



Studio Legale SMAF & Associates [S.T.A. - S.A.S]

Società Multiprofessionale Avvocati Fiscalisti

Roma - Milano - Bologna

Law Firm in Italy

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**ROMA
MILANO
BOLOGNA**

MASTER LEASE

dated as of

between

LEASE XYZ , **INC.**, as the Lessor

and

WWW INC.,
as the Lessee

THIS MASTER LEASE (as amended, supplemented or otherwise modified from time to time, this "Lease"), dated as of, is by and between LEASE XYZ , INC., an corporation, having its principal office at 135 S. Street, , as the lessor (together with its permitted successors and assigns, the "Lessor") and WWW INC., a Delaware corporation, having its principal office at , , , as the lessee (the "Lessee").

W I T N E S S E T H:

A. WHEREAS, the Lessor will purchase the Phase I Facility on the Land Interest Acquisition Date therefor and will purchase the Phase II Facility on the Land Interest Acquisition Date therefor, and each of the Phase I Facility and the Phase II Facility will be leased to the Lessee subject to the terms of this Lease from and after the relevant Land Interest Acquisition Date; and

B. WHEREAS, on the applicable Lease Term Commencement Date, the Lessor desires to lease to the Lessee and the Lessee desires to lease from the Lessor, the relevant portion of the Property pursuant to this Lease.

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

ARTICLE I.

1.1 Definitions; Interpretation. Capitalized terms used but not otherwise defined in this Lease have the respective meanings specified in Appendix 1 to this Lease; and the rules of interpretation set forth in Appendix 1 to this Lease shall apply to this Lease.

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ARTICLE II.

2.1 Acceptance and Lease of Property. Effective as of the Closing Date, the Lessor, subject to the satisfaction or waiver of the applicable conditions set forth in Section 6 of the Participation Agreement, hereby agrees to acquire the Phase I Facility on the initial Land Interest Acquisition Date pursuant to the terms of the Participation Agreement, and to lease to the Lessee hereunder for the Term (as defined in Section 2.3), the Lessor's interest in such Phase I Facility and, subject to satisfaction or waiver of the applicable conditions set forth in Section 6 of the Participation Agreement, effective as of the Land Interest Acquisition Date in respect of the Phase II Facility, the Phase II Facility, and the Lessee hereby agrees, expressly for the direct benefit of the Lessor, to lease commencing on the applicable Lease Commencement Date from the Lessor for the Term, the Lessor's interest in each such portion of the Property to be delivered on the applicable Land Interest Acquisition Date and any Improvements thereon pursuant to this Lease or the Participation Agreement.

2.2 Acceptance Procedure; Appointment as Agent. The Lessor hereby authorizes one or more employees of the Lessee, to be designated by the Lessee, as the authorized representative or representatives of the Lessor to accept delivery on behalf of the Lessor of the relevant portion of the Property identified on the applicable Acquisition Request. The Lessee hereby agrees that such acceptance of delivery by such authorized representative or representatives and the execution and delivery by the Lessee on each Land Interest Acquisition Date of a Lease Supplement in the form of Exhibit A hereto with respect to the applicable portion of the Property (appropriately completed) shall, without further act, constitute the irrevocable acceptance by the Lessee of the portion of the Property which is the subject thereof for all purposes of this Lease and the other Operative Documents on the terms set forth therein and herein. In addition, the Lessor hereby irrevocably designates and appoints the Lessee as its agent for the purpose of supervising and monitoring the performance of the Existing Owner in the completion, following each applicable Land Interest Acquisition Date, of all outstanding punch list items in respect of the relevant Improvements and all other obligations of the Existing Owner in respect of the Property following each Land Interest Acquisition Date. The Lessee hereby unconditionally agrees to act as said agent on behalf of the Lessor.

2.3 Lease Term. The term of this Lease (the "Term") shall begin (1) with respect to the Phase I Facility, on the Land Interest Acquisition Date applicable thereto; and (2) with respect to the Phase II Facility, on the Land Interest Acquisition Date applicable thereto and, in each case, shall end on the fifth anniversary of the Closing Date, unless the Term is renewed or earlier terminated in accordance with the provisions of this Lease.

2.4 Title. The Property is leased to the Lessee without any representation or warranty of title, condition of any of the Improvements or permitted uses, express or implied, by the Lessor and subject to the rights of parties in possession, the existing state of title (including, without limitation, the Permitted Exceptions) and all applicable Requirements of Law. The Lessee shall in no event have any recourse against the Lessor for any defect in or exception to title to the Property, other than for any such defect or exception constituting a Lessor Lien.

ARTICLE III.

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3.1 **Rent.**

(a) During the Term, the Lessee shall pay Basic Rent on each Payment Date, on the date required under Section 22.1(i) in connection with the Lessee's exercise of the Remarketing Option and on any date on which this Lease shall terminate.

(b) Neither the Lessee's inability or failure to take possession of all or any portion of the Property when delivered by the Lessor, nor the Lessor's inability or failure to deliver all or any portion of the Property to the Lessee on or before the contemplated Lease Commencement Date therefor, whether or not attributable to any act or omission of the Lessee or any act or omission of the Lessor, or for any other reason whatsoever (including any act or omission of the Existing Owner), shall delay or otherwise affect the Lessee's obligation to pay Rent for the Property from and after commencement of the Term.

3.2 **Payment of Basic Rent.** Basic Rent shall be paid absolutely net to the Lessor, so that this Lease shall yield to the Lessor the full amount thereof, without setoff, deduction or reduction, whether or not the Lessee's quiet possession of the Property is disturbed.

3.3 **Supplemental Rent.** The Lessee shall pay to the Lessor or the Person entitled thereto any and all Supplemental Rent promptly as the same shall become due and payable, and if the Lessee fails to pay any Supplemental Rent, the Lessor shall have all rights, powers and remedies provided herein or by law or equity or otherwise in the case of nonpayment of Basic Rent. The Lessee shall pay to the Lessor, as Supplemental Rent, among other things, on demand, to the extent permitted by Applicable Law, interest at the applicable Overdue Rate on any installment of Basic Rent not paid when due for the period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded by the Lessor for the period from the due date or the date of any such demand, as the case may be, until the same shall be paid. The expiration or other termination of the Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this Lease, in the event of any failure on the part of the Lessee to pay and discharge any Supplemental Rent as and when due, the Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added under any agreement with a third party for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent.

3.4 **Method of Payment.** Each payment of Rent shall be made by the Lessee to the Lessor by 12:00 noon, time, at the place of payment designated by Agent in funds consisting of lawful currency of the United States of which shall be immediately available on the scheduled date when such payment shall be due, unless such scheduled date shall not be a Business Day, in which case such payment shall be made on the next succeeding Business Day or as otherwise required by the definition of the term "Interest Period" set forth in Appendix 1 hereto. Payments initiated after 12:00 noon, time shall be deemed received on the next succeeding Business Day for purposes of the second sentence of Section 3.3 hereof, but shall be deemed received on the same day for purposes of Section 17.1 hereof.



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ARTICLE IV.

4.1 Utility Charges. Subject to the Lessee's rights under the terms of Article XIII relating to permitted contests, the Lessee shall pay or cause to be paid all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents and utilities used in or on the Property during the Term. The Lessee shall be entitled to seek and receive any credit or refund with respect to any utility charge 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, shall be promptly paid over to the Lessee. All charges for utilities imposed with respect to the Property for a billing period during which this Lease expires or terminates shall be adjusted and prorated on a daily basis between the Lessor and the Lessee, and each party shall pay or reimburse the other for each party's pro rata share thereof, except that if the Lessee retains possession of the Property after termination or expiration of this Lease, no such adjustment and proration shall be made.

ARTICLE V.

5.1 Quiet Enjoyment. Subject to the rights of the Lessor contained in Section 17.2 and the other terms of this Lease and so long as no Event of Default shall have occurred and be continuing, the Lessee shall peaceably and quietly have, hold and enjoy the Property for the Term, free of any claim or other action by the Lessor or anyone rightfully claiming by, through or under the Lessor (other than the Lessee) with respect to any matters arising from and after (i) the Land Interest Acquisition Date therefor, in the case of the Phase I Facility, and (ii) the Land Interest Acquisition Date therefor, in the case of the Phase II Facility.

ARTICLE VI.

6.1 Net Lease. This Lease shall constitute a net lease. It is the further express intent of the Lessor and the Lessee that the obligations of the Lessor and the Lessee hereunder shall be separate and independent covenants and agreements and that the Basic Rent and Supplemental Rent, and all other charges and sums payable by the Lessee hereunder, shall commence at the times provided herein and shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to an express provision in this Lease. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall the Lessee be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense (other than the defense of payment) with respect to the Rent, nor shall the obligations of the Lessee hereunder be affected (except as expressly herein permitted and by performance of the obligations in connection therewith) by reason of: (i) any defect in the condition, merchantability, design, construction, quality or fitness for use of the Property or any portion thereof, or the failure of the Property to comply with all Requirements of Law and Insurance Requirements, including any inability to occupy or use the Property or any portion thereof by reason of such non-compliance; (ii) any damage to, removal, abandonment, salvage, loss, contamination of or Release from, scrapping or destruction of, or any requisition or taking of the Property or any portion thereof; (iii) any restriction, prevention or curtailment of or interference with any use of the Property or any portion thereof; (iv) any defect in title to or rights to the Property or any portion thereof or any Lien on such title or rights or on the Property (other than Lessor Liens); (v) any change, waiver, extension, indulgence or other action or omission or breach in

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respect of any obligation or liability of or by the Lessor, the Agent or any Participant (other than the breach by the Lessor of its covenant of quiet enjoyment set forth in Section 5.1); (vi) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to the Lessee, the Lessor, the Agent, any Participant or any other Person, or any action taken with respect to this Lease by any trustee or receiver of the Lessee, the Lessor, the Agent, any Participant or any other Person, or by any court, in any such proceeding; (vii) any claim that the Lessee has or might have against any Person, including without limitation the Lessor, the Existing Owner, any vendor, manufacturer, contractor of or for the Property, the Agent or any Participant; (viii) 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 any other agreement (other than the breach by the Lessor of its covenant of quiet enjoyment set forth in Section 5.1); (ix) any invalidity or unenforceability or illegality or disaffirmance of this Lease, against or by the Lessee or any provision hereof or any of the other Operative Documents or any provision of any thereof; (x) the impossibility or illegality of performance by the Lessee, the Lessor or both; (xi) any action by any court, administrative agency or other Governmental Authority; (xii) any restriction, prevention or curtailment of or interference with the construction on or any use of the Property or any portion thereof; or (xiii) any other cause or circumstances whether similar or dissimilar to the foregoing and whether or not the Lessee shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of the Lessee hereunder shall be covenants and agreements that are separate and independent from any obligations of the Lessor hereunder or under any other Operative Document and the obligations of the Lessee shall continue unaffected unless such obligations shall have been modified or terminated in accordance with an express provision of this Lease.

