

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported) **May 30, 2012**

QAD Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

0-22823
(Commission File Number)

77-0105228
(IRS Employer Identification Number)

100 Innovation Place, Santa Barbara, California
(Address of principal executive offices)

93108
(Zip code)

Registrant's telephone number, including area code **(805) 566-6000**

Not Applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

Effective May 30, 2012, QAD Ortega Hill, LLC, a wholly owned limited liability company of QAD Inc., entered into a variable rate credit agreement (the “Agreement”) with Rabobank, N.A., to refinance an existing mortgage. The agreement provides for an initial principal amount of \$16.1 million and bears interest at LIBOR plus 2.25%. The credit agreement matures in June 2022 and is secured by QAD’s headquarters located in Santa Barbara, California. Under the terms of the Agreement, QAD entered into an interest rate swap with Rabobank, N.A. The swap agreement has an initial notional amount of \$16.1 million and fixes the overall interest rate at 4.31%. The terms of the agreement provide for QAD to make net monthly payments of \$88,100 consisting of principal and interest and one final payment of \$11.7 million.

Item 1.02. Termination of a Material Definitive Agreement.

The Agreement replaces QAD’s existing loan agreement with Rabobank, N.A.. The information provided in Item 1.01 above is incorporated herein by reference.

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

As described in Item 1.01 above, QAD entered into the Agreement with Rabobank, N.A. effective May 30, 2012. The information provided in Item 1.01 above is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

d) Exhibits.

[10.1](#) Credit Agreement between the Registrant and Rabobank, N.A. effective as of May 30, 2012

[10.2](#) Real Estate Term Loan Note between the Registrant and Rabobank, N.A. effective as of May 30, 2012

[10.3](#) Deed of Trust between the Registrant and Rabobank, N.A. effective as of May 30, 2012

[10.4](#) ISDA 2002 Master Agreement between the Registrant and Rabobank, N.A. effective as of May 30, 2012

[10.5](#) ISDA Schedule to the 2002 Master Agreement between the Registrant and Rabobank, N.A. effective as of May 30, 2012

[10.6](#) Confirmation of a Swap Transaction between between the Registrant and Rabobank, N.A. effective as of June 4, 2012

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

QAD Inc.
(Registrant)

Date: June 5, 2012

By By /s/ Daniel Lender
Daniel Lender
Chief Financial Officer
(on behalf of the Registrant and as
Principal Financial Officer)

CREDIT AGREEMENT

This agreement is dated as of May 30, 2012. It is between QAD ORTEGA HILL, LLC, a Delaware limited liability company ("Borrower") and RABOBANK, N.A., a national banking association ("Lender").

Borrower requests that Lender make a term loan to Borrower. Lender will make a term loan, subject to the terms of this agreement.

ARTICLE 1- THE REAL ESTATE TERM LOAN

1.01 Loan Amount. Lender shall lend Borrower the principal sum of \$16,053,651.44 (the "Loan").

1.02 Purpose. The Loan must be used only to refinance Borrower's existing term loan with Lender (Loan No. 9417427988)

1.03 Interest. The unpaid principal balance of the Loan will bear interest at a rate equal to the one month LIBOR plus 2.250% per annum, Adjusted on the fifteenth day of each Loan Month, with LIBOR determined two London Banking Days immediately preceding the date of the respective Adjustment (the "LIBOR Indexed Rate"). The term "Loan Month" means the one month period beginning on the fifteenth day of the calendar month immediately following the Closing Date, and each successive one month period.

1.04 Required Payments; Maturity Date.

(a) Borrower shall pay accrued interest on the Loan on July 15, 2012 and on the fifteenth day of each month after the Closing Date to the Maturity Date.

(b) Borrower shall pay Loan principal at the times and in the respective amount shown on Schedule 1.04(b) attached.

(c) The unpaid principal balance of, all unpaid accrued interest on, and all other charges under this agreement with respect to the Loan, shall be paid on June 1, 2022 (the "Maturity Date").

1.05 Prepayments. Prepayments of the Loan may be made at any time without prepayment fee or penalty.

1.06 The Note. The Loan will be evidenced by this agreement and a promissory note in a form provided by Lender (the "Note").

ARTICLE 2 - COVENANTS REGARDING THE LOAN

2.01 Computation of Interest. All computations of accrued interest under the Loan Documents other than interest at the Maximum Rate, and all computations of fees under the Loan Documents, will be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) elapsed; and all computations of interest accrued at the Maximum Rate will be based upon a year of the actual number of days in the respective year. Subject to Section 2.04, there is no limit on the amount that a rate of interest subject to Adjustment by Lender may increase at any one time, or in the aggregate. Lender's determination of a rate of interest will be conclusive, absent manifest error.

2.02 Late Fee. To the extent permitted by Applicable Law, Borrower shall pay a late fee in the amount of 2.000% of the amount of any scheduled payment due prior to the Maturity Date that is not paid in full when due; provided, however, that any payment for the full amount then due that is made within 10 days of its due date shall not be subject to a late fee. The imposition and payment of a late fee will not constitute a waiver of Lender's rights with respect to an Event of Default as a result of that late payment.

2.03 Default Rate. Upon the occurrence of an Event of Default, the principal balance of the Loan and, to the extent permitted by Applicable Law, all other Loan Obligations shall, from the date of an Event of Default until the date Lender notifies Borrower that such Event of Default is waived or cured or all Loan Obligations are paid in full, bear interest at the Default Rate. Subject to the provisions of Section 2.04, the "Default Rate" means (a) with respect to the unpaid principal balance of any Loan, the rate per annum which is equal to the otherwise applicable rate, plus 2.000% per annum; and (b) with respect to all other Loan Obligations, 5.000% per annum. Interest payable at the Default Rate shall be paid from time to time on demand, or if not sooner demanded, on the fifteenth day of each month. The provisions of this section may result in the compounding of interest. The provisions of this section will not constitute a waiver of any Event of Default.

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2.04 Maximum Rate. Notwithstanding any provision of this agreement to the contrary, (a) no interest will be due on any amount due under this agreement if, under Applicable Law, Lender is not permitted to charge interest on that amount, and (b) in all other cases interest due under this agreement will be calculated at a rate not to exceed the Maximum Rate. If Borrower is requested by Lender to pay interest on any amount due under this agreement at a rate greater than the Maximum Rate, the amount of interest due on that amount will be deemed the Maximum Rate and all payments in excess of the Maximum Rate will be deemed to have been Prepayments without prepayment fee or penalty, and not interest. All amounts other than interest which are paid or agreed to be paid to Lender for the use, forbearance, or detention of Borrower's indebtedness to Lender under this agreement shall, to the extent permitted by Applicable Law, be amortized over the full stated term of the indebtedness, so that the rate of interest on account of that indebtedness does not exceed the Maximum Rate for so long as the indebtedness is outstanding.

