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Cook County Recorder

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Prepared by and upon  
recording return to:  
Gemia Jonscher, Esq.  
McGuireWoods LLP  
77 West Wacker Drive  
Suite 4500  
Chicago, IL 60601

**LEASEHOLD CONSTRUCTION MORTGAGE, SECURITY AGREEMENT  
AND FINANCING STATEMENT**

dated as of January 25, 2001

by

**LEASE PLAN NORTH AMERICA, INC.,**  
as Mortgagor

to

**LASALLE NATIONAL LEASING CORPORATION, AS AGENT**  
as Mortgagee

Relating to Premises in:

Northbrook, Cook County, Illinois

This Mortgage secures the same indebtedness as set out in that certain Master Lease, as referenced in that certain Memorandum of Lease (and Lease Supplement No. 1) recorded concurrently herewith as Document No. 0010067969 between Lease Plan North America, Inc., and Crate & Barrel Holdings, Inc. The Mortgage granted herein secures credit in the maximum principal amount of \$34,500,000.00.

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Property of Cook County Clerk's Office

**LEASEHOLD CONSTRUCTION MORTGAGE, SECURITY AGREEMENT  
AND FINANCING STATEMENT**

LEASEHOLD CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT AND FINANCING STATEMENT, dated as of January 25, 2001 (this "Mortgage"), made by LEASE PLAN NORTH AMERICA, INC., an Illinois corporation (the "Mortgagor") with an address at 135 S. LaSalle Street, Chicago, Illinois 60603, to LASALLE NATIONAL LEASING CORPORATION, with an address at 135 South LaSalle Street, Chicago, Illinois 60603, in its capacity as agent (in such capacity, the "Mortgagee"), under the Participation Agreement, dated as of December 22, 2000 (as amended, restated, supplemented or otherwise modified from time to time, the "Participation Agreement"), among the Mortgagor, the Mortgagee, Lessee (defined herein), the Guarantors (defined therein) and the financial institutions from time to time parties to the Participation Agreement (the "Participants").

**PRELIMINARY STATEMENT**

A. Mortgagor, the Participants, Mortgagee as Agent for the Participants, Lessee and the Guarantors, have entered into the Participation Agreement, pursuant to which each Participant will fund the Advances in accordance with such Participant's Participation Interest.

B. Fee title to the Land Interest described on Exhibit A attached hereto and made a part hereof, is held by Cole Taylor bank, as Trustee under a Trust Agreement dated January 6, 2000, and known as Trust No. 99-8161 ("Head Ground Lessor"). Pursuant to that certain "Ground Lease" between Head Ground Lessor and CB Northbrook Headquarters, L.L.C., a Delaware limited liability company ("Head Ground Lessee"), dated April 10, 2000 (the "Head Ground Lease"), the Head Ground Lessor has leased the Land Interest to the Head Ground Lessee. The Head Ground Lessee has assigned its right, title and interest in the Head Ground Lease to Crate and Barrel Holdings, Inc., a Delaware corporation (the "Lessee"), pursuant to that certain Assignment and Assumption of Ground Lease and Consent of Lessor dated December 22, 2000. Lessee has entered into that certain Ground Lease Agreement dated January 25, 2001, with Mortgagor (the "Ground Lease"), whereby Lessee has subleased the Land Interest to Mortgagor.

C. Pursuant to the Construction Agency Agreement, Lessee, acting as Construction Agent, has agreed to design and construct the Improvements (defined in the Participation Agreement) on the Land Interest.

D. Under that certain "Master Lease" dated December 22, 2000 (as amended, restated, supplemented, or otherwise modified from time to time, the "Master Lease"), Mortgagor has agreed to sublease its interest in the Land Interest and to lease the Improvements to Lessee, and Lessee has agreed to mortgage its interest in the Property to Mortgagor and the Participants as provided in Section 7.1(d) of the Master Lease, all in accordance with the terms of the Master Lease; and

E. Concurrently herewith, Mortgagor has made to Mortgagee a certain Assignment of Lease, of even date herewith, pursuant to which Mortgagor has presently assigned to Mortgagee and the Participants all right, title and interest of Mortgagor in and to the Master

Lease and the Rents and the other assets stated therein, whether now owned or hereafter acquired.

It is a condition, among others, to the obligation of the Participants to make their respective Participation Interests in the Advances available to the Mortgagor under the Participation Agreement that the Mortgagor shall have executed and delivered this Mortgage to Mortgagee for the further benefit of the Participants as set forth in the Participation Agreement. This Mortgage is being given by Mortgagor to secure the payment by Mortgagor of all Advances and Participation Interests therein and the prompt and complete performance when due of the covenants and obligations to be performed by Mortgagor under the Operative Documents (collectively, the "Obligations").

NOW, THEREFORE, in consideration of the premises and to induce the Mortgagee and the Participants to fund their respective Participation Interests in the Advances under the Participation Agreement, the Mortgagor hereby agrees with the Mortgagee, for the benefit of the Participants, as follows:

TO SECURE PAYMENT OF ALL THE AMOUNTS ADVANCED UNDER THE PARTICIPATION AGREEMENT AND THE OTHER SECURITY DOCUMENTS, AND FOR THE PURPOSE OF SECURING ALL MONIES ADVANCED BY THE MORTGAGEE TO (i) PRESERVE OR RESTORE THE MORTGAGED PROPERTY, (ii) PRESERVE THE LIEN OF THIS MORTGAGE OR THE PRIORITY THEREOF, OR (iii) ENFORCE THIS MORTGAGE, THE MORTGAGOR HAS GRANTED, REMISED, RELEASED, ALIENED, CONVEYED, TRANSFERRED, MORTGAGED, ASSIGNED AND WARRANTED UNTO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS, FOR THE BENEFIT OF MORTGAGEE, ITS SUCCESSORS AND ASSIGNS AND BY THESE PRESENTS DOES HEREBY GRANT, REMISE, RELEASE, ALIEN, CONVEY, TRANSFER, ASSIGN, MORTGAGE AND WARRANT UNTO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS ALL OF THE FOLLOWING, WHETHER NOW OWNED OR HEREAFTER ACQUIRED:

(A) all right, title, estate, and interest of Mortgagor in and to the parcel(s) of real property described on Exhibit A, TOGETHER WITH all Appurtenant Rights owned or leased by Mortgagor and in any way now or hereafter belonging, relating or appertaining to the Land Interest or the Improvements (now existing or to be designed and constructed by Construction Agent pursuant to the Construction Agency Agreement), including but not limited to all of Mortgagor's leasehold estate, right, title and interest in the Property whether arising under the Master Lease or the Ground Lease, and further including but not limited to all of Mortgagor's rights and remedies under the terms of the Master Lease or the Ground Lease, and the reversions, remainders, rents, security deposits, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever in and to the same, at law as well as in equity; and all of Mortgagor's right, title and interest in, to and under the Ground Lease and the Master Lease, including, without limitation, all credits, options, deposits, rights of first offer, rights of first refusal, extension rights and expansion rights;

(B) all of the Improvements, Equipment and Fixtures at any time located on or under such Land Interest other than Equipment and Fixtures not financed by an Advance and not becoming property of the Mortgagor under Article XI of the Master Lease.

(C) all right, title and interest of the Mortgagor in and to all substitutes and replacements of, and all additions and improvements to, the Improvements and the Fixtures, subsequently acquired by the Mortgagor or constructed, assembled or placed by Mortgagor on 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, conveyance, assignment or other act by the Mortgagor;

(D) all right, title and interest of the Mortgagor 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;

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

(F) all right, title and interest of the Mortgagor 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 part thereof; (ii) all plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports or examinations or analyses relating to the Property; and (iii) all service and other contracts and other agreements relating to the operation, maintenance, and repair of the Property;

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

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

(I) all right, title and interest of the Mortgagor in and to all of the Operative Documents, including, without limitation, the Lease Supplement and the Equipment Schedules, regardless of whether the interest of Mortgagor therein is that of lessor, lessee or secured lender.

(All of the foregoing property and rights and interests now owned or held or subsequently acquired by the Mortgagor and described in the foregoing clauses (A) through (I) are collectively referred to as the "Mortgaged Property");

TO HAVE AND TO HOLD the Mortgaged Property and the rights and privileges hereby mortgaged unto Mortgagee, its successors and assigns for the uses and purposes set forth, until all Obligations are paid.

1. Definitions. Capitalized terms used but not otherwise defined in this Mortgage shall have the respective meanings specified in Appendix 1 to this Mortgage.

2. Payment of Obligations. This Mortgage is made on, *inter alia*, the covenant, term and condition to pay the Obligations in accordance with the terms of the Participation Agreement and perform each term to be performed by Mortgagor under the Participation Agreement and the other Operative Documents. The aggregate Commitment of the Participants as of the date hereof is Thirty Four Million Five Hundred Thousand and 00/100 Dollars (\$34,500,000.00).

3. Other Mortgage Covenants. At any time and from time to time, upon the written request of the Mortgagee, and at the sole expense of the Mortgagor (but only to the extent Mortgagor has been reimbursed by Lessee), the Mortgagor will promptly and duly execute and deliver such further instruments and documents and take such further actions as the Mortgagee reasonably may request for the purposes of obtaining or preserving the full benefits of this Mortgage and of the rights and powers granted by this Mortgage.

4. Default; Remedies.

(a) If an Event of Default has occurred and is continuing:

(i) the Mortgagee, in addition to all other remedies available at law or in equity, shall have the right forthwith to enter upon and take possession of the Property, and to let the Property and receive the rents, issues and profits thereof, to make repairs and to apply said rentals and profits, after payment of all necessary or proper charges and expenses, on account of the amounts hereby secured (subject to the Excepted Payments); and

(ii) the Mortgagee shall, as a matter of right, at the option of the Mortgagee, be entitled to the appointment of a receiver for the Mortgaged Property, and the Mortgagor hereby consents to such appointment and waives notice of any application therefor.

(b) Mortgagee may, (i) by judicial action institute and maintain an action of Mortgage foreclosure against any of the Mortgaged Property, through judicial proceedings, pursuant to the applicable statutes, ordinance, or rules of civil procedure; (ii) by judicial action institute and maintain an action on the Obligations; or (iii) by judicial action take such other action at law or in equity for the enforcement of any document evidencing or securing the Obligations as the law may allow. The Mortgagee may proceed in any such action to final judgment and execution thereon for all sums under the Participation Agreement together with interest on such sums as provided in the Participation Agreement, all costs of suit and an attorneys' commission for fees and expenses actually incurred all to be a lien under the Mortgage. Interest at a rate equal to the Overdue Rate shall be due on any judgment obtained by Mortgagee from the date of judgment until actual payment is made of the full amount of the judgment or decree for



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sale resulting therefrom. The proceeds of any sale of any of the Mortgaged Property shall be applied pursuant to Sections 3.14 and 3.17 of the Participation Agreement. Mortgagor hereby waives its right of redemption in the event of foreclosure.

5. Remedies Not Exclusive. The Mortgagee shall be entitled to enforce payment of the indebtedness and performance of the Obligations and to exercise all rights and powers under this Mortgage or under any of the other Operative Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as the Mortgagee may determine in its absolute discretion. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Operative Documents to the Mortgagee or to which it may otherwise be entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Mortgagee. In no event shall the Mortgagee, in the exercise of the remedies provided in this Mortgage (including, without limitation, in connection with the assignment of Rents to Mortgagee, or the appointment of a receiver and the entry of such receiver on to all or any part of the Mortgaged Property), be deemed a "mortgagee in possession," and the Mortgagee shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

6. Performance by the Mortgagee of the Mortgagor's Obligations. If the Mortgagor fails to perform or comply with any of its agreements contained herein, the Mortgagee, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement. The expenses of the Mortgagee incurred in connection with actions undertaken as provided in this Section, together with interest thereon at a rate per annum equal to the Overdue Rate, from the date of payment by the Mortgagee to the date reimbursed by the Mortgagor, shall be payable by the Mortgagor to the Mortgagee on demand.

7. Duty of the Mortgagee. The Mortgagee's sole duty with respect to the custody, safekeeping and physical preservation of any Mortgaged Property in its possession, under Section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as the Mortgagee deals with similar property for its own account. Neither the Mortgagee, any Participant nor any of their respective directors, officers, employees or beneficiaries shall be liable for failure to demand, collect or realize upon any of the Mortgaged Property or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Mortgaged Property upon the request of the Mortgagor or any other Person or to take any other action whatsoever with regard to the Mortgaged Property or any part thereof.

