
**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): March 22, 2013

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 March 22, 2013, Lennox International Inc. (the “Company”) entered into an Amended and Restated Lease Agreement (the “Amended Lease”) and an Amended and Restated Participation Agreement (the “Amended Participation Agreement”) with BTMU Capital Leasing & Finance, Inc. (the “Lessor”) and other agreements related to the lease of an office building in Richardson, Texas, which includes the Company’s corporate headquarters, and land and related improvements (the “Leased Property”).

Under the Amended Lease, the Company can generally lease the Leased Property until March 1, 2019 (the “Term”) and the Company is to pay base rent in quarterly installments, payable in arrears. In addition to base rent, the Company 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. The Company must also generally pay or reimburse and indemnify Lessor and its affiliates for and against all costs and claims that may arise in connection with the Amended 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.

150 days or more before the end of the Term, if the Company is not in default under the Amended Lease, Company must generally elect to do one of the following: (i) purchase the Leased Property for a net price equal to the sum of (a) the Lease Balance (which is initially \$41,202,994.25) plus (b) any other amounts due under the Amended Lease and related documents; (ii) 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 the Company elects to arrange a sale of the Leased Property to a third party, then the Company 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 the sum of (x) 86.32% of the Lease Balance plus (y) any other amounts due under the Amended Lease and related documents. If the net sales proceeds paid by the third party are greater than the Lease Balance and other amounts due, the excess sales proceeds will be paid to the Company so long as the sale is consummated before the end of the Term.

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 may require the Company to purchase the remainder of the Leased Property for a price equal to the Lease Balance plus any other amounts due under the Amended Lease and related documents, less any net insurance or condemnation proceeds received and retained by Lessor. Also, in the case of most defaults by the Company, the Lease obligates the Company to purchase the Leased Property for a net price equal to the Lease Balance plus any other amounts due under the Amended Lease and related documents. 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 \$75,000,000; (ii) the Company or its subsidiaries default in the payment or performance of other indebtedness of \$75,000,000 or more; (iii) the Company fails to comply with some covenants (including financial covenants) incorporated by reference from the Company’s existing fourth amended and restated revolving credit agreement dated as of October 21, 2011 (the “Revolving Credit Agreement”); and (iv) a change of control of the Company (as defined in the Revolving Credit Agreement). Under the Amended Lease, covenants from the Revolving Credit Agreement would continue even if the Revolving Credit Agreement terminates and waivers or amendments under the Revolving Credit Agreement would not generally be effective for covenants incorporated by reference into the Amended Lease.

The Company’s obligations under the Amended Lease, the Amended Participation Agreement and related documents are secured by a pledge of the Company’s interest in the Leased Property pursuant to an Amended and Restated Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Amended Memorandum”), dated as of March 22, 2013 by and among the Company, Lessor and David Parnell, as deed of trust trustee for the Lessor.

Copies of the Amended Lease, Amended Participation Agreement and Amended Memorandum are filed herewith as Exhibits 10.1, 10.2 and 10.3, respectively. The foregoing descriptions of the documents 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.

(d) Exhibits.

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
10.1	Amended and Restated Lease Agreement, dated as of March 22, 2013, by and between BTMU Capital Leasing & Finance, Inc., as lessor, and Lennox International Inc., as lessee.
10.2	Amended and Restated Participation Agreement, dated as of March 22, 2013, by and among Lennox International Inc., as lessee and BTMU Capital Leasing & Finance, Inc., as lessor.
10.3	Amended and Restated Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of March 22, 2013, by and among Lennox International Inc., BTMU Capital Leasing & Finance, Inc. and David Parnell, as Deed of Trust Trustee, for the benefit of BTMU Capital Leasing & Finance, Inc.

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.

By: /s/ Joseph Reitmeier
Name: Joseph Reitmeier
Title: Executive Vice President and Chief Financial Officer

Date: March 25, 2013

AMENDED AND RESTATED LEASE AGREEMENT

Dated as of March 22, 2013

between

BTMU CAPITAL LEASING & FINANCE, INC.,
as Lessor

and

LENNOX INTERNATIONAL INC.

as Lessee

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THIS AMENDED AND RESTATED LEASE AGREEMENT (as from time to time amended or supplemented, this "Lease"), dated as of March 22, 2013, is between BTMU CAPITAL LEASING & FINANCE, INC., a Delaware corporation (together with its successors and permitted assigns hereunder, "Lessor"), as Lessor, and LENNOX INTERNATIONAL INC., a Delaware corporation (together with its successors and permitted assigns hereunder, "Lessee"), as Lessee.

PRELIMINARY STATEMENT

A. Original Lessor and Original Lessee entered into the Original Lease, which Original Lease is scheduled to expire on the Original Scheduled Termination Date.

B. Lessee and Lessor wish to extend the term of the Original Lease for up to six (6) years beyond the Original Scheduled Termination Date and otherwise modify the Original Lease Agreement. Lessee and Lessor desire to amend and restate the Original Lease Agreement in accordance herewith.

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 to amend and restate the Original Lease in its entirety 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 Liens, 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 Liens, 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 beyond the Termination Date 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) March 1, 2019 (such date, the "Scheduled Termination Date") and (b) the date upon which this Lease is terminated pursuant to its terms, and if such date is not a Business Day, the next succeeding Business Day unless the result will be that such date would be in the next succeeding calendar month, in which case such date shall be the next preceding Business Day (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 amount 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 Lessee's Leverage 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. 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 2.4 shall be payable in the type of funds and in the manner set forth in Section 2.5.

(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 2.5. 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 2:00 p.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

2:00 p.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 2.4, 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; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Lessee, Lessor or any other Person, or any action taken with respect to this Lease by any trustee or receiver of Lessee, Lessor 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; (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, upon Lessor'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, evidencing the payment thereof.

(b) With the prior written consent of Lessor, made in its sole discretion, 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 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 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 ALTA/ACSM Land Title Survey As-Built One Lake Park, dated November 10, 2005 by Ferguson-Deere, Inc.), (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 personality 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, 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 LESSOR IS NOT AND SHALL NOT 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 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 in connection therewith (including, without limitation, the reasonable fees of attorneys, architects, engineers, planners, appraisers and other professionals reasonably retained by Lessor in connection with any such action);

(b) Lessee shall have delivered to Lessor 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 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 Lessor.

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, 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 Lessee 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.

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 Lessee's practice for other properties similar to the Leased Property owned or leased by Lessee, 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 "VII" 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.

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 is included as an additional insured as its interest may appear;

(b) in the case of insurance required by Section 8.1(b) and 8.1(c) Lessor 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 replacement cost endorsements;

(c) the insurer thereunder waives all rights of subrogation against Lessor 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;

(e) if the insurers cancel such insurance for any reason whatsoever (other than failure to pay premiums), thirty (30) days' advance written notice shall be provided to Lessor by such insurer or Lessee's insurance broker (Lessee hereby agreeing to provide thirty (30) days' advance written notice to Lessor of any adverse changes or modifications to the terms or conditions of such insurance); 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 may participate in any such proceeding, action, negotiation, prosecution or adjustment at Lessor's sole cost and expense, unless (x) Lessor has been named in such claim or demand, in which case participation shall be at Lessee's sole cost and expense or (y) Lessor would be entitled to be indemnified as a result of such claim in which case Lessor'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 Sections 10.1(c) or 10.4.

