issued by Lessor under the Credit Agreement. The Notes bear interest as provided in the Credit Agreement and have a maturity date of the Scheduled Termination Date, as defined below, as such date may be extended as provided therein.

D. Lessor will use the proceeds of the Loan and an equity investment made by Lessor in an amount equal to \$8,240,598.85 to finance its acquisition of the Land and Improvements for the benefit of Lessee, and Lessor will hold the record title to the Mortgaged Property (as defined below), subject to the rights of Lessee under the Lease and the other Operative Documents, to secure Lessee's payment and performance under the Operative Documents.

E. The Participation Agreement and the Lease provide for the execution and delivery of this Memorandum of Lease with respect to the Land and Improvements, all for the purpose of

confirming (i) Lessee's acceptance of the Land and Improvements, including the condition thereof, (ii) Lessor's lease of its interest in the Land and Improvements to Lessee pursuant to the terms of the Lease, and (iii) Lessee's grant of a lien and security interest in its interest in the Land and Improvements.

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessor and Lessee hereby agree as follows:

Section 1. Definitions and Interpretation.

For purposes of this Memorandum of Lease, each capitalized term or phrase used and not defined in this Memorandum of Lease shall have the meaning set forth in Appendix A to the Participation Agreement and the rules of interpretation set out in such Appendix A shall also apply to this Memorandum of Lease. This Memorandum of Lease evidences of record the Lease, and all references in the Memorandum of Lease or in the other Operative Documents to the Lease shall be deemed to include this Memorandum of Lease. As used in this Memorandum of Lease:

"Event of Default" means a Lease Event of Default.

"Existing Space Leases" means the following leases, each of which covers space in the Improvements and was executed before Lessor acquired the Land and the Improvements: (i) One Lake Park Lease Agreement, dated March 27, 2002 between Seller and Forum Financial Services, Inc., as amended; (ii) One Lake Park Lease Agreement, dated November 9, 2005 between Seller and Glow Networks, Inc., as amended; (iii) One Lake Park Lease Agreement dated May 17, 2000, between AOC Development II, L.L.C. and Datatrac Information Services, Inc., as amended; (iv) One Lake Park Lease Agreement, dated March 29, 2000 between AOC Development II, L.L.C. and Philips Semiconductors, Inc., as amended; (v) One Lake Park Lease Agreement, dated March 4, 2003 between Seller and Vining Sparks IBG, L.P., as amended; (vi) One Lake Park Lease Agreement dated September 1, 2005 between Seller and Ayes Technologies, Inc., as amended; and (vii) the Existing Lennox Leases.

"Lessee Collateral" means all of Lessee's rights in (a) the Leased Property, (b) contracts and warranties necessary to operate and maintain the Leased Property or otherwise specifically related to the Leased Property, (c) the Mortgaged Property, (d) all insurance policies required to be maintained pursuant to the Lease, and (e) all products, excess successions, subleases, rents, issues, profits, products, returns, income and proceeds of and from any or all of the foregoing (including proceeds from any of the foregoing), and to the extent not otherwise included, all payments under insurance (whether or not Lessee is the loss payee hereof) or any indemnity, warranty or guarantee payable by reason of loss or damage to or otherwise with respect to any of the foregoing.

"Mortgaged Property" means all of Lessee's interest and title in all of the following property, wherever located whether such interest and title is held or owned now or in the future, as such interest may appear, be determined or be re-characterized:

(a) the Land described on Exhibit A attached hereto, along with all buildings, structures and other improvements which are now or in the future located or to be

constructed on the Land from time to time, and whether or not such buildings, structures, or other improvements have become subject to the Lease (the "Improvements"), and all other Leased Property which is now or in the future located or to be constructed or installed on or off the Land from time to time, (the interest in Improvements and in the Land, together with Appurtenant Rights and Fixtures (as such terms are defined below) relating thereto being collectively referred to as the "Property");

(b) all the estate, right, title, claim or demand, in possession or expectancy, in and to the Property or any part thereof;

(c) all of the fixtures of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof (together with, in each case, attachments, components, parts and accessories) now or subsequently attached to the Property (all of the foregoing in this paragraph (c) being referred to as the "Fixtures");

(d) all substitutes and replacements of, and all additions and improvements to, the Property and the Fixtures, subsequently acquired, constructed, assembled or placed on the Land, immediately upon such acquisition, construction, assembling or placement, including any and all building materials whether stored at the Property or offsite, and, in each such case, without any further conveyance, mortgage, assignment or other act by any Person;

(e) all contracts and warranties necessary to purchase, construct, remodel, repair, operate and maintain the Property

(f) (i) to the extent assignable, all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any part thereof and (ii) all plans and specifications relating to the Property;

(g) the Lease, including without limitation, the deed of trust liens and security interests granted by Lessee to Lessor under the Lease, and all Rent and all other rents, payments, purchase prices, receipts, revenues, issues and profits payable under the Lease or pursuant to any other lease with respect to the Property;

(h) all subleases with respect to the Property, and the Existing Space Leases, together with all rent payable thereunder;

(i) all insurance policies (including title insurance policies, to the extent assignable) required to be maintained by Lessee pursuant to Article VIII of the Lease or any insurance policies to be obtained on behalf of Lessee, including the right to collect and receive such proceeds; and, subject to the rights of Lessee under Article X of the Lease, all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Property for the taking by eminent domain, condemnation or otherwise, of all or any part of the Property or any easement or other right therein;

(j) (i) all accounts, general intangibles, tangible chattel paper, deposit accounts, money, investment property, instruments and documents relating to or otherwise arising in connection with or derived from the Property, (ii) all refunds, rebates, reserves, deferred payments, deposits, cost savings, and payments of any kind due from or payable by (A) any Governmental Authority, or (B) any insurance or utility company, relating in either case to any or all of the Property, (iii) all refunds, rebates and payments of any kind due from or payable by any Governmental Authority for any taxes, assessments, or governmental or quasi governmental charges or levies imposed with respect to or upon any or all of the Property, and (iv) any cash collateral account maintained pursuant to any of the or Operative Documents;

(k) all tenements, hereditaments, appurtenances, privileges, options to purchase or lease all or any part of the Property or any interest therein (and any greater estate in the Property now owned or hereafter acquired pursuant thereto), and all other rights and interests now or in the future benefiting or otherwise relating to the Property, including easements, rights of way, sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property, development rights, mineral rights, water rights and water stock (collectively, "Appurtenant Rights");

(l) all rights to liquidated damages, rebates, offset or other warranty payments, or assignment under a purchase order, invoice or purchase agreement with any manufacturer of or contractor for any portion of the Mortgaged Property;

(m) all products, excess successions, subleases, rents, issues, profits, products, returns, income and proceeds of and from any or all of the foregoing (including proceeds from any of the foregoing), and to the extent not otherwise included, all payments under insurance (whether or not Lessee is the loss payee hereof) or any indemnity, warranty or guarantee payable by reason of loss or damage to or otherwise with respect to any of the foregoing; and

(n) all cash and non-cash proceeds of the foregoing.

"Obligations" means (a) all obligations (monetary or otherwise) of the Lessee and Guarantor arising under or in connection with any of the Operative Documents, (b) the due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement of Lessee contained in this Memorandum of Lease and all supplements, amendments and modifications thereto and all extensions and renewals thereof, (c) to the extent that Lessee becomes obligated to pay and perform such obligations, the due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement of Lessor in the Operative Documents and all supplements, amendments and modifications thereto and all extensions and renewals thereof, or in any other instrument heretofore or hereafter executed by Lessor having reference to or arising out of the loans, certificate amounts, interest and yield represented by the Notes, and (d) the obligation to pay all sums advanced by Administrative Agent or Lessor to protect the Mortgaged Property or any portion thereof, whether or not any such advance is specifically authorized by the provisions of this Memorandum of Lease or any of the other Operative Documents, with interest thereon at the Overdue Rate.

“Personal Property” means all of the Mortgaged Property that does not constitute real property and in which a security interest may be created under the UCC.

“Uniform Commercial Code” and “UCC” means the Uniform Commercial Code as in effect from time to time in any applicable jurisdiction, including, for Texas, the Texas Business & Commerce Code.

Section 2. Acceptance and Approval.

Lessee hereby acknowledges and confirms that Lessee’s execution of this Memorandum of Lease, without further act, constitutes the irrevocable acceptance by Lessee of Lessor’s interest in the Land described on Exhibit A attached hereto and incorporated herein by reference and in the Improvements on the Land for all purposes of the Lease and the other Operative Documents.

Section 3. Lease of Leased Property; Payment and Performance of Obligations.

(a) Effective upon the execution and delivery of this Memorandum of Lease by Lessor and Lessee, Lessor’s rights in and to the Land, the Improvements, the Appurtenances and the Fixtures shall constitute “Leased Property” for all purposes of the Lease and shall be subject to the terms and provisions of the Lease. Beginning on the Closing Date, Lessor hereby delivers, demises and leases the Leased Property to Lessee, and Lessee hereby accepts, hires and leases the Leased Property from Lessor for the term of the Lease, as described in Section 2.2 of the Lease.