8. Execution of Financing Statements. Pursuant to Section 9-402 of the Uniform Commercial Code, the Mortgagor authorizes the Mortgagee to file financing statements with respect to the Mortgaged Property without the signature of the Mortgagor in such form and in such filing offices as the Mortgagee reasonably determines appropriate to perfect the security interests of the Mortgagee under this Mortgage. A carbon, photographic or other reproduction of this Mortgage shall be sufficient as a financing statement for filing in any jurisdiction.

9. Security Agreement under Uniform Commercial Code.

(a) It is the intention of the parties hereto that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State in which the Mortgaged Property is located. If an Event of Default shall occur, then in addition to having any other right or remedy available at law or in equity, the Mortgagee shall have the option of either (i) proceeding under the Uniform Commercial Code and exercising such rights and remedies as may be provided to a secured party by the Code with respect to all or any portion of the Mortgaged Property which is personal property (including, without limitation, taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Mortgaged Property in accordance with the Mortgagee's rights, powers and remedies with respect to the real property (in which event the default provisions of the Uniform Commercial Code shall not apply). If the Mortgagee shall elect to proceed under the Uniform Commercial Code, then five days' notice of sale of the personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, attorneys' fees and legal expenses. At the Mortgagee's request, the Mortgagor shall assemble the personal property and make it available to the Mortgagee at a place designated by the Mortgagee which is reasonably convenient to both parties.

(b) THIS IS A CONSTRUCTION MORTGAGE AS SAID TERM IS DEFINED IN SECTION 9-313(1)(C) OF THE UNIFORM COMMERCIAL CODE. The Mortgagor and the Mortgagee agree, to the extent permitted by law, that this Mortgage upon recording or registration in the real estate records of the proper office shall constitute a financing statement filed as a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Uniform Commercial Code.

- (i) Name and Address of Debtor: LEASE PLAN NORTH AMERICA, INC.  
135 South LaSalle Street  
Chicago, Illinois 60603
- (ii) Name and Address of Secured Party: LASALLE NATIONAL LEASING CORPORATION  
135 South LaSalle Street  
Chicago, Illinois 60603

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- (iii) Description of the types (or items) by property covered by this Financing Statement: Those items described as the Mortgaged Property herein, and other personal property described therein.
- (iv) Description of real estate to which collateral is attached or upon which it is located: See Exhibit A hereto.

10. Authority of Mortgagee. The Mortgagor acknowledges that the rights and responsibilities of the Mortgagee under this Mortgage with respect to any action taken by the Mortgagee or the exercise or non-exercise by the Mortgagee of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Mortgage shall, as between the Mortgagee and the Participants, be governed by the Participation Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Mortgagee and the Mortgagor, the Mortgagee shall be conclusively presumed to be acting as Mortgagee for the Participants with full and valid authority so to act or refrain from acting, and the Mortgagor shall be under no obligation, or entitlement, to make any inquiry respecting such authority.

11. Notices. All notices, requests and demands to or upon the Mortgagee or the Mortgagor shall be given in accordance with Section 15.3 of the Participation Agreement, the terms of which are hereby incorporated into this Mortgage as if stated at length herein.

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

13. Amendments in Writing; No Waiver; Cumulative Remedies.

(a) None of the terms or provisions of this Mortgage may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Mortgagor and the Mortgagee in accordance with the terms of the Participation Agreement.

(b) No failure to exercise, nor any delay in exercising, on the part of the Mortgagee or any Participant, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Mortgagee or any Participant of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Mortgagee or such Participant would otherwise have on any future occasion.

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



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

15. Successors and Assigns. This Mortgage shall run with the land and be binding upon the successors and assigns of the Mortgagor and shall inure to the benefit of the Mortgagee, the Participants and their respective successors and assigns.

16. Mortgagor's Waiver of Rights. Except as otherwise set forth herein, to the fullest extent permitted by law, the Mortgagor waives the benefit of all laws now existing or that may subsequently be enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Property, (ii) any extension of the time for the enforcement of the collection of the indebtedness or the creation or extension of a period of redemption from any sale made in collecting such debt, and (iii) exemption of the Mortgaged Property from attachment, levy or sale under execution or exemption from civil process. Except as otherwise set forth herein, to the full extent the Mortgagor may do so, the Mortgagor agrees that the Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, exemption, extension or redemption, reinstatement or requiring foreclosure of this Mortgage before exercising any other remedy granted hereunder and the Mortgagor, for the Mortgagor and its successors and assigns, and for any and all Persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, reinstatement, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created.

17. Multiple Security. If (a) the Mortgaged Property shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Mortgage, the Mortgagee shall now or hereafter hold one or more additional mortgages, liens, deeds of trust or other security (directly or indirectly) for the Obligations upon other property in the State in which the Mortgaged Property is located (whether or not such property is owned by the Mortgagor or by others) or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, the Mortgagee may, in its sole discretion, commence or consolidate in a single foreclosure action all foreclosure proceedings against all such collateral securing the Obligations (including the Mortgaged Property), which action may be brought or consolidated in the courts of any county in which any of such collateral is located. The Mortgagor acknowledges that the right to maintain a consolidated foreclosure action is a specific inducement to the Mortgagee to extend the Obligations and the Mortgagor expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. The Mortgagor further agrees that if the Mortgagee shall be prosecuting one or more foreclosure or other proceedings against a portion of the Mortgaged Property or against any collateral other than the Mortgaged Property, which collateral directly or indirectly secures the Obligations, or if the Mortgagee shall have obtained a judgment of foreclosure and sale or similar judgment against such collateral, then, whether or not such proceedings are being maintained or judgments were obtained in or outside the State in which the Mortgaged Property is located, the Mortgagee may commence or continue foreclosure proceedings and exercise its

other remedies granted in this Mortgage against all or any part of the Mortgaged Property and the Mortgagor waives any objections to the commencement or continuation of a foreclosure of this Mortgage or exercise of any other remedies hereunder based on such other proceedings or judgments, and waives any right to seek to dismiss, stay, remove, transfer or consolidate either any action under this Mortgage or such other proceedings on such basis. Neither the commencement nor continuation of proceedings to foreclose this Mortgage nor the exercise of any other rights hereunder nor the recovery of any judgment by the Mortgagee in any such proceedings shall prejudice, limit or preclude the Mortgagee's right to commence or continue one or more foreclosure or other proceedings or obtain a judgment against any other collateral (either in or outside the State in which the Mortgaged Property is located) which directly or indirectly secures the Obligations, and the Mortgagor expressly waives any objections to the commencement of, continuation of, or entry of a judgment in such other proceedings or exercise of any remedies in such proceedings based upon any action or judgment connected to this Mortgage, and the Mortgagor also waives any right to seek to dismiss, stay, remove, transfer or consolidate either such other proceedings or any action under this Mortgage on such basis.

18. GOVERNING LAW. THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES AND ALL MATTERS OF CREATION, PERFECTION, PRIORITY OR ENFORCEABILITY OF ANY AND ALL RIGHTS AND REMEDIES PROVIDED FOR HEREIN SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS.

19. Partial Release; Full Release. The Mortgagee may release, for such consideration or none, as it may require, any portion of the Mortgaged Property without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien, security interest and priority herein provided for the Mortgagee compared to any other lien holder or secured party. Further, upon full satisfaction of all obligations which are secured by this Mortgage, Mortgagee shall execute and deliver to Mortgagor such documents and instruments as may be required to release the lien and security interest created by this Mortgage.

20. Certain Rights of Mortgagee. Except as provided in the Operative Documents, the Mortgagee, with the express written consent of the Mortgagor, may at any time or from time to time renew or extend this Mortgage, or alter or modify the same in any way, and the Mortgagee may waive any of the terms, covenants or conditions hereof in whole or in part and may release any portion of the Mortgaged Property or any other security, and grant such extensions and indulgences in relation to the Obligations secured hereby as the Mortgagee may determine without the consent of any other person and without any obligation to give notice of any kind thereto and without in any manner affecting the priority of the lien hereof on any part of the Mortgaged Property.

21. Covenants Regarding Lease.

(a) Mortgagor will promptly pay, or cause to be paid, all rents, charges and other sums or amounts required to be paid by Mortgagor under the terms of the Ground Lease or the Master Lease, and will further timely and fully keep and perform all of the covenants, terms, conditions and provisions of the Ground Lease or the Master Lease

required to be performed and complied with by the Mortgagor thereunder, and will not do or suffer to be done anything the doing of which, or refrain from doing anything the omission of which, will impair the security of this Mortgage.

(b) Each lease hereafter executed with respect to the Mortgaged Property or any part thereof shall provide that (i) the tenant thereunder, at the request of any transferee in foreclosure of this Mortgage or in lieu thereof, shall attorn to such other transferee and shall recognize such transferee as landlord under the lease, (ii) neither Mortgagee nor any such transferee or its successors or assigns shall be bound by (A) any prepayment of an installment or rent or other obligation under any lease of more than thirty (30) days, or (B) any amendment or modification to any lease made without the written consent of Mortgagee or such transferee, or (C) any obligations under the lease to have been performed prior to the date that Mortgagee or such transferee shall have acquired title to the Mortgaged Property, (iii) such lease shall not be amended, extended or consensually terminated without the prior written consent of Mortgagee. Each tenant, upon request by Mortgagee or such successor in interest, shall execute and deliver an instrument or instruments confirming the foregoing provisions.

22. Condemnation; Eminent Domain. All awards (the "Awards") made to the present, or any subsequent, owner of the Mortgaged Property, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, are hereby assigned and shall be paid to Mortgagee. Mortgagee may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Mortgagor shall immediately notify Mortgagee of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Mortgaged Property and shall deliver to Mortgagee copies of all papers served in connection with any such proceedings. Mortgagor shall make, execute and deliver to Mortgagee, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Mortgagee for the purpose of assigning the Awards to Mortgagee. If any portion of or interest in the Mortgaged Property is taken by condemnation or eminent domain, and the remaining portion of the Mortgaged Property is not, in the judgment of Mortgagee, a complete economic unit having equivalent value to the Mortgaged Property as it existed prior to the taking, then, at the option of Mortgagee, the entire Obligations shall immediately become due. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including attorney's fees, Mortgagee shall be entitled to apply the net proceeds as permitted under the Participation Agreement, without affecting the lien of this Mortgage. In the event of any partial taking of the Mortgaged Property or any interest in the Mortgaged Property, which, in the judgment of Mortgagee, leaves the Mortgaged Property as a complete economic unit having equivalent value to the Mortgaged Property as it existed prior to the taking, and provided Mortgagor is not in default hereunder, the Award shall be applied to reimburse Mortgagor for the cost of restoration and rebuilding the Mortgaged Property in accordance with plans, specifications and procedures approved in advance by Mortgagee, and such Award shall be disbursed in the same manner as is provided above for the application of insurance proceeds. If all or any part of the Award is not applied for reimbursement of such restoration costs, the Award shall at the option of Mortgagee be applied against the Obligations, in accordance with the Participation Agreement.



23. Future Advances. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of the Participation Interests in the Advances and other extensions of credit made after this Mortgage is delivered to the appropriate recording offices of Illinois, whether made pursuant to an obligation of Mortgagee or otherwise, and such future Advances shall be secured to the same extent as if such Advances were made on the date hereof, although there may be no Advance made at the time of the execution hereof and although there may be no indebtedness outstanding at the time any Advance is made. Such unpaid balances of loan Advances and other extensions of credit may or may not be evidenced by notes executed pursuant to the Participation Agreement.

24. No Merger. It is the desire and intention of the parties hereto that this Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Property, unless a contrary intent is ever manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded. Therefore, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

25. Liability Limited. Mortgagee acknowledges and agrees that Mortgagor shall not be liable or accountable under any circumstances whatsoever in its individual capacity for or on account of any statements, representations, warranties, covenants or obligations stated to be those of the Mortgagor, except for its own gross negligence or willful misconduct and as otherwise expressly provided herein or in the other Operative Documents, and it is understood and agreed that all obligations of the Mortgagor to Mortgagee hereunder and thereunder are solely nonrecourse obligations (except as otherwise expressly provided therein) and shall be enforceable solely against the interest of Mortgagor in the Property.

26. Conflict of Terms. In the event of a conflict between the terms and provisions hereof and the terms and provisions of the other Operative Documents, the terms and provisions of the other Operative Documents shall be controlling.

27. Additional Provisions. The following provisions shall also constitute an integral part of this Mortgage. Furthermore, in the event that any prior provisions of this Mortgage conflict with the following provisions of this Section, the provisions of this Section shall control and shall be deemed a modification of or amendment to the section or provision at issue.

(a) Payment of Taxes and Fees. Mortgagor agrees to pay or cause to be paid all transfer taxes, recording fees, and any other fees required by or imposed by the State, the county, or the municipality in which the Mortgaged Property is located in order to record this Mortgage in the Recorder's Office of said County.