6.2 No Termination or Abatement. The Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate (except as provided herein), rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution, or other proceeding affecting the Lessor, the Agent, any Participant or the Lessee or any action with respect to this Lease or any Operative Document which may be taken by any trustee, receiver or liquidator of the Lessor, the Agent, any Participant or the Lessee or by any court with respect to the Lessor, the Agent or any Participant. The Lessee hereby waives, to the extent permitted by Applicable Law, all right (i) to terminate or surrender this Lease (except as provided herein) or (ii) to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense (other than the defense of payment) with respect to any Rent. The Lessee shall remain obligated under this Lease in accordance with its terms and the Lessee hereby waives, to the extent permitted by Applicable Law, any and all rights now or hereafter conferred by statute or otherwise to modify or to avoid strict compliance with its obligations under this Lease. Notwithstanding any such statute or otherwise, the Lessee shall be bound by all of the terms and conditions contained in this Lease.

ARTICLE VII.

7.1 Nature of Transaction; Intent of the Parties.

(a) It is the intent of the parties hereto that: (i) this Lease constitutes an "operating lease" pursuant to Statement of Financial Accounting Standards No. 13, as amended and interpreted, for purposes of the Lessee's financial

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reporting, and (ii) for purposes of federal, state, and local income or franchise taxes (and for any other tax imposed on or measured by income) and documentary, intangibles and transfer taxes, the transaction contemplated hereby is a financing arrangement and preserves ownership in the Property in the Lessee. The parties shall take no action inconsistent with such intention. Nevertheless, the Lessee acknowledges and agrees that neither the Agent, the Lessor nor any Participant (other than the Tranche Y Participant) has made any representations or warranties to the Lessee concerning the tax, accounting or legal characteristics of the Operative Documents and that the Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents as it deems appropriate.

(b) Anything to the contrary in the Operative Documents notwithstanding, the Lessor and the Lessee intend and agree that with respect to the nature of the transactions evidenced by this Lease in the context of the exercise of remedies under the Operative Documents, including, without limitation, in the case of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of or any State or Commonwealth thereof or any foreign country affecting the Lessee, the Lessor, or any Participant or any enforcement or collection actions arising out of or relating to bankruptcy or insolvency laws, (i) the transactions evidenced by this Lease shall be deemed to be loans made by the Lessor and the Participants to the Lessee secured by the Property, (ii) the obligations of the Lessee under this Lease to pay Basic Rent, Supplemental Rent, Asset Termination Value or Residual Value Guarantee Amount in connection with a purchase of the Property pursuant to this Lease shall be treated as payments of interest on (with respect to Basic Rent), and principal of, respectively, loans from the Lessor and the Participants to the Lessee, and (iii) this Lease grants a security interest and mortgage or deed of trust lien, as the case may be, in the Property to the Lessor and the Lease has been assigned by the Lessor to the Agent for the benefit of the Participants to secure the Lessee's performance under and payment of all amounts under this Lease and the other Operative Documents.

(c) Specifically, without limiting the generality of subsection (b) of this Section 7.1, the Lessor and the Lessee further intend and agree that, for the purpose of securing the Lessee's obligations for the repayment of the above-described loans from the Lessor and the Participants to the Lessee (the aggregate commitment from the Participants as of the date hereof is Two Hundred Seventy Million Dollars (\$270,000,000) and the maturity date of such loans as of the date hereof is March 16, 2006), (i) this Lease shall also be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code and a real property mortgage of the Property; (ii) the conveyance provided for in Article II shall be deemed to be a grant by the Lessee to the Lessor, assigned by the Lessor to the Agent for the benefit of the Participants, of a mortgage lien and security interest in all of the Lessee's right, title and interest in and to the Property, except to the extent all or a portion of the Property is released from this Lease in accordance with the Operative Documents, and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property, whether in the form of cash, investments, securities or other property (it being understood that the Lessee hereby mortgages and warrants and grants a security interest in the Property to Lessor to secure such loans); (iii) the possession by the Lessor or any of its agents of any of the Collateral (as defined below) which constitutes notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to

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be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-305 of the Uniform Commercial Code; and (iv) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of the Lessee shall be deemed to have been given for the purpose of perfecting such security interest under Applicable Law; provided that the foregoing provisions of this subsection 7.1(c) shall not be deemed or construed so as to constitute the transactions evidenced under this Lease as loans other than for the purposes described in subsection 7.1(a) (ii) and/or under the circumstances described in subsection 7.1(b). The Lessor and the Lessee shall, to the extent consistent with this Lease, take such actions and execute, deliver, file and record such other documents, financing statements, mortgages and deeds of trust as may be necessary to ensure that, if this Lease were deemed to create a security interest in the Property in accordance with this Section, such security interest would be deemed to be a perfected security interest of first priority (subject to Permitted Exceptions) under Applicable Law and will be maintained as such throughout the Term.

(d) If the transactions evidenced by this Lease and the other Operative Documents can no longer be treated as an operating lease pursuant to GAAP for accounting purposes (other than by reason of the failure of the Lessor to maintain the minimum equity required by EITF Issues 96-21 and 97-1), all provisions in the Operative Documents limiting the Lessee's obligation to pay the Asset Termination Value (including the Remarketing Option) on the Expiration Date or otherwise shall no longer apply. If any such change in accounting treatment shall occur, the Lessee, the Lessor, the Agent and the Participants shall negotiate in good faith to enter into such amendments to the Operative Documents as may be reasonably necessary or desirable to reflect the foregoing.

(e) In the event that, after the date hereof, the UCC as enacted and in effect in any applicable jurisdiction shall be revised or amended or amendments thereto shall become effective, the Lessee, the Lessor, the Agent and the Participants shall negotiate in good faith to enter into such amendments to the Operative Documents as may be reasonably necessary or desirable to effect the intended purposes of this Lease and the other Operative Documents in light of such revisions or amendments.

(f) Specifically, without limiting the generality of subsection (b) of Section 7.1, in order to secure the Lessee's obligation to pay Basic Rent, Supplemental Rent, Asset Termination Value, the Residual Value Guarantee Amount, the Purchase Option Price and all other obligations owing by the Lessee under the Operative Documents (the "Obligations"), the Lessee hereby grants, remises, releases, aliens, conveys, transfers, mortgages, assigns and warrants to Firstn Title Insurance Company, as trustee (as "Trustee") for the benefit of Lessor WITH POWER OF SALE and right of entry and possession, all of the Lessee's right, title and interest in and to the following (collectively, the "Collateral"):

(i) all right, title and interest of the Lessee in and to the Property or any part thereof and the reversions, remainders, rents, issues and profits thereof;

(ii) all right, title and interest of the Lessee in and to all Fixtures and Improvements and all substitutes and replacements of, and all additions and improvements to, the Improvements and the Fixtures, subsequently acquired by the Lessee or constructed, assembled

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or placed by Lessee on any of the Land Interest, immediately upon such acquisition, release, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Property or offsite, and, in each such case, without any further mortgage, deed of trust, conveyance, assignment or other act by the Lessee;

(iii) all right, title and interest of the Lessee in, to and under all books and records relating to or used in connection with the operation of the Property or the Fixtures or any part thereof and the Equipment;

(iv) all right, title and interest of the Lessee in and to all insurance policies (including title insurance policies) required to be maintained by the Lessee pursuant to the Operative Documents, including the right to collect and receive such proceeds; and all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the owner of the Property for the taking by eminent domain, condemnation or otherwise, of all or any part of the Property or any easement or other right therein;

(v) all right, title and interest of the Lessee in and to (i) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any portion thereof, provided that any such consent, license, permit, certificate or approval that by its terms or by operation of law would become void, voidable, terminable or revocable or would result in a breach or default thereunder or under any applicable law if subjected to the lien granted pursuant to this clause (v) is expressly excepted and excluded from this clause (v) to the extent necessary to avoid such result, and (ii) all XYZs and specifications relating to the Property or any portion thereof, in each case to the extent assignable;

(vi) all Rent and all other rents, payments, purchase prices, receipts, revenues, issues and profits payable under this Lease or pursuant to any other lease with respect to the Property;

(vii) all proceeds, both cash and noncash, of the foregoing and any items acquired in substitution of, or replacement for, any of the foregoing; and

(viii) all right, title and interest of the Lessee in and to all of the Operative Documents, including, without limitation, each Lease Supplement, regardless of whether the interest of the Lessee therein is that of lessee, sublessee, sublessor or borrower.

(g) For the purposes of the security agreement and financing statement provided herein the following information applies:

(i) Name and WWW Inc.

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Address of
Debtor:
.....

(ii) Name and Lease XYZ
Address of Inc.
Secured 135 South Street,
Party: Suite 740
.....,

(iii) Description Those items described as
of the types Improvements, Fixtures and
(or items) other personal property in
by property Section 7.1(f)
covered by
this
Financing
Statement

(iv) Description See Exhibit B hereto
of real
estate to
which
collateral
is attached
or upon
which it is
located:

ARTICLE VIII.

8.1 Condition of the Property. THE LESSEE ACKNOWLEDGES AND AGREES THAT ALTHOUGH THE LESSOR WILL HOLD FEE TITLE TO THE PROPERTY, THE LESSEE IS SOLELY RESPONSIBLE FOR THE IMPROVEMENTS AND ANY ALTERATIONS OR MODIFICATIONS. THE LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT IT IS LEASING THE PROPERTY "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY THE LESSOR, THE AGENT OR ANY PARTICIPANT AND IN EACH CASE SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW, AND (D) VIOLATIONS OF REQUIREMENTS OF LAW WHICH MAY EXIST ON THE DATE HEREOF. NEITHER THE LESSOR, THE AGENT NOR ANY PARTICIPANT HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE (EXCEPT FOR THE LESSOR'S COVENANT OF QUIET ENJOYMENT SET FORTH IN SECTION 5.1), VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, OR FITNESS FOR USE OF THE PROPERTY (OR ANY PORTION THEREOF, INCLUDING ANY IMPROVEMENTS EXISTING THEREON), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OR ANY PORTION THEREOF, INCLUDING ANY IMPROVEMENTS EXISTING THEREON) AND NEITHER THE LESSOR, THE AGENT NOR ANY PARTICIPANT SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN OR THE FAILURE OF THE PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY REQUIREMENT OF LAW.

