



**ALAMEDA COUNTY**  
**AUDITOR-CONTROLLER AGENCY**  
**MELISSA WILK**  
 AUDITOR-CONTROLLER/CLERK-RECORDER

September 11, 2024

Honorable Board of Supervisors  
 County of Alameda  
 1221 Oak Street, Suite 536  
 Oakland, CA 94612

**SUBJECT: APPROVE DOCUMENTARY TRANSFER TAX REFUND CLAIM FOR LAM RESEARCH CORPORATION – INSTRUMENT NUMBER 2023108912**

Dear Board Members:

**RECOMMENDATION:**

Approve the Documentary Transfer Tax Claim for Refund for Lam Research Corporation in the amount of \$21,150.25.

**DISCUSSION/SUMMARY:**

Documentary Transfer Tax (“DTT”) in the amount of \$21,150.25 was collected when a Grant Deed with Instrument Number 2023108912 was presented to the Recorder’s Office on September 22, 2023.

The claimant has proven through related documentation that they were the beneficial owner of the property prior to the recording of the deed. The recorded documents reflect synthetic leases where Lam Research Corporation remains the owner, and no changes in ownership occurred in connection with the Grant Deed recorded. The Clerk-Recorder is therefore recommending the approval for the refund of Documentary Transfer Tax for document number 2023108912 in the amount of \$21,150.25.

The Alameda County Clerk-Recorder requests that the Board approve the claim. The Clerk-Recorder will provide claimant with notice of the Board’s decision.

**FINANCING:**

No additional appropriations are required, and there will be no increase to the net County cost.

**Office of the Auditor-Controller**  
 1221 Oak St., Suite 249  
 Oakland, CA 94612  
 Tel: (510) 272-6565  
 Fax: (510) 272-6502

**Central Collections Division**  
 1106 Madison St., 1<sup>st</sup> Floor  
 Oakland, CA 94607  
 Tel: (510) 208-9900  
 Fax: (510) 208-9932

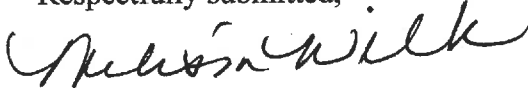
**Clerk-Recorder’s Office, Oakland**  
 1106 Madison St., 1<sup>st</sup> Floor  
 Oakland, CA 94607  
 Tel: (510) 272-6362  
 Fax: (510) 208-9858

**Clerk-Recorder’s Office, Tri-Valley**  
 7600 Dublin Blvd.  
 Dublin, CA 94568  
 Tel: (510) 272-6362  
 Fax: (510) 208-9858

VISION 2026 GOAL:

Accurate and transparent financial information, as well as fiscal stewardship meet the County of Alameda's 10x goal pathways in support of our shared vision of a **Prosperous and Vibrant Economy**.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Melissa Wilk". The signature is fluid and cursive, with the first name "Melissa" and last name "Wilk" clearly distinguishable.

Melissa Wilk

Auditor-Controller/Clerk-Recorder

**CLAIM FOR REFUND OF ALAMEDA COUNTY  
DOCUMENTARY TRANSFER TAX (DTT)**

CLAIMANT'S NAME: Lam Research Corporation

CLAIMANT'S ADDRESS: 4650 Cushing Parkway, Fremont, CA 94538

PHONE NUMBER: (510) 572-6467 EMAIL ADDRESS: George.schisler@lamresearch.com

AMOUNT OF CLAIM: \$21,150.25

DATE OF RECORDING: 09/22/2023 SERIES NUMBER: 2023108912

FACTS GIVING RISE TO CLAIM: See Attachment to Claim for Refund of Documentary Transfer Tax attached  
Hereto. Also attached is a copy of the Grant Deed as proof of transfer tax payment.

*I certify under penalty of perjury that the foregoing is true and correct.*

January 19, 2024 - Fremont, California  
Date and Place

  
Name/Signature of Claimant

George M. Schisler, Jr.

*For Recorder's Use Only*

City(s) where property(s) located: Livermore ☐ County Tax ☒ City Share Tax

**DECISION OF DEPARTMENT**

I certify that an examination of our office records shows that the Transfer Tax was paid at the time of recording and herewith render the following decision:

**APPROVAL**

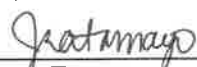
- ☐ Recorder approves payment of claim for refund. (Amount \$1,000 and under)
- ☒ Recorder recommends **Board** approval of claim for refund. (Amount over \$1,000)

**DENIAL**

- ☐ Recorder denies claim for refund. (Amount \$1,000 and under)
- ☐ Recorder recommends matter be set for hearing with **Legal Hearing Officer** to deny claim for refund. (Amount \$1,000.01 - \$10,000)
- ☐ Recorder recommends **Board** denial of claim for refund. (Amount over \$10,000)

MELISSA WILK, COUNTY CLERK-RECORDER

By:

  
Julie Anne Tamayo  
Assistant County Clerk-Recorder

09/10/2024  
Date

## **Attachment to Claim For Refund of Documentary Transfer Tax Lam Research Corporation**

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This claim for refund is filed by Lam Research Corporation (“**Lam**”) with respect to Documentary Transfer Tax (“**Transfer Tax**”) paid in connection with the recording of that certain Grant Deed recorded on September 22, 2023, as Document Number 2023108912 (the “**Deed**”) with the Alameda County Recorder’s, in the amount of \$21,150.25. The real property covered by the Deed is that certain real property known as 101 Portola Avenue, Livermore, California 94551 (the “**Property**”).

Lam seeks a refund of the entire amount of Transfer Tax paid on the grounds that Lam was the beneficial owner of the Property before the recording of the Deed, and therefore recording the Deed was not in connection with “realty sold” within the meaning of Section 11911 of the California Revenue and Taxation Code (the “**CRTC**”).

### **Statement of Facts**

#### **Background of the Finance Leases**

Lam acquired beneficial ownership of the Property from KLA-Tencor Corporation on April 18, 2002, and has used the Property in connection with its business since that time.

Instead of obtaining conventional debt financing with respect to the Property, Lam decided to use a financing lease (also known as a “synthetic lease”) with a finance company. Under this arrangement, Lam caused title to the Property to be transferred to BNP Paribas Leasing Corporation, a finance company, and concurrently entered into a lease of the Property from the finance company, which lease gave to Lam significant rights over, and obligations with respect to, the Property. The Property was refinanced on January 10, 2014, with a different finance company, MUFG Americas Capital Leasing & Finance, LLC, formerly known as BTMU Capital Leasing & Finance, Inc. (the “**Final Finance Company**”). At that time, title to, but not beneficial ownership of, the Property was transferred to the Final Finance Company, and Lam and the Final Finance Company entered into a revised financing lease for the Property.

This last lease was documented in the Second Amended and Restated Lease Agreement between Lam (as Lessee) and the Final Finance Company, as Lessor, dated September 21, 2020 (the “**Lease Agreement**”). At the same time, the Final Finance Company and Lam entered into several other documents governing their respective rights and obligations with respect to the Property, including:

- (i) the Participation Agreement, dated as of September 21, 2020, between Lessor and Lessee (the “**Participation Agreement**”),
- (ii) the Pledge Agreement between Lessee and Lessor, dated as of September 21, 2020 (the “**Pledge Agreement**”); and

- (iii) the Deposit Agreement between MUFG Bank, Ltd., Lessee and Lessor (the “**Deposit Agreement**” and, together with the Lease, the Participation Agreement, and the Pledge Agreement, the “**Operative Documents**”).

#### Beneficial Ownership Under the Operative Documents

The Operative Documents gave to Lam all the benefits and burdens associated with the ownership of the Property. In particular, Lam was granted the following rights and obligations with respect to the Property:

1. Lam had the exclusive right to possess and occupy the Property.
2. Lam was required to maintain the Property at its own expense.
3. Lam was allowed to make alterations to the Property at its own expense. Section 9.2 of the Lease Agreement.
4. Lam had the right to sublease the Property. Article XII of the Lease.
5. Lam had the right to terminate the Lease at any time (the “**Early Termination Option**”) and obtain title to the Property for an amount equal to the remaining principal and interest due on the financing (the “**Break Even Price**”). Lease Section 20.1.
6. If the Property was taken through condemnation or otherwise, Lam was still required to pay the Final Finance Company the Break Even Price for the Property. Similarly, if the Property were to be destroyed, Lam was required to pay the Break Even Price to the Final Finance Company or replace the Property at its own expense. Section 13.1(a) of the Lease.
7. Lam had the right at any time to have the Property marketed and sold. In this case, the Final Finance Company was entitled to retain only an amount of sales proceeds equal to the Break Even Price. Any excess had to be paid over to Lam. In addition, if the sales proceeds were less than the Break Even Price, Lam was obligated to pay the amount of the shortfall to the Final Finance Company. Section 20.3 of the Lease.
8. At the end of the Lease term, if Lam did not elect to purchase the Property, the Final Finance Company could require Lam to market the Property for sale. In all events, Lam was required to pay to the Lessor (through sales proceeds or otherwise) an amount that protected the Lessor from economic loss. And, if the sales proceeds exceeded the Break Even Price, Lam was entitled to retain the excess. Section 21.1 of the Lease.

Furthermore, the parties to the Operative Documents clearly indicated their intent with respect to the treatment of the Lease as a financing lease. Section 2.12(b) of the Participation Agreement provides:

“It is the intention of the parties that:

- (a) each Lease constitutes a finance lease from Lessor to Lessee for purposes of Lessee's financial reporting under GAAP; and
- (b) for United States federal, state and local income tax, property tax, transfer tax, sales tax, franchise tax, general corporation tax and other similar taxes that may be imposed upon net or gross income, bankruptcy (including the substantive law upon which bankruptcy proceedings are based), real estate, commercial law and all other purposes:
  - (i) such Leases and the Overall Transaction constitute a financing by the Lessor to the Lessee, the obligations of the Lessee to pay Basic Rent shall be treated as payments of interest to the Lessor, and the payment by the Lessee of any amounts in respect of the Lease Balance shall be treated as payments of principal to the Lessor;
  - (ii) Lessee will not be entitled to, and shall not avail itself of, any of the rights or benefits accorded to a lessee under Applicable Law except as expressly permitted under the Leases and the Lessor will be deemed and will have the rights of a lender making secured loans to the Lessee secured by, among other things the Lessee Collateral; and
  - (iii) Lessee is and will be the owner of the Sites and the Improvements.”

Accordingly, under the Operative Documents, Lam retained all of the benefits of ownership, including the right to use the Property. Lam could sell or sublease the Property, and, in the event of a sale, Lam was entitled to receive any appreciation in the value of the Property over the term of the Lease. Lam was required to maintain the Property and pay property taxes with respect to the Property. If the Property decreased in value, Lam bore the economic loss because Lam was required to pay the Break Even Price to the Final Finance Company in all events.

In contrast, the Final Finance Company only had the right to be repaid its principal plus interest. Although the Final Finance Company held legal title to the Property, that was to secure Lam's obligation to pay amounts due under the Lease. Lam could, by exercising the Early Termination Option, obtain legal title at any time by paying the remaining amounts due under the financing.

#### Exercise of the Early Termination Option

In September 2023 Lam exercised the Early Termination Option under the Lease. Lam paid the Break Even Price to the Final Finance Company, and the Final Finance Company recorded the Deed to transfer title to the Property to Lam.

## Legal Analysis

Section 11911(a) of the CRTC authorizes counties to impose the Transfer Tax on the recording of instruments by which “realty sold” within the county shall be conveyed to the purchaser or purchasers.

### Recording the Deed Is Exempt Under CRTC Section 11921

Section 11921 of the CRTC provides that the Transfer Tax “shall not apply to any instrument in writing given to secure a debt.” This rule necessarily applies equally to any writing recorded when the debt is repaid. As discussed above, the Lease of the Property was a financing transaction in which Lam retained all of the benefits and burdens of ownership of the Property. The retention of legal title by the Final Finance Company was merely a means of securing the financing and securing Lam’s obligation to repay the debt. When the financing was repaid by Lam, the Final Finance Company returned title to the Property to Lam. Therefore, under CRTC Section 11921, the recording of the Deed was exempt from the Transfer Tax. Lam is entitled to a full refund of the amount of Transfer Tax paid.

### The Transfer Tax Does Not Apply When There is No Change In Ownership

Under California’s Property Tax laws, the assessed value of real property cannot be increased by more than fixed percent per year, unless the property has undergone a “change in ownership.” If there has been a “change in ownership” of property, the property is reassessed for Property Tax purposes at its full cash value.

CRTC Section 60 provides that a “change in ownership” of real property occurs when there is “a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.” Sections 61 through 65 of the CRTC address whether certain types of transactions, including transfers of interests in legal entities and leases of real property, constitute changes in ownership of real property.

As stated above, Section 11911 authorizes the imposition of Transfer Tax only on “realty sold.” Numerous courts have ruled that the term “realty sold” is equivalent to the term “change in ownership” under the Property Tax rules. Thus, for example, in Thrifty Corp. v. County of Los Angeles, 210 Cal. App. 3d 881 (1989), the California Court of Appeal, Second Appellate District, held that a lease of real estate for 20 years, with a single 10-year extension option, was not subject to Transfer Tax because such a lease was not a change in ownership under the Property Tax statutes. The Thrifty court reasoned that, although the Transfer Tax statute did not define “realty sold,” the phrase is “sufficiently similar to the phrase ‘change in ownership’” to give each phrase the same meaning.

Similarly, in 926 North Ardmore Avenue, LLC v. County of Los Angeles, 229 Cal. App. 4th 1335 (2017), the California Supreme Court held that the Transfer Tax did apply to a transfer of interests in a legal entity, even though no deed was recorded, because such a transfer resulted in a “change in ownership” of the realty held by the legal entity under CRTC Section 64. The Court concluded that “the critical factor in determining whether the documentary transfer tax

may be imposed is whether there was a sale that resulted in a transfer of beneficial ownership of real property.”

Further, the California Attorney General, citing the Thrifty case, also found that the term “realty sold” should be construed to mean “change in ownership” as used in the Property Tax statutes. Atty Gen Op 98-1203 (Mar. 26, 1999). The opinion holds that the transfer of real property from a parent corporation to a wholly owned subsidiary was not subject to the Transfer Tax because such a transfer did not constitute a change in ownership under CRTC Sections 62 and 64.

#### The Unwind of the Lease Did Not Constitute a Change in Ownership

Lam’s exercise of the Early Termination Option under the Lease, and the transfer of legal title to the Property to Lam as a result, clearly did not constitute a change in ownership of the Property for purposes of the Property Tax.

First, as stated above, CRTC Section 60 defines a “change in ownership” as a transfer of a present interest in real property “the value of which is substantially equal to the value of the fee interest.” In this case, Lam already possessed beneficial ownership of the Property; all that was transferred was bare legal title. The consideration paid by Lam to exercise the Early Termination Option was the Break Even Price, which was only the remaining principal and interest on the financing, and bore no relationship to the fair market value of the Property. In fact, based on an analysis Lam prepared before deciding to exercise the Early Termination Option, the Break Even Price was far less than the full fair market value of the Property. Thus, there was no transfer of an interest equivalent to the value of the fee, and therefore there was no change in ownership of the Property.

Moreover, both administrative and case law support the position that the lessee in a “synthetic lease” or a “financing lease” is the owner of the subject property for Property Tax purposes. If the property is already owned by the lessee, the unwinding of the lease, and the transfer of title to the lessee, cannot constitute a change in ownership.

The State Board of Equalization stated expressly in a Property Tax annotation that the lessee under a financing lease is the owner of the leased property for property tax purposes. See SBE Annotation 220.0354 (5/24/2005), which states that the true owner of the property subject to a financing lease is considered to be the lessee, even though legal title to the property remains in the lessor for purposes of security. That annotation also provides that a “synthetic lease” is a financing agreement used to convey a security interest in real property in exchange for capital.

Further, the Supreme Court of California established many years ago that a purchaser under a conditional sales contract, where the seller retained title simply as security for the payment of the remainder of the purchase price, is the “owner” of real property for property tax purposes. Sherman v. Quinn, 31 Cal 2d 661 (1948).

Similarly, in Mayhew Tech Center, Phase II, v. County of Sacramento, 4 Cal. App. 4th 497 (1992), the California Court of Appeal for the Third Appellate District held that the State of California was the beneficial owner of a facility used by the Franchise Tax Board under a



financing lease. The court found that the lease transferred all the benefits and burdens of ownership to the State, and the lessor retained title solely for security purposes. The court noted that the State was responsible for all maintenance and repair on the property, and any insurance proceeds would be made available to the State for that purpose. The State was responsible for utilities and services provided on the property. The State also agreed to pay any taxes and assessments levied on the property. The lease provided for automatic vesting of title in the State at the end of the lease term, and gave the State an option to purchase the property before termination. The court also pointed out that, if the State defaulted on its obligation to pay rent under the lease, the property would be sold and the State was entitled to keep any amounts after payment of principal and interest on the financing.

As described above, the Operative Documents granted to Lam all of the benefits and burdens of ownership of the Property. Therefore, under the foregoing authorities, it is clear that Lam was the owner of the Property for Property Tax purposes during the term of the Lease. We note in this regard that Lam directly paid property tax with respect to the Property to Alameda County while the Lease was in effect.

Accordingly, the transfer of title to Lam on unwinding the Lease could not, and did not, constitute a change in ownership of the Property. If the unwinding of the Lease did not give rise to a change in ownership of the Property, then the unwinding was also not subject to Transfer Tax. Lam is entitled to a full refund of Transfer Tax paid in connection with recording the Deed.

2023108912

09/22/2023 02:17 PM

6 PGS

**RECORDING REQUESTED BY:**First American Title Insurance Company  
National Commercial ServicesOFFICIAL RECORDS OF ALAMEDA COUNTY  
MELISSA WILK, CLERK-RECORDERRECORDING FEES: \$39.00  
TOTAL TAX: \$21,150.25

COUNTY TAX PORTION: \$10,575.13

CITY TAX PORTION: \$10,575.12

**WHEN RECORDED RETURN TO AND  
MAIL TAX STATEMENTS TO:**Lam Research Corporation  
4650 Cushing Parkway  
Fremont, California 94538**ELECTRONICALLY RECORDED**

Space Above Line for Recorder's Use Only

APNs: 903-0010-018-01

The undersigned paid transfer tax is being paid under protest. This deed is intended to reconvey the land to the beneficial owner. Legal title was originally transferred to Grantor for financing purposes pursuant to a financing lease.

**GRANT DEED**

The undersigned Grantor declares:

DOCUMENTARY TRANSFER TAX \$21,150.25 (Transfer Tax is being paid under protest)

- ☒ computed on full value of property conveyed, or  
☐ computed on full value less liens and encumbrances remaining at time of sale.  
☐ Unincorporated Area      ☒ City of Livermore

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC, a Delaware limited liability company formerly known as BTMU Capital Leasing & Finance, Inc., Delaware corporation by merger and name change ("Grantor"), hereby grants to LAM RESEARCH CORPORATION, a Delaware corporation ("Grantee") all of Grantor's right, title and interest in and to that certain real property located in the County of Alameda, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, as is, where is, with all faults, without covenants or warranties of title and without recourse, representation or warranty of any kind, other than with respect to liens, which result from any act or omission of Grantor that is in breach of its covenants or agreements under the documents listed in Schedule 1 attached hereto and incorporated herein by this reference.

***[SIGNATURE PAGE FOLLOWS]*****MAIL TAX STATEMENTS AS DIRECTED ABOVE**

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the date set forth below.

**GRANTOR:**

**MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC,**  
a Delaware limited liability company, formerly known as  
BTMU Capital Leasing & Finance, Inc., a Delaware corporation

By: [Signature]  
Name: Benjamin Clark  
Title: Vice President

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of New York )  
County of New York )

On September 20, 2023, before me, Natasha LeBlanc,  
Notary Public, personally appeared Benjamin Clark, who proved to me on the  
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New York  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]

(Seal)



## **EXHIBIT A TO GRANT DEED**

### **LEGAL DESCRIPTION**

Real property in the City of Livermore, County of Alameda, State of California, described as follows:

ALL OF PARCEL 7 AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON THE PARCEL MAP 7341 FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY IN BOOK 268 OF PARCEL MAPS AT PAGE 85, TOGETHER WITH A PORTION OF PARCEL 14 AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON THE MAP OF TRACT 7610 FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY IN BOOK 293 OF MAPS AT PAGE 14, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER COMMON TO SAID PARCEL 7 AND PARCEL 14;

THENCE ALONG THE BOUNDARY LINE OF SAID PARCEL 7 THE FOLLOWING TEN (10) COURSES

1. WESTERLY ALONG A NON-TANGENT 1278.00 FOOT RADIUS CURVE TO THE RIGHT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 05° 41' 02" EAST, THROUGH A CENTRAL ANGLE OF 3° 38' 58" AN ARC DISTANCE OF 81.402 FEET;
2. ALONG A REVERSE 1022.00 FOOT RADIUS CURVE TO THE LEFT FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 09° 20' 00" WEST, THROUGH A CENTRAL ANGLE OF 9° 20' 00" AN ARC DISTANCE OF 166.481 FEET;
3. WEST, 284.906 FEET;
4. NORTH, 666.259 FEET;
5. EASTERLY ALONG A NON-TANGENT 1452.00 FOOT RADIUS CURVE TO THE LEFT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 01° 01' 32" EAST, THROUGH A CENTRAL ANGLE OF 15° 46' 40" AN ARC DISTANCE OF 399.843 FEET;
6. ALONG A REVERSE 29.00 FOOT RADIUS CURVE TO THE RIGHT FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 14° 45' 08" EAST, THROUGH A CENTRAL ANGLE OF 36° 52' 16" AN ARC DISTANCE OF 18.662 FEET;
7. ALONG A REVERSE 21.00 FOOT RADIUS CURVE TO THE LEFT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 22° 07' 08" EAST, THROUGH A CENTRAL ANGLE OF 36° 52' 16" AN ARC DISTANCE OF 13.514 FEET;
8. NORTH 75° 14' 52" EAST, 30.267 FEET;
9. SOUTH 14° 45' 08" EAST, 77.744 FEET; AND
10. SOUTH, 2.171 FEET,

THENCE LEAVING SAID BOUNDARY LINE OF PARCEL 7, EAST, 26.510 FEET;

THENCE SOUTH, 22.517 FEET;

THENCE EAST, 17.000 FEET;

THENCE SOUTH, 130.001 FEET;

THENCE WEST 27.000 FEET;

THENCE SOUTH, 222.595 FEET;

THENCE EAST, 44.018 FEET;

THENCE SOUTH, 250.002 FEET;

THENCE WEST, 5.526 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL 7;

THENCE ALONG SAID EASTERLY LINE SOUTH, 41.262 FEET TO THE POINT OF  
BEGINNING.

## SCHEDULE 1 TO GRANT DEED

1. Each of the following, by and between MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC ("**MUFG LLC**"), as Lessor, and LAM RESEARCH CORPORATION ("**Lam**"), as Lessee: (i) the Second Amended and Restated Lease Agreement (Fremont 1), dated as of September 21, 2020, (ii) the Second Amended and Restated Lease Agreement (Fremont 3-E), dated as of September 21, 2020, (iii) the Second Amended and Restated Lease Agreement (Fremont 4), dated as of September 21, 2020, (iv) the Second Amended and Restated Lease Agreement (Port 1), dated as of September 21, 2020, and (v) the Second Amended and Restated Lease Agreement (Port 101), dated as of September 21, 2020;

2. The Participation Agreement, dated as of September 21, 2020, between MUFG LLC and Lam;

3. Each of the following (a) the Memorandum of Second Amended and Restated Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Fremont 1), dated as of September 21, 2020, by and among MUFG LLC, Lam and First American Title Insurance Company (as Deed of Trust Trustee) ("**First American**"), and recorded in the Official Records of Alameda County (the "**Alameda Records**") on September 23, 2020 as Instrument No 2020242954, (b) the Memorandum of Second Amended and Restated Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Fremont 3-E), dated as of September 21, 2020, by and among MUFG LLC, Lam and First American, and recorded in the Alameda Records on September 22, 2020 as Instrument No 2020240804, (c) the Memorandum of Second Amended and Restated Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Fremont 4), dated as of September 21, 2020, by and among MUFG LLC, Lam and First American, and recorded in the Alameda Records on September 22, 2020 as Instrument No 2020242264, (d) the Memorandum of Second Amended and Restated Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Port 1), dated as of September 21, 2020, by and among MUFG LLC, Lam and First American, and recorded in the Alameda Records on September 22, 2020 as Instrument No 2020240725, and (e) the Memorandum of Second Amended and Restated Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Port 101), by and among MUFG LLC, Lam and First American, and recorded in the Alameda Records on September 22, 2020 as Instrument No 202024225;

4. The Pledge Agreement (Fremont 1) between Lam and MUFG LLC, dated as of September 21, 2020, the Pledge Agreement (Fremont 3-E) between Lam and MUFG LLC, dated as of September 21, 2020, the Pledge Agreement (Fremont 4) between Lam and MUFG LLC, dated as of September 21, 2020, the Pledge Agreement (Port 1) between Lam and MUFG LLC, dated as of September 21, 2020, and the Pledge Agreement (Port 101) between Lam and MUFG LLC, dated as of September 21, 2020; and

5. The Deposit Agreement (Fremont 1) between MUFG Bank, Ltd. (the "**Bank**"), Lam and MUFG LLC, the Deposit Agreement (Fremont 3-E) between the Bank, Lam and MUFG LLC, the Deposit Agreement (Fremont 4) between the Bank, Lam and MUFG LLC, the

Deposit Agreement (Port 1) between the Bank, Lam and MUFG LLC, and the Deposit Agreement (Port 101) between the Bank, Lam and MUFG LLC.

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**PARTICIPATION AGREEMENT**

DATED AS OF SEPTEMBER 21, 2020

BETWEEN

**LAM RESEARCH CORPORATION,**  
AS LESSEE,

AND

**MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC,**  
AS LESSOR

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## PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT, dated as of September 21, 2020 (this “*Agreement*”), is made between LAM RESEARCH CORPORATION, a Delaware corporation, as Lessee (the “*Lessee*”), and MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC, a Delaware limited liability company, as Lessor (the “*Lessor*”).

### PRELIMINARY STATEMENT

A. The Lessee currently leases each Site and the Improvements from the Lessor (formerly known as BTMU Capital Leasing & Finance, Inc.).

B. The Lessee and the Lessor desire to (i) consolidate, renew, amend and restate Existing Lease Fremont 3 and Existing Lease Fremont 3E in order to continue to lease Site Fremont 3-E and Improvements thereon, (ii) renew, amend and restate each other Existing Lease in order to continue to lease each Site and Improvements thereon, and (iii) enter into the Overall Transaction.

C. Subject to the terms and conditions of this Agreement and the other Operative Documents, as of the Closing Date:

- (i) with respect to each Site, the Lessor and the Lessee will enter into a Lease pursuant to which the Lessor will lease each Site and the Improvements thereon to the Lessee; and
- (ii) the Lessee and the Lessor will enter into a Memorandum of Lease for each Site pursuant to which (x) notice of the leasing of such Site and the Improvements thereon to the Lessee will be publicized, (y) the Lessee will grant the Lessor a Lien on and a security interest in its interest in such Site and the Improvements thereon to secure its obligations under the Operative Documents, and (z) the Lessor will grant the Lessee a Lien on and a security interest in its interest in such Site and the Improvements thereon to secure its conveyance of such interests to Lessee under certain circumstances.

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

## ARTICLE I

### DEFINITIONS

**SECTION 1.1. Definitions.** Unless the context shall otherwise require, capitalized terms used and not defined herein shall have the meanings assigned thereto in the Common Definitions attached hereto as Appendix I for all purposes hereof.

**SECTION 1.2. Rules of Interpretation.** Except as otherwise expressly provided, the rules of interpretation set forth in the Common Definitions attached hereto as Appendix I shall apply to this Agreement and the other Operative Documents.

## ARTICLE II

### THE CREDITS

**SECTION 2.1. Equity Investment Commitments.**

Subject to the terms and conditions set forth herein, Lessor shall maintain outstanding the Equity Investment in Dollars, in immediately available funds, in an amount equal to its Commitment as set forth on Schedule I hereto. Amounts repaid or prepaid in respect of the Equity Investment may not be re-borrowed.

**SECTION 2.2. Equity Investment.**

(a) *Procedure for Investment.* With respect to the Closing Date for the renewal, consolidation, amendment and restatement of the Existing Leases with respect to the Improvements and the related Sites, subject to the terms and conditions of this Agreement, the Lessor agrees that it shall maintain outstanding its Equity Investment in an amount equal to the Commitment as set forth on Schedule I hereto.

(b) *Returns on and of Equity Investment.* Lessor shall be entitled to a return on the Equity Investment in the amount of Yield, which is payable in accordance with Section 2.4 hereof. With respect to the Leases, Lessor shall be entitled to a return of its Equity Investment outstanding, in full, allocated to such Lease together with (i) Yield accrued thereon to the date of return, and (ii) all other amounts then due and payable by Lessee hereunder or under the other Operative Documents (except under Other Lease Documents) to the Lessor, upon the first to occur of:

(i) purchase by Lessee of the respective Leased Property pursuant to Article XIII or Article XX of such Lease, such return to be due on the date specified in such provisions for payment with respect to such purchase; or

(ii) the Return Date.

(c) *Scheduled Return of Investment.* Except in the case of a required return described in Section 2.2(b) above or upon default, no return in respect of the Equity Investment

shall be due prior to the Final Maturity Date. On the Final Maturity Date, the Lessor shall be entitled to the aggregate unpaid Equity Investment as of such date.

***SECTION 2.3. Calculation of Basic Rent.***

With respect to each Lease, Basic Rent shall be payable from time to time on each Payment Date during the Base Term in an amount equal to all Yield then due on the outstanding Equity Investment.

***SECTION 2.4. Yield.***

(a) *Calculation of Yield.* During the Base Term under each Lease, the amount of the Equity Investment outstanding from time to time with respect to such Lease shall accrue Yield during each Payment Period at a rate *per annum* equal to the Yield Rate. Yield shall be payable in arrears on each Payment Date. For the avoidance of doubt, Yield shall accrue on the Equity Investment until paid in full and any amount of the Equity Investment outstanding after the Base Term Expiration Date shall accrue interest at the Overdue Rate for the period commencing on the Base Term Expiration Date and ending on the date of repayment thereof.

(b) *Overdue Rate.* If all or a portion of (i) any Equity Investment, (ii) any Yield payable on any Equity Investment, or (iii) any other amount payable to Lessor hereunder (whether in respect of yield, fees or other amounts) shall not be paid when due (whether at the stated maturity thereof, by acceleration or otherwise), then such overdue amount shall bear interest, payable on demand, at a rate *per annum* which is equal to the Overdue Rate. Without duplication of the foregoing, upon the occurrence and during the continuance of any Event of Default, the Equity Investment and, to the extent permitted by Applicable Law, Yield on the Equity Investment and interest on any other amounts owing hereunder or under the other Operative Documents shall bear interest, payable on demand, at a *per annum* rate of two percent (2%) greater than the rate which would otherwise be applicable. Such interest shall be added to and constitute Supplemental Rent, payable by Lessee.

***SECTION 2.5. Intentionally Omitted.***

***SECTION 2.6. Fees.***

(a) On the Closing Date, the Lessee shall pay to the Arranger an upfront fee (the “*Upfront Fee*”) as previously agreed to in the Fee Letter.

(b) On the Closing Date, Lessee shall pay for any and all Transaction Costs with respect to which invoices have been received at least five (5) Business Days prior to the Closing Date.

***SECTION 2.7. Computations.***

Yield on the Equity Investment and other accrued amounts under the Operative Documents shall be calculated on the basis of a 360-day year and twelve (12) thirty-day months. Each

determination of the Yield Rate by the Lessor pursuant to any provision of this Agreement or any other Operative Document shall be binding on Lessee in the absence of manifest error.

***SECTION 2.8. Intentionally Omitted.***

***SECTION 2.9. Change of Circumstances.***

(a) *Change of Law.* If on or after the date hereof, any Change of Law:

(i) shall subject the Lessor (or its applicable lending office) to any Tax with respect to its Equity Investment, or shall change the basis of taxation of payments to the Lessor (or its applicable lending office) of the principal of or yield on its obligations hereunder or any other amounts due under the Operative Documents in respect of its obligations hereunder or thereunder (except for (A) franchise taxes or Taxes related to the general authority of the Lessor or its applicable lending office to do business, (B) Taxes imposed other than by way of withholding from payments under this Agreement on the gross income of the Lessor or its applicable lending office, (C) Taxes imposed by the jurisdiction where the Lessor is incorporated (or any political subdivision thereof) or where it is managed or controlled or where its applicable lending office is located, (D) Taxes that would not have been imposed but for the failure to provide an IRS Form W-8BEN, W-8ECI or W-8IMY or such other certification that may reasonably be requested in order to avoid or eliminate any Taxes (or the withholding thereof), (E) withholding taxes imposed under the laws of any jurisdiction other than the United States or any State thereof, or (F) U.S. withholding Taxes imposed pursuant to FATCA); or

(ii) shall impose, modify or deem applicable any reserve (including, without limitation, any such requirement imposed by the F.R.S. Board), special deposit, insurance assessment or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Lessor (or its applicable lending office)

and the result of any of the foregoing is to increase the cost to the Lessor (or its applicable lending office) of making or maintaining any Equity Investment or to reduce the amount of any sum received or receivable by the Lessor (or its applicable lending office) under this Agreement or any Lease by an amount deemed by the Lessor to be material (provided, that any such determination by Lessor hereunder is made in good faith on a basis that is neither arbitrary nor capricious and shall be conclusive and binding on Lessee absent manifest error), then, within thirty (30) days after demand by the Lessor, the Lessee shall pay to the Lessor such additional amount or amounts as will compensate the Lessor for such increased cost or reduction.

(b) *Capital Requirements.* If the Lessor shall have determined, in good faith (which determination shall be made on a basis that is neither arbitrary nor capricious) that (i) any Change of Law affects the amount of capital required or expected to be maintained by the Lessor or its applicable lending office (a “***Capital Adequacy Requirement***”) and (ii) the result of the Capital Adequacy Requirement shall be to increase the cost to Lessor of making or maintaining any Equity Investment (taking into account the Lessor’s policies with respect to capital adequacy),

then from time to time, within fifteen (15) days after demand therefor by the Lessor, the Lessee shall pay to the Lessor such additional amount or amounts.

(c) *Notice.* Except as otherwise provided in this Section 2.9, the Lessor will notify the Lessee of any event occurring after the date of this Agreement that will entitle the Lessor to compensation pursuant to this Section 2.9 as promptly as is practicable; provided that Lessee is not required to compensate the Lessor under this Section 2.9 for any increased costs or reduction incurred more than one hundred eighty (180) days before the date Lessor first notifies Lessee of its intention to demand compensation under this Section 2.9; provided further that if the Change of Law that gives rise to such increased cost or reduction is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof. A certificate of the Lessor claiming compensation under this Section 2.9 and setting forth the additional amount or amounts to be paid to it hereunder, accompanied by a computation in reasonable detail of such amount or amounts, shall be conclusive absent manifest error. In determining such amount, the Lessor may use any reasonable averaging and attribution methods provided, that, such methods shall not be inconsistent with the methods used by the Lessor in calculating the reduction in return allocable to other similar loans, investments or commitments to other companies.

***SECTION 2.10. Intentionally Omitted.***

***SECTION 2.11. Intentionally Omitted.***

***SECTION 2.12. Nature of Transaction.***

It is the intention of the parties that:

(a) each Lease constitutes a finance lease from Lessor to Lessee for purposes of Lessee's financial reporting under GAAP; and

(b) for United States federal, state and local income tax, property tax, transfer tax, sales tax, franchise tax, general corporation tax and other similar taxes that may be imposed upon net or gross income, bankruptcy (including the substantive law upon which bankruptcy proceedings are based), real estate, commercial law and all other purposes:

(i) such Leases and the Overall Transaction constitute a financing by the Lessor to the Lessee, the obligations of the Lessee to pay Basic Rent shall be treated as payments of interest to the Lessor, and the payment by the Lessee of any amounts in respect of the Lease Balance shall be treated as payments of principal to the Lessor;

(ii) Lessee will not be entitled to, and shall not avail itself of, any of the rights or benefits accorded to a lessee under Applicable Law except as expressly permitted under the Leases and the Lessor will be deemed and will have the rights of a lender making secured loans to the Lessee secured by, among other things the Lessee Collateral; and

(iii) Lessee is and will be the owner of the Sites and the Improvements.



Nevertheless, the Lessee acknowledges and agrees that the Lessor has not made, in any capacity, any representations or warranties concerning the tax, accounting or legal consequences or characteristics of the Operative Documents or any aspect of the Overall Transaction and that the Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents and the Overall Transaction as it deems appropriate, provided, that the Lessee may rely on the representations and warranties contained in the Operative Documents and the legal opinions issued to it in connection therewith and to which it is an addressee. The Lessor acknowledges and agrees that the Lessee has not made any representations or warranties concerning the tax, accounting or legal consequences or characteristics of the Operative Documents or any aspect of the Overall Transaction and that the Lessor has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents and the Overall Transaction as it deems appropriate, provided, that the Lessor may rely on the representations and warranties contained in the Operative Documents and the legal opinions issued in connection therewith.

***SECTION 2.13. Amounts Due.***

(a) Anything else herein or elsewhere to the contrary notwithstanding, it is the intention of the Lessee and the Lessor that (i) during the Base Term, the amount and timing of installments of Basic Rent due and payable from time to time from the Lessee under each Lease shall be equal to the aggregate payments due and payable in respect of Yield accrued on the Equity Investment due on each Payment Date for such Lease; (ii) if the Lessee elects an Early Termination Option or a Purchase Option under a Lease, the Equity Investment, all Yield thereon, all Fees and Transaction Costs and all other obligations of the Lessee owing to the Lessor shall be paid in full by the Lessee in accordance with Article XX or Article XXI of such Lease, as applicable; (iii) if the Lessee properly elects a Return Option and remarkets a Leased Property in accordance with Article XXII of a Lease, in the absence of a Default or Event of Default thereunder, Lessee shall be required to pay the Sale Proceeds of the sale of such Leased Property (in an amount not to exceed the Lease Balance, any excess being payable to the Lessee, except in the case of application of Section 22.4 of such Lease), and if the Sale Proceeds are less than the related Lease Balance, the lesser of (x) the amount of such difference and (y) the Recourse Deficiency Amount, all in accordance with Article XXII of such Lease, and any amounts due pursuant to Article VII hereof and Section 22.3(a) of such Lease (which aggregate amounts may be less than the related Lease Balance); and (iv) upon a Default or Event of Default, the amounts then due and payable by the Lessee under the related Lease shall include all amounts necessary to pay in full the outstanding Equity Investment and all accrued Yield thereon, plus all other amounts then payable by the Lessee to the Lessor under Operative Documents.

(b) Lessee shall pay or repay the Equity Investment at such times and in such amounts as the Lease Balances becomes due and payable, which payment obligations shall be satisfied by and to the extent of any payment made by or on behalf of the Lessee pursuant to the Operative Documents of Rent, the Lease Balance or the Recourse Deficiency Amount, as the case may be.

## ARTICLE III

### CONDITIONS PRECEDENT

#### ***SECTION 3.1. Closing Date Conditions.***

The obligations of Lessor to lease the Leased Properties and maintain outstanding its Equity Investment, the consolidation, amendment and restatement of the Existing Leases and the effectiveness of this Agreement (the “***Closing***”) shall occur at the offices of Dechert LLP, One International Place, 100 Oliver Street, Boston, Massachusetts 02110, or at such other location as the as the Lessor and the Lessee may agree, at 10:00 a.m. on September 21, 2020 (the “***Closing Date***”) and shall be subject to the fulfillment to the satisfaction of, or waiver by, the Lessor (acting directly or through its counsel) on or, unless otherwise specified, prior to the Closing Date of the following conditions precedent:

(a) *Authorization, Execution and Delivery of Operative Documents.* The following documents shall have been duly authorized, executed and delivered by the Lessee, shall be in form and substance reasonably satisfactory to the Lessor and an executed counterpart of each thereof shall have been received by the Lessor:

- (i) this Agreement;
- (ii) each Lease;
- (iii) each Memorandum of Lease;
- (iv) each Pledge Agreement; and
- (v) each Deposit Agreement.

(b) *Legal Opinions.* Lessor shall have received the favorable opinion of Jones Day, special counsel to Lessee, dated the Closing Date and in form and substance reasonably satisfactory to Lessor.

(c) *Insurance.* Lessee shall have delivered the insurance certificates required by Section 11.2 of each Lease to the Lessor.

(d) *Governmental and Third Party Approvals.* All necessary or advisable Governmental Actions and all consents, approvals and authorizations of Persons other than Authorities, required in connection with the Overall Transaction, shall have been obtained or made and be in full force and effect and not be subject to any pending procedures or appeals, whether administrative, judicial or otherwise, except for any Governmental Action, consent, approval or authorization the failure to obtain which, or the appeal of or further procedures with respect to which, would not reasonably be expected to have a Material Adverse Effect.

(e) *Corporate Status and Proceedings.* The Lessor shall have received:

(i) a certificate of good standing with respect to Lessee from the State of Delaware and a satisfactory certificate of status with respect to Lessee from the State of California, each dated no earlier than the 30th day prior to the Closing Date; and

(ii) a certificate of the Secretary or Assistant Secretary (or other authorized representative) of the Lessee, in form and substance reasonably satisfactory to the Lessor and attaching and certifying as to (A) the directors' resolutions in respect of the execution, delivery and performance by the Lessee of each Operative Document to which it is or will be a party, (B) its certificate of incorporation and by-laws (or equivalent company documents), and (C) the incumbency and signatures of persons authorized to execute and deliver the Operative Documents on behalf of the Lessee.

(f) *Representations and Warranties.* Each representation and warranty of the Lessee contained herein or in any other Operative Document (or in certificates delivered pursuant thereto) shall be true and correct in all material respects on and as of the Closing Date.

(g) *Appraisal.* The Lessor shall have received a copy of an appraisal (the "*Appraisal*") from the Appraiser which shall establish (by the use of appraisal methods satisfactory to the Lessor) the Fair Market Value and the economic useful life of each Leased Property as of the Base Term Commencement Date and as of the Final Maturity Date.

(h) *Environmental Report.* The Lessor shall have received a copy of the "Phase I" environmental assessment (or its equivalent) of the Site by the Environmental Expert, and, if such assessment indicates any exceptions reasonably requiring remedy or further investigation, a further environmental assessment of the Site by such Environmental Expert satisfactory to the Lessor.

(i) *Survey.* Lessee shall have delivered, or shall have caused to be delivered, to the Lessor, at Lessee's expense, sufficient copies of an accurate as-built survey (x) prepared by Kier & Wright dated December 23, 2013 with respect to Site Port 1 and Site Port 101, and prepared by Ruggeri, Jensen, Azar, dated September 18, 2020, with respect to the Fremont Sites each prepared in accordance with the 2011/2016 (as applicable) Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys certified to the Lessor and showing no state of facts reasonably unsatisfactory to the Lessor and prepared within ninety (90) days of the Closing Date by a Person reasonably satisfactory to the Lessor. Such surveys shall (1) be acceptable to the Title Insurance Company, (2) show no encroachments on the related Leased Properties by structures owned by others, and no encroachments from any part of the related Leased Properties onto any land owned by others, and (3) disclose no state of facts reasonably objectionable to the Lessor or the Title Insurance Company, and be reasonably acceptable to each such Person.

(j) *No Material Adverse Effect.* Since June 30, 2019, there has been no Material Adverse Effect with respect to any Leased Property or in the financial position or operations of the Lessee and its Consolidated Subsidiaries, considered as a whole, in each case other than as disclosed in the Lessee's Form 10-Ks filed with the SEC after such date or its Current Reports on Form 8-K or Form 8-KA filed with the SEC after such date.

(k) *Fees, Transaction Costs and Taxes.* The Lessor shall have received payment of (i) all Fees agreed to by the Lessee in writing and due and payable to it on or prior to the Closing Date and (ii) all other Transaction Costs due and payable on or prior to the Closing Date that have been set forth in detailed invoices delivered to the Lessee at least five (5) Business Days prior to the Closing Date. All Taxes and filing fees and other charges payable on or prior to the Closing Date in connection with the execution, delivery, recording, filing and registration of the Operative Documents and the Overall Transaction shall have been paid in full or provisions for such payments shall have been made by Lessee to the reasonable satisfaction of the Lessor.

(l) *Title and Title Insurance.* On the Closing Date, for each Leased Property Lessor shall receive from the Title Insurance Company an alternative ALTA Loan Policy of Title Insurance (insuring the lien of the mortgage contained in the Memorandum of Lease) issued to Lessor and its successors and assigns 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, shall include coverage over the general exceptions to such policy and shall contain such affirmative endorsements as may be available under California law 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.

(m) *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 other than Liens released concurrently with the effectiveness of this Agreement on the Closing Date (regardless of whether senior, pari passu or junior) in effect with respect to any Lessee Collateral and UCC-1 financing statements covering such collateral shall have been prepared by the parties thereto and copies thereof delivered to Lessor, all of which shall be in form and substance reasonably acceptable to the Lessor.

(n) *Filings, Recordings and Other Actions.* Lessee shall have caused each Memorandum of Lease to have been duly recorded. Lessee and Lessor shall have executed and delivered all instruments and documents necessary for (i) the Lessor to obtain or maintain a Lien on the Lessee Collateral, and (ii) any of the Operative Documents to become effective or enforceable, in each case in accordance with Applicable Law. Lessee and Lessor shall cause all such instruments and documents to be filed and recorded in the Recorder’s Office or such governmental offices as is necessary to perfect or publish notice of such Liens in favor of the Lessor. The 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 each Memorandum of Lease and any UCC financing statements to be filed with the Secretary of State of Delaware (or other appropriate filing office).

(o) *No Default.* No Default or Event of Default exists under any Existing Lease and, immediately after giving effect to the transactions contemplated on the Closing Date, no Default or Event of Default shall occur and be continuing.

(p) *No Event of Loss, Event of Taking.* No Event of Loss or Event of Taking or other event of circumstance that, with the giving of notice or lapse of time or both, would constitute an Event of Loss or an Event of Taking shall have occurred with respect to any Leased Property.

(q) *Equity Investment Permitted by Applicable Law, etc.* The making of the Equity Investment by Lessor shall be permitted by Applicable Laws (including, without limitation, Regulations T, U and X of the F.R.S. Board) and shall not subject the Lessor to any Tax, penalty, liability or other onerous condition under or pursuant to any Applicable Law. If requested by the Lessor, Lessee shall deliver an Officer's Certificate certifying as to such matters of fact as it may reasonably specify to enable it to determine whether such making of the Equity Investment is so permitted.

(r) *Cash Collateral.* The Lessee has delivered or caused to be delivered to Lessor the Cash Collateral for deposit with the Deposit Taker, which may be an Affiliate of Lessor, pursuant to each Pledge Agreement and the Deposit Taker's Agreement as defined therein.

All documents and instruments required to be delivered on the Closing Date pursuant to the Operative Documents shall be delivered at the offices of Dechert LLP, One International Place, 100 Oliver Street, Boston, Massachusetts 02110, or at such other location as the Lessor and the Lessee may agree. The release by any party of its counterpart to this Agreement shall constitute conclusive evidence of its satisfaction with the form and substance of each of the items so delivered under this Section 3.1.