(b) No Assumption of Liabilities. In the event of a foreclosure of the Mortgaged Property, Mortgagee shall not assume any liability of Mortgagor for Mortgagor's violation of any environmental laws, statutes, codes, regulations, or practices and Mortgagor's indemnifications as contained herein shall survive said foreclosure.



(c) Expenses of Enforcement; Waiver. Mortgagor agrees to bear and pay all expenses (including reasonable attorney fees and appellate attorney fees), of or incidental to the enforcement of any provision hereof, or the enforcement, compromise, or settlement of this Mortgage or the Liabilities, and for the curing thereof, or for defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, Mortgagor: (i) hereby waives trial by jury; (ii) will not (a) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or execution or moratorium law, any exemption for execution of sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter enforced, which may affect the covenants and terms of performance of this Mortgage, nor (b) claim, take or insist upon any benefit or advantage of any law now or hereafter enforced providing for the evaluation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction, nor (c) after any such sale or sales, claim, or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof; (iii) hereby expressly waives all benefit or advantage of any such law or laws including but not limited to a waiver of the equity of redemption, statutory right of redemption, and any other statutory or common law right of redemption, homestead, dower, marital share and all other exemptions; and (iv) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such laws or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

28. Termination Date. The final termination date of the Obligations shall be the tenth anniversary of the Closing Date unless the Obligations or any portion thereof shall remain unpaid as of such date.

[Signature page follows]

# UNOFFICIAL COPY

THE MORTGAGOR HEREBY DECLARES AND ACKNOWLEDGES THAT THE MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS MORTGAGE.

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be duly executed and delivered as of the date first above written.

LEASE PLAN NORTH AMERICA, INC.,  
an Illinois corporation

By: Elizabeth R. McClellan  
Name: Elizabeth R. McClellan  
Title: Vice President

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

Before me, the undersigned, a Notary Public within and for said State and County aforesaid, personally appeared [Signature] with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence) and who, upon his oath, acknowledged himself to be the [Signature] of LEASE PLAN NORTH AMERICA, INC., the within-named Mortgagor, an Illinois corporation, and he as such officer, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such [Signature].

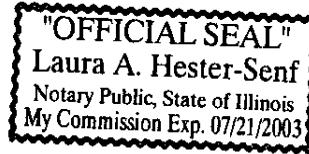
WITNESS my hand and official seal at office in Chicago, Illinois, this 18 day of January, 2001.

[Signature]  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_



**EXHIBIT A - LEGAL DESCRIPTION**

04-14-100-032 (AFFECTS PARCEL 1)  
01-15-200-020 (AFFECTS PARCEL 1)  
  
04-15-200-021 (AFFECTS PARCEL 2)  
04-14-100-033 (AFFECTS PARCEL 2)

**LEGAL DESCRIPTION:**

PARCEL 1: (NC-1A)

THAT PART OF LOT 1 IN TECHNIV PARCEL NC-1 SUBDIVISION, ACCORDING TO THE FINAL PLAT OF SUBDIVISION OF TECHNIV PARCEL NC-1 RECORDED ON NOVEMBER 12, 1999, AS DOCUMENT NO. 09067611, IN COOK COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

THAT PORTION OF THE WEST HALF OF SECTION 14, AND PART OF THE EAST HALF OF SECTION 15, IN TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH 89 DEGREES 02 MINUTES 23 SECONDS EAST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15 A DISTANCE OF 1710.55 FEET, THENCE NORTH 00 DEGREES 57 MINUTES 37 SECONDS EAST 306.23 FEET; THENCE NORTH 54 DEGREES 02 MINUTES 09 SECONDS WEST 564.01 FEET; THENCE NORTH 35 DEGREES 57 MINUTES 51 SECONDS EAST ALONG THE EASTERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT-OF-WAY, A DISTANCE OF 724.19 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 592.66 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 1524.58 FEET, HAVING A CHORD BEARING OF SOUTH 39 DEGREES 58 MINUTES 01 SECONDS EAST, 6.15 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 40 DEGREES 04 MINUTES 57 SECONDS EAST ALONG THE WESTERLY RIGHT-OF-WAY LINE OF WAUKEGAN ROAD PER DOCUMENT 93174460, A DISTANCE OF 14.45 FEET; THENCE NORTH 49 DEGREES 55 MINUTES 03 SECONDS EAST 19.69 FEET; THENCE SOUTH 40 DEGREES 09 MINUTES 19 SECONDS EAST ALONG A LINE THAT IS 33.00 FEET SOUTHWESTERLY OF THE CENTERLINE OF WAUKEGAN ROAD (SAID LINE BEING THE WESTERLY RIGHT-OF-WAY LINE OF WAUKEGAN ROAD PER SURVEY PREPARED FOR THE COOK COUNTY HIGHWAY DEPARTMENT IN 1927), A DISTANCE OF 309.27 FEET FOR A PLACE OF BEGINNING; THENCE CONTINUING SOUTH 40 DEGREES 09 MINUTES 19 SECONDS EAST ALONG SAID LINE BEING THE WESTERLY RIGHT-OF-WAY LINE OF WAUKEGAN ROAD 675.06 FEET; THENCE SOUTH 43 DEGREES 42 MINUTES

Continued on next page



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CONTINUATION OF EXHIBIT "A"

23 SECONDS WEST 1002.92 FEET; THENCE NORTH 43 DEGREES 07 MINUTES 43 SECONDS WEST 197.40 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 480.00 FEET, HAVING A CHORD BEARING OF NORTH 54 DEGREES 59 MINUTES 43 SECONDS WEST, 198.82 FEET; THENCE NORTH 00 DEGREES 57 MINUTES 37 SECONDS EAST 410.97 FEET; THENCE NORTH 43 DEGREES 42 MINUTES 23 SECONDS EAST 792.27 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2: (NC-1B)

THAT PART OF LOT 1 IN TECHNY PARCEL NC-1 SUBDIVISION, ACCORDING TO THE FINAL PLAT OF SUBDIVISION OF TECHNY PARCEL NC-1 RECORDED ON NOVEMBER 12, 1999, AS DOCUMENT NO. 09067611, IN COOK COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

THAT PORTION OF THE WEST HALF OF SECTION 14, AND PART OF THE EAST HALF OF SECTION 15, IN TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH 89 DEGREES 02 MINUTES 23 SECONDS EAST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15 A DISTANCE OF 1710.95 FEET; THENCE NORTH 00 DEGREES 57 MINUTES 37 SECONDS EAST 306.23 FEET; THENCE NORTH 54 DEGREES 02 MINUTES 09 SECONDS WEST 564.01 FEET; THENCE NORTH 35 DEGREES 57 MINUTES 51 SECONDS EAST ALONG THE EASTERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT-OF-WAY, A DISTANCE OF 724.19 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 592.66 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 1520.58 FEET, HAVING A CHORD BEARING OF SOUTH 39 DEGREES 58 MINUTES 01 SECONDS EAST, 6.15 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 40 DEGREES 04 MINUTES 57 SECONDS EAST ALONG THE WESTERLY RIGHT-OF-WAY LINE OF WAUKEGAN ROAD PER DOCUMENT 93174460, A DISTANCE OF 14.45 FEET; THENCE NORTH 49 DEGREES 55 MINUTES 03 SECONDS EAST 19.69 FEET; THENCE SOUTH 40 DEGREES 09 MINUTES 19 SECONDS EAST ALONG A LINE THAT IS 33.00 FEET SOUTHWESTERLY OF THE CENTERLINE OF WAUKEGAN ROAD (SAID LINE BEING THE WESTERLY RIGHT-OF-WAY LINE OF WAUKEGAN ROAD PER SURVEY PREPARED FOR THE COOK COUNTY HIGHWAY DEPARTMENT IN 1927), A DISTANCE OF 984.33 FEET FOR A PLACE OF BEGINNING; THENCE CONTINUING SOUTH 40 DEGREES 09 MINUTES 19 SECONDS EAST ALONG SAID LINE BEING THE WESTERLY RIGHT-OF-WAY LINE OF WAUKEGAN ROAD 395.58 FEET; THENCE SOUTH 46 DEGREES 28 MINUTES 03 SECONDS WEST 303.59 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 780.00 FEET, HAVING A CHORD BEARING OF SOUTH

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CONTINUATION OF EXHIBIT "A"

28 DEGREES 25 MINUTES 49 SECONDS WEST, 491.10 FEET, THENCE SOUTH 50 DEGREES 43 MINUTES 28 SECONDS WEST 73.93 FEET, THENCE NORTH 86 DEGREES 15 MINUTES 54 SECONDS WEST 54.39 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 400 FEET, HAVING A CHORD BEARING OF NORTH 64 DEGREES 41 MINUTES 48 SECONDS WEST, 301.15 FEET TO A POINT OF TANGENCY; THENCE NORTH 43 DEGREES 07 MINUTES 43 SECONDS WEST 176.46 FEET; THENCE NORTH 43 DEGREES 42 MINUTES 23 SECONDS EAST 1002.92 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

APPENDIX 1

to Participation Agreement, Master Lease and Leasehold Construction Mortgage each dated as of December 22, 2000 (Corporate Headquarters Facility)

DEFINITIONS AND INTERPRETATION

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

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Operative Documents, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement (including any Operative Document), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Operative Documents and reference to any promissory note includes any promissory note which is an extension or renewal thereof or a substitute or replacement therefor;

(v) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) reference in any Operative Document to any Article, Section, Appendix, Schedule, or Exhibit means such Article or Section thereof or Appendix, Schedule or Exhibit thereto;

(vii) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to an Operative Document as a whole and not to any particular Article, Section or other provision thereof;

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

(ix) "or" is not exclusive; and

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

B. Accounting Terms. In each Operative Document, unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determinations and computations shall be made, in accordance with GAAP.

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

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

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

"Account" is defined in Section 3.10 of the Participation Agreement.

"Accountants" means KPMG LLP, or such other firm of independent certified public accountants of recognized national standing selected by the Lessee.

"Accreted Value" shall be calculated as the future value (using the discount rate 8.1955% per annum) of any amount from the date such amount was paid to the date the Residual Value Guarantee Amount is due.

"Acquisition Request" is defined in Section 3.3 of the Participation Agreement.

"Adjusted Percentage" is defined in Section 11.6 of the Participation Agreement.

"Advance" means an advance of funds by the Lessor pursuant to Section 3 of the Participation Agreement which will be used to pay Property Costs, including all amounts capitalized under the terms of the Participation Agreement (it being acknowledged that no such advances or amounts constitute loans to the Lessee other than for the purposes described in Section 7.1(a)(ii) of the Lease and/or under the circumstances described in Section 7.1(b) of the Lease).



"Affiliate" means, when used with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common control with such Person.

"After Tax Basis" means, with respect to any payment to be received, the amount of such payment increased so that, after deduction of the amount of all taxes required to be paid by the recipient calculated at the then maximum marginal rates generally applicable to Persons of the same type as the recipient (less any tax savings realized as a result of the payment of the indemnified amount) with respect to the receipt by the recipient of such amounts, such increased payment (as so reduced) is equal to the payment otherwise required to be made.

"Agent" means LaSalle National Leasing Corporation, as Agent for the Participants pursuant to the Participation Agreement, or any successor or additional Agent appointed in accordance with the terms of the Participation Agreement.

"Agent Financing Statements" means UCC financing statements appropriately completed and executed for filing in the applicable jurisdiction in order to perfect a security interest in favor of the Agent for the ratable benefit of the Participants in the Equipment, if any, located on the Property or in any Improvements on the Property.

"Alternate Base Rate" means, for any period, an interest rate per annum equal to the higher of (A) the current yield on full term U.S. Treasury Notes as most recently reported in *The Wall Street Journal* plus the current swap spread as most recently determined by the Agent plus 1.75% and (B) the Federal Funds Effective Rate most recently determined by the Agent plus .50%. If either of the aforesaid rates or equivalent changes from time to time after the date of the Participation Agreement, the Alternate Base Rate shall be automatically increased or decreased, if appropriate and as the case may be, without notice to the Lessee or the Lessor, as of the effective time of each change.

"Applicable Law" means all existing and future domestic and foreign applicable laws, rules, regulations (including Environmental Laws), statutes, treaties, codes, ordinances, permits, certificates, covenants, restrictions, requirements, orders and licenses of and interpretations by, any Governmental Authorities, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quas-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety or the environment (including, without limitation, wetlands) and those pertaining to the construction, use or occupancy of the Property) and any restrictive covenant or deed restriction or easement affecting the Property.