(b) Lessee shall pay the Obligations in accordance with the terms of the Lease, the Participation Agreement, and the other Operative Documents and perform each term to be performed by Lessee under the Operative Documents.

Section 4. Basic Lease Term.

Unless earlier terminated, the term of the Lease shall consist of a base term commencing on the Closing Date and ending the first to occur of:

- (a) the seventh (7th) anniversary of the Closing Date (the “Scheduled Termination Date”); and
- (b) the date upon which the Lease is terminated pursuant to its terms.

As described in Section 2.2 of the Lease, the first to occur of (a) and (b) shall be the “Termination Date.”

Section 5. Notice of Purchase Options.

Notice is hereby made of purchase options that have been granted under the Lease in favor of Lessee which purchase options may, subject to the terms and conditions set forth therein, be exercised following the occurrence and continuance of an Event of Default and upon thirty (30) days notice to Lessor.

Section 6. Lessee Grant of Lien and Security Interest.

(a) To secure the full and timely payment of, and the complete and timely performance and discharge of, the Obligations by Lessee, Lessee has GRANTED, BARGAINED, SOLD, ASSIGNED, and CONVEYED, and does hereby GRANT, BARGAIN, SELL, ASSIGN and CONVEY unto the Deed of Trust Trustee, in trust with a power of sale and for the benefit of Lessor (for the benefit of Administrative Agent, and for the ratable benefit of Lessor and Lenders), all of the Mortgaged Property (other than the Personal Property), subject to the Permitted Liens, TO HAVE AND TO HOLD the Mortgaged Property and the rights and privileges hereby granted unto Deed of Trust Trustee and Lessor, their respective successors and assigns, until all the Obligations are paid, performed and satisfied in full.

(b) To secure the full and timely payment of, and the complete and timely performance and discharge of, the Obligations by Lessee, Lessee further grants to Lessor (for the benefit of Administrative Agent, and for the ratable benefit of Lessor and Lenders), pursuant to the UCC, a security interest in all of Lessee's present and future right, title, and interest in and to the Personal Property.

Section 7. Remedies.

(a) Without limiting any other remedies set out in the Lease, while an Event of Default exists, Lessor may, at its option, declare all Obligations to be immediately due and payable without any presentment, demand, protest or notice of any kind (except as may otherwise be provided in the Operative Documents), and if the Obligations have been accelerated, then and subject to Lessee's rights under the Lease (including Lessee's right to purchase the Leased Property pursuant to Section 13.2 of the Lease):

(i) Each of Deed of Trust Trustee and Lessor, in addition to all other remedies available at law or in equity, shall have the right forthwith, with or without bringing any action or proceeding, with or without a receiver appointed by a court, and without regard to the adequacy of its security, (A) to enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name or in the name of Lessee, to make repairs and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or any part thereof or interest therein, increase the income therefrom or protect the security hereof, (B) to let the Mortgaged Property, and (C) with or without taking possession of the Mortgaged Property, to sue for or otherwise collect and receive the rents, issues and profits thereof and to apply said rentals and profits, after payment of all necessary or proper charges and expenses, including reasonable attorneys' fees, on account of the amounts hereby secured (subject to the Excluded Payments). The collection of such rentals and profits and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of Event of Default and, notwithstanding the continuance in possession of all or any portion of the Mortgaged Property or the collection, receipt and application of rentals and

profits, Lessor shall be entitled to exercise every right provided for in any of the Operative Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale herein contained. Failure or discontinuance of Lessor at any time, or from time to time, to collect rentals and profits shall not in any manner affect the subsequent enforcement of Lessor of the right to collect the same.

(ii) Lessor shall, as a matter of right, without notice to Lessee or anyone claiming under Lessee, and without regard to the then value of the Mortgaged Property, or the interest of Lessee therein, at the option of Lessor, be entitled to the appointment of a receiver for the Mortgaged Property, and Lessee hereby consents to such appointment and waives notice of any application therefor and waives any requirement that the receiver post or deliver a bond. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lessor and Deed of Trust Trustee in case of entry as provided in this Memorandum of Lease and shall continue as such and exercise all such powers until the later of (A) the date of confirmation of sale of the Mortgaged Property; (B) the disbursement of all proceeds of the Mortgaged Property collected by such receiver and the payment of all expenses incurred in connection therewith; or (C) the termination of such receivership with the consent of Lessor or pursuant to an order by a court of competent jurisdiction.

(iii) Lessee hereby authorizes and empowers the Deed of Trust Trustee and each and all of his successors in this trust, at the request of Lessor, to sell the Mortgaged Property at public auction to the highest bidder for cash at the door of the courthouse of the county in Texas in which the Mortgaged Property or any part thereof is situated, as herein described, between the hours of 10:00 a.m. and 4:00 p.m. (as more particularly described in the hereinafter described notice) of the first Tuesday of any month, after advertising the time, place and terms of said sale and the Mortgaged Property to be sold, by posting (or by having some person or persons acting for him post) for at least twenty one (21) days preceding the date of the sale, written or printed notice of the proposed sale at the Courthouse of said county in the area of the courthouse designated by the Commissioner's Court as the area for sales pursuant to Section 51.002 of the Texas Property Code and if no area is designated by the Commissioner's Court, the notice of sale shall designate the area of the courthouse where the sale is to take place; in addition to such posting of notice, the holder of the indebtedness hereby secured shall, at least twenty one (21) days preceding the date of sale: (A) serve written or printed notice of the proposed sale by certified mail on Lessee and on each other debtor, if any, obligated to pay the indebtedness hereby secured according to records of such holder, which shall state the earliest time at which the sale will begin and the sale shall begin at such time or not later than three (3) hours after that time, and (B) file a copy of the notice of proposed sale with the County Clerk or County Clerks of the county or counties where such notice was posted. Service of such notice shall be completed upon deposit of the notice, with postage prepaid, properly addressed to Lessee and such other debtors at their most recent address

or addresses as shown by the records of the holder of the indebtedness hereby secured, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. The provisions hereof with respect to posting and giving notices of sale are intended to comply with the provisions of Section 51.002 of the Texas Property Code, and, in the event the requirement for any notice under such Section 51.002 shall be eliminated or the prescribed manner of giving same modified by future amendment to or adoption of any statute superseding such Section 51.002, the requirement for such particular notice shall be deemed stricken from or modified in this instrument in conformity with such amendment or superseding statute, effective as of the effective date of same. The manner herein prescribed for serving or giving any notice, other than that to be posted or caused to be posted by the Deed of Trust Trustee, shall not be deemed exclusive, but such notice or notices may be given in any other manner which may be permitted by applicable law. Lessee agrees that no notice of any sale other than as set out in this paragraph need be given by Deed of Trust Trustee, Lessor or any other person. Lessee hereby designates as its address for the purposes of such notice the address set out on the signature page of this Memorandum of Lease and agrees that such address shall be changed only by depositing notice of such change, enclosed, postage pre-paid, in a post office or official depository under the care and custody of the United States Postal Service, certified mail, postage prepaid, return receipt requested, addressed to Lessor at the address for Lessor set out herein (or to such other address as Lessor may have designated by notice given as above provided to Lessee and such other debtors), any such notice of change of address of Lessee or other debtors shall be effective upon receipt by Lessor. Any change of address of Lessor shall be effective three (3) Business Days after deposit thereof in the above described manner in a post office or official depository under the care and custody of the United States Postal Service. Lessee does hereby authorize and empower the Deed of Trust Trustee and each and all of his successors in this trust to sell the Mortgaged Property or any interest or estate in the Mortgaged Property, together or in lots or parcels, as such Deed of Trust Trustee shall deem expedient and to execute and deliver to the purchaser or purchasers of the Mortgaged Property good and sufficient deed or deeds of conveyance thereof and bills of sale with covenants of general warranty binding on Lessee and Lessee's successors and assigns. Payment of the purchase price to the Deed of Trust Trustee shall satisfy the obligation of the purchaser at such sale therefor and he shall not be bound to oversee or insure the proper application of the proceeds. Lessor may bid and become the purchaser of the Mortgaged Property at any trustee's or foreclosure sale hereunder.

(iv) In addition to the rights and powers of sale granted under the preceding Subsection (iii), if any Event of Default occurs concerning the payment of any installment of the Obligations, Lessor, at its option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Obligations to be due and payable, may orally or in writing direct the Deed of Trust Trustee to enforce this trust and to sell the Mortgaged Property subject to

such unmatured indebtedness and the assignments, liens, and security interests securing its payment, in the same manner, on the same terms, at the same place and time and after having given notice in the same manner, all as provided in the preceding provisions of Subsection (iii). After such sale, the Deed of Trust Trustee shall make due conveyance to the purchaser or purchasers. Sales made without maturing the Obligations may be made hereunder whenever there occurs an Event of Default in the payment of any installment of the Obligations without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this Subsection (iv), the unmatured balance of the Obligations (except as to any proceeds of any sale which Lessor may apply as a prepayment of the Obligations) or the assignments, liens and security interests securing payment of the Obligations.