2.05 Method and Application of Payments. All payments of principal, interest, and other amounts to be made under the Loan Documents shall be made to Lender in U.S. dollars and in immediately available funds, without set-off, deduction, or counterclaim, not later than 2:00 pm (California time) on the dates on which those payments will become due (any of those payments made after the time on the due date will be deemed to have been made on the next succeeding Business Day). Unless otherwise agreed to in writing, or otherwise required by Applicable Law, payments will be applied first to accrued, unpaid interest, then to any unpaid collection costs, late charges and other charges, and any remaining amount to principal, provided, however, during the continuance of an Event of Default, Lender reserves the right to apply payments among principal, interest, late charges, collection costs and other charges in such order of priority as Lender shall from time to time determine in its sole discretion. The early or late date of making a regularly scheduled payment will be disregarded for purposes of allocating the payment between principal and interest. For this purpose, the payment will be treated as though made on the date due. In any legal action or proceeding, the entries made by Lender in an account or accounts maintained by Lender or Rabobank International or any of their Affiliates in accordance with its usual practice and evidencing the Obligations, will be *prima facie* evidence of the existence and amounts of those Obligations.

2.06 ACH Payments. So long as any Loan Obligations are unpaid or unsatisfied, Borrower and/or QAD Inc., a Delaware corporation ("QAD"), shall maintain a demand deposit account with Lender (the "Designated Account") in good standing. Borrower authorizes (and shall cause QAD to authorize, as applicable) Lender to, at Lender's option in each instance, initiate debits to the Designated Account, on the due date, for all interest and principal payments, any fees and expenses, and any other amounts due and payable by Borrower with respect to the Loan and Interest Hedging Obligations, by means of the automatic clearinghouse electronic funds transfer system, by direct debit of the Designated Account, or by any other commercially accepted method (hereafter, "ACH Payments"). Lender shall give Borrower not less than ten days notice before beginning ACH Payments. If Lender elects to initiate ACH Payments, Borrower will thereafter maintain sufficient funds in the Designated Account on the dates Lender enters debits for ACH Payment of regularly scheduled payments of interest, principal, and fees, if any. If there are insufficient funds in the Designated Account on the date Lender enters any debit authorized by this agreement, Lender may reverse the debit. Borrower agrees to upon request by Lender, execute and deliver to Lender an ACH Payment authorization in form and content satisfactory to Lender. Subject to Section 2.04, all rates of interest specified in this agreement shall be increased by 0.100% per annum if Borrower does not maintain the Designated Account in good standing.

2.07 Inability to Determine Rates. If, in connection with any Loan bearing interest at a rate to be determined in whole or in part on the basis of an applicable LIBOR based index (a "LIBOR Based Rate"), Lender determines that (a) United States dollar deposits are not being offered to banks in the London interbank market for the applicable amount of such Loan, (b) adequate and reasonable means do not exist for determining the applicable LIBOR Based Rate, or (c) the applicable LIBOR Based Rate does not adequately and fairly reflect the cost to Lender of funding that Loan, Lender will promptly so notify the Borrower. Thereafter, the obligation of Lender to make or maintain any Loan bearing interest at the applicable LIBOR Based Rate shall be suspended until Lender revokes such notice, and all Loans which would otherwise bear interest at the applicable LIBOR Based Rate shall accrue interest at a comparable rate based on an index designated by Lender in its sole discretion after notice to Borrower.

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ARTICLE 3- COLLATERAL

3.01 **Collateral Documents.** The payment and performance of the Obligations are secured by the following:

(a) all Liens in favor of Lender created under (i) the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date of this agreement by Borrower to and in favor of RABOBANK, N.A., a national banking association, for the benefit of Lender, on behalf of itself and, if Borrower enters into Interest Hedging Agreements with Swap Counterparties, as agent for the other Secured Parties, and encumbering real estate located in Santa Barbara County, California; and (ii) any other instrument or agreement delivered to Lender in conjunction with this agreement, which states that it secures all or any of the Obligations (the property encumbered by those Liens, the "Collateral;" and those instruments and agreements securing all or any of the Obligations, the "Collateral Documents") and

(b) all Liens upon and security interests created under any other written instrument or agreement stating expressly that it secures all or any portion of the indebtedness, liabilities or obligations of Borrower under the terms of this specific agreement.

3.02 Due on Sale or Encumbrance Provisions. Each Collateral Document which is a mortgage, deed of trust or deed to secure debt includes the following provision: Grantor shall not make or permit any Prohibited Transfer. Any Prohibited Transfer shall be an Event of Default, permitting Beneficiary to declare all of the Secured Obligations to be due and payable immediately. "Prohibited Transfer" means: (a) any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, lease of the Property not expressly permitted under this instrument or the other Secured Obligation Documents, or other transfer of all or any material part of the Property or any interest in it, including any transfer of Mineral Rights, Water Rights, or Water Stock, whether voluntary, involuntary, by operation of law or otherwise; (b) if Grantor is a corporation, any transfer or transfers of shares of the voting power or the direct or indirect beneficial ownership of Grantor; (c) if Grantor is a partnership, withdrawal or removal of any general partner, dissolution of the partnership under Applicable Law, or any transfer or transfers of the partnership interests; (d) if Grantor is a limited liability company, withdrawal or removal of any managing member (but not of any non-member manager), termination of the limited liability company or any transfer or transfers of the voting power or the ownership of the economic interest in the Grantor; or (e) if Grantor is a trust, withdrawal or removal of any trustee or revocation of the trust.

ARTICLE 4- CONDITIONS

4.01 Conditions of the Loan. Lender's obligation to make the Loan is subject to satisfaction of Lender's sole discretion of the following conditions precedent:

(a) Borrower has executed and delivered the Loan Documents to Lender; and Lender has executed this agreement and all other Loan Documents to which Lender is a Party;

(b) Lender has received evidence satisfactory to Lender, of (i) the formation and existence of all Parties to the Transaction Documents other than Lender, and except for any Party that is an individual, (ii) due authorization of the individuals executing the Transaction Documents on behalf of those Parties;

(c) Lender has received all appraisals and inspection reports required by Lender, in a form and content satisfactory to Lender;

(d) Lender has received evidence satisfactory to Lender, that Borrower is in compliance with all applicable Environmental Laws, including a phase I environmental assessment of the real estate collateral performed by a third party consultant approved by Lender (that evidence, the "Environmental Information");

(e) Lender has received evidence satisfactory to Lender, that all regulatory approvals, Permits and licenses required under Applicable Law for Borrower's business operations have been issued and are in full force and effect;