"Applicable Margin" means with respect to the Advances (and related purchases of Participation Interests therein) which bear interest or accrue yield by reference to the Eurodollar Rate, the respective margin percentage set forth below in basis points:

APPLICABLE MARGIN TABLE

<u>Tranche A Advances</u>	<u>Tranche B Advances</u>	<u>Tranche C Advances</u>
175 bps	190 bps	200 bps

"Appraisal" means, with respect to the Property, a land appraisal and an improvements appraisal, collectively, prepared by a reputable appraiser reasonably approved by the Lessor, the Agent and the Required Participants, which in the judgment of counsel to the Lessor, the Agent and the Required Participants, complies with all of the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto, and all other applicable Requirements of Law, which appraisals taken together will (i) appraise the Fair Market Sales Value of the Property as built in accordance with the Plans and Specifications on the eighteenth (18<sup>th</sup>) monthly anniversary of the Closing Date; as of the commencement of any Renewal Term, if any; and at the end of any Renewal Term, if any; and (ii) contain an estimate of the useful life of the Improvements as of each such date, all in a form satisfactory to the Lessor, the Agent and the Required Participants.

"Appurtenant Rights" means (i) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to the Land Interest, the parcel of land underlying such Land Interest, or the Improvements, including, without limitation, the use of any streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, vaults or strips of land adjoining, abutting, adjacent or contiguous to any Land Interest, or the Improvements (now existing or to be designed and constructed by Construction Agent pursuant to the Construction Agency Agreement) and (ii) all permits, licenses and rights, whether or not of record, appurtenant to the Land Interest or the parcel of land underlying such Land Interest.

"Arranger" means LNLCC.

"Arrangement Fee" is defined in Section 4.2 of the Participation Agreement.

"Asset Termination Value" means, as of any date of determination, an amount equal to the aggregate sum of the outstanding Advances (including all amounts capitalized under the terms of the Participation Agreement), all accrued and unpaid Basic Rent and all Supplemental Rent owing by the Lessee under the Operative Documents.

"Assignment and Acceptance" is defined in Section 12.1(b) of the Participation Agreement.

"Assignment of Construction Documents" means the Assignment of Construction Documents, dated as of the Closing Date, in the form attached as Exhibit A to the Construction Agency Agreement.

"Assignment of Lease" means the Assignment of Lease, dated as of the Land Interest Acquisition Date, from the Lessor to the Agent for the benefit of the Participants, and consented to by the Lessee pursuant to that certain Lessee's Consent, dated as of the Land Interest

Acquisition Date (the "Consent to Assignment") by the Lessee, as obligor, in favor of the Agent for the benefit of the Participants, in each case in the respective forms set forth in Exhibit J to the Participation Agreement.

"Available Commitments" means as to any Participant at any time, an amount equal to the excess, if any, of (a) the amount of such Participant's Commitment over (b) the aggregate amount of its Participation Interest in all Advances made by the Lessor then outstanding.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect.

"Basic Rent" means, following the Completion Date, the sum of the interest or yield on Advances due on any Payment Date as set forth in Section 3.7 of the Participation Agreement.

"Benefit Arrangement" means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by any member of the ERISA Group.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Budget" means a construction budget for the Improvements delivered by the Lessee to the Lessor pursuant to Section 6.1(v) of the Participation Agreement.

"Business" is defined in Section 8.3(k)(ii) of the Participation Agreement.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banks in Chicago, Illinois, New York, New York or (if interest is being determined by reference to the Eurodollar Rate) London, England, are generally authorized or obligated, by law or executive order, to close.

"Capital Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee which, in conformity with GAAP, is, or is required to be, accounted for as a capital lease on the balance sheet of that Person.

"Capitalized Lease Obligations" shall mean any amount payable with respect to any Capital Lease or any lease of any tangible or intangible property (whether real, personal or mixed), however denoted, which either (i) is required by GAAP to be reflected as a liability on the face of the balance sheet of the lessee thereunder or (ii) based on actual circumstances existing and ascertainable, either at the commencement of the term of such lease or at any subsequent time at which any property becomes subject thereto, can reasonably be anticipated to impose on such lessee substantially the same economic risks and burdens, having regard to such lessee's obligations and the lessor's rights thereunder both during and at the termination of such lease, as would be imposed on such lessee by any lease which is required to be so reflected or by the ownership of the leased property.

"Casualty" means any damage or destruction of all or any portion of the Property as a result of a fire or other casualty.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986.

"Certifying Party" is defined in Section 26.1 of the Lease.

"Claims" means any and all obligations, liabilities, losses, actions, suits, judgments, penalties, fines, claims, demands, settlements, costs and expenses (including, without limitation, reasonable legal fees and expenses) of any nature whatsoever, including, as they relate to issues involving any Environmental Law or Environmental Violation, those matters set forth in Section 13.3 of the Participation Agreement.

"Closing Date" is defined in Section 2 of the Participation Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto.

"Commitment" means (i) as to any Participant, the obligation of such Participant to purchase a Participation Interest in Advances to be made by the Lessor under the Participation Agreement, in an aggregate amount at any one time outstanding not to exceed the amount set forth opposite such Participant's name on Schedule I to the Participation Agreement, as such amount may be reduced from time to time in accordance with the provisions of the Participation Agreement, and (ii) as to the Lessor, the obligation of the Lessor to make Advances from amounts received from the Participants pursuant to the purchase of Participation Interests under the Participation Agreement.

"Commitment Fee" is defined in Section 4.1 of the Participation Agreement.

"Commitment Fee Payment Date" means the last day of each March, June, September and December and the Outside Completion Date or such earlier date as the Commitments shall terminate as provided in the Operative Documents.

"Commitment Percentage" means, (i) with respect to each Participant at any time prior to the Completion Date, the percentage which such Participant's Commitment then constitutes of the aggregate Commitments of the Participants as set forth in the column captioned "Pre-Completion Commitment Percentage" on Schedule I to the Participation Agreement and (ii) with respect to each Participant at any time after the Completion Date, the percentage which such Participant's Commitment then constitutes of the aggregate Commitments of the Participants as set forth in the column captioned "Post-Completion Commitment Percentage" on Schedule I to the Participation Agreement (or, in either case, at any time after the Commitments of the Participants shall have expired or terminated, the percentage which the aggregate amount of such Participant's Advances (or related purchases of Participation Interests therein) then outstanding constitutes of the aggregate amount of the Advances (or related purchases of Participation Interests therein) then outstanding).

"Commitment Period" means the period from and including the Land Interest Acquisition Date to but not including the earlier of the Completion Date or the Outside Completion Date, or



such earlier date on which the Commitments shall terminate as provided in the Operative Documents.

"Completion" is defined in Section 7 of the Participation Agreement.

"Completion Date" means, with respect to the Property, the date on which Completion of the Improvements on such Property has occurred.

"Completion Delay Event" means (a) the occurrence of any event or the existence of any condition that causes the likely Completion Date to be later than the Outside Completion Date and (b) the delivery by the Lessee to any Lessor Party at any time of any notice, certificate or other writing which indicates that the likely Completion Date will be later than the Outside Completion Date.

"Condemnation" means any condemnation, requisition, confiscation, seizure or other taking or sale of the use, access, occupancy, easement rights or title to the Property or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain, but not including an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, the Property or alter the pedestrian or vehicular traffic flow to the Property so as to result in change in access to the Property so long as adequate ingress and egress remains with respect to the Property, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action. A "Condemnation" shall be deemed to have occurred on the earliest of the dates that use, occupancy or title is taken.

"Confidential Information" is defined in Section 15.13 of the Participation Agreement.

"Consent to Assignment" is defined in the definition of the term "Assignment of Lease".

"Consent to Construction Agency Agreement Assignment" means the Consent dated as of the Closing Date by the Lessee to the Construction Agency Agreement Assignment in the form attached to the Construction Agency Agreement Assignment.

"Construction Agency Agreement" means the Construction Agency Agreement, dated as of the Closing Date, between the Lessor and the Construction Agent, in the form of Exhibit K to the Participation Agreement.

"Construction Agency Agreement Assignment" means the Assignment of Construction Agency Agreement, dated as of the Closing Date, from the Lessor to the Agent, for the benefit of the Participants, in the form of Exhibit L to the Participation Agreement.

"Construction Agency Agreement Event of Default" means a "Construction Agency Agreement Event of Default" as defined in Section 5.1 of the Construction Agency Agreement.

"Construction Agent" means Crate & Barrel Holdings, Inc., as construction agent under the Construction Agency Agreement.



"Construction Commencement Date" is defined in Section 2.3 of the Construction Agency Agreement.

"Construction Period" means, with respect to the Property, the period commencing on the Construction Commencement Date and ending on the earlier of the Completion Date and the Outside Completion Date for such Property.

"Construction Termination Event" means (a) the occurrence or existence of any Cost Overrun Event or Completion Delay Event, (b) the incurrence by any Lessor Party of any liabilities, losses, damages or expenses excluded from the Lessee's obligations under clause (5) of the proviso to Section 13.1 of the Participation Agreement, or (c) the occurrence or existence of any loss or liability excluded from the Lessee's obligations under Section 24.1 of the Lease Agreement by the proviso to such section.

"Contractual Obligation" means as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, the possession directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Cost Overrun Event" means (a) the delivery by the Lessee of a Funding Request for any Advance that will reduce the Unused Total Commitment to \$0 prior to the Completion Date, (b) the occurrence of any event or the existence of any condition that causes the likely aggregate remaining cost for Completion of the Improvements at any time to exceed the Unused Total Commitment at such time or (c) the delivery by the Lessee to any Lessor Party at any time of any notice, certificate or other writing which indicates that the likely aggregate remaining cost for Completion of the Improvements at such time will exceed the Unused Total Commitment at such time.

"Covered Liabilities" is defined in Section 11.6 of the Participation Agreement.

"Covered Matters" is defined in Section 13.14 of the Participation Agreement.

"Default" means any event or condition which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"Defaulted Amount" is defined in Section 11.7 of the Participation Agreement.

"Defaulting Participant" means, at any time, any of the Participants which at such time has (i) failed to make a payment when due to the Lessor equal to its Commitment Percentage of an Advance, (ii) has been notified of such failure by the Lessor, and (iii) has not cured such failure by making such payment, together with interest at the Late Payment Rate.

"Designated Payment Date" means the Expiration Date, the Termination Date or other date of termination of the Lease.

"Discount Value" shall be calculated as the present value (using the discount rate 8.1955% per annum) of any amount from the date such amount will be paid to the date the Residual Value Guarantee Amount is due.

"Dollars" and "\$" mean dollars in lawful currency of the United States of America.

"EBITDAR" means, with reference to any period, (a) the sum of (i) Net Income for such period, (ii) depreciation of fixed assets and amortization of intangible assets during such period, (iii) Interest Expense for such period, (iv) federal, state and local income taxes for such period, and (v) lease rental expense for the same such period.

"EDI" means Euromarket Designs, Inc., an Illinois corporation.

"EDI II" means Euromarket Designs II, Inc., an Illinois corporation.

"End of the Term Report" is defined in Section 13.2 of the Participation Agreement.

"Environmental Audit" means a Phase One environmental site assessment (the scope and performance of which meets or exceeds ASTM Standard Practice E1527-93 Standard Practice for Environmental Site Assessments: Phase One Environmental Site Assessment Process) of the Land Interest to be acquired by the Lessor on the Land Interest Acquisition Date or of the Property to be remarketed under the Remarketing Option under the Lease.

"Environmental Certificate" is defined in Section 6.1 of the Participation Agreement.

"Environmental Law" means, whenever enacted or promulgated, any foreign, federal, state, county or local law, statute, ordinance, rule, regulation, license, permit, authorization, approval, covenant, criteria, guideline, administrative or court order, judgment, decree, injunction, code or requirement or any agreement with a Governmental Authority:

(x) relating to pollution (or the cleanup, removal, remediation or encapsulation thereof, or any other response thereto), or the regulation or protection of human health, safety or the environment, including air, water, vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life, or

(y) concerning exposure to, or the use, containment, storage, recycling, treatment, generation, discharge, emission, Release or threatened Release, transportation, processing, handling, labeling, containment, production, disposal or remediation of any Hazardous Substance, Hazardous Condition or Hazardous Activity;

in each case as amended and as now or hereafter in effect, and any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries (whether personal or property) or damages due to or threatened as a result of the presence of, exposure to, or ingestion of, any Hazardous Substance, whether such common law or equitable doctrine is now or hereafter recognized or developed. Applicable laws include, but are not limited to, CERCLA; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et

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seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321; the Refuse Act, 33 U.S.C. §§ 401 et seq.; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; and the Occupational Safety and Health Act of 1970, each as amended and as now or hereafter in effect, and their state and local counterparts or equivalents, including any regulations promulgated thereunder.