Section 8.6. Additional Insurance. Any additional insurance obtained by Lessee, Lessor 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 Lessor certificates of insurance reasonably satisfactory to Lessor 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 Lessor 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 Lessee if (i) no Lease Event of Default shall have occurred or be continuing, and (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, provided that Lessee may not assign this Lease to any Offshore Affiliate or any Offshore Person

under any circumstances. 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; and (f) 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, other than as contemplated by this Lease. 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. 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 18.2(d)), *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 Lessor

(or if previously received by Lessee, shall be held in trust for Lessor) and shall at the option of Lessor 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 18.2(d)), *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 Lessor (or if previously received by Lessee, shall be held in trust for Lessor) and shall, at the option of Lessor, 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 18.2(d).

(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) 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 Lessor 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 apply such payment in accordance with Section 18.2(b)(i)(B) and 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 (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. 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 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 written notice (a "Termination Notice") no later than sixty (60) days after Lessee's written notice to Lessor 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 shall apply such sums in accordance with Section 18.2(b)(i)(B), (ii) Lessor and Lessee shall comply with the provisions of Section 14.5; and (iii) Lessor shall convey to Lessee any net proceeds (after deducting all costs and expenses incurred by Lessor, 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 and its authorized representative 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 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 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 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 Lease 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 5.1(n) of the Participation Agreement;

(f) Lessee or any Subsidiary of Lessee (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 Lessee the book value of whose total assets (determined in accordance with GAAP) is less than \$25,000,000;

(g) a court or Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Lessee, Lessee or any of Lessee'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 Lessee or any of Lessee's Subsidiaries, or any such petition shall be filed against Lessee or any of Lessee'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 Lessee the book value of whose total assets (determined in accordance with GAAP) is less than \$25,000,000;

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

(i) Lessee 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 and (ii) knowledge of such breach by an officer of Lessee 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;

(j) a final judgment or judgments for the payment of money aggregating in excess of \$75,000,000 (to the extent not covered by independent, third-party insurance as to which the insurer does not dispute coverage) are rendered against one or more of Lessee 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;

(k) Lessee 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 Material Indebtedness which payments are required by the terms of the underlying related documents to be made or (ii) is in default in the performance of or compliance with any term of any evidence of any Material 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 Material 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 to declare such Indebtedness due and payable before its stated maturity or before its regularly scheduled dates of payment or to terminate any commitment relating thereto;

(l) a Change in Control of Lessee, 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 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, and (iii) delivery to Lessor 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 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 Sections 12(e) or 12(k)(ii) hereof with respect to which the default or condition relating to the Material Indebtedness which gives rise to the Lease Event of Default hereunder consists solely of a default, the existence of which depends upon the determination that matters, individually or in the aggregate, have resulted in a Material Adverse Effect, or (ii) pursuant to clause (i) of Section 12(f) solely by reason of Lessee's failure generally to pay its debts as they become due or (iii) pursuant to clause 12(l) solely by reason of an unsolicited tender offer for a controlling interest in Lessee, 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 Lessee. 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 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 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, 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 earlier than 30 days prior 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 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; and (y) 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 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 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 Lessor, 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 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 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 Lessor, in lawful money of the United States in immediately available funds, at Lessor’s address hereinabove stated or at any other place in the United States which Lessor 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 will be paid from sale proceeds and deducted in computing Net Proceeds;

(iv) Lessee shall pay to Lessor all Basic Rent and 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), 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 shall cause an environmental assessment of the Leased Property to be performed and 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. 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 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 Lessor, which consent may be withheld in its 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 its Lessor, Lessor will notify Lessee whether or not Lessor consents to such renewal request (which consent, may be granted or denied in its sole discretion, and may be conditioned on such conditions precedent as may be specified by such parties). If Lessor fails to respond within such time frame, such failure shall be deemed to be a rejection of such request. If Lessor notifies Lessee that Lessor has 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 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.

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 Leasing & Finance, Inc.
111 Huntington Avenue
Boston, MA 02199
Attn: Vice President – Administration
Phone: 617-573-9000
Fax: 617-345-5153
Email: nmullen@us.mufg.jp and asacco@us.mufg.jp

If to Lessee:

Lennox International Inc.
2140 Lake Park Boulevard
Richardson, TX 75080
Attn: Rick Pelini
Phone: 972-497-5410
Fax: 972-497-6940
Email: rick.pelini@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 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, 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 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), 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 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 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 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 Lessor.

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 pending payment to Lessee shall until paid to Lessee, as provided hereunder be invested by Lessor 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 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 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.

ARTICLE XVIII
ALLOCATION OF PAYMENTS

Section 18.1. Collection and Application Generally. Promptly after receipt, Lessor shall apply and allocate, in accordance with the terms of this Article XVIII, such amounts received from Lessee and all other payments, receipts and other consideration of any kind whatsoever received by Lessor pursuant to the Participation Agreement or otherwise received by Lessor in connection with the Leased Property, the Participation Agreement or any of the other Operative Documents. Any amounts of Basic Rent received by Lessor shall be applied in accordance with Section 18.2(a). With regard to any other amounts received by Lessor under the Lease or other Operative Documents, Lessor shall apply and allocated such amounts in accordance with Sections 18.2(b), (c), (d) or (e), as applicable.

Section 18.2. Allocation of Payments. Payments and other amounts received by Lessor pursuant to the Lease and the other Operative Documents shall be applied and allocated as follows (subject in all cases to Section 18.3):

(a) Any such payment or amount identified as or deemed to be Basic Rent shall be applied and allocated first, to Lessor, an amount equal to the Yield that is due and payable on the Equity Investment on such date, and, second, if no Lease Default or Lease Event of Default has occurred and is continuing, any excess shall be paid to such Person or Persons as Lessee may designate; *provided*, that if a Lease Default or Lease Event of Default has occurred and is continuing, such excess (if any) shall instead be held by Lessor and applied in accordance with Section 18.2(c) and 18.2(d), as applicable.

(b) If on any date Lessor shall receive any amount in respect of (i) the purchase of the Leased Property in connection with (A) Lessee's exercise of the Early Termination Option pursuant to Section 17.22, or its Purchase Option pursuant to Section 14.1; or (B) payment of the Lease Balance and Rent pursuant to Section 10.1(e) or the Purchase Amount pursuant to Section 10.4 in connection with a Significant Casualty, Significant Condemnation or Significant Environmental Event; (ii) any amount payable by Lessee pursuant to Section 14.4, including, payment of the Lessee Obligation, the Lease Balance and the Deficiency; or (iii) sale proceeds relating to a sale of the Leased Property to a third party pursuant to Section 14.2, then in each case, Lessor shall apply and allocate such amount received as follows: (1) if no Lease Event of Default has occurred and is continuing, first, to the payment of the outstanding principal balance of the Equity Investment plus all outstanding Yield; second, to the payment of any other amounts owing to Lessor hereunder or under any of the other Operative Documents, and third, to the extent moneys remain after application and allocation pursuant to clauses first and second above, to Lessor or such other Persons as Lessor may designate (unless all amounts to be applied and allocated have been made following the exercise of the Purchase Option, in which case, so long as no Lease Event of Default has occurred and is continuing, to Lessee or such other Persons as Lessee may designate), and (2) if a Lease Event of Default has occurred and is continuing, pursuant to Section 18.2(c) and 18.2(d) hereof, as applicable.

(c) All proceeds of the sale or other liquidation of the Leased Property (except as otherwise specified in Section 18.2(b)) or any portion thereof, following a Lease Event of Default, whether pursuant to Article XIV of the Lease or the exercise of remedies under the Lease, the other Operative Documents or otherwise, shall be applied and allocated by Lessor, first, to any expenses of enforcement and the reasonable fees and expenses of Lessor following and during the continuance of such Lease Event of Default, including, without limitation, fees and expenses of counsel to Lessor, second, to the Lessor in an amount equal to all accrued and unpaid Yield, third, the outstanding principal balance of the Equity Investment; fourth, to the payment of Breakage Costs, if any, and all other amounts owing to Lessor hereunder and under the other Operative Documents; and fifth, the balance to Lessee or such other Persons as Lessee may designate.