(f) Lender has received evidence satisfactory to Lender, that the Liens granted to Lender under the Collateral Documents are valid and enforceable and, upon the Closing will be, properly perfected, and prior to the rights and interests of all other Persons, except those rights and interests acceptable to Lender in its sole discretion;

(g) Lender has received evidence satisfactory to Lender, that all policies of insurance required under the Loan Documents are in full force and effect and all premiums for those policies have been paid through the date required by Lender;

(h) Lender has received, at least 5 Business Days prior to the Closing Date, all documentation and other information required by bank regulatory authorities under applicable "know your customer laws" and Anti-Terrorism Laws, including the U.S.A. Patriot Act;

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- (i) all representations and warranties of all Parties other than Lender in the Transaction Documents are true and correct;
- (j) Lender has received a written opinion from Borrower's legal counsel acceptable to Lender, covering all issues required by Lender;
- (k) Lender's receipt of a closing fee in the amount of \$80,500.00 (the "Closing Fee");
- (l) Lender has received reimbursement of Lender's out of pocket expenses, including Legal Fees, incurred in connection with the underwriting of the Loans or the Closing (collectively, the "Closing Expenses");
- (m) Lender has received copies of all Leases and such estoppel certificates and subordination, non-disturbance and attornment agreements signed by Tenants, landlords and, if applicable, in recordable form, as Lender may have requested;
- (n) Lender shall have received such subordination agreements signed by such lien holders and creditors of Borrower, if applicable, in recordable form, as Lender may request;
- (o) Lender shall have received in form and substance satisfactory to Lender (i) an irrevocable written commitment by the Title Insurer or, if the Title Policy is to be issued by the Title Company on behalf of the Title Insurer, the Title Company that it will issue to Lender the Title Policy upon the Closing, and (ii) if the Title Policy is to be issued by the Title Company on behalf of the Title Insurer, a closing protection letter or insured closing letter;
- (p) as of the Closing Date, the following shall be true and correct:
 - (i) no Default or Event of Default has occurred and is continuing; and
 - (ii) no event has occurred and no condition exists which has resulted in or could reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect; and
- (q) Lender has received all other documents, certificates, filings, consents, approvals, legal opinions, information and other preconditions requested by Lender.

4.02 Closing Deadline. Lender shall have no obligation to make the Loan unless the conditions precedent to the Closing set forth herein have been fully complied with and the Closing has occurred on or before the Closing Deadline. Termination of Lender's commitment to make the Loan pursuant to this Section shall not relieve Borrower of its obligation to reimburse Lender for its costs, expenses and other charges payable by Borrower hereunder or of any indemnity obligations hereunder or under the other Loan Documents, but Borrower shall not be obligated to pay the Closing Fee. Lender shall also be relieved of its obligation to make the Loan hereunder in the event of a material change in the Real Estate or the financial condition of Borrower prior to the Closing. If Lender elects to close the Loan after the Closing Deadline, Lender's commitment to make the Loan shall be deemed to have been extended to the actual Closing Date.

ARTICLE 5– BORROWER REPRESENTATIONS

5.01 Representations. From and after the date hereof and until such time as all Obligations have been paid in full, Borrower represents and warrants to Lender that:

- (a) it has complied with all applicable laws concerning its organization, existence and the transaction of its business, and is in existence and good standing in its state of organization and each state in which it conducts its business, except to the extent failure to do so could not reasonably be expected to have a Material Adverse Effect;
- (b) the execution, delivery and performance by Borrower of each Transaction Document to which it is a party, is within the powers and authority of Borrower and have been duly authorized; and the Transaction Documents have been duly executed and delivered by each of the Loan Parties thereto;
- (c) the Transaction Documents do not conflict with any Applicable Law;
- (d) each Transaction Document to which Borrower is a Party is a legal, valid and binding agreement of Borrower, enforceable against Borrower in accordance with its terms, and any instrument or agreement required thereunder, when executed and delivered to Lender, will be similarly legal, valid, binding and enforceable subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, and similar laws generally affecting creditors' rights and to general principles of equity;

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(e) all financial statements and other reports, documents, instruments, information and forms of evidence concerning Borrower or the Collateral (the "**Financial Information**"), delivered to Lender in connection with this agreement, are accurate, correct and sufficiently complete in all material respects to provide Lender true and accurate knowledge of their subject matter, including, without limitation, all material contingent liabilities;

(f) there has been no event or occurrence which has resulted in or could reasonably be expected to result in, individual or in the aggregate, any Material Adverse Effect since the effective date of the Financial Information provided to Lender;

(g) Borrower has good and marketable title to, or a valid leasehold interest in, all of its property and assets as reflected in the Financial Information provided to Lender, and such assets and properties are subject to no Liens and Borrower has complied with all material obligations under all material leases to which it is a party and enjoys peaceful and undisturbed possession under such leases;

(h) the Collateral Documents are effective to create, in favor of Lender, legally valid and enforceable security interests in such right, title and interest each applicable Loan Party shall from time to time have in the Collateral and such security interests are subject to no Liens and are prior to the rights and interests of all other Persons, except those rights and interests acceptable to Lender in its sole discretion. Each of the Loan Parties has properly delivered to Lender all Collateral that requires perfection of the security interests by possession and has authorized all filing and recording by Lender required for the perfection of the security interests by filing or recording;

(i) Borrower is not the subject of any Judgment which could reasonably be expected to have a Material Adverse Effect; and there is no lawsuit, tax claim or other dispute pending or to Borrower's knowledge threatened against Borrower that, if determined adverse to Borrower, is reasonably likely to have a Material Adverse Effect;

(j) the Transaction Documents do not conflict with, nor is Borrower in default in any material respect under any agreement or arrangement in effect providing for or relating to extensions of credit or other indebtedness of any nature in respect of which Borrower is in any manner directly or contingently obligated;

(k) Borrower has filed all tax returns (federal, state, and local) required to be filed by Borrower and has paid all material taxes, assessments, and governmental charges and levies thereon, including interest and penalties;

(l) Borrower and the Real Estate are in material compliance with all Applicable Laws (including all Environmental Laws), and there is no claim, action, proceeding or investigation pending or to Borrower's knowledge threatened against Borrower or the Real Estate with respect to a violation of any Applicable Law (including any Environmental Law) by Borrower;

(m) no Loan Party has treated, stored, used or Released any Hazardous Material in, on or at any of the properties or facilities owned or leased by the Loan Parties (except for inventories of substances that are used or to be used in the ordinary course of business of the Loan Parties (which inventories have been stored and used and wastes disposed of in material compliance with all applicable Environmental Laws), and there are no underground tanks, surface impoundments or lagoons, whether operative or temporarily or permanently closed, asbestos-containing materials, or PCB-containing equipment located in, on or at any of the properties or facilities owned or leased by the Loan Parties;

(n) Borrower has previously delivered to Lender each environmental audit, assessment or investigation report in the possession or control of any Loan Party which have been prepared by any party during the 5-year period preceding the Closing date relating to environmental conditions or compliance with Environmental Laws on any of the properties or facilities owned or leased by any Loan Party;

(o) Borrower is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986;

(p) Borrower is not an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended;

(q) no Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Loan will be used, either directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose; or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board;

(r) no Default or Event of Default has occurred and is continuing; and

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(s) no Loan Party or any Affiliate thereof is in violation of any Anti-Terrorism Laws and the use of the proceeds of the Loan by Borrower will not violate any Anti-Terrorism Laws.