"Environmental Obligations" means, collectively, any obligations of the Lessee with respect to all Claims against, incurred by or suffered by any Lessor Party, or which adversely affect the Property or the value thereof, which (i) arise as a result of the breach by the Lessee of any representation set forth in Section 8.3 (k) of the Participation Agreement or Section 8.4(b) of the Participation Agreement (to the extent said Section relates to Environmental Laws), (ii) arise as a result of the failure by the Lessee to comply with any of the covenants set forth in Section 10.1(b) of the Participation Agreement or Section 9.1 of the Lease (to the extent either such Section relates to Environmental Laws), (iii) arise under Section 13.3 of the Participation Agreement (subject to the proviso to said Section), or (iv) arise as a result of an Environmental Violation.

"Environmental Violation" means any activity, occurrence or condition or omission that violates or results in non-compliance with any Environmental Law.

"Equipment" means equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever purchased, leased or otherwise acquired by the Lessor using the proceeds of the Participation Interests in the Advances now or subsequently attached to, contained in or used or usable in any way in connection with any operation or letting of the Property, including but without limiting the generality of the foregoing, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, storm doors and windows, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilation, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, cleaning systems (including window cleaning apparatus), telephone wiring, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, pipes, pumps, tanks, conduits, fittings and fixtures of every kind and description.

"Equipment Schedule" means each Equipment Schedule, if any, in the form of Exhibit B to the Lease.

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

"ERISA Group" means the Lessee and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Lessee, are treated as a single employer under Section 414 of the Code.

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

"Eurodollar Rate" means, with respect to each day during each Interest Period, the rate per annum determined by the Agent to be the offered rate per annum at which deposits in Dollars appear with respect to such Interest Period on the Reuters Screen LIBOR Page (or any successor page), or if such offered rate is not available, then the rate per annum at which deposits in Dollars appear with respect to such Interest Period on the Telerate Page 3750 (or any successor page) in each case as of 11:00 a.m. (London time), two Business Days prior to the beginning of such Interest Period or in the event that the foregoing offered rates are not available, then the average (rounded upward to the nearest whole multiple of one sixteenth of one percent per annum, if such average is not such a multiple) of the respective rates notified to the Agent by each of the Participants as the rates at which such Participant's Funding Office is offered Dollar deposits at or about 11:00 a.m. (London time), two Business Days prior to the beginning of such Interest Period in the interbank Eurodollar market for delivery on the first day of such Interest Period for the number of days comprised herein in an amount comparable to the amount of its Participation Interest to be outstanding during such Interest Period.

"Event of Default" means a Lease Event of Default, a Construction Agency Agreement Event of Default or a Guarantee Event of Default.

"Excepted Payments" means:

(a) all indemnity payments (including indemnity payments made pursuant to Section 13 of the Participation Agreement) to which the Lessor, or any of its Affiliates, agents, officers, directors or employees is entitled, provided that during the Construction Period, indemnity payments made to the Lessor pursuant to Section 13.13 of the Participation Agreement for Losses of the Lessor arising out of its indemnification obligations under Section 13.14 of the Participation Agreement shall not constitute Excepted Payments;

(b) any amounts (other than Basic Rent or amounts payable by Lessee pursuant to Section 16.2, Section 16.3 or Articles XVII, XX or XXII of the Lease) payable under any Operative Document to reimburse the Lessor or any of its respective Affiliates (including the reasonable expenses of the Lessor incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any Operative Document, except to the extent that one or more Participants have indemnified the Lessor with respect thereto pursuant to the Participation Agreement;



(c) any amount payable to the Lessor by any Participant or transferee permitted under the Operative Documents of the interest of the Lessor as the purchase price of such Participant's Participation Interest;

(d) any insurance proceeds (or payments with respect to risks self-insured or policy deductibles) under liability policies other than such proceeds or payments payable to the Agent or the Lessor;

(e) any insurance proceeds under policies maintained by the Lessor;

(f) Transaction Expenses or other amounts or expenses paid or payable to or for the benefit of the Lessor;

(g) all right, title and interest of the Lessor to the Property or any portion thereof or any other property to the extent any of the foregoing has been released from the Lien of the Mortgage, the Assignment of Lease and the Construction Agency Agreement Assignment pursuant to the terms thereof following the payment of the Participant Balances of all of the Participants and all amounts due and owing to the Agent; and

(h) any payments in respect of interest to the extent attributable to payments referred to in clauses (a) through (g) above.

"Excess Investment" of the Lessor means the excess (if any) of the outstanding Participant Balance of the Lessor in the Property from time to time over the amount that would have been the Lessor's Participant Balance if, in connection with all Advances actually made under the Participation Agreement, all Participants had paid to the Lessor an amount equal to such Advances times their respective Commitment Percentages, as such excess may be determined by the Lessor. Absent the existence of a Defaulting Participant, a failure by Participant to make a payment required by Section 3.4 of the Participation Agreement or some other unexpected contingency, it is expected that the Lessor will have no Excess Investment.

"Excess Proceeds" means the excess, if any, of the aggregate of all awards, compensation or insurance proceeds payable in connection with a Casualty or Condemnation over the Asset Termination Value paid by the Lessee pursuant to Articles XIV and XV of the Lease with respect to such Casualty or Condemnation.

"Excess Reimbursement" is defined in Section 11.6 of the Participation Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Expiration Date" means, as of any date of determination, the later of the Initial Expiration Date or, if one or more Renewal Terms have been granted, the First Extended Expiration Date or the Final Extended Expiration Date, as the case may be.



"Expiration Date Purchase Obligation" means the Lessee's obligation, pursuant to Section 20.2 of the Lease, to purchase all (but not less than all) of the Property on the Expiration Date.

"Extension Effective Date" is defined in Section 3.6(b) of the Participation Agreement and Section 21.1 of the Lease.

"Extension Request" is defined in Section 3.6(b) of the Participation Agreement.

"Extension Response Date" is defined in Section 3.6(b) of the Participation Agreement.

"Fair Market Sales Value" means, with respect to the Property, the amount, which in any event shall not be less than zero, that would be paid in cash in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, for the ownership of the Property. The Fair Market Sales Value of the Property shall be determined based on the assumption that, except for purposes of Article XVII of the Lease and Section 13.2 of the Participation Agreement, the Property is in the condition and state of repair required under Section 10.1 of the Lease and the Lessee is in compliance with the other requirements of the Operative Documents.

"Federal Funds Effective Rate" means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of quotations for such day on such transaction received by the Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means that certain letter agreement dated as of the Closing Date between the Lessee and the Agent.

"Final Extended Expiration Date" means the date which is two years following the First Extended Expiration Date, in the event a second Renewal Term has been granted pursuant to Section 12.1 of the Lease.

"Final Extended Maturity Date" means the date which is two years following the First Extended Maturity Date, in the event that the First Extended Maturity Date has been extended for an additional two years pursuant to Section 3.6(b) of the Participation Agreement.

"First Extended Expiration Date" means the date which is three years following the Initial Expiration Date, in the event the initial Renewal Term has been granted pursuant to Section 21.1 of the Lease.

"First Extended Maturity Date" means the date which is three years following the Initial Maturity Date, in the event the Initial Maturity Date has been extended for an additional three years pursuant to Section 3.6(b) of the Participation Agreement.

"Fixed Charge Coverage Ratio" means at any time the same is to be determined, the quotient of (a) EBITDAR for the four most recently completed fiscal quarters of the Lessee, divided by (b) Fixed Charges for the same such period.

"Fixed Charges" means, with reference to the Lessee and the Guarantors on a consolidated basis for any period, the sum of (without duplication) (i) the aggregate amounts of mandatory current principal payments required to be made by the Lessee and the Guarantors and their Subsidiaries during such period in respect of principal on all Indebtedness for Borrowed Money (whether at maturity, as a result of mandatory sinking fund redemption, mandatory prepayment, acceleration or otherwise), (ii) Interest Expense for the same such period, and (iii) lease rental expense for the same such period.

"Fixtures" means all fixtures relating to the Improvements, including all components thereof, located in or on the Improvements, together with all replacements, modifications, alterations and additions thereto.

"Force Majeure Event" means with respect to the Property any event (the existence or potentiality of which was not known and could not have been discovered through the exercise of due diligence by the Lessee prior to the Land Interest Acquisition Date) beyond the control of the Construction Agent, other than a Casualty or Condemnation, including, but not limited to, strikes, lockouts, adverse soil conditions, acts of God, adverse weather conditions, inability to obtain labor or materials, government activities, civil commotion and enemy action; but excluding any event, cause or condition that results from the Construction Agent's financial condition or failure to pay or any event, cause or condition which could be remedied through the exercise of commercially reasonable efforts or the commercially reasonable expenditure of funds.

"Fully Indemnifiable Event" means the occurrence of any of the following events: (i) a Lease Event of Default specified in Section 17.1(f) or (g) of the Lease or (ii) the Lessee has committed fraud, misapplication of funds, illegal acts or willful misconduct in respect of the Property, the Operative Documents or any actions or transactions in connection therewith.

"Funding Date" means any Business Day on which Advances are funded pursuant to the Participation Agreement.

"Funding Office" means the office of each Participant identified on Schedule II to the Participation Agreement as its Funding Office.

"Funding Request" is defined in Section 3.4 of the Participation Agreement.

"GAAP" means United States generally accepted accounting principles (including principles of consolidation), in effect from time to time.

"Governmental Action" means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Applicable Law, and shall include, without

limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operation of the Property.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Ground Lease" means the Ground Lease dated as of the Land Interest Acquisition Date between the Lessee, as ground sublessor, and the Lessor, as ground sublessee, substantially in the form attached as Exhibit O to the Participation Agreement.

"Ground Lease Event of Default" means a "Ground Lease Event of Default" as defined in Section 5.1 of the Ground Lease.

"Ground Rent" means the rent payable by the Head Ground Lessee under the Head Ground Lease or by the Lessor under the Ground Lease.

"Guarantee" means the Guarantee dated as of the Closing Date executed by each of EDI and EDI II in favor of the Agent, for the benefit of the Participants, in the form of Exhibit M to the Participation Agreement.

"Guarantee Event of Default" is defined in the Guarantee.

"Guarantor" means each of EDI and EDI II.

"Hazardous Activity" means any activity, process, procedure or undertaking that directly or indirectly (i) produces, generates or creates any Hazardous Substance; (ii) causes or results in (or threatens to cause or result in) the Release of any Hazardous Substance into the environment (including air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life); (iii) involves the containment or storage of any Hazardous Substance; or (iv) would be regulated as hazardous waste treatment, storage or disposal within the meaning of any Environmental Law.

"Hazardous Condition" means any condition that violates or threatens to violate, or that results in or threatens noncompliance with, any Environmental Law.

"Hazardous Substance" means any of the following: (i) any petroleum or petroleum product, explosives, radioactive materials, asbestos, formaldehyde, polychlorinated biphenyls, lead and radon gas; (ii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous to the environment or human health or safety; or (iii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

"Head Ground Lease" means the Ground Lease, dated as of April 10, 2000, between the Head Ground Lessor and the Head Ground Lessee.

"Head Ground Lease Event of Default" means an "Event of Default" under and as defined in Section 17.2 of the Head Ground Lease.

"Head Ground Lessee" means Crate & Barrel Holdings, Inc., a Delaware corporation, as assignee of CB Northbrook Headquarters, L.L.C., a Delaware limited liability company.

"Head Ground Lessor" means Cole Taylor Bank, as Trustee under a Trust Agreement dated January 6, 2000 and known as Trust No. 99-8161.

"Impositions" means, except to the extent described in the following sentence, any and all liabilities, losses, expenses, costs, charges and Liens of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or withholdings ("Taxes") including (i) real and personal property taxes, including personal property taxes on any property covered by the Lease that is classified by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) any excise taxes; (iv) real estate transfer taxes, mortgage taxes, conveyance taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added, privilege and doing business taxes, license and registration fees; (vi) assessments on the Property, including all assessments for public improvements or benefits, whether or not such improvements are commenced or completed within the Term; and (vii) any tax, Lien, assessment or charge asserted, imposed or assessed by the PBGC or any governmental authority succeeding to or performing functions similar to, the PBGC, and in each case all interest, additions to tax and penalties thereon, which at any time prior to, during or with respect to the Term or in respect of any period for which the Lessee shall be obligated to pay Supplemental Rent, may be levied, assessed or imposed by any Governmental Authority upon or with respect to (a) the Property or any part thereof or interest therein; (b) the leasing, financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, activity conducted on, delivery, insuring, use, operation, improvement, transfer of title, return or other disposition of the Property or any part thereof or interest therein; (c) the Participation Interests with respect to the Property or any part thereof or interest therein; (d) the rentals, receipts or earnings arising from the Property or any part thereof or interest therein; (e) the Operative Documents, the performance thereof, or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to the Property or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract (including the Construction Agency Agreement) relating to the construction, acquisition or delivery of the Improvements or any part thereof or interest therein; or (h) otherwise in connection with the transactions contemplated by the Operative Documents.