(v) It is intended by each of the foregoing provisions of Subsection (iii) and Subsection (iv) that Deed of Trust Trustee may, after any request or direction by Lessor, sell not only that portion of the Mortgaged Property constituting real property, but also the Property and other interests constituting a part of the Mortgaged Property, or any part thereof, along with the Land and the improvements thereon, or any part thereof, all as a unit and as a part of a single sale, or may sell any part of the Mortgaged Property separately from the remainder of the Mortgaged Property. The sale or sales by Deed of Trust Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Deed of Trust Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of such Mortgaged Property shall be less than the aggregate of the Obligations and the expense of executing this trust, this Memorandum of Lease and the assignments, liens, and security interests hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale or sales of less than the whole of the Mortgaged Property had occurred, but Lessor shall have the right, at its sole election, to request Deed of Trust Trustee to sell less than the whole of the Mortgaged Property.

(vi) Lessee and Lessor agree that, in any assignments, deeds, bills of sale, notices of sale, or postings, given by Deed of Trust Trustee or Lessor, any and all statements of fact or other recitals therein made as to the identity of Lessor, or as to the occurrence or existence of any Event of Default, or as to the acceleration of the maturity of the Obligations, or as to the request to sell, posting of notice of sale, notice of sale, time, place, terms and manner of sale and receipt, distribution and application of the money realized therefrom, or as to the due and proper appointment of a substitute trustee and without being limited by the foregoing, as to any other act or thing having been duly done by Lessor or by Deed of Trust Trustee, shall be construed by all courts of law and equity as prima facie evidence that the said statements or recitals state facts and are without further question to be so accepted, and Lessee does hereby ratify and confirm any and all acts that Deed of Trust Trustee may lawfully do in the Mortgaged Property by virtue hereof.

(vii) Lessor may, or Deed of Trust Trustee may upon written request of Lessor, proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligations in accordance with the terms hereof or of the other Operative Documents or of the other Instruments, to foreclose or otherwise enforce the assignments, liens, and security interests created or evidenced by the other Operative Documents, or this Memorandum of Lease as against all, or any part of, the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction.

(viii) To the extent permitted by law, Lessor may enter upon the Land, take possession of the Mortgaged Property and remove the Property or any part thereof, with or without judicial process, and, in connection therewith, without any responsibility or liability on the part of Lessor, take possession of any property located on or in the Land and the improvements situated on the Land which is not a part of the Mortgaged Property and hold or store such property at Lessee's expense.

(ix) Lessor may buy the Mortgaged Property, or any part thereof, at any public sale or judicial sale.

(x) Notwithstanding anything contained herein to the contrary, pursuant to Section 9.604(a) of the UCC, as amended, Lessor may proceed under Chapter 9 of the UCC as to all Personal Property covered hereby or, at Lessor's election, Lessor may proceed as to both the real and personal property covered hereby in accordance with Lessor's rights and remedies in respect of real property, in which case the provisions of Chapter 9 of the UCC shall not apply.

(xi) If Lessor is the purchaser of the Mortgaged Property, or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Deed of Trust Trustee, or upon any other foreclosure or enforcement of the assignments, liens, and security interests hereof, or otherwise, Lessor shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the assignments, liens, and security interests of these presents.

(xii) Lessee covenants to promptly reimburse and pay to Lessor, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Lessor in connection with its custody, preservation, use or operation of the Mortgaged Property, together with interest thereon from the date incurred by Lessor at the Overdue Rate, and all such expenses, cost, taxes, interest, and other charges shall be a part of the Obligations.

(xiii) If the assignments, liens, or security interests hereof shall be foreclosed or otherwise enforced by a Deed of Trust Trustee's sale, or by any other judicial or non-judicial action, then the purchaser at any such sale shall receive, as an incident to his ownership, immediate possession of that portion of the Mortgaged Property purchased, and if Lessee or Lessee's successors shall hold possession of any of said portion of the Mortgaged Property subsequent to

such foreclosure, Lessee and Lessee's successors shall be considered as tenants at sufferance of the purchaser at such foreclosure sale, and any one occupying the Mortgaged Property (or any part thereof) after demand made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

(xiv) This Memorandum of Lease shall be effective as a mortgage as well as a deed of trust, and upon the occurrence of an Event of Default may be foreclosed as to the Mortgaged Property in any manner permitted by the laws of the State of Texas and any other state in which any part of the Mortgaged Property is situated. Any foreclosure suit may be brought by Deed of Trust Trustee or Lessor. If a foreclosure hereunder is commenced by Deed of Trust Trustee, Lessor may, at any time before the sale, direct the Deed of Trust Trustee to abandon the sale, and may then institute suit for the collection of the Obligations, and for the foreclosure or enforcement of the assignments, liens, and security interests hereof. If Lessor should institute a suit for the collection, and for a foreclosure or enforcement of the assignments, liens, and security interests hereof, it may, at any time before the entry of a final judgment in said suit, dismiss the same, and require Deed of Trust Trustee to sell the Mortgaged Property, or any part thereof, in accordance with the provisions of this Memorandum of Lease.

(xv) Deed of Trust Trustee and Lessor may exercise all other rights and remedies provided herein, in any of the Operative Documents or other document or agreement now or hereafter securing all or any portion of the Obligations secured hereby, by law or equity or by virtue of any of the Operative Documents, or under the UCC or otherwise.

(xvi) Subject to Applicable Law, Deed of Trust Trustee may postpone sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(xvii) Upon the occurrence and continuance of an Event of Default hereunder, Lessor may proceed or cause Deed of Trust Trustee, in any sequence: (A) to exercise its rights hereunder with respect to all or any portion of the Mortgaged Property and all or any portion of the Personal Property; and (B) to exercise its rights under Section 14 hereof with respect to all or any portion of the Personal Property in accordance with the provisions of the UCC, in each case subject to Lessee's rights under the Lease (including Lessee's right to purchase the Leased Property under Section 13.2 of the Lease).

(xviii) Subject always to the then existing rights, if any, of Lessee under the Lease (including Lessee's right to purchase the Leased Property under Section

13.2 of the Lease), Lessor or Deed of Trust Trustee may proceed to exercise all rights, privileges and remedies of Lessor under the Lease and may exercise all such rights and remedies either in the name of Lessor or in the name of Lessor for the use and benefit of Administrative Agent.

(b) If an Event of Default exists and the Obligations have been accelerated, subject to Lessee's rights under the Lease (including Lessee's right to purchase the Leased Property under Section 13.2 of the Lease), Lessor may proceed by an action at law, suit in equity or other appropriate proceeding, to protect and enforce its rights, whether for the foreclosure of the lien of this Memorandum of Lease, or for the specific performance of any agreement contained herein or for an injunction against the violation of any of the terms hereof.

(c) The proceeds of any sale of the Mortgaged Property shall be applied pursuant to Section 3 of the Credit Agreement.

Section 8. Remedies Not Exclusive.

Lessor shall be entitled to enforce payment of the indebtedness and performance of the Obligations and to exercise or cause Deed of Trust Trustee to exercise all rights and powers under this Memorandum of Lease or under any of the other Operative Documents or other agreement or any Applicable Laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by deed of trust, mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this Memorandum of Lease nor its enforcement shall prejudice or in any manner affect Lessor's or Deed of Trust Trustee's right to realize upon or enforce any other security now or hereafter held by Lessor or Deed of Trust Trustee, it being agreed that Lessor shall be entitled to enforce or cause Deed of Trust Trustee to enforce this Memorandum of Lease and any other security now or hereafter held by Lessor or Deed of Trust Trustee in such order and manner as Lessor or Deed of Trust Trustee may determine in its absolute discretion. No remedy herein conferred upon or reserved to Lessor or Deed of Trust Trustee 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 Lessor or Deed of Trust Trustee or to which they may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lessor. In no event shall Lessor or Deed of Trust Trustee, in the exercise of the remedies provided in this Memorandum of Lease (including in connection with the appointment of a receiver and the entry of such receiver on to all or any part of the Mortgaged Property or Lessee Collateral), be deemed a "grantee in possession" unless and until Lessor or Deed of Trust Trustee takes possession of the Mortgaged Property or Lessee's Collateral and Lessor or Deed of Trust Trustee shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

Section 9. Other Covenants.

(a) At any time and from time to time, upon the written request of Lessor, and at the sole expense of Lessee, Lessee will promptly and duly execute and deliver such further instruments and documents and take such further actions as Lessor reasonably may request for the purposes of obtaining or preserving the full benefits of this Memorandum of Lease and of the rights and powers granted by this Memorandum of Lease. Lessee hereby irrevocably constitutes and appoints Lessor as Lessee's true and lawful attorney-in fact (which power is coupled with an interest) to execute and deliver such further instruments, and take such further actions for the purposes of obtaining or preserving the full benefits of this Memorandum of Lease and of the rights and powers granted by this Memorandum of Lease.