5.02 Information Accurate and Complete. Borrower's submission of any report, record, certificate or other information pertaining to the condition or operations, financial or otherwise, of Borrower, from time to time, whether or not required under this agreement, will be deemed accompanied by a representation by Borrower that the report, record or information is complete and accurate in all material respects as to the condition or operations of Borrower (and, if applicable, Borrower's Subsidiaries, Affiliates, partners, shareholders, members, or other principals), including, without limitation, all material contingent liabilities and does not omit to state any material fact necessary to make the information contained therein misleading.

ARTICLE 6 – BORROWER COVENANTS

Until such time as all Obligations have been paid in full in cash:

6.01 Interest Hedging. Borrower shall maintain in full force and effect, one or more interest rate swaps or other similar agreements with Lender, an Affiliate of Lender, or another counterparty acceptable to Lender, and in a form and substance satisfactory to Lender, which effectively enables Borrower to protect itself against the risk of interest rate fluctuations as to a notional principal amount equal to the unpaid principal balance of the Loan for a term up to and including the applicable Maturity Date.

6.02 Debt Service Coverage Ratio. At all times prior to repayment of the Obligations, the Annual Net Operating Income for the Real Estate shall be adequate to support a minimum Debt Service Coverage Ratio of 1.25:1.00. The Debt Service Coverage Ratio shall be tested annually based on a calendar year, with the initial testing commencing as of January 31, 2013 with respect to calendar year 2012. Accordingly, Borrower shall demonstrate to Lender's reasonable satisfaction that the Real Estate has a minimum Debt Service Coverage Ratio of 1.25:1.00 with respect to the preceding year as set forth above (the "Preceding Year"). If the Debt Service Coverage Ratio is less than 1.25:1.00 for the Preceding Year, then it shall be an event of default entitling Lender, at its option, to any or all of the following remedies: (i) have Borrower provide Lender with quarterly operating statements and rent rolls by no later than the 15th day of the month following each calendar quarter until Borrower demonstrates achievement of a minimum Debt Service Coverage Ratio of 1.25:1.00 for 4 successive quarters; (ii) charge default interest until Borrower demonstrates achievement of a minimum Debt Service Coverage Ratio of 1.25:1.00 for 4 successive quarters; (iii) pledge other collateral, in a form and on terms acceptable to Lender, to remargin the Obligations so that they are in compliance with a minimum Debt Service Coverage Ratio of 1.25:1.00; or (iv) require Borrower, within 30 days of demand, to make a principal reduction payment on the Obligations in an amount equal to the amount of principal necessary to cause the principal balance of the Obligations, when calculating the Debt Service Coverage Ratio of not less than 1.25:1.00. Nothing contained herein shall be construed as altering or eliminating any obligation on the part of Borrower to make any other principal reduction payments as provided for in the Loan Documents.

6.03 Other Debt. Borrower shall have no outstanding and shall not incur any direct or contingent liabilities or lease obligations, or guaranty of the liabilities of others, except the following if not otherwise prohibited under the Transaction Documents: (a) liabilities and obligations to Lender or any of its Affiliates; (b) normal trade credit not more than 90 days past due or being contested in good faith by appropriate proceedings; (c) lease obligations or debt incurred for the purpose of purchasing equipment used in the ordinary course of business; and (d) other liabilities and obligations in existence on the date of this transaction and disclosed in the most recent financial statement submitted to Lender.

6.04 Other Liens. Borrower shall not create, assume or suffer to exist any Liens on the rights, title or interests in its property, except the following if not otherwise prohibited under the Loan Documents: (a) Liens in favor of Lender or any of its Affiliates; and (b) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of Borrower in accordance with generally accepted accounting principles ("GAAP"); and (c) easements, rights-of-way, restrictions and other similar encumbrances affecting real property 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 the Borrower or interfere or otherwise result in a breach of any Lease.

6.05 Sale of Assets. Borrower shall not sell or transfer any business or asset, except the following if not otherwise prohibited by the Loan Documents: (a) sales or transfers of inventory in the ordinary course of business and (b) sales or transfers of obsolete or worn out property, in the ordinary course of business.

6.06 [Intentionally Omitted]

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6.07 Loans to Others. Borrower shall not make loans to others except the following to the extent not otherwise prohibited by the Loan Documents: (a) extensions of credit made prior to the date of this agreement and disclosed to and approved by Lender in writing on or before the date of this agreement (b) extensions of credit to current Subsidiaries and Affiliates and (c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the ordinary course of business to persons other than family members, Subsidiaries, and Affiliates.

6.08 Books and Records. Borrower shall maintain and cause each of its Subsidiaries to maintain proper books of record and account including full, true, and correct entries of all dealings and transactions relating to its and their business and activities on an accrual basis, in all material respects in conformity with GAAP.

6.09 Deposit Account. Borrower and/or QAD shall maintain with Lender a deposit account during the entire term of the Loan.

6.10 Reporting Requirements. Borrower shall furnish to Lender:

(a) as soon as available, but no later than 30 days after filing, copies of federal income tax returns filed by Borrower, including all schedules and exhibits and any extensions of the filing date (with copies of extensions to be provided to Lender not later than 30 days following the original date for filing of said extensions);

(b) promptly upon sending or receipt, copies of any management letters and correspondence relating to management letters, sent to or received from Borrower's accountants; and

(c) promptly upon receipt, copies of all notices, orders, or other communications regarding (i) any enforcement action by any Governmental Authority relating to health, safety, the environment, or any Hazardous Materials with regard to Borrower's property, activities, or operations, or (ii) any claim against Borrower regarding Hazardous Materials;

(d) notice of the occurrence of any of the following, promptly, but in any event no later than five days after such occurrence: (i) any lawsuit, tax claim or other dispute if filed or threatened against Borrower in an amount greater than \$250,000.00; (ii) any substantial dispute between Borrower and any Governmental Authority; (iii) the failure by Borrower to comply with the terms and provisions of this agreement; (iv) any Material Adverse Effect as to Borrower; (v) any change in Borrower's name, legal structure, place of business, or chief executive office or federal identification number; or (vi) the Release of any Hazardous Materials on the property of any Loan Party or violation of any Environmental Laws by any Loan Party; ; and

(e) promptly upon Lender's request, all other books, records, statements, lists of property and accounts, budgets, forecasts, reports, records or other information pertaining to the condition or operations of Borrower requested by Lender.