The term "Imposition" shall not mean or include:

(i) Taxes and impositions (other than Taxes that are, or are in the nature of, sales, use, transfer or property taxes) that are imposed on an Indemnitee by the United States federal government or any foreign government that are based on or measured by the net income (including taxes based on capital gains and minimum taxes) of such Person; provided, that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;



(ii) Taxes and impositions (other than Taxes that are, or are in the nature of, sales, use, transfer or property taxes) that are imposed by any state or local jurisdiction or taxing authority within any state or local jurisdiction and that are franchise taxes or are based upon or measured by the net income or net receipts except that this clause (ii) shall not apply to (and thus shall not exclude) any such net incremental Taxes imposed on an Indemnitee with respect to the transactions contemplated by the Operative Documents by a state (or any local taxing authority thereof or therein) where the Property is located, possessed or used under the Lease by reason of the transactions contemplated by the Operative Documents being characterized by such state authority as something other than a loan; provided, that this clause (ii) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made (anything to the contrary notwithstanding, nothing in the Operative Documents shall be construed to impose upon Lessee any liability for Taxes imposed upon an Indemnitee to the extent imposed with respect to any activities of such Indemnitee other than under the transactions contemplated by the Operative Documents);

(iii) any Tax or imposition to the extent, but only to such extent, it relates to any act, event or omission that occurs after the termination of the Lease and redelivery or sale of the Property in accordance with the terms of the Lease (but not any Tax or imposition that relates to any period prior to such termination and redelivery);

(iv) any Tax or imposition for so long as, but only for so long as, it is being contested in accordance with the provisions of Section 13.5 of the Participation Agreement; or

(v) any Taxes which are imposed on an Indemnitee as a result of the gross negligence or wilful misconduct of such Indemnitee itself, but not Taxes imposed as a result of ordinary negligence of such Indemnitee.

Any Tax excluded from the defined term "Imposition" in any one of the foregoing clauses (i) through (v) shall not be construed as constituting an Imposition by any provision of any other of the aforementioned clauses.

"Improvements" means all buildings, structures, Fixtures, Equipment, if any, and other improvements of every kind existing on the Land Interest Acquisition Date and at any time and from time to time and either constructed pursuant to the Construction Agency Agreement or those purchased with amounts advanced by the Participants pursuant to the Participation Agreement (or those becoming the property of the Lessor pursuant to Article XI of the Lease) on or under the Land Interest, together with any and all appurtenances to such buildings, structures, or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways, and including all Modifications and other additions to or changes in the Improvements at any time.

"Indebtedness for Borrowed Money" means for either the Lessee or either Guarantor (without duplication) (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than trade accounts



payable arising in the ordinary course of business which are not more than one hundred eighty (180) days past due), (iii) all indebtedness secured by any Lien upon property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person and (v) all obligations of such Person on or with respect to letters of credit, banker's acceptances and other extensions of credit whether or not representing obligations for borrowed money.

"Indemnification Sections" is defined in Section 13.13 of the Participation Agreement.

"Indemnified Party" is defined in Section 13.14(a) of the Participation Agreement.

"Indemnitee" means the Lessor, the Agent, the Participants, their respective Affiliates and their respective successors, assigns, directors, shareholders, partners, officers, employees and agents.

"Initial Expiration Date" means the fifth anniversary of the Closing Date.

"Initial Maturity Date" means the fifth anniversary of the Closing Date.

"Insurance Requirements" means all terms and conditions of any insurance policy required by the Lease to be maintained by the Lessee, and all requirements of the issuer of any such policy.

"Interest Expense" means, with reference to any period, the amount (if any) by which (x) the sum of all interest charges (including imputed interest charges with respect to Capitalized Lease Obligations and all amortization of debt discount and expense) of the Lessee and the Guarantors and their Subsidiaries for such period determined on a combined basis in accordance with GAAP exceeds (y) interest income of the Lessee, the Guarantors and their Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

"Interest Payment Advance" means any Advance made to fund the payment of interest or yield accruing on Advances prior to the Completion Date.

"Interest Period" means, with respect to any Advance based upon the Eurodollar Rate:

(a) initially, the period commencing on the funding with respect to such Advance and ending one, three or six months thereafter, as selected by the Lessee in its Funding Request given with respect thereto; and

(b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Advance and ending one, three or six months thereafter, as selected by the Lessee by irrevocable notice to the Lessor and the Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto;

provided that, the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Expiration Date shall end on the Expiration Date;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month;

(iv) the Lessee shall select Interest Periods so as not to require a payment or prepayment of any Advance during an Interest Period for such Advance; and

(v) if the Lessee shall fail to specify the length of any Interest Period for any Advance (including an Interest Payment Advance or any amount capitalized under the terms of the Participation Agreement), such Advance shall have an Interest Period of one month until such time as the Lessee shall specify an Interest Period therefor.

"Investment Company Act" means the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.

"LNLC" is defined in the preamble to the Participation Agreement.

"Land Interest" means leasehold title to the parcel of real property described on Schedule 1 of the Lease Supplement and all Appurtenant Rights attached thereto.

"Land Interest Acquisition Date" means the date on which the Lessor acquires the Land Interest, which date shall be specified in the Acquisition Request.

"Late Payment Rate" means (a) for each day (other than as set forth in clause (a) of this definition) the Federal Funds Effective Rate or (b) for the purpose of computing interest on past due payments for each day following the fifth day after such payments first became due, a rate of two percent (2%) per annum in excess of the Alternate Base Rate then in effect; provided, the Late Payment Rate shall not, notwithstanding anything to the contrary herein contained, exceed the maximum rate of interest permitted by applicable law.

"Lease" means the Master Lease, dated as of the Closing Date, between the Lessor and the Lessee, together with the Lease Supplement and all Equipment Schedules thereto, if any.

"Lease Balance" means, as of any date of determination, an amount equal to the aggregate sum of the outstanding amount of the Advances (including all amounts capitalized

under the terms of the Participation Agreement), all accrued and unpaid Basic Rent and all Supplemental Rent (minus Prepaid Rent) owing by the Lessee under the Operative Documents.

"Lease Commencement Date" means the Completion Date.

"Lease Default" means any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Lease Event of Default.

"Lease Event of Default" is defined in Section 17.1 of the Lease.

"Lease Supplement" means the Lease Supplement substantially in the form of Exhibit A to the Lease together with all attachments and schedules thereto, as such Lease Supplement may be supplemented, amended or modified from time to time.

"Lessee" means Crate & Barrel Holdings, Inc., a Delaware corporation, as lessee under the Lease, and its successors and assigns expressly permitted under the Operative Documents.

"Lessee Properties" is defined in Section 8.3(k)(i) of the Participation Agreement.

"Lessor" means Lease Plan North America, Inc., as Lessor under the Lease.

"Lessor Financing Statements" means UCC financing statements appropriately completed and executed for filing in the applicable jurisdiction in order to protect the Lessor's interest under the Lease to the extent the Lease is a security agreement.

"Lessor Lien" means any Lien, true lease or sublease or disposition of title arising as a result of (a) any claim against the Lessor not resulting from the transactions contemplated by the Operative Documents, (b) any act or omission of the Lessor which is not required by the Operative Documents or is in violation of any of the terms of the Operative Documents, (c) any claim against the Lessor with respect to Taxes or Transaction Expenses against which Lessee is not required to indemnify the Lessor, pursuant to Sections 9 or 13.5 of the Participation Agreement or (d) any claim against the Lessor arising out of any transfer by the Lessor of all or any portion of the interest of the Lessor in the Property or the Operative Documents other than the transfer of title to or possession of the Property by the Lessor pursuant to and in accordance with the Lease or the Participation Agreement or pursuant to the exercise of the remedies set forth in Article XVII of the Lease.

"Lessor Losses" is defined in Section 13.13 of the Participation Agreement.

"Lessor Party" means the Lessor, the Agent and the Participants.

"Lien" means any mortgage, deed of trust, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including, without limitation, any irrevocable license, conditional sale or other title retention agreement, any lease in the nature thereof, or any other right of or arrangement with any creditor to have its claim satisfied out of any specified property or asset with the proceeds therefrom prior to the satisfaction of the claims of the general creditors of the owner thereof, whether or not filed or recorded, or the filing of, or agreement to execute as "debtor", any financing or continuation statement under the Uniform Commercial Code of any

jurisdiction or any foreign or federal, state or local lien imposed pursuant to any Environmental Law.

"Losses" is defined in Section 13.14(b) of the Participation Agreement.

"Marketing Period" means the period commencing on the date one hundred eighty (180) days prior to the Expiration Date and ending on the Expiration Date.

"Material", "Materially", and "Material Adverse Effect" mean, with respect to any event, condition, occurrence or other circumstance, that (i) as a result thereof or in connection therewith, the Lessee or either Guarantor knows or should have known that the Lessee and the Guarantors will fail (or if the Lessee and the Guarantors do fail) to satisfy any of the financial covenants set forth in Section 10.1 of the Participation Agreement or (ii) such event, condition, occurrence or other circumstance impairs (A) the ability of the Lessee or either Guarantor to perform, in any material respect, their obligations under any of the Operative Documents, (B) the value or condition of the Property or the Lessor's interests therein or title thereto or (C) the ability of the Lessor, the Agent or any Participant to enforce any of its rights or remedies under any Operative Document.

"Material Environmental Amount" means an amount payable by the Lessee and/or its Subsidiaries in excess of 20% of the original Property Cost for remedial costs, non-routine compliance costs, compensatory damages, punitive damages, fines, penalties or any combination thereof.

"Materials of Environmental Concern" means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

"Maturity Date" means, as of any date of determination, the later of the Initial Maturity Date or, if one or more extensions of the Initial Maturity Date have been granted pursuant to Section 3.6(b) of the Participation Agreement, the First Extended Maturity Date or the Final Extended Maturity Date, as the case may be.

"Modifications" is defined in Section 11.1(a) of the Lease.

"Mortgage" means, with respect to the Property, a Leasehold Construction Mortgage, Security Agreement and Financing Statement substantially in the form attached as Exhibit N to the Participation Agreement, made by the Lessor in favor of the Agent for the benefit of the Participants and satisfactory in form and substance to the Agent and the Required Participants in order to create a first priority mortgage lien on the Lessor's leasehold interest in the Land Interest and fee interest in the Improvements and a first priority security interest in and lien on the Equipment, if any.

"Mortgage Documents" is defined in Section 6.1 of the Participation Agreement.

"Mortgage Taxes" is defined in Section 6.1 of the Participation Agreement.

"Mortgaged Property" is defined in Section 7.1 of the Lease.

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

"Net Cure Proceeds" is defined in Section 11.8 of the Participation Agreement.

"Net Income" means, with reference to any period, the net income (or net loss) of the Lessee, the Guarantors and their Subsidiaries for such period as computed on a consolidated basis in accordance with GAAP, and, without limiting the foregoing, after deduction from gross income of all expenses and reserves, including reserves for all taxes on or measured by income, but excluding any extraordinary profits and also excluding any taxes on such profits.

"Net Proceeds" means all amounts paid in connection with any Casualty or Condemnation, and all interest earned thereon, less the expense of claiming and collecting such amounts, including all costs and expenses in connection therewith for which the Agent or the Lessor is entitled to be reimbursed pursuant to the Lease.

"Net Sales Proceeds" means the Gross Proceeds actually received by the Lessor upon any sale by the Lessor of any part of the Property pursuant to Articles XVII or XXII of the Lease, including, without limitation, (i) any such payments made to the Lessor by the Lessee or any purchaser, (ii) any Shortfall Amount paid to the Lessor by the Lessee, and (iii) any interest paid by the Lessee to the Lessor on past due amounts under the Lease; but excluding any payments applied by the Lessor to pay, or received by the Lessor as reimbursement for, bona fide costs of the sale and further excluding any excess net sales proceeds received from a purchaser that the Lessor is required to pay over to the Lessee. In the event that for any reason whatsoever, including a default by the Lessee, the Lessor does not sell the Property pursuant to the Lease on the Designated Payment Date, "Net Sales Proceeds" shall nonetheless include any Shortfall Amount actually received by the Lessor. Further, if the Lessor does not sell the Property pursuant to the Lease, then "Net Sales Proceeds" shall also include the excess, if any, of:

(A) all rents and all sales, condemnation and insurance proceeds actually received by the Lessor from any sale or lease after the Designated Payment Date of any interest in, or because of any subsequent taking or damage to, the Property; over

(B) the sum of (i) all costs of collecting the rents and proceeds described in the preceding clause (A) plus (ii) all ad valorem taxes, insurance premiums and other costs of every kind incurred by the Lessor with respect to the ownership, operation or maintenance of the Property.