(d) Notwithstanding anything to the contrary herein, all payments received and amounts realized after the occurrence and continuance of a Lease Event of Default not covered by Sections 18.2(a) or 18.2(c) above shall be applied and allocated by Lessor, first, to any expenses of enforcement and the reasonable fees and expenses of Lessor following and during the continuance of such Lease Event of Default, including, without limitation, fees and expenses of counsel to Lessor, second, to the Lessor in an amount equal to all accrued and unpaid Yield, third, the outstanding principal balance of the Equity Investment; fourth, to the payment of Breakage Costs, if any, and all other amounts owing to Lessor hereunder and under the other Operative Documents; and fifth, the balance to Lessee or such other Persons as Lessee may designate.

(e) Any amounts constituting Supplemental Rent shall be paid to the Person entitled to receive such Supplemental Rent pursuant to the Operative Documents.

(f) Any payment received by Lessor for which no provision as to the application thereof is made in the Operative Documents or elsewhere in this Section 18.2 shall be distributed in accordance with Section 18.2(a).

Section 18.3. Identification of Payments. Lessor in its reasonable judgment shall identify the nature of each payment or amount received by it, and apply and allocate each such amount in the manner specified above.

[balance of page left blank/signatures follow]

IN WITNESS WHEREOF, the undersigned have each caused this Amended and Restated 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 LEASING & FINANCE,
INC., as Lessor

By: /s/ Gregory B. Register

Name: Gregory B. Register

Title: Managing Director

LENNOX INTERNATIONAL INC., as Lessee

By: /s/ Joe Reitmeier

Name: Joe Reitmeier

Title: Executive Vice President and Chief Financial
Officer

AMENDED AND RESTATED PARTICIPATION AGREEMENT

Dated as of March 22, 2013

between

LENNOX INTERNATIONAL INC.,
as Lessee,

and

BTMU CAPITAL LEASING & FINANCE, INC., as Lessor,

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APPENDIX A Definitions and Interpretation

SCHEDULES

SCHEDULE 8.2 [Not included]

EXHIBITS [Not included]

EXHIBIT A Form of Environmental Audit Reliance Letter

EXHIBIT B Form of Lessor Confirmation

EXHIBIT C Form of Subordination Agreement

AMENDED AND RESTATED PARTICIPATION AGREEMENT

THIS AMENDED AND RESTATED PARTICIPATION AGREEMENT, dated as of March 22, 2013 (as it may be further amended or modified from time to time in accordance with the provisions hereof, this "Agreement"), is between LENNOX INTERNATIONAL INC., a Delaware corporation (together with its successors and permitted assigns, "Lessee"), and BTMU CAPITAL LEASING & FINANCE, INC., a Delaware corporation, as Lessor (together with its successors and assigns, the "Lessor").

PRELIMINARY STATEMENT

A. Pursuant to the Participation Agreement, dated as of June 22, 2006 (as amended by the First Amendment and Second Amendment, as defined below, the "Original Participation Agreement"), entered into by and among Lennox Procurement Company Inc., a Delaware corporation (the "Original Lessee"), Lessee, as guarantor, BTMU Capital Corporation, a Delaware corporation (the "Original Lessor"), MHCBS (USA) Leasing and Finance Corporation, a New York corporation ("MHCBS"), as initial Lender and MHCBS, as administrative agent (the "Original Administrative Agent"), the Original Lessor acquired the Property (as defined below), financed such acquisition with MHCBS and leased the Property to the Original Lessee pursuant to that certain Lease Agreement dated as of June 22, 2006 (as amended by the First Amendment and Second Amendment, the "Original Lease Agreement"). Capitalized terms used but not defined herein have the meanings set forth in Appendix A hereto, as amended hereby.

B. Pursuant to that certain Assignment and Assumption Agreement, dated as of September 22, 2008 (the "Assignment Agreement"), between MHCBS and Compass Bank, an Alabama banking corporation ("Compass"), MHCBS assigned all of its rights and obligations as Lender and Administrative Agent under the Original Participation Agreement, Credit Agreement, Note and the other Operative Documents to Compass. In connection therewith, that certain First Omnibus Amendment to Operative Documents, dated as of September 22, 2008 (the "First Amendment"), was entered into by and among the Original Lessee, Lessee as parent guarantor, the Subsidiary Guarantors named therein (collectively in such capacities, the "Guarantors"), the Original Lessor and Compass, as successor lender (the "Lender") and as successor administrative agent to MHCBS (the "Administrative Agent").

C. Pursuant to that certain letter dated January 15, 2013 from the Original Lessor to the Original Lessee (the "Second Amendment"), and agreed to by the Guarantors, the Lender and the Administrative Agent, the Replacement Date was modified and a Subsidiary Guarantor was conditionally released from its guaranty.

D. In accordance with the terms and provisions of the Original Lease Agreement, the Basic Lease Term expires on June 22, 2013 (the "Original Scheduled Termination Date").

E. Lessee and Lessor wish to extend the term of the Original Lease for up to six (6) years beyond the Original Scheduled Termination Date and otherwise modify the Original Participation Agreement and the Original Lease Agreement. In connection therewith, (i) the Original Lessor shall transfer its interests in the Property and the Operative Documents to its affiliate, the Lessor, (ii) the Original Lessee shall transfer its interests as lessee under the Original Lease Agreement and the other Operative Documents to its parent, the Lessee, (iii) the Lessor shall increase its Equity Investment and repay the Loan in full to the Lender, (iv) upon

receipt of repayment of the Loan in full, Lender and Administrative Agent shall release Liens securing the Loan granted under the Mortgage, Credit Agreement, Assignment of Lease and Assignment of Guaranty, (v) the guaranties of the Lessee, as parent guarantor, and of the Subsidiary Guarantors shall be terminated other than with respect to any provisions which are expressly stated to survive such termination, and (vi) Lessee and Lessor shall amend and restate the Original Participation Agreement in accordance herewith and amend and restate the Original Lease Agreement in accordance with the Amended and Restated Lease Agreement, dated as of the date hereof (the "Lease"), between Lessee and Lessor.

In consideration of the premises and 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 that the Original Participation Agreement shall be amended and restated in its entirety 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. 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) Original Lessor is assigning its rights under the Original Lease and other Operative Documents to Lessor and conveying fee simple interest in the Property to Lessor, subject to the Permitted Liens, (ii) Lessor is advancing to the Original Lessor the Purchase Price for the Property using the proceeds of 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 Original Lessor in executing the Escrow Agreement which will establish the terms and conditions of (A) the release from escrow and delivery of Original Lessor's deed, which will convey the Property to Lessor, and of the Operative Documents to Lessor, and (B) the delivery of the Purchase Price for the Property. 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 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 Escrow Agreement, other than the acceptance of the conveyance of the Property and payment of the purchase price therefor.

SECTION 2.2. 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 Lessor with its own funds in the amount of \$41,202,994.25 (such amount, the "Equity Investment"), shall acquire the Property from the Original Lessor and lease the Property to Lessee pursuant to the Lease.

SECTION 2.3. Equity Investment Yield, 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. 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) Fees. Lessee agrees to pay the Upfront Fee to Lessor on the Closing Date.

(c) Rate Determinations. Lessor 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 Lessee of any change in the Applicable Margin.