### ***SECTION 3.2. Condition to Lessee's Obligations on Closing Date.***

The obligations of Lessee to perform its obligations hereunder and under the other Operative Documents on the Closing Date shall be subject to the fulfillment or the satisfaction of, or the waiver in writing by, Lessee, of the following conditions precedent on or prior to the Closing Date:

(a) *Representations and Warranties.* On the Closing Date, the representations and warranties of the Lessor set forth in the Operative Documents (or in certificates delivered pursuant thereto) executed by it shall be true and correct in all respects as though made on and as of such date.

(b) *Equity Investment and Delivery of Documents.* The Lessor shall have maintained outstanding its Equity Investment and executed and delivered all documents and instruments, required to be made, executed or delivered by such party on or before the Closing Date pursuant to the Operative Documents and the transactions contemplated hereby and thereby.

(c) *Lessor Documents.* The Lessee shall have received:

(i) a certificate of good standing with respect to the Lessor from the State of Delaware, dated no earlier than the 30th day prior to the Closing Date; and

(ii) a certificate of the Secretary or Assistant Secretary (or other authorized representative) of the Lessor, in form and substance reasonably satisfactory to

the Lessee and attaching and certifying as to (A) the directors' resolutions in respect of the execution, delivery and performance by the Lessor of each Operative Document to which it is or will be a party, (B) its certificate of incorporation and by-laws and (C) the incumbency and signatures of persons authorized to execute and deliver the Operative Documents on behalf of the Lessor.

(d) *Lessor Representations.* The Lessee shall have received a confirmation letter from the Lessor providing information related to ASC 810 in the form approved by Lessee prior to the date hereof.

***SECTION 3.3. Intentionally Omitted.***

***SECTION 3.4. Maintenance of Equity Investment.***

Subject to the terms and conditions of this Agreement and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, on the Closing Date, the Lessor shall enter into the Overall Transaction and maintain outstanding the Equity Investment which shall be in an amount equal to the Commitment. No amounts paid or prepaid with respect to any amounts advanced or the Equity Investment may be readvanced.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES**

***SECTION 4.1. Representations and Warranties of Lessee.***

As of the Closing Date, Lessee makes the representations and warranties set forth in this Section 4.1 to Lessor:

(a) *Organization; Power; Qualification.* Lessee is duly organized as a corporation and is validly existing under the laws of the State of Delaware, has the power and authority to own its properties and to carry on its business as now being and hereafter proposed to be conducted and is duly qualified and authorized to do business in the State of California and each jurisdiction in which the character of its properties or the nature of its business requires such qualification and authorization, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) *Authorization of Operative Documents.* Lessee has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of each of the Operative Documents to which it is a party in accordance with its respective terms. Each of the Operative Documents to which the Lessee is a party has been duly executed and delivered by a duly authorized representative of the Lessee.

(c) *Dissolution or Winding Up.* The Lessee has not taken any action nor have any steps been taken or legal proceedings commenced or, to the Actual Knowledge of a Responsible Officer of the Lessee, threatened, against the Lessee for its dissolution, winding-up,

examination, administration, court protection or reorganization or for the appointment of a receiver, administrator, administrative receiver, examiner, trustee or similar official with respect to the Lessee or any substantial part of its assets or revenues. Prior to and after giving effect to the Overall Transaction, the Lessee is and will be Solvent.

(d) *Absence of Defaults, Loss, etc.* No event has occurred and is continuing which constitutes a Material Default, Event of Default, Event of Loss (unless the Lessee shall have elected to continue the Lease and reconstruct the affected Improvements in accordance with Section 13.1(b) of the Lease), Condemnation or Casualty; and there is no action pending or, to the best of its knowledge, threatened by an Authority to initiate a Condemnation or an Event of Taking.

(e) *Financial Information.*

(i) The audited consolidated balance sheet of the Lessee and its Consolidated Subsidiaries as of June 30, 2019 and the related consolidated statements of income, cash flows and changes in stockholders' equity for the fiscal year then ended, reported on by Ernst & Young LLP, a copy of which has been delivered to the Lessor, fairly present in all material respects, in conformity with generally accepted accounting principles, the consolidated financial position of Lessee and its Consolidated Subsidiaries as of such date and their consolidated results of operations, cash flows and changes in stockholders' equity for such fiscal year.

(ii) There has been no change since June 30, 2019, which has had or could be reasonably expected to have a Material Adverse Effect.

(f) *No Conflicts, etc.* The execution, delivery and performance by the Lessee of the Operative Documents to which it is a party and the transactions contemplated thereby do not and will not, by the passage of time, the giving of notice or otherwise, (i) violate any Applicable Law relating to the Lessee, (ii) conflict with, result in a breach of or constitute a default under the charter documents or resolutions of the Lessee, or any indenture or other material agreement or instrument to which the Lessee is a party, or any Governmental Action relating to the Lessee, except, in any case, as could not reasonably be expected to have a Material Adverse Effect, or (iii) result in or require the creation or imposition of any Lien upon or with respect to any Leased Property or any Site (except as contemplated by the Operative Documents) or any material Lien upon or with respect to any other property now owned or hereafter acquired by the Lessee.

(g) *Enforceability.* Each of the Operative Documents to which the Lessee is a party constitutes the legal, valid and binding obligation of the Lessee, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar debtor relief laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies.

(h) *Pari Passu.* The claims of the Lessor against the Lessee under the Operative Documents rank at least pari passu with the claims of all of Lessee's other unsecured creditors, except those whose claims are preferred solely by any laws of general application having effect in relation to bankruptcy, insolvency, liquidation or other similar events.

(i) *Investment Company Act, etc.* The Lessee is not and will not become, by reason of the Operative Documents or any business or transactions in which it participates voluntarily, (i) an “investment company” or a company “controlled” by an “investment company” (as each of the quoted term is defined or used in the Investment Company Act of 1940, as amended), or (ii) subject to regulation under the Federal Power Act or any foreign, federal or local statute or regulation limiting the Lessee’s ability to incur or guarantee indebtedness or obligations, or to pledge its assets to secure indebtedness or obligations, as contemplated by any of the Operative Documents.

(j) *Not a Foreign Person.* The Lessee is not a “foreign person” within the meaning of Sections 1445 and 7791 of the Code (*i.e.*, the Lessee is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(k) *Compliance with ERISA.* Except where instances of non-compliance, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) Lessee and each ERISA Affiliate has fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to each Plan and is in compliance in all material respects with the presently applicable provisions of ERISA and the Code with respect to each Plan and (ii) neither the Lessee nor any ERISA Affiliate has (A) sought a waiver of the minimum funding standard under Section 412 of the Code in respect of any Plan, (B) failed to make any contribution or payment to any Plan or Multiemployer Plan or made any amendment to any Plan which in either case has resulted or could result in the imposition of a Lien or the posting of a bond or other security under ERISA or the Code or (C) incurred any Withdrawal Liability or any liability under Title IV of ERISA other than a liability to the PBGC for premiums under Section 4007 of ERISA. Assuming that the source of funds for the Lessor does not include assets of any employee benefit plan (as defined in Section 3 of ERISA) or Plan other than an employee benefit plan or Plan exempt from the coverage of ERISA, Section 4975 of the Code and similar Laws; and the Lessor is not using, directly or indirectly, the assets of any Employee Benefit Plan that is subject to ERISA or Section 4975 of the Code or any similar provisions of Federal, state or local law or any regulations promulgated thereunder to make the Equity Investment, neither Lessee nor any ERISA Affiliate has engaged in a “prohibited transaction” (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to subject Lessee to the tax or penalties on prohibited transactions imposed by Section 4975 of the Code or Section 502 of ERISA and which would result in a Material Adverse Effect.

(l) *Labor.* Neither the Lessee nor any of its Subsidiaries has experienced strikes, labor disputes, slow downs or work stoppages due to labor disagreements that currently have or could reasonably be expected to have a Material Adverse Effect, and to the knowledge of the Lessee there are no such strikes, disputes, slow downs or work stoppages threatened against it or against any Subsidiary. The hours worked and any payments made to employees of the Lessee and its Subsidiaries have not been in violation in any material respect of the Fair Labor Standards Act or any other Applicable Laws dealing with such matters. All material payments due on



account of wages or employee health and welfare insurance and other benefits from the Lessee or from any Subsidiary have been paid or accrued as liabilities on its books.

(m) *Title to Properties Generally.* Except when the failure to do so does not have and could not reasonably be expected to have a Material Adverse Effect, the Lessee and its Subsidiaries have and will have and maintain good and indefeasible fee simple title to or valid leasehold interests in all of its real property and good title to or a valid leasehold interest in all of its other material assets, as such properties and assets are reflected in the most recent financial statements delivered to the Lessor, other than properties or assets disposed of in the ordinary course of business since such date.

(n) *No Approvals, etc.* The execution and delivery by the Lessee of any of the Operative Documents to which it is a party does not require the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Authority.

(o) *Litigation.* There is no action, proceeding or investigation pending or, to its knowledge, threatened against the Lessee which questions the validity of the Operative Documents, and there is no action, proceeding or investigation pending or, to its knowledge, threatened which is likely to result, either in any case or in the aggregate, in any Material Adverse Effect.

(p) *Compliance with Law; Governmental Approvals.* Other than with respect to environmental matters, which are treated exclusively in Section 4.1(q) hereof, (i) the Lessee has obtained or received all Governmental Action required by any Applicable Law with respect to the then current status of the Improvements and each Site, each of which is in full force and effect and not subject to any pending proceedings or appeals (administrative, judicial or otherwise), except for any other Governmental Action the failure to obtain which, or the appeal of or further procedures with respect to which, would not reasonably be expected to have a Material Adverse Effect, and (ii) the Lessee and each Leased Property are in compliance with each Governmental Action applicable to it and in compliance with all other Applicable Law relating to it in each case, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(q) *Environmental Matters.* Except as previously disclosed to Lessor in the Environmental Reports or as could not reasonably be expected to have a Material Adverse Effect:

(i) no Leased Property (including soils, surface waters and ground waters on, at or under the related Site or such structures) contains, nor is any Leased Property otherwise adversely affected by, and, to the Lessee's knowledge, no Leased Property has previously contained or been adversely affected by, any Hazardous Materials in amounts or concentrations which (A) constitute or constituted an Environmental Violation or (B) could give rise to any liability or obligation under applicable Environmental Laws;

(ii) each Leased Property and all operations conducted in connection therewith are in material compliance, and have been in material compliance, with all

applicable Environmental Laws, and there are no Hazardous Materials at, under or about any Site and there was and has been no Release of Hazardous Materials from, to, at, under or about any Site or from such operations of Improvements;

(iii) Lessee has obtained, is in compliance with, and has made all appropriate filings for issuance or renewal of, all Environmental Permits required for the then current status of any Leased Property and all such Environmental Permits are in full force and effect;

(iv) Lessee has not received any written notice of violation, alleged violation, noncompliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with respect to any Leased Property nor does the Lessee have knowledge or reason to believe that any such notice will be received or is being threatened; and

(v) no judicial proceedings or governmental or administrative action is pending, or, to the knowledge of the Lessee threatened, under any Environmental Law to which the Lessee has been or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to any Leased Property or operations of the Lessee with respect thereto.

(r) *Accuracy and Completeness of Information.* The written information, taken as a whole, furnished by or on behalf of the Lessee to the Lessor in connection with the negotiation of this Agreement and the other Operative Documents or delivered hereunder (as modified or supplemented by other information so furnished) does not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(s) *Subjection to Government Regulation.* To the Lessee's Actual Knowledge, the Lessor shall not be required to, solely by reason of entering into the Operative Documents or consummating any of the transactions contemplated thereby (other than upon the exercise by the Lessor of remedies under the Operative Documents), perform in its own capacity or on behalf of any other Person any obligations, instructions or other duties imposed by an Authority (except with respect to bank regulations and, if such Person shall have assumed operational control of any Leased Property, operating permit requirements for such Leased Property) as long as the Lessee is not in breach of any of the Operative Documents.

(t) *Private Offering.* The making of the Equity Investments and the interests in the Operative Documents under the circumstances contemplated hereby do not require the registration or qualification of such Equity Investments or interests under the Securities Act, any state securities laws or the Trust Indenture Act of 1939.

(u) *The Leased Properties and the Sites.*

(i) As of the Closing Date, the Lessee is not a party to any other contract or agreement to sell, transfer or, in any manner prohibited by the Operative Documents,

encumber any interest in the Leased Property or the Site in which it has an interest or any part thereof other than pursuant to the Operative Documents;

(ii) each Site is described on Schedule IV to this Agreement. Each Leased Property and any present use or construction and presently anticipated future use or construction thereof by the Lessee and its agents, assignees, employees, invitees, lessees, licensees and tenants comply with all Applicable Law (including planning, zoning and land use laws and Environmental Laws) and Insurance Requirements, except for such instances of non-compliance that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No notices, complaints or orders of violation or non-compliance or liability have been issued or, to the best of its knowledge, threatened by any Authority with respect to any Leased Property or Site or the present or intended future use of any Leased Property or Site except for such violations and instances of non-compliance as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and Lessee is not aware of any circumstances which could give rise to the issuance of any such notices, complaints or orders;

(iii) to the knowledge of Lessee, there is no action being taken by any Person with respect to any actual or pending Condemnation or Event of Taking, except as is being contested by Lessee in accordance with Section 13.6 of the Lease;

(iv) the structures constructed as part of the Leased Property are in such condition that such structures at all times meet the standards which, in the given circumstances, each of them may be expected to meet so as not to constitute a danger for persons or things; and

(v) the description of the Lessee Collateral sufficiently identifies such property to the extent required by Applicable Law in order to obtain a valid security interest therein.

(v) *Taxes.* On the Closing Date, to the Actual Knowledge of a Responsible Officer of the Lessee, the Lessor is not subject to any Taxes with respect to which the Lessee is obligated to indemnify the Lessor pursuant to Section 7.2(a)(ii) and no Indemnatee is subject to Withholding Taxes with respect to which the Lessee is obligated to indemnify such Indemnatee pursuant to Section 7.2(a)(iii), assuming that each Indemnatee complies with its obligations pursuant to Section 7.3.

(w) *Foreign Assets Control Regulations, etc.* The Lessee shall not use, and shall maintain in effect and enforce policies and procedures designed to reasonably ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of the Equity Investment (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(x) *Anti-Corruption Laws and Sanctions.* Lessee has implemented and maintains in effect policies and procedures designed to reasonably ensure compliance by the Lessee, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Lessee, its Subsidiaries and their respective officers and employees and to the knowledge of the Lessee its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Lessee, any Subsidiary or to the knowledge of the Lessee or such Subsidiary any of their respective directors, officers or employees, or (b) to the knowledge of the Lessee, any agent of the Lessee or any Subsidiary that will act in any capacity in connection with or benefit from the financing established hereby, is a Sanctioned Person. The use of the proceeds of the Equity Investment will not violate Anti-Corruption Laws or applicable Sanctions.

#### ***SECTION 4.2. Representations and Warranties of the Lessor.***

As of the Closing Date, the Lessor represents and warrants to Lessee as follows:

(a) *Due Organization, etc.* The Lessor is duly organized and validly existing under the laws of the State of Delaware and has the power and authority to enter into and perform its obligations as a Lessor under each Operative Document to which it is or is to be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Closing Date in connection with or as contemplated by each such Operative Document to which it is or is to be a party.

(b) *Due Authorization; Enforceability, etc.* This Agreement and each other Operative Document to which the Lessor is or will be a party have been or will be (to the extent it is to be a party thereto in its individual capacity) duly authorized, executed and delivered by or on behalf of the Lessor (in its individual capacity) and are, or upon execution and delivery will be, legal, valid and binding obligations of the Lessor, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.

(c) *ERISA.* It is making its Equity Investment with assets that are not assets of any Employee Benefit Plan (or its related trust) which is subject to Title I of ERISA or Section 4975 of the Code.

(d) *Lessor Liens.* The Leased Property is free and clear of all Lessor Liens attributable to it and no act or omission by it has occurred which would cause a Lessor Lien attributable to it.

(e) *Qualified Institutional Buyer.* It is an "Accredited Investor" as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act, and if applicable, its officers, employees, directors or equity owners are Accredited Investors; and is aware that the Equity Investment has not been registered under the Securities Act or qualified or registered under any state or other jurisdiction's securities laws. Neither it nor anyone authorized to act on its behalf has taken or will take any action which would subject the issuance or sale of the Equity Investment to the registration requirements of Section 5 of the Securities Act.

## ARTICLE V

### COVENANTS OF LESSEE

#### ***SECTION 5.1. Financial Reporting.***

*Information.* The Lessee will deliver to the Lessor:

(a) as soon as available and in any event within one hundred and twenty (120) days after the end of each fiscal year of the Lessee, an audited consolidated balance sheet of the Lessee and its Consolidated Subsidiaries as of the end of such fiscal year and the related consolidated statements of income, of cash flows and of changes in stockholders' equity for such fiscal year, setting forth in each case in comparative form the figures as of the end of and for the previous fiscal year, all in reasonable detail and reported on without qualification as to scope by Ernst & Young LLP or other independent public accountants of nationally recognized standing;

(b) as soon as available and in any event within sixty (60) days after the end of each of the first three quarters of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee and its Consolidated Subsidiaries as of the end of such quarter, and the related consolidated statements of income for such quarter and for the portion of the Lessee's fiscal year ended at the end of such quarter and the related consolidated statement of cash flows for the portion of the Lessee's fiscal year ended at the end of such quarter, setting forth in each case in comparative form the consolidated balance sheet as of the end of the previous fiscal year and the consolidated statements of income for the corresponding quarter and the corresponding portion of the Lessee's previous fiscal year, all certified (subject to normal year-end adjustments) as to fairness of presentation and consistency by the Financial Officer of the Lessee;

(c) simultaneously with the delivery of each set of financial statements referred to in Sections 5.1(a) and (b), a certificate of the Financial Officer of the Lessee stating whether there exists on the date of such certificate any Event of Default and, if any circumstance then exists, setting forth the details thereof and the action that the Lessee is taking or proposes to take with respect thereto;

(d) within five (5) Business Days after any Responsible Officer of the Lessee obtains Actual Knowledge of any Default or Event of Default, if such Default or Event of Default is then continuing, a certificate of the Financial Officer of the Lessee setting forth the details thereof and the action that the Lessee is taking or proposes to take with respect thereto;

(e) promptly after the sending or filing thereof, copies of all such financial statements, proxy statements, notices and reports which the Lessee or any Subsidiary sends to its public stockholders, and copies of all reports and registration statements (without exhibits) which the Lessee or any Subsidiary files with the Securities and Exchange Commission (or any governmental body or agency succeeding to the functions of the Securities and Exchange Commission) or any national securities exchange;

(f) promptly upon the filing thereof, copies of all registration statements (other than the exhibits thereto and any registration statements on Form S-8 or its equivalent), annual,

quarterly or monthly reports and any reports on Form 8-K (or any successor form) that the Lessee or any Consolidated Subsidiary shall have filed with the Securities and Exchange Commission;

(g) as soon as available and in any event within thirty (30) days after Lessee or any ERISA Affiliate (i) gives notice to the PBGC of any “reportable event” (as defined in Section 4043 of ERISA) with respect to any Plan which might constitute grounds for a termination of such Plan under Title IV of ERISA, or knows that the plan administrator of any Plan has given notice of any such reportable event, a copy of the notice of such reportable event given to the PBGC; (ii) receives notice of complete or partial withdrawal liability under Title IV of ERISA which liability exceeds \$50,000,000 or notice that any Multiemployer Plan is in reorganization, is insolvent or has been terminated, a copy of such notice; (iii) receives notice of demand for liability from the PBGC or notice from the PBGC under Title IV of ERISA of an intent to terminate, impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or appoint a trustee to administer, any Plan, a copy of such notice; (iv) applies for a waiver of the minimum funding standard under Section 412 of the Code, a copy of such application; (v) gives notice of intent to terminate any Plan under Section 4041(c) of ERISA, a copy of such notice and other information filed with the PBGC; or (vi) gives notice of withdrawal from any Plan pursuant to Section 4063 of ERISA, a copy of such notice;

(h) as soon as practicable after a Principal Officer of the Lessee obtains knowledge of the commencement of an action, suit or proceeding against the Lessee or any Subsidiary before any court or arbitrator or any governmental body, agency or official in which there is a reasonable likelihood of an adverse decision which could reasonably be expected to have a Material Adverse Effect or which in any manner questions the validity or enforceability of this Agreement or any of the transactions contemplated hereby, information as to the nature of such pending or threatened action, suit or proceeding; and

(i) from time to time such additional information regarding the business, properties, financial position, results of operations, or prospects of the Lessee or any Subsidiary as the Lessor may reasonably request; provided such information is in Lessee’s possession or obtainable using commercially reasonable efforts.

Documents required to be delivered pursuant to clauses (a) and (b) of this Section 5.1 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lessee posts such documents, or provides a link thereto, on the Lessee’s website, or (ii) on which such documents are filed for public availability on the SEC’s Electronic Data Gathering and Retrieval System.

## ***SECTION 5.2. Affirmative Covenants of Lessee.***

Lessee covenants and agrees with the Lessor that during the Lease Term, the Lessee shall comply with the following provisions of this Section 5.2:

(a) *Payment of Obligations.* The Lessee will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, at or before maturity, all of their respective material obligations and liabilities and all lawful taxes, assessments and governmental charges or levies upon it or its property or assets, except where the same may be diligently contested in good faith

by appropriate proceedings or where the failure to so pay and discharge could not be reasonably expected to have a Material Adverse Effect, and will maintain, and will cause each of its Subsidiaries to maintain, in accordance with GAAP as in effect from time to time, appropriate reserves for the accrual of any of the same.

(b) *Maintenance of Property; Insurance.*

(i) The Lessee will keep, and will cause each Subsidiary to keep, all material property useful and necessary in its business in good working order and condition, normal wear and tear excepted, except to the extent any such property is replaced or discarded in the ordinary course of Lessee's business.

(ii) The Lessee will, and will cause each of its Subsidiaries to, maintain (either in the name of the Lessee or in such Subsidiary's own name) with financially sound and responsible insurance companies, insurance on all their respective properties in at least such amounts and against at least such risks (and with such risk retention) as are usually maintained in the same general area by companies of established repute engaged in the same or a similar business; and will furnish to the Lessor upon request therefor information presented in reasonable detail as to the insurance so carried.

(c) *Inspection of Property, Books and Records.* The Lessee will keep, and will cause each of its Subsidiaries to keep, proper books of record and account in which full, true and correct entries, in all material respects, shall be made of all dealings and transactions in relation to its business and activities. Subject to Section 8.16 hereof and Article XV of the Lease, the Lessee will permit, and will cause each of its Subsidiaries to permit, representatives of the Lessor to visit and inspect any of their respective properties, to examine their respective corporate, financial and operating records and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, employees and independent public accountants (provided that the Lessee shall have the right to participate in any discussions with such accountants), all at such reasonable times and as often as may reasonably be desired, upon reasonable advance notice to the Lessee.

(d) *Maintenance of Existence, Rights, Etc.*

The Lessee will preserve, renew and keep in full force and effect its, and will cause each of its Subsidiaries to preserve, renew and keep in full force and effect their respective, corporate or partnership existence and its and their respective rights, privileges and franchises necessary or desirable in the normal conduct of business, except when failure to do so could not be reasonably expected to have a Material Adverse Effect; provided that nothing in this Section 5.2(d) shall prohibit (i) a transaction permitted under Section 5.3 or (ii) the termination of the corporate or partnership existence of any Subsidiary if the Lessee in good faith determines that such termination is in the best interest of the Lessee and could not be reasonably expected to have a Material Adverse Effect.

(e) *Intentionally Omitted.*

(f) *Compliance with Laws.* The Lessee will comply, and cause each of its Subsidiaries to comply, in all material respects with all requirements of Applicable Law (including ERISA, Environmental Laws and the rules and regulations thereunder), except where failure to so comply could not be reasonably expected to have a Material Adverse Effect. Lessee shall promptly notify the Lessor should it or any of its Subsidiaries be named on the SDNL and shall promptly take efforts to cause such entity to be removed from such list.

(g) *Further Assurances.* The Lessee will, upon the request of the Lessor, (i) execute, acknowledge, deliver and record or file such further instruments and do such further acts as may be reasonably necessary to carry out more effectively the purposes of the Operative Documents and to subject to any of the Operative Documents any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to any Leased Property; (ii) execute, acknowledge, deliver, procure and record or file any document or instrument reasonably requested by the Lessor to protect its rights in and to any Leased Property against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be reasonably necessary to enable the Lessor to comply with the requirements or requests of any agency or authority having jurisdiction over it; provided none of the foregoing expose the Lessee to increased liability under the Operative Documents.

(h) *Estoppels.* Upon request by the Lessor, not more than one time per calendar quarter (except following an election of a Return Option with respect to a Leased Property in which event there shall be no limitation), a statement in writing certifying that the Operative Documents are unmodified and in full effect (or, if there have been modifications, that the Operative Documents are in full effect as modified, and setting forth such modifications) and either stating that (to the best knowledge of the Lessee) no default exists under the Operative Documents or specifying each such default; it being intended that any such statement by the Lessee may be relied upon by any prospective purchaser or mortgagee of any Leased Property or any Person who may become the Lessor; and

(i) *USA PATRIOT Act.* The Lessee acknowledges that the Lessor may be required, pursuant to the USA PATRIOT Act, to obtain, verify, record and disclose to law enforcement authorities information that identifies the Lessee, including the name and address of the Lessee. The Lessee will provide to the Lessor any such information they may request pursuant to the USA PATRIOT Act, and the Lessee agrees that the Lessor may disclose such information to law enforcement authorities if the authorities make a request or demand for disclosure pursuant to the USA PATRIOT Act. The Lessee also acknowledges that, in such event the Lessor may not be required or even permitted by the USA PATRIOT Act to notify the Lessee of the request or demand for disclosure.

### ***SECTION 5.3. Negative Covenants of the Lessee.***

Lessee covenants and agrees with the Lessor that during the Lease Term, the Lessee shall not, without the prior written consent of the Lessor, do or permit any of its Subsidiaries to do any of the following:



(a) *Merger and Consolidation.* Merge with or into or consolidate with or into another Person, except that, subject to any other applicable restrictions in the Operative Documents (including restrictions against sales or transfers of a Leased Property):

(i) any Subsidiary may merge or consolidate with any other Subsidiary or with any other Person that becomes a Subsidiary as a result of such transaction, and any Subsidiary may merge into the Lessee; and

(ii) the Lessee or any Subsidiary may merge or consolidate with any other Solvent corporation, if:

(1) after giving effect to and immediately following such merger or consolidation, no Default or Event of Default occurs or is continuing;

(2) the surviving corporation, if a corporation other than Lessee or such Subsidiary, as applicable, is not a Prohibited Person;

(3) if such merger is with the Lessee, the surviving corporation, if a corporation other than Lessee, assumes the obligations of Lessee hereunder; and

(4) after giving effect to and immediately following such merger or consolidation, the Lessor retains all of its interests in and benefits of the Cash Collateral and receives prior certification thereof from the Lessee and such other evidence thereof as the Lessor may reasonably request.

(b) *Change in Nature of Business.* Make or do anything that would result in a material change in the nature of the business of the Lessee and its Subsidiaries, taken as whole, as carried on at the Closing Date by the original Lessee.

(c) *Sales, Etc. of Assets.* Sell, lease, transfer or otherwise dispose of all or substantially all of its assets (in a single transaction or series of related transactions), except that, subject to any other applicable restrictions in the Operative Documents:

(i) any Subsidiary may sell, lease, transfer or otherwise dispose of any of its assets to the Lessee or to another Subsidiary; and

(ii) any Subsidiary may sell or otherwise dispose of all or substantially all of its assets if:

(1) after giving effect to the sale or other disposition, the financial condition of the Lessee and its Subsidiaries, taken as a whole, is not materially impaired;

(2) after giving effect to and immediately following such sale or other disposition, no Default or Event of Default occurs or is continuing; and

(3) after giving effect to and immediately following such sale or other disposition, the Lessor retains all of its interests in and benefits of the Cash Collateral and receives prior certification thereof from the Lessee and such other evidence thereof as the Lessor may reasonably request.

(d) *Use of Proceeds.* Use any part of the proceeds of the Equity Investment, whether directly or indirectly, in a manner that violates Regulation U or X of the F.R.S. Board. The Lessee will not permit more than 25% of the consolidated assets of the Lessee and its Consolidated Subsidiaries to consist of “margin stock,” as such term is defined in Regulation U of the F.R.S. Board.

(e) *Transactions with Affiliates.* Enter into any transaction of any kind with any Affiliate of the Lessee, other than upon fair and reasonable terms as could reasonably be obtained in an arm’s-length transaction with a Person that is not an Affiliate in accordance with prevailing industry customs and practices; provided the foregoing shall not apply between and among Lessee and its Subsidiaries.

(f) *Prohibited ERISA Transaction.* Enter into any transaction which would cause any of the Operative Documents or any related documents executed or accepted by the Lessor (or any exercise of the Lessor rights hereunder or thereunder) to constitute a non-exempt prohibited transaction under ERISA (a “**Prohibited ERISA Transaction**”); provided, that it shall not constitute a breach of this Section 5.3(f) if a Prohibited ERISA Transaction occurs by reason of any of the funds used by the Lessor in connection with any of the transactions under the Operative Documents constituting assets of a “benefit plan investor” as defined in 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA.

#### ***SECTION 5.4. Covenants Related to Leased Property, Overall Transaction.***

(a) *Investigation and Litigation.* Lessee shall deliver a written notice to the Lessor promptly upon the Lessee’s receiving notice, or upon the Lessee’s obtaining Actual Knowledge, of the intent by an Authority to (i) take an action which would constitute a Condemnation or Event of Taking, (ii) investigate the Leased Property or the Site or other land on which any portion of the Leased Property has been constructed for a material violation of any Applicable Law (including any Environmental Law) on or in respect of the Improvements or any portion thereof, or (iii) investigate the Leased Property or the Site or other land on which any portion of the Leased Property has been constructed (other than routine fire, occupational health and safety and similar inspections) for any violation of Applicable Law under which civil liability in excess of \$25,000,000 or criminal liability may be incurred or imposed upon the Lessor or the Lessee.

(b) *Notices.* The Lessee shall provide prompt (but in no event later than ten (10) Business Days after the Lessee obtains Actual Knowledge thereof) telephonic (confirmed in writing) or written notice of:

(i) the commencement of all proceedings and investigations by or before any Authority and all actions and proceedings in any court or before any arbitrator against or involving the Lessee or any of the Leased Property or the Site or other land on

which any portion of the Leased Property has been constructed (A) which in the reasonable judgment of the Lessee could reasonably be expected to have a Material Adverse Effect or (B) with respect to any Operative Document; and

(ii) the occurrence of any event which constitutes, or which could reasonably be expected to result in an Event of Default or an Event of Loss.

(c) *Securities.* Lessee shall not, nor shall it permit anyone (other than the Lessor) authorized to act on its behalf to, take any action which would subject the issuance or sale of the Equity Investment, the Leased Property or the Operative Documents, or any security or lease the offering of which, for purposes of the Securities Act or any state securities laws would be deemed to be part of the same offering as the offering of the aforementioned items, to the registration requirements of Section 5 of the Securities Act or any state securities laws.

## ARTICLE VI

### OTHER COVENANTS; ASSIGNMENTS

#### ***SECTION 6.1. Cooperation with Lessee.***

The Lessor shall, to the extent reasonably requested by the Lessee (but without assuming additional liability on account thereof), as a Transaction Cost, and at the Lessee's expense thereafter, cooperate to allow the Lessee to further the Lessee's requirements as lessee of each Leased Property including to file any statement with respect to any tax abatements or other requirements; provided none of the foregoing expose the Lessor to increased liability under the Operative Documents.

#### ***SECTION 6.2. Covenants of the Lessor.***

(a) *Discharge of Liens.* The Lessor will not create or permit to exist at any time, and will promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens attributable to it and will cause restitution to be made to the Lessee (as its interests may appear) in the amount of any diminution of the value of the affected Leased Property as a result of its failure to comply with its obligations under this Section 6.2(a). Notwithstanding the foregoing, the Lessor shall not be required to so discharge any such Lessor Lien while the same is being contested by a Permitted Contest, made in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any meaningful danger of the sale, forfeiture, loss or diminution in value of, and shall not interfere with the use, operation or disposition of, any part of the affected Leased Property, any Lease or title thereto or any interest therein or the payment of Rent payable under any Lease; provided, however, that the Lessor shall discharge any such Lessor Lien attributable to it, whether or not subject to contest as provided above, upon the purchase of such Leased Property by the Lessee pursuant to the related Lease or a sale of such Leased Property pursuant to the Return Option.

(b) *Change of Information.* Lessor shall give prompt notice to the Lessee if any facts regarding it shall change where such change might reasonably affect its interests in any Leased Property.

(c) *Depreciation.* Prior to the termination of any Lease, the Lessor shall not claim any United States federal, state, or local tax attributes or benefits as the owner for tax purposes (including depreciation) relating to such Leased Property unless required to do so by an appropriate taxing Authority or after a clearly applicable change in Applicable Law or as a protective response to a proposed adjustment by an Authority; provided, however, that if an appropriate taxing authority shall require the Lessor to claim any such United States federal, state, or local tax attributes or benefits, such Person shall promptly notify the Lessee thereof and shall permit the Lessee to contest such requirement in a manner similar to the contest rights provided in, and subject to any applicable limitation to a contest contained in, Section 7.2(b) hereof.

(d) *Quiet Possession.* If and so long as no Event of Default shall have occurred and be continuing, the Lessor agrees that it shall not interfere with the Lessee's right to the use, possession and quiet enjoyment of the Leased Property and the Site according to the terms hereof and of the other Operative Documents.

(e) *Insurance Covenants.* The Lessor hereby accepts all covenants between the Lessee and each insurer made in accordance with the terms of the Operative Documents for their respective benefit, including, but not limited to, the naming of the Lessor as an additional insured or as loss payee, as the case may be.

(f) *Further Assurances.* Upon the written request of Lessee delivered at least thirty (30) days prior to the date specified in such request for a restructuring of the Overall Transaction, as a result of a change or proposed change in the applicable accounting rules, the Lessor agrees to cooperate with the reasonable requests of Lessee promptly and in good faith to negotiate with a view toward causing a restructuring of the obligations represented by the Lease and the other Operative Documents, provided Lessee shall reimburse the Lessor for its out-of-pocket expenses incurred in connection with any such written request including the reasonable and properly documented fees and expenses of its legal counsel. In the event any such restructuring involves a change in the nature and scope of the Lessor's obligations under the Operative Documents and does not involve a transfer by the Lessor of its interest in any Improvements or any Site, the Lessee and the Lessor shall agree upon a reasonable and appropriate amount to be paid to the Lessor as reimbursement for reasonable, out-of-pocket personnel expenses incurred by the Lessor in such restructuring. Notwithstanding any of the foregoing negotiations, neither Lessor nor Lessee shall be obligated to restructure the transaction.

(g) *Lessor Confirmation Letter.* Upon the written request of Lessee, which request may not be made more than one time in each calendar quarter, the Lessor shall deliver to the Lessee a lessor confirmation letter, in the form approved by Lessee prior to the date thereof, providing information related to ASC 810.

### ***SECTION 6.3. Assignments.***

(a) *Restrictions on Transfers.* Except by a Permitted Transfer, Lessor will not assign, transfer, mortgage, pledge, encumber or hypothecate the Leases or the other Operative Documents or any interest of Lessor in and to the Leased Property during the Lease Term without the prior consent of Lessee, which consent Lessee may withhold in its sole discretion.

(b) *Effect of Permitted Transfer or other Assignment by Lessor.* If by a Permitted Transfer Lessor sells or otherwise transfers any portion of the Leased Property and assigns to the transferee all of Lessor's rights under the Leases and under the other Operative Documents, and if the transferee expressly assumes all of Lessor's obligations under the Leases and under the other Operative Documents, then Lessor will thereby be released from any obligations arising after such assumption under the Leases or under the other Operative Documents, and Lessee must look solely to each successor in interest of Lessor for performance of such obligations.

(c) *Exceptions to Restrictions.* Notwithstanding anything to the contrary contained in this Section 6.3, when an Event of Default has occurred and is continuing, no consent of the Lessee shall be required in respect of an assignment by the Lessor of all or any part of its rights and obligations under or with respect to the Leases and the other Operative Documents to any third party (whether or not a Permitted Transfer), provided, that unless (i) an Event of Default described in clause (h) or (i) of the definition thereof shall have occurred and be continuing, (ii) the Lease Balance shall have been accelerated in accordance with the Lease, or (iii) an Event of Default shall have occurred and be continuing at the Final Maturity Date, in each case under any Lease, Lessor shall not make such an assignment to a Person who fails to deliver not less than ten (10) days prior to such assignment a letter to Lessee covering the substance required by Section 3.2(d) hereof.

#### ***SECTION 6.4. Participations.***

The Lessor may sell, transfer or assign a participation in all or a portion of the interests represented by its Equity Investment or any right to payment thereunder (each such sale, transfer or assignment of a participation in such interests or rights, a "***Participation***"), to any Person (a "***Participation Holder***") upon prior notice to the Lessee. In the event of any such sale by the Lessor of a Participation to a Participation Holder, the obligations of Lessor under this Agreement and under the other Operative Documents shall remain unchanged, Lessor shall remain solely responsible for the performance thereof, Lessor shall remain the holder of the Equity Investment for all purposes under this Agreement and under the other Operative Documents and the Lessee shall continue to deal solely and directly with the Lessor in connection with Lessor's rights and obligations under this Agreement and the other Operative Documents. Any agreement pursuant to which the Lessor may grant such a Participation shall provide that Lessor shall retain the sole right and responsibility to enforce the obligations of the Lessee under the Operative Documents including, without limitation, the right to approve any amendment, modification or waiver of any provision of the Operative Documents; provided, that such agreement may require Lessor to obtain the consent of the Participation Holder party thereto before Lessor enters into or approves any amendment, modification or waiver of any provision of any Operative Document that, among other things, (i) extends any date upon which any payment of money is due to the Lessor, (ii) reduces the Yield on the Equity Investment, any fee or any other payment obligation under the Operative Documents, (iii) releases any party from any payment obligations, or (iv) releases any interest of the Lessor in any Leased Property (except as otherwise expressly provided for in any Operative Document). If the Lessor sells, transfers or assigns a Participation pursuant hereto, the Lessor hereby agrees to indemnify, protect, defend and hold harmless the Lessee, on a Grossed-Up Basis, against any United States federal or state Withholding Tax which may arise from its Participation,

except to the extent such Withholding Tax is imposed on the Lessee as a result of the fraud, gross negligence or willful misconduct of the Lessee. Any such Participation shall be at no cost to the Lessee.

## **ARTICLE VII**

### **INDEMNIFICATION AND ADDITIONAL PAYMENTS**

#### ***SECTION 7.1. General Indemnification.***

(a) Subject to clauses (b) and (f) below, the Lessee will indemnify, defend and hold each Indemnatee harmless, on a Grossed-Up Basis, from and against any and all Claims (which may include the outstanding Lease Balance or any portion thereof subject to any limitations set forth in the Operative Documents, including, without limitation, payments limited to the applicable Recourse Deficiency Amount) that directly or indirectly relate to, result from or arise out of or are alleged to relate to, result from or arise out of any of the following (whether or not any such Indemnatee is indemnified as to such matter by any other Person and whether or not such Claim arises or accrues prior to the Closing Date or after the Lease Expiration Date):

(i) each Leased Property, each Site, the Lessee Collateral or, in each case, any part thereof;

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

(iii) the regulation of the ownership, construction, installation, leasing, use or operation of each Leased Property, each Site or any part thereof, but only to the extent that the Indemnatee is subjected to such regulation as a result of its being a party to or beneficiary of the Operative Documents or its involvement in the transactions contemplated in the Operative Documents;

(iv) the offer, financing, refinancing, inspection, mortgaging, pledging, granting of a security interest in, design, manufacture, construction, purchase, ownership, acquisition, acceptance, rejection, delivery, nondelivery, redelivery, possession, transportation, lease, sublease, installation, condition, transfer of title or other ownership interest, rental, use, operation, storage, maintenance, modification, alteration, repair, assembly, sale, return, abandonment or other application or disposition of all or any part of each Leased Property or any product produced therewith, each Site or any interest therein or improvements thereto or the failure to perform or accomplish any of the foregoing in accordance with the requirements of the Operative Documents, other agreements governing such matters or Applicable Laws or Regulations including, without limitation, Claims or penalties arising from any violation of law or in tort (strict liability or otherwise), latent or other defects, whether or not discoverable, 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 a Leased Property or a Site, the making of any Alterations in violation of any standards imposed by any insurance policies required to be maintained by

the Lessee pursuant to the Lease which policies are in effect at any time with respect to a Leased Property or any part thereof, any Claim for patent, trademark or copyright infringement, and Claims arising from any public improvements with respect to a Leased Property or a Site resulting in any change or special assessments being levied against such Leased Property or such Site or any plans to modify, widen or realign any street or highway adjacent to any Leased Property or any Claim for utility "tap-in" fees;

(v) a breach by the Lessee of any of its covenants under any Operative Document, or a misrepresentation by the Lessee (including any omission by Lessee that makes any representation made by Lessee materially misleading) in any Operative Document or in any certificate or other document delivered by the Lessee to the Lessor pursuant to any Operative Document, or the occurrence of any Default or Event of Default, or the material inaccuracy of any information provided by any such party to any third party in connection with the preparation by such third party of a report or other document required to be delivered pursuant to any Operative Document;

(vi) the existence of any Lien on or with respect to any Leased Property, any Site, title thereto, any interest therein or any Basic Rent or Supplemental Rent, including any Liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of any Leased Property or any Site or by reason of labor or materials furnished or claimed to have been furnished to the Lessee, or any of its contractors or agents or by reason of the financing of any personality or equipment purchased or leased by the Lessee or Alterations constructed by the Lessee, except Liens in favor of the Lessee or the Lessor, but expressly excluding any Lessor Liens; and

(vii) any Environmental Claim.

Lessee shall be entitled to credit against any payments due to an Indemnitee under this Section 7.1 both (x) any insurance recoveries received by such Indemnitee in respect of the matters described herein under or from insurance paid for by any Person other than the Indemnitee or an Affiliate thereof or assigned to the Lessor by the Lessee and (y) any other indemnity amount received by such Indemnitee in respect of such matters from a Person (other than the Lessor) unrelated to such Indemnitee.

(b) *Exclusions.* The provisions of Section 7.1(a) shall not apply to any Claim:

(i) with respect to the Indemnities, to the extent attributable to the willful misconduct or gross negligence of, or negligence in the handling of funds by, such Indemnitee, its officers, agents, employees and Affiliates or the breach in any material respect of any representation made by any Indemnitee under the Operative Documents;

(ii) to the extent attributable to acts or events that occur after the commencement of day to day operation of any Improvements by the Lessor or any Person designated by the Lessor following an Event of Default or the return of a Leased Property pursuant to the Return Option as such Claim relates to such Improvements or Leased Property (except (A) to the extent fairly attributable to circumstances existing or acts, events, liabilities or damages occurring or accruing prior to such day to day operation, or

(B) to the extent relating to the acts or omissions of the Lessee or any other LAM Person in relation to, or liabilities arising out of, the location, structure, installation, putting into service, operation, repair, servicing, maintenance, replacement or dismantling of such Improvements or remaining on or the entering onto such Site or such Improvements by any such Person); or

(iii) in respect of Taxes, which are governed by Section 7.2, other than a payment necessary to make payments under this Section 7.1 on a Grossed-Up Basis.

(c) *Contests.* In respect of the indemnification provided under Section 7.1(a), promptly after receipt by an Indemnatee of notice of any pending or threatened Claim, such Indemnatee shall, if a claim for indemnification in respect thereof is to be made against the Lessee, give notice thereof to the Lessee. So long as no Event of Default is continuing, the Lessee, at its own expense, may elect to assume the defense of any such Claim through its own counsel, which shall be subject to the reasonable approval of the Indemnatee, on behalf of the Indemnatee (with full right of subrogation to the Indemnatee's rights and defenses). Lessee must indicate its election to assume such defense by written notice to the Indemnatee within thirty (30) days following receipt of Indemnatee's notice of the Claim, or in the case of a third- party claim which requires a shorter time for response then within such shorter period as specified in the Indemnatee's notice of Claim; provided that such Indemnatee has given the Lessee notice thereof. If the Lessee denies liability or fails to respond to the notice within the time period set forth above, the Indemnatee may defend or compromise the Claim as it deems appropriate without prejudice to any of Indemnatee's rights hereunder. If the Lessee shall have elected to assume the defense of any such Claim, then upon the request of the Lessee, the Indemnatee requesting payment of indemnity under Section 7.1(a) shall promptly furnish the Lessee with copies of any records or documents pertaining to the matter to be indemnified and, to the extent known by such Indemnatee, a reasonably detailed explanation of the circumstances giving rise to the claim of indemnification and the determination of the amount of the requested indemnity payment. Upon payment in full to Indemnatee of any indemnity pursuant to Section 7.1(a), the Lessee shall be subrogated to any right of Indemnatee in respect of the matter against which such indemnity has been paid. If the Lessee shall have elected to assume the defense of any such Claim, upon the written request at any time and from time to time of the Lessee, Indemnatee shall, at the expense of the Lessee, take such reasonable actions and execute such documents as are necessary or reasonably appropriate to assist the Lessee in the preservation and enforcement against third parties of the Lessee's right of subrogation hereunder. The Indemnatee may employ separate counsel in any such Claim and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnatee unless the Indemnatee and the Lessee shall have been advised by counsel that there exists an irresolvable conflict of interest in such counsel's representation of the Indemnatee and the Lessee in which case the fees and expenses of such separate counsel shall be for the account of the Lessee. All reasonable out-of-pocket fees and expenses shall be paid periodically as incurred. So long as no Event of Default shall have occurred and be continuing, the Lessee shall not be liable for any settlement of any such Claim effected without its consent unless the Lessee shall fail to, or elect in writing not to, assume the defense thereof in which case the Indemnatee, without waiving any rights to indemnification hereunder, may defend such Claim and enter into any good faith settlement thereof without the prior written consent of the Lessee. Lessee shall not, without the prior written consent (not to be unreasonably withheld) of the Indemnatee, effect any settlement of



any such Claim unless such settlement includes an unconditional release of the Indemnatee from all liabilities that are the subject of such Claim. The parties agree to cooperate in any defense or settlement of any such Claim and to give each other reasonable access to all information relevant thereto subject to appropriate confidentiality agreements. The parties will similarly cooperate in the prosecution of any claim or lawsuit against any third party.

(d) *Subrogation.* Upon the indefeasible payment in full of any Claim pursuant to this Section 7.1, the Lessee, without any further action, shall be subrogated to any claims the Indemnatee may have relating thereto. The Indemnatee agrees, at the Lessee's expense, to give such further assurances or agreements and to cooperate with the Lessee to permit the Lessee to pursue such claims, if any, to the extent reasonably requested by the Lessee. If the Lessee shall have paid an amount to or for an Indemnatee pursuant to this Section 7.1, and such Indemnatee subsequently shall be reimbursed in respect of such indemnified amount from any other Person, such Indemnatee shall promptly pay the Lessee, but not before the Lessee shall have made all payments then due to such Indemnatee pursuant to this Section 7.1 and any other payments then due hereunder and under any other Operative Document, the amount of such reimbursement, including interest actually received attributable thereto, net of Taxes required to be paid by such Indemnatee as a result of any refund received, after giving effect to such payment to the Lessee.

(e) *Not Residual Guaranty.* Nothing in this Section 7.1 shall be construed as a guaranty of residual value of any Leased Property.