However, for purposes of computing any excess described in the preceding sentence, costs described in clause (B) shall not include the Lessor's general overhead costs or any costs for which the Participants have already paid the Lessor their Commitment Percentages thereof as required by Section 11.6 of the Participation Agreement.



"Non-Consenting Participant" means any Participant which has denied, or is deemed to have denied, an Extension Request pursuant to Section 3.6 of the Participation Agreement.

"Operative Documents" means the following:

- (a) the Participation Agreement;
- (b) the Lease and Lease Supplement;
- (c) the Guarantee;
- (d) the Ground Lease;
- (e) the Construction Agency Agreement;
- (f) the Assignment of Lease;
- (g) the Consent to Assignment;
- (h) the Equipment Schedules;
- (i) the Mortgage;
- (j) the Construction Agency Agreement Assignment;
- (k) the Consent to Construction Agency Agreement Assignment;
- (l) the Assignment of Construction Documents; and
- (m) the Subordination Agreement.

"Original Executed Counterpart" is defined in Section 31.8 of the Lease.

"Outside Completion Date" means the eighteenth (18<sup>th</sup>) monthly anniversary of the Closing Date, as such date may be extended for up to an additional nine months in the event Completion is delayed due to the occurrence of a Force Majeure Event, provided that in no event shall the Outside Completion Date be extended to a date which is later than the twenty-seventh (27<sup>th</sup>) monthly anniversary of the Closing Date.

"Overdue Rate" means, with respect to the Advances, fees or any other payment due under the Operative Documents, the interest rate then applicable to the Advances plus 2% per annum.

"Parent" means CRBA, GmbH, a German corporation and the parent corporation of the Lessee.

"Parent Loan" means the intercompany loan in the aggregate principal amount of \$269,000,000 owed by the Lessee to the Parent.

"Parent Note" means the promissory note dated April 8, 1998 executed by Lessee in favor of Parent in respect of the Parent Loan, as in effect on the Closing Date.

"Participant's Letter" is defined in Section 12.1(b) of the Participation Agreement.

"Participation Agreement" means the Participation Agreement, dated as of the Closing Date, among the Lessee, the Guarantors, the Lessor, the Participants and the Agent.

"Participation Interest" means, as to each Tranche A Participant and Tranche B Participant, a participation interest or, as to each Tranche C Participant, an equity interest, in the Advances and the Lease and the right to receive that percentage of the following payments

actually received by the Lessor from or on behalf of the Lessee as is set forth on Schedule I to the Participation Agreement under the column heading "Pre-Completion Commitments" in the case of any determination of such percentage prior to the Completion Date, and under the column heading "Post-Completion Commitments" in the case of any determination of such percentage from and after the Completion Date, subject in any case to the provisions of Sections 3.10 - 3.20 and Section 11 of the Participation Agreement: (i) Basic Rent, (ii) Supplemental Rent, (iii) Asset Termination Value, (iv) Purchase Option Price, (v) Net Sales Proceeds, (vi) Residual Value Guarantee Amount, (vii) the Shortfall Amount, (viii) Lease Balance, and (ix) other payments in respect of indemnities or pursuant to either of the Guarantees or the exercise of remedies under the Operative Documents, excluding, however, (x) any Excepted Payments and (y) as to a particular Participant, any payments on account of any Advances (including any amounts capitalized under the terms of the Participation Agreement) and interest thereon for which the Lessor has not received payment from such Participant of such Participant's Commitment Percentage thereof.

"Participants" means LNLC, the Lessor, and each Person executing the Participation Agreement or a Participant's Letter as a Participant and purchasing a Participation Interest in the transactions contemplated by the Participation Agreement and the other Operative Documents.

"Participant Balance" means for each Participant the sum of its Tranche A Participant Balance, its Tranche B Participant Balance and its Tranche C Participant Balance.

"Payment Date" means (a) any Scheduled Payment Date and (b) any date on which interest is payable pursuant to Section 3.7(b) of the Participation Agreement in connection with any prepayment of the Advances.

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Permitted Exceptions" means (i) Liens of the types described in clauses (i), (ii), (iii), (v) and (viii) of the definition of Permitted Liens; and (ii) all non-monetary encumbrances, exceptions, restrictions, easements, rights of way, servitudes, encroachments and irregularities in title, other than any such matters or conditions which, in the reasonable assessment of the Agent, materially impair the value of the Property or the use of the Property for its intended purpose.

"Permitted Liens" means:

(i) the respective rights and interests of the parties to the Operative Documents as provided in the Operative Documents;

(ii) the rights of any sublessee under a sublease expressly permitted by the terms of the Lease;

(iii) Liens for Taxes that either are not yet due or are being contested in accordance with the provisions of Section 13.1 of the Lease;

(iv) Liens arising by operation of law, materialmen's, mechanics', workers', repairmen's, employees', carriers', warehousemen's and other like Liens in connection

with any Modifications or arising in the ordinary course of business for amounts that either are not more than 60 days past due or are being diligently contested in good faith by appropriate proceedings, so long as such proceedings satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease;

(v) Liens of any of the types referred to in clause (iv) above that have been bonded for not less than the full amount in dispute (or as to which other security arrangements satisfactory to the Lessor have been made), which bonding (or arrangements) shall comply with applicable Requirements of Law, and has effectively stayed any execution or enforcement of such Liens;

(vi) Liens arising out of judgments or awards with respect to which appeals or other proceedings for review are being prosecuted in good faith and for the payment of which adequate reserves have been provided as required by GAAP or other appropriate provisions have been made, so long as such proceedings have the effect of staying the execution of such judgments or awards and satisfy the conditions for the continuation of proceedings to contest set forth in Section 13.1 of the Lease;

(vii) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of either the Lessee or any Subsidiary;

(viii) easements, rights of way and other encumbrances on title to real property pursuant to Section 12.2 of the Lease, including, with respect to the Property, those easements, rights of way and other encumbrances specifically disclosed in the title insurance policies delivered to, and approved by, the Lessor and the Agent on the Land Interest Acquisition Date;

(ix) a Lien consisting of a deposit or pledge made, in the ordinary course of business, in connection with, or to secure payment of, obligations under worker's compensation, unemployment insurance or similar legislation; and

(x) other Liens expressly permitted by the agreements, documents or other instruments governing Indebtedness for Borrowed Money of the Lessee or either Guarantor, so long as no such Liens attach to the Property.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other entity.

"Plan" means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (ii) has at any time within the preceding five years been maintained, or contributed to, by any Person which was at such

time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

"Plans and Specifications" means, with respect to the Property, the plans and specifications for the Improvements to be constructed on the Property.

"Prepaid Rent" means the sum of the aggregate amount of (a) Property Improvements Costs and Transaction Expenses, if any, caused by a Cost Overrun Event and paid by the Construction Agent prior to the Completion Date pursuant to (and subject to the limitations set forth in) Section 3.4(e) of the Construction Agency Agreement, and (b) indemnification payments made by the Lessee prior to the Completion Date under Section 9.1 of the Participation Agreement, Section 9.3 of the Participation Agreement, Section 13.1 of the Participation Agreement, Section 13.10 of the Participation Agreement, Article XV of the Lease, Article XVI of the Lease, Section 18.1 of the Lease, Section 23.1 of the Lease or Section 24.1 of the Lease, other than any such payments made as a result of or in connection with a Fully Indemnifiable Event or any Environmental Obligations.

"Proceeds" is defined in Section 22.1(k) of the Lease.

"Project Costs" means "project costs" within the meaning of such term under GAAP in effect on the date of the Participation Agreement.

"Property" means (i) the Land Interest (including the Lessor's rights under the Ground Lease) and (ii) all of the Improvements, Equipment (if any) and Fixtures at any time located on or under such Land Interest other than Equipment and Fixtures not financed by an Advance and not becoming property of the Lessor under Article XI of the Lease.

"Property Balance" means, with respect to the Property, an amount equal to the outstanding amount of the Advances (including all amounts capitalized under the terms of the Participation Agreement), all accrued and unpaid interest thereon and all other amounts owing by the Lessee under the Operative Documents.

"Property Cost" means with respect to the Property, the aggregate amount of the Property Improvements Costs.

"Property Improvements Costs" means, with respect to the Property, the amount funded to or on behalf of the Construction Agent or the Lessee by the Lessor under the Participation Agreement and the Construction Agency Agreement to construct any Improvements, Fixtures or Modifications, to purchase Equipment, if any, to be used on the Property in accordance with the Plans and Specifications therefor and the Operative Documents and to pay Transaction Expenses during the Construction Period that are to be capitalized under Section 9.1 of the Participation Agreement, as set forth in the Acquisition Request and Funding Requests therefor (including interest and yield on the Advances during the Construction Period applied to such cost and funded by an Interest Payment Advance and amounts funded by one or more Lessor Parties and capitalized under Section 3.7(e) of the Participation Agreement).

"Purchase Notice" is defined in Section 20.1 of the Lease.

"Purchase Option" is defined in Section 20.1 of the Lease.

"Purchase Option Price" is defined in Section 20.1 of the Lease.

"Release" means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

"Remarketing Option" is defined in Section 22.1 of the Lease.

"Renewal Effective Date" is defined in Section 21.1(a) of the Lease.

"Renewal Option" is defined in Section 21.1(a) of the Lease.

"Renewal Request" is defined in Section 21.1(a) of the Lease.

"Renewal Response Date" is defined in Section 21.1(a) of the Lease.

"Renewal Term" means a renewal term of three years immediately following the Initial Expiration Date, or two years following the First Extended Expiration Date, as the case may be, with respect to which Lessee has exercised a Renewal Option pursuant to Section 21.1 of the Lease.

"Rent" means, collectively, the Basic Rent and the Supplemental Rent, in each case payable under the Lease.

"Replacement Participant" is defined in Section 3.7(c) of the Participation Agreement.

"Requesting Party" is defined in Section 26.1 of the Lease.

"Required Modification" is defined in Section 11.1(a) of the Lease.

"Required Participants" means, at any time, Participants the Commitment Percentages of which aggregate at least 66 2/3%.

"Requirement of Law" means all Federal, foreign, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Property, the Improvements or the demolition, construction, use or alteration thereof, whether now or hereafter enacted and in force, including any that require repairs, modifications or alterations in or to the Property or in any way limit the use and enjoyment thereof (including all building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. § 1201 et. seq. and any other similar Federal, foreign, state or local laws or ordinances and the regulations promulgated thereunder) and any that may relate to environmental requirements (including all Environmental Laws), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments which are either of record or known to the Lessee affecting the Property, the Appurtenant Rights and any easements, licenses or other agreements entered into pursuant to Section 12.2 of the Lease.



"Residual Value Guarantee Amount" means, as of any date of determination, (A) prior to the Completion Date, an amount equal to the remainder of (1) the total Tranche A Proportionate Share of the total Project Costs of the Improvements minus (2) the Accreted Value or Discount Value of any Prepaid Rent paid by the Lessee; and (B) after the Completion Date, an amount equal to the aggregate Tranche A Proportionate Share of the Lease Balance provided, however, that if (i) a Cost Overrun Event has occurred and the Lessee has paid Prepaid Rent, or (ii) any amount has been capitalized pursuant to clause (ii) of Section 3.7(e) of the Participation Agreement, then the Residual Value Guarantee Amount shall be recomputed such that (a) the Lessee is not deemed under GAAP to be the owner of the Property prior to Completion, and (b) from the Lessee's perspective the Lease qualifies as an operating lease in accordance with GAAP in effect on the date of the Participation Agreement.

"Response Actions" means remove, removal, remedy, and remedial action as those terms are defined in CERCLA, 42 U.S.C. § 9601.

"Responsible Officer" means, with respect to the Lessee or either Guarantor, the chief executive officer, the president, any executive vice president, the chief financial officer, the treasurer and the manager of treasury services of such Person, provided that the manager of treasury services of the Lessee shall be a Responsible Officer solely for purposes of signing Funding Requests for the Lessee.

"Responsible Officer's Certificate" means a certificate signed by any Responsible Officer, which certificate shall certify as true and correct the subject matter being certified to in such certificate.

"Scheduled Payment Date" means (a) with respect to interest (or yield) on any Advance, the last day of each Interest Period of three months or less duration and, with respect to any Advance with an Interest Period of six months, the third monthly anniversary of the commencement of such Interest Period and the last day of such Interest Period, and (b) as to the principal amount of the Advances, each date, if any, indicated on Schedule 1 to the Lease as being a payment date with respect to such portion of the Property Improvements Cost, if any.