(d) Adjustment of Basic Rent. The parties hereto acknowledge that Lessor has entered into an Interest Rate Swap Agreement pursuant to which Lessor agreed to pay to the counterparty thereunder the fixed payments of Basic Rent due from Lessee pursuant to the Lease and the swap counterparty agreed to make floating payments to the order of Lessor in amounts that are intended to be sufficient to pay the 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 Agreement. The parties intend and agree that, to the extent that the Pricing Level changes on a Calculation Date due to a change in Lessee’s Leverage 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 and Lessee. 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 and Lessor 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, and (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. 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 Lessor has not 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.

SECTION 2.5. Amounts Due Under Lease. Notwithstanding anything else to the contrary herein, it is the intention of Lessee and Lessor 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 fixed payments pursuant to the Interest Rate Swap Agreement entered into by Lessor on January 23, 2012, shall be equal to the aggregate payments due and payable on each Payment Date with respect to 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 Equity Investment, all 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 shall be paid in full by Lessee; (iii) if Lessee properly elects the Remarketing Option, the principal amount of, and accrued Yield on, 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 Equity Investment and accrued Yield thereon and all other obligations of Lessee owing to Lessor.

SECTION III CONDITIONS PRECEDENT

The obligations of Lessor shall be subject to the fulfillment to the satisfaction of, or waiver by, Lessee (acting directly or through its counsel) on or prior to the Closing Date of the following conditions precedent:

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

(i) Deed; Bill of Sale. The form of the original Deed duly executed by the Original Lessor and in recordable form and copies of the original Bill of Sale, duly executed by the Original Lessor and Lessor, shall each have been delivered to Lessor.

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

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

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

(v) Escrow Agreement. Counterparts of the Escrow Agreement, duly executed by Original Lessor, Title Company, Lessee and Lessor shall have been delivered to each of the parties hereto.

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

(b) Intentionally Deleted.

(c) Title and Title Insurance. On the Closing Date, Lessor shall receive from the Title Insurance Company an assignment of lien endorsement and a modification endorsement to the 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, as amended and assigned, in each case, reasonably acceptable in form and substance to Lessor (collectively, the "Title Policy"). The Title Policy shall be dated as of the Closing Date or the date the Memorandum of Lease is recorded and, to the extent permitted under Applicable Law and included in the Mortgagee Policy of Title Insurance, 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 shall reasonably request, including, without limitation, an appropriate "re-characterization" endorsement.

(d) Appraisal. An appraisal of the Property dated November 7, 2012 and based on a valuation of the Property completed as of October 19, 2012 (the "Appraisal"), paid for by Lessee; which Lessor hereby acknowledges it has received a copy of such Appraisal and such Appraisal is satisfactory to Lessor.

(e) Environmental Audit and Related Reliance Letter. Lessor shall have received sufficient copies of an Environmental Audit (from Terracon Consultants, Inc. or a firm selected by Lessor and acceptable to Lessee) for the Leased Property showing that no Hazardous Materials are present and otherwise satisfactory to Lessor, provided, however, that if such Environmental Audit is not satisfactory to Lessor, Lessee shall provide Lessor with a full

environmental review (Phase I, and if appropriate, Phase II); and the firm that prepared the Environmental Audit for the Leased Property shall have delivered to Lessor a letter substantially in the form set forth on Exhibit A hereto stating that Lessor 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 obligations under the Operative Documents with respect to any environmental liabilities relating to the Leased Property.

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

(g) Lien Searches, Financing Statements. Uniform Commercial Code lien searches shall have been performed and sufficient copies thereof delivered to Lessor, which shall indicate to Lessor'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 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, all of which shall be in form and substance reasonably acceptable to Lessor.

(h) Recording Fees; Transfer Taxes. Lessor 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) and any UCC financing statements to be filed with the Secretary of State of Delaware (or other appropriate filing office) as Lessor deems necessary or desirable in order to protect Lessor's interests.

(i) Lessee Opinion. The opinion of Counsel to Lessee, dated the Closing Date, in form reasonably acceptable to Lessor.

(j) 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.

(k) Legality. In the opinion of Lessor or its 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 to participate in any of the transactions contemplated by the Operative Documents.

(l) No Events. (i) No Lease Event of Default, Lease 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.

(m) Representations. Each representation and warranty of the Lessee 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.

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

(o) 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.

(p) 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.

(q) Intentionally Deleted.

(r) Lessee's Resolutions and Incumbency Certificate, etc. Lessor 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 the Leased Property is located.

(s) Transaction Expenses. To the extent (if any) not paid from proceeds of 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.

(t) Existing Space Leases. Lessor 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.

(u) Lessor Confirmation. On the Closing Date, Lessor shall deliver to Lessee the letter in the form attached hereto as Exhibit B.

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 Lessor 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 Equity Investment under the circumstances contemplated by 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 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 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 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. The only leases encumbering the Leased Property or any portion thereof are the Lease and the Existing Space Leases.

(m) Conditions Precedent contained in the Operative Documents; Events of 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 Lease Default or Lease Event of Default under the Lease.

(n) Solvency. Lessee is, and upon consummation of the transactions contemplated by this Agreement will be, Solvent. The Transactions are in furtherance of Lessee'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.

(o) Foreign Assets Control Regulations, etc. The use of 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. Lessee is not (i) on the Specified Designated Nationals List or (ii) to its knowledge, in violation of any money laundering Law, regulation or order including Executive Order No. 13244 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "USA PATRIOT Act").

(p) Compliance with ERISA.

(i) Lessee and each member of its Controlled Group have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. Neither Lessee nor any member of its Controlled Group has incurred any material liability (other than required contributions to Plans) 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 material liability by Lessee or any member of its Controlled Group, or in the imposition of any Lien on any of the

rights, properties or assets of Lessee or any member of its Controlled Group, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(ii) 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 ASC 715 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 Lessee with the SEC.

(iii) Lessee and each member of its Controlled Group have not incurred unsatisfied 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, could reasonably be expected to result in a Material Adverse Effect.

(iv) The expected post-retirement benefit obligation (determined as of the last day of the Lessee's most recently ended fiscal year in accordance with ASC 715, without regard to liabilities attributable to continuation coverage mandated by Section 4980B of the Code) of Lessee and its Subsidiaries was accurately reported in the Form 10-Q filed by Lessee with the SEC as of September 30, 2012.

(q) Financial Information. None of the consolidated financial statements for Lessee's Fiscal Year ending at December 31, 2012, 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 Lessee'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. Lessee 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.

(r) Financial Statements; No Material Adverse Change. Lessee has furnished to Lessor the audited consolidated balance sheet of Lessee and its Consolidated Subsidiaries as of December 31, 2012 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 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, 2011, there have been no changes with respect to Lessee or its Subsidiaries which have had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(s) Disclosure. Lessee has disclosed to 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 Lessee is required to file with the Securities and Exchange Commission), written statements contemplated hereby, representation of Lessee contained in any Operative Document, certificates or other information furnished by or on behalf of Lessee to Lessor or anyone on its behalf, in connection with the negotiation 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.

(t) Taxes. Lessee 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.

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 Lessee 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 the fiduciary responsibility provisions of Title I of ERISA, or of a “plan” that is subject to Section 4975 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 is 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 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) Intentionally Deleted.

(c) Intentionally Deleted.

(d) Intentionally Deleted.

(e) Payments. Lessee covenants that (A) 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 with respect to the Equity Investment, 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 the Equity Investment; 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 Equity Investment.