6.11 Change in Accounting. Borrower shall not make any material change or modification of Borrower's manner and method of accounting except as required by the applicable accounting standard.

6.12 Maintenance of Assets. Borrower shall maintain and preserve all rights, privileges, intellectual property rights and franchises Borrower now has or later acquires in the normal conduct of its business, except to the extent that such failure could not reasonably be expected to have a Material Adverse Effect; and make any repairs, renewals, or replacements to keep Borrower's properties in good working condition, ordinary wear and tear excepted, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.13 Existence and Good Standing. If Borrower is anything other than an individual, Borrower shall preserve and maintain its existence and good standing in the jurisdiction of its formation, and qualify and remain qualified to conduct its business in each jurisdiction in which such qualification is required, except to the extent such failure could not reasonably be expected to have a Material Adverse Effect.

6.14 Change in Business or Organizational Structure. Borrower shall not engage in any material line of business substantially different from those lines of business conducted by Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto; and if Borrower is anything other than an individual, Borrower shall not (a) form or otherwise acquire any Subsidiary, unless that Subsidiary executes and delivers to Lender a guaranty of all of the Obligations and all other instruments and agreements required by Lender; or (b) merge, dissolve, liquidate, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person.

6.15 Compliance with Laws; Permits. Borrower shall comply in all material respects with all Applicable Laws and pay before delinquency, all taxes, assessments, and governmental charges imposed upon Borrower or its property, except to the extent such failure to comply and or pay could not reasonably be expected to have a Material Adverse Effect. Each Loan Party shall obtain and maintain in full force and effect and comply in all material respects with all necessary Permits and government approvals, except to the extent such failure to do so could not reasonably be expected to have a Material Adverse Effect.

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6.16 Inspections. Borrower shall, at any reasonable time during normal operating hours and from time to time, permit Lender or any of its agents or representatives to examine and make copies of and abstracts from the records and books of, and visit the properties of, Borrower and to discuss the affairs, finances, and accounts of Borrower, at Lender's sole cost and expense with (if Borrower is other than an individual) officers, directors, partners, or managers or Borrower, as applicable; Borrower's independent accountants; and any other person dealing with Borrower.

6.17 Insurance.

(a) Borrower shall maintain, or cause to be maintained, public liability insurance; all risk property damage insurance policies covering tangible property comprising the Collateral for the full insurable value on a replacement cost basis; workers' compensation insurance as required by law; and such additional insurance as required by Lender or any Swap Counterparty from time to time.

(b) If any Real Estate is located in an area now or hereafter designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Borrower agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Real Estate is located in a special flood hazard area, for the full unpaid principal balance of the Loan, plus any Swap Counterparties' derivative exposure under the Interest Hedging Agreements as calculated by the Swap Parties, plus any prior liens on the property securing the Loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the Loan.

(c) All policies of insurance required under the Transaction Documents must be issued by companies approved by Lender and, if applicable, the Swap Counterparties, and must be acceptable to Lender and the Swap Counterparties as to amounts, forms, risk coverages, expiration dates, and loss payable and cancellation provisions with deductibles of a maximum of \$10,000 on improvements and fixtures located on the Real Estate. In addition, each required policy must stipulate that coverage will not be cancelled or diminished without a minimum of 10 days prior written notice to Lender or the Swap Counterparties and without disclaimer of the insurer's liability for failure to provide such notice; contain a First Loss Payable Endorsement and any other endorsements as Lender or the Swap Counterparties may require and must name Lender as an additional insured and loss payee so that all proceeds of such property or casualty insurance shall be payable to Lender and the Swap Counterparties to the extent of its respective interest.

(d) Borrower agrees to deliver to Lender and, if applicable, the Swap Counterparty, on or before the Closing Date, evidence of the required insurance as provided herein, with an effective date on or before the Closing Date. If Borrower fails to provide any required insurance or fails to continue any required insurance in force, Lender or a Swap Counterparty may do so at Borrower's expense. At the option of Lender or a Swap Counterparty, Borrower shall reimburse Lender or a Swap Counterparty, on demand, the cost of any such insurance paid by Lender or a Swap Counterparty or shall be added to the Obligations. BORROWER ACKNOWLEDGES THAT IF LENDER OR A SWAP COUNTERPARTY SO PURCHASES ANY REQUIRED INSURANCE, THE INSURANCE WILL PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO AN AMOUNT EQUAL TO THE LESSER OF (1) THE UNPAID BALANCE OF THE OBLIGATIONS, EXCLUDING ANY UNEARNED FINANCE CHARGES, OR (2) THE VALUE OF THE COLLATERAL; HOWEVER, BORROWER'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

(e) For purpose of insurance coverage on the Collateral, Borrower authorizes Lender and, if applicable, the Swap Counterparties to provide to any Person all Information Lender or a Swap Counterparty deems appropriate, whether regarding the Collateral, the Loan or other financial accommodations, or both.

6.18 Arms' Length Dealing. Borrower shall not enter into any transaction of any kind with any family member, Subsidiary or Affiliate, other than on fair and reasonable terms substantially as favorable to Borrower as would be obtainable by Borrower at the time in a comparable arm's length transaction with a Person other than a family member, Subsidiary or Affiliate, and, if such transaction is not in the ordinary course of business, with prior written notice to Lender.

6.19 Use of the Loan. Borrower shall not use the Loan (a) for personal, family or household purposes, or (b) to purchase or carry Margin Stock or to invest in other Persons for the purpose of carrying Margin Stock or to reduce or retire any indebtedness incurred for that purpose.

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6.20 **ERISA Plans.** Borrower shall promptly pay and cause all Subsidiaries to pay contributions adequate to meet not less than the minimum funding standards under ERISA with respect to each and every Plan; file each annual report required to be filed pursuant to ERISA in connection with each Plan for each year; and notify Lender within ten days following the occurrence of any Reportable Event that might constitute grounds for termination of any capital Plan by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer any Plan. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

6.21 **Legal Fees; Costs.** Borrower shall pay the following: (a) costs, expenses and Legal Fees paid or incurred in connection with any amendments, modifications or waivers of the provisions of the Loan Documents; (b) costs, expenses and Legal Fees paid or incurred in connection with the collection or enforcement of the Transaction Documents, whether or not suit is filed; (c) costs, expenses and Legal Fees paid or incurred in connection with any Insolvency Proceeding involving a claim under the Transaction Documents; (d) costs of suit and such sum as the court may adjudge as Legal Fees in any action to enforce payment of the Notes or any part thereof; and (e) costs, expenses and Legal Fees incurred to protect the liens and security interests under the Collateral Documents.