## ***SECTION 7.2. General Tax Indemnity.***

(a) (i) *Tax Indemnity.* Lessee shall pay on a Grossed-up Basis, and on written demand shall indemnify and hold each Indemnatee at all times harmless from and against, any and all Taxes actually imposed on, or borne by, such Indemnatee, on or with respect to any Indemnatee, each Leased Property or the Lessee or any sublessee or user of any Leased Property by any taxing Authority, in connection with or in any way relating to: (A) the acquisition, design, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, purchase, ownership, possession, rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition, substitution, storage, transfer of title, redelivery, use, financing, refinancing, operation, condition, repurchase, sale, return or other application or disposition of all or any part of each Leased Property or the imposition of any Lien (or incurrence of any liability to refund or pay over any amount as a result of any Lien) thereon; (B) the payment of Basic Rent or Supplemental Rent or the receipts or earnings arising from or received with respect to each Leased Property or any part thereof, or any interest therein; (C) the payment of any other amount pursuant to the Equity Investment or any other Operative Documents; (D) each Leased Property or any part thereof or any interest therein or the property or the income or other proceeds with respect thereto; (E) the execution, delivery, filing, registration or recording of any of the Operative Documents and any amendments and supplements thereto; and (F) otherwise with respect to or in connection with the transactions contemplated by the Operative Documents or the enforcement thereof;

provided, however, that the indemnification obligation of this Section 7.2(a)(i) shall not apply to:

(1) Taxes (other than Taxes that are sales, use, rental, value added, real estate transfer or similar Taxes that are not substitutes for income taxes) based upon or measured by the Indemnatee's gross or net income, gross or net receipts or that are in the nature of, or are imposed with respect to, capital, net worth, excess profits, accumulated earnings capital gains, franchise or conduct of business of such Indemnatee, except in the case of gross or net income Taxes, to the extent necessary so that payments under this Section 7.2 are made to an Indemnatee on a Grossed-Up Basis within the meaning of Section 7.4;

(2) Taxes that result from a transfer or other disposition by the Indemnatee or any of its Affiliates of all or any portion of its interest in any Leased Property, the Equity Investment or the Operative Documents (other than a transfer or disposition that occurs while a Default or Event of Default has occurred and is continuing and is related to such Default or Event of Default or that results from (a) the Lessee's exercise of the Return Option, the Early Termination Option or Purchase Option under the related Lease or (b) any other transfer to the Lessee under the Operative Documents or which is contemplated by the Operative Documents);

(3) Taxes imposed with respect to any period or portion thereof after the expiration or earlier termination of a Lease (but not to the extent attributable to events occurring on or prior to such date);

(4) Taxes resulting from (a) the gross negligence, willful misconduct or fraud of the Indemnatee or any of its Affiliates or (b) the inaccuracy or breach of a representation, warranty or covenant of the Indemnatee under the Operative Documents;

(5) Withholding Taxes, indemnification for which shall be solely as provided in Section 7.2(a)(iii) hereof;

(6) Taxes while they are being contested in accordance with Section 7.2(b);

(7) Taxes imposed on, or, in the case of value added taxes, not refunded to, an Indemnatee that results from its failure to file tax returns properly or timely, to claim a deduction or credit to which it is entitled, or to comply with certification, reporting, or similar requirements of the jurisdiction imposing the Tax, except to the extent caused by a failure of the Lessee to comply with Section 7.2(d);

(8) Taxes imposed on a transferee to the extent of the excess of such Taxes over the total amount of the Taxes of the same or similar nature that would have been imposed had there not been a transfer by the initial Indemnatee of its interest after the Closing Date; and

(9) Taxes in the nature of intangible taxes or similar taxes upon or with respect to the value of the interest of the Lessor in the Equity Investment.

(ii) *Structural Tax Indemnity.* Notwithstanding Section 7.2(a)(i), the Lessee shall indemnify and hold harmless the Lessor for any Taxes that are described in Section 7.2(a)(i) without regard to exclusions, but only to the extent that such Taxes would not have been imposed on Lessor if, for purposes of such Taxes, the advance made on the Closing Date by the Lessor had been in the form of a secured loan made directly to the Lessee, the obligation to pay a proportionate part Basic Rent were the obligation to pay interest to the Lessor, and the proportionate amount of the Lease Balance were the principal amount owed to the Lessor; provided, however, that the indemnification obligation of this Section 7.2(a)(ii) shall not apply to: (1) Taxes resulting from (a) the gross negligence, willful misconduct, or fraud of the Lessor or any of its Affiliates or (b) the inaccuracy or breach of a representation, warranty, or covenant of or by the Lessor under the Operative Documents; (2) Withholding Taxes, indemnification for which shall be solely provided in Section 7.2(a)(iii); (3) Taxes while they are being contested in accordance with Section 7.2(b); (4) Taxes imposed on the Lessor that result from its failure to file tax returns properly or timely, to claim a deduction or credit to which it is entitled, or to comply with certification, reporting or similar requirements of the jurisdiction imposing the Tax, in each case, in accordance with the intent specified in Section 2.12 or as otherwise required by Applicable Law with respect to the Lessor, except to the extent such failure by the Lessor is caused by a failure of the Lessee to comply with Section 7.2(d); (5) Taxes imposed on a transferee to the extent of the excess of such Taxes over the total amount of the Taxes of the same or similar nature that would have been imposed had there not been a transfer by the initial Lessor of its interest after the Closing Date; (6) Taxes imposed upon any Leased Property and indemnifiable pursuant to Section 7.2(a)(i); and (7) California income, franchise, corporate or other similar taxes imposed on an Indemnitee.

(iii) *Withholding Tax Indemnity.* The Lessee shall not be required to make any additional payment to or on behalf of an Indemnitee with respect to any Withholding Tax, except that the Lessee agrees to indemnify, protect, defend and hold harmless the Indemnitees, on a Grossed-Up Basis, against Withholding Taxes described in paragraphs (1) and (2) of this Section 7.2(a)(iii). If any such withholding is so required, the Lessee shall make the withholding and pay the amount withheld to the appropriate taxing Authority before penalties attach thereto or interest accrues thereon. The Lessee shall forthwith pay the relevant Indemnitee an amount that, after making all required deductions (including deductions applicable to additional sums payable under this Section), equals the amount that would have been paid if such withholding had not been required. Withholding Taxes referred to in the first sentence of this Section 7.2(a)(iii) as indemnifiable are:

(1) Withholding Taxes imposed under the laws of any jurisdiction other than the United States if such Tax is imposed solely as a result of the Lessee making the payment from such jurisdiction;

(2) Withholding Taxes imposed under the laws of the United States, or any taxing jurisdiction therein, imposed solely as the result of a change in Tax laws, regulations, rulings, interpretations or treaties after the Closing Date other than a withholding Tax that results from a change in Tax law which is excluded from the definition of Change of Law pursuant to Section 2.9(a)(i)(F).

If the Lessee pays any amount to an Indemnatee with respect to Withholding Taxes required to be withheld by law but not subject to indemnity pursuant to this Section 7.2, such Indemnatee shall reimburse the Lessee within fifteen (15) days of written demand therefor for the amount so paid by the Lessee provided that if such Indemnatee fails to reimburse the Lessee within such fifteen (15) days, such Indemnatee shall thereafter be obligated to reimburse the Lessee for such amount together with interest on such amount at the Overdue Rate from the date such reimbursement was due until the date it is paid.

(iv) Nothing contained in Section 7.2(a) shall entitle an Indemnatee to indemnification of a Tax under more than one subsection of Section 7.2(a).

(b) *Contests.* If any claim or claims is or are made against any Indemnatee for any Tax which is subject to indemnification as provided in Section 7.2(a), such Indemnatee shall as soon as practicable, but in no event more than thirty (30) days after receipt of formal written notice of the Tax or proposed Tax, notify the Lessee and if, in the reasonable opinion of the Lessee there exists a reasonable basis to contest such Tax which satisfies the requirements of ABA Formal Opinion 85-352 (and if the provisos of the definition of “Permitted Contest” continue to be satisfied), the Lessee at its expense may, to the extent permitted by Applicable Law and provided that it has acknowledged in writing its liability for the Tax at issue if the contest is not successful, contest such Tax, and subsequently may appeal any adverse determination (other than to the United States Supreme Court), in the appropriate administrative and legal forums; provided, that in all other circumstances, upon notice from the Lessee to such Indemnatee that there exists a reasonable basis to contest any such Tax which satisfies the requirements of ABA Formal Opinion 85-352 (as supported by an opinion of tax counsel to the Lessee reasonably acceptable to the Indemnatee), the Indemnatee, at the Lessee’s expense, shall contest any such Tax (so long as the provisos of the definition of “Permitted Contest” continue to be satisfied and, in the case of a Tax on gross or net income, the aggregate amount of the Tax exceeds U.S. \$100,000). Lessee shall pay all reasonable, out-of-pocket expenses actually incurred by the Indemnatee in contesting any such Tax (including, without limitation, all reasonable attorney’s and accountants’ fees), upon demand by the Indemnatee. Lessee shall have the right to participate in the conduct of any proceedings controlled by the Indemnatee to the extent that such participation by the Lessee does not interfere with the Indemnatee’s control of such contest and the Lessee shall in all events be kept informed, to the extent practicable, of material developments relative to such proceedings. The Indemnatee shall have the right to participate in the conduct of any proceedings controlled by the Lessee to the extent that such participation by the Indemnatee does not interfere with the Lessee’s control of such contest, and the Indemnatee shall in all events be kept informed, to the extent practicable, of material developments relative to such proceedings. The Indemnitees agree that a contested claim for which the Lessee would be required to make a reimbursement payment hereunder will not be settled or compromised without the Lessee’s prior written consent or the Indemnatee waives its right to indemnification hereunder and repays the Taxes advanced by the Lessee as a non-interest

bearing loan by the Lessee to such Indemnatee without interest. Indemnatee shall endeavor to settle or compromise any such contested claim in accordance with written instructions received from the Lessee; provided, that (i) the Lessee on or before the date the Indemnatee executes a settlement or compromise pays the contested Tax to the extent agreed upon or makes an indemnification payment to the Indemnatee in an amount acceptable to the Indemnatee; and (ii) the settlement or compromise does not, in the reasonable opinion of the Indemnatee materially adversely affect the right of the Lessor or such Indemnatee to receive Rent or the Lease Balance or any other payment pursuant to the Operative Documents, or involve a material risk of sale, forfeiture or loss of the affected Leased Property or any interest therein or any matter described in the provisos to the definition of "Permitted Contest." The failure of an Indemnatee to contest timely a claim against it for any Tax which is subject to indemnification under Section 7.2(a) and for which it has an obligation to the Lessee to contest under this Section 7.2(b) in the manner required by Applicable Law where the Lessee has timely requested (with regard to the time of the initial notification by Indemnatee) that such Indemnatee contest such claim shall relieve the Lessee of its obligations to such Indemnatee under Section 7.2(a) with respect to such claim only to the extent such failure results in the loss of an effective contest. If Applicable Law requires the payment of a contested Tax as a condition to, or regardless of, its being contested, and the Lessee chooses to contest such Tax or to direct the Indemnatee to contest such Tax in accordance with this Section, then the Lessee shall provide the Indemnatee with the funds to pay such Tax, such provision of funds to be deemed a non-interest bearing loan by the Lessee to the Indemnatee to be repaid by any recovery of such Tax (including the amount of any interest received by reason of payment or deposit of the Tax claimed with funds advanced by the Lessee to the Indemnatee with respect to such recovered Tax, payable on a net after-tax basis to the Indemnatee) from such contest and any remaining unpaid amount not recovered to offset the Lessee's obligation to indemnify the Indemnatee for such Tax. Lessee shall indemnify the Indemnatee on a Grossed-Up Basis in accordance with Section 7.4 for and against any adverse consequences of any such interest-free loan.

(c) *Payments.* Any Tax indemnifiable under Section 7.2(a) shall be paid by the Lessee directly when due to the applicable taxing Authority if direct payment is practicable and permitted. If direct payment to the applicable taxing Authority is not permitted or is otherwise not made, any amount payable to an Indemnatee pursuant to Section 7.2(a) shall be paid within thirty (30) days after receipt of a written demand therefor from such Indemnatee accompanied by a written statement describing in reasonable detail the amount so payable, but not before the date that the relevant Taxes are due or, in the case of taxes that are contested under Section 7.2(b), the contest is finally resolved. Any payments made pursuant to Section 7.2(a) directly to the Indemnatee entitled thereto or the Lessee, as the case may be, shall be made in immediately available funds at such bank or to such account as specified by the payee in written directions to the payor, or, if no such direction shall have been given, by check of the payor payable to the order of the payee by certified mail, postage prepaid at its address as set forth in this Agreement. Upon the request of any Indemnatee with respect to a Tax that the Lessee is required to pay, the Lessee shall furnish to such Indemnatee the original or a certified copy of a receipt for the Lessee's payment of such Tax or such other evidence of payment as is reasonably acceptable to such Indemnatee.

(d) *Ownership.* The Lessee covenants that, during the Lease Term, it shall remain organized as a corporation under the laws of the United States or any state thereof, it being

understood that the sole remedy of an Indemnatee for a breach by the Lessee of the foregoing covenant shall be the right of such Indemnatee to indemnification by the Lessee on an after-tax basis for any incremental tax liability of such Indemnatee that would not have been imposed but for such breach.

(e) *Calculation of Payments.* Any payment that the Lessee shall be required to make to or for the account of any Indemnatee with respect to any Tax that is subject to indemnification under this Section 7.2 shall be paid on a Grossed-Up Basis under Section 7.4 of this Agreement. If an Indemnatee or any Affiliate of such Indemnatee who files any tax return on a combined, consolidated, unitary or similar basis with such Indemnatee shall actually realize any saving of any Tax not indemnifiable by the Lessee pursuant to the Operative Documents (by way of credit (including any foreign tax credit), deduction, exclusion from income or otherwise) by reason of any amount with respect to which the Lessee has indemnified such Indemnatee pursuant to this Section 7.2, and such tax saving was not taken into account in determining the amount payable by the Lessee on account of such indemnification, such Indemnatee shall promptly pay to the Lessee the amount of such saving together with the amount of any tax saving resulting from any payment pursuant to this sentence (provided that such payments by such Indemnatee shall not exceed the amount of the payments made by the Lessee to or for such Indemnatee which gave rise to such savings and payment by such Indemnatee). Each Indemnatee agrees to make, at the Lessee's expense, good-faith efforts to claim any such tax saving that may reasonably be available and to provide promptly thereafter to the Lessee written notification of any action, proceeding or decision with respect to such claim.

(f) *Refund.* If an Indemnatee shall receive a refund of (or receive a credit against or any other current reduction in, any Tax not indemnified by the Lessee under this Section 7.2, in respect of) all or part of any Taxes which the Lessee shall have paid on behalf of such Indemnatee or for which the Lessee shall have reimbursed, advanced funds to or indemnified such Indemnatee, such Indemnatee shall promptly pay or repay to the Lessee an amount equal to the amount of such refund, plus any net tax benefit (taking into account any Taxes incurred by such Indemnatee by reason of the receipt of such refund, credit or reduction) realized by such Indemnatee as a result of any payment by such Indemnatee made pursuant to this sentence (provided that such payments by such Indemnatee shall not exceed the amount of the payments made by the Lessee to or for such Indemnatee which gave rise to such refund and payment by such Indemnatee). If, in addition to such refund, credit or reduction, as the case may be, such Indemnatee shall receive an amount representing interest on the amount of such refund, credit or reduction, as the case may be, such Indemnatee shall promptly pay to the Lessee that proportion of such interest that shall be fairly attributable to Taxes paid, reimbursed or advanced by the Lessee prior to the receipt of such refund. If an Indemnatee loses the benefit of any refund for which it has made a payment pursuant to this Section 7.2(f), such loss shall be treated as a Tax indemnifiable hereunder without regard to exclusions. Each Indemnatee agrees to make, at the Lessee's expense, good-faith efforts to claim any such refund, credit or reduction that may reasonably be available and to provide promptly thereafter to the Lessee written notification of any action, proceeding or decision with respect to such claim.

(g) *Restructuring for Withholding Taxes.* Each party covered by this Section 7.2 agrees to use reasonable efforts to investigate alternatives for reducing any

Withholding Taxes that are indemnified against hereunder or imposed on Rent or Yield on Equity Investment (whether or not indemnifiable hereunder) and to use reasonable efforts to reduce any Withholding Taxes that are indemnified against hereunder, including, without limitation, negotiating in good faith to relocate or restructure the advance made on the Closing Date (which relocation or restructuring shall be at the Lessee's expense in the case of indemnifiable Withholding Taxes), but no party shall be obligated to take any such action as such party determines will be adverse to its business or financial or commercial interests.

(h) *Tax Ownership.* Each Indemnitee represents and warrants that it will not, prior to the termination of a Lease, claim ownership of (or any tax benefits, including depreciation, with respect to) the related Leased Property for any income tax purposes (unless required to do so by a taxing authority) with respect to the period prior to such termination, it being understood that it is the intention of all parties to this transaction that the Lessee is and will remain the owner of such Leased Property for such income tax purposes until the termination of the Lease and such transfer.

### ***SECTION 7.3. Withholding Tax Documentation.***

(a) Lessee shall, as promptly as practicable to enable the Indemnitee to comply with the requirements of subsection (b) below, notify the Indemnitee in writing of the availability of any exemption from withholding tax under the laws or bilateral income tax treaties of any jurisdiction imposing a Withholding Tax indemnifiable under Section 7.2(a)(iii). Lessee shall furnish the Indemnitee with the applicable documentation or, to the extent commercially reasonable, information that is required to obtain such exemption or reduction.

(b) At least five (5) Business Days prior to the first payment date with respect to a payment under the Operative Documents that is subject to a Withholding Tax on interest that is indemnifiable under Section 7.2(a)(iii) and that is imposed by a jurisdiction outside the United States, the Indemnitee shall have complied with certification, information, documentation, reporting, filing, or other similar requirements concerning the nationality, residence, identity, or connection with the jurisdiction imposing such Withholding Taxes or any other similar matters that are required by law as a condition to total exemption or total relief from such Withholding Taxes and shall have notified the Lessee in writing of such compliance. The Indemnitee shall further timely comply with all requirements for keeping the exemption in full force and effect, unless a change in treaty, law, or regulation has occurred that would prevent the Indemnitee from complying and the Indemnitee promptly advises the Lessee in writing that it is not capable of receiving payments without withholding. Each of the parties hereto agrees that on the Closing Date, no certification, documentation, reporting or similar confirmation is required of an Indemnitee to establish total exemption from Withholding Taxes on interest or any other amounts relevant to this transaction in any applicable jurisdiction other than forms W-8BEN, W-8ECI or W-8IMY and any required attachments as required by Section 7.3(c) or form W-9 if requested by the Lessee.

(c) At least five (5) Business Days prior to the first date on which any payment is due under the Equity Investment for the account of any successor Lessor that is not organized or incorporated under the laws of the United States or a state thereof, such Lessor shall have

delivered to the Lessee two duly completed copies of United States Internal Revenue Service form W-8BEN, W-8ECI or W-8IMY and any required attachments, in any case with taxpayer identifying numbers, certifying that such Lessor is entitled to receive payments of Yield and a return of principal on the Equity Investment under the Operative Documents without deduction or withholding of any United States Federal income taxes. In delivering any such form or any successor or replacement form, such Lessor shall be entitled to assume that the payor of such Yield is organized under the laws of the United States or any state thereof. Each Lessor which so delivers form W-8BEN, W-8ECI or W-8IMY and any required attachments shall further deliver to the Lessee two additional copies of such form (or a successor form) on or before the date that such form expires (currently, three successive calendar years for Form W-8ECI) or becomes obsolete or within thirty (30) days after the occurrence of any event requiring a change in the most recent forms so delivered by it, and, as may be reasonably requested by Lessee such amendments thereto or extensions or renewals thereof, in each case certifying that such Lessor is entitled to receive payments under the Operative Documents without deduction or withholding of any United States Federal income taxes, unless a change in treaty, law or regulation has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Lessor from duly completing and delivering any such form with respect to it and such Lessor promptly advises the Lessee in writing that it is not capable of receiving payments without any withholding of United States Federal income tax.

(d) If any payment made to an Indemnitee hereunder would be subject to U.S. federal withholding Tax imposed by FATCA if such Indemnitee were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Indemnitee shall deliver to the Lessee at the time or times prescribed by law and at such time or times reasonably requested by the Lessee such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) as may be necessary for the Lessee to comply with their obligations under FATCA and to determine that such Indemnitee has complied with such Indemnitee's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

#### ***SECTION 7.4. Gross Up.***

If an Indemnitee shall not be entitled to a corresponding and equal deduction with respect to any payment or Tax which the Lessee is required to pay or reimburse under any other provision of this Article VII (each such payment or reimbursement under this Article VII, an "***original payment***") and which original payment constitutes income to such Indemnitee when accrued or received, then the Lessee shall pay to such Indemnitee on demand the amount of such original payment on a grossed-up basis such that, after subtracting all Taxes imposed on such Indemnitee with respect to such grossed-up payment by the Lessee (including any Taxes otherwise excluded by Section 7.2(a)(i) and assuming for this purpose that such Indemnitee was subject to taxation at the United States Federal, state and local marginal rates applicable and, in the case of Withholding Taxes subject to indemnification pursuant to Section 7.2(a)(iii), actually applicable provincial and foreign marginal rates to the Indemnitee for the year in which such income is taxable), such amount (*i.e.*, the grossed-up payment minus the taxes thereon) shall be equal to the original payment to be received or reimbursed (net of any credits, deductions or other tax benefits then actually recognized



that arise from the payment by such Indemnitee of any amount, including taxes, for which the payment to be received is made) (“*Grossed-Up Basis*”).

***SECTION 7.5. Leased Property Indemnity.***

Notwithstanding any provision to the contrary in this Article VII, in the event that (a) the Lessee elects the Return Option with respect to a Leased Property and (b) after paying to the Lessor any amounts due under Article XXII of the related Lease, the Lease Balance for such Leased Property shall not have been reduced to zero, then, except to the extent such amounts represent amounts due in respect of a Default or Event of Default, the Lessee shall promptly pay over to the Lessor on the Return Date, the shortfall between the Fair Market Value of such Leased Property as of the Return Date and the Fair Market Value anticipated for such date in the Appraisal delivered pursuant to Section 3.1(g) in an amount not to exceed such outstanding Lease Balance, unless the Lessee delivers a report from an appraiser selected by it and approved by the Lessor, in form and substance satisfactory to the Lessor and using approved methods satisfactory to the Lessor, which establishes that the reasons for the actual Fair Market Value of such Leased Property as of the Return Date being less than the Fair Market Value anticipated for such date in the Appraisal delivered pursuant to Section 3.1(g) were not due to any of the following events, circumstances or conditions, whether or not permitted under such Lease: (i) the failure to maintain such Leased Property as required by such Lease and the other Operative Documents, and in at least as good a condition as it was in on Closing Date, ordinary wear and tear excepted; (ii) the carrying out of or the failure to complete any modifications, improvements or Alterations; (iii) the existence of any environmental condition at or affecting such Leased Property that did not exist on the Closing Date; (iv) any defect, exception, easement, restriction or other encumbrance on or title to such Leased Property not existing on the Closing Date and not consented to by the Lessor; or (v) any other cause or condition within the power of the Lessee to control or affect (other than ordinary wear and tear) that did not exist on the Closing Date. Notwithstanding the foregoing, in no event shall Lessee have liability under this indemnity to the extent of any fraud, gross negligence or willful misconduct of any Indemnitee.

**ARTICLE VIII**

**MISCELLANEOUS**

***SECTION 8.1. Survival of Indemnities.***

The indemnities of the parties provided for in the Operative Documents shall survive the execution and delivery and the termination or expiration of this Agreement and any of the Operative Documents, the transfer of the interest in any Leased Property as provided herein or in any other Operative Documents, any disposition of any interest of the Lessor in any Leased Property, the making of the Equity Investment, payment therefor and any disposition thereof and shall continue in effect notwithstanding that any party hereto may waive compliance with any of the other terms, provisions or conditions of any of the Operative Documents.

**SECTION 8.2.        *No Broker, etc.***

Except for the Lessee's dealings with the Lessor, in its capacity as the Arranger, each of the parties hereto represents to the others that it has not retained or employed any arranger, broker, finder or financial advisor to act on its behalf in connection with this Agreement, nor has it authorized any arranger, broker, finder or financial adviser retained or employed by any other Person so to act, nor has it incurred any fees or commissions to which the Lessor might be subjected by virtue of their entering into the transactions contemplated by this Agreement. Any party who is in breach of this representation shall indemnify and hold the other parties harmless from and against any liability arising out of such breach of this representation.

**SECTION 8.3.        *Notices.***

Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto in connection with the Operative Documents shall be deemed to have been given (i) in the case of notice by letter, the earlier of when delivered to the addressee by hand or courier if delivered on a Business Day and, if not delivered on a Business Day, the first Business Day thereafter or on the fifth Business Day after depositing the same in the mails, registered or certified mail, postage prepaid, return receipt requested and (ii) in the case of notice by electronic mail, when return receipt or reply by electronic mail is sent, provided, that if the intended recipient declines or opts out of the receipt acknowledgment, then such notice shall be deemed to have been received on the Business Day sent, if sent during normal business hours on such Business Day, or if otherwise, at the opening of business on the next Business Day, in each case addressed as provided on Schedule II hereto, or to such other address as any of the parties hereto may designate by written notice. For the avoidance of doubt, this Agreement shall constitute notice of the Lessor's change of address for purposes of the Shared Parking Agreement.

**SECTION 8.4.        *Counterparts.***

This Agreement and each of the other Operative Documents may be executed by the parties hereto and thereto 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 agreement.

**SECTION 8.5.        *Amendments.***

No Operative Document nor any of the terms thereof may be terminated, amended, supplemented, waived or modified without the written agreement or consent of the Lessor and the Lessee; provided, however, that, Section 8.14 hereof may not be terminated, amended, supplemented, waived or modified without the written agreement or consent of the Arranger.

**SECTION 8.6.        *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 8.7.        *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 and their respective successors and permitted assigns.

**SECTION 8.8.        *Governing Law.***

THIS AGREEMENT HAS BEEN DELIVERED IN, AND SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF, THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES OF SUCH STATE (EXCEPT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

**SECTION 8.9.        *Payment of Transaction Costs and Other Costs.***

(a)     *Transaction Costs and Fees.* As and when any portion of Transaction Costs or Fees becomes due and payable, such Transaction Costs or Fees shall be paid by the Lessee as Supplemental Rent.

(b)     *Amendments, Supplements, etc.* Without limitation of the foregoing, the Lessee agrees to pay to the Lessor all costs and expenses (including reasonable and properly documented legal fees and expenses of counsel to the Lessor) incurred by it in connection with: (i) the considering, evaluating, investigating, negotiating and entering into or giving or withholding of any amendments or supplements or waivers or consents with respect to any Operative Document requested by the Lessee; (ii) the negotiation and documentation of any restructuring or “workout,” whether or not consummated, of any Operative Document; (iii) the enforcement of the rights or remedies under the Operative Documents; or (iv) any transfer by the Lessor of any interest in the Operative Documents during the continuance of an Event of Default.

**SECTION 8.10.      *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 8.11.      *Limited Liability.***

The parties hereto agree that except as specifically set forth herein or in any Operative Document, no shareholder, member, owner, officer, director or employee or Affiliate of Lessor shall have personal liability whatsoever to the Lessee or its successors and assigns for any claim or obligation based on or in respect hereof or any of the Operative Documents or arising in any way from the transactions contemplated hereby or thereby and recourse, if any, shall be solely had against the Lessee Collateral (it being acknowledged and agreed by each party hereto that all such personal liability of such shareholders, members, owners, officers, directors, employees and

Affiliates is expressly waived and released as a condition of, and as consideration for, the execution and delivery of the Operative Documents by the Lessor).

***SECTION 8.12. Submission to Jurisdiction; Waivers.***

(a) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY:

(i) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER OPERATIVE DOCUMENT, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR OF ANY NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, AND APPELLATE COURTS FROM ANY THEREOF;

(ii) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT TO SUCH COURTS, AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(iii) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS SET FORTH ON SCHEDULE II OR AT SUCH OTHER ADDRESS OF WHICH THE OTHER PARTIES HERETO SHALL HAVE BEEN NOTIFIED PURSUANT TO SECTION 8.3; AND

(iv) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THE OPERATIVE DOCUMENTS AND FOR ANY COUNTERCLAIM THEREIN.

***SECTION 8.13. Reproduction of Documents.***

Subject to Section 8.16, this Agreement, all documents constituting an Appendix, Schedule or Exhibit hereto, and all documents relating hereto received by a party hereto, including, without limitation: (a) consents, waivers and modifications that may hereafter be executed; (b) documents

received by the Lessor in connection with the receipt and/or acquisition of each Leased Property; and (c) financial statements, certificates and other information previously or hereafter furnished to the Lessor may be reproduced by the party receiving the same by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. Each of the parties hereto agrees and stipulates that, to the extent permitted by law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such party in the regular course of business) and that, to the extent permitted by law, any enlargement, facsimile, or further reproduction of such reproduction shall likewise be admissible in evidence.

***SECTION 8.14. Role of Arranger.***

Each party hereto acknowledges hereby that it is aware of the fact that MUFG Americas Capital Leasing & Finance, LLC has acted as “arranger” with respect to the Overall Transactions. The parties hereto acknowledge and agree that neither the Arranger nor its Affiliates have made any representations or warranties concerning, and that they have not relied upon the Arranger as to, the tax, accounting or legal characterization or validity of (i) the Operative Documents or (ii) any aspect of the Overall Transaction. The parties hereto acknowledge and agree that the Arranger has no duties, express or implied, under the Operative Documents in its capacity as the Arranger. The parties hereto further agree that Section 2.6(a), Section 8.2, Section 8.9(a) and this Section 8.14 are for the express benefit of the Arranger, in such capacity, and the Arranger shall be entitled to rely thereon as if it were a party hereto.

***SECTION 8.15. Payments in Dollars.***

All payments to be made by the Lessee hereunder shall be made in Dollars in immediately available and freely transferable funds at the place of payment, all such payments to be paid without setoff, counterclaim or reduction.

***SECTION 8.16. Confidentiality.***

The Lessor agrees, with respect to any information delivered or made available by the Lessee to it under the Operative Documents, to use all reasonable efforts to protect such confidential information from unauthorized use or disclosure and to restrict disclosure to only those Persons employed or retained by the Lessor who are or are expected to become engaged in evaluating, approving, structuring or administering this Agreement and the transactions contemplated hereby. Nothing herein shall prevent the Lessor from disclosing such information (i) to any Participation Holder or prospective Participation Holder subject to an agreement containing provisions substantially the same as those in this Section 8.16, (ii) to its Affiliates, officers, directors, employees, agents, attorneys and accountants who have a need to know such information in accordance with customary banking practices and who receive such information having been made aware of and having agreed to the restrictions set forth in this Section, (iii) upon the order of any court or administrative agency, (iv) upon the request or demand of any regulatory agency or authority having jurisdiction over the Lessor, (v) which has been publicly disclosed other than that through the breach of this Section 8.16, (vi) to the extent reasonably required in connection with the exercise of any remedy hereunder and (vii) with the prior written consent of

the Lessee; provided, however, that before any disclosure is permitted under (iii) or (iv) of this Section 8.16, the Lessor shall, if not legally prohibited, notify and consult with the Lessee, promptly and in a timely manner, concerning the information it proposes to disclose, to enable the Lessee to take such action as may be appropriate under the circumstances to protect the confidentiality of the information in question, and provided further that any disclosure under the foregoing proviso be limited to only that information discussed with the Lessee. The use of the term “confidential” in this Section 8.16 is not intended to refer to data classified by the government of the United States under laws and regulations relating to the handling of data, but is intended to refer to information and other data regarded by the Lessee as private.

***SECTION 8.17. Entire Agreement.***


This Agreement (together with the other Operative Documents) constitutes the entire agreement between the parties hereto with respect to the matters covered hereby and supersedes all prior agreements and understandings, written or oral, with respect to such matters between the parties. For the avoidance of doubt, that certain Participation Agreement, dated as of December 31, 2015, by and between the Lessee and BTMU Capital Leasing & Finance, Inc. (as predecessor-in-interest to Lessor), is hereby terminated and all further rights and obligations of the parties therein shall be terminated except for those rights or obligations that expressly survive termination. The parties hereto shall not have any duties or obligations, except those expressly set forth herein, and no implied duties or obligations shall be read into this Agreement.

***SECTION 8.18. UCC Filings and Other Matters.*** Lessee hereby grants to the Lessor (or its counsel on its behalf) the permission and right to file, without the signature of the Lessee, any financing statements under the Uniform Commercial Code necessary to perfect the Lessor’s interest in the “collateral” under each Memorandum of Lease. The Lessee represents and warrants that its address listed on Schedule II hereof is the true, correct and complete addresses of either (i) its sole place of business or (ii) its chief executive office and covenants and agrees to inform the Lessor within thirty (30) days of any change in such principal place of business. The Lessee shall cause the Lessor to attend to the filing of any necessary UCC continuation statements in order to maintain the perfection of the UCC Financing Statements filed on or about the Closing Date.

[Signature Pages Follow]

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

**LAM RESEARCH CORPORATION,**  
AS LESSEE

By:   
Name: Odette Go  
Title: Vice President, Global Treasury

**MUFG AMERICAS CAPITAL LEASING &  
FINANCE, LLC,**  
AS LESSOR

By:   
Name: Robert J. Hoegler  
Title: Vice President



**APPENDIX I**

**Common Definitions**

## APPENDIX I

### COMMON DEFINITIONS AND RULES OF INTERPRETATION

In the Participation Agreement and each other Operative Document, unless otherwise expressly provided, the following rules of interpretation shall apply:

- (a) any term defined below by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) a reference to a part, clause, section, article, exhibit or schedule is a reference to a part, clause, section and article of, and exhibit and schedule to, such Operative Document;
- (e) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws amending, supplementing, supplanting, varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute;
- (f) a reference to a document includes any amendment, modification or supplement to, or replacement, restatement or novation of, that document;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) all accounting terms not specifically defined herein shall be construed in accordance with GAAP; and
- (i) references to ***"including"*** shall mean including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement followed by or referable to an enumeration of specific matters to matters similar to those specifically mentioned.

Further, each of the parties to the Operative Documents and their counsel have reviewed and revised the Operative Documents, or requested revisions thereto, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in construing and interpreting the Operative Documents.

***"Actual Knowledge"*** shall mean, as to any matter with respect to any Person, the actual knowledge of such matter by a Responsible Officer of such Person.

***"Additional Costs"*** shall mean the amounts payable by the Lessee pursuant to Sections 2.9(b), 2.9(c), 2.10, 7.2(a)(iii) and 7.5 of the Participation Agreement.

**“Affiliate”** shall mean, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person or any of its Subsidiaries. The term “control” shall mean the possession, directly or indirectly, of any power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

**“Alterations”** shall have the meaning provided in Section 9.2(a) of the Lease.

**“A.M. Best’s”** shall mean A.M. Best Company or any successor thereto.

**“Anti-Corruption Laws”** means all laws, rules, and regulations of any jurisdiction applicable to the Lessee or its Subsidiaries from time to time concerning or relating to bribery or corruption.

**“Applicable Laws”** shall mean as of any date all applicable laws, rules, regulations (including Environmental Laws), statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any 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 and those pertaining to the construction, use, occupancy or subdivision of any Leased Property or the related Site) and any restrictive covenant or deed restriction or easement of record affecting any Leased Property or the related Site including the Shared Use Agreement and the Appurtenant Rights and Restrictions.

**“Appraisal”** shall mean the appraisal described in Section 3.1(g) of the Participation Agreement.

**“Appraiser”** shall mean DBG, Inc.

**“Appurtenant Rights and Restrictions”** shall mean the covenants, conditions, restrictions and easements which are a burden and benefit to the Site, as the same may be modified from time to time as provided in the Lease.

**“Arranger”** shall mean MUFG Americas Capital Leasing & Finance, LLC.

**“Authority”** shall mean any federal, state, county, municipal or other government or governmental, quasi-governmental or regulatory authority, agency, board, body, commission, instrumentality, court or tribunal, water board, or any political subdivision of any thereof, or arbitrator or panel of arbitrators, of or within the United States or any other jurisdiction applicable to the Lessor and having jurisdiction or authority over the Lessor.

**“Bankruptcy Code”** shall mean the United States Bankruptcy Code as set forth in Title 11 of the United States Code.

**“Base Term”** shall have the meaning provided in Section 2.2 of each Lease.

**“Base Term Commencement Date”** shall have the meaning provided in Section 2.2 of each Lease.

**“Base Term Expiration Date”** shall mean the Final Maturity Date.

**“Basic Rent”** shall mean for each Lease, for any period of determination, an amount equal to the sum of the Basic Rent (Improvements) and the Basic Rent (Site).

**“Basic Rent (Improvements)”** shall mean for each Lease and each Payment Period thereunder, an amount equal to the Yield payable on the last day of such period on the Lease Balance (Improvements) related to such Lease.

**“Basic Rent (Site)”** shall mean for each Lease and each Payment Period thereunder, an amount equal to the Yield payable on the last day of such period on the Lease Balance (Site) related to such Lease.

**“Board of Directors”** shall mean, with respect to a corporation or limited liability company, as applicable, either the board of directors or any duly authorized committee of that board of directors which, pursuant to the by-laws of such corporation or company, has the same authority as that board of directors as to the matter at issue.

**“Break Even Price”** shall mean, as of any date of determination, for the applicable Lease, the sum, without duplication, of (a) the aggregate outstanding Equity Investment of the Lessor, plus (b) all accrued but unpaid Yield, plus (c) without duplication, all accrued and unpaid Rent and all other sums then due and payable pursuant to the terms of the Operative Documents (except under Other Lease Documents) by the Lessee including all accrued and unpaid Supplemental Rent.

**“Business Day”** shall mean any day other than a Saturday, Sunday or other day on which commercial banks in San Francisco, California, New York, New York are authorized or required by law to close.

**“Capital Adequacy Requirement”** shall have the meaning provided in Section 2.8(b) of the Participation Agreement.

**“Cash Collateral”** shall mean all cash of Lessee which Lessee has delivered to Lessor pursuant to the respective Pledge Agreements for deposit with the Eligible Deposit Taker, as defined therein, pursuant to the related Pledge Agreement.

**“Casualty”** shall mean an event of damage or casualty relating to any portion or all of any Improvements or the related which does not constitute an Event of Loss.

**“Change in Control”** shall mean any of the following shall occur: (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act), of Equity Interests (as defined below) representing more than fifty percent (50%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Lessee; or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Lessee by Persons who were neither (i) nominated by the board of directors of the Lessee, nor (ii) appointed by directors so nominated. As used in this paragraph, “Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to

purchase or acquire any such equity interest. No merger or other transaction permitted pursuant to Section 5.3 of the Participation Agreement shall constitute a Change in Control.

***“Claims”*** shall mean liabilities, obligations, damages, losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, charges, costs, fees, expenses and disbursements (including, without limitation, out-of-pocket legal fees and expenses and costs of investigation which, in the case of counsel or investigators retained by an Indemnatee, shall be reasonable) of any kind and nature whatsoever including (except where specifically noted otherwise) but not limited to the outstanding Lease Balance or any part thereof.

***“Closing”*** shall have the meaning provided in Section 3.1 of the Participation Agreement.

***“Closing Date”*** shall mean September 21, 2020.

***“Code”*** shall mean the Internal Revenue Code of 1986 and the rules and regulations thereunder.

***“Commitment”*** shall mean \$250,027,401.58, which is comprised of the sum of each Lease Balance as set forth on Schedule I to the Participation Agreement.

***“Condemnation”*** shall mean any condemnation, requisition, confiscation, seizure or other taking or sale of the use, occupancy or title to any Improvements or the related Site or any part thereof in, by or on account of any eminent domain proceeding or other action by any Authority or other Person under the power of eminent domain or otherwise or any transfer in lieu of or in anticipation thereof, which in any case does not constitute an Event of Taking. A Condemnation shall be deemed to have “occurred” on the earliest of the dates that use, occupancy or title is taken.

***“Consolidated Subsidiary”*** shall mean, at any date, any Subsidiary or other entity the accounts of which would be consolidated with those of the Lessee in its consolidated financial statements as of such date.

***“Control”*** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

***“Default”*** shall mean the occurrence of any event under any Operative Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

***“Deposit Agreement”*** shall mean each Deposit Agreement among Lessee, Lessor and MUFG Union Bank, N.A., dated as of the Closing Date.

***“Deposit Taker”*** shall have the meaning set forth under the respective Pledge Agreement.

***“Dollars”*** or ***“\$”*** shall mean, unless otherwise qualified, dollars in lawful currency of the United States.

***“Early Termination Option”*** shall have the meaning provided in Section 20.1 of the Lease.

**“Easement”** shall have the meaning provided in Section 22.1 of the Lease.

**“Employee Benefit Plan”** shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA which is subject to Title I of ERISA or a “plan” within the meaning of Section 4975(e)(I) of the Code.

**“Environmental Claim”** shall mean any written notice of violation, claim, demand, abatement order or other order or direction (conditional or otherwise), or other mandatory communication by any Authority or any Person for any damage, including personal injury (including sickness, disease or death), tangible or intangible property damage, contribution, indemnity, indirect or consequential damage, damage to the environment, violation of pollution standards, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties or restrictions, in each case resulting from or based upon (A) the existence of a Release (whether sudden or non sudden or accidental or non accidental), or exposure to, any Hazardous Material in, into or onto the environment at, in, by, from or related to any Leased Property, any Site or any part thereof and relating to, arising from or as a result of the Lessee’s or any Lessee Affiliate’s or any sublessee’s use or operation thereof, (B) the use, handling, transportation, storage, treatment or disposal of any such Hazardous Material in connection with the operation of any Leased Property, any Site or any part thereof and relating to, arising from or as a result of the Lessee’s or any Lessee Affiliate’s or any sublessee’s use or operation thereof, or (C) the violation of any Environmental Laws or any Environmental Permits or other Governmental Action in connection with any Leased Property, any Site or any part thereof, or any contiguous, proximate or neighboring property irrespective of whether or not such property is owned or leased by Lessee or Lessor, and arising from, relating to or as a result of the Lessee’s or any Lessee Affiliate’s or any sublessee’s use or operation thereof.

**“Environmental Expert”** shall mean EFI Global, Inc. or such other environmental services firm reasonably satisfactory to the Lessor.

**“Environmental Laws”** shall mean 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.* (excluding FIFRA Section 4 and Labeling requirements found at 40 CFR 156.10), the California Safe Drinking Water and Toxic Enforcement Act (aka “Prop 65”) (California Health & Safety Code § 25249.5 *et seq.*), the Air Toxics “Hot Spots” Information and Assessment Act of 1987 (California Health & Safety Code §§ 44300-44309), the California Accidental Release Prevention Program (California Health & Safety Code §§ 25531 *et seq.*) 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 applicable to the Leased Property 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 the Leased

Property, or any part thereof, as any of the foregoing may have been from time to time amended, supplemented or supplanted.

***“Environmental Permits”*** shall mean all permits, licenses, authorizations, registrations, certificates and approvals of Authorities required by Environmental Laws relating to the Leased Property or the Overall Transaction.

***“Environmental Reports”*** shall mean those certain Phase I Environmental Site Assessments dated July 9, 2020, prepared for Lessor by the Environmental Expert, with respect to the Sites.

***“Environmental Violation”*** shall mean an activity, occurrence or condition that violates or results in non-compliance with or liability under any Environmental Laws or Environmental Permits.

***“Equipment”*** shall mean personal property of every kind and nature whatsoever purchased or otherwise paid for with the funds advanced on the Closing Date or otherwise acquired by or on behalf of the Lessor and used or usable in connection with any operation or letting of any Improvements or any Site, including but without limiting the generality of the foregoing, all electrical and mechanical equipment, plumbing, ventilation, furnaces, air conditioning and air-cooling apparatus, refrigerating and incinerating equipment, escalators, generators, loading and unloading equipment and systems, communications systems (including satellite dishes and antennae), sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, fittings and fixtures of every kind and description, and any substitutions or replacements thereof.

***“Equity Investment”*** shall mean, as of any date of determination, (i) with respect to all Leases, the aggregate principal amount of invested capital maintained by the Lessor pursuant to Section 2.2(a) of the Participation Agreement, net of any Qualified Prepayments paid to Lessor with respect thereto and (ii) with respect to any particular Lease, the principal amount of invested capital maintained by the Lessor pursuant to Section 2.2 of the Participation Agreement which is comprised of the original Lease Balance for such Lease as set forth on Schedule A to such Lease.

***“ERISA”*** shall mean the Employee Retirement Income Security Act of 1974.

***“ERISA Affiliate”*** shall mean any Person who together with the Lessee is treated as a single employer within the meaning of Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(m) or (o) of the Code.

***“Event of Default”*** shall mean any event condition or failure designated as an “Event of Default” in Article XVII of the Lease.

***“Event of Loss”*** shall mean (w) the actual or constructive total or substantial loss of any Improvements, any Site or damage to any Improvements or any Site to an extent rendering repair impractical or uneconomical, in any case as reasonably determined in good faith by the Board of Directors of the Lessee, such determination to be made promptly after the occurrence of such event and to be evidenced by an Officer’s Certificate of the Lessee delivered to the Lessor, (x) damage

to any Improvements which results in an insurance settlement on the basis of a total loss or constructive total loss (including title insurance proceeds) in respect of a total loss of the Improvements, (y) an Environmental Violation with respect to which the Lessee or Lessor could reasonably be expected to incur liability in excess of \$2,000,000 per Site or (z) an Event of Taking.

***“Event of Taking”*** shall mean: (A) taking of title to any Improvements or a portion thereof or the related Site or (B) any condemnation, requisition, confiscation, seizure or other taking or sale of the use, occupancy or title to any Improvements or the related Site or any part thereof in, by or on account of any eminent domain proceeding or other action by any Authority or other Person under the power of eminent domain or otherwise or any transfer in lieu or in anticipation thereof (other than a requisition of temporary use) or requisition of use for a period scheduled to last beyond the end of the Lease Term or which in fact is continuing on the Final Maturity Date even if not scheduled to last beyond the Lease Term), in either case, resulting in the loss of use or possession of substantially all or a material portion of such Improvements or the related Site as reasonably determined in good faith by the Board of Directors of the Lessee, such determination to be made promptly after the occurrence of such event and to be evidenced by an Officer’s Certificate of the Lessee delivered promptly after the occurrence of such event to Lessor.

***“Existing Improvements (Fremont 3)”*** shall mean the “class A” corporate office building as described in clause (ii) of the definition of Improvement Fremont 3-E below located on a portion of Site Fremont 3-E totaling approximately 170,000 square feet all located on a portion of the Site Fremont 3-E, including all fixtures, Equipment and other improvements of every kind existing at any time and from time to time in such building together with any and all appurtenances to such building or improvements, including utility pipes, conduits and lines in such building.

***“Existing Improvements (Fremont 3E)”*** shall mean the “class A” corporate office building as described in clause (ii) of the definition of Improvement Fremont 3-E below located on a portion of Site Fremont 3-E totaling approximately 134,000 square feet all located on a portion of the Site Fremont 3-E, including all fixtures, Equipment and other improvements of every kind existing at any time and from time to time in such building together with any and all appurtenances to such building or improvements, including utility pipes, conduits and lines in such building.

***“Existing Leases”*** shall mean, collectively, with respect to the parcels of land located in Fremont, California, the Existing Lease Fremont 1, Existing Lease Fremont 3, Existing Lease Fremont 3E and Existing Lease Fremont 4 and, with respect to the parcels of land located in Livermore, California, the Existing Lease Port 1 and Existing Lease Port 101.