(f) Use of Proceeds. No part of the proceeds of 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, an appraisal of the Leased Property is required during the Basic Lease Term under Applicable Law with respect to Lessor's interest therein, or the Operative Documents, then Lessee shall pay the cost of such appraisal.

(h) Intentionally Deleted.

(i) Visitation, Inspection, Etc. Lessee will, and will cause each of its Subsidiaries to, permit any representative of 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 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 and all of the foregoing shall be at Lessee's expense.

(j) Information. Lessee will furnish to Lessor such information relating to the business, affairs and financial condition of Lessee and its Subsidiaries as Lessor may from time to time reasonably request, provided, however, Lessor will keep all such information strictly confidential, except for such disclosure as may be required by Applicable Law or disclosures to advisors, accountants and bank regulators.

(k) Further Assurances. Upon the written request of Lessor, 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 in the Leased Property as contemplated by the Operative Documents.

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

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

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

(n) Provisions of the Lennox Revolver Incorporated by Reference. Lessee 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 "Financial Statements and Other Information"), subject to the qualification that (x) references therein to the "Administrative Agent" shall be deemed to refer to Lessor and (y) references therein to "Lender" or "Lenders" shall be deemed to refer to Lessor;

(2) Sections 5.02(a) and (c) (which is titled "Notices of Material Events"), subject to the qualification that (x) references therein to the "Administrative Agent" shall be deemed to refer to Lessor and (y) references therein to "Lender" shall be deemed to refer to Lessor;

(3) Section 5.03 (which is titled "Existence; Conduct of Business");

(4) Section 5.04 (which is titled "Payment of Obligations");

(5) Section 5.05 (which is titled "Maintenance of Properties");

(6) Section 5.06 (which is titled "Insurance");

(7) Section 5.08 (which is titled "Books and Records; Inspection and Audit Rights"), subject to the qualification that (x) references therein to the "Administrative Agent" shall be deemed to refer to Lessor and (y) references therein to "Lender" or "Lenders" shall be deemed to refer to Lessor;

(8) Section 5.09 (which is titled "Compliance with Laws");

(9) Section 5.11 (which is titled "New Material Subsidiaries"), subject to the qualification that (x) references therein to the "Administrative Agent" shall be deemed to refer to Lessor and (y) references therein to "Lenders" shall be deemed to refer to Lessor;

(10) Section 6.01 (which is titled "Indebtedness; Certain Equity Securities"), subject to the qualification that references therein to the "Administrative Agent" shall be deemed to refer to Lessor;

(11) Section 6.02 (which is titled "Liens");

(12) Section 6.03 (which is titled “Fundamental Changes”), subject to the qualification that, immediately upon the expiration or termination of the Lennox Revolver, (x) references in clause (a)(iii) thereof to “an acquisition permitted by Section 6.04” shall be deemed to be replaced by the phrase “in connection with any acquisition” and (y) the proviso at the end of clause (a) shall be deemed to have been deleted;

(13) Section 6.05 (which is titled “Asset Sales”);

(14) Section 6.08 (which is titled “Restricted Payments”), subject to the qualification that the provisions thereof shall not apply to any of the Operative Documents;

(15) Section 6.09 (which is titled “Transactions with Affiliates”);

(16) Section 6.10 (which is titled “Restrictive Agreements”), subject to the qualification that the provisions thereof shall not apply to any of the Operative Documents; and

(17) Article 7 (which is titled “Financial Covenants”), subject to the qualification that references therein to the “Administrative Agent”, the “Issuing Bank” and the “Lenders” shall in each case be deemed to refer to Lessor

provided, however, (i) notwithstanding anything to the contrary set forth above, Sections 6.01 (which is titled “Indebtedness; Certain Equity Securities”), 6.02 (which is titled “Liens”) and 6.08 (which is titled “Restricted Payments”) of the Lennox Revolver shall not be deemed to be incorporated by reference into Section 5.1(n) of this Agreement until and unless the Lennox Revolver shall expire or terminate, whereupon immediately following such expiration or termination such Sections will automatically be deemed to be incorporated by reference into Section 5.1(n) of this Agreement (subject to the qualifications set forth above) without any action being taken by Lessor or Lessee, and (ii) notwithstanding the incorporation of Section 6.09 of the Lennox Revolver into this Agreement by reference, for purposes of this Agreement, such Section 6.09 will not be construed to restrict any payments or transactions between Lessee and any Subsidiary or between any Subsidiaries of Lessee that, according to Section 6.10 of the Lennox Revolver, are not to be restricted.

For purposes of determining requirements, calculations, Lease Defaults or Lease Events of Default 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 Lessee remained outstanding thereunder), notwithstanding any expiration or termination thereof;

- no amendment, restatement, modification or replacement of, or waiver or consent under, the Lennox Revolver (each, a “Lennox Revolver Amendment”) had been executed or granted after October 21, 2011 other than a Lennox Revolver Amendment approved in writing by Lessor; provided, however, that if the Lessor or any of its Affiliates is a party to the Lennox Revolver and Lessor or such Affiliate provides its

consent to a Lennox Revolver Amendment, then such consent will constitute Lessor's written approval of such Lennox Revolver Amendment for purposes of this Agreement and the other Operative Documents without the necessity of any further action;

- the Lennox Revolver required Lessee to deliver to Lessor copies of the notices, certificates and other documents required by the provisions listed above during the time frames prescribed by such provisions for delivery to the administrative agent or lenders under the Lennox Revolver (except that (i) in cases where the Lennox Revolver requires notice of any Default or Event of Default (as each are defined under the Lennox Revolver), 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 Lessee by the Lennox Revolver will include such modifications as may be appropriate to allow Lessor to determine compliance with the Operative Documents by Lessee and applicable calculations required under the Operative Documents, rather than Lessee's compliance with the Lennox Revolver and calculations required under the Lennox Revolver);

- the Lennox Revolver required Lessor'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."

(o) Notices. Financials. Lessee agrees to deliver (i) copies to Lessor of all financial information that it is required to deliver pursuant to clause (n) above, and (ii) copies to Lessor of all notices received by Lessee pursuant to the Lennox Revolver.

SECTION 5.2. Covenants of Lessor

(a) Purchase Amount. The proceeds of the Equity Investment will be used by Lessor solely to refinance the existing equity investment, pay-off the existing loan in connection therewith, acquire the Leased Property, extend the term of the Original Lease Agreement and to pay Lessee for certain closing and transaction costs associated therewith.

(b) 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 Lessee for any diminution in value of the Leased Property resulting from such Lessor Liens.

(c) 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 B 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.

(d) 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 (d) 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 (d) 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 (d) to incur or assume any potential liability to another Person.

(iv) Lessor will have no obligations whatsoever under this subsection (d) 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.

(vi) No action may be required of Lessor pursuant to this subsection (d) 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.

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 (d) will be the responsibility of Lessee.

(e) 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 (d) 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 Original Purchase Agreement from One Lake Park, L.L.C. 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.

(f) 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 (f), and if reasonably requested by Lessee, Lessor will provide such confirmation.

(g) Confirmation by Lessor. Upon reasonable advance request by Lessee in connection with Lessee’s preparation of its annual audited financial statements, Lessor shall deliver to Lessee a letter in the form attached hereto as Exhibit B.