"Securities Act" means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Security Documents" means the collective reference to the Mortgage, the Assignment of Lease, the Construction Agency Agreement Assignment, the Assignment of Construction Documents and all other security documents hereafter delivered to the Agent granting a Lien on any asset or assets of any Person to secure the obligations and liabilities of the Lessor to the Agent and the Participants under the Participation Agreement or of the Lessee to the Lessor under the Lease.

"Shortfall Amount" means, as of the Expiration Date or other termination date of the Lease, the amount that the Asset Termination Value will exceed the aggregate of the Gross Proceeds and the Residual Value Guarantee Amount upon the completion of a sale of the Property pursuant to Article XXII of the Lease.

"Significant Casualty" means (i) a Casualty that results in an insurance settlement on the basis of a total loss, or a constructive or compromised total loss, or (ii) a Casualty that in the reasonable, good faith judgment of the Lessee (as evidenced by a Responsible Officer's Certificate delivered to the Lessor pursuant to Section 16.1 of the Lease) either (a) renders the Property unsuitable for continued use as a commercial property of the type of such property immediately prior to such Casualty or (b) is so substantial in nature that restoration of the Property to substantially its condition as existed immediately prior to such Casualty would be impracticable or impossible.

"Significant Condemnation" means (i) a Condemnation that involves a taking of Lessor's entire title to the related Land Interest, (ii) a Condemnation that results in loss of possession of the Property by the Lessee for a period in excess of one hundred eighty (180) consecutive days, or (iii) a Condemnation that in the reasonable, good faith judgment of the Lessee (as evidenced by a Responsible Officer's Certificate delivered to the Lessor pursuant to Section 16.1 of the Lease) either (a) renders the Property unsuitable for continued use as commercial property of the type of such property immediately prior to such Condemnation or (b) is such that restoration of the Property to substantially its condition as existed immediately prior to such Condemnation would be impracticable or impossible.

"Significant Event" means (i) a Significant Casualty, (ii) a Significant Condemnation, (iii) an event where the restoration of the Property subject to a Casualty or Condemnation shall not be completed prior to the earlier of (A) the 180th day prior to the Expiration Date or (B) twelve (12) months following the occurrence of such Casualty or Condemnation or (iv) the occurrence of an Environmental Violation where the costs to clean up or remediate the same are reasonably estimated by the Lessee to exceed 30% of Asset Termination Value.

"Subordination Agreement" means the Subordination Agreement dated as of the Closing Date among the Parent, the Lessee, the Lessor and the Agent subordinating the obligations of Lessee under the Parent Loan to the obligations of Lessee and the Guarantors under the Operative Documents.

"Subsidiary" means any corporation or other entity more than 50% of the outstanding ordinary voting shares or other equity interest of which is at the time directly or indirectly owned by the Lessee, either Guarantor, by one or more Subsidiaries of either of them, or by either the Lessee or either Guarantor and one or more of their respective Subsidiaries.

"Supplemental Rent" means (i) prior to the Completion Date, the aggregate amount of Prepaid Rent or amounts arising out of a Fully Indemnifiable Event or constituting an Environmental Obligation, in each case paid or payable by the Lessee or the Construction Agent, and (ii) at all times from and after the Completion Date, all amounts, liabilities and obligations (other than Basic Rent) which Lessee assumes or agrees to pay to Lessor or any other Person under the Lease, or under any of the other Operative Documents, including, without limitation, payments of the Residual Value Guarantee Amount, the Shortfall Amount and payments pursuant to Sections 16.2, 16.3, 17.2(h), or 17.6 of the Lease and Articles XX and XXII of the Lease and any and all Ground Rent.

"Tangible Net Worth" means, on a consolidated basis, as of any time the same is to be determined, the shareholders' equity (including capital stock, additional paid-in-capital and retained earnings after deducting treasury stock, but excluding minority interests in Subsidiaries) which would appear on the consolidated balance sheet of the Lessee, the Guarantors and their Subsidiaries determined on a consolidated basis in accordance with GAAP, plus the sum of any subordinated indebtedness, including without limitation, the subordinated indebtedness to the affiliated company of the Parent, less the sum of (i) the aggregate book value of all assets which are classified as "Intangible Assets" under GAAP, including without limitation, goodwill, patents, trademarks, trade names, copy rights, franchises, and deferred charges (including, without limitation, unamortized debt discount and expense, organizational costs and deferred research and development expense) and similar assets, (ii) the write-up of assets above cost, (iii) shareholder notes receivable, (iv) affiliate notes receivable, and (v) income tax receivables.

"Taxes" is defined in the definition of Impositions.

"Term" is defined in Section 2.3 of the Lease.

"Termination Date" is defined in Section 15.1(d), 16.2(a) and 17.2(e) of the Lease.

"Termination Notice" is defined in Section 16.1 of the Lease.

"Total Commitment" means the amount set forth as such in Schedule I to the Participation Agreement or, if such amount is reduced pursuant to Section 3.6(a) of the Participation Agreement, the amount to which so reduced.

"Total Liabilities" means, at any time the same is to be determined, the aggregate of all indebtedness, obligations, liabilities, reserves, and any other items which would be listed as a liability on a consolidated balance sheet of the Lessee, the Guarantors and their Subsidiaries determined on a consolidated basis in accordance with GAAP, less the sum of any subordinated indebtedness, including without limitation, the subordinated indebtedness to the affiliated company of the Parent.

"Tranche A Participants" means those Participants purchasing a Tranche A Participation Interest in the Advances and maintaining a Tranche A Participation Interest Commitment.

"Tranche A Participation Interest" means, as to each Tranche A Participant as of any date of determination, such Participant's Tranche A Participation Interest Commitment Percentage then in effect, multiplied by the outstanding amount of all Advances as to which such Participant has funded its Tranche A Participation Interest Commitment Percentage under Section 3.4 of the Participation Agreement.

"Tranche A Participant Balance" means for each Tranche A Participant as of any date of determination an amount equal to the sum of such Participant's Tranche A Participation Interest as of such date in all outstanding Advances (including all amounts capitalized under the terms of the Participation Agreement), together with all accrued and unpaid interest thereon and all other amounts owed to such Tranche A Participant under the Operative Documents.

"Tranche A Participation Interest Commitment" is defined in Section 3.5 of the Participation Agreement.

"Tranche A Participation Interest Commitment Percentage" means (i) with respect to all Participants in the aggregate, (A) at any time prior to the Completion Date, 89.9% of the Aggregate Commitments, and (B) at any time from and after the Completion Date, 81.0% of the Aggregate Commitments and (ii) with respect to each Tranche A Participant, the percentage of the Aggregate Commitments set forth after such Participant's Tranche A Participation Interest Commitment in Schedule I to the Participation Agreement (A) at any time prior to the Completion Date, under the column heading "Pre-Completion Commitments," and (B) at any time from and after the Completion Date, under the column heading "Post-Completion Commitments."

"Tranche A Proportionate Share" means (a) at any time prior to the Completion Date, eighty-nine and nine-tenths percent (89.9%) and (b) at any time from and after the Completion Date, eighty-five percent (85.0%).

"Tranche B Participants" means those Participants purchasing a Tranche B Participation Interest in the Advances and maintaining a Tranche B Participation Interest Commitment.

"Tranche B Participation Interest" means, as to each Tranche B Participant as of any date of determination, such Tranche B Participant's Tranche B Participation Interest Commitment Percentage then in effect multiplied by the outstanding amount of all Advances as to which such Participant has funded its Tranche B Participation Interest Commitment Percentage under Section 3.4 of the Participation Agreement.

"Tranche B Participant Balance" means for each Tranche B Participant as of any date of determination an amount equal to the sum of such Participant's Tranche B Participation Interest as of such date in all outstanding Advances (including all amounts capitalized under the terms of the Participation Agreement), together with all accrued and unpaid interest thereon and all other amounts owed to such Tranche B Participant under the Operative Documents.

"Tranche B Participation Interest Commitment" is defined in Section 3.5 of the Participation Agreement.

"Tranche B Participation Interest Commitment Percentage" means (i) with respect to all Participants in the aggregate, (A) at any time prior to the Completion Date, 7.1% of the Aggregate Commitments, and (B) at any time from and after the Completion Date, 12.0% of the Aggregate Commitments, and (ii) with respect to each Tranche B Participant, the percentage of the Aggregate Commitments set forth after such Participant's Tranche B Participation Interest Commitment in Schedule I to the Participation Agreement (A) at any time prior to the Completion Date, under the column heading "Pre-Completion Commitments" and (B) at any time from and after the Completion Date, under the column heading "Post-Completion Commitments."

"Tranche C Equity Interest" means, as to each Tranche C Participant as of any date of determination, such Tranche C Participant's Tranche C Equity Interest Commitment Percentage then in effect multiplied by the outstanding amount of all Advances as to which such Participant



has funded its Tranche C Equity Interest Commitment Percentage under Section 3.4 of the Participation Agreement.

"Tranche C Equity Interest Commitment" is defined in Section 3.5 of the Participation Agreement.

"Tranche C Equity Interest Commitment Percentage" means (i) with respect to all Participants in the aggregate at any time, 3% of the Aggregate Commitments, and (ii) with respect to each Tranche C Participant, the percentage of the Aggregate Commitments set forth after such Participant's Tranche C Equity Interest Commitment in Schedule I to the Participation Agreement (A) at any time prior to the Completion Date, under the column heading "Pre-Completion Commitments" and (B) at any time from and after the Completion Date, under the column heading "Post-Completion Commitments."

"Tranche C Participant Balance" means for each Tranche C Participant as of any date of determination an amount equal to the sum of such Participant's Tranche C Equity Interest as of such date in all outstanding Advances (including all amounts capitalized under the terms of the Participation Agreement), together with all accrued and unpaid yield thereon and all other amounts owed to such Tranche C Participant under the Operative Documents.

"Tranche C Participants" means those Participants purchasing a Tranche C Equity Interest in the Advances and maintaining a Tranche C Equity Interest Commitment.

"Transaction Expenses" means all costs and expenses incurred in connection with the preparation, execution and delivery of the Operative Documents and the transactions contemplated by the Operative Documents including without limitation:

(a) the reasonable fees, out-of-pocket expenses and disbursements of counsel for each of the Lessor, the Participants and the Agent in negotiating the terms of the Operative Documents and the other transaction documents, preparing for the closing under, and rendering opinions in connection with, such transactions and in rendering other services customary for counsel representing parties to transactions of the types involved in the transactions contemplated by the Operative Documents;

(b) the reasonable fees, out-of-pocket expenses and disbursements of counsel, and (without duplication) the reasonable allocated cost of internal legal services and all disbursements of internal counsel of each of the Lessor, the Participants and the Agent in connection with (1) any amendment, supplement, waiver or consent with respect to any Operative Documents requested or approved by the Lessee and (2) any enforcement of any rights or remedies against the Lessee, the Parent or either Guarantor in respect of the Operative Documents;

(c) any other reasonable fees, out-of-pocket expenses, disbursements or cost of any party to the Operative Documents or any of the other transaction documents, including without limitation any amounts paid to insurance consultants;

(d) any and all Taxes and fees incurred in recording, registering or filing any Operative Document or any other transaction document, any deed, declaration, mortgage,



security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Documents;

(e) any title fees, premiums and escrow costs and other expenses relating to title insurance and the closing contemplated by the Transaction Documents;

(f) all expenses relating to all Environmental Audits;

(g) the Arrangement Fee; and

(h) any and all Appraisal fees;

"UCC Financing Statements" means collectively the Agent Financing Statements and the Lessor Financing Statements.

"Unfunded Liabilities" means, with respect to any Plan at any time, the amount (if any) by which (i) the present value of all benefits under such Plan exceeds (ii) the fair market value of all Plan assets allocable to such benefits (excluding any accrued but unpaid contributions), all determined as of the then most recent valuation date for such Plan, but only to the extent that such excess represents a potential liability of a member of the ERISA Group to the PBGC or any other Person under Title IV of ERISA.

"Uniform Commercial Code" and "UCC" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

"Unused" means, with respect to the Total Commitment at any time, the remainder of (a) the Total Commitment at such time minus (b) the aggregate amount of all Advances made prior to such time.

"Voluntary Retention of the Property" means any election made by the Lessor to keep the Property pursuant to the Lease when the Lessee has not exercised the Purchase Option and has made and caused to be made all payments to the Lessor required by the Operative Documents (including the Shortfall Amount).

"Voting Stock" of any Person means capital stock of any class or classes or other equity interests (however designated) having ordinary voting power for the election of directors or similar governing body of such Person.

"Wholly-Owned" when used in connection with any Subsidiary of either the Lessee or a Guarantor means a Subsidiary of which all of the issued and outstanding shares of stock or other equity interests (other than directors' qualifying shares as required by law) shall be owned by the Lessee or such Guarantor and/or one or more of their respective Wholly-Owned Subsidiaries.