***“Existing Lease Fremont 1”*** shall mean that certain Lease Agreement (Fremont 1) dated as of December 31, 2013 between the Existing Lessor and the Lessee, encumbering Site Fremont 1.

***“Existing Lease Fremont 3”*** shall mean that certain Lease Agreement (Fremont 3) dated as of December 31, 2013 between the Existing Lessor and the Lessee, encumbering a portion of Site Fremont 3-E.



***“Existing Lease Fremont 3(E)”*** shall mean that certain Lease Agreement (Fremont 3(E)) dated as of December 31, 2013 between the Existing Lessor and the Lessee, encumbering a portion of Site Fremont 3-E.

***“Existing Lease Fremont 4”*** shall mean that certain Lease Agreement (Fremont 4) dated as of December 31, 2013 between the Existing Lessor and the Lessee, encumbering Site Fremont 4.

***“Existing Lease Port 1”*** shall mean that certain Lease Agreement (Port 1) dated as of December 31, 2013 between the Existing Lessor and the Lessee, encumbering Site Port 1.

***“Existing Lease Port 101”*** shall mean that certain Lease Agreement (Port 101) dated as of December 31, 2013 between the Existing Lessor and the Lessee, encumbering Site Port 101.

***“Extended Remarketing Period”*** shall have the meaning provided in Section 22.4 of the Lease.

***“Fair Market Value”*** shall mean with respect to any Leased Property or any portion thereof, as of the date of the determination, the fair market value (which in any event shall not be less than zero) as determined by an independent appraiser chosen by the Lessor and reasonably acceptable to the Lessee that would be obtained in an arm’s-length transaction between an informed and willing buyer (other than a buyer currently in possession) and an informed and willing seller, under no compulsion to buy or sell, and neither of which is related to the Lessor or the Lessee or any Affiliate thereof, for the purchase of such Leased Property or any portion thereof, as applicable. Such fair market value shall be calculated as the value for the use of such Leased Property or any such portion, assuming, in the determination of such fair market value, that such Leased Property or any such portion is in the condition and repair required to be maintained by the terms of the Lease (unless such fair market value is being determined for purposes of the Appraisal to be delivered on or prior to the Closing Date for evaluating the items described in Section 7.5 of the Participation Agreement, in which case this assumption shall not be made).

***“FATCA”*** shall mean Sections 1471 through 1474 of the Code, any current or future regulations promulgated thereunder or official interpretations thereof, any applicable agreements entered into pursuant to Section 1471(b)(1) of the Code, any applicable intergovernmental agreements and implementing laws, regulations, rules or official guidance adopted by any non-U.S. jurisdiction with respect to the foregoing.

***“Fee Letter”*** shall mean that certain letter dated as of the Closing Date from the Arranger to the Lessee in which Lessee confirmed its agreement to pay the Fees and Transaction Expenses in accordance therewith.

***“Fees”*** shall mean the Upfront Fee.

***“Final Maturity Date”*** shall mean the seventh year anniversary of the Closing Date.

***“Final Rent Payment Date”*** shall have the meaning provided in Section 18.1(c)(2)(A) of the Lease.

***“Financial Officer”*** means the chief financial officer, principal financial officer, principal accounting officer, treasurer, vice president of finance, controller or assistant controller of the Lessee.

***“Fremont Leases”*** shall mean, collectively, Lease Fremont 1, Lease Fremont 3-E and Lease Fremont 4.

***“Fremont Sites”*** shall mean, collectively, Site Fremont 1, Site Fremont 3-E and Site Fremont 4.

***“F.R.S. Board”*** shall mean the Board of Governors of the Federal Reserve System or any successor thereto.

***“GAAP”*** shall mean generally accepted accounting principles in the United States as in effect from time to time, consistently applied and maintained on a consistent basis for the Lessee and its Subsidiaries throughout the period indicated.

***“Governmental Action”*** shall mean all applicable 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 Authority, or required by any Applicable Law, and shall include, without limitation, all citings, Environmental Permits, construction permits and operating permits and licenses that are required for the use, occupancy, zoning, construction and operation of any Leased Property.

***“Grossed-Up Basis”*** shall have the meaning provided in Section 7.4 of the Participation Agreement.

***“Hazardous Material”*** shall mean any substance, waste or material which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous by listing characteristic or definition under any Environmental Law, including petroleum, crude oil or any fraction thereof, petroleum derivatives, by-products and other hydrocarbons and is or becomes regulated by any Authority, including any agency, department, commission, board or instrumentality of the United States, the State of California or any political subdivision thereof and also including, but not limited to, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls (“PCBs”) and radon gas.

***“Improvements”*** shall mean, collectively, with respect to the Fremont Sites, Improvements (Fremont 1), Improvements (Fremont 3-E), and Improvements (Fremont 4) and, with respect to the parcels of land located in Livermore, California, Improvements (Port 1) and Improvements (Port 101).

***“Improvements (Fremont 1)”*** shall mean the “class A” corporate office building as described in Schedule IV to the Participation Agreement and on Exhibit A to the Lease Fremont 1 encumbering Site Fremont 1 totaling approximately 145,000 square feet all located on the Site Fremont 1 including all buildings, structures, fixtures, Equipment and other improvements of every kind existing at any time and from time to time on or under such Site, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, utility pipes,

conduits and lines, parking areas and roadways and including all Alterations and other additions to or changes in the Improvements at any time.

***“Improvements (Fremont 3-E)”*** shall mean (i) the “class A” corporate office building as described in Schedule IV to the Participation Agreement and on Exhibit A to the Lease Fremont 3-E encumbering a portion of Site Fremont 3-E totaling approximately 134,000 square feet all located on a portion of the Site Fremont 3-E and (ii) the “class A” corporate office building as described in Schedule IV to the Participation Agreement and on Exhibit A to the Lease Fremont 3-E encumbering a portion of Site Fremont 3-E totaling approximately 170,000 square feet all located on a portion of the Site Fremont 3-E, each including all buildings, structures, fixtures, Equipment and other improvements of every kind existing at any time and from time to time on or under such Site, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways and including all Alterations and other additions to or changes in the Improvements at any time.

***“Improvements (Fremont 4)”*** shall mean the “class A” corporate office building as described in Schedule IV to the Participation Agreement and on Exhibit A to the Lease Fremont 1 encumbering Site Fremont 4 totaling approximately 117,000 square feet all located on the Site Fremont 4 including all buildings, structures, fixtures, Equipment and other improvements of every kind existing at any time and from time to time on or under such Site, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways and including all Alterations and other additions to or changes in the Improvements at any time.

***“Improvements (Port 1)”*** shall mean the “class A” corporate office building as described in Schedule IV to the Participation Agreement and on Exhibit A to the Lease Port 1 encumbering Site Port 1 totaling approximately 120,000 square feet all located on the Site Port 1 including all buildings, structures, fixtures, Equipment and other improvements of every kind existing at any time and from time to time on or under such Site, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways and including all Alterations and other additions to or changes in the Improvements at any time.

***“Improvements (Port 101)”*** shall mean the “class A” corporate office building as described in Schedule IV to the Participation Agreement and on Exhibit A to the Lease Port 101 encumbering Site Port 101 totaling approximately 120,000 square feet all located on the Site Port 101 including all buildings, structures, fixtures, Equipment and other improvements of every kind existing at any time and from time to time on or under such Site, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways and including all Alterations and other additions to or changes in the Improvements at any time.

***“Indemnatee”*** shall mean the Lessor and its Affiliates, successors, permitted assigns, permitted transferees, contractors, servants, employees, officers, directors, shareholders, partners, participants, representatives, trustees and agents of each of the foregoing Persons; provided, however, that in no event shall the Lessee or its Affiliates be an Indemnatee.

***“Inspecting Parties”*** shall have the meaning provided in Article XV of the Lease.

***“Insurance Requirements”*** shall mean the terms of the insurance required to be maintained in accordance with the Lease.

***“Lease Balance”*** shall mean, as of any date of determination and as to any particular Lease, an amount equal to the sum of the Lease Balance (Improvements) and the Lease Balance (Site) for such Lease.

***“Lease Balance (Improvements)”*** shall mean, as of any date of determination and as to any particular Lease, an amount equal to the principal amount of the Equity Investment of the Lessor outstanding with respect to the Improvements on the Site encumbered by such Lease as such original amount is set forth on Schedule A to such Lease.

***“Lease Balance (Site)”*** shall mean, as of any date of determination and as to any particular Lease, an amount equal to the principal amount of the Equity Investment of the Lessor outstanding with respect to the Site encumbered by such Lease as such original amount is set forth on Schedule A to such Lease.

***“Lease Expiration Date”*** shall mean the Base Term Expiration Date or any earlier date on which the Lease is terminated including pursuant to Article XIII, XVIII, XX, or XXI of the Lease.

***“Lease Fremont 1”*** shall mean that certain Second Amended and Restated Lease Agreement dated as of the Closing Date between the Lessor and the Lessee, encumbering Site Fremont 1.

***“Lease Fremont 3-E”*** shall mean that certain Second Amended and Restated Lease Agreement dated as of the Closing Date between the Lessor and the Lessee, encumbering Site Fremont 3-E.

***“Lease Fremont 4”*** shall mean that certain Second Amended and Restated Lease Agreement dated as of the Closing Date between the Lessor and the Lessee, encumbering Site Fremont 4.

***“Lease Port 1”*** shall mean that certain Second Amended and Restated Lease Agreement dated as of the Closing Date between the Lessor and the Lessee, encumbering Site Port 1.

***“Lease Port 101”*** shall mean that certain Second Amended and Restated Lease Agreement dated as of the Closing Date between the Lessor and the Lessee, encumbering Site Port 101.

***“Lease Term”*** shall have the meaning provided in Section 2.2 of the Lease.

***“Leased Property”*** shall mean, with respect to each Site, the Improvements, the Fixtures, the Appurtenant Rights, the Personal Property and such Site.

***“Leases”*** shall mean, collectively, with respect to the Sites located in Fremont, California, Lease Fremont 1, Lease Fremont 3-E and Lease Fremont 4 and, with respect to the Sites located in Livermore, California, Lease Port 1 and Lease Port 101.

**“Lessee”** shall mean LAM Research Corporation, a Delaware corporation.

**“Lessee Collateral”** shall mean the Mortgaged Property and Personal Property of the Lessee with respect to which a lien is granted pursuant to the related Memorandum of Lease, the Cash Collateral and other property subject to the Pledge Agreement, and, in each case, all proceeds and income therefrom.

**“Lessor”** shall mean MUFG Americas Capital Leasing & Finance, LLC, a Delaware limited liability company.

**“Lessor Liens”** shall mean Liens on or against any Leased Property, Site, Lease or any payment of Rent (a) which result from any act of, or any Claim against the Lessor unrelated to the transactions contemplated by the Operative Documents, (b) which result from any Tax owed by the Lessor except any Tax for which the Lessor is entitled to indemnification under the Operative Documents, or (c) which result from any act or omission of the Lessor that is in breach of such Person’s covenants or agreements under the Operative Documents.

**“Lien”** shall mean any lien, mortgage, deed of trust, encumbrance, pledge, charge, lease, easement, servitude, right of others or security interest of any kind, including any thereof arising under any conditional sale or other title retention agreement.

**“Material Adverse Effect”** shall mean a material adverse effect on (i) the assets, business, operations, properties, condition, financial or otherwise, of the Lessee and its Subsidiaries, taken as a whole, (ii) the ability or authority of the Lessee to perform its obligations under the Operative Documents to which it is a party, (iii) the rights or remedies available to the Lessor under any Operative Document which apply to a particular Lease, or (iv) with respect to a particular Lease, the value, condition, utility or useful life of the related Leased Property or the rights or interests of the Lessor in the related Leased Property.

**“Material Default”** shall mean any event, condition or failure which, with notice or lapse of time or both, would become an Event of Default of the type described in clause (a), (b), (c), (h) or (i) of Article XVII of the Lease.

**“Material Environmental Violation”** shall have the meaning provided in Section 16.2 of the Lease.

**“Material Plan”** shall have the meaning provided in Article XVII of the Lease.

**“Maximum Remarketing Obligation (Improvements)”** shall mean, with respect to each Lease, the product of the percentage of the Maximum Remarketing Obligation (Improvements) as set forth on Schedule A to such Lease and the Lease Balance (Improvements) related to such Lease; provided, however, with respect to Lease Fremont 3-E, Maximum Remarketing Obligations (Improvements) shall mean the sum of (x) the product of the percentage of the Maximum Remarketing Obligation (Existing Improvements Fremont 3) and the Lease Balance (Existing Improvements Fremont 3), and (y) the product of the percentage of the Maximum Remarketing Obligation (Existing Improvements Fremont 3E) and the Lease Balance (Existing Improvements Fremont 3E), as each of the foregoing percentages and amounts are set forth on Schedule A to such Lease.

**“Maximum Remarketing Obligation (Site)”** shall mean, with respect to each Lease, the product of the percentage of the Maximum Remarketing Obligation (Site) as set forth on Schedule A to such Lease and the Lease Balance (Site) related to such Lease.

**“Material Subsidiary”** shall have the meaning set forth in Rule 1-02 of Regulations S-X under the Securities Exchange Act of 1934.

**“Memorandum of Lease”** shall mean for each Lease, that certain Memorandum of Second Amended and Restated Lease, Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the Closing Date by and between Lessee and Lessor.

**“Moody’s”** shall mean Moody’s Investor Service, Inc., or any successor thereto.

**“Mortgaged Property”** shall have the respective meanings set forth in each of the Memoranda of Lease.

**“Multiemployer Plan”** shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which Lessee or any ERISA Affiliate is then making or accruing an obligation to make contributions or has within the preceding five years made contributions, including for these purposes any Person which ceased to be an ERISA Affiliate during such five year period.

**“Non-severable”** shall describe an Alteration or part of an Alteration or fixture, addition or improvement which (i) cannot be readily removed from the Leased Property without causing damage to the Leased Property or the Site which cannot be readily repaired, or (ii) is required for the Leased Property to comply with Applicable Law and Insurance Requirements.

**“OFAC”** shall mean the Office of the Foreign Assets Control of the U.S. Treasury Department.

**“Officer’s Certificate”** of a Person shall mean a certificate signed by the Chairman of the Board of Directors and/or the President and/or any Executive Vice President and/or any Senior Vice President and/or any other Vice President, Managing Director, Principal and/or other authorized representative(s) of such Person, provided, that with respect to the Lessee, whomever signs the certificate is authorized to represent such Person, and no more than any one of the foregoing individuals shall be required to sign such certificate.

**“Operative Documents”** shall mean, as the context requires:

- (1) the Participation Agreement;
- (2) each Lease;
- (4) each Memorandum of Lease;
- (5) each Pledge Agreement; and
- (8) each Deposit Agreement.

***“Other Lease Document”*** means, with respect to any Lease, Memorandum of Lease or Pledge Agreement, as the case may be, and the Site to which such Operative Documents relate, each Lease, Memorandum of Lease or Pledge Agreement, respectively, which relates to a different Site.

***“Overall Transaction”*** shall mean all the transactions and activities referred to in or contemplated by the Operative Documents.

***“Overdue Rate”*** shall mean, (i) during the Base Term and through the Extended Remarketing Period, the lesser of (a) the highest interest rate permitted by Applicable Law and (b) an interest rate *per annum* equal to the Yield Rate, as applicable, plus two percent (2%) and (ii) after the expiration of the Extended Remarketing Period, provided any amount of the Equity Investment remains outstanding, the lesser of (a) the highest interest rate provided by Applicable Law and (b) the greater of (1) the Federal Funds Rate plus two percent (2%), (2) the Prime Rate plus two percent (2%), or (3) the rate of interest charged under that certain Amended and Restated Credit Agreement, dated November 10, 2015, for overdue payments.

***“Participation”*** shall have the meaning provided in Section 6.4 of the Participation Agreement.

***“Participation Agreement”*** shall mean the Participation Agreement dated as of the Closing Date between the Lessee and the Lessor.

***“Participation Holder”*** shall have the meaning provided in Section 6.4 of the Participation Agreement.

***“Payment Date”*** shall mean (i) the Quarterly Date occurring at the end of each Payment Period, and (ii) with respect to the final Payment Period, the Final Maturity Date.

***“Payment Period”*** shall mean (i) with respect to the first payment of Basic Rent following the date hereof, a period commencing on the Base Term Commencement Date and ending on the next Quarterly Date, (ii) for each payment of Basic Rent other than the first and final payments of Basic Rent, a period of three (3) months commencing on the day immediately following the prior Payment Period and ending on the Quarterly Date occurring three (3) months thereafter, and (iii) with respect to the final payment of Basic Rent, a period commencing on the final Quarterly Date and ending on the Final Maturity Date.

***“PBGC”*** shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor agency.

***“Permitted Contest”*** shall mean actions taken by a Person to contest in good faith, by appropriate proceedings initiated timely and diligently prosecuted, the legality, validity or applicability to a Leased Property, a Site or any interest in a Leased Property, a Site or to the operation, use or maintenance of a Leased Property and a Site or the Overall Transaction by, any Person of: (a) any Applicable Law; (b) any term or condition of, or any revocation or amendment of, or other proceeding relating to, any Governmental Action; or (c) any Lien or Tax; provided that the initiation and prosecution of such contest (i) would not in the reasonable opinion of an Indemnitee to which such proceeding relates, involve (A) the possible imposition of any criminal

liability or penalty or civil penalty on such Indemnitee, or (B) a material risk of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) on any Leased Property or any Site or any part of any thereof or the right of the Lessor to receive payment of the Equity Investment of or Yield on any such Equity Investment, the Lease Balance or any interest therein; (ii) in the reasonable opinion of an Indemnitee to which such proceeding relates, the control of such proceeding would not involve an actual or potential legal conflict of interest; (iii) would not be reasonably likely to adversely affect the Fair Market Value, utility or remaining useful life of any Leased Property, any Site or any interest in any Leased Property or any Site or the continued economic operation of any Leased Property or any Site; or (iv) such proceeding involves Claims not fully indemnified by Lessee which Lessee and the Indemnitee to which such proceeding relates have been unable to sever from the indemnified Claims, unless the Lessee shall have agreed in a writing reasonably satisfactory to such Indemnitee to defend, indemnify, protect, save and keep harmless such Indemnitee on a Grossed-Up Basis from such otherwise not fully indemnified Claim and, provided further that, in any event reserves to the extent required by GAAP are maintained against any adverse determination of such proceeding.

***“Permitted Investments”*** shall mean (i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States (or by any agency thereof to the extent (a) such obligations are backed by the full faith and credit of the United States and (b) such agency and the United States are rated at least “Aa2” by Moody’s and at least “AA” by S&P), in each case maturing within one year from the date of acquisition thereof, (ii) investments in certificates of deposit, deposit accounts, banker’s acceptances and time deposits maturing within 365 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Collateral Agent or any domestic office of any commercial bank organized under the laws of the United States or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000, (iii) commercial paper of companies, banks, trust companies or national banking associations (in each case excluding the Lessee and its Affiliates) incorporated or doing business under the laws of the United States or one of the States thereof, in each case having a remaining term until maturity of not more than 180 days from the date such investment is made and rated at least “P-1” by Moody’s or at least “A-1” by S&P, (iv) investments in money market mutual funds rated in the highest short-term rating category of at least one nationally recognized rating agency (including any such funds for which the Collateral Agent or an affiliate may be acting as an investment advisor or providing other services) and (v) repurchase agreements maturing within one (1) year with any financial institution having combined capital and surplus of not less than \$500,000,000 with any of the obligations described in clauses (i) through (v) as collateral so long as title to the underlying obligations pass to the Collateral Agent and such underlying securities shall be segregated in a custodial or trust account for the benefit of the Collateral Agent.

***“Permitted Liens”*** shall mean (a) the respective rights and interests of the Lessee and the Lessor, as provided in the Operative Documents, (b) Lessor Liens, (c) Liens for Taxes either not yet delinquent or being contested in good faith and by appropriate proceedings diligently conducted and in any event constituting a Permitted Contest, (d) materialmen’s, mechanics’, workers, repairmen’s, employees’ or other like Liens arising in the ordinary course of business for amounts either not yet delinquent or being contested in good faith and by appropriate proceedings diligently conducted and in any event constituting a Permitted Contest, (e) Liens arising after the Closing Date out of judgments or awards not otherwise constituting an Event of Default under



clause (k) of Article XVII of the Lease and with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and either (x) have been reserved for to the extent required by GAAP, or (y) the enforcement of such Lien has been stayed pending such appeal or review, (f) all encumbrances and other matters disclosed in the title insurance policies delivered to Lessor at Closing, (g) during the Base Term, other Liens encumbering any Leased Property securing amounts not exceeding \$1,000,000 in the aggregate; provided that such \$1,000,000 in Liens shall not have been created, in whole or in part, by any affirmative pledge or other affirmative grant of such Lien on the part of the Lessee, and (h) Liens arising after the Closing Date which are expressly approved by the Lessor in accordance with the Operative Documents.

***“Permitted Transfer”*** shall mean any of the following:

- (1) any assignment or conveyance by Lessor requested by Lessee or required by any Permitted Lien or by Applicable Laws; or
- (2) any conveyance to a Qualified Affiliate of Lessor of all or any interest in or rights with respect to the Leased Property or any portion thereof; provided, however, that any such conveyance must be expressly subject and subordinate to the Operative Documents and all rights of Lessee under the Operative Documents, including its Purchase Option.

***“Person”*** shall mean any individual, partnership, corporation, limited liability company, trust, association, joint venture, joint stock company, un-incorporated organization, Authority or any other entity.

***“Personal Property”*** shall mean, (a) all tangible personal property located on the Site that could constitute fixtures under the UCC and all renewals or replacements of or substitutions for any such personal property; and (b) any permits, licenses, franchises, certificates and other rights and privileges against third parties, in each such case, related to the Site.

***“Plan”*** shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Lessee or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

***“Pledge Agreement”*** shall mean, collectively, the Pledge Agreements for each of the Leased Properties relating to the pledging and holding of the Cash Collateral.

***“Pledge Agreement (Fremont 1)”*** shall mean the Pledge Agreement for Lease Fremont 1 relating to the pledging and holding of the Cash Collateral.

***“Pledge Agreement (Fremont 3-E)”*** shall mean the Pledge Agreement for Lease Fremont 3-E relating to the pledging and holding of the Cash Collateral.

***“Pledge Agreement (Fremont 4)”*** shall mean the Pledge Agreement for Lease Fremont 4 relating to the pledging and holding of the Cash Collateral.

***“Pledge Agreement (Port 1)”*** shall mean the Pledge Agreement for Lease Port 1 relating to the pledging and holding of the Cash Collateral.

***“Pledge Agreement (Port 101)”*** shall mean the Pledge Agreement for Lease Port 101 relating to the pledging and holding of the Cash Collateral.

***“Principal Officer”*** of Lessee shall mean, any of the following officers: Chief Financial Officer, Chief Operating Officer, Secretary, Assistant Secretary, Controller, Treasurer or Vice President of Finance. If any of the titles of the preceding officers are changed after the date hereof, the term "Principal Officer" shall thereafter mean any officer performing substantially the same functions as are currently performed by one or more of the officers listed in the first sentence of this definition.

***“Prohibited ERISA Transaction”*** shall have the meaning provided in Section 5.3(f) of the Participation Agreement.

***“Prohibited Person”*** shall mean a Person that is (i) on the SDNL or (ii) in violation of any money laundering law, regulation or order, including the USA PATRIOT Act.

***“Purchase Option”*** shall have the meaning provided in Section 21.1(a) of the Lease.

***“Qualified Affiliate”*** means any Person that, like Lessor, (i) is one hundred percent (100%) owned, directly or indirectly, by Lessor’s parent or any successor of such bank, (ii) can make (and has in writing made) the same representations to Lessee that Lessor has made in Section 4.2 of the Participation Agreement (except that such Person need not be a Delaware entity) and can deliver the letter described in Section 3.2(d) of the Participation Agreement, and (iii) is an entity organized under the laws of the State of Delaware or another state within the United States of America.

***“Qualified Prepayment”*** shall mean any repayment of Lease Balance (excluding for clarification, any payments of Yield) arising pursuant to Articles XIII, XVIII, or XX of the Lease.

***“Quarterly Date”*** shall mean the final calendar day (or the prior Business Day if such day is not a Business Day) of each of September, December, March and June.

***“Recorder’s Office”*** shall mean the Office of the Clerk-Recorder of Alameda County, California.

***“Recourse Deficiency Amount”*** shall mean, for each Lease, an amount equal to (i) the Maximum Remarketing Obligation (Improvements) for such Lease plus (ii) the Maximum Remarketing Obligation (Site) for such Lease.

***“Reference Bank”*** shall mean MUFG Bank, Ltd.

***“Release”*** shall mean 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”*** shall have the meaning provided in Section 20.3 of the Lease.

***“Remarketing Sale Date”*** shall have the meaning provided in Section 20.3 of the Lease.

***“Remarketing Sale Proceeds”*** shall mean the net sale proceeds actually received in cash by the Lessor from sale of the Leased Property pursuant to Section 20.3 of the Lease after deduction for any transfer tax thereon not paid by the purchaser thereof, any costs or expenses incurred by the Lessee and/or the Lessor in connection with the actions required under Section 20.3 of the Lease or any other amounts deducted from the gross sale proceeds in connection with such sale.

***“Remediation”*** shall have the meaning provided in Section 16.1 of the Lease.

***“Rent”*** shall mean Basic Rent and Supplemental Rent, collectively.

***“Responsible Officer”*** shall mean Chief Financial Officer, Chief Operating Officer, Vice President of Global Operations, Secretary, Assistant Secretary, Controller, Treasurer or Vice President of Finance.

***“Return Date”*** shall mean the Final Maturity Date.

***“Return Option”*** shall have the meaning provided in Section 21.1(b) of the Lease.

***“Sale Proceeds”*** shall mean the gross sale proceeds actually received in cash by the Lessor from sale of a Leased Property pursuant to Article XVIII or Article XXII of the related Lease minus any transfer tax thereon not paid by the purchaser thereof and minus the aggregate amount of any reasonable, out-of-pocket costs or expenses incurred by the Lessee and/or the Lessor in connection with the actions required under Article XVIII or Article XXII of such Lease, excluding, in the case of the Lessee, any provision of such Article XXII which expressly specifies that the Lessee’s costs shall not be reimbursable out of gross sale proceeds.

***“Sanctioned Country”*** means, at any time, a country or territory which is the subject or target of any Sanctions.

***“Sanctioned Person”*** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

***“Sanctions”*** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

***“SDNL”*** shall mean the list of Specially Designated Nationals and Blocked Persons issued by OFAC.

**“SEC”** shall mean the United States Securities and Exchange Commission and any successor thereto.

**“Security Documents”** shall mean, collectively, each Memorandum of Lease and each Pledge Agreement.

**“Securities Act”** shall mean the Securities Act of 1933.

**“Securities Exchange Act”** shall mean the Securities Act of 1933.

**“Shared Parking Agreement”** shall mean the Shared Parking Agreement dated as of December 31, 2013, between the owner of the Site Fremont 3-E and the owner of Site Fremont 4.

**“Shared Use Agreement”** shall mean (i) a Shared Use Agreement dated on or before the Return Date among the owners of the Fremont Sites, and (ii) a Shared Use Agreement dated on or before the Return Date among the owners of the Site Port 1 and Site Port 101.

**“Site”** shall mean, collectively, with respect to the parcels of land located in Fremont, California, Site Fremont 1, Site Fremont 3-E and Site Fremont 4 and, with respect to the parcels of land located in Livermore, California, Site Port 1 and Site Port 101, all as described in Schedule IV to the Participation Agreement and on Exhibit A to the respective Leases encumbering such Sites.

**“Site Fremont 1”** shall mean the parcel of land located at 4650 Cushing Parkway, Fremont, California, as described in Schedule IV to the Participation Agreement and on Exhibit A to Lease Fremont 1 encumbering such land.

**“Site Fremont 3-E”** shall mean the parcel of land generally located at 4540, 4400 and 4350 Cushing Parkway, Fremont, California, as described in Schedule IV to the Participation Agreement and on Exhibit A to Lease Fremont 3-E encumbering such land.

**“Site Fremont 4”** shall mean the parcel of land located at 4300 Cushing Parkway, Fremont, California, as described in Schedule IV to the Participation Agreement and on Exhibit A to Lease Fremont 4 encumbering such land.

**“Site Port 1”** shall mean the parcel of land located at 1 Portola Avenue, Livermore, California, as described in Schedule IV to the Participation Agreement and on Exhibit A to Lease CA Port 1 encumbering such land.

**“Site Port 101”** shall mean the parcel of land located at 101 Portola Avenue, Livermore, California, as described in Schedule IV to the Participation Agreement and on Exhibit A to Lease CA Port 101 encumbering such land.

**“Solvent”** shall mean, with respect to any Person, that as of the date of determination both (i) the then fair saleable value of the assets of such Person is (y) greater than the total amount of liabilities of such Person and (z) not less than the amount that will be required to pay the probable liabilities on such Person's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to such Person; and (ii)

such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances.

**"S&P"** shall mean Standard & Poor's Rating Services, a division of the McGraw- Hill Companies, Inc. or any successor thereto.

**"Subsidiary"** shall mean, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

**"Supplemental Rent"** shall mean any and all amounts, liabilities and obligations other than Basic Rent which the Lessee assumes or agrees or is otherwise obligated to pay under the Lease or any other Operative Document (whether or not designated as Supplemental Rent) to the Lessor or any other Person including Break Even Price, Additional Costs, Recourse Deficiency Amount, the amounts payable pursuant to Section 7.5 of the Participation Agreement and indemnities and damages for breach of any covenants, representations, warranties or agreements.

**"Survey"** shall mean, collectively, the as-built ALTA Surveys prepared by Kier & Wright dated December 23, 2013 with respect to Site Port 1 and Site Port 101, and by Ruggeri, Jensen, Azar, dated September 18, 2020 with respect to the Fremont Sites.

**"Taxes"** and **"Tax"** shall mean any and all fees (including, without limitation, documentation, recording, license and registration fees and public dues, taxes (including, without limitation, income (whether net, gross or adjusted gross), gross receipts, sales, rental, use, value added, net asset, property, real estate transfer, transfer, excise and stamp taxes), levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever imposed by an Authority, together with any penalties, fines or interest thereon or additions thereto.

**"Title Insurance Company"** shall mean the insurance company that has or will issue the title policies with respect to the Leased Property, which company shall be reasonably acceptable to the Lessor.

**"Title Policy"** shall have the meaning provided in Section 3.1(l) of the Participation Agreement.

**"Transaction Costs"** shall mean reasonable, properly documented, out-of-pocket costs, expenses and fees incurred by the Lessee, the Lessor and the Arranger in connection with the consummation of the transactions contemplated by the Operative Documents, and the preparation, negotiation, syndication, execution and delivery of the Operative Documents including, without duplication, (1) the reasonable and properly documented fees and expenses of Jones Day as special counsel to the Lessee; (2) the reasonable and properly documented fees and expenses of Dechert

LLP; (3) all fees and expenses of the Appraiser with respect to the Appraisal payable in accordance with the fee agreement between the Appraiser and the Lessor; (4) all taxes and search fees, recording fees and filing fees incurred in connection with lien searches and the recording, registering or filing any Operative Document, any deed, declaration, mortgage, security agreement, notice, release, discharge, termination or financing statement with any public office, registry or governmental agency; (5) all reasonable and properly documented costs, expenses and fees of one company engaged to survey the Site and one company engaged to issue an environmental report for the Site; (6) all premiums and other fees and expenses of the Title Company with respect to its issuance of the Title Policy; (7) all fees and expenses of the environmental consultant with respect to the Phase I environmental report issued on or before the Closing Date; and (8) all applicable Fees.

**“UCC Financing Statement”** shall mean the UCC-1 Financing Statements to be filed with respect to the Lessee Collateral.

**“Uniform Commercial Code”** or the **“UCC”** shall mean the Revised Uniform Commercial Code as enacted in the State of New York.

**“Upfront Fee”** shall have the meaning provided in Section 2.6(a) of the Participation Agreement.

**“U.S. Corporation”** shall mean a corporation incorporated under the laws of the United States or any state thereof.

**“USA PATRIOT Act”** shall have the meaning provided in Section 4.1 of the Participation Agreement.

**“Voting Stock”** shall mean outstanding equity or voting interests (or other similar interests) in a Person having voting power for the election of a majority of directors or Persons performing similar functions of such Person.

**“Withdrawal Liability”** shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan within the meaning of Part I of Subtitle E of Title IV of ERISA.

**“Withholding Taxes”** shall mean Taxes arising under the laws of any national, municipal or local government, political subdivision or taxing authority of the United States or any other jurisdiction imposed or collected by way of withholding (regardless of whether such taxes may also be imposed upon or collected from the recipient of a payment), and fines, interest, penalties or other additions thereto, thereon, in lieu thereof or for noncollection or in respect thereof.

**“Yield”** shall mean with respect to each Payment Period under each Lease (a) the Yield Rate for such Payment Period multiplied by (b) the aggregate Equity Investment outstanding.

**“Yield Rate”** shall mean, for any Payment Period, a fixed rate of interest equal to 1.778 percent (1.778%) *per annum*.

## SCHEDULE I

### Equity Investment

<u>Institution</u>	<u>Commitment Amount</u> (which is comprised of the Lease Balances set forth below)
MUFG Americas Capital Leasing & Finance, LLC	\$250,027,401.58
<b>AGGREGATE LESSOR COMMITMENTS:</b>	\$250,027,401.58

<u>Institution</u>	<u>Site</u>	<u>Allocated Commitment Amount</u>
MUFG Americas Capital Leasing & Finance, LLC	Fremont 1	\$22,630,869.82
MUFG Americas Capital Leasing & Finance, LLC	Fremont 3-E	\$154,485,947.72
MUFG Americas Capital Leasing & Finance, LLC	Fremont 4	\$18,708,344.23
MUFG Americas Capital Leasing & Finance, LLC	Port 1	\$34,974,967.40
MUFG Americas Capital Leasing & Finance, LLC	Port 101	\$19,227,272.41

## **SCHEDULE II**

### **Addresses For Notice; Wire Instructions**

#### **LESSEE:**

Lam Research Corporation  
4650 Cushing Parkway  
Fremont, California 94538  
Attention: Odette Go  
Fax Number: odette.go@lamresearch.com

#### **Wire Transfer Instructions:**

Account Name:	Lam Research Corporation
Account Number:	Redacted - Privacy
Bank Name:	Bank of America, N.A.
Bank Address:	New York, New York
Bank Routing (Swift):	Redacted - Privacy
Bank Routing (ABA):	Redacted - Privacy
Bank Contact:	Yi-Xin Soh/ (415) 436-1160/ yi-xin.soh@bofa.com



**LESSOR:**

MUFG Americas Capital Leasing & Finance, Inc.  
445 S. Figueroa Street, G14-200  
Los Angeles, California 90071  
Attention: Leasing and Asset Finance  
Tel.: 213-236-6444  
Email: [portfoliomgmt@unionbank.com](mailto:portfoliomgmt@unionbank.com)

**Wiring Instructions:**

Bank:	MUFG Union Bank, N.A. 445 South Figueroa, 14th Floor Los Angeles, California 90017
Swift Code:	Redacted - Privacy
ABA #:	Redacted - Privacy
Account Name:	MUFG Americas Capital Leasing & Finance, LLC
Account Number:	Redacted - Privacy
Ref:	Lam Research

### **SCHEDULE III**

**[Intentionally Omitted]**

## **SCHEDULE IV**

### **Description of Each Site and Improvements**

#### **Site Fremont 1**

Real property in the City of Fremont, County of Alameda, State of California, described as follows:

##### **PARCEL ONE:**

NEW PARCEL 1 AS SHOWN ON CERTIFICATE OF COMPLIANCE PLN2014-00136, AS EVIDENCED BY DOCUMENT RECORDED JUNE 02, 2014 AS INSTRUMENT NO. 2014132510 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1 AS CREATED BY THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP 5001" FILED ON MARCH 18, 1987 IN BOOK 168 OF MAPS, AT PAGE 24 THRU 26 OFFICIAL RECORDS OF SAID COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE ABOVEMENTIONED PARCEL 1 (PM 5001); THENCE ALONG THE WEST LINE OF SAID PARCEL 1 (PM 5001), NORTH 38° 40' 33" EAST, 703.06 FEET TO THE NORTHWEST CORNER OF PARCEL 1 (PM 5001); THENCE ALONG THE NORTH LINE OF PARCEL 1 (PM 5001), NORTH 82° 48' 27" EAST, 548.63 FEET; THENCE ACROSS PARCEL 1 (PM 5001), SOUTH 07° 11' 33" EAST, 547.93 FEET TO A POINT ON THE SOUTH LINE OF PARCEL 1 (PM 5001); THENCE ALONG SAID SOUTH LINE, SOUTH 85° 58' 49" WEST, 1054.86 FEET TO THE POINT OF BEGINNING.

##### **PARCEL TWO:**

A NON-EXCLUSIVE EASEMENT FOR PRIVATE ACCESS APPURTENANT TO PARCEL ONE ABOVE AS MORE PARTICULARLY DESCRIBED AS "J.A.E" ON THAT CERTAIN PARCEL MAP 5001 FILED MARCH 18, 1987 IN BOOK 168 OF MAPS, AT PAGES 24 THROUGH 26 OF OFFICIAL RECORDS.

#### **Site Fremont 3-E**

Real property in the City of Fremont, County of Alameda, State of California, described as follows:

##### **PARCEL ONE:**

LAND DESCRIPTION OF A PARCEL OF LAND SITUATED IN THE CITY OF FREMONT, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND BEING PORTIONS OF THOSE TWO PARCELS, BOTH DESCRIBED AS PARCEL ONE IN THE DEED WITH LIMITED WARANTEES BOTH GRANTED TO BTMU CAPITAL LEASING AND FINANCE, INC. A DELAWARE CORPORATION, AND BOTH RECORDED ON JANUARY 10, 2014 UNDER DOCUMENT NO. 2014-006852 AND 2014 006846 OFFICIAL RECORD OF SAID COUNTY, AND ALL OF PARCEL ONE DESCRIBED IN THE DEED WITH LIMITED WARANTEES GRANTED TO BTMU CAPITAL LEASING AND FINANCE, INC. A DELAWARE CORPORATION RECORDED ON JANUARY 10, 2014 UNDER DOCUMENT NO. 2014-006855, SAME THREE PARCELS BEING PORTION OF PARCELS 1, AND 4 AND ALL OF PARCELS 2 AND 3 AS CREATED BY THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP 5001" FILED ON MARCH 18, 1987 IN BOOK 168 OF MAPS, AT PAGE 24 THRU 26 OFFICIAL RECORDS OF SAID COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SAID PARCEL 1 (PM 5001); THENCE ALONG THE SOUTH LINE OF PARCEL 1 (PM 5001) FOR THE FOLLOWING TWO COURSES; (1) SOUTH 85° 58' 33" WEST - 2.24 FEET, AND (2) SOUTH 85° 58' 49" WEST - 7.78 FEET; THENCE ACROSS PARCEL 1, NORTH 07° 11' 33" WEST - 547.93 FEET TO A POINT ON THE NORTH LINE OF PARCEL 1 (PM 5001); THENCE ALONG THE NORTH LINES OF PARCELS 1, 2, 3, AND 4 (PM 5001), NORTH 82° 48' 27" EAST - 661.24 FEET; THENCE ACROSS PARCEL 4 (PM 5001), SOUTH 07° 11' 33" EAST - 584.53 FEET TO A POINT ON THE SOUTH LINE OF PARCEL 4 (PM 5001); THENCE ALONG THE SOUTH LINES OF PARCELS 2, 3 AND 4 (PM 5001), SOUTH 85° 58' 33" WEST - 652.24 FEET TO THE POINT OF BEGINNING.

AS SET FORTH AS "NEW PARCEL 2" IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED JUNE 02, 2014 AS INSTRUMENT NO. 2014132512 OF OFFICIAL RECORDS AND THAT CERTAIN GRANT DEED RECORDED JUNE 2, 2014 AS INSTRUMENT NO. 2014132511 OF OFFICIAL RECORDS.

#### PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR PRIVATE ACCESS APPURTENANT TO PARCEL ONE ABOVE AS MORE PARTICULARLY DESCRIBED AS "J.A.E" ON THAT CERTAIN PARCEL MAP 5001 FILED MARCH 18, 1987 IN BOOK 168 OF MAPS, AT PAGES 24 THROUGH 26 OF OFFICIAL RECORDS.

#### PARCEL THREE:

LAND DESCRIPTION OF A PARCEL OF LAND SITUATED IN THE CITY OF FREMONT, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND BEING A PORTION OF PARCEL ONE DESCRIBED IN THE DEED WITH LIMITED TITLE WARANTEES GRANTED TO BTMU CAPITAL LEASING & FINANCE, INC., A DELAWARE CORPORATION RECORDED ON JANUARY 10, 2014 UNDER DOCUMENT NO. 2014-006846 OFFICIAL RECORDS OF SAID COUNTY, SAME PARCEL BEING A

PORTION OF PARCEL 4 AS CREATED BY THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP 5001" FILED ON MARCH 18, 1987 IN BOOK 168 OF MAPS, AT PAGE 24 THRU 26 OFFICIAL RECORDS OF SAID COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SAID THIRD FEE PARCEL AS SHOWN ON THE PLAT ATTACHED TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED JUNE 02, 2014 AS INSTRUMENT NO. 2014132512 OF OFFICIAL RECORDS OF SAID COUNTY, SAME BEING A CORNER ON THE SOUTH LINE OF SAID PARCEL 4; THENCE ALONG SAID SOUTH LINE, SOUTH 85° 58' 33" WEST - 246.39 FEET; THENCE ACROSS SAID THIRD FEE PARCEL AND PARCEL 4, NORTH 07° 11' 33" WEST - 584.53 FEET TO A POINT ON THE NORTH LINE OF SAID THIRD FEE PARCEL AND PARCEL 4; THENCE ALONG SAID NORTH LINE FOR THE FOLLOWING TWO (2) COURSES: (1) NORTH 82° 48' 27" EAST - 166.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, AND (2) IN A NORTHEASTERLY DIRECTION 50.89 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 2044.00 FEET AND THROUGH A CENTRAL ANGLE OF 01° 25' 35" TO THE NORTHEAST CORNER OF SAID THIRD FEE PARCEL; THENCE ALONG THE EASTERLY LINE OF THE THIRD FEE PARCEL FOR THE FOLLOWING THREE (3) COURSES: (1) SOUTH 07° 11' 33" EAST - 244.99 FEET, (2) NORTH 82° 48' 27" EAST - 29.08 FEET, AND (3) SOUTH 07° 11' 33" EAST - 353.79 FEET FOR THE POINT OF BEGINNING.

AS SET FORTH AS "NEW PARCEL 3" IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED JUNE 02, 2014 AS INSTRUMENT NO. 2014132512 OF OFFICIAL RECORDS.

#### **Site Fremont 4**

Real property in the City of Fremont, County of Alameda, State of California, described as follows:

BEING A PORTION OF LOT 4, AS SHOWN ON THE PARCEL MAP 5001 FILED IN BOOK 168 OF MAPS, AT PAGES 24 THROUGH 26, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHERLY LINE OF CUSHING PARKWAY AT THE MOST NORTHEASTERLY CORNER OF SAID LOT 4;

THENCE FROM SAID POINT OF BEGINNING, ALONG THE EASTERLY AND SOUTHERLY LINE OF SAID LOT 4, THE FOLLOWING TWO COURSES:

SOUTH 0° 35' 19" EAST, 646.04 FEET; AND  
SOUTH 85° 58' 33" WEST, 354.60 FEET;

THENCE LEAVING THE SOUTHERLY LINE OF SAID LOT 4, THE FOLLOWING THREE (3) COURSES:

NORTH 7° 11' 33" WEST, 353.79 FEET;  
NORTH 82° 48' 27" WEST, 31.00 FEET; AND  
NORTH 7° 11' 33" WEST, 245.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE ON THE SOUTHERLY LINE OF CUSHING PARKWAY, FROM WHICH POINT A RADIAL LINE BEARS NORTH 8°37' 08" WEST;

THENCE EASTERLY ALONG SAID SOUTHERLY LINE OF CUSHING PARKWAY AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 7° 21' 45", HAVING A RADIUS OF 2044.00 FEET AND AN ARC DISTANCE OF 262.65 FEET;

THENCE CONTINUING ALONG SAID SOUTHERLY LINE OF CUSHING PARKWAY, NORTH 82° 48' 27" EAST, 197.93 FEET TO THE POINT OF BEGINNING.

#### **Site Port 1**

Real property in the City of Livermore, County of Alameda, State of California, described as follows:

PARCEL 6, AS SAID PARCEL IS SHOWN ON THE PARCEL MAP 7341 FILED IN BOOK 268 OF PARCEL MAPS AT PAGE 85, ALAMEDA COUNTY RECORDS.

#### **Site Port 101**

Real property in the City of Livermore, County of Alameda, State of California, described as follows:

ALL OF PARCEL 7 AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON THE PARCEL MAP 7341 FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY IN BOOK 268 OF PARCEL MAPS AT PAGE 85, TOGETHER WITH A PORTION OF PARCEL 14 AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON THE MAP OF TRACT 7610 FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY IN BOOK 293 OF MAPS AT PAGE 14, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER COMMON TO SAID PARCEL 7 AND PARCEL 14;

THENCE ALONG THE BOUNDARY LINE OF SAID PARCEL 7 THE FOLLOWING TEN (10) COURSES

1. WESTERLY ALONG A NON-TANGENT 1278.00 FOOT RADIUS CURVE TO THE RIGHT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 05° 41' 02" EAST, THROUGH A CENTRAL ANGLE OF 3° 38' 58" AN ARC DISTANCE OF 81.402 FEET;

2. ALONG A REVERSE 1022.00 FOOT RADIUS CURVE TO THE LEFT FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 09° 20' 00" WEST, THROUGH A CENTRAL ANGLE OF 9° 20' 00" AN ARC DISTANCE OF 166.481 FEET;

3. WEST, 284.906 FEET;

4. NORTH, 666.259 FEET;

5. EASTERLY ALONG A NON-TANGENT 1452.00 FOOT RADIUS CURVE TO THE LEFT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 01° 01' 32" EAST, THROUGH A CENTRAL ANGLE OF 15° 46' 40" AN ARC DISTANCE OF 399.843 FEET;

6. ALONG A REVERSE 29.00 FOOT RADIUS CURVE TO THE RIGHT FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 14° 45' 08" EAST, THROUGH A CENTRAL ANGLE OF 36° 52' 16" AN ARC DISTANCE OF 18.662 FEET;

7. ALONG A REVERSE 21.00 FOOT RADIUS CURVE TO THE LEFT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 22° 07' 08" EAST, THROUGH A CENTRAL ANGLE OF 36° 52' 16" AN ARC DISTANCE OF 13.514 FEET;

8. NORTH 75° 14' 52" EAST, 30.267 FEET;

9. SOUTH 14° 45' 08" EAST, 77.744 FEET; AND

10. SOUTH, 2.171 FEET,

THENCE LEAVING SAID BOUNDARY LINE OF PARCEL 7, EAST, 26.510 FEET;

THENCE SOUTH, 22.517 FEET;

THENCE EAST, 17.000 FEET;

THENCE SOUTH, 130.001 FEET;

THENCE WEST 27.000 FEET;

THENCE SOUTH, 222.595 FEET;

THENCE EAST, 44.018 FEET;

THENCE SOUTH, 250.002 FEET;

THENCE WEST, 5.526 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL  
7;

THENCE ALONG SAID EASTERLY LINE SOUTH, 41.262 FEET TO THE POINT OF  
BEGINNING.