(b) Provided no Event of Default exists, Lessee shall be suffered and permitted to remain in full possession, enjoyment and control of Lessee's interest in the Mortgaged Property subject always to the observance and performance by Lessee of the terms of this Memorandum of Lease and of the Participation Agreement and the other Operative Documents. Provided no Event of Default has occurred and is continuing, Lessee shall be suffered and permitted to remain in full possession, enjoyment and control of Lessee's interest in the Mortgaged Property subject always to the observance and performance of the terms of this Memorandum of Lease and of the Participation Agreement and the other Operative Documents to which Lessee is a party. It is expressly understood that the use and possession of the Property by Lessee or any of its permitted sublessees and assignees under and subject to the Lease and the other Operative Documents shall not constitute a violation of this Section 9(b).

(c) All monies constituting a part of the Mortgaged Property shall be paid and distributed in accordance with the terms and provisions of Section 3 of the Credit Agreement.

Any monies received by Lessee as payment for any loss under any policy of title insurance or as an award or compensation for any condemnation shall become part of the Mortgaged Property and shall be paid and applied in the same manner as net proceeds of a Casualty or Condemnation as provided in the Lease.

Section 10. Performance by Lessor of Lessee's Obligations.

If a Lease Event of Default occurs because of a failure by Lessee to perform or comply with any of its agreements contained herein, Lessor, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement. The expenses of Lessor incurred in connection with actions undertaken as provided in this Section, together with interest thereon at a rate per annum equal to the Overdue Rate, from the date of payment by Lessor, as applicable, to the date reimbursed by Lessee, shall be payable by Lessee to Lessor on demand.

Section 11. Duty of Lessor.

Lessor's sole duty with respect to the custody, safekeeping and physical preservation of any Mortgaged Property, in its possession, under the UCC or otherwise, shall be to deal with it in the same manner as Lessor deals with similar property for its own account. None of Lessor, Deed of Trust Trustee, the Lenders and their respective directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon any of the Mortgaged Property, or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Mortgaged Property, upon the request of Lessee, Lessee, or any other Person or to take any other action whatsoever with regard to the Mortgaged Property, or any part thereof.

Section 12. Powers Coupled with an Interest.

All powers, authorizations and agencies contained in this Memorandum of Lease are coupled with an interest and are irrevocable until this Memorandum of Lease is terminated and the lien created hereby is released.

Section 13. Authorization of Financing Statements.

Lessee authorizes the financing statements to be filed with respect to the Mortgaged Property without the signature of such party in such form and in such filing offices as Lessor reasonably determines appropriate to perfect the security interests of Lessor under this Memorandum of Lease. A carbon, photographic or other reproduction of this Memorandum of Lease shall be sufficient as a financing statement for filing in any jurisdiction.

Section 14. Security Agreement under UCC.

(a) It is the intention of the parties hereto that this Memorandum of Lease shall constitute with respect to the Personal Property a "security agreement" within the meaning of the UCC. If an Event of Default exists, and subject to Lessee's rights under the Lease (including Lessee's right to purchase the Leased Property under Section 13.2 of the Lease), then in addition to having any other right or remedy available at law or in equity, Lessor shall have the option of either (i) proceeding under the UCC and exercising such rights and remedies as may be provided to a secured party by the UCC with respect to all or any portion of the Mortgaged Property or Lessee's Collateral which is personal property (including taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Mortgaged Property or Lessee's Collateral in accordance with Deed of Trust Trustee's rights, powers and remedies with respect to the real property (in which event the default provisions of the UCC shall not apply). If Lessor shall elect to proceed under the UCC, then ten (10) days' notice of sale of the personal property shall be deemed reasonable notice and the expenses of retaking, holding, preparing for sale, selling and the like incurred by Lessor shall include, but not be limited to, attorneys' fees and legal expenses (including allocated costs of internal counsel) of Lessor. At Lessor's request, Lessee shall assemble its Personal Property subject to the lien hereof and make it available to Lessor at a place designated by Lessor which is reasonably convenient to both parties.

(b) Lessee and Lessor agree, to the extent permitted by law, that this Memorandum of Lease, upon recording or registration in the real estate records of the proper office, shall constitute a financing statement filed as a “fixture filing” within the meaning of the UCC.

(c) Lessee and Lessee hereby acknowledges that (i) this Memorandum of Lease covers goods which are or are to become fixtures on the Property, (ii) this Memorandum of Lease is to be recorded in the real estate records, and (iii) products of collateral are also covered.

Section 15. Authority of Lessor.

Lessor and Lessee acknowledge that the rights and responsibilities of Lessor under this Memorandum of Lease with respect to any action taken by Lessor or the exercise or non exercise by Lessor of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Memorandum of Lease shall, as between Lessor, Administrative Agent and Lender, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between Lessee and Administrative Agent, Lessor shall be conclusively presumed to be acting as agent for Administrative Agent and Lender with full and valid authority so to act or refrain from acting, and Lessee shall be under no obligation, or entitlement, to make any inquiry respecting such authority.

Section 16. Nature of the Transaction.

It is the intention of the parties that:

(a) the 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 federal and all state and local income and transfer taxes and bankruptcy, insolvency, conservatorships and receiverships (including the substantive law upon which bankruptcy insolvency, conservatorships and receiverships proceedings are based) purposes:

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

(ii) to the extent the Transaction is deemed a financing, this Memorandum of Lease provides for a security interest or a Lien, as the case may be, in Lessee’s interest in the Mortgaged Property, including without limitation other Lessee Collateral, in favor of Lessor, and for the benefit of the

Administrative Agent and the Lenders, to secure Lessee's payment and performance of the Obligations;

(iii) the Lease creates a Lien on and security interest in Lessee Collateral in favor of the Administrative Agent for the benefit of Lessor and the Lenders to secure Lessor's payment and performance of its obligations under the Operative Documents; and

(iv) the Lease is intended as a deed of trust on the Leased Property, notwithstanding the remedies in Section 13.1 of the Lease that are more customarily available to lessors of real property.

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

(c) Specifically, without limiting the generality of clause (a) above, 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 or Guarantor or any collection actions, the transactions evidenced by the Operative Documents (including, without limitation, the Lease) constitute loans made directly to Lessee by Lessor and the Lenders, in each case as unrelated third party lenders, and that Lessor holds title to, and Lessor holds a lien on, the Leased Property for the benefit of the Lessor and the Lenders to secure Lessee's obligations to repay such loans to Lender and all other amounts due under any of the Operative Documents.

(d) Specifically, but without limiting the generality of subsection (a) above, Lessor and Lessee intend and agree that, for the purpose of securing 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 UCC; (ii) the conveyance provided for hereby shall be deemed to be a grant by Lessee to Lessor, of a security interest in and to the Deed of Trust Trustee of a mortgage and deed of trust lien on all of Lessee's present and future title and interest in and to the Leased Property and the other Lessee Collateral, 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 and the other Lessee Collateral unto Lessor, (iii) to the extent permitted by Applicable Laws, the possession by Lessor of notes and such other items of property as constitute instruments, money, negotiable documents or tangible chattel paper shall be deemed to be "possession" or "control" by the "secured party" for purposes of perfecting the security interest pursuant to the UCC; and (iv) to the extent permitted by Applicable Law, notifications to Persons holding such property, and acknowledgments, receipts or

confirmations from financial intermediaries, bankers or agents (as applicable) of Lessee shall be deemed to have been given for the purpose of perfecting such security interest under Applicable Law. Lessor and 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 this Memorandum of Lease creates a mortgage lien and a security interest in the Mortgaged Property and the other Lessee Collateral in accordance with this Section 16 and, such mortgage lien and security interest is a perfected security interest in the Mortgaged Property and the other Lessee Collateral with priority over all Liens, other than Permitted Liens, under Applicable Law and will be maintained as such throughout the Term.

(e) If (contrary to the intent of the parties as expressed above and in Section 2.4 of the Participation Agreement) it is determined that Lessee is not, under applicable state law as applied to the Operative Documents, the equitable owner of the Leased Property and the borrower from Lessor in a financing arrangement, but rather is a tenant under the Lease with an option to purchase from Lessor as provided in Sections 14.1 or 17.22 of the Lease (as the case may be, the "Payoff Option"), then the parties intend that the Payoff Option be secured by a lien and security interest against the Leased Property. Accordingly, Lessor does hereby grant to lessee a lien and security interest against the Leased Property, including all rights, title and interests of Lessor from time to time in and to the Land and Improvements, for the sole purpose of securing (1) Lessor's obligation to convey the Leased Property to lessee if Lessee exercises the Payoff Option and tenders payment of the Purchase Amount to Lessor as provided herein, and (2) Lessee's right to recover any damages from Lessor caused by a breach of such obligation, including any such breach caused by a rejection or termination of the Payoff Option in any bankruptcy or insolvency proceeding instituted by or against Lessor, as debtor. Lessee may enforce such lien and security interest judicially after any such breach by Lessor, but not otherwise. The foregoing grant shall terminate without further action upon the termination or expiration of the Payoff Option.

Section 17. Incorporation into Lease.

This Memorandum of Lease shall be construed in connection with and as part of the Lease, and all terms, conditions and covenants contained in the Lease, as supplemented by this Memorandum of Lease, shall be and remain in full force and effect and shall govern the Leased Property, as located on the Land described in Exhibit A attached hereto and incorporated herein by reference.

Section 18. Notice to Potential Claimant.