6.22 **Remargining Requirement.** If at any time the Debt Service Coverage Ratio is less than the minimum Debt Service Coverage Ratio, then within 15 days after Lender's demand therefor, Borrower shall make such prepayment under the Loan as may be necessary to cause Borrower to meet the minimum Debt Service Coverage Ratio, as appropriate.

6.23 **Leases.**

(a) Borrower shall perform all obligations required to be performed by it as landlord under the Leases. Borrower shall not accept payment of more than one month's rent in advance from any Tenant under a Lease. Except as otherwise approved by Lender in writing, all Leases shall be entered into with bona fide third party subtenants financially capable, at the time of entering into their respective Leases, of performing their obligations under their Leases throughout the terms thereof and shall reflect arm's-length transactions at the then current market rate for comparable space. Furthermore, Borrower shall not grant any Tenant any rights or options to purchase the Real Estate or any portion thereof or release any Tenant or lease guarantor from any obligation or conditions without Lender's prior written consent. Borrower shall obtain Lender's written approval prior to executing any new Major Lease, modifying, amending, terminating or surrendering an existing Lease, or consenting to any sublease under or assignment of any Major Lease, unless Borrower is unconditionally obligated under the terms of the Major Lease to consent to the sublease or assignment. Lender shall respond to Borrower's written request for approval of a new Major Lease or modification, amendment, termination or surrender of a Major Lease (which written request must contain the following on the first page thereof in bold, fully-capitalized 12-point or greater text: "IMPORTANT: PURSUANT TO SECTION 6.23 OF THE CREDIT AGREEMENT BETWEEN BORROWER AND LENDER, IF LENDER FAILS TO PROVIDE WRITTEN NOTICE OF THE ATTACHED LEASE OR MODIFICATION, AMENDMENT, TERMINATION OR SURRENDER THEREOF OR SUBLEASE THEREUNDER OR ASSIGNMENT THEREOF WITHIN 10 DAYS FOLLOWING LENDER'S RECEIPT HEREOF, LENDER SHALL BE DEEMED TO HAVE APPROVED THE ATTACHED LEASE OR THE MODIFICATION, AMENDMENT, TERMINATION OR SURRENDER THEREOF, SUBLEASE THEREUNDER, OR ASSIGNMENT THEREOF") within 10 business days following Lender's receipt of a copy of the proposed Major Lease, modification or amendment, or request for approval of termination or surrender or approval of sublease or assignment, as the case may be, together with financial statements and references on the prospective tenant and such other information concerning such new Major Lease, sublease or assignment, as the case may be, or prospective tenant, subtenant or assignee, as the case may be, or concerning the modification, amendment, termination or surrender, as the case may be, as Lender shall reasonably require. If Lender shall fail to respond to any such written request by Borrower for such approval within such 10 business day period, Lender shall be deemed to have approved such matter. Borrower shall submit to Lender, within 30 days following execution, all new Leases, all modifications, amendments, consents to assignment or subletting of existing Leases, and shall promptly notify Lender of the termination or surrender of any Lease.

(b) Borrower shall promptly deliver to Lender such rent rolls, leasing schedules and reports, operating statements or other leasing information as Lender may request from time to time, and shall promptly notify Lender of any material dispute with a Tenant or material adverse change in leasing activity on the Real Estate. Borrower shall use reasonable efforts promptly to obtain and deliver to Lender such subordination, non-disturbance and attornment agreements and tenant estoppel certificates, as Lender may require. In no event shall any approval by Lender of a Lease be a representation of any kind with regard to the Lease or its enforceability, or the financial capacity of any Tenant or lease guarantor.

(c) Borrower shall first apply all income derived from the Real Estate, including all income from the Leases, to pay the costs and expenses associated with the ownership, maintenance, operation and leasing of the Real Estate that are then due and payable, including all amounts then required to be paid under the Loan Documents, before using or applying such income for any other purpose. No such income shall be distributed or paid to any partner, shareholder or member, or, if Borrower is a trust, to any beneficiary or trustor, unless all such costs and expenses which are then due and payable have been paid in full.

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6.24 Management. Borrower shall not enter into any agreement providing for the construction, development, management, sale, leasing or operation of the Real Estate (including any such agreement with any Affiliate), and shall not modify, amend or terminate any such agreement approved by Lender, without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed. Without limiting the foregoing, any property manager for the Real Estate and the property management agreement under which such property manager is or is to be engaged by Borrower must be approved by Lender in writing. Borrower shall not enter into any agreement providing for the construction, development, management, sale, leasing or operation of the Real Estate or any other agreement with respect to the Real Estate with any Affiliate except on terms and provisions that are no less favorable to Borrower than are generally available in the market for goods and services to be provided to Borrower under such agreement. Borrower shall not cause or permit any change in the management of Borrower without prior written consent of Lender. At the request of Lender, Borrower shall (a) execute and deliver to Lender an assignment of management agreement for any management agreement affecting the Real Estate, including a consent and subordination of property manager thereto, in form and substance satisfactory to Lender, and (b) upon the occurrence of an Event of Default, upon Lender's request, terminate the management agreement of any property manager for the Real Estate that is an Affiliate of Borrower and replace such property manager with a property manager satisfactory to Lender, in its reasonable judgment.

6.25 Inspections; Appraisals. Lender shall have the right, in its sole discretion, to inspect the Real Estate and to obtain new appraisals, or to update existing appraisals, at any time while the Loan or any portion thereof remains outstanding. Borrower shall cooperate with Lender and the appraiser (and use its best efforts to cause the Tenants of the Real Estate to cooperate with Lender and the appraiser) in permitting access to the Real Estate and in obtaining operating and other relevant information on the Real Estate. Borrower agrees to pay the cost and expense for (a) more than one Appraisal and review ordered by Lender during any consecutive 12 calendar month period, and (b) for any additional appraisals and reviews (i) as are required pursuant to a change in applicable law or regulations, and (ii) after the occurrence and during the continuation of an Event of Default.

6.26 Lender Expenses. Within ten Business Days after demand from Lender to Borrower, Borrower shall pay (or reimburse Lender for payment of) reasonable Closing Expenses not previously received by Lender.

6.27 Other Acts. Upon request by Lender, Borrower shall cooperate with Lender for the purposes of, and perform all acts which may be necessary or advisable to establish, perfect and/or monitor any Lien granted under this agreement or the Collateral Documents, or to carry out the intent of the Transaction Documents.