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8.2 Possession and Use of the Property. The Property shall be used in a manner consistent with properties of a similar nature in the businesses in which the Lessee is engaged or as permitted in any sublease or assignment allowed by Section 25.1 hereof and in compliance in all respects with any covenants, conditions and restrictions of record and any ordinance or law affecting the use and occupancy of the Property; and provided that such other uses do not increase the liability, directly or indirectly, of the Lessor or adversely affect the value, utility or remaining useful life of the Property. At all times during the applicable Term, the Property shall not be abandoned by the Lessee or a permitted assignee or sublessee. The Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Property as contemplated by this Lease. The Lessee shall not commit or permit any waste of the Property or any portion thereof.

ARTICLE IX.

9.1 Compliance with Requirements of Law and Insurance Requirements. Subject to the terms of Article XIII relating to permitted contests, the Lessee, at its sole cost and expense, shall (a) comply with all Requirements of Law and all Insurance Requirements relating to the Property, including the construction, use, operation, maintenance, repair and restoration thereof and the remarketing thereof pursuant to Article XXII, whether or not compliance therewith shall require structural or extraordinary changes in the Improvements or interfere with the use and enjoyment of the Property, and (b) procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance and operation of the Property and for the use, operation, maintenance, repair and restoration of the Improvements.

ARTICLE X.

10.1 Maintenance and Repair; Return.

(a) The Lessee, at its sole cost and expense, shall maintain the Property in good working order, mechanical condition and repair, subject to reasonable wear and tear, and make all necessary repairs thereto, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen, in each case in compliance with all applicable Requirements of Law and in compliance with all Insurance Requirements and on a basis consistent with the operation and maintenance of commercial properties comparable in type and location to the Property and in compliance with prudent industry practice.

(b) The Lessor shall under no circumstances be required to build any improvements on the Property, make any repairs, replacements, alterations or renewals of any nature or description to the Property, make any expenditure whatsoever in connection with this Lease or maintain the Property in any way. The Lessor shall not be required to maintain, repair or rebuild all or any part of the Property, and the Lessee waives any right to (i) require the Lessor to maintain, repair, or rebuild all or any part of the Property, or (ii) make repairs at the expense of the Lessor pursuant to any Requirement of Law, Insurance Requirement, contract, agreement, or covenant, condition or restriction in effect at any time during the Term.

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(c) The Lessee shall, upon the expiration or earlier termination of this Lease (unless the Property is conveyed to the Lessee as provided herein), vacate and surrender the Property to the Lessor in its then-current, "AS IS" condition, subject to the Lessee's obligations under Sections 9.1, 10.1(a), 11.1, 12.1, 15.1(e), 15.2, 17.2(h), 22.1 and 23.1.

ARTICLE XI.

11.1 Modifications, Substitutions and Replacements.

(a) The Lessee, at its sole cost and expense, may at any time and from time to time make alterations, renovations, improvements and additions to the Property or any portion thereof and substitutions and replacements therefor (collectively, "Modifications"); provided that: (i) no Modification shall impair the value, utility or remaining useful life of the Property or any part thereof from that which existed immediately prior to such Modification; (ii) the Modification shall be done expeditiously and in a good and workmanlike manner; (iii) the Lessee shall comply with all Requirements of Law and all Insurance Requirements applicable to the Modification, including the obtaining of all permits and certificates of occupancy, and the structural integrity of the Property shall not be adversely affected; (iv) subject to the terms of Article XIII relating to permitted contests, the Lessee shall pay all costs and expenses and shall discharge (or cause to be insured or bonded over) within sixty (60) days after the same shall be filed (or otherwise become effective) any Liens arising with respect to the Modification; and (v) such Modifications shall comply with Sections 8.2 and 10.1.

All Modifications (other than those that both are not Modifications required to be made pursuant to a Requirement of Law or an Insurance Requirement ("Required Modification") and are readily removable without impairing the value, utility or remaining useful life of the Property) shall remain part of the realty and shall be subject to this Lease, and title thereto shall immediately vest in the Lessor. So long as no Event of Default has occurred and is continuing, the Lessee may place upon the Property any trade fixtures, machinery, equipment or other property belonging to the Lessee or third parties and may remove the same at any time during the Term, subject, however, to the terms of Section 10.1(a); provided that such trade fixtures, machinery, equipment or other property do not impair the value, utility or remaining useful life of the Property; provided, further, that the Lessee shall keep and maintain at the Property and shall not remove from the Property any Equipment financed or otherwise paid for (directly or indirectly) by the Lessor or any Participant pursuant to the Participation Agreement.

(b) The Lessee shall deliver to the Lessor and the Agent and each Participant a brief written narrative description of the work to be done in connection with any Modification to the Property the cost of which is anticipated to exceed \$1,000,000 in the aggregate.

ARTICLE XII.

12.1 Warranty of Title.

(a) The Lessee agrees that except as otherwise provided herein and subject to the terms of Article XIII relating to permitted contests, the Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, attachment, levy, title

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retention agreement or claim upon the Property (or the Lessor's interest therein) or any Modifications or any Lien, attachment, levy or claim with respect to the Rent, the Cash Collateral or with respect to any amounts held by the Agent or any other Person pursuant to the Participation Agreement or the other Operative Documents, other than, with respect to the Property only, Permitted Exceptions and Lessor Liens.

(b) Nothing contained in this Lease shall be construed as constituting the consent or request of the Lessor, expressed or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Property or any part thereof. NOTICE IS HEREBY GIVEN THAT NEITHER THE LESSOR, ANY PARTICIPANT NOR THE AGENT IS OR SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE LESSEE, OR TO ANYONE HOLDING THE PROPERTY OR ANY PART THEREOF THROUGH OR UNDER THE LESSEE AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF THE LESSOR IN AND TO THE PROPERTY.

12.2 Grants and Releases of Easements and Other Agreements. Provided that no Event of Default shall have occurred and be continuing and subject to the provisions of Articles VIII, IX, X and XI, the Lessor hereby consents in each instance to the following actions by the Lessee, in the name and stead of the Lessor, but at the Lessee's sole cost and expense: (a) the granting of easements, licenses, rights-of-way and other rights and privileges in the nature of easements reasonably necessary or desirable for the use, repair, operation or maintenance of the Property as herein provided; (b) the release of easements, licenses, rights-of-way and other rights and privileges in the nature of easements which are for the benefit of the Property; (c) the execution of petitions to have the Property annexed to any municipal corporation or utility district; and (d) the execution of amendments to any covenants, restrictions, easements, licenses, rights-of-way, and other rights and privileges in the nature of easements affecting the Property; provided, however, in each case the Lessee shall have delivered to the Lessor a Responsible Officer's Certificate stating that (i) such grant, release, contract or agreement does not materially impair the value, utility and remaining useful life of the Property, (ii) such grant, release, contract or agreement is reasonably necessary for the use, operation, maintenance, alteration or improvement of the Property, (iii) the Lessee shall remain obligated under this Lease and under any instrument executed by the Lessee consenting to the assignment of the Lessor's interest in this Lease as security for indebtedness, in each such case in accordance with their terms, as though such grant, release, contract, agreement or transfer had not been effected, and (iv) the Lessee shall pay and perform any obligations of the Lessor under such grant, release, contract or agreement. Without limiting the effectiveness of the foregoing, provided that no Event of Default shall have occurred and be continuing, the Lessor shall, upon the request of the Lessee, and at the Lessee's sole cost and expense, execute and deliver, any instruments necessary or appropriate to confirm any such grant, agreement or release to any Person permitted under this Section 12.2.

ARTICLE XIII.

13.1 Permitted Contests Other Than in Respect of Indemnities. Except to the extent otherwise provided for in Section 13 of the Participation Agreement, the Lessee, on its own or on the Lessor's behalf but at the Lessee's sole cost and expense, may contest, by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part,

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of any Requirement of Law, or utility charges payable pursuant to Section 4.1 or any Lien, attachment, levy, encumbrance or encroachment, and the Lessor agrees not to pay, settle or otherwise compromise any such item, provided that (a) the commencement and continuation of such proceedings shall suspend the collection thereof from, and suspend the enforcement thereof against, the Property, the Cash Collateral, the Lessor, the Agent and the Participants or the Lessee shall have bonded or otherwise secured such amount in a manner satisfactory to the Lessor and the Agent; (b) there shall be no risk of the imposition of a Lien as a result of such contest (other than, as to the Property, Permitted Exceptions) on the Property or the Cash Collateral, and no part of the Property or the Cash Collateral, nor any Rent would be in any danger of being sold, forfeited, lost or deferred as a result of such contest; (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability or material civil liability on the Lessor, the Agent or any Participant for failure to comply therewith (unless, in the case of civil liability, the Lessee shall have bonded or otherwise secured such amount in a manner satisfactory to the Lessor and the Agent); and (d) in the event that, at any time, there shall be a material risk of extending the application of such item beyond the end of the Term, then the Lessee shall deliver to the Lessor a Responsible Officer's Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1. The Lessor, at the Lessee's sole cost and expense, shall cooperate in good faith with the Lessee with respect to any permitted contests conducted by the Lessee pursuant to this Section 13.1 and shall, at the Lessee's sole cost and expense, execute and deliver to the Lessee such authorizations and other documents as may reasonably be required in connection with any such contest and, if reasonably requested by the Lessee, shall join as a party therein at the Lessee's sole cost and expense.

ARTICLE XIV.

14.1 General Liability and Workers' Compensation Insurance. The Lessee shall procure and carry commercial general liability insurance, including contractual liability, for claims for injuries or death sustained by persons or damage to property while on the Property and such other general liability coverages as are ordinarily procured by Persons who own or operate similar properties and consistent with prudent business practice, which policies shall include contractual liability endorsements covering the Lessee's indemnification obligations in Section 13.1 of the Participation Agreement. Such insurance shall be on terms and in amounts (which shall be acceptable to the Lessor and in the event of liability insurance shall be maintained at a level set forth on Schedule 14.2) that are no less favorable than insurance maintained by the Lessee and its Subsidiaries with respect to similar properties that it owns and that are in accordance with prudent business practice and may be provided under blanket policies maintained by or on behalf of the Lessee and its Subsidiaries. The policy shall be endorsed to name the Lessor, the Agent and each Participant as additional insureds. The policy shall also specifically provide that the policy shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which the Lessor, the Agent or the Participants may have in force. The Lessee shall, in the operation of the Property (including in connection with any Modifications thereof) comply with the applicable workers' compensation laws and protect the Lessor, the Agent and the Participants against any liability under such laws.