Nothing contained in this Memorandum of Lease or the Lease shall be construed as constituting the consent or request of Lessor, expressed 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 or demolition of or to the Improvements or any part thereof. NOTICE IS HEREBY GIVEN THAT NEITHER LESSOR NOR ADMINISTRATIVE AGENT IS OR SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO

ANYONE HOLDING THE IMPROVEMENTS OR ANY PART OR PORTION THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR OR ADMINISTRATIVE AGENT IN AND TO ALL OR ANY PORTION OF THE IMPROVEMENTS.

Section 19. Ratification.

Except as expressly supplemented hereby, the terms and provisions of the Lease are hereby ratified and confirmed and remain in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Memorandum of Lease, the terms of the Lease shall control.

Section 20. Assignment of Lease and Liens.

Lessee acknowledges and agrees that (a) all of Lessor's interest in the Lease, has been irrevocably assigned, transferred, set over and conveyed by Lessor to Administrative Agent for the benefit of the Lenders, and (b) that all of Lessor's rights and liens under this Memorandum of Lease have been assigned or delegated by Lessor to Administrative Agent for the benefit of the Lenders.

Section 21. Notices.

All notices, requests and demands to or upon Administrative Agent, Lessor or Lessee shall be given in accordance with Section 8.2 of the Participation Agreement. Notices to the Deed of Trust Trustee shall be addressed as provided on page 1 hereof, or such other address as such party may designate by written notice.

Section 22. Severability.

Any provision of this Memorandum of Lease which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

Section 23. Amendments in Writing; Cumulative Remedies.

(a) None of the terms or provisions of this Memorandum of Lease may be waived, amended, supplemented or otherwise modified except by a written instrument executed by Lessee and Lessor in accordance with the terms of Section 8.4 of the Participation Agreement.

(b) The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by Applicable Laws.

Section 24. Section Headings.

The section headings used in this Memorandum of Lease are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

Section 25. Successors and Assigns.

This Memorandum of Lease shall run with the land and be binding upon the successors and assigns of Lessor and Lessee and shall inure to the benefit of Lessor, Administrative Agent, Lender, Deed of Trust Trustee and their respective successors and assigns.

Section 26. Partial Release; Full Release.

Lessor may release, for such consideration or none, as it may require, any portion of the Mortgaged Property without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien, security interest and priority herein provided for Lessor compared to any other lien holder or secured party. Further, upon receipt of the Purchase Amount pursuant to Lessee's exercising its Early Termination Option in accordance with Section 17.22 of the Lease or its Purchase Option in accordance with the provisions of Section 14.1 of the Lease, or upon receipt of all amounts payable under Article XIV of the Lease and performance of all of Lessee's Obligations under the Lease, Lessor shall execute and deliver to Lessee such documents and instruments as may be required to release any portion of the Mortgaged Property from the lien and security interest created by this Memorandum of Lease. The recitals in such release of any matters or facts shall be conclusive proof of the truthfulness thereof.

Section 27. Future Advances.

In addition to any other sum secured hereby, this Memorandum of Lease shall also secure the unpaid principal balance of, plus accrued interest on, any amount of money loaned, advanced or paid by Lessor or Administrative Agent to or for the account and benefit of Lessee after this Memorandum of Lease is delivered to and filed in the Real Property Records, Dallas County, Texas, for recording, in order to pay (i) any real estate taxes and assessments, and insurance premiums; and (ii) all other costs and expenses incurred in connection with the operation of the Mortgaged Property and the protection or preservation of the Mortgaged Property or the security of this Memorandum of Lease, including to cure any of Lessee's defaults by making any payments which Lessee should have made as provided in this Memorandum of Lease.

Section 28. Certain Actions of Lessor.

Subject to Section 8.4 of the Participation Agreement and Section 5.2 of the Lease, at any time, or from time to time without liability therefor and without notice, upon written request of Administrative Agent and presentation of this Memorandum of Lease and the Operative Documents for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Memorandum of Lease upon the remainder of the Mortgaged Property, Lessor may (a) release any part of said Mortgaged Property, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any

easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Section 29. Certain Powers of Deed of Trust Trustee: Substitution of Deed of Trust Trustee.

(a) Deed of Trust Trustee may act in the execution of this trust, and Deed of Trust Trustee is hereby authorized to act by agent or attorney in the execution of this trust. It shall not be necessary for Deed of Trust Trustee to be present in person at any foreclosure sale hereunder.

(b) It is hereby expressly covenanted and agreed by all parties hereto that Lessor may, at any time and from time to time hereafter, with notice to Lessee by registered or certified mail (or otherwise in compliance with applicable law), appoint and substitute another Deed of Trust Trustee in place of Deed of Trust Trustee herein named to execute the trust herein created. Upon such appointment, either with or without conveyance to said substituted Deed of Trust Trustee by the Deed of Trust Trustee herein named, or by any substituted Deed of Trust Trustee in case the said right of appointment is exercised more than once, the new and substituted Deed of Trust Trustee in each instance shall be vested with all rights, titles, interests, powers, duties and trusts in the premises which are vested in and conferred upon the Deed of Trust Trustee herein named; and such new and substituted Deed of Trust Trustee shall be considered the successor and assign of Deed of Trust Trustee who is named herein within the meaning of this Memorandum of Lease, and substituted in its place and stead. Each such appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Memorandum of Lease and the description of the real property herein described, which instrument, executed and acknowledged by Lessor or Administrative Agent and recorded in the appropriate office of the county wherein the Mortgaged Property is situated, shall be conclusive proof of the proper substitution and appointment of such successor Deed of Trust Trustee, and notice of such proper substitution and appointment to all parties in interest.

Section 30. Successor Administrative Agent.

Administrative Agent acting alone may from time to time, by written instrument executed and acknowledged by Administrative Agent, mailed to Lessee and Lessor and recorded in the county in which the Land is located, and by otherwise complying with the provisions of Applicable Law, substitute a successor or successors to Administrative Agent named herein or acting hereunder for the benefit of Lessor and the Lenders.

Section 31. Certain Acknowledgments and Agreements of Lessee.

Lessee hereby acknowledges and agrees that:

(a) The Loan and the Equity Investment are being made, and the Notes are being issued, for Lessee's direct benefit and will be used to acquire the Mortgaged Property, and it is the intention of the parties hereto that Lessee be the beneficial owner

of the Mortgaged Property for tax and bankruptcy law purposes, but that Lessor be the owner for Lessee's financial reporting purposes.

(b) Lessee, on behalf of itself and all persons now or hereafter interested in the Mortgaged Property, or any part thereof, to the fullest extent permitted by Applicable Law, hereby waives all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all indebtedness and payments thereon secured by this Memorandum of Lease, and Lessee agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Memorandum of Lease or any of this Mortgaged Property. Without limiting the generality of the preceding sentence, Lessee, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property, or any part thereof, subsequent to the date of this Memorandum of Lease, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Memorandum of Lease or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Lessee, for itself and for all persons hereafter claiming through or under it, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Memorandum of Lease. Administrative Agent shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided herein. Administrative Agent shall have the right to determine the order in which any or all portions of the Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Nothing contained herein shall be deemed to be a waiver of Lessee's right to purchase the Leased Property in accordance with the provisions of the Lease.

(c) Lessee further waives: (i) diligence and demand of payment except as otherwise required hereunder, the Lease and the Participation Agreement or any other Operative Document; (ii) the right to receive any notices sent to the other or to any other person, including notices of the creation, renewal, extension, modification, or accrual, of any obligations contained in the Operative Documents or notice of any other matters relating thereto not expressly required under the other Operative Documents; (iii) all demands whatsoever not otherwise required to be delivered under the Operative Documents; (iv) any duty on the part of Administrative Agent or Deed of Trust Trustee to disclose to Lessee any facts that either may now or hereafter know about the other, regardless of whether Administrative Agent or Deed of Trust Trustee has reason to believe that any such facts materially increase the risk beyond that which Lessee intends to assume or has reason to believe that such facts are unknown to Lessee, it being understood and agreed that Lessee is fully responsible for being and keeping informed of the financial condition of the other and of all circumstances bearing on the risk of nonpayment of any amount hereby secured; (v) all principles or provisions of law that conflict with the terms of this Memorandum of Lease or any circumstances which would otherwise constitute a legal or equitable discharge of Lessee hereunder; (vi) any right

Lessee may have to require Administrative Agent or Deed of Trust Trustee to proceed against Lessee or against any other party to foreclose any lien on any real or personal property, to exercise any right or remedy under the Operative Documents, or to pursue any other remedy, or to enforce any other right; (vii) any rights, legal or equitable, to require marshaling of assets or to require upon foreclosure sales in a particular order; and (viii) any statute of limitations affecting enforcement of this Memorandum of Lease.

(d) No failure to exercise, nor any delay in exercising, on the part of Administrative Agent, Deed of Trust Trustee, Lessor or Lender, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by Lessor, Administrative Agent, Deed of Trust Trustee or Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that Lessor, Administrative Agent, Deed of Trust Trustee or Lender would otherwise have on any future occasion.