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**SECOND AMENDED AND RESTATED LEASE AGREEMENT**

**(Port 101)**

DATED AS OF SEPTEMBER 21, 2020

BETWEEN

**MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC,**  
AS THE LESSOR,

AND

**LAM RESEARCH CORPORATION,**  
AS THE LESSEE

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### EXHIBITS

EXHIBIT A	Description of Site
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## SECOND AMENDED AND RESTATED LEASE AGREEMENT

### (PORT 101)

THIS SECOND AMENDED AND RESTATED LEASE AGREEMENT (PORT 101), dated as of September 21, 2020 (as amended, supplemented, or otherwise modified from time to time, this “*Lease*”), is between MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC, a Delaware corporation, as the Lessor (the “*Lessor*”) and whose principal offices are located at 445 South Figueroa, 14th Floor, Los Angeles, California 90017, and LAM RESEARCH CORPORATION, a Delaware corporation, as the Lessee (the “*Lessee*”) and whose principal offices are located at 4650 Cushing Parkway, Fremont, California 95438.

### WITNESSETH:

A. The Lessee and the Lessor are entering into this Lease and the Operative Documents.

B. Subject to the terms and conditions set forth in the Operative Documents, on the Closing Date, the Lessor and the Lessee have agreed to renew the existing lease of the land described on Exhibit A attached hereto (the “*Site*”) and the existing improvements thereon (the “*Improvements*”) and Personal Property used thereon (collectively, the “*Leased Property*”) which Leased Property is subject to that certain Amended and Restated Lease Agreement (Port 101), dated as of December 31, 2013 (“*Existing Lease Port 101*”), between the Lessor and the Lessee.

The Lessee and the Lessor desire to continue to lease the Leased Property and to amend and restate the Existing Lease in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, hereby agree that the Existing Lease is hereby amended and restated in its entirety as follows:

### ARTICLE I DEFINITIONS

For all purposes hereof, the capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in Appendix I to that certain Participation Agreement dated as of even date herewith, between the Lessee and the Lessor (as the same may be amended, modified, restated or supplemented from time to time, the “*Participation Agreement*”).

### ARTICLE II LEASE OF LEASED PROPERTY; LEASE TERM

#### ***SECTION 2.1. Acceptance and Lease.***

The Lessor, subject to the satisfaction or waiver of the conditions set forth in Section 3.1 of the Participation Agreement, hereby agrees to lease all of the Leased Property (the location of

which is more particularly described on Exhibit A hereto) to the Lessee hereunder and the Lessee hereby agrees, expressly for the direct benefit of the Lessor, to lease from the Lessor for the Lease Term, all of the Leased Property. Without limiting the generality of the foregoing, the Lessee acknowledges that the leasehold estate conveyed by this Lease and the Lessee's rights hereunder are expressly made subject and subordinate to the terms and conditions of the matters listed in Schedule B to the Title Policy and all other Permitted Liens, and any other Liens not constituting Lessor Liens.

Subject to Articles XII and XVIII hereof, the Lessor will not lease nor otherwise make the Leased Property, in whole or in part, available to any Person other than the Lessee and its permitted successors, assigns and sublessees during the Lease Term, and (without derogating in any way from the Lessor's rights under Article XV hereof) during the Lease Term the Lessee shall have unimpeded physical control of the Leased Property notwithstanding the Lessor's rights to inspect the Leased Property under Article XV.

***SECTION 2.2. Lease Term.***

Unless earlier terminated, the term of this Lease for the Leased Property shall consist of a base lease term (the "***Base Term***" or the "***Lease Term***") which shall commence on and including the Closing Date (such day, the "***Base Term Commencement Date***") and ending on September 21, 2027.

**ARTICLE III  
TAXES**

***SECTION 3.1. Impositions.***

During the Lease Term, the Lessee agrees to pay prior to delinquency without penalty or interest all Taxes imposed upon or levied against the Leased Property or any part thereof or interest therein consistent with Section 7.2 of the Participation Agreement. The Site consists of one or more separate tax lots for real property tax assessment purposes. Any Tax relating to a fiscal period of any taxing Authority falling partially within and partially outside the Lease Term shall be apportioned and adjusted between (i) the Lessor and the Lessee to the extent the Leased Property is returned to the Lessor pursuant to Sections 21.1(b) and Article XXII hereof or (ii) Lessor and a purchaser of the Leased Property in connection with a sale pursuant to Section 18.1). The Lessee covenants to furnish the Lessor, upon the Lessor's request, within forty-five (45) days after the last date when any Tax must be paid by the Lessee, official receipts of the appropriate taxing Authority or other proof reasonably satisfactory to the Lessor evidencing the payment thereof.

***SECTION 3.2. Contests.***

The Lessee shall have the right to contest any Tax in accordance with Section 7.2(b) of the Participation Agreement.

## **ARTICLE IV RENT**

### ***SECTION 4.1. Rental Payments.***

Commencing on the first Payment Date following the Base Term Commencement Date, the Lessee shall pay to the Lessor Basic Rent, without offset or deduction, (i) on each Payment Date, (ii) on the Return Date, and (iii) on any date on which this Lease terminates or upon demand following an Event of Default pursuant to Article XVII.

### ***SECTION 4.2. Supplemental Rent.***

The Lessee shall pay to the Lessor, or to whomever shall be entitled thereto as expressly provided herein or in any other Operative Document (and the Lessor hereby directs the Lessee, on behalf of the Lessor, to so pay any such other Person), any and all Supplemental Rent promptly as the same shall become due and payable and, in the event of any failure on the part of the Lessee to pay any Supplemental Rent, the 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. The Lessee hereby reaffirms that its obligation to pay Supplemental Rent shall include the payment of any and all Additional Costs. The expiration or other termination of the Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent.

### ***SECTION 4.3. Method and Amount of Payment.***

Basic Rent and Supplemental Rent shall be paid by wire transfer by the Lessee to the Lessor (or, in the case of Supplemental Rent, to such Person as may be entitled thereto) at such place as the Lessor (or such other Person) shall specify in writing to the Lessee pursuant to Schedule II to the Participation Agreement. Each payment of Rent shall be made by the Lessee prior to 11:00 A.M. New York time (and payments made after such time shall be deemed to have been made on the next day) at the place of payment in funds consisting of Dollars which shall be immediately available on the scheduled date when such payment shall be due unless the scheduled date shall not be a Business Day, in which case such payment shall be due and made on the next succeeding Business Day. The provisions of the foregoing sentence of this Section 4.3 shall be applicable only to Basic Rent and to Supplemental Rent payable to, or on behalf of or for the account of, the Lessor and any other Indemnatee.

### ***SECTION 4.4. Late Payment.***

If any Basic Rent shall not be paid within three (3) Business Days of the due date applicable thereto, the Lessee shall pay to the Lessor, or if any Supplemental Rent payable to or on behalf of for the account of the Lessor or other Indemnatee is not paid when due, the Lessee shall pay to whomever shall be entitled thereto, in each case as Supplemental Rent, interest at the Overdue Rate (to the maximum extent permitted by law) on such overdue amount from and including the

due date thereof (without regard to any applicable grace period) to but excluding the Business Day of payment thereof.

## **ARTICLE V NET LEASE**

This Lease shall constitute a net lease and, notwithstanding any other provision of this Lease, it is intended that Basic Rent, Supplemental Rent, the Lease Balance and all other amounts due and payable under the Operative Documents shall be paid without counterclaim, setoff, deduction or defense of any kind and without abatement, suspension, deferment, diminution or reduction of any kind, and the Lessee's obligation to pay all such amounts throughout the Lease Term is absolute and unconditional. The obligations and liabilities of the Lessee hereunder shall, to the fullest extent permitted by Applicable Laws, in no way be released, discharged or otherwise affected for any reason (other than the indefeasible payment or performance in full of such liability or obligation) including: (a) any defect in the condition, merchantability, design, construction, quality or fitness for use of the Leased Property or any portion thereof, or any failure of the Leased Property or any portion thereof to comply with all Applicable Laws including any inability to occupy or use the Leased Property or any portion thereof by reason of such non-compliance; (b) any damage to, abandonment, loss, contamination of or Release from or destruction of or any requisition or taking of the Leased Property or any portion thereof including eviction; (c) any restriction, prevention or curtailment of or interference with any use of the Leased Property or any portion thereof, including eviction; (d) any defect in title to or rights to the Leased Property or any portion thereof or any Lien on such title or rights or on the Leased Property or any portion thereof; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by the Lessor; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to the Lessee, the Lessor or any other Person, or any action taken with respect to this Lease by any trustee or receiver of the Lessee, the Lessor or any other Person, or by any court, in any such proceeding; (g) any claim that the Lessee has or might have against any Person, including the Lessor or any Indemnitee arising from any of the circumstances set forth in this sentence (but will not constitute a waiver of such claim); (h) any failure on the part of the Lessor to perform or comply with any of the terms of this Lease, any other Operative Document or of any other agreement whether or not related to the Overall Transaction; (i) any invalidity or unenforceability or disaffirmance against or by the Lessee of this Lease or any provision hereof or any of the other Operative Documents or any provision of any thereof; (j) the impossibility of performance by the Lessee, the Lessor or both; (k) any action by any court, administrative agency or other Authority; (l) the construction of any Alterations; (m) the failure of the Lessee to achieve any accounting or tax benefits or the characterization of the transaction intended by Section 2.12 of the Participation Agreement; or (n) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not the Lessee shall have notice or knowledge of any of the foregoing. Except as specifically set forth in Article XIII or Section 20.1 of this Lease, this Lease shall be noncancellable by the Lessee for any reason whatsoever and the Lessee, to the fullest extent permitted by Applicable Laws, waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this



Lease, or to any diminution, abatement or reduction of Rent payable by the Lessee hereunder. If for any reason whatsoever this Lease shall be terminated or amended in whole or in part by operation of law or otherwise, except as expressly provided in Article XIII or Section 20.1 of this Lease, the Lessee shall, unless prohibited by Applicable Laws, pay to the Lessor (or, in the case of Supplemental Rent, to whomever shall be entitled thereto) a compensation in an amount equal to each Rent payment (including the Lease Balance and any other amount due and payable under any Operative Documents) at the time and in the manner that such payment would have become due and payable under the terms of this Lease if it had not been terminated or amended in whole or in part. Each payment of Rent including any payment of the Lease Balance and Break Even Price made by the Lessee hereunder shall be final and, absent manifest error in the computation of the amount thereof, the Lessee shall not seek or have any right to recover all or any part of such payment from the Lessor or any party to any agreements related thereto for any reason whatsoever. The Lessee assumes the sole responsibility for the condition, use, operation, maintenance, and management of the Leased Property and the Lessor shall have no responsibility in respect thereof and shall have no liability for damage to the Leased Property or the property relating thereto of the Lessee or any subtenant of the Lessee on any account or for any reason whatsoever. Without affecting the Lessee's obligation to pay Basic Rent, Supplemental Rent, the Lease Balance and all other amounts due and payable under the Operative Documents or to perform its obligations under the Operative Documents, the Lessee may, notwithstanding any other provision of the Operative Documents (other than Section 8.11 of the Participation Agreement), seek damages of any kind or any other remedy at law or equity against the Lessor for such willful misconduct or gross negligence or negligence in the handling of funds or for a breach by the Lessor of its obligations under this Lease or the other Operative Documents.

## **ARTICLE VI UTILITY CHARGES**

During the Lease Term the Lessee shall pay or cause to be paid all development and improvement charges and all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents, utilities or public dues used in or on the Improvements or the Site during the Lease Term. The Lessee shall be entitled to receive any credit or refund with respect to any utility charge or public dues paid by the Lessee and the amount of any credit or refund received by the Lessor on account of any utility charges paid by the Lessee, net of the costs and expenses reasonably incurred by the Lessor in obtaining such credit or refund, which amount shall be promptly paid over to the Lessee. All charges for utilities imposed or public dues with respect to the Improvements and the Site for a billing period during which this Lease expires or terminates (except pursuant to Article XX or Section 21.1(a), in which case the Lessee shall be solely responsible for all such charges) shall be adjusted and prorated on a daily basis between the Lessee and any purchaser of the Leased Property, and each party shall pay or reimburse the other for each party's pro rata share thereof; provided, that in no event shall the Lessor have any liability therefor (unless Lessor is the purchaser of the Leased Property).

**ARTICLE VII**  
**CONDITION AND USE OF LEASED PROPERTY**

LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING THE LEASED PROPERTY "AS IS" IN ITS PRESENT CONDITION, SUBJECT TO (A) ANY RIGHTS OF ANY PARTIES IN POSSESSION THEREOF OR OF THE SITE, (B) THE STATE OF THE TITLE THERETO OR TO THE SITE EXISTING AT THE TIME THE LESSOR ACQUIRED ITS INTEREST IN THE LEASED PROPERTY, (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW (INCLUDING ANY SURVEY DELIVERED ON OR PRIOR TO THE CLOSING DATE), (D) ALL APPLICABLE LAWS, AND (E) ANY VIOLATIONS OF APPLICABLE LAWS WHICH MAY EXIST AT THE COMMENCEMENT OF THE LEASE TERM. LESSEE HAS EXAMINED THE LEASED PROPERTY AND (INSOFAR AS THE LESSOR IS CONCERNED) HAS FOUND THE SAME TO BE SATISFACTORY. WITHOUT LIMITING THE SPECIFIC REPRESENTATIONS AND WARRANTIES IN ARTICLE IV OF THE PARTICIPATION AGREEMENT, THE LESSOR HAS NOT MADE NOR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, NOR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE TO THE LEASED PROPERTY OR THE SITE OR TO THE VALUE, MERCHANTABILITY, HABITABILITY, CONDITION, OR FITNESS FOR USE OF THE LEASED PROPERTY OR THE SITE, OR ANY PART THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED PROPERTY OR THE SITE, OR ANY PART THEREOF, AND THE LESSOR SHALL NOT BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN OR THE FAILURE OF THE LEASED PROPERTY OR ANY PORTION THEREOF, TO COMPLY WITH ANY APPLICABLE LAWS, except that the Lessor hereby represents and warrants that as of the date of this Lease, the Leased Property is free of Lessor Liens. The Lessee, having been afforded full opportunity to inspect the Leased Property, is satisfied with the results of its inspections 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 the preceding sentence, as between the Lessor, on the one hand, and the Lessee, on the other, are to be borne by the Lessee. The provisions of this Article VII 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 the Lessor, express or implied, with respect to the Leased Property (or any interest therein) that may arise pursuant to any law now or hereafter in effect or otherwise.

**ARTICLE VIII**  
**LIENS; EASEMENTS**

***SECTION 8.1. Liens.***

During the Lease Term and subject to the Lessee's right to engage in Permitted Contests in accordance with Section 9.5, the Lessee will not directly or indirectly create, incur, assume or

suffer to exist any Lien (other than Permitted Liens) on or with respect to any portion of the Leased Property or any portion thereof or the Lessor's interest therein. The Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Leased Property free and clear of, and duly to discharge, eliminate or bond in a manner reasonably satisfactory to the Lessor, any such Lien (other than Permitted Liens) if the same shall arise at any time.

## ***SECTION 8.2. Easements.***

Notwithstanding Section 8.1, at the request of the Lessee, the Lessor shall, from time to time during the Lease Term and upon reasonable advance written notice from the Lessee and receipt of the materials specified below, consent to and join in any (i) grant of easements, licenses, rights of way and other rights in the nature of easements, including utility easements which in each case facilitate the Lessee's use, development and operation of the Leased Property, (ii) release or termination of easements, licenses, rights of way or other rights in the nature of easements which releases and terminations are for the benefit of the Site or the Improvements or any portion thereof, (iii) dedication or transfer of portions of the Site, not improved with a building, for road, highway or other public purposes, provided the same are for the benefit of the Site or Improvements, (iv) execution of agreements for ingress and egress and amendments to any covenants and restrictions affecting the Site or Improvements or any portion thereof, and (v) request to any Authority for platting or subdivision or replatting or resubdivision approval with respect to the Site or any portion thereof or any parcel of land of which the Site 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 the Lessee and the Lessee shall pay all reasonable out-of-pocket costs of the Lessor in connection therewith (including the reasonable fees of attorneys, architects, engineers, planners, appraisers and other professionals reasonably retained by the Lessor in connection with any such action);

(b) the Lessee shall have delivered to the Lessor a certificate of a Responsible Officer of the Lessee stating that:

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

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

(c) in the case of any release or conveyance, if the Lessor so reasonably requests, the Lessee will cause to be issued and delivered to the 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 the Lessor; and

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

## **ARTICLE IX MAINTENANCE AND REPAIR; ALTERATIONS AND ADDITIONS**

### ***SECTION 9.1. Maintenance and Repair; Compliance With Law.***

At all times during the Lease Term, the Lessee shall (a) maintain the Improvements and the Site in good operating condition and repair, subject to ordinary wear and tear, and in any event in a manner consistent with other similar facilities or buildings owned or leased by the Lessee and its Subsidiaries; (b) subject to Section 9.5, maintain the Improvements and the Site in accordance with all Applicable Laws (including all Environmental Laws) in all material respects, whether or not such maintenance requires structural modifications; (c) maintain the Improvements and the Site in such a way that the Improvements and the Site shall not constitute a danger to persons or things; (d) comply in all material respects with the Insurance Requirements which are in effect at any time with respect to the Leased Property or any part thereof; (e) use the Improvements and the Site only in accordance with Article X; (f) make all necessary or appropriate repairs, replacements and renewals of the Improvements and the Site or any part thereof which may be required to keep the Improvements and the Site in the condition required by the preceding clauses (a) through (e), whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, and including repairs, replacements and renewals that would constitute capital expenditures under GAAP if incurred by an owner of property; and (g) procure, maintain and comply in all material respects with all licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance and operation of the Improvements and the Site. The Lessee waives any right that it may now have or hereafter acquire to (x) require the Lessor to maintain, repair, replace, alter, remove or rebuild all or any part of the Improvements or the Site or (y) make repairs at the expense of the Lessor pursuant to any Applicable Laws or other agreements.

### ***SECTION 9.2. Improvements and Alterations.***

(a) The Lessee, at the Lessee's own cost and expense, (i) shall make alterations, renovations, repairs, improvements and additions to the Leased Property or any part thereof and substitutions and replacements therefor (collectively, "***Alterations***") which are (A) necessary to repair or maintain the Improvements or the Site in the condition required by Section 9.1 or (B) necessary or advisable to restore the Improvements and the Site to its condition existing prior to a Casualty or Condemnation to the extent required pursuant to Article XIII, and (ii) so long as no Material Default or Event of Default has occurred and is continuing, may undertake Alterations

on the Leased Property so long as such Alterations comply in all material respects with Applicable Laws and are consistent and comply with Section 9.1 and subsection (b) of this Section 9.2.

(b) The making of any Alterations pursuant to subsection (a)(i) above of this Section 9.2 must be in compliance with the following requirements:

(i) The Lessee shall not make any Alterations in violation of the terms of any restriction, easement, condition, covenant or other similar matter affecting title to or binding on the Improvements or the Site.

(ii) No Alterations shall be undertaken until the Lessee shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations relating to such Alterations of all municipal and other Authorities having jurisdiction over the Improvements or the Site. The Lessor, at the 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; provided, however, that such joinder shall not constitute or be deemed to constitute, any assumption or responsibility or liability whatsoever.

(iii) The Alterations shall be completed in a good and workmanlike manner and in compliance in all material respects with all Applicable Laws then in effect and with the Insurance Requirements.

(iv) All Alterations shall, when completed, be of such a character as to not materially diminish (A) the utility of the Improvements as a corporate office complex including a corporate office building, lab and semiconductor equipment manufacturing facilities, and any uses ancillary thereto, (B) the then current Fair Market Value as determined by reference to the Appraisal, or (C) the Fair Market Value as determined by reference to the Appraisal as of the scheduled expiration date of the Lease Term.

(v) The Lessee shall have made adequate arrangements for payment of the cost of all Alterations when due so that the Improvements and the Site shall at all times be free of Liens for labor and materials supplied or claimed to have been supplied to the Improvements or the Site, other than Permitted Liens; provided, that the Lessee shall have the right to engage in Permitted Contests in accordance with Section 9.5.

(vi) The Alterations must be located solely on the Site.

### ***SECTION 9.3. Alterations Subject to Lease.***

The following Alterations without further act shall be deemed to constitute a part of the Leased Property and be subject to this Lease:

(a) Alterations that are in replacement of or in substitution for a portion of the Improvements;

(b) Alterations that are required to be made pursuant to the terms of Section 9.1 or 9.2(a)(i) hereof; or

(c) Alterations that are Non-severable or immovable.

To the extent any Alterations are deemed to constitute part of the Leased Property pursuant to the preceding sentence, the Lessee hereby acknowledges and agrees that such Alterations will become upon installation property of the Lessor. The Lessee will, at the Lessor's request, execute and deliver any documents reasonably necessary to evidence or cause the vesting of such interests in and to such Alterations to the Lessor.

If such Alterations are not within any of the categories set forth in clauses (a) through (c) of this Section 9.3 and have not become property of the Lessor in accordance therewith, then such Alterations shall remain the sole property of the Lessee and such Alterations shall not be deemed to be Alterations which are part of the Leased Property. All such Alterations not constituting part of the Leased Property may, so long as no Event of Default is continuing, be removed at any time by the Lessee other than Alterations the removal of which would result in a violation of Applicable Laws. The Lessee shall at its expense prior to the Lease Expiration Date repair any damage to the Improvements or the Site caused by the removal of such Alterations. The Lessor (or the purchaser of the Leased Property if the Lessee elects the Return Option or in connection with a sale pursuant to Section 18.1) may purchase from the Lessee any such Alterations (if not already owned by the Lessor) that the Lessee intends to remove from the Improvements or the Site prior to the Lease Expiration Date, which purchase shall be at the Fair Market Value of such Alterations as determined by the Appraiser at the time of such purchase.

#### ***SECTION 9.4. Maintenance and Repair Reports.***

During the Lease Term, the Lessee shall keep maintenance and repair reports in sufficient detail, on the same basis as records are kept for similar properties owned or leased by the Lessee or its Subsidiaries, to indicate the nature and date of major work done. Such reports shall be kept on file by the Lessee at its offices during the Lease Term, and shall be made available at the Lessee's office to the Lessor upon reasonable request.

#### ***SECTION 9.5. Permitted Contests.***

If, to the extent and for so long as (a) a contest of the legality, validity or applicability to the Improvements or the Site or any interest therein of, or the operation, use or maintenance thereof by the Lessee of (i) any Applicable Laws, (ii) any term or condition of, or any revocation or amendment of, or other proceeding relating to, any Governmental Action, or (iii) any Lien or Tax shall be made in good faith, by appropriate proceedings initiated timely and diligently prosecuted, by the Lessee or (b) compliance with such Applicable Laws, Governmental Action, Lien or Tax

shall have been excused or exempted by a valid nonconforming use permit, waiver, extension or forbearance, the Lessee shall not be required to comply with such Applicable Laws, Governmental Action, Lien or Tax but only if and so long as any such contest shall constitute a Permitted Contest.

The Lessor will not be required to join in any Permitted Contest pursuant to this Section 9.5 unless a provision of any Applicable Laws requires, or, in the good faith opinion of the Lessee, it is helpful to the Lessee that such proceedings be brought by or in the name of the Lessor; and in that event, the Lessor will join in the proceedings or permit them or any part thereof to be brought in its name if and so long as (i) no Event of Default is continuing, (ii) the Lessee has not elected the Return Option, and (iii) the Lessee pays all related out-of-pocket expenses, and the Lessee shall be deemed to have acknowledged and agreed that the Lessor is indemnified therefor pursuant to Section 7.1 of the Participation Agreement.

## **ARTICLE X USE**

### ***SECTION 10.1. Use.***

The Site on which the Improvements are located shall be used solely for the purposes of a corporate office complex including a corporate office building, lab and semiconductor equipment manufacturing facilities and any uses ancillary thereto. The Lessee shall not use the Leased Property or any portion thereof for any purpose or in any manner that would diminish (A) the utility of the Improvements as a corporate office complex including a corporate office building and any uses ancillary thereto, (B) the then current Fair Market Value as determined by reference to the Appraisal, or (C) the Fair Market Value as determined by reference to the Appraisal as of the scheduled expiration date of the Lease Term. The Lessee shall use the Leased Property in compliance in all material respects with (a) any Applicable Laws (including Environmental Laws), except to the extent permitted by Section 9.5, (b) any Insurance Requirements, and (c) all of the Operative Documents. The Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Leased Property in accordance with this Lease and the Participation Agreement. The Lessee shall not commit or permit any intentional waste of the Leased Property or any material part thereof.

### ***SECTION 10.2. Trade Compliance; Anti-Corruption.***

(a) *Trade Compliance.* The Lessee shall comply with the Trading with the Enemy Act, as amended, and all of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended), federal embargo laws and regulations, and the USA PATRIOT Act in the conduct of all of its activities, including the following: (i) the use, assignment, or sublease of Site or the Improvements by Prohibited Persons; and (ii) the export of any products manufactured at the Improvements to any destination or Prohibited Person.

(b) *Compliance with Anti-Corruption and Anti-Money Laundering Laws:* The Lessee shall at all times comply with all anti-bribery, anti-corruption, anti-money laundering and related records keeping laws, rules, regulations and orders of any Authority applicable to it or its property, in each case except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Lessee will maintain in effect and enforce policies and procedures designed to ensure compliance by the Lessee, its Subsidiaries and their respective directors, officers, employees and agents with applicable economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

## **ARTICLE XI INSURANCE**

### ***SECTION 11.1. Required Coverages.***

During the Lease Term, the Lessee will provide or cause to be provided insurance with respect to the Improvements and the Site of a character usually obtained by the Lessee against loss or damage of the kinds and in the amounts customarily insured against by the Lessee with respect to similar properties, and carry such other insurance as is usually carried by the Lessee with respect to similar properties; provided, that in any event the Lessee will maintain:

(a) *Comprehensive General Liability Insurance.* The Lessee will maintain a comprehensive general liability insurance policy on an occurrence basis, with a combined single limit against claims for third-party bodily injury, including death and third-party property damage in an amount at least equal to \$25,000,000 per occurrence and \$25,000,000 in the aggregate, which may be a blanket policy, including pollution liability insurance for sudden and accidental contamination occurring on, in or about the Improvements or the Site in an amount of not less than \$10,000,000. Such coverage may be subject to deductibles or self-insurance up to an amount that is customarily carried by the Lessee with respect to similar property. Such liability insurance shall name the Lessor as an additional insured and the Lessor shall continue to be named as an additional insured and such policy shall remain in effect until at least the third anniversary of the end of the Lease Term. Notwithstanding the foregoing, Lessee may maintain the contractual liability and pollution liability insurance required above in a separate policy otherwise satisfying the requirements of this Section 11.1(a).

(b) *Builder's Risk Insurance.* At any other time in connection with any construction of or Alteration to any Improvements which enlarge the "footprint" of the Improvements by more than ten percent (10%), the Lessee shall arrange, on behalf of the Lessor and all contractors, to obtain and keep in force an all-risk builder's risk insurance with respect to the Improvements and the construction of such Alterations or Improvements insuring the Lessor's interest in the Improvements and the construction of such Alterations or Improvements including



resulting damage from collapse, coverage for fire, hurricanes, flood and coverage against damage or loss caused by machinery accidents and operational and performance testing and start-up, with extended coverage, in an amount not less than the full replacement cost of the insured building (without deduction for depreciation). The coverage required pursuant to this Section 11.1(b) may be maintained in a separate policy or included in the property insurance policy maintained pursuant to Section 11.1(c).

(c) *Property Insurance.* During the Base Term, the Lessee will maintain all-risk insurance (including coverage for fire, hurricanes, flood and coverage against damage or loss caused by machinery accidents and operational and performance testing and start-up) against loss or damage covering the Leased Property or any portion thereof against such risks customarily maintained by the Lessee with respect to similar properties in an amount not less than the replacement cost of the Improvements, including any costs that may be required to cause the Leased Property to be reconstructed to comply with then current Applicable Laws. Such property insurance shall name each of the Lessor as sole loss payee and as an additional insured.

(d) *Flood Insurance.* To the extent any portion of the Leased Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable Authority, the Lessee shall (i) obtain flood insurance for the Leased Property in an amount not less than \$150,000,000 on a blanket insurance basis together with Site Port 1, and (ii) require and shall ensure that such flood insurance at all times names Lessor as an additional insured and as loss payee, as its interests may appear.

(e) *Other Insurance.* Insurance shall not cover any terrorism or war risks unless the Lessee carries insurance for such risks generally on similar property it owns or leases.

Insurance provided pursuant to this Section 11.1 (other than permitted self-insurance) shall be written by reputable insurance companies that are financially sound and solvent with a rating of at least "A-" by A.M. Best's or Standard and Poor's or by other insurers approved in writing by the Lessor (including consistent with the Lessee's past practices, insurance companies affiliated with the Lessee). Each policy referred to in this Section 11.1 shall provide that: (i) it will not be canceled or allowed to lapse without renewal, except after not less than thirty (30) days' prior written notice to the Lessor or ten (10) days' prior notice to the Lessor in the case of non-payment of premium; (ii) other than standard policy exclusions, there is no provision in the policies where the interests of the Lessor shall be invalidated by any act or negligence of or breach of warranty by the Lessee or any Person having an interest in the Improvements or the Site; (iii) such insurance is primary and non-contributory with respect to any other insurance carried by or available to the Lessor; (iv) the insurer shall waive customary rights of subrogation, setoff, counterclaim, or other deduction, whether by attachment or otherwise, against any additional insured or loss payee; (v) such general liability policy and pollution legal liability policy shall contain a severability clause providing for coverage of the Lessor as if a separate policy had been issued to the Lessor; (vi) the Lessee will notify the Lessor promptly of any policy cancellation, reduction in policy limits, lapse, modification or amendment, and (vii) the insurer shall not allow for unpaid premiums to be paid by the Lessor.

Except as expressly set forth herein, the insurance required to be maintained by the Lessee under this Section 11.1 may be subject to such deductible amounts or periods, as applicable as is consistent with the Lessee's practice for other properties similar to the Leased Properties owned or leased by the Lessee, and may be carried under blanket policies maintained by or on behalf of the Lessee so long as such policies otherwise comply with the provisions of this Section 11.

***SECTION 11.2. Delivery of Insurance Certificates.***

Pursuant to Section 3.1(c) of the Participation Agreement, the Lessee shall deliver to the Lessor certificates of insurance reasonably satisfactory to the Lessor evidencing the existence of all insurance required to be maintained hereunder and setting forth the respective coverages, limits of liability, carrier, policy number and period of coverage. Thereafter, throughout the Lease Term, at the time each of the Lessee's insurance policies is renewed (but in no event less frequently than once every twelve (12) months) or upon written request by the Lessor during the continuance of an Event of Default, the Lessee shall deliver to the Lessor certificates of insurance evidencing that all insurance required by Section 11.1 to be maintained by the Lessee with respect to the Leased Property is in effect.

The Lessee agrees that nothing in this Article XI shall prohibit the Lessor from maintaining its own insurance coverage, at its own expense, which coverage shall not reduce the obligations of the Lessee under this Article XI; provided, however, that no such insurance shall be maintained if its maintenance would prevent the Lessee from maintaining insurance as to the Improvements and the Site with insurers when required to do so herein.

**ARTICLE XII**  
**ASSIGNMENT AND SUBLEASING**

During the Lease Term, the Lessee may assign, sublease or transfer to any Person, at any time, in whole or in part, its right, title or interest in, to or under this Lease or any portion of the Leased Property without the prior written consent of the Lessor so long as (v) any such assignment, sublease or transfer would not subject the Lessor to a violation of laws or regulations applicable to the Lessor including those set forth in Section 10.2 hereof, (w) no Event of Default shall have occurred and be continuing or, after giving effect to such assignment, sublease or transfer, would exist, (x) any such sublease is expressly subject and subordinate to this Lease, (y) the Lessee remains liable for all obligations under this Lease after giving effect to any such assignment, sublease or transfer, and (z) the Lessor retains all of its interests in and benefits of the Cash Collateral and receives prior certification thereof from the Lessee and such other evidence thereof as the Lessor may reasonably request. Unless and until the Lessee has exercised the Early Termination Option or the Purchase Option, no sublease may have a term that extends beyond the Base Term Expiration Date. In all cases, the Lessee will promptly provide the Lessor copies of each such assignment, sublease or transfer.

No sublease will discharge or diminish any of the Lessee's obligations hereunder and the Lessee shall remain directly and primarily liable under the Lease with respect to the Leased Property and the Operative Documents to which it is a party. Each sublease permitted hereby shall be made and shall expressly provide in writing that it is subject and subordinate to this Lease and the rights of the Lessor hereunder, shall expressly provide for the surrender of the Leased Property by the sublessee at the election of the Lessor after an Event of Default, shall provide that such provisions may be directly enforced by the Lessor and shall provide that such sublessee expressly agrees to comply with the use restrictions set forth in Article X hereof.

Notwithstanding the first paragraph of this Article XII, the Lessee may not assign or transfer its rights and obligations under this Lease and the other Operative Documents unless (a) on the effective date of any such assignment and transfer, no Event of Default exists, (b) the parties enter into an assignment agreement in form and substance reasonably satisfactory to the Lessor, (c) all filings of or in respect of any such assignment and transfer necessary to protect the rights of the Lessor in the Leased Property and the other Operative Documents are made in a timely fashion, (d) without limiting any provisions of this Article XII, any such assignment and transfer shall include an appropriate provision for the operation, maintenance and insurance of the Leased Property in accordance with the terms hereof, (e) the Lessor shall have received opinions of counsel with respect thereto and such other matters as the Lessor may reasonably request, (f) such assignment and transfer will not result in a Material Adverse Effect, (g) such assignment and transfer will not result in the imposition of any unindemnified Taxes, (h) the Lessor shall have received such other documents and instruments and the Lessee shall take such further acts as the Lessor may reasonably request to evidence and facilitate such assignment and transfer, provided that no such document or instrument shall increase the Lessee's obligations or diminish the Lessee's rights under the Operative Documents or otherwise, and (i) such assignment and transfer will not, with respect to the Lessor, violate the use restrictions set forth in Article X hereof or Applicable Laws and provided, further that, the Lessee shall provide to the Lessor not less than thirty (30) days' prior written notice of such assignment or transfer, such notice to identify the assignee or transferee. No such assignment and transfer will diminish or discharge any of the Lessee's obligations under this Lease or the other Operative Documents.

## **ARTICLE XIII**

### **LOSS, DESTRUCTION, CONDEMNATION OR DAMAGE**

#### ***SECTION 13.1. Event of Loss.***

(a) *Event of Loss During Base Term.*

(i) *Event of Taking.* If an Event of Taking shall occur during the Base Term, the Lessee shall give the Lessor prompt written notice of such occurrence and the date thereof and the Lessee shall on the next succeeding Payment Date (the "***Next Date***") after such Event of Taking shall have occurred or, if such Event of Taking shall have occurred within ten (10) Business Days preceding a Payment Date, then on the next succeeding

Payment Date after such Next Date shall have occurred, terminate this Lease and, as compensation for such Event of Taking, pay to the Lessor on such Payment Date the Break Even Price.

(ii) *Event of Loss.* If an Event of Loss (other than an Event of Taking) shall occur during the Base Term, the Lessee shall give the Lessor prompt written notice of such occurrence and the date thereof which notice shall contain an election by the Lessee to either (A) purchase the Leased Property from the Lessor on the Next Date after such Event of Loss shall have occurred or, if such Event of Loss shall have occurred within ten (10) Business Days preceding a Payment Date, then on the next succeeding Payment Date after such Next Date shall have occurred, at a purchase price equal to the Break Even Price of the Leased Property (and if the Lessee makes such election the Break Even Price shall become due and payable and the Lessee shall purchase the Leased Property on such Payment Date), or (B) provided no Material Default or Event of Default shall have occurred and be continuing and rebuilding of the Improvements is capable of being completed prior to the end of the Lease Term (as certified in writing by a construction consultant appointed by the Lessee and acceptable to the Lessor), rebuild the Improvements and continue the Lease. If the Lessee elects to rebuild the Improvements, the Lessee shall rebuild the Improvements to the condition required to be maintained pursuant to Section 9.1 and so as not to diminish (A) the utility of the Improvements as a corporate office complex including a corporate office building, and any uses ancillary thereto, (B) the then current Fair Market Value as determined by reference to the Appraisal, or (C) the Fair Market Value as determined by reference to the Appraisal as of the scheduled expiration date of the Lease Term.

(b) *Purchase and Termination.* Upon receipt in full by the Lessor of the Break Even Price pursuant to this Section 13.1(i) above, the Lease shall terminate and the obligations of the Lessee hereunder and under the other Operative Documents (other than any obligations expressed herein, or any other Operative Document as surviving termination of this Lease (including any obligations with respect to any existing Event of Default)) shall terminate as of the date of such receipt. Upon such receipt in full of the Break Even Price, the Leased Property and all rights to any remaining awards or proceeds shall be transferred to the Lessee or its designee in accordance with Section 23.11 hereof.

(c) *Application of Payments Relating to an Event of Loss.* Subject to Section 13.4, all condemnation proceeds and property insurance proceeds received at any time by the Lessee during the Lease Term from any Authority or other Person with respect to any Event of Loss shall be promptly remitted to the Lessor (up to, but not exceeding, the Break Even Price) and, upon the payment in full of the Break Even Price, the Lessor shall assign to the Lessee all rights to any condemnation proceeds and property insurance proceeds and any such condemnation proceeds and property insurance proceeds remaining thereafter or thereafter received shall be paid by the Lessor (whichever shall receive same) over to the Lessee, or as the Lessee may direct, and any receipt of such proceeds shall satisfy the Lessee's obligations under Section 13.1.

### ***SECTION 13.2. Condemnation.***

In case of a Condemnation for temporary use of all or a portion of the Leased Property or a Condemnation of a portion of the Leased Property, in each case which is not an Event of Taking, this Lease shall remain in full force and effect, without any abatement or reduction of Rent, and the proceeds and awards received from any Authority relating to such Condemnation shall, so long as no Material Default or Event of Default shall have occurred and be continuing, be paid by the Lessor to the Lessee and, to the extent applicable, shall be used by the Lessee to repair and restore the affected Leased Property to the condition required by Section 9.1. Notwithstanding anything herein to the contrary, any portion of such proceeds that is awarded with respect to the time period after the expiration or termination of the Lease Term (unless the Lessee shall have exercised an option to purchase the Leased Property and consummated such purchase) shall be paid to the Lessor; provided, that if the Lessee has paid the Break Even Price to the Lessor, such proceeds (or the portion of such proceeds in excess of portion thereof applied to the Break Even Price) shall be paid by the Lessor over to the Lessee.

### ***SECTION 13.3. Casualty.***

Upon any Casualty during the Base Term with respect to the Leased Property which is not an Event of Loss, this Lease shall remain in full force and effect, without any abatement or reduction of Rent and, if the cost of repair would exceed \$2,000,000 (as reasonably determined by the Lessee), the Lessee shall give to the Lessor written notice of such Casualty. As soon as practicable after such Casualty with respect to the Leased Property has occurred, the Lessee shall repair and rebuild the affected portions of the Leased Property suffering such Casualty (or cause such affected portions to be repaired and rebuilt) to the condition required to be maintained by Section 9.1 and so that the Fair Market Value, utility, useful life and functional capability of such item as restored is at least equivalent to the Fair Market Value, utility and useful life and functional capability of such item as in effect immediately prior to the occurrence of such Casualty (assuming the Improvements were being maintained in accordance with Section 9.1); provided, that at all times during such repair or rebuilding the Lessee shall maintain the Improvements in accordance with Section 9.1.

### ***SECTION 13.4. Proceeds.***

If a Material Default or an Event of Default shall have occurred and be continuing, any proceeds received from any Authority or any insurance proceeds, in either case with respect to any Casualty or an Event of Loss, shall be held by the Lessor. So long as no Material Default or Event of Default shall have occurred and be continuing, any such proceeds received from any Authority or any insurance proceeds with respect to any Casualty, or if the Lessee has elected to rebuild the Improvements upon an Event of Loss pursuant to Section 13.1 hereof, with respect to such Event of Loss, shall be paid by the Lessor or by the insurers over to the Lessee up to \$2,000,000. Any such proceeds received from any Authority or any insurance proceeds with respect to any Casualty or, if the Lessee has elected to rebuild the Improvements, with respect to an Event of Loss, in each case, not paid over to the Lessee in accordance with the previous sentence, shall be held by the

Lessor and made available to the Lessee to pay costs actually incurred by the Lessee to restore the Leased Property as required herein in accordance with Section 13.1(a)(ii) and any proceeds received from any Authority or any insurance proceeds remaining after such restoration shall be paid by the Lessor over to the Lessee.

#### ***SECTION 13.5. Negotiations.***

In the event any part of the Leased Property becomes subject to condemnation or requisition proceedings during the Lease Term, the Lessee shall give notice thereof to the Lessor promptly after the Lessee has knowledge thereof and, to the extent permitted by any Applicable Laws, the Lessee shall control the negotiations with the relevant Authority unless an Event of Default has occurred and is continuing, in which case the Lessor shall be entitled to control such negotiations in consultation with the Lessee; provided, that in any event the Lessor may participate at the Lessor's expense (or if an Event of Default is continuing, at the Lessee's expense) in such negotiations. The Lessee shall give to the Lessor such information, and copies of such documents, which relate to such proceedings, or which relate to the settlement of amounts due under insurance policies required by Section 11.1, and are in the possession of the Lessee, as are reasonably requested by the Lessor. If the proceedings relate to an Event of Taking, the Lessee shall act diligently in connection therewith. Nothing contained in this Section 13.5 shall diminish the Lessor's rights with respect to condemnation proceeds and property insurance proceeds under Section 13.1.

#### ***SECTION 13.6. No Rent Abatement.***

Rent shall not abate hereunder by reason of any Casualty, any Event of Loss, any Event of Taking or any Condemnation of any portion of the Leased Property, and the Lessee shall continue to perform and fulfill all of the Lessee's obligations, covenants and agreements hereunder notwithstanding such Casualty, Event of Loss, Event of Taking or Condemnation until the Lease Expiration Date.

### **ARTICLE XIV CERTAIN DUTIES AND RESPONSIBILITIES**

The Lessor undertakes to perform such duties and only such duties as are specifically set forth herein and in the other Operative Documents, and no implied covenants or obligations shall be read into this Lease against the Lessor, and the Lessor agrees that it shall not, nor shall it have a duty to, manage, control, use, sell, maintain, insure, register, lease, operate, modify, dispose of or otherwise deal with the Improvements or the Site in any manner whatsoever, except as required by the terms of the Operative Documents and as otherwise provided herein.

## **ARTICLE XV INSPECTION**

Upon seven (7) Business Days prior notice to the Lessee, the Lessor or its authorized representatives (the “***Inspecting Parties***”) at any time during the Lease Term may inspect (a) the Improvements and the Site and (b) the books and records of the Lessee and its Affiliates relating to the Improvements and the Site and make copies and abstracts therefrom. All such inspections shall be (i) during the Lessee’s normal business hours, (ii) subject to the Lessee’s reasonable confidentiality requirements, and (iii) at the expense and risk of the Inspecting Parties, except that, if a Default or Event of Default has occurred and is continuing, the Lessee shall reimburse the Inspecting Parties for the reasonable out-of-pocket costs and expenses of such inspections and, except for the Inspecting Party’s gross negligence or willful misconduct, such inspection shall be at the Lessee’s risk. No inspection shall unreasonably interfere with the Lessee’s operations. None of the Inspecting Parties shall have any duty to make any such inspection or inquiry. None of the Inspecting Parties shall incur any liability or obligation by reason of making any such inspection or inquiry unless and to the extent such Inspecting Party causes damage to the Improvements or the Site or any property of the Lessee or any other Person during the course of such inspection.

## **ARTICLE XVI ENVIRONMENTAL MATTERS**

### ***SECTION 16.1. Environmental Matters.***

At the Lessee’s sole cost and expense, the Lessee shall promptly and diligently and in accordance with Applicable Laws commence and complete any response, clean up, remedial or other action necessary to remove, clean up or remediate any Environmental Violation with respect to the Improvements or the Site to the extent required of the Lessee or the Lessor in order to comply with Applicable Laws (a “***Remediation***”). The Lessee shall, upon completion of remedial action by the Lessee (i) with respect to any Material Environmental Violation described in clause (ii) of the definition thereof, cause to be prepared by an authorized representative of the Lessee a certificate describing in sufficient detail such Environmental Violation and the actions taken by the Lessee (or its agents) in response to such Environmental Violation and a statement of such authorized representative of the Lessee that such Environmental Violation has been remedied in compliance in all material respects with Applicable Laws and (ii) with respect to any other Material Environmental Violation, cause to be prepared by the Environmental Expert a report describing in sufficient detail such Environmental Violation and the actions taken by the Lessee (or its agents) in response to such Environmental Violation, and a statement by the Environmental Expert that the Environmental Violation has been remedied in compliance in all material respects with Applicable Laws. Each Environmental Violation shall be remedied prior to the Lease Expiration Date unless the Leased Property has been purchased by the Lessee in accordance with Section 20.1, 20.2 or 22.1(a), provided that if remedying such Environmental Violation requires continued operation of a remediation system or monitoring of testing wells or similar ongoing testing, the Lessee shall have access at reasonable times and shall remain obligated to perform such actions

unless the Lessor, in its sole discretion, notifies the Lessee to terminate such actions. Nothing in this Article XVI shall reduce or limit the Lessee's obligations under Article VII of the Participation Agreement (which obligations shall include any Claims arising from such actions).

### ***SECTION 16.2. Notice of Environmental Matters.***

Promptly upon the Lessee's obtaining knowledge of the existence of any Material Environmental Violation with respect to the Improvements or the Site, the Lessee shall notify the Lessor in writing of such Material Environmental Violation. Promptly, but in any event within thirty (30) days from the date a Responsible Officer of the Lessee has actual knowledge thereof, the Lessee shall provide to the Lessor written notice of any pending or, to the Lessee's knowledge, threatened (in writing) claim, action or proceeding involving any Material Environmental Violation with respect to the Improvements or the Site. All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and the Lessee's proposed response thereto. In addition, the Lessee shall provide to the Lessor, within thirty (30) days of receipt, copies of all material written communications with any Authority relating to any Material Environmental Violation. The Lessee shall also promptly provide such detailed reports of any Material Environmental Violation as may reasonably be requested by the Lessor. For purposes hereof, "***Material Environmental Violation***" shall mean any Environmental Violation (i) which imposes or, in the good faith judgment of the Lessee or the Lessor, could reasonably be expected to impose criminal liability on the Lessor, or (ii) the cost of which to remediate is or could reasonably be expected to be in excess of \$1,000,000.