14.2 Hazard and Other Insurance. The Lessee shall keep, or cause to be kept, the Property insured against loss or damage by fire, flood and other risks (excluding earthquake, which insurance may be obtained by the Lessee if it so elects but

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which shall not be required hereunder) in an amount not less than the greater of the amount set forth on Schedule 14.2 and the then current replacement costs of the buildings and improvements on the Property and on terms that are no less favorable than insurance covering other similar properties owned or leased by the Lessee and that are in accordance with prudent business practice. The Lessee may provide such coverage under blanket policies maintained by or on behalf of the Lessee; provided, that if the Lessee does not elect to terminate the Lease pursuant to Article XVI hereof following the occurrence of an event covered by any such blanket policy, the proceeds of any such blanket policy shall be applied first, to the exclusion of other facilities covered by such policy other than the Property, to the repair, rebuilding and restoration of any damage to the Property. Insurance coverage required under this Section 14.2 shall be subject to deductibles reasonably satisfactory to the Lessor. During the construction of any Modifications the Lessee shall also maintain builders' risk insurance. Each policy of insurance maintained by the Lessee pursuant to this Section 14.2 shall provide that all insurance proceeds in respect of any loss or occurrence shall be paid to and adjusted solely by (and such proceeds shall be paid to) the Lessee, except from and after the date on which the insurer receives written notice from the Lessor or the Agent that a Event of Default exists (and unless and until such insurer receives written notice from the Lessor or the Agent that all Events of Default have been cured), all losses shall be adjusted solely by, and all insurance proceeds shall be paid solely to, the Agent (or the Lessor if the Participation Interests have been fully paid) for application pursuant to Article XV. The costs and expenses of all insurance required under this Section 14.2 shall be at the sole cost and expense of the Lessee.

14.3 Coverage.

(a) The Lessee shall furnish the Lessor and the Agent with certificates of insurance and certified copies of the insurance policies on each Land Interest Acquisition Date showing the insurance then required under Sections 14.1 and 14.2 to be in effect and naming the Lessor, the Agent and each Participant as additional insureds and, with respect to the insurance required under Section 14.2 (and with respect to any earthquake insurance covering the Property which Lessee may elect to purchase and maintain), naming the Agent, for the benefit of the Participants, as loss payees, and showing the mortgagee endorsement required by Section 14.3(c). All such insurance shall be at the cost and expense of the Lessee. Such policies and certificates in respect thereof shall include a provision for thirty (30) days' advance written notice by the insurer to the Lessor and the Agent in the event of cancellation of or any significant reduction in the coverage provided by such insurance.

(b) The Lessee agrees that the insurance policy or policies required by Sections 14.1 and 14.2 shall include (i) an appropriate clause pursuant to which such policy shall provide that it will not be invalidated should the Lessee waive, in writing, prior to a loss, any or all rights of recovery against any party for losses covered by such policy, and that the insurance in favor of the Lessor, the Agent and the Participants, and their respective rights under and interests in said policies shall not be invalidated or reduced by any act or omission or negligence of the Lessee or any other Person having any interest in the Property, and (ii) a so-called "Waiver of Subrogation Clause". The Lessee hereby waives any and all such rights against the Lessor, the Agent and the Participants to the extent of payments made under such policies.

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(c) All such insurance shall be written by reputable insurance companies that are financially sound and solvent and otherwise reasonably appropriate considering the amount and type of insurance being provided by such companies. Any insurance company selected by the Lessee which is rated in Best's Key Rating Guide or any successor thereto (or if there be none, an organization having a similar national reputation) shall have a general policyholder rating of "A-" and a financial rating of at least IX in Best's Key Rating Guide or be otherwise acceptable to the Lessor and the Agent. All insurance policies required by Section 14.2 shall include a standard form mortgagee endorsement in favor of the Agent.

(d) The Lessor shall not carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Article XIV except that the Lessor may carry separate liability insurance (at its sole cost) so long as (i) the Lessee's insurance is designated as primary and in no event excess or contributory to any insurance the Lessor may have in force which would apply to a loss covered under the Lessee's policy and (ii) each such insurance policy will not cause the Lessee's insurance required under this Article XIV to be subject to a coinsurance exception of any kind.

(e) The Lessee shall pay as they become due all premiums for the insurance required by Section 14.1 and, when required under Section 14.2, for the insurance required under Section 14.2, and shall renew or replace each policy prior to the expiration date thereof. At the time each of the Lessee's insurance policies is renewed (but in no event less frequently than once each year), the Lessee shall deliver to the Lessor and the Agent certificates of insurance with respect to the insurance policies required by this Article XIV to be maintained by the Lessee with respect to the Property.

(f) The Lessee hereby waives, releases and discharges the Lessor, the Agent and each Participant and their agents and employees from all claims whatsoever arising out of loss, claim, expense or damage to or destruction covered or coverable by insurance required under this Article XIV notwithstanding that such loss, claim, expense or damage may have been caused by the Lessor, the Agent or any Participant or any of their agents or employees, and the Lessee agrees to look to the insurance coverage only in the event of such loss.

ARTICLE XV.

15.1 Casualty and Condemnation.

(a) Subject to the provisions of Article XIV, this Article XV and (in the event the Lessee delivers, or is obligated to deliver, a Termination Notice) Article XVI, and prior to the occurrence and continuation of a Event of Default, the Lessee shall be entitled to receive (and the Lessor shall pay over to the Lessee, if received by the Lessor, and hereby irrevocably assigns to the Lessee all of the Lessor's right, title and interest in) any award, compensation or insurance proceeds to which the Lessee or the Lessor may become entitled by reason of their respective interests in the Property (i) if all or a portion of the Property is damaged or destroyed in whole or in part by a Casualty or (ii) if the use, access, occupancy, easement rights or title to the Property or any part thereof, is the subject of a Condemnation; provided,

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however, subject to Article XIV, if a Event of Default shall have occurred and be continuing, such award, compensation or insurance proceeds shall be paid directly to the Agent or, if received by the Lessee, shall be held in trust for the Agent, and shall be paid over by the Lessee to the Agent (or, if the Participation Interests have been fully paid, to the Lessor) and held in accordance with the terms of this paragraph (a). If, contrary to such provision, any such award, compensation or insurance proceeds are paid to the Lessor or the Lessee rather than to the Agent, the Lessor and the Lessee, as the case may be, hereby agree to transfer any such payment to the Agent. All amounts held by the Lessor or the Agent under the preceding sentences on account of any award, compensation or insurance proceeds either paid directly to the Lessor or the Agent or turned over to the Lessor or the Agent shall either be (i) paid to the Lessee for the repair of damage caused by such Casualty or Condemnation in accordance with paragraph (e) of this Section 15.1, or (ii) applied to the purchase price of the Property on a Termination Date resulting from a Casualty or Condemnation in accordance with paragraph (d) of this Section 15.1 or paragraph (a) of Section 16.2, with any Excess Proceeds being payable to the Lessee.

(b) In any proceeding or action under the control of the Lessor or the Agent pursuant to the terms of Section 14.2, the Lessee may participate and shall pay all expenses of such proceeding and its participation. At the Lessee's reasonable request, and at the Lessee's sole cost and expense, the Lessor and the Agent shall participate in any such proceeding, action, negotiation, prosecution or adjustment under the control of the Lessee. The Lessor and the Lessee agree that this Lease shall control the rights of the Lessor and the Lessee in and to any such award, compensation or insurance payment.

(c) If the Lessor or the Lessee shall receive notice of a Casualty or of an actual, pending or threatened Condemnation of the Property or any interest therein, the Lessor or the Lessee, as the case may be, shall give notice thereof to the other and to the Agent promptly after the receipt of such notice.

(d) In the event of a Casualty or receipt of notice by the Lessee or the Lessor of a Condemnation, the Lessee may deliver to the Lessor and the Agent a Termination Notice with respect to the Property pursuant to Section 16.1. If the Lessee does not deliver a Termination Notice within thirty (30) days after such occurrence, then this Lease shall (subject to the terms and conditions thereof) remain in full force and effect, and the Lessee shall, at the Lessee's sole cost and expense, promptly and diligently restore the Property pursuant to paragraph (e) of this Section 15.1 and otherwise in accordance with this Lease. If the Lessee delivers a Termination Notice within thirty (30) days after such occurrence, a Significant Event shall irrevocably be deemed to have occurred with respect to the Property, and, in such event, this Lease shall terminate and the Lessee shall purchase the Property on the next Payment Date (but in no event to exceed sixty (60) days after such occurrence) (a "Termination Date") pursuant to Article XVI hereof.

(e) If pursuant to this Section 15.1 this Lease shall continue in full force and effect following a Casualty or Condemnation, the Lessee shall, at its sole cost and expense (and, without limitation, if any award, compensation or insurance payment is not sufficient to restore the Property in accordance with this paragraph, the Lessee shall pay the shortfall), promptly and diligently repair any damage to the Property caused by such Casualty or Condemnation in conformity with the

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requirements of Sections 10.1 and 11.1 using the applicable as-built XYZs and Specifications for the Property (as modified to give effect to any subsequent Modifications, any Condemnation affecting the Property and in compliance with all applicable Requirements of Law and all Insurance Requirements) so as to restore the Property to at least the same condition, operation, function and value as existed immediately prior to such Casualty or Condemnation. In the event of such restoration, title to the Property shall remain with the Lessor; provided, that (i) title to any such substituted equipment shall vest in the Lessor and such equipment shall constitute Equipment thereafter for all purposes of this Lease, and (ii) the Lessor shall assign all of its right, title and interest to the Lessee in any such replaced equipment without representation or warranty of any kind other than that such equipment is free of Lessor Liens and Liens created pursuant to the Operative Documents. Upon completion of such restoration, the Lessee shall furnish the Lessor an architect's certificate of substantial completion and a Responsible Officer's Certificate confirming that such restoration has been completed pursuant to this Lease.

(f) In no event shall a Casualty or Condemnation with respect to which this Lease remains in full force and effect under this Section 15.1 affect the Lessee's obligations to pay Rent pursuant to Section 3.1 or to perform its obligations and pay any amounts due on the Expiration Date or pursuant to Articles XIX and XX.