ARTICLE 7 - EVENTS OF DEFAULT AND REMEDIES

7.01 Events of Default. The following each will be an event of default under this agreement (an "Event of Default"):

- (a) any payment required under the Loan Documents is not made within 10 days after the date when due;
- (b) the Financial Information or any representation or warranty in the Loan Documents is materially incorrect or misleading when made or provided;
- (c) Borrower does not (i) pay (or cause payment of) all material taxes of Borrower prior to the date when delinquent, except those which are being contested in good faith by appropriate proceedings diligently conducted for which adequate reserves have been provided in accordance with GAAP; or (ii) maintain (or cause to be maintained) all policies of insurance required under the Transaction Documents and pay (or cause payment of) all premiums for that insurance on or prior to the date when due; or (iii) maintain the Collateral (or cause the Collateral to be maintained) in good condition and repair, all in accordance with the terms and conditions of the Transaction Documents.
- (d) the death of (i) any Borrower who is an individual, (ii) if Borrower is a partnership, any general partner of that partnership who is an individual, or (iii) if Borrower is the trustee under a trust acting in that capacity, any individual trustor under the trust;
- (e) a change in the equity interest of Borrower;
- (f) the filing of any tax lien against Borrower, any member or general partner of Borrower, or against any of the Collateral and the same is not discharged of record within 30 days after the date filed;

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(g) an Insolvency Proceeding is initiated by Borrower; or any Insolvency Proceeding initiated against Borrower by another Person is not discharged within 60 days after filing;

(h) Borrower or any Subsidiary of Borrower is or becomes subject to a Judgment or Judgments: (i) for the payment of money in an aggregate amount (as to all such Judgments or orders) exceeding \$250,000.00, which are not covered by independent third-party insurance as to which the insurer does not dispute coverage, or (ii) that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon any such Judgment, or (B) there is a period of ten consecutive days during which a stay of enforcement of any such Judgment, by reason of a pending appeal or otherwise, is not in effect;

(i) the violation of any Financial Covenant;

(j) any "Event of Default" as that term is defined in the Loan Documents other than this agreement which is not cured within any applicable cure or grace period;

(k) any material default in the payment or performance of a term or condition of any credit agreement, note, security agreement, mortgage, deed of trust, deed to secure debt, or other agreement or instrument evidencing or securing any other indebtedness, liabilities or obligations of Borrower to Lender or any Affiliates of Lender, or any Swap Counterparty;

(l) any default termination event or other similar event under any Interest Hedging Agreement which is not cured within any applicable cure or grace period;

(m) any Material Adverse Effect as to Borrower;

(n) any ERISA Event;

(o) for more than ten days after notice from Lender, Borrower is in default under any term, covenant or condition of this agreement not previously described in this Section 7.01, which can be cured by the payment of a sum of money;

(p) title to the Real Estate is not satisfactory to Lender by reason of any defect, except those matters affecting title that have at any time been consented to in writing by Lender or the lien of the Collateral Documents ceases to be a perfected lien on fee title to the Real Estate vested in Borrower, except as specifically contemplated herein;

(q) (i) any default by Borrower under a Lease beyond the applicable cure period, or (ii) except as otherwise permitted herein, (A) a Major Lease is terminated or (B) Borrower attempts to terminate a Major Lease without Lender's prior written consent;

(r) for more than 30 days after notice from Lender, Borrower is in default under any term, covenant or condition of this agreement not previously described in this Section 7.01; provided that if (i) it is reasonably certain that the default cannot be cured by Borrower within that 30 day period and (ii) Borrower has commenced curing that default within that 30 day period and thereafter diligently and expeditiously proceeds to cure that default, then that 30 day period will be extended for so long as reasonably required by Borrower in the exercise of due diligence to cure that default, up to a maximum of 90 days after the notice to Borrower of the Event of Default; and

(s) any Loan Document ceases to be in full force and effect or is declared void by a Governmental Authority or any party thereto shall claim such unenforceability or invalidity, or any security interest in the Collateral created by the Collateral Documents shall fail or cease to be, or shall be asserted in writing that it is not, a valid and perfected security interest in the securities, assets or properties covered thereby;

7.02 Remedies. Upon the occurrence of an Event of Default, Lender may: (a) declare any and all Obligations due and payable, without presentment, notice of intent to accelerate or notice of acceleration, demand, protest or further notice of any kind, all of which are expressly waived by Borrower; and (b) exercise all other rights and remedies afforded to Lender under the Loan Documents or Applicable Law or in equity; except that upon an actual or deemed entry of an order for relief with respect to Borrower or any of its Subsidiaries in any Insolvency Proceeding, all Loan Obligations shall automatically become due and payable, without presentment, demand, protest or any notice of any kind, all of which are expressly waived by Borrower.

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ARTICLE 8 - NOTICES

All requests, notices, approvals, consents, and other communications between the Parties (collectively, "Notices") under the terms and conditions of the Loan Documents must be in writing and mailed or delivered to the address specified in that Loan Document, or to the address designated by any Party in a notice to the other Parties; and in the case of any other Person, to the address designated by that Person in a notice to Borrower and Lender. All Notices will be deemed to be given or made upon the earlier to occur of (a) actual receipt by the intended recipient or (b) (i) if delivered by hand or by courier, upon delivery; or (ii) if delivered by mail, four Business Days after deposit in the mails, properly addressed, postage prepaid; except that notices and other communications to Lender shall not be effective until actually received by Lender. Borrower requests that Lender accept, and Lender may, at its option, accept and is entitled to rely and act upon any Notices purportedly given by or on behalf of Borrower, even if not made in a manner specified herein (including Notices made verbally, by telephone, telefacsimile, email, or other electronic means of communication), were incomplete or were not preceded or followed by any other form of Notice specified herein, or the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic Notices to and other telephonic communications with Lender may be recorded by Lender, and each Party consents to such recording.

ARTICLE 9 – GENERAL DEFINITIONS, ACCOUNTING MATTERS AND DRAFTING CONVENTIONS

9.01 Defined Terms. Capitalized terms defined in this section are used in this agreement as so defined. Except as otherwise defined in this agreement, or unless the context otherwise requires, each term that is used in this agreement which is defined in Article 9 of the UCC shall have the meaning ascribed to that term in Article 9 of the UCC.

"Adjust" means to increase or decrease; "Adjusted" means increased or decreased; and "Adjustment" means an increase or decrease.

"Adjustment Date" means each date on which the rate of interest on a LIBOR Indexed Rate Loan is or may be Adjusted by Lender pursuant to this agreement.

"Affiliate" of a Person which is anything other than an individual means another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Annual Net Operating Income for the Real Estate" means all revenues generated by and from the operation of the Real Estate, including, but not limited to all lease payments or rental charges and other fees, less all costs of operating the Real Estate, including without limitation property taxes and assessments, salaries, wages, and insurance premiums but excluding depreciation, amortization and interest expenses related to the Loan.

"Anti-Terrorism Laws" mean (a) the U.S.A. Patriot Act, (b) any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, and (c) any other laws relating to terrorism or money laundering.