## **ARTICLE XVII EVENTS OF DEFAULT**

The occurrence of any one or more of the following events, 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, shall constitute an "***Event of Default***":

(a) the Lessee shall fail to make any payment of Basic Rent when due and such failure shall continue for a period of three (3) Business Days after notice thereof, or the Lessee shall fail to make any payment of the Break Even Price, Lease Balance or other amounts due and payable under Article XIII, Article XX, Section 21.1(a) or Article XXII when due;

(b) the Lessee shall fail to make payment of any Supplemental Rent (other than any Supplemental Rent described in clause (a) above) when due and such failure shall continue for a period of ten (10) Business Days after notice thereof;

(c) the Lessee shall fail to maintain insurance as required by Article XI of this Lease;



(d) the Lessee shall fail to perform or observe any of the terms, covenants, conditions and agreements set forth in Articles XXI and XXII of this Lease other than the failure to give notice of an end of term option pursuant to Section 21.1 hereof;

(e) any representation, warranty, certification or statement made or deemed to be made by the Lessee under this Lease, any other Operative Document (except as to any Other Lease Document) or in any certificate, financial statement or other document delivered pursuant hereto or thereto, shall at any time prove to have been incorrect in any material respect when made or deemed made and the Lessee shall fail to cure the underlying facts causing such representation, warranty, certification or statement to be incorrect in all material respects for a period of ten (10) Business Days after the earlier of Actual Knowledge or notice thereof;

(f) the Lessee shall default in the performance or observance of any term, covenant, condition or agreement contained in this Lease (other than as specifically provided for otherwise in this Article XVII) or any other Operative Document (except as to any Other Lease Document) and such default shall continue for a period of thirty (30) days after the earlier of Actual Knowledge thereof or written notice thereof has been given to the Lessee; provided, however, that if such failure is capable of cure but cannot be cured by payment of money or cannot be cured by diligent efforts within such thirty (30) day period but such diligent efforts shall be properly commenced within such thirty (30) day period and the Lessee is diligently pursuing, and shall continue to pursue diligently remedy of such failure, such cure period shall be extended for an additional period of time in excess of such cure period as may be necessary to cure, not to extend beyond the earlier to occur of (i) the Lease Expiration Date or (ii) one hundred and twenty (120) days after the earlier of Actual Knowledge thereof or written notice thereof having been given to the Lessee;

(g) (i) the Lessee or any of its Subsidiaries shall default beyond any applicable period of grace in any payment of principal of or interest on any indebtedness for borrowed money on which the Lessee or any of its subsidiaries is liable in an aggregate principal amount then outstanding of \$150,000,000 or more or (ii) an event of default as defined in any mortgage, indenture, agreement or instrument under which there may be issued, or by which there may be secured or evidenced, any such indebtedness shall happen and shall result in such indebtedness becoming or being declared due and payable prior to the date on which it could otherwise become due and payable;

(h) the Lessee or any Material Subsidiary file a voluntary petition of insolvency, bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy, insolvency or other similar laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee in any such proceeding; or the Lessee shall, by voluntary petition, answer or consent, seek relief under the provisions of Bankruptcy Code or any other now existing or future bankruptcy, insolvency or other similar law providing for reorganization, administration or winding-up or for an agreement, composition, extension or adjustment with their respective creditors, or shall adopt a resolution of liquidation, including but not limited to, any petition or notice filed by the Board of Directors of the Lessee or the Lessee shall admit in writing its inability or fail generally to pay its debts or the Lessee shall seek the

appointment of a trustee in bankruptcy, administrator or a receiver for any kind of insolvency proceedings for itself or any substantial portion of its assets, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(i) an involuntary case or other proceeding shall be commenced against the Lessee or any Material Subsidiary seeking its bankruptcy, liquidation, reorganization, winding-up or other relief with respect to it or its debts under the Bankruptcy Code or any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) consecutive days; or the Lessee or any Material Subsidiary shall be declared bankrupt or any other order for relief shall be entered against the Lessee under the U.S. Federal bankruptcy laws or any other relevant bankruptcy laws of any jurisdiction;

(j) a final judgment or order for the payment of money in excess of \$150,000,000 (to the extent not covered by insurance) shall be rendered against the Lessee or any Material Subsidiary and the Lessee shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof, within sixty (60) days after the date of entry thereof and, in the case of any such stay of execution, within said period of sixty (60) days (or such longer period during which execution of such judgment shall have been stayed) appeal therefrom and cause the execution thereof to be stayed during such appeal;

(k) a Change in Control shall occur;

(l) (i) the Lessee or any ERISA Affiliate shall fail to pay within thirty (30) days of the due date thereof an amount or amounts aggregating in excess of \$100,000,000 which it shall have become liable to pay to the PBGC or to a Plan under Title IV of ERISA; (ii) notice of intent to terminate a Plan having unfunded benefit liabilities (within the meaning of Section 4001(a)(18) of ERISA) in excess of \$100,000,000 (a “**Material Plan**”) shall be filed under Title IV of ERISA by the Lessee or any ERISA Affiliate, any plan administrator or any combination of the foregoing; (iii) the PBGC shall institute proceedings under Title IV of ERISA to terminate or to cause a trustee to be appointed to administer any Material Plan; (iv) the failure of the Lessee or any ERISA Affiliate to make any required contribution to a Multiemployer Plan unless the failure is cured within thirty (30) days, (v) the withdrawal or partial withdrawal of the Lessee or any ERISA Affiliate from any Multiemployer Plan, (vi) the receipt by the Lessee or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Lessee or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, “**insolvent**” (within the meaning of Section 4245 of ERISA) or in “**reorganization**” (within the meaning of Section 4241 of ERISA) or (vii) the imposition of liability on the Lessee or any ERISA Affiliate by reason of the application of Section 4212(c) of ERISA, in each case with respect to clauses (iv)-(vii), to the extent that such event,

taken together with any other such events described in clauses (iv)-(vii), could reasonably be expected to result in the Lessee incurring aggregate liability in excess of \$100,000,000;

(m) any Operative Document (except as to any Other Lease Document), in whole or in material part, terminates, ceases to be a legal, valid and binding enforceable obligation of the Lessee or any of its Affiliates or the Lessee or any of its Affiliates, directly or indirectly, contests in any manner in any court the effectiveness, validity, binding nature or enforceability thereof; or any assignment, security interest or Lien securing the Lessee's obligations under the Operative Documents, in whole or in part, ceases to be perfected (except as the result of any affirmative act of the Lessor, failure by the Lessor to file a UCC continuation statement or by operation of law) with the same priority as was in effect on the Closing Date or ceases to be a legal, valid and binding enforceable obligation of the Lessee or any of its Affiliates or the Lessee or any of its Affiliates, directly or indirectly, contests in any manner in any court the effectiveness, validity, binding nature or enforceability thereof; or

(n) an Event of Default shall have occurred under and as defined in the Pledge Agreement (Port 101).

## **ARTICLE XVIII ENFORCEMENT**

### ***SECTION 18.1. Remedies.***

During the continuation of an Event of Default and notwithstanding any Event of Loss or termination of the Lease pursuant to Article XIII, at the Lessor's option and without limiting the Lessor in the exercise of any other right or remedy the Lessor may have on account of such Event of Default, and without any further demand or notice, the Lessor may to the fullest extent permitted under Applicable Laws cause the following to occur:

(a) By notice to the Lessee, the Lessor may terminate the Lessee's right to possession of the Leased Property.

(b) The Lessor may (i) demand that the Lessee, and the Lessee shall upon the written demand of the Lessor, return the Leased Property promptly to the Lessor in the condition required by Section 22.5 and the Lessor shall not be liable for the reimbursement of the Lessee for any costs and expenses incurred by the Lessee in connection therewith, and (ii) without prejudice to any other remedy which the Lessor may have for possession of the Leased Property, and to the extent and in the manner permitted by Applicable Laws, enter upon the Site and Improvements and take immediate possession of (to the exclusion of the Lessee) the Leased Property or any part thereof and expel or remove the Lessee, by summary proceedings or otherwise, all without liability to the Lessee for or by reason of such entry or taking of possession (provided that, the Lessor shall remain liable for actual damages caused by its bad faith, gross negligence or willful misconduct), whether for the restoration of damage to property caused by such taking of possession or otherwise and, in

addition to the Lessor's other damages, the Lessee shall be responsible for all actual and reasonable costs and expenses incurred by the Lessor in connection with any reletting, including brokers' fees and all costs of any alterations or repairs made by the Lessor;

(c) The Lessor may terminate this Lease with respect to all or any part of the Leased Property and/or declare the aggregate outstanding Lease Balance plus all other accrued and unpaid Rent payable by the Lessee (including Break Funding Amount, if any) to be immediately due and payable provided, however, that this Lease shall terminate immediately without notice and the aggregate outstanding Lease Balance and accrued and unpaid Rent and such other amounts payable by the Lessee under the Operative Documents shall become immediately due and payable without demand therefor, upon the occurrence of an Event of Default described in paragraphs (h) or (i) of Article XVII hereof and, subject to the conditions therein, the Leased Property shall be transferred in accordance with Section 20.2 hereof. Without duplication of any other amount recovered pursuant to this paragraph (c), the Lessor shall be entitled to recover from the Lessee the following amounts and take the following actions:

(1) all accrued and unpaid Rent hereunder (including Basic Rent and Supplemental Rent) for the period commencing on the Closing Date through the Final Rent Payment Date with respect to the Leased Property;

(2) the Lessor may elect either of the following with respect to any or all of the Leased Property:

(A) the Lessor may demand, by written notice to the Lessee specifying a payment date (the "**Final Rent Payment Date**") on a Business Day no earlier than thirty (30) days after the date of such notice but, in any event, no later than the date the Leased Property or part thereof is sold pursuant to clause (c)(2)(B) hereof, that the Lessee purchase the Leased Property, and the Lessee shall pay to the Lessor, on the Final Rent Payment Date (in lieu of Basic Rent due after the Final Rent Payment Date), an amount equal to the sum of (x) the Lease Balance computed for the period commencing on the Closing Date to and including the Final Rent Payment Date, plus (y) all accrued and unpaid Rent (including Break Funding Amount, if any) due and unpaid for the period commencing on the Closing Date to and including the Final Rent Payment Date (less any amounts paid by the Lessee under clause (x) above), and upon payment of such amount, and the amount of all other sums due and payable by the Lessee under this Lease and the other Operative Documents (and interest at the Overdue Rate on the amounts payable under this clause (c)(2)(A) from the Final Rent Payment Date to the date of actual payment), the Leased Property shall be transferred to the Lessee or its designee pursuant to Section 23.11; or

(B) the Lessor may sell its interest in the Leased Property and/or pursue any and all remedies under the Security Documents, and, in any

event, the Lessee shall pay to the Lessor an amount equal to the excess, if any, of (x) all amounts described in clause (c)(1) above due the Lessor over (y) the net Sale Proceeds received by the Lessor from the foregoing sale (provided, that in calculating such net Sale Proceeds, all fees, costs, expenses and Taxes to the extent not indemnified and not paid by the Lessee pursuant to Section 7.2 of the Participation Agreement incurred by the Lessor in connection with such sale, including legal fees, shall be deducted from such Sale Proceeds);

(3) Any other amount necessary to compensate the Lessor for all the damages caused by or resulting from the Lessee's failure to perform the Lessee's obligation under this Lease, including the costs and expenses (including reasonable attorneys' fees, advertising costs and brokers' commissions) of recovering possession of the Leased Property, removing Persons or property from the Leased Property, placing the Leased Property in good order, condition, and repair, preparing and altering the Leased Property for reletting, and all other costs and expenses of reletting; and

(4) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Laws.

(d) The Lessor may exercise any and all rights and remedies under the Security Documents including with respect to the Cash Collateral subject to the Pledge Agreement.

(e) If an Event of Default under this Lease is continuing, Lessor shall have the remedy described in California Civil Code §1951.4 (which provides that, a lessor may continue a lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if the lessee has right to sublet or assign, subject only to reasonable limitations), in which case, this Lease shall continue in effect for so long as the Lessor does not terminate this Lease, and the Lessor may enforce all of the Lessor's rights and remedies under this Lease, including the right to recover the Rent hereunder (including Basic Rent (when applicable) and Supplemental Rent) as it becomes due under this Lease. The Lessee's right to possession shall not be deemed to have been terminated by the Lessor except pursuant to clause (i) above. The following do not constitute a termination of this Lease:

(1) Acts of maintenance or preservation or efforts to relet the Leased Property; and

(2) Withholding of consent to assignment or subletting, or terminating a subletting or assignment by the Lessee.

(f) In the event that the Lessor elects to continue this Lease in full force and effect following the termination of the Lessee's right of possession of the Improvements and the Site, the Lessor, to the maximum extent permitted by Applicable Laws, may enforce all its rights and

remedies under this Lease including the right to recover Rent hereunder as it becomes due. During the continuance of an Event of Default or following the termination of the Lessee's right to possession of the Improvements and the Site, the Lessor may enter the Improvements and the Site in accordance with Applicable Laws without terminating this Lease and sublet all or any part of the Leased Property for the Lessee's account to any Person, for such term (which may be a period beyond the remaining Lease Term), at such rents and on such other terms and conditions as are commercially reasonable. In the event of any such subletting, rents received by the Lessor from such subletting shall be applied (i) first, to the payment of the reasonable costs incurred by the Lessor in maintaining, preserving, altering and preparing the Leased Property for subletting and other reasonable costs of subletting, including reasonable brokers' commissions and attorneys' fees; (ii) second, to the payment of Rent hereunder then due and payable; (iii) third, to the payment of future Rent hereunder as the same may become due and payable hereunder; (iv) fourth, to the payment of all other obligations of the Lessee hereunder and under the other Operative Documents (including the Lease Balance), and (v) fifth, the balance, if any, shall be paid to the Lessee. If the rents received by the Lessor from such subletting, after application as provided above, are insufficient in any period to pay the Rent due and payable hereunder for such period, the Lessee shall pay such deficiency to the Lessor upon demand. Notwithstanding any such subletting for the Lessee's account without termination, the Lessor may at any time thereafter, by written notice to the Lessee, elect to terminate this Lease.

(g) The Lessor may exercise any other right or remedy that may be available to it under Applicable Laws or in equity, or proceed by appropriate court action (legal or equitable) to enforce the terms or to recover damages for the breach hereof, including those arising from a breach by the Lessee of its obligations under Section 20.2 hereof. Separate suits may be brought to collect any such damages for any Rent installment period(s), and such suits shall not in any manner prejudice the Lessor's right to collect any such damages for any subsequent Rent installment period(s), or the Lessor may defer any such suit until after the expiration of the Lease Term, in which event such suit shall be deemed not to have accrued until the expiration of the Lease Term.

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

The Lessee acknowledges and agrees that upon the declaration of an Event of Default the amount due and owing by the Lessee to the Lessor hereunder shall be the Lease Balance together with all other then accrued and unpaid Rent payable by the Lessee and that to the maximum extent permitted by Applicable Laws, the Lessee waives any right to contest the Lease Balance as the liquidated sum or agreed upon sum due and owing.

#### ***SECTION 18.2. Proceeds of Sale; Deficiency.***

(a) All payments received and amounts held or realized by the Lessor at any time when an Event of Default shall be continuing and after the Lease Balance shall have been accelerated pursuant to this Article XVIII as well as all payments or amounts then held or thereafter

received by the Lessor (except for rents received by the Lessor from subletting pursuant to Section 18.1(f), which shall be distributed as set forth therein) and the proceeds of sale pursuant to Section 18.1(c)(2)(B) shall be distributed forthwith upon receipt by the Lessor as follows:

first, to the Lessor, so much of such amount as is required to reimburse the Lessor for any fees, costs, expenses, Taxes or other loss incurred by it (to the extent not previously reimbursed);

second, to the Lessor, so much of such amounts as are required to pay all expenses or fees incurred by the Lessor in connection therewith including Break Funding Amounts, if any;

third, to the Lessor, so much of such amount as is required to pay all accrued Yield thereon;

fourth, to the Lessor, so much of such amounts as are required to pay in full the outstanding amount of the Lease Balance;

fifth, to the Lessor, so much of such amounts as are required to pay all outstanding obligations of the Lessee pursuant to the Operative Documents including all indemnities which are due and payable; and

sixth, to the Lessee, the balance of such amount, if any.

### ***SECTION 18.3. Waiver of Certain Rights.***

To the maximum extent permitted by Applicable Laws, (a) the Lessee hereby waives the benefit of any appraisalment, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale of the Leased Property or any interest therein and (b) if this Lease shall be terminated pursuant to this Article XVIII, the Lessee waives, to the fullest extent permitted by Applicable Laws, (i) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession, (ii) any right of redemption, re-entry or repossession, (iii) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt or limiting the Lessor with respect to the election of remedies, (iv) any other rights which might otherwise limit or modify any of the Lessor's rights or remedies under this Article XVIII, and (v) any rights now or hereafter conferred under California Applicable Laws that may require the Lessor to sell, lease or otherwise use the Leased Property, or any part thereof in mitigation of the Lessor's damages upon the occurrence of an Event of Default or that may otherwise limit or modify any of the Lessor's rights or remedies under this Article XVIII.

### ***SECTION 18.4. Remedies Cumulative; No Waiver; Consents.***

To the extent permitted by, and subject to the mandatory requirements of, Applicable Laws, each and every right, power and remedy herein specifically given to the 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 the 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 other right, power or remedy. No delay or omission by the 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 the Lessee or be an acquiescence therein. The Lessor's consent to any request made by the Lessee shall not be deemed to constitute or preclude the necessity for obtaining the Lessor's consent, in the future, to all similar requests. No express or implied waiver by the Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default.

## **ARTICLE XIX RIGHT TO CURE**

If any Event of Default other than those described in paragraphs (h) and (i) of Article XVII shall be continuing and in the Lessor's reasonably exercised judgment the Lessee is not acting diligently and appropriately to cure such Event of Default, the Lessor may, but shall not be obligated to, on five (5) Business Days' prior notice to the Lessee (except in the event of an emergency, in which case only one (1) Business Day's prior notice shall be required), cure such Event of Default and the Lessor shall not thereby be deemed to have waived any default caused by such failure to cure, and the amount of such payment and the amount of the expenses of the Lessor (including reasonable attorneys' fees and expenses) incurred in connection with such cure, together with interest thereon at the Overdue Rate, shall be deemed Supplemental Rent, payable by the Lessee to the Lessor upon demand.

## **ARTICLE XX EARLY TERMINATION OPTION; OBLIGATION TO PURCHASE; MID-TERM REMARKETING OPTION**

### ***SECTION 20.1. Early Termination Option.***

Without limitation of the Lessee's purchase obligation pursuant to Section 20.2, the Lessee may, at its option, on any Business Day following the Base Term Commencement Date but prior to the Lessee's election to exercise the Return Option, purchase all, but not less than all, of the Leased Property (the "***Early Termination Option***") at a price equal to the Break Even Price. In order to exercise its option to purchase the Leased Property pursuant to this Section 20.1, the Lessee shall give the Lessor not less than thirty (30) days' prior written notice of such election which election, in each case, shall be irrevocable when made. Notwithstanding anything herein to the contrary, the Lessee shall not be permitted to exercise the Early Termination Option following the occurrence and during the continuance of an Event of Default unless it shall (i) elect the Early Termination Option on or before ten (10) Business Days following such Event of Default, and (ii)



consummate the purchase of the Leased Property by the Lessee (or its designee) before twenty (20) Business Days following such Event of Default. Upon receipt of the Break Even Price, the Leased Property shall be transferred to the Lessee (or its designee) pursuant to Section 23.11.

***SECTION 20.2. Required Purchase.***

So long as the Lessor has not exercised any other remedy inconsistent therewith, the Lessee shall be obligated to purchase the Leased Property for the Break Even Price automatically and without notice upon the occurrence of any Event of Default described in clauses (h) or (i) of Article XVII and upon receipt of the Break Even Price the Leased Property shall be transferred to the Lessee (or its designee) pursuant to Section 23.11.

***SECTION 20.3. Mid-term Remarketing Option.***

At any time during the Lease Term other than after the occurrence and during the continuance of an Event of Default, the Lessee shall have the option (the “***Remarketing Option***”) to designate a third party purchaser and to cause the Lessor to sell the Leased Property to such purchaser on the date designated for the sale thereof by the Lessee (the “***Remarketing Sale Date***”) provided, that the Lessor shall have received the Remarketing Sale Proceeds of such sale together with (in the case where such Remarketing Sale Proceeds do not equal or exceed the Break Even Price) additional cash amounts paid to the Lessor by the Lessee, as Supplemental Rent, in an amount equal to the excess of the Break Even Price over such Remarketing Sale Proceeds. If the Remarketing Sale Proceeds exceed the Break Even Price as of such Remarketing Sale Date, the Lessor shall pay over to the Lessee the portion of the Remarketing Sale Proceeds in excess thereof after satisfaction of all amounts due hereunder or under the other Operative Documents. Subject to, and concurrent with, the receipt by the Lessor of funds equal to or in excess of the Break Even Price, on the Remarketing Sale Date, the Lessor shall convey to the Lessee or its designee the Leased Property in accordance with Section 23.11. The Lessee shall be responsible for the payment of all fees and expenses of the Lessor (including reasonable attorneys’ fees and expenses) incurred in connection with any exercise or purported exercise of the Remarketing Option.

**ARTICLE XXI  
END OF TERM OPTIONS**

***SECTION 21.1. End of Term Options***

At least one hundred and eighty (180) days, but not more than two hundred seventy (270) days prior to the Return Date, the Lessee shall, by delivery of an irrevocable written notice to the Lessor, exercise one of the following options:

(a) Purchase for cash for the Break Even Price all, but not less than all, of the Leased Property then subject to this Lease on the last day of the Lease Term (the “***Purchase Option***”) and if the Lessee shall have elected the Purchase Option, upon the payment to the Lessor of the Break

Even Price, the Leased Property shall be transferred to the Lessee (or its designee) pursuant to Section 23.11; or

(b) Provided no Default or Event of Default or Event of Loss shall have occurred and be continuing, return the Leased Property to the Lessor at the end of the scheduled expiration date of the Lease Term (the “**Return Option**”). The Return Option shall be conditioned upon and subject to the fulfillment by the Lessee of each of the terms and conditions set forth in Article XXII and, thereafter, the Lessee shall have no further obligations to pay Basic Rent or the remaining Lease Balance. The Lessee shall not enter into any additional subleases or renew any subleases with respect to the Leased Property following the Lessee’s election of the Return Option. Following the Lessee’s election of the Return Option, the Lessee shall not remove any Alterations.

### ***SECTION 21.2. Election of Options.***

In the event the Lessor shall not have received the foregoing notice from the Lessee on or prior to the date that is one hundred and eighty (180) days prior to the Return Date, by delivery of written notice via nationally recognized overnight courier to the Lessee, the Lessor may notify the Lessee of the expiration of the election notice period set forth in the preceding section. If, in any event, the Lessee fails to make a timely election under Section 21.1 hereof, the Lessee shall be deemed to have elected the Purchase Option. The Lessee may not elect the Return Option if there exists on the date the election is made a Default, an Event of Default or an Event of Loss. In the event a Default or an Event of Default or an Event of Loss shall have occurred after the election by the Lessee, or deemed election by the Lessee, of the Return Option, then notwithstanding any such election or deemed election, the Lessee shall be deemed to have elected the Purchase Option with respect to the Leased Property.

## **ARTICLE XXII RETURN OPTION**

### ***SECTION 22.1. Return Option Procedures.***

(a) If the Lessee elects the Return Option and the Lessor elects to require the Lessee to offer to sell the Leased Property, at the option of the Lessor, (x) the purchaser shall be reasonably entitled (whether on or before the Return Date or thereafter) to be granted a temporary easement or other right of access from the Lessee on the Leased Property to enable the purchaser to have access over paths and streets necessary to remarket the Leased Property (the “**Easement**”) (which obligation of the Lessee to grant such Easement hereunder shall survive the termination of this Lease), or (y) the Lessee shall use commercially reasonable efforts as non-exclusive agent for the Lessor to obtain the highest all cash purchase price for the Leased Property. In the event the Lessee receives any bid, the Lessee shall within five (5) Business Days after receipt thereof and, at least five (5) Business Days prior to the Return Date, certify to the Lessor in writing the amount and terms of such bid and the name and address of the party (who shall not be the Lessee or any Subsidiary of the Lessee or, unless the sum of (i) the Sale Proceeds pursuant to a proposed bid

which the Lessee desires to accept plus (ii) the Recourse Deficiency Amount plus (iii) any amount payable pursuant to Section 7.5 of the Participation Agreement is not less than the Break Even Price, any Person with whom the Lessee has an understanding or arrangement regarding their future use, possession or ownership of the Leased Property or the Lessor's other rights, title and interest in and to the Leased Property, but who may be the Lessor, any Affiliate thereof, or any Person contacted by the Lessor (other than any Person otherwise forbidden from being such purchaser pursuant to the foregoing parenthetical)) submitting such bid, and the Lessee and any sublessee shall confirm in writing both to the Lessor and to the bidder that it will vacate the Leased Property (unless some other reasonable understanding or arrangement between the bidder and Lessee is reached and permitted pursuant this Section above) and take such reasonable steps as may be required to grant to the bidder the Easement on or before the Return Date.

(b) If the sum of (i) the Sales Proceeds pursuant to a proposed bid which the Lessee desires to accept plus (ii) the Recourse Deficiency Amount plus (iii) any amount payable pursuant to Section 7.5 of the Participation Agreement is not less than the Break Even Price, then the Lessee shall determine and accept such bid; otherwise, the Lessor shall have the right, in its sole and absolute discretion to accept or reject any bid so presented by the Lessee. As non-exclusive selling agent, the Lessee's expenses and the out-of-pocket expenses incurred by the Lessor in connection with any such bidding and sale process pursuant to this Section 22.1 as well as all costs and expenses incurred by the Lessor or, unless agreed to be the responsibility of the buyer, a buyer or potential buyer of the Leased Property to place the Leased Property in the condition required by Section 9.1, shall be deducted from the Sale Proceeds. On the Return Date, so long as no Event of Default or Default or Event of Loss shall have occurred and be continuing: (w) the Lessee shall transfer all of the Lessee's right, title and interest in the Leased Property if any, that the Lessor does not yet hold pursuant to the terms of the Operative Documents to the bidder, if any, which shall have submitted the bid (if any) accepted pursuant to this Section 22.1(b), in the same manner and in the same condition and otherwise in accordance with all of the terms of this Lease, warranted free and clear of all Liens other than Permitted Liens described in clauses (a) (but only if the bidder has elected to keep this Lease in effect) and (b) of the definition thereof and liens for Taxes not yet delinquent; (x) subject to the prior or current payment by the Lessee of all amounts due under clause (y) of this sentence, the Lessor shall comply with any conditions to transfer set forth in Section 22.2 in order to transfer its interests in the Leased Property for cash to such bidder; (y) the Lessee, as non-exclusive selling agent, shall simultaneously pay to the Lessor all of the amounts required pursuant to Section 22.3; and (z) after payment in full of all amounts owing to the Lessor hereunder and under the terms of the bid, this Lease shall terminate or, at the Lessee's option, shall be assigned by the Lessor without recourse or warranty by the Lessor to a designee concurrent with the payment of such designated amount. The Lessor shall not have any responsibility for procuring any purchaser; provided, however, that the Lessor and its designees may engage in activities to market and sell the Leased Property and may terminate the Lessee as its non-exclusive selling agent upon one (1) Business Day's notice. Any such activities reasonably undertaken by the Lessor pursuant to this Section 22.1(b) shall be at the Lessor's sole cost and expense (which shall be deducted from the Sale Proceeds in accordance with the foregoing), and shall not reduce the Lessee's obligations, as non-exclusive selling agent, under this Section 22.1(b)

(or during the Extended Remarketing Period) to use commercially reasonable efforts, as non-exclusive selling agent, to sell the Leased Property in accordance with the requirements of this Section 22.1(b) and Section 22.2. If the Sale Proceeds exceed the Break Even Price as of the Return Date, the Lessee shall retain or be entitled to receive the portion of the Sale Proceeds in excess thereof. If the Sale Proceeds are less than the aggregate outstanding Break Even Price, the Lessee shall pay or shall cause to be paid to the Lessor, as Supplemental Rent, on the date of such sale (but not later than the Return Date), in addition to the Sale Proceeds, an additional amount as set forth in the last sentence of Section 22.3(a) hereof.

### ***SECTION 22.2. Sale.***

The Lessee, as non-exclusive selling agent, shall, on the Return Date, at the Lessee's own expense (without right of reimbursement therefor out of gross sale proceeds except as provided in the third sentence of Section 22.1(b) above), negotiate the terms of any applicable sale, such that the Leased Property transferred to the purchaser in accordance with Section 22.1 hereof is (i) free and clear of all Liens, other than Permitted Liens described in clauses (a) (but only if the purchaser has elected to keep this Lease in effect) or (b) of the definition thereof and liens for Taxes not yet delinquent, and (ii) (A) in the condition required by the terms of this Lease, (B) capable of operating in accordance with the purposes set forth in the Appraisal, (C) without any lessees claiming relief or exemption from judicial execution, and (D) in compliance with all Applicable Laws. The Lessee, as non-exclusive selling agent, shall obtain all necessary governmental consents and approvals and make all governmental filings required by the Lessee or the Lessor in connection with any sale and grant of rights. The Lessor shall take such reasonable steps as may be required under the applicable sale agreement to transfer the Leased Property to the purchaser. The Lessee, as non-exclusive selling agent, shall cooperate with the purchaser of the Leased Property in order to facilitate the transfers of the use, ownership and operation of the Leased Property by such purchaser after the date of the sale or transfer, including providing all books, reports and records regarding the maintenance, repair and ownership of the Leased Property and granting or assigning all licenses necessary for the operation of the Leased Property and cooperating in seeking and obtaining all necessary Governmental Actions. The Lessee shall also, on the Return Date, vacate and cause any sublessee to vacate the Leased Property, unless otherwise permitted pursuant to Section 22.1(a). As a further condition to the Lessee's rights hereunder, the Lessee shall pay the total cost for the completion of all Alterations commenced after the Base Term Commencement Date and prior to the Return Date, and, subject to the Lessee's right to use applicable insurance proceeds as set forth in Article XIII hereof, for the repair and rebuilding of the affected portions of the Leased Property suffering a Casualty after the Base Term Commencement Date. Such Alterations and all such repairs and rebuilding shall be completed prior to the Return Date. Unless the Lessee shall have exercised or been deemed to have exercised its Purchase Option or the Leased Property is to be sold to an independent purchaser, prior to the Return Date, the Lessee shall furnish to the Lessor and the independent purchaser hereunder a reasonably current preliminary environmental survey for the Leased Property dated no earlier than forty-five (45) days prior to the Return Date, from an environmental consultant satisfactory in the reasonable discretion of the Lessor certifying that there exists no environmental contamination with respect to the Leased

Property which would adversely affect the marketability, fair market value or useful life, as determined by the Appraisal, of the Leased Property or have an adverse effect on the Lessor and addressed to the Lessor in form and substance satisfactory in the reasonable discretion of the Lessor. The obligations of the Lessee under this Section 22.2 shall survive the expiration or termination of this Lease. Unless the Lessee shall have exercised or been deemed to have exercised its Purchase Option or the Leased Property is to be sold to an independent purchaser, the Lessor shall be entitled to perform such investigation, including obtaining reports of engineers and other experts as to the condition and state of repair and maintenance of the Improvements and the Site required by this Section 22.2 and as to the compliance of the Leased Property with Applicable Laws, including Environmental Laws, as it deems appropriate. The Lessee, at its sole cost and expense (without right of reimbursement therefor out of gross sale proceeds but, subject to the Lessee's right to use applicable insurance and condemnation proceeds as set forth in Article XIII hereof), shall cause the repair or other remediation of any discrepancies between the actual condition of the Improvements and the Site and the condition required under this Lease, such repair or remediation to be completed not later than the Return Date.

***SECTION 22.3. Application of Sale Proceeds and Recourse Payments.***

(a) On the Return Date, in connection with the Lessee's exercise of the Return Option, the Lessee shall pay to the Lessor all accrued and unpaid Rent then due together with all other amounts due and payable by the Lessee to the Lessor or any Indemnitee. The Lessee also shall cause to be paid to the Lessor, from the aggregate Sale Proceeds (after application of gross sale proceeds to payment of any deed or transfer tax thereon not paid by the purchaser thereof and payment or reimbursement to the Lessee and/or the Lessor for any costs or expenses incurred by the Lessee and/or the Lessor in connection with the actions required under Sections 22.1 and 22.2, excluding any provision thereof which expressly specifies that the Lessee's costs shall not be reimbursable out of gross sale proceeds), the aggregate outstanding Break Even Price as of the Return Date (as determined after the payment of all Rent due on such date and application of all other payments hereunder by the Lessee in accordance with Section 22.3(c) hereof). If the Sale Proceeds exceed the Break Even Price as of the Return Date, the Lessee shall retain or be entitled to receive the portion of the Sale Proceeds in excess thereof. If the Sale Proceeds are less than the aggregate outstanding Break Even Price, the Lessee shall pay or shall cause to be paid to the Lessor, as Supplemental Rent, on the Return Date, in addition to the Sale Proceeds, an additional amount equal to the lesser of (x) the amount that the Break Even Price exceeds the Sale Proceeds or (y) provided no Default or Event of Default or Event of Loss has occurred and is continuing, the Recourse Deficiency Amount.

(b) The obligation of the Lessee to pay the amounts determined pursuant to Sections 22.3(a) and 22.4 shall be recourse obligations of the Lessee, and such payments by the Lessee shall not limit any other obligation of the Lessee under the Operative Documents, including pursuant to Article VII of the Participation Agreement.

(c) If on any date prior to the expiration of the Extended Remarketing Period, the Lessor shall receive any amounts that constitute payment of the Recourse Deficiency Amount and

any Sale Proceeds following the Lessee's election to return the Leased Property at the Return Date, the Lessor shall apply such amounts in the following order of priority:

first, to the Lessor, so much of such amount as is required to reimburse the Lessor for any fees, costs, expenses, Taxes or other loss incurred by it (to the extent not previously reimbursed);

second, to the Lessor, so much of such amounts as are required to pay all expenses or fees incurred by the Lessor in connection therewith;

third, to the Lessor, so much of such amount as is required to pay all accrued Yield thereon;

fourth, to the Lessor, so much of such amounts as are required to pay in full the outstanding amount of the Lease Balance;

fifth, to the Lessor, so much of such amounts as are required to pay all outstanding obligations of the Lessee pursuant to the Operative Documents including all indemnities due and payable; and

sixth, to the Lessee, the balance of such amount, if any.

***SECTION 22.4. Failure to Sell Leased Property.***

(a) If the Leased Property shall not have been sold on or prior to the Return Date, in accordance with and subject to the provisions of this Article XXII, then the Lessee and the Lessor hereby agree as follows:

(i) the Lessee shall pay or shall cause to be paid to the Lessor, as Supplemental Rent, on the Return Date, an amount equal to the Recourse Deficiency Amount plus all other Rent then due under this Lease and the other Operative Documents or, in the event a Default or Event of Default or an Event of Loss shall have occurred and be continuing on such date, the Break Even Price and, in the case where the Break Even Price is paid, the Lessor shall convey to the Lessee or its designee the Leased Property in accordance with Section 23.11; and

(ii) at the option of the Lessor, if the Lessee has not paid the Break Even Price as set forth in Section 22.4(a)(i) above, the Lessee shall be required to continue using commercially reasonable efforts as non-exclusive agent for the Lessor to sell the Leased Property in accordance with Sections 22.1 and 22.2 for the period (the "***Extended Remarketing Period***") commencing on the Return Date, and ending on the earliest of (w) the date occurring twenty-four (24) months following the Return Date, (x) the sale of the Leased Property in accordance with the provisions of Sections 22.1 and 22.2 or such earlier date as the Lessor has received payment in full of the Break Even Price, (y) the delivery of

a written notice from the Lessor to the Lessee at any time terminating this Lease, which notice shall indicate that such termination is being made pursuant to this Section 22.4(a)(ii) and the date such termination shall be effective, and (z) the delivery of a written notice from the Lessee to the Lessor pursuant to which the Lessee notifies the Lessor of its election to terminate the Extended Remarketing Period. The notice given by the Lessee pursuant to Section 22.4(a)(ii)(z) shall indicate that it is being made pursuant to Section 22.4(a)(ii)(z) and shall set forth the date of termination of the Extended Remarketing Period; provided, however, in no event shall such effective date occur prior to the twenty-fourth (24<sup>th</sup>) month following the Return Date. On the last day of the Extended Remarketing Period, if the Leased Property has not been sold during the Extended Remarketing Period in accordance with Section 22.2, the Lessee shall also make the payments required under Section 22.4(a)(i), to the extent not already paid under such Section. Nothing in this Section 22.4(a)(ii) shall adversely affect any other rights the Lessor may have to terminate this Lease pursuant to any other Section of this Lease or the Lessor's right to pursue any remedy hereunder as a result of an Event of Default arising as a result of the Lessee's failure to comply with the requirements set forth herein including pursuant to Article XVII or the Lessee's obligation to pay amounts arising under Article VII of the Participation Agreement.

(b) Following the expiration of the Extended Remarketing Period (or, if not so extended by the Lessor, following the Return Date) and the absence of any sale of the Leased Property, the Lessor may sell the Leased Property and require that the Lessee (pursuant to documents reasonably acceptable to the Lessee and the purchaser of the Leased Property) facilitate the transfers of the ownership, leasing and operation of the Leased Property to the Lessor or any third party designated by the Lessor including providing all books, reports and records regarding the maintenance, repair and ownership of the Leased Property, granting or assigning all licenses necessary for the operation of the Leased Property and cooperating in seeking and obtaining all necessary Governmental Actions and otherwise doing all things reasonably necessary to convey and deliver possession of the Leased Property to any such Person in order to maximize the Lessor's opportunity to recover the Lease Balance plus Yield at the Overdue Rate on any unpaid Lease Balance and all other accrued and unpaid Rent. Upon such sale and transfer of the Leased Property, the Lessee's possession under this Lease shall terminate; provided that any provisions hereof that expressly survive the expiration or other termination of this Lease shall survive such termination.

(c) The Lessor may sell or lease the Leased Property and the Lessor's other interest in and to the Leased Property to any third party at such reasonable times and for such amounts as the Lessor deems commercially reasonable and appropriate in order to maximize the Lessor's opportunity to recover the unpaid Lease Balance. If the Lessee returns the Leased Property to the Lessor in accordance with this Section 22.4 and, following the expiration of the Extended Remarketing Period, the Lessor subsequently sells the Leased Property for cash Sale Proceeds, Sale Proceeds shall be applied by the Lessor in the following order of priority:

(i) first, to the Lessor, Sale Proceeds shall be applied to any fees, costs, expenses, Taxes or other loss incurred by it (to the extent not previously reimbursed);

(ii) second, to the Lessor, Sale Proceeds shall be applied to the Break Even Price until the Break Even Price is paid in full (*provided that*, all costs and expenses arising from or related to the Leased Property which accrue after the later of the Return Date and the date the Lessee ceases to occupy the Leased Property shall be excluded from the Break Even Price for purposes of this Section 22.4(c)(ii));

(iii) third, to the Lessee, Sale Proceeds shall be applied to the Recourse Deficiency Amount;

(iv) fourth, to the Lessor, Sale Proceeds shall be applied, to the extent not previously paid to the Lessor pursuant to clause (i) or clause (ii) above, to any other amounts payable to the Lessor pursuant to any expense reimbursement or indemnification by the Lessee pursuant to the provisions of the Operative Documents;

(v) fifth, to the Lessor, Sale Proceeds shall be applied to any costs or expenses excluded from the Lease Balance as a result of the proviso in Section 22.4(c)(ii) above;

(vi) sixth, to the Lessor, Sale Proceeds shall be applied to all other amounts, if any, accrued and payable by the Lessee to the Lessor under the Operative Documents, to the extent not previously paid to the Lessor pursuant to clauses (i), (ii), (iv) or (v) above; and

(vii) seventh, to the Lessee, the balance, if any, of any Sale Proceeds shall be distributed to, or as directed by, the Lessee.

(d) The Lessor's appointment of the Lessee as the Lessor's non-exclusive agent to use commercially reasonable efforts to obtain the highest all-cash price for the purchase of the Leased Property and the Lessor's interest in the Leased Property shall not restrict the Lessor's right to market or lease the Leased Property and the Lessor's interest in the Leased Property or to retain one or more sales agents or brokers (with the costs and expenses thereof being paid out of the Sale Proceeds, as provided in Sections 22.1(a) and 22.3(a) hereof).

(e) Subject to Applicable Laws, the Lessor reserves all rights under this Lease and the other Operative Documents arising out of the Lessee's breach of any provisions of this Lease (including this Article XXII), whether occurring prior to, on or after the Return Date, including the Lessee's breach of any of its obligations under this Article XXII, including the right to sue the Lessee for damages.

(f) To the greatest extent permitted by Applicable Law, the Lessee hereby unconditionally and irrevocably waives, and releases the Lessor from, any right to require the Lessor at any time prior to the Return Date or the expiration of the Extended Remarketing Period,



as applicable, to market the Leased Property and the Lessor's other interest in and to the Leased Property at all or for any minimum purchase price or on any particular terms and conditions, the Lessee hereby agrees that if the Lessee shall elect or shall be deemed to have elected the Return Option, its ability to sell the Leased Property and the Lessor's other interest in and to the Leased Property on or prior to the Return Date, and to cause any Person to submit a bid to the Lessor pursuant to Section 22.1 shall constitute full and complete protection of the Lessee's interest hereunder.

(g) During the period following the Lessee's exercise of the Return Option, the obligation of the Lessee to pay Rent with respect to the Leased Property (including the installment of Rent due on the Return Date) shall continue undiminished; provided that such amounts subsequent to the Return Date (assuming the Lessee has returned the property to the Lessor) shall accrue and be payable out of the Sale Proceeds of any sale in accordance with Section 22.4(c).

#### ***SECTION 22.5. Surrender and Return.***

(a) Upon the expiration or earlier termination of the Lease Term, and provided that the Lessee, if so entitled, has not exercised its option to purchase the Leased Property, the Lessee shall peaceably leave and surrender and return the Leased Property to the Lessor in the same condition in which the Leased Property existed on the Closing Date and such subsequent date on which any Alterations that constitute part of the Improvements were constructed, except as completed, repaired, rebuilt, restored, altered or added to as required by or permitted by any provision of this Lease (ordinary wear and tear excepted). The 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 the Lessor and the Leased Property shall be broom clean and the Lessee shall repair any damage caused by such removal. Property not so removed shall become the property of the Lessor and the Lessor may cause such property to be removed from the Leased Property and disposed of, and the Lessee shall pay (without right of reimbursement out of gross sale proceeds) 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 Lease Term hereof, no surrender to the Lessor of this Lease or of the Leased Property shall be valid or effective unless agreed to and accepted in writing by the Lessor.

(c) Without limiting the generality of the foregoing, upon the surrender and return of the Leased Property to the Lessor pursuant to this Section 22.5, the Leased Property shall be (w) 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 the Lessor), use or occupancy of the Leased Property, (x) in compliance with all Applicable Laws including any of the foregoing required by virtue of a change in ownership, use or occupancy of the Leased Property other than to or by the Lessee, (y) subject to any Shared Use Agreement, Appurtenant Rights and Restrictions or other cross easement agreement as may be

necessary to comply with Applicable Laws, to make any such property marketable and to increase the aggregate value of the Leased Property and the other Sites, and (z) free and clear of any Lien. Until the Leased Property has been surrendered and returned to the Lessor in accordance with the provisions of this Section 22.5, the Lessee shall continue to pay the Lessor all Rent due hereunder.

(d) the Lessee acknowledges and agrees that a breach of any of the provisions of this Section 22.5 may result in damages to the 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 the Lessee, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee set forth in this Section 22.5.

(e) Upon the request of the Lessor, the Lessee shall continue to maintain its insurance policies for the Leased Property, to the extent permitted by such policies and solely for the remaining period for which premiums have already been paid, provided that the Lessor pays or reimburses the Lessee for the pro rata cost thereof.

## **ARTICLE XXIII MISCELLANEOUS**

### ***SECTION 23.1. Binding Effect; Successors and Assigns; Survival.***

The terms and provisions of this Lease, and the respective rights and obligations hereunder of the Lessor and the Lessee shall be binding upon them and their respective successors, legal representatives and assigns (including, in the case of the Lessor, any Person to whom the Lessor may transfer the Leased Property or any interest therein in accordance with the provisions of the Operative Documents), and inure to their benefit and the benefit of their respective permitted successors, legal representatives and assigns (including, in the case of the Lessor, any Person to whom the Lessor may transfer the Leased Property or any interest therein in accordance with the provisions of the Operative Documents).

### ***SECTION 23.2. 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 the Lessee shall remain liable to perform its obligations hereunder except to the extent of such unenforceability. To the extent permitted by Applicable Laws, the Lessee hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

***SECTION 23.3. Notices.***

Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be in writing and shall be delivered and shall be deemed to have been given in accordance with Section 8.3 of the Participation Agreement.

***SECTION 23.4. Amendment; Complete Agreements.***

Neither this Lease or any other Operative Document nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of the Participation Agreement. This Lease, together with the other Operative Documents, is intended by the parties as a final expression of their 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 23.5. 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 23.6. Original Executed Counterpart.***

The single executed original of this Lease marked as Counterpart No. 1 shall be the “original executed counterpart” of this Lease. To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect 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 executed counterpart.”

***SECTION 23.7. Governing Law.***

This Lease has been delivered in, and shall in all respects be governed by and construed in accordance with the laws of, the State of New York, without regard to conflicts of laws principles (except Section 5-1401 of the New York General Obligations Law), including all matters of construction, validity and performance, except as to matters relating to the perfection of the security interests hereunder and the exercise of rights and remedies with respect thereto, which shall be governed by and construed in accordance with the laws of the State of California.

***SECTION 23.8. No Joint Venture.***

Any intention to create a joint venture or partnership relation hereunder or pursuant to any other Operative Document between the Lessor and the Lessee is hereby expressly disclaimed.

***SECTION 23.9. No Accord and Satisfaction.***

The acceptance by the Lessor of any sums from the Lessee (whether as Basic Rent or otherwise) in amounts which are less than the amounts due and payable by the Lessee hereunder is not intended, nor shall be construed, to constitute an accord and satisfaction of any dispute between the Lessor and the Lessee regarding sums due and payable by the Lessee hereunder, unless the Lessor specifically deems it as such in writing.

***SECTION 23.10. Survival.***

The termination of this Lease pursuant to Section 18.1 shall in no event relieve the Lessee of its liabilities and obligations hereunder which accrued prior to such termination, all of which shall survive any such termination. The extension of any applicable statute of limitations by the Lessee, the Lessor or any other Indemnitee shall not affect such survival.

***SECTION 23.11. Transfer of Leased Property.***

Except as may be applicable under Article XXII, any transfer of the Leased Property pursuant to this Lease shall be at the Lessee's expense. Upon receipt by the Lessor of payment in full of the Break Even Price pursuant to the applicable provision of this Lease, the Leased Property shall be transferred to the Lessee or any designee it may identify.

Any transfer of the Lessor's interest in and to the Leased Property pursuant to this Lease shall be transferred on an "as is, where is, with all faults" basis, without covenants or warranties of title and without recourse, representation or warranty of any kind, other than with respect to the Lessor, the absence of Lessor Liens, and together with the due assumption by the Lessee (or its designee), of, and due release of the Lessor from, all obligations relating to the Leased Property. In connection with any transfer to an independent third party, the Lessee shall, or shall ensure that its designee shall, execute and deliver such documents, certificates and estoppels as may be required to facilitate the transfer of the Leased Property. Any provision in this Lease or other Operative Document to the contrary notwithstanding, no transfer of the Leased Property to the Lessee or to a third party buyer pursuant to the Return Option shall be made until the Lessor has received all Rent and other amounts then due and owing by the Lessee hereunder and under the other Operative Documents. At or subsequent to the transfer or return of all or any of the Leased Property to a third party buyer pursuant to the Return Option, the Lessee will provide the Lessor with such lien and title searches as the Lessor may reasonably request to demonstrate to the Lessor's satisfaction that the Leased Property is subject to no liens other than Permitted Liens as described in clauses (a) or (b) of the definition thereof and the lien of Taxes not yet delinquent. Notwithstanding anything contained herein or in the other Operative Documents to the contrary,

any obligation of the Lessor to transfer any assets to the Lessee shall be satisfied by a transfer of such assets to any designee selected by it.