(g) Any Excess Proceeds received by the Lessor or the Agent in respect of a Casualty or Condemnation shall be turned over to the Lessee.

15.2 Environmental Matters. Promptly upon the Lessee's actual knowledge of the presence of Hazardous Substances in any portion of the Property in concentrations and conditions that constitute or could reasonably be expected to constitute an Environmental Violation (excluding any such Environmental Violation that is a Pre-Existing Environmental Condition), the Lessee shall notify the Lessor in writing of such condition. In the event of such Environmental Violation, the Lessee shall, not later than thirty (30) days after the Lessee has actual knowledge of such Environmental Violation, either, if such Environmental Violation is a Significant Event, deliver to the Lessor and the Agent a Responsible Officer's Certificate and a Termination Notice with respect to the Property pursuant to Section 16.1, or, if such Environmental Violation is not a Significant Event, at the Lessee's sole cost and expense, promptly and diligently commence any Response Actions necessary to investigate, remove, clean up or remediate such Environmental Violation in accordance with the terms of Section 9.1. If the Lessee does not deliver a Termination Notice with respect to the Property pursuant to Section 16.1, the Lessee shall, upon completion of Response Actions by the Lessee, cause to be prepared by an environmental consultant reasonably acceptable to the Lessor a report describing the Environmental Violation (excluding any such Environmental Violation that is a Pre-Existing Environmental Condition) and the Response Actions taken by the Lessee (or its agents or contractors) for such Environmental Violation, and a statement by the consultant that such Environmental Violation (excluding any such Environmental Violation that is a Pre-Existing Environmental Condition) has been remedied in compliance in all material respects with applicable Environmental Law. Each such Environmental Violation shall be remedied prior to the Expiration Date. Nothing in this Article XV shall reduce or limit the Lessee's obligations under Sections 13.1, 13.2 or 13.3 of the Participation Agreement.

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15.3 Notice of Environmental Matters. Promptly, but in any event within thirty (30) Business Days from the date the Lessee has actual knowledge thereof, the Lessee shall provide to the Lessor written notice of any material pending or threatened claim, action or proceeding involving any Environmental Law or any Release on or in connection with the Property (other than with respect to any Pre-Existing Environmental Condition). 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) Business Days of receipt, copies of all material written communications with any Governmental Authority relating to any Environmental Law in connection with the Property. The Lessee shall also promptly provide such detailed reports of any such material environmental claims (other than with respect to any Pre-Existing Environmental Condition) as may reasonably be requested by the Lessor and the Agent.

ARTICLE XVI.

16.1 Termination by the Lessee upon Certain Events. If either: (i) the Lessee or the Lessor shall have received notice of a Condemnation, and the Lessee shall have delivered to the Lessor a Responsible Officer's Certificate that such Condemnation is a Significant Condemnation; or (ii) a Casualty occurs, and the Lessee shall have delivered to the Lessor a Responsible Officer's Certificate that such Casualty is a Significant Casualty; or (iii) an Environmental Violation occurs or is discovered and the Lessee shall have delivered to the Lessor a Responsible Officer's Certificate stating that, in the reasonable, good-faith judgment of the Lessee, the cost to remediate the same will cause the same to be a Significant Event, or (iv) if the Lessee shall not have delivered a Termination Notice with respect to such Environmental Violation described in clause (iii) but the requirements of Section 16.3 are met with respect to such Environmental Violation; then, (A) the Lessee shall, simultaneously with the delivery of the Responsible Officer's Certificate pursuant to the preceding clause (i), (ii) or (iii) deliver a written notice in the form described in Section 16.2(a) (a "Termination Notice"), or (B) if clause (iv) is applicable, the Lessor may deliver a Termination Notice pursuant to Section 16.3.

16.2 Procedures.

(a) A Termination Notice shall contain: (i) notice of termination of this Lease with respect to the Property or the affected portion thereof on a date that is no later than sixty (60) days after the occurrence of the applicable event described in clause (i), (ii) or (iii) of Section 16.1 (the "Termination Date"), such termination to be effective upon the Lessee's payment of the Asset Termination Value (or portion thereof representing the Property Cost of the affected portion of the Property); and (ii) a binding and irrevocable agreement of the Lessee to pay the Asset Termination Value and purchase the Property on the Termination Date.

(b) On the Termination Date, the Lessee shall pay to the Lessor the Asset Termination Value (or such portion thereof, as applicable), plus all other amounts owing in respect of Rent for the Property (including Supplemental Rent) theretofore accruing, and the Lessor shall convey the Lessor's interest in the Property or such portion thereof to the Lessee (or the Lessee's designee) all in accordance with Section 19.1 and, to the extent applicable, Section 19.2, as well as any Net Proceeds with respect to the Casualty or Condemnation giving rise to the termination of this Lease with respect to the Property theretofore received by the Lessor.

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16.3 Purchase of Property. Upon receipt of any notice pursuant to Section 15.2 or 15.3, the Lessor or the Required Participants, at the Lessee's expense, shall have the right to select an independent environmental consultant acceptable to the Lessee, which acceptance shall not be unreasonably withheld or delayed, to determine the estimated cost of conducting any clean-up or remediation required as a result of the Environmental Violation disclosed in such notice. If such independent environmental consultant determines that the cost of any such clean-up or remediation would exceed thirty percent (30%) of the original Property Cost, the Lessor shall, at the direction of the Required Participants, by written notice require the Lessee to purchase, or arrange for an Affiliate of Lessee or other third party to purchase, the Property on the Termination Date by delivering a Termination Notice following the requirements of Section 16.2 hereof.

ARTICLE XVII.

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

(a) the Lessee shall fail to make payment of (i) any Basic Rent (other than a payment of Basic Rent due on the Expiration Date or Termination Date) within five (5) Business Days after the same has become due and payable or (ii) Basic Rent, Purchase Option Price, Asset Termination Value, Residual Value Guarantee Amount or other amounts due on the Expiration Date or the Termination Date, including, without limitation, amounts due pursuant to Sections 16.2, 16.3, 20.2, 20.3 or 22.1, after the same has become due and payable;

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

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

(d) the Lessee shall fail to observe or perform any term, covenant or condition of the Lessee under this Lease, the Participation Agreement or any other Operative Document to which it is a party (other than those described in Section 17.1(a), (b), (c), (n) or (o) hereof), or any representation or warranty set forth in this Lease or in any other Operative Document or in any document entered into in connection herewith or therewith or in any document, certificate or financial or other statement delivered in connection herewith or therewith shall be false or inaccurate in any material way, and, if such failure to perform or misrepresentation or breach of warranty is other than with respect to a covenant, agreement, representation or warranty contained in Section 10.1(b) and Section 10.2 of the Participation Agreement (with respect to which there shall be no cure period), such failure or misrepresentation or breach of warranty shall remain uncured for a period of thirty (30) days after the earlier of (x) the date upon which an executive officer of the Lessee has actual

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knowledge thereof and (y) the date upon which the Agent or the Lessor gives notice to the Lessee thereof;

(e) (i) failure to make any payment when due (whether by scheduled maturity, upon acceleration or otherwise) on account of any Indebtedness of the Lessee or any Subsidiary of the amount of such Indebtedness exceeds \$10,000,000 or more, or (ii) default shall otherwise occur under one or more indentures, agreements or other instruments under which any Indebtedness of the Lessee or any Subsidiary in an aggregate principal amount of \$10,000,000 or more may be issued or created and such default shall continue beyond any grace period provided with respect thereto by such indenture, agreement or other instrument, if the effect of such default is to cause, or to permit the holder or beneficiary of such Indebtedness or a trustee therefor to cause, such Indebtedness to become due (by acceleration, mandatory redemption or otherwise) prior to its stated maturity (and/or to be secured by cash collateral);

(f) (i) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Lessee or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against the Lessee or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Lessee or any of its Subsidiaries or over all or a substantial part of any such Person's property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of the Lessee or any of its Subsidiaries for all or a substantial part of any such Person's property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of the Lessee or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for ninety (90) days unless dismissed, bonded or discharged;

(g) the Lessee or any of its Subsidiaries shall (i) commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or the Lessee or any of its Subsidiaries shall make any assignment for the benefit of creditors; (ii) be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; (iii) be dissolved or liquidated in full or in part; (iv) become insolvent (as such term may be defined or interpreted under any applicable statute); or (v) the Board of Directors of the Lessee or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 17.1(f);

(h) one or more judgments, orders, decrees or arbitration awards requiring Lessee or any of its Subsidiaries to pay an aggregate amount

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of \$10,000,000 or more shall be rendered against Lessee or any of its Subsidiaries and the same shall not be satisfied, vacated or stayed within thirty (30) days after the date so rendered;

(i) any Operative Document or any material term thereof shall cease to be, or be asserted by the Lessee not to be, a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms;

(j) any ERISA Event which constitutes grounds for the termination of any Employee Benefit XYZ by the PBGC or for the appointment of a trustee by the PBGC to administer any Employee Benefit XYZ shall occur, or any Employee Benefit XYZ shall be terminated within the meaning of Title IV of ERISA or a trustee shall be appointed by the PBGC to administer any Employee Benefit XYZ;

(k) a Change of Control shall occur;

(l) the Lessee shall have abandoned or constructively abandoned all or any material portion of the Property for a period of 30 consecutive days which results in the Property not being properly maintained in accordance with the terms of this Lease;

(m) the Lessee shall have elected to or be required to purchase the Property pursuant to Sections 16.2 or 16.3 hereof and such purchase shall not have been consummated on the Termination Date pursuant to either such Section;

(n) in the event the Lessee is not purchasing the Property upon the Expiration Date or earlier termination of this Lease, failure to comply with the return conditions set forth in Sections 19.1(b) and 22.3 hereof; or

(o) any event(s) or condition(s) which have a Material Adverse Effect shall occur and be continuing or exist.