SECTION VI TRANSFERS BY LESSOR

SECTION 6.1. Transfers by Lessor. Lessor shall not 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. 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, and (3) in the case of a transfer by Lessor, can make and does make the statements to Lessee set forth on Exhibit B attached hereto; 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 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. Lessee agrees, 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 or by the Original Participation Agreement, 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 Equity Investment, 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;

(e) the breach or alleged breach by Lessee 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 to act on its behalf in connection with this Agreement, or the incurring of any fees or commissions to which Lessor 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 personality 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, or any prohibited transaction described in Section 4975(c) of the Code; or

(i) any Breakage Costs;

provided, however, Lessee shall not 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 is not exercising remedies against Lessee 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, and (5) Taxes (it 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 agrees 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 Lessee or any predecessor in title or any employees, agents, contractors or subcontractors of Lessee 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, Lessee shall be not 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 Lessee is requested by an Indemnitee to pay by reason of Section 7.1 or 7.2, such Indemnitee shall, if so requested by Lessee and prior to any payment, submit such additional information to Lessee as Lessee may reasonably request and which is in the possession of such Indemnitee to substantiate properly the requested payment. In case any action, suit or proceeding shall be brought against any Indemnitee, such Indemnitee shall notify Lessee 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 may assume and control the defense of such proceeding only if Lessee shall have acknowledged in writing its obligations to fully indemnify such Indemnitee (on and subject to the terms and conditions hereof) in respect of such action, suit or proceeding, Lessee 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) a Lease 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 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 Lessee, 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 pursuant to Section 7.1 or 7.2 to or on behalf of an Indemnitee, Lessee, without any further action, shall be subrogated to any and all claims that such Indemnitee may have relating thereto (other than claims in respect of insurance policies maintained by such Indemnitee at its own expense), and such Indemnitee shall execute such instruments of assignment and conveyance, evidence of claims and payment and such other documents, instruments and agreements as may be reasonably necessary to preserve any such claims and otherwise cooperate with Lessee and give such further assurances as are reasonably necessary or advisable to enable Lessee 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 agrees 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 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 agrees, 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 may be liable for indemnity pursuant to this Section 7.4, such Indemnitee shall give Lessee written notice of such claim promptly after its receipt, and shall furnish Lessee 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 with such written notice, unless required to do so by law or regulation. Subject to the conditions set forth in the following paragraph, Lessee shall be entitled to contest (acting through counsel selected by Lessee 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; (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 is not responsible or (iii) the Indemnitee requests that Lessee 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 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),

(2) the Indemnitee shall not otherwise settle, compromise or abandon such contest without Lessee'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 shall be required to pay the applicable Impositions without contest, unless:

(1) within thirty (30) days after notice by the Indemnitee to Lessee of such Tax Claim, Lessee 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 of such requirement, Lessee shall use reasonable efforts to request such contest within such shorter period,

(2) no Lease 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 posts 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 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 pursuant to this Section 7.4 with respect to such Imposition,

(6) Lessee agrees 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 sole expense with an opinion, reasonably acceptable to such Indemnitee, of independent tax counsel of recognized standing selected by Lessee 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 shall acknowledge in writing its 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.

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 consent if the Indemnitee:

(1) waives its right to any indemnity payment by Lessee 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 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 Lessee has knowledge, the Lessee shall promptly notify such Indemnitee of such requirement and, at the expense of the Lessee, (i) if the Lessee 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 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 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 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 to make or maintain or supply the Equity Investment at a rate based on the LIBOR Rate as contemplated by the Operative Documents, then the 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 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 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 Equity Investment to the date of such automatic conversion and, upon the request of Lessor, shall pay to Lessor 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 to Lessee shall be conclusive absent manifest error. As soon as practicable, Lessor shall notify Lessee 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 Equity Investment pursuant to this Section 7.5, and Lessor 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 Lessor, be otherwise disadvantageous to the Lessor.

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

(i) shall subject Lessor to any tax, duty or other charge with respect to the Equity Investment (or its participation therein) or Lessor's obligations or right to acquire or hold 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 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 Lessor's obligations or rights, if any, to acquire or participate in 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 Lessor or franchise tax based on capital or net income of Lessor imposed by the United States of America or any state); or

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

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

(iv) shall impose any other condition affecting the Equity Investment (or its participation therein) or Lessor's obligations or right to acquire or hold 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) Lessor, or loans or other extensions of credit under any Covered Document or any obligation or commitment of Lessor with respect to any of the foregoing,

(II) to reduce the amount of any sum received or receivable by 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 Lessor as a consequence of its obligations under the Covered Documents (or its participation therein) to a level below that which Lessor could otherwise have achieved,

in each such case by an amount reasonably deemed by Lessor to be material, then prior to the next scheduled Payment Date, and in any case within 30 days after demand by 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 Lessor such additional amount or amounts as will compensate Lessor 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), Lessor may use any reasonable averaging and attribution method that each (in its sole discretion) shall deem applicable. 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. Lessor shall not 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 Lessor.

(c) Compliance with Laws. If Lessor or any participant herein (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 Lessee thereof. A certificate as to any additional amounts payable pursuant to the foregoing submitted by a Funding Party to Lessee 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. Lessee, 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 Equity Investment on the Closing Date, failure to make a payment on the due date thereof or the payment, prepayment or conversion of 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 Lessor and Lessee 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 Bill of Sale), any disposition of any interest of Lessor in the Leased Property, the making of the Equity Investment 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 or any Funding Party, except (a) in the case of a termination, amendment, supplement, waiver or modification to be binding on the Lessee, with the written agreement or consent of Lessee, 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 no such termination, amendment, supplement, waiver or modification shall, without the written agreement or consent of Lessor be made hereto or to the Lease. 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 LESSEE 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, 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 Equity Investment in the event Lessee agrees to pay, as Supplemental Rent, all reasonable and documented out-of-pocket costs and expenses of Lessor 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 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, Lessee agrees that, except as expressly set forth below, (a) all payments to be made by Lessor in respect of the Participation Agreement and the other Operative Documents shall be made solely from certain payments received pursuant to the Lease and proceeds of the Leased Property and only to the extent that Lessor shall have received sufficient payments from such sources to make payments in respect of the Equity Investment in accordance with Section 18 of the Lease; (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 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 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, and (ii) its gross negligence or willful misconduct; 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.

[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 INTERNATIONAL INC., as Lessee

By: /s/ Joe Reitmeier
Name: Joe Reitmeier
Title: Executive Vice President and Chief Financial Officer

BTMU CAPITAL LEASING & FINANCE, INC., as
Lessor

By: /s/ Gregory B. Register
Name: Gregory B. Register
Title: Managing Director

APPENDIX A
to
Participation Agreement and Lease

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:

“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.

“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.

“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 Yield on the Equity Investment, shall mean the applicable basis point spread set forth below corresponding to the Leverage Ratio of Lessee in effect as of the most recent Calculation Date:

<u>Pricing Level</u>	<u>Leverage Ratio</u>	<u>Applicable Margin on Equity Investment (basis points)</u>
I	Less than or equal to 1.50 to 1.0	125
II	Less than or equal to 2.00 to 1.0 but greater than 1.50 to 1.0	150
III	Less than or equal to 2.50 to 1.0 but greater than 2.00 to 1.0	175
IV	Less than or equal to 3.00 to 1.00 but greater than 2.50 to 1.0	200
V	Greater than 3.00 to 1.00	225

The Applicable Margin for Yield on the Equity Investment shall 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 shall be based on Pricing Level I (as shown above) and shall remain at Pricing Level I 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(d) of the Participation Agreement.

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

“ASC” means Financial Accounting Standards Board Accounting Standards Codification.

“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.

“Bill of Sale” means that certain Omnibus Bill of Sale and General Assignment, dated as of the Closing Date, from the Original Lessor to Lessor, conveying the personal property relating to the Property, in a form reasonably acceptable to Lessor.