***SECTION 23.12. Enforcement of Certain Warranties.***

Unless an Event of Default shall have occurred and be continuing, the Lessor authorizes the Lessee (directly or through agents), without assuming any responsibility for the existence of such warranty or the validity of the authorization granted hereunder at the Lessee's expense, to assert, during the Lease Term, all of the Lessor's rights (if any) under any applicable warranty and any other claim that the Lessee or the Lessor may have under the warranties provided in connection with the Improvements and the Lessor agrees to cooperate, at the Lessee's expense, with the Lessee and its agents in asserting such rights. Any amount recovered by the Lessee under any such warranties shall be retained by or paid over to the Lessee, subject to Section 23.13.

***SECTION 23.13. Security Interest in Funds.***

As long as a Material Default or Event of Default shall have occurred and be continuing, any amount that would otherwise be payable to the Lessee under the Operative Documents shall be paid to or retained by the Lessor (including amounts to be paid to the Lessee pursuant to Article XIII or Section 23.12) as security for the performance by the Lessee in full of its obligations under this Lease and the other Operative Documents and, provided an Event of Default exists, it may be applied to the obligations of the Lessee hereunder and under the other Operative Documents and distributed pursuant to Section 18.2. At such time as no Material Default or Event of Default shall be continuing, such amounts, net of any amounts previously applied to the Lessee's obligations hereunder or under any other Operative Documents, shall be paid to the Lessee. Any such amounts which are held pending payment to the Lessee or application hereunder shall be invested by the Lessor as directed from time to time in writing by the Lessee, and at the expense and risk of the 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 from time to time in the same manner as the principal invested. The Lessor shall not be liable for any losses on such investments or for any failure to make any investment,

***SECTION 23.14. Submission to Jurisdiction.***

EACH OF THE LESSOR AND THE LESSEE IRREVOCABLY AND UNCONDITIONALLY:

(a) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LEASE, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR OF ANY NEW YORK STATE COURT

SITTING IN THE BOROUGH OF MANHATTAN, AND APPELLATE COURTS FROM ANY THEREOF;

(b) CONSENTS THAT ANY SUCH ACTION OR PROCEEDINGS MAY BE BROUGHT TO SUCH COURTS, AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(c) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS SET FORTH ON SCHEDULE II TO THE PARTICIPATION AGREEMENT OR AT SUCH OTHER ADDRESS OF WHICH THE OTHER PARTIES HERETO SHALL HAVE BEEN NOTIFIED PURSUANT TO SECTION 8.3 OF THE PARTICIPATION AGREEMENT; AND

(d) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.

***SECTION 23.15. Jury Trial.***

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE LESSOR AND THE LESSEE HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS LEASE OR ANY OTHER OPERATIVE DOCUMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS LEASE OR ANY OTHER OPERATIVE DOCUMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

***SECTION 23.16. Payments.***

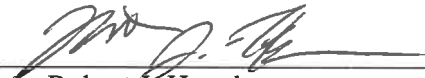
All payments to be made by the Lessee hereunder shall be made to the Lessor in Dollars in immediately available and freely transferable funds at the place of payment, all such payments to be paid without setoff, counterclaim or reduction and without deduction for, and free from, any and all present or future taxes, levies, imposts, duties, fees, charges, deductions, withholding or liabilities with respect thereto or any restrictions or conditions of any nature. If the Lessee is required by law to make any deduction or withholding on account of any tax or other withholding or deduction from any sum payable by the undersigned hereunder, the Lessee shall pay any such tax or other withholding or deduction and shall pay such additional amount necessary to ensure

that, after making any payment, deduction or withholding, the Lessor shall receive and retain (free of any liability in respect of any payment, deduction or withholding) a net sum equal to what it would have received and so retained hereunder had no such deduction, withholding or payment been required to have been made, which payment or withholding is made subject to the limitations set forth in Sections 7.2(a)(iii) and 7.4 of the Participation Agreement, reimbursement obligations of Indemnitees set forth in Sections 7.2(a)(iii), 7.2(e) and 7.2(f) of the Participation Agreement and other rights of the Lessee set forth in Sections 7.2(b)(i), 7.2(e), 7.2(f) and 7.4 of the Participation Agreement.

[Signature Pages Follow]

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

**MUFG AMERICAS CAPITAL LEASING &  
FINANCE, LLC,  
AS THE LESSOR**

By:   
Name: Robert J. Hoegler  
Title: Vice President

**[THIS IS COUNTERPART NO. 1 OF 2 ORIGINALLY  
EXECUTED COUNTERPARTS]**



**LAM RESEARCH CORPORATION,**  
AS THE LESSEE

By: 

Name: Odette Go  
Title: Vice President, Global Treasury

**[THIS IS COUNTERPART NO. 2 OF 2 ORIGINALLY  
EXECUTED COUNTERPARTS]**

## Schedule A

### Recourse Deficiency Amount Percentages

1. Maximum Remarketing Obligation (Improvements): 282.0178636193%
2. Maximum Remarketing Obligation (Site): 282.0178630931%
3. Lease Balance on the Base Term Commencement Date:

The initial Lease Balance (Improvements) for the Leased Property is \$16,768,009.63.

The initial Lease Balance (Site) for the Leased Property is \$2,459,262.78.

Exhibit A

Description of Site

Real Property in the City of Livermore, County of Alameda, State of California and described as follows:

ALL OF PARCEL 7 AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON THE PARCEL MAP 7341 FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY IN BOOK 268 OF PARCEL MAPS AT PAGE 85, TOGETHER WITH A PORTION OF PARCEL 14 AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON THE MAP OF TRACT 7610 FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY IN BOOK 293 OF MAPS AT PAGE 14, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER COMMON TO SAID PARCEL 7 AND PARCEL 14;

THENCE ALONG THE BOUNDARY LINE OF SAID PARCEL 7 THE FOLLOWING TEN (10) COURSES

1. WESTERLY ALONG A NON-TANGENT 1278.00 FOOT RADIUS CURVE TO THE RIGHT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 05° 41' 02" EAST, THROUGH A CENTRAL ANGLE OF 3° 38' 58" AN ARC DISTANCE OF 81.402 FEET;
2. ALONG A REVERSE 1022.00 FOOT RADIUS CURVE TO THE LEFT FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 09° 20' 00" WEST, THROUGH A CENTRAL ANGLE OF 9° 20' 00" AN ARC DISTANCE OF 166.481 FEET;
3. WEST, 284.906 FEET;
4. NORTH, 666.259 FEET;
5. EASTERLY ALONG A NON-TANGENT 1452.00 FOOT RADIUS CURVE TO THE LEFT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 01° 01' 32" EAST, THROUGH A CENTRAL ANGLE OF 15° 46' 40" AN ARC DISTANCE OF 399.843 FEET;
6. ALONG A REVERSE 29.00 FOOT RADIUS CURVE TO THE RIGHT FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 14° 45' 08" EAST, THROUGH A CENTRAL ANGLE OF 36° 52' 16" AN ARC DISTANCE OF 18.662 FEET;
7. ALONG A REVERSE 21.00 FOOT RADIUS CURVE TO THE LEFT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 22° 07' 08" EAST, THROUGH A CENTRAL ANGLE OF 36° 52' 16" AN ARC DISTANCE OF 13.514 FEET;
8. NORTH 75° 14' 52" EAST, 30.267 FEET;

9. SOUTH 14° 45' 08" EAST, 77.744 FEET; AND

10. SOUTH, 2.171 FEET,

THENCE LEAVING SAID BOUNDARY LINE OF PARCEL 7, EAST, 26.510 FEET;

THENCE SOUTH, 22.517 FEET;

THENCE EAST, 17.000 FEET;

THENCE SOUTH, 130.001 FEET;

THENCE WEST 27.000 FEET;

THENCE SOUTH, 222.595 FEET;

THENCE EAST, 44.018 FEET;

THENCE SOUTH, 250.002 FEET;

THENCE WEST, 5.526 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL 7;

THENCE ALONG SAID EASTERLY LINE SOUTH, 41.262 FEET TO THE POINT OF BEGINNING.

**PLEDGE AGREEMENT  
(Port 101)**

**BETWEEN**

**LAM RESEARCH CORPORATION  
("LRC")**

**AND**

**MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC  
("MUGCLF")**

**September 21, 2020**

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## PLEDGE AGREEMENT (PORT 101)

This PLEDGE AGREEMENT (Port 101) (this “**Agreement**”), dated as of September 21, 2020 (the “**Effective Date**”), is made by and between MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC (“**MUFGCLF**”), a Delaware limited liability company, and LAM RESEARCH CORPORATION (“**LRC**”), a Delaware corporation.

### RECITALS

A. LRC, as lessee, and MUFGCLF, as lessor, are parties to that certain Second Amended and Restated Lease Agreement (Port 101), dated of even date herewith (as amended, supplemented or otherwise modified from time to time pursuant thereto, the “**Lease**”), pursuant to which the Lessee has agreed to lease from the Lessor, and the Lessor has agreed to lease to the Lessee, the Leased Property described therein.

B. LRC and MUFGCLF are also parties to that certain Participation Agreement, dated of even date herewith (as amended, supplemented or otherwise modified, the “**Participation Agreement**”) pursuant to which the parties agree to renew the Lease and MUFGCLF agrees to maintain the outstanding Equity Investment with respect to Site Port 101 and the Improvements thereon and the Personal Property used thereon subject to the terms and conditions set forth therein.

C. By this Agreement, MUFGCLF and LRC desire to establish the terms and conditions upon which LRC is pledging cash collateral for its obligations to MUFGCLF under the Lease and the Participation Agreement.

### AGREEMENTS

#### 1. DEFINITIONS AND INTERPRETATION.

(A) Definitions. As provided in the recitals above, all capitalized terms used in this Agreement which are defined in the Participation Agreement and not otherwise defined herein shall have the same meanings herein as set forth in Appendix I to the Participation Agreement and this Agreement shall be subject to the rules of interpretations set therein. All terms used in this Agreement which are defined in the UCC and not otherwise defined herein shall have the same meanings herein as set forth therein, except where the context otherwise requires. As used in this Agreement, the following terms shall have the following respective meanings:

“**Account Office**” means, with respect to any Deposit Account maintained by any Deposit Taker, the branch, office or agency of such Deposit Taker in California or New York at which such Deposit Account is maintained as specified in the applicable Deposit Taker’s Agreement.

“**Cash Collateral**” means (i) all money of LRC which LRC delivers or has delivered to MUFGCLF or as directed by it for deposit in the Deposit Accounts maintained by the



Deposit Takers pursuant to this Agreement, and (ii) all amounts on deposit in any of the Deposit Accounts from time to time, which have not been withdrawn or applied to Secured Obligations as provided in this Agreement.

**“Clearing System”** means the Depository Trust Company (“DTC”) and such other clearing or safekeeping system that may from time to time be used in connection with transactions relating to or the custody of any Securities, and any depository for any of the foregoing.

**“Collateral”** has the meaning indicated in Paragraph 2.

**“Control Agreement”** means any future blocked account control agreement that may be used by a Deposit Taker following a Substitution Event.

**“Default”** means any Event of Default and any default, event or condition which would, with the giving of any requisite notices and the passage of any requisite periods of time, constitute an Event of Default.

**“Deposit Account”** means a deposit account maintained by any Deposit Taker into which Cash Collateral has been or may in the future be deposited as provided in this Agreement.

**“Deposit Taker”** means, for MUFGCLF or any Participant, an Eligible Deposit Taker designated by it to act as the Deposit Taker for it under this Agreement. MUFGCLF has already designated MUFG Bank as the Deposit Taker for MUFGCLF hereunder. Any Participant which is an Eligible Deposit Taker will be deemed to have designated itself to act as the Deposit Taker for it, unless some other designation is expressly set forth in this Agreement. Any Participant which is not an Eligible Deposit Taker will be expected to designate MUFG Bank or, to the extent MUFG Bank is not an Eligible Deposit Taker, another Person which is an Eligible Deposit Taker (as reasonably approved by LRC) prior to any delivery of Cash Collateral by LRC pursuant to this Agreement. It is also understood, however, that each of MUFGCLF and any Participants, for itself only, may from time to time designate another Eligible Deposit Taker (as reasonably approved by LRC) as provided in subparagraphs 3(C) and 3(D)(1) below and that LRC may from time to time designate another Eligible Deposit Taker (as reasonably approved by MUFGCLF and, as applicable, a Participant) as provided in subparagraph 3(D)(2) below.

**“Deposit Taker Prerequisites”** means, with respect to any Deposit Taker: (1) the requirement that such Deposit Taker establish a Deposit Account and provide to LRC and MUFGCLF the account number and other information regarding such Deposit Account which they must have to complete and submit a Deposit Taker’s Agreement covering such Deposit Account; and (2) the requirement that such Deposit Taker accept, execute and return a Deposit Taker’s Agreement covering each Deposit Account to be maintained by such Deposit Taker. It is understood that any Deposit Taker’s refusal or failure to satisfy the Deposit Taker Prerequisites will cause it to be a Disqualified Deposit Taker.

**“Deposit Taker’s Agreement”** means a completed Deposit Agreement in the form attached as Exhibit A, which specifically identifies a Deposit Account in which a Deposit Taker shall hold Cash Collateral delivered to it pursuant to this Agreement.

**“Disqualified Deposit Taker”** means any Person that MUFGCLF or any Participant has designated or approved as a Deposit Taker, but that has not satisfied or no longer satisfies the following requirements:

(a) With respect to each Deposit Account in which such Person holds or will hold Collateral delivered to it pursuant to this Agreement, such Person must have received from MUFGCLF and LRC an executed Deposit Taker’s Agreement which specifically identifies such Deposit Account and which designates, at such Person’s election, an Account Office with respect to such Deposit Account.

(b) Such Person must have executed and returned to MUFGCLF a Deposit Taker’s Agreement with respect to each such Deposit Account and must have complied with its Deposit Taker’s Agreement, and the representations set forth therein with respect to such Person must continue to be true and correct (except that such Person will not become a Disqualified Deposit Taker because of its failure to comply with its Deposit Taker’s Agreement, or because any such representation does not continue to be true and correct, if such failure is cured and all such representations are made true and correct in all material respects before the earlier of (i) thirty days after the Deposit Taker is notified thereof, and (ii) any date upon which MUFGCLF’s security interest in any Collateral maintained or held by such Deposit Taker is not a Qualified Pledge by reason of such failure to comply or such representation not being true and correct). Such Person must have complied in all material respects with the provisions in this Agreement applicable to Deposit Takers.

(c) Such Person must be an Eligible Deposit Taker.

**“Eligible Deposit Taker”** means:

(1) (a) MUFG Bank or any successor of MUFG Bank, acting through an Account Office in the United States that can lawfully maintain a Deposit Account as a Deposit Taker hereunder or (b) MUB or any successor of MUB acting through any Account Office in the United States that can lawfully maintain a Deposit Account as a Deposit Taker hereunder;

(2) with respect to any Participant which has designated for itself a new Deposit Taker hereunder, any Participant or Affiliate of a Participant that is (a) a commercial bank, organized under the laws of the United States of America or a state thereof or under the laws of another country which is doing business in the United States of America, and (b) authorized to maintain deposit accounts for others through

Account Offices (as specified in its Deposit Taker's Agreement) so long as no Participant Downgrade Event shall occur; or

(3) such Person that (a) has been designated by MUFGCLF or a Participant to act as the Deposit Taker for it under this Agreement, (b) is one of the fifty largest (measured by total assets) U.S. banks, or one of the one hundred largest (measured by total assets) banks in the world, (c) is acting through any Account Office in the United States that can lawfully maintain a Deposit Account as a Deposit Taker hereunder, and (d) has a debt ratings of at least (i) A- (in the case of long term debt) and A-1 (in the case of short term debt) or the equivalent thereof by Standard and Poor's Corporation (the "**S&P Rating**"), and (ii) A3 (in the case of long term debt) and P-1 (in the case of short term debt) or the equivalent thereof by Moody's Investor Service, Inc. (the "**Moody Rating**"), the parties hereto believing that it is improbable that the ratings systems used by Standard and Poor's Corporation and by Moody's Investor Service, Inc. will be discontinued or changed, but if such ratings systems are discontinued or changed, LRC shall be entitled to select and use a comparable ratings systems as a substitute for the S&P Rating or the Moody Rating, as the case may be, for purposes of determining the status of any bank as an Eligible Deposit Taker.

If at any time a Deposit Taker fails to satisfy the requirements of this definition above, such Deposit Taker shall cease being an Eligible Deposit Taker and LRC may, at its option, require that the Collateral held by such ineligible Deposit Taker be transferred to an Eligible Deposit Taker, provided that (i) such Eligible Deposit Taker satisfies the requirements of this definition above and (ii) LRC, Lessor and such replacement Eligible Deposit Taker have entered into a control agreement in form reasonably acceptable to all parties thereto.

**"Event of Default"** means the occurrence of any of the following:

- (a) an Event of Default as defined in the Lease;
- (b) any failure by LRC to provide funds as and when required by subparagraph 4(A) of this Agreement or under the Deposit Taker's Agreement, on the date due;
- (c) the failure of the pledge or security interest contemplated herein in any Deposit Account or Cash Collateral to be a Qualified Pledge (regardless of the characterization of any Deposit Accounts or Cash Collateral as deposit accounts, instruments or general intangibles under the UCC); unless, within five days after LRC becomes aware of such failure, LRC both (1) notifies MUFGCLF of such failure, and (2) cures such failure;
- (d) the failure of any representation herein by LRC to be true (other than a failure described in another clause of this definition of Event of Default) and LRC shall fail to cure the underlying facts causing such representation, warranty, certification or statement to be incorrect in all material respects for a period of ten (10) Business Days after the earlier of Actual Knowledge or notice thereof;

(e) the failure of any representation made by LRC in subparagraph 6(A)(1) to be true, if within fifteen days after LRC becomes aware of such failure, LRC does not (1) notify MUFGCLF of such failure, and (2) cure such failure; and

(f) the failure by LRC timely and properly to observe, keep or perform any covenant, agreement, warranty or condition herein required to be observed, kept or performed (other than a failure described in another clause of this definition of Event of Default), if diligent efforts are not being taken by LRC to cure such Default and such failure is not cured within thirty (30) days after the earlier of Actual Knowledge thereof by LRC or receipt of written notice thereof; provided, however, that if such failure is capable of cure but cannot be cured by payment of money or cannot be cured by diligent efforts within such thirty (30) day period but such diligent efforts shall be properly commenced within such thirty (30) day period and LRC is diligently pursuing, and shall continue to pursue diligently remedy of such failure, such cure period shall be extended for an additional period of time in excess of such cure period as may be necessary to cure, not to extend beyond the earlier to occur of (i) the Lease Expiration Date or (ii) one hundred and twenty (120) days after the earlier of Actual Knowledge thereof or written notice thereof having been given to LRC.

**“Lien”** means, with respect to any property or assets, any right or interest therein of a creditor to secure indebtedness or other obligations of any kind which is owed to such Person or any other arrangement with such creditor which provides for the payment of such indebtedness or obligations out of such property or assets or which allows such Person to have such indebtedness or obligations satisfied out of such property or assets prior to the general creditors of any owner thereof, including any lien, mortgage, security interest, pledge, deposit, production payment, rights of a vendor under any title retention or conditional sale agreement or lease substantially equivalent thereto, tax lien, mechanic’s or materialman’s lien, or any other charge or encumbrance for security purposes, whether arising by law or agreement or otherwise, but excluding any right of setoff which arises without agreement in the ordinary course of business. “Lien” also means any filed financing statement, any registration with an issuer of uncertificated securities, or any other arrangement which would serve to perfect a Lien described in the preceding sentence, regardless of whether such financing statement is filed, such registration is made, or such arrangement is undertaken before or after such Lien exists.

**“LRC Substitute Deposit Taker”** means an Eligible Deposit Taker as defined in clause (3) of the definition thereof with the exception of clause (a) therein.

**“Make Whole Amount”** means the sum of the following:

(1) the amount (if any) by which the Lease Balance exceeds any Recourse Deficiency Amount which was actually received by MUFGCLF on the Base Term Expiration Date in accordance with Articles XXI and XXII of the Lease, together with interest on such excess computed at the Overdue Rate for the period commencing on the Base Term Expiration Date and ending on the expiration of the Extended Remarketing Period; plus

(2) any unpaid Base Rent or other amounts due to MUFGCLF pursuant to the Lease or other Operative Documents (except pursuant to Other Lease Documents); plus

(3) MUFGCLF's Transaction Costs; plus

(4) the amount, but not less than zero, by which (i) all Taxes, insurance premiums and other Claims of every kind suffered or incurred by MUFGCLF (whether or not reimbursed in whole or in part by another Person) with respect to the ownership, operation or maintenance of the Leased Property during the Extended Remarketing Period, exceeds (ii) any rents or other sums collected by MUFGCLF during such period from third parties as consideration for any lease or other contracts made by MUFGCLF that authorize the use and enjoyment of the Leased Property by such parties; together with interest on such excess computed at the Overdue Rate for each day prior to the date of expiration or earlier termination of the Extended Remarketing Period (or, if not so extended by the Lessor, the Return Date).

**"MUB"** means MUFG Union Bank, N.A.

**"MUFG Bank"** means MUFG Bank, Ltd.

**"MUFGCLF"** shall have the meaning given to that term in the introductory paragraph hereof.

**"Other Liable Party"** means any Person, other than LRC, who may now or may at any time hereafter be primarily or secondarily liable for any of the Secured Obligations or who may now or may at any time hereafter have granted to MUFGCLF a Lien against any of its assets to secure any Secured Obligations.

**"Participant"** means, with respect to the Lease, any Participation Holder as defined in Section 6.4 of the Participation Agreement.

**"Participant Downgrade Event"** means Participant or any successor of Participant fails to maintain a debt rating of at least (i) BBB- (in the case of long term debt) by Standard and Poor's Corporation (the "S&P Rating"), and (ii) Baa3 (in the case of long term debt) by Moody's Investor Service, Inc. (the "Moody Rating") and LRC shall elect to require that the Collateral held by Participant to be transferred to an Eligible Deposit Taker pursuant to Section 3(C) hereof, provided that (i) such transferee shall satisfy the requirements of an Eligible Deposit Taker and (ii) LRC, Lessor and such replacement Eligible Deposit Taker have entered into a control agreement in form reasonably acceptable to all parties thereto.

The parties hereto believe that it is improbable that the ratings systems used by Standard and Poor's Corporation and by Moody's Investor Service, Inc. will be discontinued or changed, but if such ratings systems are discontinued or changed, LRC shall be entitled to select and use a comparable ratings systems as a substitute for the S&P Rating or the Moody Rating, as the case may be, for purposes of determining the status of Participant or such successor as an Eligible Deposit Taker.

**"Percentage"** means with respect to each Participant and the Deposit Taker for such Participant, the percentage obtained by dividing (x) the amount of the outstanding Equity

Investment assumed by such Participant pursuant to Section 6.4 of the Participation Agreement by (y) the aggregate amount of the Equity Investment of the Participants. Percentages may be adjusted from time to time as provided in the Participation Agreement or as provided in supplements thereto executed as provided in the Participation Agreement.

**“Qualified Pledge”** means a pledge or security interest that constitutes a valid, perfected, first priority pledge or security interest.

**“Secured Obligations”** means and includes all obligations of LRC under the Operative Documents (except with respect to the Other Lease Documents) including, without limitation, (i) LRC’s obligation to pay the Recourse Deficiency Amount as provided in Article XXII of the Lease, (ii) LRC’s obligation to pay the Break-Even Price as the purchase price for the Leased Property pursuant to Sections 20.1, 20.2 or 21.1(a) of the Lease, and (iii) any damages incurred by MUFGLF or other amounts due under the Operative Documents (except with respect to the Other Lease Documents) following an Event of Default including any rejection by LRC of the Lease or any other Operative Document (except with respect to the Other Lease Documents) in any bankruptcy, insolvency or similar proceeding.

**“UCC”** means the Uniform Commercial Code as in effect in the State of New York from time to time, and the Uniform Commercial Code as in effect in any other jurisdiction which governs the perfection or non-perfection of the pledge of and security interests in the Collateral created by this Agreement.

(B) Rules of Interpretation. The rules of interpretation set forth in Appendix I to the Participation Agreement are hereby incorporated by reference.

(C) Attachments. All attachments to this Agreement are a part hereof for all purposes.

## **2. PLEDGE AND GRANT OF SECURITY INTEREST.**

As security for the Secured Obligations, LRC hereby pledges and assigns to MUFGLF and grants to MUFGLF a continuing security interest and lien in and against all right, title and interest of LRC in and to the following property, whether now or hereafter existing, whether tangible or intangible, whether presently owned or vested in or hereafter acquired by LRC and wherever the same may be located (collectively and severally, the **“Collateral”**):

(a) all Cash Collateral and all Deposit Accounts; and all cash and other assets from time to time held in or on deposit in any Deposit Account and all general intangibles arising from or relating to any Deposit Account or such cash or other assets; and all documents, instruments and agreements evidencing the same; and all extensions, renewals, modifications and replacements of the foregoing; and any interest or other amounts payable in connection therewith; and

(b) all proceeds of the foregoing (including whatever is receivable or received when Collateral or proceeds is invested, sold, collected, exchanged, returned, substituted or otherwise disposed of, whether such disposition is voluntary

or involuntary, including rights to payment and return premiums and insurance proceeds under insurance with respect to any Collateral, and all rights to payment with respect to any cause of action affecting or relating to the Collateral).

The pledge, assignment and grant of a security interest made by LRC hereunder is for security of the Secured Obligations only; the parties to this Agreement do not intend that LRC's delivery or deposit of any Collateral, including the Cash Collateral, as herein provided will constitute an advance payment of any Secured Obligations or liquidated damages, nor do the parties intend that the Collateral increase the dollar amount of the Secured Obligations.

### **3. PROVISIONS CONCERNING THE DEPOSIT TAKERS.**

(A) Deposit Taker Agreements. Prior to the Closing, LRC must (1) ask MUFG Bank, as the designated Deposit Taker for MUFGCLF, and each Eligible Deposit Taker designated by any Participant to act as the Deposit Taker for it under this Agreement, to satisfy the Deposit Taker Prerequisites; and (2) execute and provide to MUFGCLF a completed Deposit Taker's Agreement for MUFGCLF's execution and delivery to each Deposit Taker. Promptly after receipt of a properly completed Deposit Taker's Agreement executed by LRC and in form ready to be executed by MUFG Bank or any other Eligible Deposit Taker named therein, MUFGCLF must execute such Deposit Taker's Agreement and deliver it to the appropriate Deposit Taker as necessary for the satisfaction of the Deposit Taker Prerequisites.

Without limiting the foregoing, it is understood that (i) MUFGCLF and any Participant may designate MUFG Bank as its Deposit Taker, (ii) any Participant may designate itself or any of its Affiliates as its Deposit Taker so long as the Participant or its Affiliate, as the case may be, is an Eligible Deposit Taker, and (iii) as provided in both the preceding provisions of this subparagraph and in subparagraph 3(E), MUFGCLF and LRC must promptly upon request execute and deliver any properly completed Deposit Taker Agreement requested by MUFGCLF or any Participant to facilitate the designations of Deposit Takers contemplated by this Agreement. If any Participant has not already designated an Eligible Deposit Taker to act as Deposit Taker for it under this Agreement at any time when such a designation is required, then MUFGCLF may make the designation for such Participant; subject, however, to such Participant's rights under subparagraphs 3(D)(1) and 3(E).

(B) Qualification of Deposit Takers Generally. Notwithstanding anything herein to the contrary, MUFGCLF may decline to deposit or maintain Cash Collateral hereunder with any Disqualified Deposit Taker.

(C) Substitutions for Disqualified Deposit Takers.

(1) Upon learning that any Deposit Taker has become a Disqualified Deposit Taker, LRC (as to any Participant other than MUFGCLF or an Affiliate thereof) or MUFGCLF may request that the party for whom such Disqualified Deposit Taker has been designated a Deposit Taker (*i.e.*, the applicable Participant) (a) designate another Eligible Deposit Taker as its new, substitute Deposit Taker, and (b) direct the substitute to satisfy the Deposit Taker Prerequisites.

(2) Pending the designation of a substitute Deposit Taker as provided in this subparagraph 3(C) and its execution and delivery to MUFGCLF of an appropriate Deposit Taker's Agreement, MUFGCLF may withdraw Collateral held by the Deposit Taker to be replaced and deposit such Collateral with other Deposit Takers. If at any time no Deposit Takers have been designated other than Disqualified Deposit Takers, then MUFGCLF must itself select a new Eligible Deposit Taker to act as a Deposit Taker for it and direct the new Eligible Deposit Taker to satisfy the Deposit Taker Prerequisites.

(D) Other Voluntary Substitutions of Deposit Takers.

(1) MUFGCLF may, and with the written approval of MUFGCLF (which approval will not be unreasonably withheld) any Participant may, at any time designate for itself a new Deposit Taker (in replacement of any prior Deposit Taker acting for it hereunder); provided, the Person so designated is not be a Disqualified Taker.

(2) In addition, at any time LRC desires to designate a new Deposit Taker (in replacement of MUFG as the initial Deposit Taker) other than by reason of any Deposit Taker becoming a Disqualified Deposit Taker, LRC shall notify MUFGCLF and, if applicable, a Participant that has designated for itself a new Deposit Taker in accordance herewith of its desire to designate a LRC Substitute Deposit Taker as the new, substitute Deposit Taker for one or more existing Deposit Takers and requesting approval from MUFGCLF and, if applicable, such Participant. Upon receipt of such notice, MUFGCLF and, if applicable, such Participant shall advise LRC as to its approval of such proposed LRC Substitute Deposit Taker (which approval shall not be unreasonably withheld), conditioned or delayed and shall provide a good faith estimate of the effect thereof on its effective yield under the Operative Documents taking into account the loss of the Deposit Account holding the Cash Collateral and other factors deemed relevant by MUFGCLF in good faith and, if applicable, such Participant, and the estimated increase in Basic Rent chargeable under the Lease and other modifications needed under the Operative Documents each determined in good faith in the event of such substitution in order to maintain its net economic benefits thereunder (which estimates are subject to change prior to the date of the actual substitution). Following its receipt of such approval(s) and estimates, LRC may elect in a writing delivered to MUFGCLF and such Participant, if applicable, to designate the proposed LRC Substitute Deposit Taker as the new, substitute Deposit Taker for one or more existing Deposit Takers and the intended date therefor, which shall not be less than ten (10) Business Days nor more than twenty (20) Business Days therefrom. Such designation shall be subject to the receipt by MUFGCLF and any such Participant of (i) evidence that such Deposit Taker satisfies the requirements of a LRC Substitute Deposit Taker, (ii) a Deposit Agreement and a Control Agreement, each among Lessor and/or such Participant, LRC and such LRC Substitute Deposit Taker, each of which shall become an Operative Document and shall be in form and substance reasonably acceptable to all parties thereto, (iii) a modification of the Lease and other Operative Documents by Lessor and LRC to reflect the increase in Basic Rent and other modifications necessary under the Operative Documents in the event



of such substitution in order to maintain Lessor's net economic benefits thereunder and the modifications to the terms and conditions of this Agreement, in form and substance reasonably acceptable to all parties thereto, and (iv) such certificates, opinions and other documentation as Lessor and/or such Participant may reasonably request. LRC shall be responsible for all reasonable, out-of-pocket costs and expenses incurred by MUFGCLF and any Participant with respect to the foregoing. Upon consummation of such substitution, such existing Deposit Taker shall cease being a Deposit Taker hereunder and subject to the termination provisions therein, the Deposit Agreement to which such existing Deposit Taker is a party shall terminate and the related Cash Collateral shall be transferred to the LRC Deposit Taker subject to the Operative Documents as modified or delivered above.

(E) Delivery of Deposit Taker's Agreements by LRC and MUFGCLF. To the extent required for the designation of a new Deposit Taker by MUFGCLF or any Participant pursuant to subparagraph 3(D)(1), or to permit the substitution or replacement of a Deposit Taker for MUFGCLF or any Participant as provided in subparagraphs 3(C) and 3(D), LRC and MUFGCLF shall promptly execute and deliver any properly completed Deposit Taker's Agreement requested by MUFGCLF or the applicable Participant.

(F) Constructive Possession of Collateral. The possession by a Deposit Taker of any money, instruments, chattel paper, financial assets or other property constituting Collateral or evidencing Collateral shall be deemed to be possession by MUFGCLF or a person designated by MUFGCLF, for purposes of perfecting the security interest granted to MUFGCLF hereunder pursuant to the UCC or other Applicable Law; and notifications to a Deposit Taker by other Persons holding any such property, and acknowledgments, receipts or confirmations from any such Persons delivered to a Deposit Taker, and control agreements made by any such Person with Deposit Taker with respect to any such property, shall be deemed notifications to, or acknowledgments, receipts or confirmations from, or control agreements with, financial intermediaries, bailees or agents (as applicable) of such Deposit Taker for the benefit of MUFGCLF for the purposes of perfecting such security interests under Applicable Law.

However, nothing in this subparagraph will be construed to permit or authorize any replacement of Cash Collateral required by this Agreement with other types of Collateral or any substitution of other types of Collateral for Cash Collateral hereunder.

(G) Attempted Setoff by Deposit Taker. By delivery of a Deposit Taker's Agreement, each Deposit Taker must agree not to setoff or attempt a setoff, without in each case first obtaining the prior written authorization of MUFGCLF (which MUFGCLF will not grant without the prior written consent of all Participants, if applicable), obligations owed to such Deposit Taker against any Collateral held by it from time to time. Nevertheless, LRC acknowledges and agrees (without limiting its right to recover any resulting damages from any Deposit Taker that violates such agreements) that MUFGCLF shall not be responsible for, or be deemed to have taken any action against LRC because of, any violation of such agreement by any Deposit Taker. Further, and without limiting the foregoing, as additional consideration for MUFGCLF's accommodations to LRC, including MUFGCLF's acceptance of the Collateral in lieu of other forms of security as collateral for the Secured Obligations,

LRC hereby waives and covenants not to assert any defense or claim arising out of (i) the California antideficiency laws, including without limitation California Code of Civil Procedure Sections 580a, 580b, 580d and 726, and (ii) without limiting the generality of the foregoing, Walker v. Community Bank, 10 Cal. 3d 729, 111 Cal. Rptr. 897, 518 P.2d 329 (1974), Security Pacific Nat'l Bank v. Wozab, 51 Cal. 3d 991, 275 Cal. Rptr. 201, 800 P.2d 557 (1990), and similar cases, to the extent such claim arises out of or relates to the exercise of set off rights by any Deposit Taker.

#### **4. DELIVERY AND MAINTENANCE OF COLLATERAL.**

(A) Delivery of Cash Collateral by LRC. On the Base Term Commencement Date as a condition precedent thereto under the Participation Agreement, LRC must deliver or cause to be delivered to Deposit Takers for deposit directly into the Deposit Accounts, in either case subject to the pledge and security interest created hereby, funds as Cash Collateral then needed (if any) in an amount equal to the Lease Balance. As of the date hereof, MUFG Bank currently maintains \$19,227,272.41, which amount will reduce dollar for dollar the amount of Cash Collateral to be delivered by the Lessee on the Base Term Commencement Date.

(B) Status of the Deposit Accounts Under the Reserve Requirement Regulations. Each Deposit Taker shall be permitted to structure the Deposit Account maintained by it as a nonpersonal time deposit under 12 C.F.R., Part II, Chapter 204 (commonly known as "Regulation D"). Accordingly, any Deposit Taker may require at least seven days advance notice of any withdrawal or transfer of funds from the Deposit Account maintained by it and, to the extent LRC has the right to request withdrawals therefrom, may limit the number of withdrawals or transfers from such Deposit Account to no more than six in any calendar month, notwithstanding anything to the contrary herein or in any deposit agreement that LRC and such Deposit Taker may enter into with respect to such Deposit Account. As necessary to satisfy the seven days' notice requirement with respect to withdrawals by MUFGCLF when required by LRC pursuant to the provisions below, MUFGCLF shall notify the affected Deposit Takers promptly after receipt of any notice from LRC described in subparagraph 5(B).

(C) Acknowledgment by LRC that Requirements of this Agreement are Commercially Reasonable. LRC acknowledges and agrees that the requirements set forth herein concerning receipt, deposit, withdrawal, allocation, application and distribution of Cash Collateral by MUFGCLF, including the requirements and time periods set forth in the Paragraph 5, are commercially reasonable.

(D) Change of Account Office. Any Eligible Deposit Taker as defined in clause (1) of the definition thereof may relocate its Account Office to a location outside of the States of California and New York at no cost to LRC so long as no Event of Default shall have occurred be continuing.

#### **5. WITHDRAWAL OF COLLATERAL.**

(A) Withdrawal of Cash Collateral Upon the Occurrence and During the Continuance of an Event of Default. Upon the occurrence and during the continuance of an

Event of Default, without any instruction or request of LRC, MUFGCLF may withdraw and retain any Cash Collateral held by any Deposit Taker (which retention by MUFGCLF shall be free and clear of all liens and security interests hereunder and any rights of LRC thereto shall be released, terminated and waived without further action) as a payment on behalf of LRC of any amounts then due from LRC under Article XVIII of the Lease. To the extent MUFGCLF has exercised its rights and remedies thereunder and the Secured Obligations have been indefeasibly satisfied in full in accordance with Article XVIII of the Lease, LRC may require MUFGCLF to withdraw and promptly pay to LRC any Cash Collateral still held by any Deposit Taker.

(B) Withdrawal and Application of Cash Collateral to Reduce or Satisfy the Secured Obligations to MUFGCLF. Except following the occurrence and during the continuance of an Event of Default, to satisfy the Secured Obligations in full, LRC may require MUFGCLF to withdraw and retain any Cash Collateral held by any Deposit Taker on the earlier of the Base Term Expiration Date or, if applicable, on the date of any purchase or sale of the Leased Property pursuant to Articles XX, XXI, or XXII (which retention by MUFGCLF shall be free and clear of all liens and security interests hereunder and any rights of LRC thereto shall be released, terminated and waived without further action) as a payment on behalf of LRC of any amounts then due from LRC under Articles XX, XXI or XXII of the Lease; provided, that by a notice in the form of Exhibit B, LRC must have notified MUFGCLF of the required withdrawal and payment to MUFGCLF at least ten days prior to the date upon which it is to occur and when no Event of Default (under and as defined in this Agreement or as defined in the Lease) has occurred and is continuing. In furtherance of the foregoing, to the extent LRC has (i) validly exercised or been deemed to have exercised the Purchase Option under Article XX or XXI of the Lease, or (ii) validly exercised the Return Option under the Lease and the Recourse Deficiency Amount has been indefeasibly satisfied in full on the Base Term Expiration Date in accordance with Articles XXI and XXII of the Lease, LRC may require MUFGCLF to withdraw and pay to LRC the Cash Collateral held by any Deposit Taker on the Base Term Expiration Date other than an amount equal to the Make Whole Amount as reasonably estimated by MUFGCLF and when no Default or Event of Default (under and as defined in this Agreement or as defined in the Lease) has occurred and is continuing.

(C) Withdrawal and Return of Cash Collateral Following Satisfaction of all Secured Obligations. When (i) all Secured Obligations have been indefeasibly satisfied in full or, (ii) to the extent LRC has validly exercised the Return Option in accordance with Paragraph 5(B) above, at the expiration or termination of the Extended Remarketing Period with respect to the Make Whole Amount, any remaining Cash Collateral that has not been withdrawn and applied against the Secured Obligations shall revert to LRC as provided in subparagraph 9(F), whereupon LRC may require MUFGCLF to withdraw such remaining Cash Collateral then maintained pursuant to this Agreement and promptly transfer such remaining Cash Collateral to LRC.

(D) No Other Right to Require or Make Withdrawals. LRC may not withdraw or require any withdrawal of Collateral from any account or deposit account pledged hereunder, including the Deposit Accounts, except as expressly provided in the preceding subparagraphs of this Paragraph 5. LRC acknowledges that it will have no check writing privileges or line

of credit or credit card privileges under any such pledged account or deposit account, including the Deposit Accounts.

(E) MUFGCLF's Covenant Not to Make Unauthorized Withdrawals. Notwithstanding provisions of any Control Agreement or of any Deposit Taker's Agreement which may state that MUFGCLF is entitled to withdraw Collateral held by any Deposit Taker without any prior consent or authorization of LRC, MUFGCLF covenants to LRC (as between MUFGCLF and LRC) that MUFGCLF will not exercise such rights to withdraw Collateral except (1) as required or permitted by this Paragraph 5, (2) in the exercise of MUFGCLF's rights or remedies as otherwise herein provided, or (3) as may from time to time be requested or approved by LRC.

## **6. REPRESENTATIONS AND COVENANTS OF LRC.**

(A) Representations of LRC. LRC represents to MUFGCLF as follows:

(1) LRC is the legal and beneficial owner of the Collateral (or, in the case of after-acquired Collateral, at the time LRC acquires rights in the Collateral, will be the legal and beneficial owner thereof), subject to the pledge and rights hereby granted in favor of MUFGCLF. No other Person has (or, in the case of after-acquired Collateral, at the time LRC acquires rights therein, will have) any right, title, claim or interest (by way of Lien, purchase option or otherwise) in, against or to the Collateral, except for rights created hereunder. The Collateral shall be deposited with the Deposit Taker hereunder and under the Deposit Taker's Agreement free and clear of any Lien.

(2) MUFGCLF has (or in the case of after-acquired Collateral, at the time LRC acquires rights therein, will have) a valid, first priority, perfected pledge of and security interest in the Collateral, regardless of the characterization of the Collateral as deposit accounts, instruments or general intangibles under the UCC, but assuming that the representations of each Deposit Taker in its Deposit Taker's Agreement are true.

(3) LRC has delivered to MUFGCLF, together with all necessary stock powers, endorsements, assignments and other necessary instruments of transfer, the originals of all documents, instruments and agreements evidencing the Collateral in order to comply with Section 2 of the Deposit Taker's Agreement.

(4) Neither the ownership or the intended use of the Collateral by LRC, nor the pledge of Collateral or the grant of the security interest by LRC to MUFGCLF herein, nor the exercise by MUFGCLF of its rights or remedies hereunder, will (i) violate any provision of (a) Applicable Law, (b) the articles or certificate of incorporation, charter or bylaws of LRC, or (c) any agreement, judgment, license, order or permit applicable to or binding upon LRC or its properties, or (ii) result in or require the creation of any Lien, charge or encumbrance upon any assets or properties of LRC except as expressly contemplated in this Agreement. Except as expressly contemplated in this Agreement, no consent, approval, authorization or order of, and no notice to or filing with any court, governmental authority or third party is required

in connection with the pledge or grant by LRC of the security interest contemplated herein or the exercise by MUFGCLF of its rights and remedies hereunder.

(B) Covenants of LRC. LRC hereby agrees as follows:

(1) LRC, at LRC's expense, shall promptly procure, execute and deliver to MUFGCLF all documents, instruments and agreements and perform all acts which are necessary or desirable, or which MUFGCLF may request, to establish, maintain, preserve, protect and perfect the Collateral, the pledge thereof to MUFGCLF or the security interest granted to MUFGCLF therein and the first priority of such pledge or security interest or to enable MUFGCLF to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the preceding sentence, LRC shall (A) procure, execute and deliver to MUFGCLF all stock powers, endorsements, assignments, financing statements and other instruments of transfer requested by MUFGCLF, (B) deliver to MUFGCLF promptly upon receipt all originals of Collateral consisting of instruments, documents and chattel paper, and (C) cause the security interest of MUFGCLF in any Collateral consisting of securities to be recorded or registered in the books of any financial intermediary or Clearing System requested by MUFGCLF.

(2) When Applicable Law provides more than one method of perfection of MUFGCLF's security interest in the Collateral, MUFGCLF may choose the method(s) to be used. LRC hereby authorizes MUFGCLF to file any financing statements or financing statement amendment covering all or any portion of the Collateral or relating to the security interest created herein.

(3) LRC shall not use or authorize or consent to any use of any Collateral in violation of any provision of this Agreement or any other Operative Document or any Applicable Law.

(4) LRC shall pay promptly when due all Taxes and other governmental charges, Liens and other charges now or hereafter imposed upon, relating to or affecting any Collateral or arising on any interest or earnings thereon.

(5) LRC shall appear in and defend, on behalf of MUFGCLF, any action or proceeding which may affect LRC's title to or MUFGCLF's interest in the Collateral.

(6) Subject to the express rights of LRC under Paragraph 5, LRC shall not surrender or lose possession of (other than to MUFGCLF or a Deposit Taker pursuant hereto), encumber, lease, rent, option, or otherwise dispose of or transfer any Collateral or right or interest therein, and LRC shall keep the Collateral free of all Liens (other than Liens granted under this Agreement). The rights granted to MUFGCLF pursuant to this Agreement are in addition to the rights granted to MUFGCLF in any Control Agreement or other custody, investment management, trust, account control agreement or similar agreement. In case of conflict between the provisions of this Agreement and of any other such agreement, the provisions of this Agreement will prevail.

(7) LRC will not take any action which would in any manner impair the value or enforceability of MUFGCLF's pledge of or security interest in any Collateral, nor will LRC fail to take any action which is required to prevent (and which LRC knows is required to prevent) an impairment of the value or enforceability of MUFGCLF's pledge of or security interest in any Collateral.

(8) Without limiting the foregoing, within five days after LRC becomes aware of any failure of the pledge or security interest contemplated herein in any Deposit Account or Cash Collateral to be a valid, perfected, first priority pledge or security interest (regardless of the characterization thereof as deposit accounts, securities accounts, instruments or general intangibles under the UCC), LRC shall notify MUFGCLF of such failure.

## **7. AUTHORIZED ACTION BY MUFGCLF.**

LRC hereby irrevocably appoints MUFGCLF as LRC's attorney-in-fact for the purpose of authorizing MUFGCLF to perform (but MUFGCLF shall not be obligated to and shall incur no liability to LRC or any third party for failure to perform) any act which LRC is obligated by this Agreement to perform, and to exercise, consistent with the other provisions of this Agreement, such rights and powers as LRC might exercise with respect to the Collateral during any period in which a Default has occurred and is continuing, including the right to (a) collect by legal proceedings or otherwise and endorse, receive and receipt for all dividends, interest, payments, proceeds and other sums and property now or hereafter payable on or on account of the Collateral; (b) enter into any extension, reorganization, deposit, merger, consolidation or other agreement pertaining to, or deposit, surrender, accept, hold or apply other property in exchange for the Collateral; (c) insure, process, preserve and enforce the Collateral; (d) make any compromise or settlement, and take any action it deems advisable, with respect to the Collateral; (e) pay any indebtedness of LRC relating to the Collateral; and (f) execute UCC financing statements and other documents, instruments and agreements required hereunder. Such appointment is coupled with an interest and shall be valid and binding on LRC and its successor and assigns.

## **8. DEFAULT AND REMEDIES.**

(A) Remedies. In addition to all other rights and remedies granted to MUFGCLF by this Agreement and other Operative Documents (except under Other Lease Documents) or by the UCC and other Applicable Laws, MUFGCLF may, upon the occurrence and during the continuance of any Event of Default (as defined herein and in the Lease), exercise any one or more of the following rights and remedies, all of which will be in furtherance of its rights as a secured party under the UCC:

(1) MUFGCLF may collect, receive, appropriate or realize upon the Collateral or otherwise foreclose or enforce the pledge of or security interests in any or all Collateral in any manner permitted by Applicable Law or in this Agreement.