17.2 Lease Remedies. Upon the occurrence of any Event of Default and at any time thereafter, the Lessor may, so long as such Event of Default is continuing, do one or more of the following as the Lessor in its sole discretion shall determine, without limiting any other right or remedy the Lessor may have on account of such Event of Default (including, without limitation, the obligation of the Lessee to purchase the Property as set forth in Section 20.3):

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

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

(c) The Lessor may (i) sell all or any part of the Property at public or private sale, as the Lessor may determine, pursuant to such notices and procedures as may be required by Applicable Law, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or any proceeds with respect thereto (except to the extent required by clause (ii) below if the Lessor shall elect to exercise its rights thereunder) in which event the Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated or proportionately reduced, as the case may be; and (ii) if the Lessor shall so elect, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (the parties agreeing that the Lessor's actual damages would be difficult to predict, but the aforementioned liquidated damages represent a reasonable approximation of such amount) (in lieu of Basic Rent due for periods commencing on or after the Payment Date coinciding with such date of sale (or, if the sale date is not a Payment Date, the Payment Date next preceding the date of such sale)), an amount equal to (A) the excess, if any, of (1) the Asset Termination Value calculated as of such Payment Date (including all Rent due and unpaid to and including such Payment Date) less the aggregate amount of the Cash Collateral, if any, retained by the Lessor, the Agent or the Participants, over (2) the net proceeds of such sale, if any (that is, after deducting all costs and expenses incurred by the Lessor, the Agent and the Participants incident to such conveyance, including, without limitation, repossession costs, brokerage commissions, prorations, transfer taxes, fees and expenses for counsel, title insurance fees, survey costs, recording fees, and any repair or alteration costs); plus (B) interest at the Overdue Rate on the foregoing amount from such Payment Date until the date of payment; provided, that the Lessor shall deliver all proceeds from the sale of the Property and other amounts received hereunder, including any Cash Collateral, to the Agent for application as provided in Sections 3.14, 3.17 and 3.18 of the Participation Agreement.

(d) Reserved;

(e) Unless the Property has been sold in its entirety, the Lessor may, subject to Section 17.2(h), whether or not the Lessor shall have

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exercised or shall thereafter at any time exercise any of its rights under paragraph (b), (c) or (i) of this Section 17.2 with respect to the Property or portions thereof, demand, by written notice to the Lessee specifying a date (a "Termination Date") not earlier than 10 days after the date of such notice, that the Lessee purchase, on such Termination Date, the Property (or the remaining portion thereof) in accordance with the provisions of Article XIX and Section 20.3;

(f) The Lessor may exercise any other right or remedy that may be available to it under the Operative Documents or otherwise under Applicable Law, or proceed by appropriate court action (legal or equitable) to enforce the terms hereof or to recover damages for the breach hereof. Separate suits may be brought to collect any such damages for any period(s), and such suits shall not in any manner prejudice the Lessor's right to collect any such damages for any subsequent period(s), or the Lessor may defer any such suit until after the expiration of the Term, in which event such suit shall be deemed not to have accrued until the expiration of the Term;

(g) 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;

(h) Notwithstanding anything contained in this Lease or any other Operative Document to the contrary, in the event that the Event of Default resulting in the exercise of remedies by the Lessor hereunder is solely a Limited Event of Default, then the following provisions of this Section 17.2(h) shall apply (but without limitation of the right and remedies set forth in Section 17.2(a)). The Lessee shall have the option or, if the Lessor terminates this Lease, the Lessee shall be required to elect to (i) remarket the Property for 180 days after the occurrence of such Limited Event of Default in accordance with Article XXII hereof (which period shall constitute the Marketing Period), with the purchase of the Property to be consummated no later than the date that is 180 days following the occurrence of such Limited Event of Default (which date shall constitute the Expiration Date if such option is exercised or required to be exercised), or (ii) exercise its Purchase Option under Section 20.1 hereof, with the purchase of the Property by the Lessee to be consummated, and the other payments required thereunder to be made to the Lessor, on the next Payment Date following the occurrence of such Limited Event of Default (which date shall constitute the Expiration Date if such option is exercised). Notwithstanding the provisions of clause (i) above, if the Lessor elects to terminate the Lease solely due to the occurrence of a Limited Event of Default and (x) the Lessor delivers to the Lessee an appraisal of the Property prepared by an appraiser selected by the Lessor and reasonably satisfactory to the Agent, the Required Participants and the Lessee setting forth the Fair Market Sales Value of the of the Property as of the date of the occurrence of such Limited Event of Default, and (y) the sum of the Fair Market Sales Value of the Property set forth in such report plus the maximum Residual Value Guarantee Amount then payable by the Lessee in connection with the exercise of the Remarketing Option is less than the Asset Termination Value as of such date, then and in such event the Lessee shall not be entitled to elect to exercise the Remarketing Option and the Lessor may in lieu thereof require the Lessee to elect to either (A) return the Property promptly to the Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Articles VIII, IX and X hereof as if the Property were being returned at the end of the Term, or (B) exercise its Purchase Option under Section 20.1 hereof, with the purchase of the Property by the Lessee to be consummated, and the other payments required thereunder

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to be made to the Lessor, on the next Payment Date following the occurrence of such Limited Event of Default (which date shall constitute the Expiration Date if such option is exercised). The Lessee shall notify the Lessor within ten (10) days after the occurrence of such Limited Event of Default which option it is exercising. If the Lessee elects to remarket the Property pursuant to clause (i) above or elects to return the Property pursuant to clause (A) above, the Lessee shall pay to the Lessor (i) the maximum Residual Value Guarantee Amount on the date the Lessee furnishes such notice of exercise of the Remarketing Option or such notice of its election to return the Property in accordance with clause (A) above (or, if the Lessor elects, on the date that is ten (10) days after the Lessor furnishes the Lessee notice that it will require the Lessee to remarket or purchase the Property or return or purchase the Property, as the case may be), (ii) Basic Rent when due for the duration of the 180 day Marketing Period, in the case of an exercise of the Remarketing Option, or all accrued and unpaid Basic Rent as of the date of the return of the Property in accordance with clause (A) above, in the case of a return of the Property, and (iii) in the case of an exercise of the Remarketing Option, the other payments required under Section 22.1 when required thereunder and no later than the Expiration Date.

(i) In addition to the other rights and remedies set forth herein, the Lessor shall have the right to continue this Lease in effect and, as permitted by Section 1951.4 of the Civil Code, to enforce, by suit or otherwise, all covenants and conditions hereof to be performed or complied with by the Lessee and exercise all of the Lessor's rights and remedies under this Lease, including, without limitation, the right to recover Basic Rent and Supplemental Rent from the Lessee as it becomes due under this Lease, even though the Lessee shall have breached this Lease and abandoned the Property. Acts of maintenance or preservation, or efforts by the Lessor or on the Lessor's behalf to relet the Property, or the appointment of a receiver upon the initiative of the Lessor to protect the Lessor's interest under this Lease shall not constitute a termination of the Lessee's right to possession of the Property; provided, however, that the foregoing enumeration shall not be construed as in any way limiting the actions the Lessor may take without terminating the Lessee's right to possession. In furtherance of the rights hereby granted to the Lessor, and to the extent permitted by law, the Lessee hereby appoints the Lessor its agent and attorney-in-fact, which appointment shall be deemed to be coupled with an interest and is irrevocable, with power of substitution, to enter the Property upon a Event of Default hereunder and remove therefrom all persons and property (with the right to store such property on the Property in a public warehouse or elsewhere at the cost and risk and for the account of the Lessee) and to alter the Property in such manner as the Lessor may deem necessary or advisable so as to put the Property in good order and to make the same rentable and from time to time and sublet the Property or any part thereof for such term or terms whether or not extending beyond the then current term of this Lease (but such sublease may provide for a new and successive lease to commence immediately upon the termination of this Lease), at such rentals and upon such other terms as the Lessor in its sole discretion may deem advisable, and with the right to make alterations and repairs to the Property; and the Lessee agrees to pay to the Lessor on demand all expenses incurred by the Lessor in such subletting, and in altering, repairing and putting the Property in good order and condition, and in reletting the same, including fees of attorneys and architects, and all other expenses or commissions. The Lessor shall be the Lessee's agent and representative on the Property in respect of all matters arising under or in connection with any such sublease made for the Lessee by the Lessor. Under each such sublease, the Lessee shall retain the right to enter upon and use the Property, subject to the terms and conditions of such sublease and the rights of the sublessee thereunder.

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The Lessee further agrees to pay to the Lessor, following the date of such subletting, to and including the date provided in this Lease for the expiration of the Term, the sums of money which would have been payable by the Lessee as Basic Rent and Supplemental Rent, deducting only the net amount of rent, if any, which the Lessor shall actually receive (after deducting from the gross receipts the expenses, costs and payments of the Lessor which in accordance with the terms of this Lease would have been borne by the Lessee) in the meantime from and by any such subletting of the Property, and the Lessee hereby agrees to remain liable for all sums otherwise payable by the Lessee under this Lease, including, but not limited to, the expenses of the Lessor aforesaid, as well as for any deficiency aforesaid. The Lessor shall have the right from time to time to begin and maintain successive actions or other legal proceedings against the Lessee for the recovery of such deficiency, expenses or damages or for a sum equal to any installments of Basic Rent or Supplemental Rent and other sums payable hereunder, and to recover the same upon the liability of the Lessee herein provided, which liability it is expressly covenanted shall survive the commencement or determination of any action to secure possession of the Property. Nothing herein contained shall be deemed to require the Lessor to wait to begin such action or other legal proceedings until the date when this Lease would have expired by limitation had there been no such Event of Default. Notwithstanding any such subletting without termination, pursuant to the terms hereof, the Lessor shall retain the right to and may at any time thereafter elect to terminate this Lease or the Lessee's right to possession of the Property for any previous breach which remains uncured or for any subsequent breach by giving the Lessee written notice thereof as herein provided, and in such event the Lessee shall forfeit any rights or interest under any such sublease and thereafter the obligations of any such sublessee shall run directly to the Lessor for its own account. Upon application by the Lessor, a receiver may be appointed to take possession of the Property, exercise all rights granted to the Lessor as agent and attorney-in-fact for the Lessee set forth in this Section 17.2(i) and apply any rentals collected from the Property as hereinabove provided. No taking of possession of the Property or other act by the Lessor as the agent and attorney-in-fact for the Lessee pursuant to the foregoing provisions, nor any subletting by the Lessor for the Lessee pursuant to the foregoing provisions, nor any such appointment of a receiver shall constitute or be construed as an election by the Lessor to terminate this Lease or the Lessee's right to possession of the Property unless a written notice of such intention be given to the Lessee.