“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 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 Rent required by any provision of the Participation Agreement or otherwise (and whether by reason of a Lease 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 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 to fund or maintain its portion of 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 Lessor.

“Calculation Date” means the last day of each fiscal year of Lessee, commencing with the fiscal year ending on December 31, 2013.

“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 March 22, 2013, the date upon which such Land and Leased Property is acquired by Lessor and the Equity Investment is 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” has the meaning set forth in the Lennox Revolver.

“Consolidated Net Income” has the meaning set forth in the Lennox Revolver.

“Consolidated Subsidiaries” means Subsidiaries of Lessee 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 and all members of an “affiliate service group” that, together with the Lessee or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

“Credit Parties” means Lessee.

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

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

“Effective Date” is defined in Exhibit B of the Participation Agreement.

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

“Environmental Audit” means that certain Phase I Environmental Site Assessment, dated May 25, 2006, satisfying 2005 ASTM Form 1527 standards, by Terracon Consultants, Inc., together with that certain Limited Phase I Environmental Site Assessment Desktop Review, dated March 4, 2013, by Terracon Consultants, Inc.

“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” has the meaning set forth in the Lennox Revolver.

“Equity Investment” is defined in Section 2.2 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 March 20, 2013 among Title Company, Compass Bank, Lessee and Lessor.

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

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

(i) Taxes and impositions imposed upon an Indemnitee (except (a) those, if any, imposed by taxing authorities in Texas upon an Indemnitee arising from its participation in the Transaction and (b) 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 net income or net receipts of such Indemnities (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 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 a Lease 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;

(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;

(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; and

(xiv) any withholding pursuant to Sections 1471-1474 of the Code and any Treasury Regulations published thereunder.

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 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 Equity Investment at the end of the Basic Lease Term.

“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 November 9, 2005, between Original Seller and Glow Networks, Inc., as amended and assigned; (ii) One Lake Park Lease Agreement, dated March 29, 2000, between AOC Development II, L.L.C. and Philips Semiconductors, Inc., as amended and assigned; (iii) One Lake Park Lease Agreement, dated September 1, 2005, between Original Seller and Axes Technology, Inc. (now known as Tech Mahindra (Americas) Inc.), as amended and assigned; (iv) Lease Agreement dated November 28, 2006, between Original Lessee and GWA Innovative Technology, Inc., as amended and assigned; and (v) Lease Agreement dated April 29, 2008, between Original Lessee and Managed Petroleum Group, Inc., as amended and assigned.

“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 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).

“Fiscal Year” means the fiscal year of Lessee 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.

“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 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 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.

“Indebtedness” has the meaning set forth in the Lennox Revolver.

“Indemnitee” means Lessor and its Affiliates, successors, permitted assigns, permitted transferees, participants, lenders, employees, officers, directors and agents and in both their trust and individual capacities, as applicable; provided, however, that in no event shall Lessee 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 be a member of the Indemnitee Group.

“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” has the meaning set forth of the Lennox Revolver.

“Interest Rate Swap Agreement” means the interest rate swap agreement entered into by Lessor on January 23, 2012 in connection with the Transaction.

“Land” means the land described in Exhibit A to the Lease.

“Lease” means the Amended and Restated Lease Agreement, dated as of March 22, 2013, between Lessor and Lessee.

“Lease Balance” means, as of any date of determination, an amount equal to the outstanding amount of the Equity Investment. 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.

“Lennox Revolver” means the Fourth Amended and Restated Revolving Credit Facility Agreement dated as of October 21, 2011, among Lessee, as borrower, JPMorgan Chase Bank, National Association, as administrative agent, Bank of America, N.A. and Wells Fargo Bank, N.A., as syndication agents, PNC Bank, National Association and The Bank of Tokyo-Mitsubishi UFJ, Ltd., as documentation agents, U.S. Bank National Association, as managing agent, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Securities, LLC, as joint lead arrangers and joint book managers, and the lenders party thereto, as amended, supplemented or otherwise modified from time to time.

“Lennox Revolver Amendment” is defined in Section 5.1(n) of the Participation Agreement.

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

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

“Lessor” means BTMU Capital Leasing & Finance, Inc., a Delaware corporation.

“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 Residual Risk Amount” means, as of any date of determination, an amount equal to the product of 13.68118972% and the Lease Balance as of such date of determination.

“Leverage Ratio” has the meaning set forth in the Lennox Revolver.

“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 Lessor 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 Lessor 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 Lessor 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, 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.

“Material Adverse Effect” means a material adverse effect on (i) the business, Property, condition (financial or otherwise), results of operations, or prospects of Lessee and its Subsidiaries taken as a whole, (ii) the ability of 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 Lessor thereunder.

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

“Material Indebtedness” has the meaning set forth in the Lennox Revolver.

“Memorandum of Lease” means the Amended and Restated Memorandum of Lease, Deed of Trust and Security Agreement, dated as of March 22, 2013 between Lessor and Lessee.

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

“Mortgagee Policy of Title Insurance” means the alternative mortgagee policy of title insurance, policy no. 006-002509A(MTP) issued June 23, 2006.

“Multiemployer Plan” means at any time an employee pension benefit plan within the meaning of Section 4001(a)(3) of ERISA to which Lessee or any member of its Controlled Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made or had an obligation to make contributions, including for these purposes Lessee and any Person which ceased to be a member of Lessee’s Controlled Group during such five year period.

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

“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.

“Offshore Affiliate” means an Affiliate that is an Offshore Person.

“Offshore Person” means (a) any entity formed under the laws of any country or part thereof (other than the US or any political subdivision thereof), (b) any non-US branch or office of an entity formed under the laws of the US or any political subdivision thereof or (3) any entity that has made an election with the IRS to be treated as either (i) a taxable entity, which is treated as an entity that is not a US person as defined in Section 7701 of the Code or (ii) a disregarded entity under the Code Section 7701 regulations that is owned by an Offshore Person.

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

“Original Lease Agreement” is defined in Preliminary Statement A of the Participation Agreement.

“Original Lessee” is defined in Preliminary Statement A of the Participation Agreement.

“Original Lessor” is defined in Preliminary Statement A of the Participation Agreement.

“Original Participation Agreement” is defined in Preliminary Statement A of the Participation Agreement.

“Original Purchase Agreement” means the Purchase and Sale Agreement and Joint Escrow Instructions dated as of March 30, 2006 by and between Original Seller and Original Lessor, as assignee of Original Lessee, as amended and assigned.

“Original Scheduled Termination Date” is defined in Preliminary Statement D of the Participation Agreement.

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

“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 Amended and Restated Participation Agreement, dated as of March 22, 2013 among Lessee and Lessor.

“Payment Date” means (a) June 23, 2013, and thereafter, the first (1st) day of March, June, September and December of each year, commencing September 1, 2013, 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 Alterations” 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 “A-1” by S&P Ratings Service and, if rated by Fitch Inc., “F-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 The Bank of Tokyo – Mitsubishi UFJ, Ltd. 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 and Lessor, 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 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 the 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 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 the Lessor.

“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 or Section 302 of ERISA and either (i) is maintained, or contributed to, by Lessee or any member of its Controlled Group for employees of Lessee or any member of its Controlled Group or (ii) has at any time within the preceding five years been maintained, or contributed to, by Lessee or any Person which was at such time a member of its Controlled Group for employees of Lessee or any Person which was at such time a member of its Controlled 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 Lessee’s Leverage Ratio as of such determination date.

“Prime Rate” means the per annum rate announced from time to time in New York City by The Bank of Tokyo – Mitsubishi UFJ, Ltd. 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 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 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.