(e) The rights of Lessor, Administrative Agent, Deed of Trust Trustee and Lender in relation to the Mortgaged Property or in relation to Lessee under any Operative Document shall in no way be affected or impaired by reason of the occurrence from time to time of any of the following events, even if such event takes place without notice to or the further consent of Lessee: (i) the waiver by Lessor, Lender, Administrative Agent, Deed of Trust Trustee of the performance or observance by Lessee or any other party of any of the agreements, covenants, terms or conditions contained in any of the Operative Documents; (ii) the doing or the omission of any of the acts referred to in the Participation Agreement, the Credit Agreement or any other Operative Document; (iii) any failure, omission or delay on the part of Lessor, Administrative Agent, Deed of Trust Trustee or Lender to enforce, assert or exercise any right, power or remedy conferred on or available to Lessor, Administrative Agent, Deed of Trust Trustee, Lender, or any of them in or by any of the Operative Documents; (iv) the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, marshaling of assets and liabilities, receivership, conservatorship, custodianship, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting Lessee or any of its assets; (v) the inability of Lessor, Administrative Agent, Deed of Trust Trustee or Lender, respectively, to enforce any provision of the Operative Documents; (vi) any change in the relationship between Lessor and Lessee or any termination of such relationship; (vii) the inability of Lessee to perform, or the release of Lessee from the performance of, any obligation, agreement, covenant, term or condition of Lessee under any of the Operative Documents, including this Memorandum of Lease, by reason of any law, regulation or decree, now or hereafter in effect; or (viii) any action or inaction by Administrative Agent, Deed of Trust Trustee, Lender or Lessor that results in any impairment or destruction of any rights of Lessee to proceed against the other or any person for reimbursement.

Notwithstanding anything stated to the contrary herein, nothing contained herein shall limit or impair the right of Lessee to purchase the Leased Property pursuant to Articles XIII and XIV and

Section 17.22 of the Lease or any other rights (including the right to receive notices) Lessee may have under any of the other Operative Documents.

Section 32. Existing Space Leases.

It is understood that so long as Lessee continues to be entitled to possession of the Leased Property pursuant to the Lease, Lessee's possession will extend to and include not only the Improvements, but also the Land (subject only to Lessor's limited right of entry on and subject to the terms and conditions set forth in this Lease), and, so long as no Lease Event of Default has occurred and is continuing, Lessee will be entitled to any benefits conferred upon the owner of the Leased Property by the Existing Space Leases, including the right to receive and retain rents as they become due under Existing Space Leases and to otherwise enforce the Existing Space Leases during the Basic Lease Term.

In furtherance thereof, Lessor hereby assigns and conveys to Lessee all of its rights in the Existing Space Leases and Lessee hereby accepts such rights and hereby assumes any and all obligations of the lessor/owner pursuant to the Existing Space Leases, the parties hereto agreeing that Lessor shall not have any obligations under any Existing Space Lease. Such enforcement may include, at the election of Lessee but subject to the terms and conditions set forth in this Memorandum of Lease, the right to terminate any Existing Space Lease in the event of a default by the tenant thereunder. Accordingly, it is the intent of the parties that Lessor will not assume or retain responsibility for the condition of the Land or the Improvements or for any obligations undertaken by the lessor/owner pursuant to the Existing Space Leases.

If, notwithstanding the intention of the parties to the contrary, a court of competent jurisdiction shall view the Lease as a lease and not as a secured financing transaction, then Lessor shall be deemed to have appointed Lessee as its agent to perform all of the obligations of the lessor/owner pursuant to the Existing Space Leases and to exercise all of the rights and benefits of the lessor/owner pursuant to the Existing Space Leases, Lessee shall be deemed to have accepted such appointment and agreed to perform all such obligations and exercise such rights and benefits and, in consideration of the foregoing, so long as no Lease Event of Default has occurred and is continuing, Lessor shall allow Lessee to retain all rents and other amounts and proceeds collected from time to time by Lessee from the tenants under the Existing Space Leases. Lessee hereby covenants that any extension or renewal of the Existing Space Leases shall provide that such Leases shall be subject and subordinate to the Lease.

Section 33. Counterpart Execution.

This Memorandum of Lease may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one and the same instrument.

Section 34. Waiver of Certain Rights.

If the Lease shall be terminated pursuant to Section 13.1 thereof or a foreclosure hereunder, Lessee waives, to the fullest extent permitted by law, (a) any notice of legal proceedings to obtain possession; (b) any right of redemption or repossession; and (c) the benefit

of any laws now or hereafter in force exempting property from liability for rent or for debt or limiting Lessor with respect to the election of remedies.

Section 35. References.

Any and all notices, requests, certificates and other instruments executed and delivered concurrently with or after the execution and delivery of this Memorandum of Lease may refer to the "Memorandum of Lease, dated as of June 22, 2006," or may identify this Memorandum of Lease in any other respect without making specific reference to this Memorandum of Lease, but nevertheless all such references shall be deemed to include this Memorandum of Lease, unless the context shall otherwise require.

Section 36. Governing Law.

THIS MEMORANDUM OF LEASE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES (OTHER THAN TITLE 14 OF ARTICLE 5 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT AS TO MATTERS RELATING TO THE CREATION OF THE GRANT OF A DEED OF TRUST LIEN AND SECURITY INTEREST HEREUNDER AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS. WITHOUT LIMITING THE FOREGOING, IN THE EVENT THAT THE LEASE IS DEEMED TO CONSTITUTE A FINANCING, WHICH IS THE INTENTION OF THE PARTIES FOR THIS PURPOSE, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN TITLE 14 OF ARTICLE 5 OF THE NEW YORK GENERAL OBLIGATIONS LAW), SHALL GOVERN THE CREATION, TERMS AND PROVISIONS OF THE INDEBTEDNESS EVIDENCED HEREBY AND THE CREATING OF THE LIEN GRANTED HEREUNDER, BUT PERFECTION AND ENFORCEMENT OF SAID LIEN SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE IN WHICH THE LEASED PROPERTY IS LOCATED.

[Signatures Begin on Following Page]

In Witness Whereof, the parties hereto have caused this Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing to be executed by the parties on the date set out in their respective acknowledgments below, but it is to be effective on the day and year first above written.

Lessee:

LENNOX PROCUREMENT COMPANY INC.,
a Delaware corporation

By: /s/ Gregory A. Moseman

Name: Gregory A. Moseman

Title: Assistant Treasurer

Address: 2140 Lake Park Boulevard
Richardson, Texas 75080

Lessor:

BTMU CAPITAL CORPORATION, a
Delaware corporation

By: /s/ Cheryl A. Behan

Name: Cheryl A. Behan

Title: Senior Vice President

Address: 111 Huntington Avenue, Suite 400
Boston, MA 02119

Receipt of this original counterpart of the foregoing Lease Supplement and Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing is hereby acknowledged as of the date hereof.

MHCB (USA) Leasing and Finance Corporation,
as Administrative Agent

By: /s/ Victor Mora
Name: Victor Mora
Title: Vice President

Address: 1251 Avenue of the Americas
New York, NY 10020

ACKNOWLEDGEMENT

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

This instrument was acknowledged before me on the 21st day of June, 2006 by Gregory A. Moseman, in his/her capacity as Assistant Treasurer of LENNOX PROCUREMENT COMPANY INC., a Delaware corporation, on behalf of said corporation.

/s/ Jayne Kopacek
Name: Jayne Kopacek

My Commission Expires: 11-15-09

ACKNOWLEDGEMENT

COMMONWEALTH OF)
MASSACHUSETTS)
COUNTY OF SUFFOLK)

ss.

This instrument was acknowledged before me on the 13th day of June, 2006 by Cheryl A. Behan, in her capacity as Senior Vice President of BTMU CAPITAL CORPORATION a Delaware corporation, on behalf of said corporation.

/s/ Kathleen Casserly
Name: Kathleen Casserly

My Commission Expires: August 21, 2009

ACKNOWLEDGEMENT

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.

This instrument was acknowledged before me on the 13th day of June, 2006 by Victor Mora, in his capacity as Vice President of MHCB (USA) Leasing and Finance Corporation a New York corporation, on behalf of said corporation.

/s/ Lisa Hayes
Name: Lisa Hayes

My Commission Expires: November 8, 2008

SWORN AND SUBSCRIBED TO BEFORE ME, the undersigned authority by Jeffrey L. Bell on this the 22nd day of June, 2006.

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

This instrument was acknowledged before me on this 22nd day of June, A.D., 2006, by Jeffrey L. Bell.

/s/ Sabrina Bowie
Notary Public, State of Texas
Notary's Printed Name:

Notary's Commission Expires: 9/8/2009

GUARANTY

from

LENNOX INTERNATIONAL INC.,
as Guarantor

to

BTMU CAPITAL CORPORATION,
as Lessor

and

the other parties specified herein

Dated as of June 22, 2006

THIS GUARANTY, dated as of June 22, 2006 (together with all amendments and supplements hereto, this "Guaranty"), is from LENNOX INTERNATIONAL INC., a Delaware corporation (together with its successors and assigns, "Guarantor"), having an address at 2140 Lake Park Blvd., Richardson, TX 75080, to BTMU CAPITAL CORPORATION, a Delaware corporation (together with its successors and assigns, "Lessor"), having an address at 111 Huntington Avenue, Suite 400, Boston, MA 02199, and the INDEMNITEES as such term is defined in the Lease (hereinafter defined) (Lessor and each Indemnitee are each a "Guaranty Beneficiary" and, collectively, "Guaranty Beneficiaries"). Terms not otherwise defined herein shall have the meanings set forth in Appendix A to the Lease.