(j) If this Lease is being terminated on the basis of the occurrence of an Event of Default (excluding a Limited Event of Default) arising out of the failure to perform an obligation or covenant listed on Schedule 17.2(j) or the breach of a representation or warranty listed on Schedule 17.2(j), or the performance of which covenant or obligation or the truth of which representation or warranty, or otherwise the existence of such Event of Default (excluding a Limited Event of Default), is qualified by the words "material," or "Objective Material Adverse Effect" (but not "Material Adverse Effect") or "in all material respects" or another similar qualifier set forth on Schedule 17.2(j) hereto, Lessor shall, to the extent required by Schedule 17.2(j) hereto, apply commercially reasonable standards in determining that such Event of Default (excluding a Limited Event of Default) occurred.

(k) In the event a Limited Event of Default occurs prior to the Land Interest Acquisition Date in respect of the Phase II Facility and the Lessor is exercising its rights and remedies under Section 17.2(h) with respect thereto, Lessor shall, in addition to such rights and remedies, be entitled to take such steps as

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it may deem necessary or appropriate to, and may require the Lessee to use its best efforts to, identify a Person willing to accept an assignment of the Property Purchase Agreement in respect of the Phase II Facility and to consummate the purchase of the Phase II Facility. In the event such a Person is identified, the Lessee shall (i) cooperate with the Lessor and such Person as necessary or as requested in order to transfer to such Person the rights and benefits of the Lessee and/or the Lessor under the Property Purchase Agreement and the Lockheed Indemnification Agreements in respect of the Phase II Facility, and (ii) pay for any modifications requested by such Person to the relevant XYZs and Specifications and for any fees, costs or expenses required to be paid or reimbursed to such Person in connection with such Person's agreement to so acquire the Phase II Facility provided the Lessee's liability with respect thereto shall not exceed 89.9% of the purchase price in respect of the Phase II Facility payable pursuant to the Property Purchase Agreement.

17.3 Waiver of Certain Rights. If this Lease shall be terminated pursuant to Section 17.2, the Lessee waives, to the fullest extent permitted by law, (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or repossession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt or limiting the Lessor with respect to the election of remedies; and (d) any other rights which might otherwise limit or modify any of the Lessor's rights or remedies under this Article XVII.

17.4 Loan Remedies. If the transaction evidenced by this Agreement and the other Operative Documents is treated as a loan, upon the occurrence or existence of any Event of Default and at any time thereafter unless such Event of Default is waived, the Lessor and the Trustee may with the consent of the Required Participants, or shall, upon instructions from the Required Participants, exercise any one or more of the following rights and remedies in addition to those rights and remedies set forth in Section 17.2:

(a) Acceleration of Obligations. The Lessor may, by written notice to the Lessee, terminate this Lease and declare all unpaid Obligations due and payable. On such termination date (which shall then be the Expiration Date), the Lessee shall pay the Asset Termination Value (subject to Section 17.2(h)), all unpaid Basic Rent accrued through such date, all Supplemental Rent due and payable on or prior to such date and all other amounts payable by the Lessee on the Expiration Date pursuant to this Lease and the other Operative Documents.

(b) Uniform Commercial Code Remedies. The Lessor may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code.

(c) Judicial Foreclosure. The Lessor may bring an action in any court of competent jurisdiction to foreclose the security interest in the Property granted to the Lessor by this Lease or any of the other Operative Documents; provided that if the Event of Default resulting in an exercise of such remedy is solely a Limited Event of Default, the Lessor's right to recover any deficiency amount from the Lessee following any such foreclosure shall be limited as set forth in Section 17.2(h). Further, Lessor and/or the Trustee may bring an action or actions in a court of competent jurisdiction to foreclose this instrument as a mortgage and to obtain specific enforcement of the covenants of the Lessee hereunder, and the Lessee agrees that such

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covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought hereunder the Lessee waives the defense of laches and any applicable statute of limitations.

(d) Power of Sale . The Lessor may cause some or all of the Property including any Collateral constituting personal property, including the Cash Collateral ("Personal Property Collateral"), to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

(i) Sales of Personal Property. The Lessor may dispose of any Personal Property Collateral separately from the sale of the Collateral constituting real property ("Real Property Collateral"), in any manner permitted by Division 9 of the Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable Governmental Rule. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Obligation for purposes of Section 2924c of the Civil Code. In connection with any such sale or other disposition, the Lessee agrees that the following procedures constitute a commercially reasonable sale:

(A) The Lessor shall mail written notice of the sale to the Lessee not later than thirty (30) days prior to such sale.

(B) Once per week during the three (3) weeks immediately preceding such sale, the Lessor will publish notice of the sale in a local daily newspaper of general circulation.

(C) Upon receipt of any written request, the Lessor will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours.

(D) Notwithstanding, the Lessor shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale.

(E) If the Lessor so requests, the Lessee shall assemble all of the Personal Property Collateral and make it available to the Lessor at the site of the Land Interest. Regardless of any provision of this Agreement or any other Operative Document, the Lessor shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any Obligation, unless the Lessor has given express written notice of its election of that remedy in accordance with Uniform Commercial Code Section 9505.

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The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(ii) Lessor's Sales of Real Property or Mixed Collateral. The Lessor may choose to dispose of some or all of the Property which consists solely of Real Property Collateral in any manner then permitted by Applicable Law, including without limitation a nonjudicial trustee's sale pursuant to Civil Code §§2924 et seq. In its discretion, the Lessor may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both Real Property Collateral and Personal Property Collateral, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Section 9501(4) of the Uniform Commercial Code. The Lessee agrees that such a sale of Personal Property Collateral together with Real Property Collateral constitutes a commercially reasonable sale of the Personal Property Collateral. (For purposes of this Power of Sale, either a sale of Real Property Collateral alone, or a sale of both Real Property Collateral and Personal Property Collateral together in accordance with Uniform Commercial Code Section 9501(4), will sometimes be referred to as a "Lessor's Sale").

(A) Before any Lessor's Sale, the Lessor shall give such notice of default and election to sell as may then be required by Applicable Law.

(B) When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, the Lessor shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale.

(C) Neither the Lessor nor the Agent shall have any obligation to make demand on the Lessee before any Lessor's Sale.

(D) From time to time in accordance with then Applicable Law, the Lessor may postpone any Lessor's Sale by public announcement at the time and place noticed for that sale.

(E) At any Lessor's Sale, the Lessor shall sell to the highest bidder at public auction for cash in lawful money of the United States.

(F) The Lessor shall execute and deliver to the purchaser(s) a deed or deeds conveying the Property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Lessor's Sale, shall be conclusive proof of their

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truthfulness. Any such deed shall be conclusive against all Persons as to the facts recited in it.

(e) Foreclosure Sales.

(i) Single or Multiple. If the Property consists of more than one lot, parcel or item of property, Lessor may:

(A) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(B) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted in Section 17.4(d), or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner the Lessor may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale," any two or more, "Foreclosure Sales").

If the Lessor chooses to have more than one Foreclosure Sale, the Lessor at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the security interests granted to the Lessor in the Property by this Lease or any part of the Property which has not been sold, until all of the Obligations have been paid in full.

(ii) Credit Bids . At any Foreclosure Sale, any Person, including the Lessor or any Participant, may bid for and acquire the Property or any part of it to the extent permitted by Applicable Law. Instead of paying cash for the Property, the Lessor may settle for the purchase price by crediting the sales price of the Property against the Obligations in any order and proportions as the Lessor in its sole discretion may choose.

(f) Additional Rights and Remedies.

(i) In addition to and without limitation of the rights and remedies otherwise provided in this Section 17.4, Lessor or its employees, acting by themselves or through a court-appointed receiver, may enter upon, possess, manage, operate, dispose of and contract to dispose of the Property or any part thereof; negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures; contract for goods and services, hire agents, employees and counsel, make repairs, alterations and improvements to the Property necessary, in Lessor's judgment, to protect or enhance the security hereof;

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to incur the risks and obligations ordinarily incurred by owners of property (without any personal obligation on the part of the receiver); and/or to take any and all other actions which may be necessary or desirable to comply with Lessee's obligations hereunder and under the Operative Documents. All sums realized by the Lessor under this Section 17.4(f)(i), less all costs and expenses incurred by it under this Section 17.4(f)(i), including attorneys' fees, and less such sums as the Lessor deems appropriate as a reserve to meet future expenses under this Section 17.4(f)(i), shall be applied to any Obligations secured hereby in such order as the Lessor shall determine. Neither application of said sums to said indebtedness nor any other action taken by the Lessor under this Section 17.4(f)(i) shall cure or waive any Event of Default or notice of default hereunder or nullify the effect of any such notice of default. The Lessor, or any employee or agent of the Lessor, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to (i) the adequacy of the security for the indebtedness secured hereunder, (ii) the existence of a de.....tion that the indebtedness secured hereby has been declared immediately due and payable, or (iii) the filing of a notice of default;

(ii) Lessor shall have the power and authority to execute a written notice of such Event of Default and, at its election, cause the Property to be sold to satisfy the Obligations secured hereby. The Lessor shall give and record such notice as the law then requires as a condition precedent to a nonjudicial foreclosure sale. When the minimum period of time required by law after such notice has elapsed, the Lessor, without notice to or demand upon Lessee except as otherwise required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale and in such order as it or the Lessor may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale (the Obligations hereby secured being the equivalent of cash for purposes of said sale). If the Property consists of several lots, parcels, or items of property, the Lessor may: (i) designate the order in which such lots, parcels, or items of property shall be offered for sale or sold, or (ii) elect to sell such lots, parcels or items through a single sale, through two or more successive sales, or in any other manner the Lessor deems in its best interest. The Lessee shall have no right to direct the order in which the Property is sold. The Lessor may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at such time fixed by the preceding postponement. The Lessor shall deliver to the purchaser at such sale a deed or other appropriate transfer instrument conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including the Lessor or the Lessee may purchase at such sale.

In connection with any sale or sales hereunder, the Lessor may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the real property covered hereby or any improvements thereon without causing structural damage thereto as if

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the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of real property. Any sale of any personal property or fixtures hereunder shall be conducted in any manner permitted by the Uniform Commercial Code.

After deducting all costs, fees and expenses of the Lessor and of this trust, including all costs of evidence of title and attorneys' fees in connection with sale, the Lessor shall apply the proceeds of sale to payment of all sums so expended under the terms hereof not then repaid; the payment of all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto;

(iii) Lessor shall have the power and authority to resort to and realize upon the Property and any other security now or hereafter held by the Lessor in such order and manner as the Lessor and the Trustee may, in their sole discretion, determine; and resort to any or all such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both.

17.5 Remedies Cumulative. The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise, including, without limitation, any mortgage foreclosure remedies.