“Purchase Price” means an amount equal to \$41,202,994.25.

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

“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, 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; (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 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 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 or 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.

“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.

“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 BTMU Capital Corporation, a Delaware corporation.

“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.

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

“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 Lessee.

“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, 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 the 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 Lessee 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.

“Title Policy” means that certain Lawyers Title Insurance Corporation Policy or Interim Construction Binder Number 006-002509A(MTP) dated June 23, 2006, as amended, assigned and endorsed.

“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.

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

“Upfront Fee” means a non-refundable fee payable to Lessor on the Closing Date in an amount equal to 0.40% (40 basis points) times the initial Equity Investment as set forth in Section 2.1 of the Participation Agreement.

“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 Lessee and Lessee’s other Wholly-Owned Subsidiaries at such time.

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

This instrument was prepared by
and when recorded return to:

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

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

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

Dated as of March 22, 2013

by and between

LENNOX INTERNATIONAL INC.

and

BTMU CAPITAL LEASING & FINANCE, INC.

and

DAVID PARNELL, as Deed of Trust Trustee for the benefit of

BTMU CAPITAL LEASING & FINANCE, INC.

This Amended and Restated 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 Lessor on or following the signature page of this Amended and Restated Memorandum of Lease.

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

This Amended and Restated Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing is made as of March 22, 2013 (this "Memorandum of Lease"), by and between LENNOX INTERNATIONAL INC., as Lessee (together with its successors and assigns, "Lessee"), and BTMU CAPITAL LEASING & FINANCE, INC., a Delaware corporation, as Lessor (together with its successors and assigns, "Lessor"), having an address at 111 Huntington Avenue, Boston, Massachusetts 02199, Attention: Senior Vice President – Portfolio Servicing, to DAVID PARNELL, an individual, as Deed of Trust Trustee ("Deed of Trust Trustee") for the benefit of Lessor and its successors and assigns.

RECITALS

A. Original Lessor and Original Lessee entered into the Original Lease, which Original Lease was evidenced of record by a Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of June 22, 2006, between Original Lessor and Original Lessee, recorded June 23, 2006 as Clerk's File No. 200600229953 of the Deed Records of Dallas County, Texas, and assigned by Original Lessor to Lessor pursuant to an Assignment of Lien dated as of the date hereof and to be recorded in the Deed Records of Dallas County, Texas immediately prior to the recording of this Memorandum of Lease (collectively, the "Original Memorandum of Lease").

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

C. Lessee and Lessor have amended and restated the Original Participation Agreement and have entered into that certain Amended and Restated 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 between Lessee, as Lessee and Lessor, as Lessor.

D. Lessor will acquire the Land and Improvements for the benefit of Lessee from its Affiliate, BTMU Capital Corporation, 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 to amend and restate the Original Memorandum of Lease in its entirety 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 November 9, 2005 between Original Seller and Glow Networks, Inc., as amended and assigned; (ii) One Lake Park Lease Agreement, dated March 29, 2000 between AOC Development II, L.L.C. and Philips Semiconductors, Inc., as amended and assigned; (iii) One Lake Park Lease Agreement dated September 1, 2005 between Original Seller and Axes Technologies, Inc. (now known as Tech Mahindra (Americas) Inc.), as amended and assigned; (iv) lease dated November 28, 2006, between Original Lessee and GWA Innovative Technologies, Inc., as amended and assigned; and (v) lease agreement dated April 29, 2008, between Original Lessee and Managed Petroleum Group, Inc., as amended and assigned.

“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 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, and (d) the obligation to pay all sums advanced by 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) March 1, 2019 (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 ten (10) Business 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, 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, 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. 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 in the name of Lessor.

(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 18 of the Lease.

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 18 of the Lease.

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 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, 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. 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 Codification 840;

(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 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 payment by Lessee of any amounts in respect of the Lease Balance shall be treated as payments of principal to Lessor;

(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 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 Lessor; 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 Lessor has not 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 any collection

actions, the transactions evidenced by the Operative Documents (including, without limitation, the Lease) constitute loans made directly to Lessee by Lessor as an unrelated third party lender, and that Lessor holds title to, and Lessor holds a lien on, the Leased Property for the benefit of the Lessor to secure Lessee's obligations to repay such loans to Lessor 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 15 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 16. 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 17. 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 LESSOR IS NOT NOR 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 IN AND TO ALL OR ANY PORTION OF THE IMPROVEMENTS.

Section 18. 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 19. Notices.

All notices, requests and demands to or upon 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 20. 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 21. 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 22. 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 23. 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, Deed of Trust Trustee and their respective successors and assigns.

Section 24. 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 25. 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 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 26. 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, 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 27. 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 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 28. Certain Acknowledgments and Agreements of Lessee.

Lessee hereby acknowledges and agrees that:

(a) The Equity Investment is being made 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. Lessor 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. Lessor 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 Lessor or Deed of Trust Trustee to disclose to Lessee any facts that either may now or hereafter know about the other, regardless of whether Lessor 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 Lessor 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 Deed of Trust Trustee or Lessor, 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 or Deed of Trust Trustee of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that Lessor or Deed of Trust Trustee would otherwise have on any future occasion.

(e) The rights of Lessor and Deed of Trust Trustee 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 or 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 or any other Operative Document; (iii) any failure, omission or delay on the part of Lessor or Deed of Trust Trustee to enforce, assert or exercise any right, power or remedy conferred on or available to Lessor, Deed of Trust Trustee 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 or Deed of Trust Trustee, 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 Deed of Trust Trustee 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 29. 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.

The parties hereto agree that Lessor shall not have any obligations under any Existing Space Lease. Any enforcement thereof 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. Each of the Existing Space Leases is subject and subordinate to the Lease and 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 30. 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 31. 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 32. 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 March 22, 2013," 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 33. 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.

Section 34. Texas Finance Code Section 307.052 Collateral Protection Insurance Notice.

(a) Lessee is required to: (i) keep the property insured against damage in the amount Lessor specifies; (ii) purchase the insurance from an insurer that is authorized to do business in the State of Texas or an eligible surplus lines insurer; and (iii) name Lessor as the person to be paid under the policy in the event of a loss; (b) Lessee shall, if requested by Lessor, deliver to Lessor a copy of the policy and proof of the payment of premiums; and (c) if Lessee fails to meet any requirement listed in paragraph (a) or (b), Lessor may obtain collateral protection insurance on behalf of Lessee at Lessee's expense.

Section 35. Entire Agreement.

This written Memorandum of Lease and any other Operative Documents together represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral arguments of the parties. There are no unwritten oral agreements between the parties.

[Signatures Begin on Following Page]

In Witness Whereof, the parties hereto have caused this Amended and Restated 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 INTERNATIONAL INC., a Delaware corporation

By: /s/ Joe Reitmeier

Name: Joe Reitmeier

Title: Executive Vice President and
Chief Financial Officer

Address: 2140 Lake Park Boulevard
Richardson, Texas 75080

Lessor:

BTMU CAPITAL LEASING & FINANCE,
INC., a Delaware corporation

By: /s/ Gregory B. Register

Name: Gregory B. Register

Title: Managing Director

Address: 111 Huntington Avenue, Suite 400
Boston, MA 02119

Receipt of this original counterpart of the foregoing Amended and Restated Memorandum of Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing is hereby acknowledged as of the date hereof.

BTMU CAPITAL LEASING &
FINANCE, INC., a Delaware Corporation

By: /s/ Gregory B. Register
Name: Gregory B. Register
Title: Managing Director

Address: 111 Huntington Avenue, Suite 400
Boston, MA 02119