Preliminary Statement

Lessor has entered into a Lease Agreement dated as of the date hereof with Lennox Procurement Company Inc., a Delaware corporation as lessee, (together with its successors and assigns, and together with each other Lessee from time to time, collectively, "Lessee") relating to the Leased Property (such Lease Agreement, as supplemented or amended from time to time, together with any Memorandum of Lease related thereto, herein called the "Lease"). Pursuant to the terms of the Lease, Lessee shall lease the Leased Property from Lessor for a term of years, as more particularly set forth in the Lease. Pursuant to the terms of the Participation Agreement, Lessor shall acquire the Land and Improvements and lease the same to Lessee, which has agreed to lease the same from Lessor and otherwise perform certain obligations relating thereto, all as more particularly set forth in the Lease and other Operative Documents. Guarantor is the owner, directly or indirectly, of all of the issued and outstanding stock of Lessee.

In order to induce Lessor to enter into the Lease and the Participation Agreement and to enter into the leasing arrangement with Lessee, as more particularly described therein, and to induce the Indemnitees to enter into the Transaction as contemplated by the Operative Documents, Guarantor has entered into this Guaranty with respect to the obligations of Lessee under the Lease and the other Operative Documents.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. Guarantor unconditionally and irrevocably guaranties, as primary obligor and not merely as surety, to Guaranty Beneficiaries, the prompt payment and performance of all debts, duties, liabilities and obligations of Lessee (pecuniary or otherwise) including, without limitation, all obligations in respect of Rent, Lease Balance, Purchase Amount, End of Term Adjustment, fees, expenses and indemnities, under the Lease, the Participation Agreement and all other Operative Documents (all of the foregoing payment and performance obligations, collectively, the "Guaranteed Obligations") as and when the same shall become due and payable and in the manner required of Lessee. This Guaranty is an irrevocable, absolute, present, primary, continuing, unlimited and unconditional promise with respect to the full and punctual payment and performance by Lessee of each of the Guaranteed Obligations, and is not a promise of collectibility only, and is in no way conditional upon the requirement that any Guaranty Beneficiary first attempt to collect payment or demand performance from Lessee or that any Guaranty Beneficiary resort to any security or other means of obtaining such payment or

performance or upon any other contingency. If for any reason (i) any such sums shall not be paid promptly by Lessee when due, or (ii) any such covenant, agreement, term or condition is not performed or observed by Lessee in accordance with the Lease, the Participation Agreement or any other Operative Document, Guarantor, shall, without notice or demand of any nature, pay the same by wire transfer of immediately available federal funds to the Person or Persons entitled thereto pursuant to the provisions of said instruments and shall perform and observe or cause to be promptly performed and observed every such covenant, agreement, term and condition, in each case regardless of (i) any defenses or rights of set-off or counterclaims which Guarantor or Lessee may have or assert, other than the defense of payment and performance in full of the Guaranteed Obligations, (ii) whether any Guaranty Beneficiary shall have taken any steps to enforce any rights against Lessee or any other remedy thereunder as a result of the default of Lessee thereunder and (iii) any other event, condition, contingency or circumstance whatsoever. Guarantor also agrees to pay to such Persons such further amounts as shall be sufficient to cover the costs and expenses of collecting such sums or any part thereof, or of otherwise enforcing or protecting the rights of such Persons under the Lease, the Participation Agreement, the other Operative Documents and this Guaranty, including reasonable fees and expenses of its attorneys and to Lessor and its attorneys for all services rendered in that connection and in any related proceeding.

2. The obligations, covenants, agreements and duties of Guarantor under this Guaranty shall be absolute and unconditional, shall not be subject to any counterclaim, setoff, deduction, diminution, abatement, recoupment, suspension, deferment, reduction or defense based upon any claim that Guarantor or any other Person may have against Lessee, any Guaranty Beneficiary or any other Person, and, until the payment or performance in full of the Guaranteed Obligations, shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by, any circumstance or condition whatsoever (whether or not any Guaranty Beneficiary, Guarantor or Lessee shall have any knowledge or notice thereof), including, without limitation, the happening from time to time of any of the following, although without notice to, or the consent of, Guarantor:

- (a) the waiver by any Guaranty Beneficiary of the performance or observance by Lessee, Guarantor or any other party of any of the agreements, covenants, terms or conditions contained in the Lease, the Participation Agreement, this Guaranty or any other instrument or Operative Document;
- (b) the extension, in whole or in part, of the time for payment by Lessee or Guarantor of any sums owing or payable under the Lease, the Participation Agreement, this Guaranty or any other Operative Document, as applicable, or of any other sums of obligations under or arising out of or on account of the Lease, the Participation Agreement, this Guaranty or any other Operative Document or the renewal or extension of either thereof;
- (c) any assignment or subsequent reassignment of the Lease, the Participation Agreement, this Guaranty or any other Operative Document, in whole or in part, or the leasing or subletting of the Leased Property or any part thereof;

- (d) the modification or amendment (whether material or otherwise) of any of the obligations of Lessee or Guarantor under the Lease, the Participation Agreement, this Guaranty or any other Operative Document, as applicable;
- (e) the taking or the omission by Lessee of any of the acts referred to in the Lease, the Participation Agreement, this Guaranty or any other Operative Document (including, without limitation, any such acts or omissions to which Lessor or Administrative Agent has given any consent referred to herein or therein);
- (f) any failure, omission or delay on the part of any Guaranty Beneficiary to enforce, assert or exercise any right, power or remedy conferred on or available to such Guaranty Beneficiary in or by the Lease, the Participation Agreement, any other Operative Document, this Guaranty or any other instrument, or any action on the part of any Guaranty Beneficiary granting indulgence or extension in any form whatsoever;
- (g) the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, marshaling of assets and liabilities, receivership, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, any Guaranty Beneficiary, Lessee, Guarantor or any other Person or any of their respective assets;
- (h) the release of Lessee or Guarantor from the performance or observance of any of the agreements, covenants, terms or conditions contained in the Lease, the Participation Agreement, this Guaranty or any other Operative Document, as applicable, by operation of law or otherwise, or any assignment or reassignment thereof or of this Guaranty, as applicable, or any invalidity or unenforceability of the Lease, the Participation Agreement, this Guaranty or any other Operative Document;
- (i) any defect in the title, or any damage to or loss or destruction of, or any interruption or cessation in the use of the Leased Property or any portion thereof by Lessee for any reason whatsoever (including, without limitation, any governmental prohibition or restriction, condemnation, requisition, or any other act on the part of any governmental authority) regardless of the duration thereof (even though such duration would otherwise constitute a frustration of the Lease, the Participation Agreement or any other Operative Document, as the case may be), whether or not resulting from accident and whether or not without fault on the part of Lessee or any other Person;
- (j) the inability of any Guaranty Beneficiary to enforce any provision of the Lease, the Participation Agreement or any other Operative Document against Lessee for any reason including due to any invalidity thereof or claim thereof;

- (k) any merger or consolidation of Lessee or Guarantor into or with any other Person or any sale, lease or transfer of any of the assets of Lessee or Guarantor to any other Person;
- (l) any change in the corporate relationship between Guarantor and Lessee;
- (m) the acceptance and release by any Guaranty Beneficiary of any other security or guarantor for any obligation hereunder;
- (n) any value, estimation, termination, rejection, discharge or disaffirmance by any Person (including trustees, trustees in bankruptcy, liquidators or representatives) of the Guaranteed Obligations in connection with any insolvency, bankruptcy, reorganization or liquidation of Lessee or any proceeding relating thereto;
- (o) any determination or claim that any Guaranty Beneficiary's claims against Lessee are or may be limited by Section 502(b) (6) of the Bankruptcy Code, as amended, or to any similar or successor provision of law upon any rejection of the Lease, the Participation Agreement or any other Operative Document in a bankruptcy proceeding filed by or against Lessee;
- (p) any failure (except to the extent by reason of a Lessor Lien) or recharacterization of title with respect to any Guaranty Beneficiary's, Lessee's or any other Person's interest in the Leased Property or other property relative to the Transaction; or
- (q) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing and any other circumstance that might otherwise constitute a legal or equitable defense or discharge of the liabilities of a guarantor or surety or that might otherwise limit recourse against Guarantor.

The obligations of Guarantor set forth herein constitute the full recourse obligations of Guarantor enforceable against Guarantor to the full extent of all its assets and properties. In no event shall the obligations of Guarantor hereunder be subordinated in any manner to any other full recourse obligations of Guarantor.