17.6 The Lessee's Right to Cure. Notwithstanding any provision contained in the Lease or any other Operative Document, if a Event of Default has occurred and is continuing, the Lessee shall have the right to cure such Event of Default by (a) exercising its Purchase Option at any time prior to the earlier of (i) the termination of the Lessee's possessory interest in the Property, (ii) the thirty day period following the occurrence of a Lease Event of Default and (iii) the entering into by the Lessor of a binding contract to sell the Property, and (b) purchasing the Property in accordance with Section 20.1 at any time prior to such time as a foreclosure upon or sale of the Property has been completed.

ARTICLE XVIII.

18.1 The Lessor's Right to Cure the Lessee's Defaults. The Lessor, without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) remedy any Default or Event of Default (other than a Limited Default or a Limited Event of Default) for the account and at the sole cost and expense of the Lessee, including the failure by the Lessee to maintain the insurance required by Article XIV (subject to the limitations set forth in Section 24.1), and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of the Lessee, enter upon the Property for such purpose and take all such action thereon as may be necessary or appropriate therefor. No such entry shall be deemed an eviction of the Lessee. All out-of-pocket costs and expenses so incurred (including fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such

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sums or expenses are paid by the Lessor, shall be paid by the Lessee to the Lessor on demand (subject to the limitations set forth in Section 24.1), as Supplemental Rent.

ARTICLE XIX.

19.1 Provisions Relating to the Lessee's Termination of this Lease or Exercise of Purchase Option or Obligation and Conveyance Upon Remarketing and Conveyance Upon Certain Other Events.

(a) In connection with any termination of this Lease pursuant to the terms of Section 16.2 or 16.3 (if the Lessee is obligated to purchase the Property), or in connection with the Lessee's exercise of its Purchase Option or Expiration Date Purchase Obligation, upon the date on which this Lease is to terminate or upon the Expiration Date, and upon tender by the Lessee of the amounts set forth in Sections 16.2(b), 20.1, 20.2 or 20.3, as applicable, the Lessor shall execute and deliver to the Lessee (or to the Lessee's designee) at the Lessee's cost and expense an assignment or transfer without recourse of the Lessor's right, title and interest in the Property (which shall include a release, quitclaim and assignment of all of the Lessor's right, title and interest in and to any Net Proceeds with respect to the Property or such portion thereof not previously received by the Lessor), subject to Permitted Exceptions (other than Lessor Liens and, so long as all amounts required to be paid upon such termination or exercise have been paid and discharged in full, free of all Liens created by the Operative Documents) and any encumbrance caused by the fault, neglect or intention of the Lessee, in recordable form and otherwise in conformity with local custom and free and clear of any Lessor Liens. The Improvements and the Equipment shall be conveyed to the Lessee "AS IS" and in their then present condition of title and physical condition free of any Lessor Liens and, so long as all amounts required to be paid upon such termination or exercise have been paid and discharged in full, free of all Liens created by the Operative Documents.

(b) If the Lessee properly exercises the Remarketing Option or is required to remarket the Property or return the Property to the Lessor pursuant to Section 17.2(h), then the Lessee shall, on the Expiration Date, transfer possession of the Property (or remaining portion thereof) to the Lessor or the independent purchaser thereof, as the case may be, by surrendering the same into the possession of the Lessor or such purchaser, as the case may be, free and clear of all Liens other than Lessor Liens, in good condition (as modified by Modifications permitted by this Lease), ordinary wear and tear excepted, in compliance with Applicable Law, and in "broom-swept clean" condition. The Lessee shall cooperate reasonably with the Lessor and the independent purchaser of the Property (or remaining portion thereof) in order to facilitate the purchase by such purchaser of the Property (or remaining portion thereof) which cooperation shall include the following, all of which the Lessee shall do on or before the Expiration Date: providing all books and records regarding the maintenance and ownership of the Property (or remaining portion thereof) and all know-how, data and technical information relating thereto, providing a current copy of all of the "as built" XYZs and Specifications for the Property, granting or assigning (to the extent assignable) all existing licenses necessary for the operation and maintenance of the Property and cooperating reasonably in seeking and obtaining all necessary Governmental Action and complying with the provisions of Section 22.3 hereof. The obligations of the Lessee under this paragraph shall survive the expiration or termination of this Lease. The reasonable, customary and documented costs and expenses of the Lessee in complying

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with this Section 19.1(b) shall at the request of the Lessee be paid or reimbursed from the gross proceeds of a sale of the Property.

ARTICLE XX.

20.1 Purchase Option. Without limitation of the Lessee's purchase obligation pursuant to Sections 20.2 or 20.3, unless the Lessee shall have given notice of its intention to exercise the Remarketing Option and the Lessor shall have entered into a binding contract to sell the Property, the Lessee shall have the option (exercisable by giving the Lessor irrevocable written notice (each, a "Purchase Notice") of the Lessee's election to exercise such option) to purchase, or to designate a third party to purchase, all of the Property (the "Purchase Option"), on the date specified in such Purchase Notice, which date shall be a Payment Date. The purchase price in respect of the Property (the "Purchase Option Price") shall be equal to the Asset Termination Value plus in each case all other amounts owing in respect of Rent (including Supplemental Rent) theretofore accruing (offsetting against such amount the aggregate amount of the Cash Collateral, if any). The Lessee shall deliver the Purchase Notice to the Lessor not less than thirty (30) days prior to the purchase date. If the Lessee exercises its Purchase Option pursuant to this Section 20.1 (the "Purchase Option"), the Lessor shall transfer to the Lessee all of the Lessor's right, title and interest in and to all of the Property, as of the date specified in the Purchase Notice upon receipt of the Purchase Option Price and (without duplication) all Rent and all other amounts then due and payable under this Lease and any other Operative Document, in accordance with Section 19.1(a).

20.2 Expiration Date Purchase Obligation. Unless (a) the Lessee shall have properly exercised the Purchase Option pursuant to Section 20.1 and purchased the Property pursuant thereto, (b) the Lessee shall have properly exercised the Remarketing Option and shall have fulfilled all of the conditions of clauses (a) through (j) and (m) of Section 22.1 hereof, or (c) the Lessee shall have properly exercised the Renewal Option pursuant to Section 21.1 and the terms and conditions of a Renewal Term shall have been agreed upon pursuant to such Section, then, subject to the terms, conditions and provisions set forth in this Section 20.2, and in accordance with the terms of Section 19.1(a), the Lessee shall purchase from the Lessor, and the Lessor shall assign and convey to the Lessee without recourse, on the Expiration Date of the Term (as such Term may be renewed pursuant to Section 21.1) all of the Lessor's right, title and interest in the Property for an amount equal to the Asset Termination Value (the "Expiration Date Purchase Obligation"), offsetting against such amount the aggregate amount of the Cash Collateral, if any. The Lessee may designate, in a notice given to the Lessor not less than ten (10) Business Days prior to the closing of such purchase (time being of the essence), the transferee or transferees to whom the conveyance shall be made (if other than to the Lessee), in which case such conveyance shall (subject to the terms and conditions set forth herein) be made to such designee; provided, however, that such designation of a transferee or transferees shall not cause the Lessee to be released, fully or partially, from any of its obligations under this Lease, including, without limitation, the obligation to pay the Lessor an amount equal to the Asset Termination Value that was not fully and finally paid by such designee on such Expiration Date.

20.3 Acceleration of Purchase Obligation.

(a) The Lessee shall be obligated to purchase for an amount equal to the Asset Termination Value the Lessor's interest in the Property

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(notwithstanding any prior election to exercise its Purchase Option pursuant to Section 20.1) (i) automatically and without notice upon the occurrence and during the continuance of any Event of Default specified in clause (f) or (g) of Section 17.1, and (ii) as provided for at Section 17.2(e) immediately upon written demand of the Lessor upon the occurrence of any other Event of Default (except as provided in Section 17.2(h)).

(b) The Lessee shall be obligated to purchase for an amount equal to the Asset Termination Value (plus all other amounts (without duplication) owing in respect of Rent (including Supplemental Rent) theretofore accruing) (offsetting against such amount the aggregate amount of the Cash Collateral, if any) immediately upon written demand of the Lessor the Lessor's interest in the Property at any time during the Term when the Lessor ceases to have title as contemplated by Section 12.1.

ARTICLE XXI.

21.1 Renewal.

(a) Subject to the conditions set forth herein, the Lessee shall have the option (the "Renewal Option") by written request (the "Renewal Request") to the Lessor and the Agent (which request the Agent shall promptly forward to each Participant) and each Participant given not later than 180 days prior to the Expiration Date then in effect, to renew the Term for an additional period as specified in such Renewal Request, commencing on the date following the Expiration Date then in effect. No later than the date (the "Renewal Response Date") which is ninety (90) days after such request has been delivered to each of the Lessor and the Agent, the Lessor will notify the Lessee in writing (with a copy to Agent) whether or not it consents to such Renewal Request (which consent may be granted or denied in its sole discretion and may be conditioned on receipt of such financial information or other documentation as may reasonably be specified by the Lessor including without limitation a satisfactory appraisal of the Property), provided that if the Lessor shall fail to notify the Lessee on or prior to the Renewal Response Date, it shall be deemed to have denied such Renewal Request. If the Lessor shall have consented to the Renewal Request, the Renewal Term contemplated by such request shall become effective as of the Expiration Date then in effect after the Lessor has consented to such Renewal Request (each an "Extension Effective Date"); provided that such renewal shall be subject to and conditioned upon the following:

(A) on both the Extension Effective Date and the date of the Renewal Request, (i) no Default or Event of Default shall have occurred and be continuing, and (ii) the Lessor and the Agent shall have received a Responsible Officer's Certificate of the Lessee as to the matters set forth in clause (i) above,

(B) the Lessee shall not have exercised the Remarketing Option, and

(C) the Participants shall have agreed to extend the Maturity Date contemporaneously therewith pursuant to Section 3.6 of the Participation Agreement such that the Renewal Term will expire on the same date as the extended Maturity Date.

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(b) As of any date of determination following the Initial Expiration Date (in the event a Renewal Term is granted hereunder), the Expiration Date shall be the date set forth in the then most recent Extension Notice delivered by the Agent pursuant to Section 3.6 of the Participation Agreement.

ARTICLE XXII.

22.1 Option to Remarket. Subject to the fulfillment of each of the conditions set forth in this Section 22.1, the Lessee shall have the option (the "Remarketing Option") to market for the Lessor and complete the sale of all, but not less than all, of the Lessor's interest in the Property on the Expiration Date for the Lessor.

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