(2) MUFGCLF may notify any Deposit Taker to pay all or any portion of Cash Collateral held by such Deposit Taker directly to MUFGCLF up to an amount equal to the then outstanding Secured Obligations. MUFGCLF shall apply any Cash

Collateral or proceeds of other Collateral received by MUFGCLF after the occurrence of such an Event of Default to the Secured Obligations in any order MUFGCLF believes to be in its best interest. If any such Cash Collateral or proceeds received by MUFGCLF remains after all Secured Obligations have been paid in full, MUFGCLF will deliver or direct the Deposit Takers to deliver the same to LRC or other Persons entitled thereto.

Without limiting the foregoing, when any such Event of Default has occurred and is continuing, MUFGCLF may, without notice or demand, sell, redeem, offset, setoff, debit, charge or otherwise dispose of or liquidate into cash any Collateral and/or to apply it or the proceeds thereof to repay any or all of the Secured Obligations in such order as MUFGCLF believes to be in its best interest, regardless of whether any such Secured Obligations are contingent, unliquidated or unmatured or whether MUFGCLF has any other recourse to LRC or any Other Liable Party or any other collateral or assets (including the Property). Moreover, regardless of whether MUFGCLF commences any action to foreclose the lien and security interest granted in the Lease or the Memorandum of Lease (a **“Property Foreclosure”**) before, after or contemporaneously with any action MUFGCLF may take under this Pledge Agreement to collect Cash Collateral or proceeds of other Collateral, and regardless of whether MUFGCLF actually receives proceeds of a Property Foreclosure before or after it receives Cash Collateral or proceeds of other Collateral, MUFGCLF will be entitled to apply Cash Collateral and proceeds of other Collateral to satisfy or reduce the Secured Obligations before applying the proceeds of a Property Foreclosure to other remaining obligations secured as described in the Lease and the Memo of Lease. Also, MUFGCLF may exercise its rights without regard to any premium or penalty from liquidation of any Collateral and without regard to LRC’s basis or holding period for any Collateral.

In connection with the exercise of its remedies under this Agreement, MUFGCLF may sell from its offices in Los Angeles, California, New York, New York or elsewhere, in one or more sales, at the price as MUFGCLF deems best, for cash or on credit or for other property, for immediate or future delivery, any item of the Collateral, at any broker’s board or at public or private sale, in any reasonable manner permissible under the UCC (except that, to the extent permissible under the UCC, LRC waives any requirements of the UCC) and MUFGCLF or anyone else may be the purchaser of the Collateral and hold it free from any claim or right including, without limitation, any equity of redemption of LRC, which right LRC expressly waives. MUFGCLF may in its sole discretion elect to conduct any sale (and related offers) of any Collateral in such a manner as to avoid the need for registration or qualification thereof under any Federal or state securities laws, that such conduct may include restrictions (including as to potential purchasers) and other requirements (such as purchaser representations) which may result in prices or other terms less favorable than those which might have been obtained through a public sale not subject to such restrictions and requirements and that any offer and sale so conducted shall be deemed to have been made in a commercially reasonable manner.

In connection with the exercise of its remedies, MUFGCLF may also, in its sole discretion, for its own benefit, acting either in its own name or in the name of LRC:

(i) hold any monies or proceeds representing the Collateral in a cash collateral account in U.S. dollars or other currency that MUFGCLF reasonably selects and invest such monies or proceeds on behalf of LRC;

(ii) convert any Collateral denominated in a currency other than U.S. dollars to U.S. dollars at the spot rate of exchange for the purchase of U.S. dollars with such other currency which is quoted by a branch or office of MUFGCLF's Parent selected by MUFGCLF (or, if no such rate is quoted by MUFGCLF's Parent on any relevant date, then at a rate estimated by MUFGCLF on the basis of other quoted spot rates) or another prevailing rate that MUFGCLF reasonably deems more appropriate; or

(iii) apply any portion of the Collateral, first, to pay or reimburse all costs and expenses of MUFGCLF and then to all or any portion of the Secured Obligations in such order as MUFGCLF may believe to be in its best interest.

In any event, LRC will pay to MUFGCLF upon demand all expenses (including reasonable, out-of-pocket fees, costs and expenses of counsel to MUFGCLF and any Participant) incurred by MUFGCLF in connection with the exercise of any of MUFGCLF's rights or remedies under this Agreement.

Notwithstanding that MUFGCLF may continue to hold Collateral and regardless of the value of the Collateral, LRC will remain liable for the payment in full of any unpaid balance of the Secured Obligations.

In any case where notice of any sale or disposition of any Collateral is required, LRC hereby agrees that ten (10) days' notice of such sale or disposition is reasonable.

(B) Recovery Not Limited. To the fullest extent permitted by Applicable Law, LRC waives any right to require that MUFGCLF proceed against any other Person, exhaust any Collateral or other security for the Secured Obligations, or to have any Other Liable Party joined with LRC in any suit arising out of the Secured Obligations or this Agreement, or pursue any other remedy in their power. LRC waives any and all notice of acceptance of this Agreement.

LRC further waives notice of the creation, modification, rearrangement, renewal or extension for any period of any of the Secured Obligations of any Other Liable Party from time to time and any defense arising by reason of any disability or other defense of any Other Liable Party or by reason of the cessation from any cause whatsoever of the liability of any Other Liable Party. Until all of the Secured Obligations shall have been paid in full, LRC shall have no right to subrogation, reimbursement, contribution or indemnity against any Other Liable Party and LRC waives the right to enforce any remedy which MUFGCLF has or may hereafter have against any Other Liable Party, and waives any benefit of and any right to participate in any other security whatsoever now or hereafter held by or on behalf of MUFGCLF. LRC authorizes MUFGCLF, without notice or demand and without any reservation of rights against LRC and without affecting LRC's liability hereunder or on the Secured Obligations, from time to time to (a) take or hold any other property of any type from any other Person as



security for the Secured Obligations, and exchange, enforce, waive and release any or all of such other property, (b) after and during the continuance of any Event of Default (as defined herein or in the Lease), apply or require the application of the Collateral (in accordance with this Agreement) or such other property in any order they may determine and to direct the order or manner of sale thereof as they may determine, (c) renew, extend for any period, accelerate, modify, compromise, settle or release any of the obligations of any Other Liable Party with respect to any or all of the Secured Obligations or other security for the Secured Obligations, and (d) release or substitute any Other Liable Party.

## 9. MISCELLANEOUS.

(A) Payments by LRC to MUFGCLF. All payments and deliveries of funds required to be made by LRC to MUFGCLF hereunder shall be paid or delivered in immediately available funds by wire transfer to the Deposit Account in accordance with wiring instructions which will be provided by MUFGCLF to LRC. Time is of the essence as to all payments and deliveries of funds by LRC to MUFGCLF under this Agreement.

(B) Payments by MUFGCLF to LRC. All payments of Cash Collateral withdrawn by MUFGCLF from the Deposit Accounts and required to be returned by MUFGCLF to LRC hereunder shall be paid or delivered in immediately available funds by wire transfer to:

Bank Name:	Bank of America, N.A.
Bank Address:	New York, New York
ABA # (Domestic):	Redacted - Privacy
SWIFT ID (Inn):	Redacted - Privacy
Account Name:	Lam Research Corporation
Account Number:	Redacted - Privacy
Bank Contact:	Yi-Xin Soh (415) 436-1160 <a href="mailto:yi-xin.soh@bofa.com">yi-xin.soh@bofa.com</a>
Reference	MUFGCLF Lease (Return of Collateral Port 101)

or at such other place and in such other manner as LRC may designate in a notice sent to MUFGCLF. Time is of the essence as to all such payments by MUFGCLF to LRC.

(C) Cumulative Rights, etc. Except as herein expressly provided to the contrary, the rights, powers and remedies of MUFGCLF under this Agreement shall be in addition to all rights, powers and remedies given to them by virtue of any Applicable Law, any other Operative Document or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing their respective rights hereunder. LRC waives any right to require MUFGCLF to proceed against any Person or to exhaust any Collateral or other collateral or security or to pursue any remedy in MUFGCLF's power.

(D) Survival of Agreements. All representations and warranties of LRC herein, and all covenants and agreements herein shall survive the execution and delivery of this

Agreement, the execution and delivery of any other Operative Documents and the creation of the Secured Obligations and continue until terminated or released as provided herein.

(E) Other Liable Party. Neither this Agreement nor the exercise by MUFGCLF or the failure of MUFGCLF to exercise any right, power or remedy conferred herein or by law shall be construed as relieving LRC or any Other Liable Party from liability on the Secured Obligations or any deficiency thereon. This Agreement shall continue irrespective of the fact that the liability of any Other Liable Party may have ceased or irrespective of the validity or enforceability of any other agreement evidencing or securing the Secured Obligations to which LRC or any Other Liable Party may be a party, and notwithstanding the reorganization, death, incapacity or bankruptcy of any Other Liable Party, or any other event or proceeding affecting any Other Liable Party.


(F) Termination. Upon indefeasible satisfaction in full of all Secured Obligations (other than contingent indemnity obligations for which no Claim has been made or are not due and payable) pursuant to Paragraphs 5(A), (B) or (C) hereof, and upon written request for the termination of this Agreement delivered by LRC to MUFGCLF, MUFGCLF will execute and deliver, at LRC's expense, an acknowledgment that this Agreement and the pledge and security interest created hereby are terminated, whereupon all rights to any remaining Collateral that has not been applied against Secured Obligations in accordance with this Agreement shall revert to LRC.

(G) Governing Law. This Agreement shall be governed by the laws of the State of New York, without giving effect to the conflicts of laws provisions of such State (including, without limitation, Section 5-1401 of the New York General Secured Obligations Law).

[Signature pages to follow]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the date first written above.

MUFG AMERICAS CAPITAL LEASING & FINANCE,  
LLC,  
a Delaware limited liability company

By:   
Name: Robert J. Hoegler  
Title: Vice President

LAM RESEARCH CORPORATION,  
a Delaware corporation

By: 

Name: Odette Go

Title: Vice President, Global Treasury

**Exhibit A**  
**TO PLEDGE AGREEMENT**  
**DEPOSIT AGREEMENT**  
**(PORT 101)**

Dated as of September 21, 2020

MUFG Bank, Ltd.  
Global Markets Division for the Americas  
1251 Avenues of the Americas  
New York, New York 10020-1104

Dear Ladies and Gentlemen:

LAM Research Corporation, a Delaware corporation (“**LRC**”), refers to that certain Pledge Agreement (Port 101), dated as of September 21, 2020 (as amended or otherwise modified from time to time, the “**Pledge Agreement**”), between MUFG Americas Capital Leasing & Finance, LLC (“**MUFGCLF**”) and LRC. All capitalized terms used herein and not otherwise defined herein shall have the same meanings herein as set forth in the Pledge Agreement. All terms used in this Agreement which are defined in the UCC and not otherwise defined herein shall have the same meanings herein as set forth therein, except where the context otherwise requires.

This Deposit Agreement (this “**Agreement**”), is among MUFG Bank, Ltd. (“**Deposit Taker**”), LRC and MUFGCLF and shall serve as instructions regarding the following deposit account established by LRC at the Deposit Taker (the “**Deposit Account**”):

<u>Account Type</u>	<u>Account Office</u>	<u>MTS Deal Number</u>
Time Deposit	New York Branch	[_____]

LRC has delivered to Deposit Taker for deposit initially in such Deposit Account, which may not necessarily bear any special title or which may be entitled: “LAM RESEARCH CORPORATION COLLATERAL ACCOUNT FOR THE BENEFIT OF MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC” or such other title as may be acceptable to Deposit Taker the sum of U.S. \$19,227,272.41 in immediately available funds and which may thereafter be held in (but are not necessarily limited to) the form of one or more time deposits, certificates of deposit, other deposits or instruments of any type which at all times shall be under the dominion and control of the Deposit Taker (such funds, whether now or at any time hereafter

on deposit with or payable or withdrawable from the Deposit Taker (whether from the Deposit Account or any other deposit account, or any time deposit, certificate of deposit, or any other deposit or instrument of any type), together with any amounts or accruals subsequently added to or earned, including interest, by such funds and all additional funds hereafter deposited into the Deposit Account hereunder or otherwise or given in substitution for such funds, being referred to herein as the “**Deposited Funds**”). Any such Deposited Funds and any funds or deposits which at any time derive from, consist of or represent Deposited Funds (including, but not limited to, time deposits, certificates of deposit, other deposits or instruments of any type), all proceeds, income and profits thereon and therefrom, and the Deposit Account and any deposit account in which any of the foregoing is deposited or held, and all of LRC’s rights and interests therein and claims against Deposit Taker with respect thereto, are collectively referred to herein as, the “**Cash Collateral**”. Without limiting any of Deposit Taker’s other rights or remedies Deposit Taker shall have all the rights and remedies of a secured party under the Uniform Commercial Code and all other applicable law with respect to the Cash Collateral and each such deposit account, all of which LRC acknowledges is to be deemed a “deposit account” defined by the Uniform Commercial Code. LRC understands that Deposit Taker may combine the Deposited Funds and Cash Collateral with other funds and will not be required to keep them separate and identifiable and that the Deposited Funds and Cash Collateral may be invested, reinvested, held or otherwise utilized by the Deposit Taker without any direction of the Parties. If such commingling occurs, Deposit Taker may consider the Deposited Funds to consist at any time of any and all funds in any relevant account up to the amount required to be held by Deposit Taker pursuant hereto.

1. Lien. As security for immediate payment and performance when due of all of the Secured Obligations as defined in the Pledge Agreement owing by LRC, whensoever arising, whether now existing or hereafter incurred, of every kind and character, including, without limitation, arising or otherwise existing under or with respect to the Second Amended and Restated Lease Agreement (Port 101), dated as of September 21, 2020 (as amended or otherwise modified from time to time, the “**Lease Agreement**”), between MUFGCLF and LRC and the Operative Documents (except with respect to the Other Lease Documents) (all such obligations, liabilities and indebtedness being referred to herein collectively as the “**Secured Obligations**”), LRC hereby pledges and assigns to MUFGCLF and grants to MUFGCLF a continuing first priority security interest in the following (the “**Collateral**”): (i) the Deposit Account, (ii) the Cash Collateral, (iii) all Deposited Funds, (iv) any and all accounts to which the Deposited Funds or the proceeds thereof are credited, (v) all amounts, money and other property standing to the credit of any such accounts, together with any and all documents evidencing or constituting such amounts, money and other property, (vi) all instruments, investment property and the like in which such property is from time to time invested or reinvested and all interest, distributions, other income and the like payable with respect thereto, and (vii) all replacements, renewals, substitutions, products, profits and proceeds of the foregoing in whatever form. The parties hereto agree that this Agreement complies with Section 9-104(a)(2) of the New York Uniform Commercial Code. So long as this Agreement remains in full force and effect, LRC shall have no right to be paid or to draw upon, transfer or otherwise dispose of any of the Cash Collateral, and Deposit Taker shall have exclusive dominion and control of all Cash Collateral. Deposit Taker has and shall have “control”, as contemplated by

Article 9 of the UCC, including Section 9-104 thereof, of the Deposit Account, the Deposited Funds, the Cash Collateral and of any deposit account in which any Cash Collateral is deposited.

2. Duties. Deposit Taker agrees to take such action with respect to the Deposit Account as shall from time to time be specified in any writing purportedly from MUFGCLF as provided herein. LRC and MUFGCLF agree that: (a) Deposit Taker has no duty to monitor the balance of the Deposit Account; (b) MUFGCLF may at any time make withdrawals from the Deposit Account and take any and all actions with respect to the Deposit Account, and Deposit Taker is hereby authorized to honor any instructions with respect to the Deposit Account (including withdrawals therefrom) which purport to be from MUFGCLF (in each case without notifying or obtaining the consent of LRC); (c) Deposit Taker may, without further inquiry, rely on and act in accordance with any instructions it receives from (or which purport to be from) MUFGCLF, notwithstanding any conflicting or contrary instructions it may receive from LRC, and Deposit Taker shall have no liability to MUFGCLF, LRC or any other person in relying on and acting in accordance with any such instructions; (d) Deposit Taker shall have no responsibility to inquire as to the form, execution, sufficiency or validity of any notice or instructions delivered to it hereunder, nor to inquire as to the identity, authority or rights of the person or persons executing or delivering the same, and (e) Deposit Taker shall have a reasonable period of time within which to act in accordance with any notice or instructions from MUFGCLF with respect to the Deposit Account. Deposit Taker is hereby authorized immediately, and without demand upon or notice to us or other formality, to take direction from MUFGCLF acting in accordance with the terms and conditions of the Pledge Agreement to (i) withdraw and deliver any and all Cash Collateral and Deposited Funds to LRC, (ii) withdraw and apply any and all Cash Collateral and Deposited Funds to reduce or satisfy any and all Secured Obligations in any order and first toward any expenses Deposit Taker incurs in Deposit Taker's discretion, as and when they arise or are due, without resort to us, any other collateral or any other obligor, or (iii) withdraw and return Cash Collateral and Deposited Funds to LRC.

3. Interest on the Deposit Account. Deposit Taker will have no obligation to pay any interest on the Deposit Account except as follows: on each Payment Date accrued interest on each Deposit Account maintained by Deposit taker will be paid by wire transfer to the LRC for the period (the "**Interest Period**") since the preceding Payment Date (or if there was no preceding Payment Date, since the Base Term Commencement Date) equal to the product of:

- the Deposited Funds on deposit with the Deposit Taker on the first day of such Interest Period, times
- the Yield Rate for such Interest Period, times
- the number of days in such Interest Period, divided by;
- three hundred sixty.

As used in this Section 3, capitalized terms defined in the Participation Agreement are intended to have the respective meanings assigned to them in the Participation Agreement.



All payments of interest by Deposit Taker hereunder to LRC hereunder shall be paid or delivered in immediately available funds by wire transfer to:

Bank Name:	Bank of America, N.A.
Bank Address:	New York, New York
ABA # (Domestic):	Redacted - Privacy
SWIFT ID (Inn):	Redacted - Privacy
Account Name:	Lam Research Corporation
Account Number:	Redacted - Privacy
Bank Contact:	Yi-Xin Soh (415) 436-1160 <a href="mailto:yi-xin.soh@bofa.com">yi-xin.soh@bofa.com</a>
Reference	MUFGCLF Lease (Return of Collateral Port 101)

or at such other place and in such other manner as LRC may designate in a notice sent to the Deposit Taker. Time is of the essence as to all such payments by Deposit Taker to LRC.

4. Remedies. LRC agrees that, at any time after an Event of Default has occurred or any Secured Obligation arises or comes due, Deposit Taker may, without notice or demand (all of which LRC hereby waives), to take direction from MUFGCLF acting in its sole discretion to realize upon and apply all or any part of the Cash Collateral to the payment of all or any part of the Secured Obligations, in such order and manner as MUFGCLF may elect and Deposit Taker is authorized to take direction from MUFGCLF acting in its sole discretion to break any time deposit or certificate deposit prior to its stated maturity and for which LRC shall have responsibility for any loss of interest or early withdrawal penalties resulting therefrom. MUFGCLF shall not be required to pursue any other right or remedy against us, or any other person liable for any part of the Secured Obligations, or enforce its security interest in or liens on any other property securing the Secured Obligations, prior to enforcing Deposit Taker's rights against the Cash Collateral. Without limiting the foregoing, Deposit Taker is hereby authorized immediately, and without demand upon or notice to us or other formality, to take direction from MUFGCLF acting in its sole discretion on and during the continuance of an Event of Default (as such term is defined in the Pledge Agreement), apply and setoff against the Cash Collateral and the Deposited Funds the aggregate amount of all principal of, interest on and other amounts payable with respect to all Secured Obligations existing or payable as of such date, whether or not then due.

5. Representations, Warranties and Covenants. LRC hereby represents, warrants and covenants to Deposit Taker and MUFGCLF that: (i) the Collateral is and will be owned by us free and clear of all claims, liens, security interests, pledges and encumbrances of any kind, except in Deposit Taker's favor; (ii) LRC is a corporation, duly organized and validly existing in good standing under the laws of State of Delaware, and have the right and power to execute, deliver and perform this Agreement, and to pledge, assign and grant a security interest in the Collateral in accordance herewith; (iii) this Agreement has been duly authorized, executed and delivered by LRC (and those individuals who have signed on its behalf have the authority to do so consistent with resolutions on file in Deposit Taker's offices) and constitutes its legal, valid,



binding and enforceable obligation; (iv) Deposit Taker has and will continue at all times to have a first priority perfected and enforceable lien and security interest in the Collateral, subject to no other liens, security interests or encumbrances; (v) LRC shall not take any action or otherwise make any attempt to draw upon, transfer or otherwise dispose of the Collateral or permit the amount of Collateral to decrease at any time; and (vi) LRC shall from time to time at Deposit Taker's request, execute, deliver, acknowledge, file and record such agreements, documents, statements and certificates (including, without limitation, Uniform Commercial Code financing statements), and do such acts and things as are necessary or appropriate to effectuate the purposes of this Agreement. LRC hereby authorizes Deposit Taker to file any Uniform Commercial Code financing statements, amendments thereto or continuations thereof, and any other appropriate security documents or instruments and to give any notices necessary or desirable to perfect any lien or security interest granted hereby, all without the signature of the LRC or to execute such items as attorney-in-fact for the LRC, as may be necessary to further the purposes described herein. Deposit Taker shall at all times have the exclusive right to hold and possess any certificates, instruments or documents included in the Collateral. Should LRC at any time receive any such certificates, instruments or documents it shall hold the same in trust for, and immediately deliver them to, Deposit Taker. Any breach of any representation, warranty, covenant or agreement made by us herein or elsewhere shall be an **"Event of Default"**. An **"Event of Default"** shall also be as defined in the Pledge Agreement.

6. Information. Deposit Taker shall provide MUFGCLF with such information with respect to the Deposit Account and all items (and proceeds thereof) deposited in the Deposit Account as MUFGCLF may from time to time reasonably request, and LRC hereby consents to such information being provided to MUFGCLF and agrees to pay all expenses in connection therewith.

7. Exculpation; Indemnity. Deposit Taker undertakes to perform only such duties as are expressly set forth herein. Notwithstanding any other provisions of this Agreement, the parties hereby agree that Deposit Taker shall not be liable for any action taken by it in accordance with this Agreement, including, without limitation, any action so taken at MUFGCLF's request or direction, except direct damages attributable to the Deposit Taker's gross negligence or willful misconduct. In no event shall Deposit Taker be liable for any (i) losses or delays resulting from acts of God, war, computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Deposit Taker's reasonable control, or (ii) for indirect, special, punitive or consequential damages. LRC agrees to indemnify and hold Deposit Taker harmless from and against all costs, damages, claims, judgments, reasonable attorneys' fees, expenses, obligations and liabilities of every kind and nature (collectively, **"Losses"**) which Deposit Taker may incur, sustain or be required to pay (other than those attributable to Deposit Taker's gross negligence or willful misconduct) in connection with or arising out of this Agreement or the Deposit Account (including without limitation, the amount of any overdraft created in the Deposit Account resulting from a Chargeback, and to pay to Deposit Taker on demand the amount of all such Losses.) Nothing in this Section, and no indemnification of Deposit Taker hereunder, shall affect in any way the indemnification obligations of LRC to MUFGCLF under the Pledge Agreement or other Operative Documents. The provisions of this Section shall survive termination of this Agreement.

8. Irrevocable Agreement. LRC acknowledges that the agreements made by it and the authorizations granted by it herein are irrevocable and that the authorizations granted in Section 2 are powers coupled with an interest.

9. Set-off. Except as set forth in Section 3(G) of the Pledge Agreement, Deposit Taker waives all of its existing and future rights of set-off and banker's liens against the Deposit Account and all items (and proceeds thereof) that come into possession of Deposit Taker in connection with the Deposit Account.

10. Miscellaneous. This Agreement is binding upon the parties hereto and their respective successors and assigns (including any trustee of LRC appointed or elected in any action under the Bankruptcy Code) and shall inure to their benefit. Neither LRC nor MUFGCLF may assign their respective rights hereunder unless the prior written consent of the Deposit Taker is obtained. Neither this Agreement nor any provision hereof may be changed, amended, modified or waived, except by an instrument in writing signed by the parties hereto. Any provision of this Agreement that may prove unenforceable under any law or regulation shall not affect the validity of any other provision hereof. This Agreement shall be governed by the laws of the State of New York, without giving effect to the conflicts of laws provisions of such State (including, without limitation, Section 5-1401 of the New York General Secured Obligations Law) and the parties hereto agree that the State of New York will be deemed to be Deposit Taker's jurisdiction for purposes of Section 9-304 of the New York Uniform Commercial Code as it applies to this Agreement. LRC hereby irrevocably submits to the jurisdiction of the courts of the U.S. Federal and New York State courts sitting in the Borough of Manhattan, New York and waives any objection to or based upon personal jurisdiction, venue, inconvenient forum or service of process in connection with any action or proceeding arising out of or in connection with this Agreement. LRC hereby irrevocably consents to service of process by first class or certified mail, or recognized courier for which a receipt is available, sent to the address shown in Deposit Taker's records. This Agreement may be executed in any number of counterparts which together shall constitute one and the same instrument. LRC HEREBY IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE PLEDGE AGREEMENT OR ANY RELATED TRANSACTION.

11. Termination and Resignation. This Agreement may be terminated by agreement of MUFGCLF and LRC upon fifteen (15) days' prior written notice to Deposit Taker; provided, however, that this Agreement shall terminate immediately upon notice from MUFGCLF that all of LRC's obligations secured by the Pledge Agreement are satisfied. Deposit Taker may, at any time upon thirty (30) days' prior written notice to MUFGCLF and LRC, terminate this Agreement and close the Deposit Account; provided, however, that an Eligible Deposit Taker has been appointed for MUFGCLF or any Participant (in its capacity as a Participant) under and as described in the Pledge Agreement. Upon termination of this Agreement any funds in the Deposit Account shall be subject to the direction of MUFGCLF, including any direction given by MUFGCLF that such funds be wired to another "Deposit Taker" designated for MUFGCLF or such Participant under and as defined in the Pledge Agreement.

12. Notices. Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier service and shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by telecopy, on the date of transmission if transmitted on a Business Day before 4:00 P.M. (New York time) (but only if such telecopied document is also delivered by another method permitted by this Agreement by the next banking business day), or, if not, on the next succeeding Business Day; or (c) if delivered by reputable overnight courier, the banking business day on which such delivery is made by such courier.

Notices shall be addressed as follows:

MUFGCLF: MUFG Americas Capital Leasing & Finance, LLC  
445 South Figueroa, 14th Floor  
Los Angeles, California 90017  
Attention: Portfolio Servicing  
Telecopy: (213) 236-6444  
Email: [portfoliomgmt@unionbank.com](mailto:portfoliomgmt@unionbank.com)

Deposit Taker: MUFG Bank, Ltd.  
1251 Avenue of the Americas  
New York, New York 10020-1104  
  
Attn: Charles Catalano – Director – Institutional Sales  
Department  
Telecopy: (212) 782-6428  
Email: [ccatalano@mufg.com](mailto:ccatalano@mufg.com)

LRC: Lam Research Corporation  
4300 Cushing Parkway  
Fremont, California 94538  
Attention: Odette Go, Treasurer  
Telecopy: (512) 572-1586  
Email: [TreasuryOrg@lamresearch.com](mailto:TreasuryOrg@lamresearch.com)

or in any case, to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section.

[signature page follows.]

Please countersign below to indicate your acceptance of our agreement herein.

Very truly yours,

LAM RESEARCH CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_

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

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

ACCEPTED AND AGREED TO as of this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

MUFG BANK, LTD.

By: \_\_\_\_\_

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

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

ACKNOWLEDGED AND AGREED TO as of this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

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

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

**Exhibit B**

**TO PLEDGE AGREEMENT**

**NOTICE OF LRC'S REQUIREMENT OF  
DIRECT PAYMENT TO MUFGCLF**

MUFG Americas Capital Leasing & Finance, LLC  
445 South Figueroa, 14th Floor  
Los Angeles, California 90017  
Attention: Portfolio Servicing

Re: Pledge Agreement (Port 101) dated as of September 21, 2020 between Lam  
Research Corporation and MUFG Americas Capital Leasing & Finance, LLC

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement (Port 101) referenced above (the “**Pledge Agreement**”). This letter constitutes notice to you, as secured party under the Pledge Agreement, that pursuant to subparagraph 5(B) of the Pledge Agreement, LRC requires you to withdraw from the Deposit Account and to retain, as a payment from LRC required by Articles XX, XXI or XXII of the Lease, the following amount:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_)

on the following date (which, LRC acknowledges, must be the Base Term Expiration Date):

LRC acknowledges that its right to require such withdrawal is subject to the condition that LRC must give this notice to you at least ten days prior to the date of required withdrawal and payment specified above, and also to the condition that no Event of Default (under and as defined in the Pledge Agreement or as defined in the Lease referenced therein) has occurred and is continuing.

Please remember that the express terms of the Pledge Agreement allow the Deposit Takers to require notice of withdrawal at least seven days before Cash Collateral is to be withdrawn from the Deposit Accounts. Accordingly, you must notify the Deposit Takers seven days prior to the withdrawal of Cash Collateral required by this notice.

Lam Research Corporation

By: \_\_\_\_\_

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

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

## **DEPOSIT AGREEMENT**

**(PORT 101)**

Dated as of September 21, 2020

MUFG Bank, Ltd.  
Global Markets Division for the Americas  
1251 Avenues of the Americas  
New York, New York 10020-1104

Dear Ladies and Gentlemen:

LAM Research Corporation, a Delaware corporation (“**LRC**”), refers to that certain Pledge Agreement (Port 101), dated as of September 21, 2020 (as amended or otherwise modified from time to time, the “**Pledge Agreement**”), between MUFG Americas Capital Leasing & Finance, LLC (“**MUFGCLF**”) and LRC. All capitalized terms used herein and not otherwise defined herein shall have the same meanings herein as set forth in the Pledge Agreement. All terms used in this Agreement which are defined in the UCC and not otherwise defined herein shall have the same meanings herein as set forth therein, except where the context otherwise requires.

This Deposit Agreement (this “**Agreement**”), is among MUFG Bank, Ltd. (“**Deposit Taker**”), LRC and MUFGCLF and shall serve as instructions regarding the following deposit account established by LRC at the Deposit Taker (the “**Deposit Account**”):

<u>Account Type</u>	<u>Account Office</u>	<u>MTS Deal Number</u>
Term Deposit	New York Branch	Redacted - Privacy

LRC has delivered to Deposit Taker for deposit initially in such Deposit Account, which may not necessarily bear any special title or which may be entitled: “LAM RESEARCH CORPORATION COLLATERAL ACCOUNT FOR THE BENEFIT OF MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC” or such other title as may be acceptable to Deposit Taker the sum of U.S. \$19,227,272.41 in immediately available funds and which may thereafter be held in (but are not necessarily limited to) the form of one or more time deposits, certificates of deposit, other deposits or instruments of any type which at all times shall be under the dominion and control of the Deposit Taker (such funds, whether now or at any time hereafter on deposit with or payable or withdrawable from the Deposit Taker (whether from the Deposit Account or any other deposit account, or any time deposit, certificate of deposit, or any other deposit or instrument of any type), together with any

amounts or accruals subsequently added to or earned, including interest, by such funds and all additional funds hereafter deposited into the Deposit Account hereunder or otherwise or given in substitution for such funds, being referred to herein as the “**Deposited Funds**”). Any such Deposited Funds and any funds or deposits which at any time derive from, consist of or represent Deposited Funds (including, but not limited to, time deposits, certificates of deposit, other deposits or instruments of any type), all proceeds, income and profits thereon and therefrom, and the Deposit Account and any deposit account in which any of the foregoing is deposited or held, and all of LRC’s rights and interests therein and claims against Deposit Taker with respect thereto, are collectively referred to herein as, the “**Cash Collateral**”. Without limiting any of Deposit Taker’s other rights or remedies Deposit Taker shall have all the rights and remedies of a secured party under the Uniform Commercial Code and all other applicable law with respect to the Cash Collateral and each such deposit account, all of which LRC acknowledges is to be deemed a “deposit account” defined by the Uniform Commercial Code. LRC understands that Deposit Taker may combine the Deposited Funds and Cash Collateral with other funds and will not be required to keep them separate and identifiable and that the Deposited Funds and Cash Collateral may be invested, reinvested, held or otherwise utilized by the Deposit Taker without any direction of the Parties. If such commingling occurs, Deposit Taker may consider the Deposited Funds to consist at any time of any and all funds in any relevant account up to the amount required to be held by Deposit Taker pursuant hereto.

1. Lien. As security for immediate payment and performance when due of all of the Secured Obligations as defined in the Pledge Agreement owing by LRC, whensoever arising, whether now existing or hereafter incurred, of every kind and character, including, without limitation, arising or otherwise existing under or with respect to the Second Amended and Restated Lease Agreement (Port 101), dated as of September 21, 2020 (as amended or otherwise modified from time to time, the “**Lease Agreement**”), between MUFGCLF and LRC and the Operative Documents (except with respect to the Other Lease Documents) (all such obligations, liabilities and indebtedness being referred to herein collectively as the “**Secured Obligations**”), LRC hereby pledges and assigns to MUFGCLF and grants to MUFGCLF a continuing first priority security interest in the following (the “**Collateral**”): (i) the Deposit Account, (ii) the Cash Collateral, (iii) all Deposited Funds, (iv) any and all accounts to which the Deposited Funds or the proceeds thereof are credited, (v) all amounts, money and other property standing to the credit of any such accounts, together with any and all documents evidencing or constituting such amounts, money and other property, (vi) all instruments, investment property and the like in which such property is from time to time invested or reinvested and all interest, distributions, other income and the like payable with respect thereto, and (vii) all replacements, renewals, substitutions, products, profits and proceeds of the foregoing in whatever form. The parties hereto agree that this Agreement complies with Section 9-104(a)(2) of the New York Uniform Commercial Code. So long as this Agreement remains in full force and effect, LRC shall have no right to be paid or to draw upon, transfer or otherwise dispose of any of the Cash Collateral, and Deposit Taker shall have exclusive dominion and control of all Cash Collateral. Deposit Taker has and shall have “control”, as contemplated by Article 9 of the UCC, including Section 9-104 thereof, of the

Deposit Account, the Deposited Funds, the Cash Collateral and of any deposit account in which any Cash Collateral is deposited.

2. Duties. Deposit Taker agrees to take such action with respect to the Deposit Account as shall from time to time be specified in any writing purportedly from MUFGCLF as provided herein. LRC and MUFGCLF agree that: (a) Deposit Taker has no duty to monitor the balance of the Deposit Account; (b) MUFGCLF may at any time make withdrawals from the Deposit Account and take any and all actions with respect to the Deposit Account, and Deposit Taker is hereby authorized to honor any instructions with respect to the Deposit Account (including withdrawals therefrom) which purport to be from MUFGCLF (in each case without notifying or obtaining the consent of LRC); (c) Deposit Taker may, without further inquiry, rely on and act in accordance with any instructions it receives from (or which purport to be from) MUFGCLF, notwithstanding any conflicting or contrary instructions it may receive from LRC, and Deposit Taker shall have no liability to MUFGCLF, LRC or any other person in relying on and acting in accordance with any such instructions; (d) Deposit Taker shall have no responsibility to inquire as to the form, execution, sufficiency or validity of any notice or instructions delivered to it hereunder, nor to inquire as to the identity, authority or rights of the person or persons executing or delivering the same, and (e) Deposit Taker shall have a reasonable period of time within which to act in accordance with any notice or instructions from MUFGCLF with respect to the Deposit Account. Deposit Taker is hereby authorized immediately, and without demand upon or notice to us or other formality, to take direction from MUFGCLF acting in accordance with the terms and conditions of the Pledge Agreement to (i) withdraw and deliver any and all Cash Collateral and Deposited Funds to LRC, (ii) withdraw and apply any and all Cash Collateral and Deposited Funds to reduce or satisfy any and all Secured Obligations in any order and first toward any expenses Deposit Taker incurs in Deposit Taker's discretion, as and when they arise or are due, without resort to us, any other collateral or any other obligor, or (iii) withdraw and return Cash Collateral and Deposited Funds to LRC.

3. Interest on the Deposit Account. Deposit Taker will have no obligation to pay any interest on the Deposit Account except as follows: on each Payment Date accrued interest on each Deposit Account maintained by Deposit taker will be paid by wire transfer to the LRC for the period (the "**Interest Period**") since the preceding Payment Date (or if there was no preceding Payment Date, since the Base Term Commencement Date) equal to the product of:

- the Deposited Funds on deposit with the Deposit Taker on the first day of such Interest Period, times
- the Yield Rate for such Interest Period less fifty-five one-hundredths of a percentage point (0.55%), times
- the number of days in such Interest Period, divided by;
- three hundred sixty.



As used in this Section 3, capitalized terms defined in the Participation Agreement are intended to have the respective meanings assigned to them in the Participation Agreement.

All payments of interest by Deposit Taker hereunder to LRC hereunder shall be paid or delivered in immediately available funds by wire transfer to:

Bank Name:	Bank of America, N.A.
Bank Address:	New York, New York
ABA # (Domestic):	Redacted - Privacy
SWIFT ID (Inn):	Redacted - Privacy
Account Name:	Lam Research Corporation
Account Number:	Redacted - Privacy
Bank Contact:	Yi-Xin Soh (415) 436-1160 <a href="mailto:yi-xin.soh@bofa.com">yi-xin.soh@bofa.com</a>
Reference	MUFGCLF Lease (Return of Collateral Port 101)

or at such other place and in such other manner as LRC may designate in a notice sent to the Deposit Taker. Time is of the essence as to all such payments by Deposit Taker to LRC.

4. Remedies. LRC agrees that, at any time after an Event of Default has occurred or any Secured Obligation arises or comes due, Deposit Taker may, without notice or demand (all of which LRC hereby waives), to take direction from MUFGCLF acting in its sole discretion to realize upon and apply all or any part of the Cash Collateral to the payment of all or any part of the Secured Obligations, in such order and manner as MUFGCLF may elect and Deposit Taker is authorized to take direction from MUFGCLF acting in its sole discretion to break any time deposit or certificate deposit prior to its stated maturity and for which LRC shall have responsibility for any loss of interest or early withdrawal penalties resulting therefrom. MUFGCLF shall not be required to pursue any other right or remedy against us, or any other person liable for any part of the Secured Obligations, or enforce its security interest in or liens on any other property securing the Secured Obligations, prior to enforcing Deposit Taker's rights against the Cash Collateral. Without limiting the foregoing, Deposit Taker is hereby authorized immediately, and without demand upon or notice to us or other formality, to take direction from MUFGCLF acting in its sole discretion on and during the continuance of an Event of Default (as such term is defined in the Pledge Agreement), apply and setoff against the Cash Collateral and the Deposited Funds the aggregate amount of all principal of, interest on and other amounts payable with respect to all Secured Obligations existing or payable as of such date, whether or not then due.

5. Representations, Warranties and Covenants. LRC hereby represents, warrants and covenants to Deposit Taker and MUFGCLF that: (i) the Collateral is and will be owned by us free and clear of all claims, liens, security interests, pledges and encumbrances of any kind, except in Deposit Taker's favor; (ii) LRC is a corporation, duly organized and validly existing in good standing under the laws of State of Delaware, and have the right and power to execute, deliver and perform this Agreement, and to pledge, assign and grant a security

interest in the Collateral in accordance herewith; (iii) this Agreement has been duly authorized, executed and delivered by LRC (and those individuals who have signed on its behalf have the authority to do so consistent with resolutions on file in Deposit Taker's offices) and constitutes its legal, valid, binding and enforceable obligation; (iv) Deposit Taker has and will continue at all times to have a first priority perfected and enforceable lien and security interest in the Collateral, subject to no other liens, security interests or encumbrances; (v) LRC shall not take any action or otherwise make any attempt to draw upon, transfer or otherwise dispose of the Collateral or permit the amount of Collateral to decrease at any time; and (vi) LRC shall from time to time at Deposit Taker's request, execute, deliver, acknowledge, file and record such agreements, documents, statements and certificates (including, without limitation, Uniform Commercial Code financing statements), and do such acts and things as are necessary or appropriate to effectuate the purposes of this Agreement. LRC hereby authorizes Deposit Taker to file any Uniform Commercial Code financing statements, amendments thereto or continuations thereof, and any other appropriate security documents or instruments and to give any notices necessary or desirable to perfect any lien or security interest granted hereby, all without the signature of the LRC or to execute such items as attorney-in-fact for the LRC, as may be necessary to further the purposes described herein. Deposit Taker shall at all times have the exclusive right to hold and possess any certificates, instruments or documents included in the Collateral. Should LRC at any time receive any such certificates, instruments or documents it shall hold the same in trust for, and immediately deliver them to, Deposit Taker. Any breach of any representation, warranty, covenant or agreement made by us herein or elsewhere shall be an **"Event of Default"**. An **"Event of Default"** shall also be as defined in the Pledge Agreement.

6. Information. Deposit Taker shall provide MUFGCLF with such information with respect to the Deposit Account and all items (and proceeds thereof) deposited in the Deposit Account as MUFGCLF may from time to time reasonably request, and LRC hereby consents to such information being provided to MUFGCLF and agrees to pay all expenses in connection therewith.

7. Exculpation; Indemnity. Deposit Taker undertakes to perform only such duties as are expressly set forth herein. Notwithstanding any other provisions of this Agreement, the parties hereby agree that Deposit Taker shall not be liable for any action taken by it in accordance with this Agreement, including, without limitation, any action so taken at MUFGCLF's request or direction, except direct damages attributable to the Deposit Taker's gross negligence or willful misconduct. In no event shall Deposit Taker be liable for any (i) losses or delays resulting from acts of God, war, computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Deposit Taker's reasonable control, or (ii) for indirect, special, punitive or consequential damages. LRC agrees to indemnify and hold Deposit Taker harmless from and against all costs, damages, claims, judgments, reasonable attorneys' fees, expenses, obligations and liabilities of every kind and nature (collectively, **"Losses"**) which Deposit Taker may incur, sustain or be required to pay (other than those attributable to Deposit Taker's gross negligence or willful misconduct) in connection with or arising out of this Agreement or the Deposit Account (including without limitation, the amount of any overdraft created in the Deposit Account resulting from a Chargeback, and to pay to Deposit Taker on demand the amount of all such Losses.) Nothing

in this Section, and no indemnification of Deposit Taker hereunder, shall affect in any way the indemnification obligations of LRC to MUFGCLF under the Pledge Agreement or other Operative Documents. The provisions of this Section shall survive termination of this Agreement.

8. Irrevocable Agreement. LRC acknowledges that the agreements made by it and the authorizations granted by it herein are irrevocable and that the authorizations granted in Section 2 are powers coupled with an interest.

9. Set-off. Except as set forth in Section 3(G) of the Pledge Agreement, Deposit Taker waives all of its existing and future rights of set-off and banker's liens against the Deposit Account and all items (and proceeds thereof) that come into possession of Deposit Taker in connection with the Deposit Account.

10. Miscellaneous. This Agreement is binding upon the parties hereto and their respective successors and assigns (including any trustee of LRC appointed or elected in any action under the Bankruptcy Code) and shall inure to their benefit. Neither LRC nor MUFGCLF may assign their respective rights hereunder unless the prior written consent of the Deposit Taker is obtained. Neither this Agreement nor any provision hereof may be changed, amended, modified or waived, except by an instrument in writing signed by the parties hereto. Any provision of this Agreement that may prove unenforceable under any law or regulation shall not affect the validity of any other provision hereof. This Agreement shall be governed by the laws of the State of New York, without giving effect to the conflicts of laws provisions of such State (including, without limitation, Section 5-1401 of the New York General Secured Obligations Law) and the parties hereto agree that the State of New York will be deemed to be Deposit Taker's jurisdiction for purposes of Section 9-304 of the New York Uniform Commercial Code as it applies to this Agreement. LRC hereby irrevocably submits to the jurisdiction of the courts of the U.S. Federal and New York State courts sitting in the Borough of Manhattan, New York and waives any objection to or based upon personal jurisdiction, venue, inconvenient forum or service of process in connection with any action or proceeding arising out of or in connection with this Agreement. LRC hereby irrevocably consents to service of process by first class or certified mail, or recognized courier for which a receipt is available, sent to the address shown in Deposit Taker's records. This Agreement may be executed in any number of counterparts which together shall constitute one and the same instrument. LRC HEREBY IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE PLEDGE AGREEMENT OR ANY RELATED TRANSACTION.

11. Termination and Resignation. This Agreement may be terminated by agreement of MUFGCLF and LRC upon fifteen (15) days' prior written notice to Deposit Taker; provided, however, that this Agreement shall terminate immediately upon notice from MUFGCLF that all of LRC's obligations secured by the Pledge Agreement are satisfied. Deposit Taker may, at any time upon thirty (30) days' prior written notice to MUFGCLF and LRC, terminate this Agreement and close the Deposit Account; provided, however, that an Eligible Deposit Taker has been appointed for MUFGCLF or any Participant (in its capacity

as a Participant) under and as described in the Pledge Agreement. Upon termination of this Agreement any funds in the Deposit Account shall be subject to the direction of MUFGCLF, including any direction given by MUFGCLF that such funds be wired to another "Deposit Taker" designated for MUFGCLF or such Participant under and as defined in the Pledge Agreement.

12. Notices. Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier service and shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by telecopy, on the date of transmission if transmitted on a Business Day before 4:00 P.M. (New York time) (but only if such telecopied document is also delivered by another method permitted by this Agreement by the next banking business day), or, if not, on the next succeeding Business Day; or (c) if delivered by reputable overnight courier, the banking business day on which such delivery is made by such courier.

Notices shall be addressed as follows:

MUFGCLF: MUFG Americas Capital Leasing & Finance, LLC  
445 South Figueroa, 14th Floor  
Los Angeles, California 90017  
Attention: Portfolio Servicing  
Telecopy: (213) 236-6444  
Email: [portfoliomgmt@unionbank.com](mailto:portfoliomgmt@unionbank.com)

Deposit Taker: MUFG Bank, Ltd.  
1251 Avenue of the Americas  
New York, New York 10020-1104  
  
Attn: Charles Catalano – Director – Institutional Sales  
Department  
Telecopy: (212) 782-6428  
Email: [ccatalano@mufg.com](mailto:ccatalano@mufg.com)

LRC: Lam Research Corporation  
4300 Cushing Parkway  
Fremont, California 94538  
Attention: Odette Go, Treasurer  
Telecopy: (512) 572-1586  
Email: [TreasuryOrg@lamresearch.com](mailto:TreasuryOrg@lamresearch.com)

or in any case, to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section.

[signature page follows.]

Please countersign below to indicate your acceptance of our agreement herein.

Very truly yours,

LAM RESEARCH CORPORATION,  
a Delaware corporation

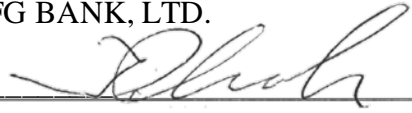
By: 

Name: Odette Go

Title: Vice President, Global Treasury

ACCEPTED AND AGREED TO as of this  
\_\_21st\_\_ day of \_\_September\_\_\_\_\_, 2020

MUFG BANK, LTD.

By: \_\_\_\_\_

Name: Tatsuo Ichioka

Title: Head of Global Markets Division for the Americas

ACKNOWLEDGED AND AGREED TO as of this  
21st day of September, 2020

MUFG AMERICAS CAPITAL LEASING & FINANCE, LLC,  
a Delaware limited liability company

By: 

Name: Robert J. Hoegler

Title: Vice President