3. Guarantor unconditionally waives (i) notice of any of the matters referred to in Section 2, (ii) all notices that may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against Guarantor, including, without limitation, any demand, presentment and protest, proof of notice of non-payment under the Lease, the Participation Agreement or any other Operative Document and notice of Default or Event of Default under the Lease, the Participation Agreement, this Guaranty or any other Operative Document, or any failure on the part of Lessee to perform and comply with any covenant, agreement, term or condition of the Lease, the Participation Agreement or any other Operative Document, (iii) any right to the enforcement, assertion or exercise against Lessee of any right, power, privilege or remedy conferred in the Lease, the Participation Agreement, any other Operative Document or otherwise, (iv) any requirement of diligence on the part of any Guaranty Beneficiary or any other Person, (v) any requirement that any Guaranty Beneficiary take any steps to enforce any rights against Lessee under the Lease, the Participation Agreement, or any

other Operative Document or any other remedy thereunder or any other requirement to exhaust any remedies or to mitigate the damages resulting from any default, Default or Event of Default under the Lease, the Participation Agreement, any other Operative Document or this Guaranty, (vi) any notice of any sale, transfer or other disposition of any right, title to or interest in the Lease, the Participation Agreement or any other Operative Document or the Leased Property covered thereby by any Guaranty Beneficiary, (vii) all rights and defenses of Guarantor as a surety under the laws of the states in which the Leased Property is located, as the same may be amended, and (viii) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety, or that might otherwise limit recourse against Guarantor hereunder.

4. In each case until all of the Guaranteed Obligations are fully and finally paid and performed, Guarantor hereby waives (i) any claim, right or remedy that Guarantor may now or hereafter acquire against Lessee that arises hereunder and/or by reason of any one or more payments or acts of performance by Guarantor hereunder, including without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification or participation in any claim, right or remedy of any Guaranty Beneficiary against Lessee or any security that any Guaranty Beneficiary now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise, (ii) any right to enforce any remedy which Lessee or any other guarantor of Lessee's obligations now has or may hereafter have against any Guaranty Beneficiary or its assigns, and (iii) any right to enforce or exercise the benefit of and any right to participate in, any security now or hereafter held by any Guaranty Beneficiary. If any amount shall nevertheless be paid to Guarantor by any such Person in violation of this Guaranty, such amount shall be held by Guarantor in trust for the benefit of Guaranty Beneficiaries and shall forthwith be paid to the Guaranty Beneficiary to whom such amount is due. Guarantor further waives any defense to the recovery by any Guaranty Beneficiary from Guarantor of any deficiency or otherwise to the enforcement of this Guaranty after a judicial or nonjudicial sale or other disposition of any security for or any of the obligations of Lessee under the Lease, the Participation Agreement or any other Operative Document even though such a sale may prevent Guarantor from exercising rights of subrogation, if any, contribution or reimbursement against Lessee or any other party. No payment hereunder by Guarantor shall give rise to any claim by Guarantor against any Guaranty Beneficiary, except for payments made in error by Guarantor to the extent such payments are in excess of amounts due hereunder. Unless and until all obligations of Lessee under and pursuant to the Lease, the Participation Agreement and the other Operative Documents, and of Guarantor hereunder, shall have been discharged by payment or performance in full, Guarantor shall not assign or otherwise transfer any such claim against Lessee to any other Person.

5. The following events shall constitute Events of Default under this Guaranty:

- (i) Guarantor shall fail to pay or perform any Guaranteed Obligation pursuant to this Guaranty upon demand therefor, or
- (ii) the occurrence of a Lease Event of Default;

then, in each such case, so long as the same shall be continuing, any Guaranty Beneficiary may, at its option, declare this Guaranty in default, and at any time thereafter, any Guaranty

Beneficiary shall be entitled to exercise any remedy available to it at law or in equity. No express or implied waiver by any Guaranty Beneficiary of an Event of Default hereunder shall in any way be, or be construed to be a waiver of any further or subsequent Event of Default. Guarantor hereby waives any right now or hereinafter conferred upon it by statute or otherwise which may limit or modify any of any Guaranty Beneficiary's rights and remedies contained herein. Guarantor agrees to give written notice to Lessor and Administrative Agent (a) of any Event of Default hereunder promptly after the occurrence thereof and (b) of any Event of Default hereunder, any Event of Default under the Lease, or any breach or default of any provision of the Participation Agreement or any other Operative Document, immediately after any Responsible Officer of Guarantor obtains Actual Knowledge of the occurrence thereof.

6. Without in any way limiting or otherwise affecting Guarantor's Guaranteed Obligations contained herein, Guarantor also agrees in the event of a Default or Event of Default under the Lease, Guarantor may and, in the event of the rejection or disaffirmance of the Lease by Lessee as debtor in possession or Lessee's trustee in bankruptcy pursuant to any Bankruptcy Law, shall and does hereby (without the necessity of any further agreement or act), assume all obligations and liabilities of Lessee under the Lease to the same extent as if it had been originally named instead of such Lessee as a party to such documents and there had been no such rejection or disaffirmance; and Guarantor shall confirm such assumption in writing at the request of any Guaranty Beneficiary upon or after such rejection or disaffirmance. Guarantor, upon such assumption, will have all rights and obligations of Lessee under the Lease. From and after the date of such assumption, as provided in this Section 6, all provisions of this Guaranty shall continue in full force and effect as separate and independent undertakings of Guarantor, binding upon and enforceable against Guarantor without regard to the validity or enforceability of such assumption, and all provisions of this Guaranty applicable to the Lease and to Guaranty Beneficiaries and Lessee in respect of the Lease shall also apply to such assumption and to any Guaranty Beneficiaries and Guarantor in respect of such assumption to the same extent and in the same manner as such provisions are applicable to the Lease and to Guaranty Beneficiaries and Lessee in respect of the Lease.

7. It is agreed that the liabilities and obligations of Guarantor hereunder are primary and those of a principal, and are enforceable either before, simultaneously with or after proceeding against Lessee or against any property or security available to any Guaranty Beneficiary.

8. This Guaranty may not be modified or amended except by a written agreement duly executed by Guarantor with the consent in writing of Lessor and Administrative Agent in accordance with Section 8.4 of the Participation Agreement. Neither this Guaranty, nor any of the obligations of Guarantor hereunder may be assigned to any Person or entity by Guarantor.

9. Guarantor understands and acknowledges that Lessor will enter into one or more financings to finance the acquisition of the Leased Property pursuant to which Lessor will encumber its interests in the Lease and Leased Property. In connection with any such financing, Guarantor understands and acknowledges that Lessor may assign its rights in and to this Guaranty and Guarantor hereby agrees that: (i) Lessor may assign its rights hereunder to the Administrative Agent in connection therewith; (ii) in connection with any such assignment by Lessor, Guarantor will consent in writing thereto; and (iii) from and after such assignment, the

rights and benefits of Lessor hereunder shall inure to the benefit of, and be exercisable by any assignee, pursuant to and in accordance with the terms of such assignment.

10. Guarantor agrees that from time to time so long as this Guaranty is in effect (but not more frequently than annually, except upon and after the occurrence of a Default or Event of Default), it will promptly, but in no event later than fifteen (15) days after request by any Guaranty Beneficiary, or any assignee, execute, acknowledge and deliver to such party a certificate stating: (i) that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that this Guaranty is in full force and effect as modified, and identifying such modification agreements); (ii) whether or not there is an existing default or Event of Default hereunder and, if there is any such default or Event of Default, specifying the nature and extent thereof; and (iii) whether or not there are any setoffs, defenses or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of Guarantor. Guarantor further agrees that it will upon five (5) day's prior notice from Lessor execute and deliver to Lessor's mortgagee a certificate stating the above.

11. All agreements, representations and warranties contained herein or made in writing by Guarantor shall survive the execution and delivery of this Guaranty.

12. This Guaranty shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

13. THIS GUARANTY SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). THIS GUARANTY AND THE OTHER OPERATIVE DOCUMENTS CONSTITUTE THE ENTIRE UNDERSTANDING AMONG THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ANY PRIOR AGREEMENTS, WRITTEN OR ORAL, WITH RESPECT THERETO.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTY OR ANY OTHER OPERATIVE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF GUARANTOR SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY LEASED PROPERTY MAY BE BROUGHT, AT THE OPTION OF THE PERSON ENFORCING THIS GUARANTY, IN THE COURTS OF ANY JURISDICTION WHERE SUCH LEASED PROPERTY MAY BE FOUND. GUARANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED

THEREBY IN CONNECTION WITH SUCH LITIGATION. GUARANTOR IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. GUARANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT GUARANTOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, GUARANTOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS GUARANTY AND THE OTHER OPERATIVE DOCUMENTS.

14. Any provision of this Guaranty which 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.

15. Any notice to be given under this Guaranty shall be given in the manner provided in the Participation Agreement, addressed to Guarantor or any Guaranty Beneficiary at its address set forth in the Participation Agreement, or as either such party may otherwise provide by notice to the other party.

16. GUARANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY GUARANTOR; AND GUARANTOR FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

[Balance of page intentionally left blank/signature page follows]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed under seal and delivered as of the day and year first above written.

LENNOX INTERNATIONAL INC., a
Delaware corporation

By: /s/ Gary A. Larson

Name: Gary A. Larson

Title: Vice President, Treasurer