"Applicable Law" means all existing and future laws, orders, ordinances, rules and regulations of or by a Governmental Authority; except that in determining the Maximum Rate, Applicable Law shall mean those laws, orders, ordinances, rules and regulations in effect as of the date hereof or if there is a change in Applicable Law which (a) permits Lender to charge interest on amounts which Lender would not otherwise be permitted to charge interest, or (b) increases the permissible rate of interest, then the new Applicable Law as of its effective date.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" shall have the meaning specified in the preamble of this agreement.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the Applicable Laws of the State of California, or are in fact closed in the State of California.

"Closing" means (a) the acknowledgement by Lender that all conditions precedent to the Loan are satisfied or waived in accordance with this agreement, or (b) the Loan is made, whichever is earlier.

"Closing Date" means the date of the Closing.

"Closing Deadline" means June 1, 2012.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Control" of a Person which is anything other than an individual means the power to direct the management and policies of that Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Debt Service Coverage Ratio" means, at any date of determination, the ratio of the Annual Net Operating Income for the Real Estate for the 12 month period ending on such date of determination to the principal, interest and other charges due on all indebtedness of the Real Estate on an annual basis.

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

"Environmental Law" means all Applicable Laws that relate to (a) the prevention, abatement or elimination of pollution, or the protection of the environment, natural resources (including water vapor, surface water and subsurface water, surface and subsurface land, air, aquatic life, wildlife, vegetation, and any other biota) or human health (to the extent relating to exposure to Hazardous Materials), or natural resource damages, and (b) the use, generation, handling, treatment, storage, Release, transportation or regulation of, or exposure to, Hazardous Materials, including the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001 *et seq.*, the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Safety Code §2530 *et seq.*), the Hazardous Waste Control Law (Health & Safety Code §2510 *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code §252249.5 *et seq.*), the Underground Storage of Hazardous Substances Act (Health & Safety Code §25280 *et seq.*) and the Porter-Cologne Water Quality Control Act (Water Code §13100 *et seq.*).

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"ERISA Event" means (a) the occurrence of any "reportable event" as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period has been waived, with respect to a Plan; (b) any failure by any Plan to satisfy the applicable minimum funding standards under Section 412 or 430 of the Code or Section 302 or 303 of ERISA, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) a determination that any Plan is, or is expected to be, in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) the incurrence by any Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by any Loan Party or any ERISA Affiliate from the Pension Benefit Guaranty Corporation or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (g) the incurrence by any Loan Party or any ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (h) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, in critical or endangered status, within the meaning of Section 305 of ERISA; (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in material liability to any Loan Party; or (j) the occurrence of any other event or condition with respect to a Plan or a Multiemployer Plan with respect to which any Loan Party is likely to incur material liability other than in the ordinary course.

"Financial Covenant" means any covenant contained in the Loan Documents regarding the financial status of a Person other than Lender.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Hazardous Material" means any substance, material or waste that is or becomes designated or regulated as "toxic," "hazardous," "caustic," "pollutant," or "contaminant" or a similar designation or regulation under any Environmental Law or could reasonably be expected to lead to liability under any Environmental Law, and shall also include, without limitation, asbestos in any form that is or could reasonably be expected to become friable or asbestos containing materials, polychlorinated biphenyls or radon gas, PCBs, petroleum, petroleum products, natural gas and explosive or radioactive substances and lead.

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"Insolvency Proceeding" means the insolvency of a Person, the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official of any part of a Person's property, an assignment by a Person for the benefit of creditors, or the voluntary or involuntary commencement of any proceeding under the Federal Bankruptcy Code or any other bankruptcy or insolvency law, by or against a Person, including the winding-up or liquidation of a Person.

"Interest Hedging Agreement" means any interest rate swap, cap, collar or other similar agreement related to an extension of credit under this agreement that is entered into by and between Borrower and a Swap Counterparty.

"Interest Hedging Obligations" means all indebtedness, liabilities and obligations of Borrower under any Interest Hedging Agreement, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several.

"Interest Payment Date" means a date on which regularly scheduled payments of interest are due.

"Interest Period" means with respect to a LIBOR Indexed Rate Loan, each period commencing on the date that Loan is made or the applicable rate is recalculated, until the next Adjustment Date or, if earlier, the respective Maturity Date.

"Judgment" means a judgment, order, writ, injunction, decree, or rule of any court, arbitrator, or Governmental Authority.

"Lease" means a lease, rental or occupancy agreement affecting all or any part of the Real Estate or an interest therein.

"Legal Fees" means any and all counsel, attorney, paralegal and law clerk fees and disbursements, including, but not limited to fees and disbursements at the pre-trial, trial, appellate, discretionary review, or any other level, incurred or paid by Lender in drafting and negotiating the Loan Documents, closing the transactions contemplated hereby, and protecting and enforcing its rights and interests under the Loan Documents.

"Lender" shall have the meaning specified in the preamble of this agreement and any successors and assigns of any of its rights and obligations under this agreement.

"LIBOR" means, for any Interest Period, the rate of interest appearing on Bloomberg L.P. (the "Service") Page BBAM1/(Official BBA USD Dollar Libor Fixings) (or on any successor or substitute page of the Service, or any successor to or substitute for the Service providing rate quotations comparable to those currently provided on such page of the Service, selected by Lender from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in an amount equal to the Loan in the London interbank market) at approximately 11:00 a.m., London time, as the rate for dollar deposits with a maturity comparable to the applicable contract period; provided, that LIBOR may be Adjusted from time to time in Lender's discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs.

"LIBOR Indexed Rate Loan" means a Loan which bears interest at the LIBOR Indexed Rate.

"Lien" means any mortgage, pledge, assignment, deposit arrangement, privilege, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Loan Documents" means this agreement, the Note, the Collateral Documents, and all other agreements and instruments required by Lender for purposes of evidencing or securing the Loan.

"Loan Obligations" means all indebtedness, liabilities and obligations of Borrower to Lender arising pursuant to any of the Loan Documents, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several.

"Loan Party" means, individually and collectively, Borrower and a grantor of a security interest in the Collateral.

"London Banking Day" means a day on which banks are open for dealings in dollar deposits in the London interbank market.

"Losses" means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, Judgments, awards, amounts paid in settlement of whatever kind or nature (including Legal Fees).

"Major Lease" means any Lease (excluding any subleases) of space in the Real Estate of at least 10% of the total net rentable area thereof.

"Major Tenant" means a Tenant under a Major Lease.

"Margin Stock" shall have the meaning assigned to such term in Regulation U.

"Material Adverse Effect" means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect as to the validity or enforceability or any right or remedy of Lender under any Transaction Document or any material term or condition therein against the applicable Person; (b) is or could reasonably be expected to be material and adverse to the financial condition, business assets, operations, or property of the applicable Person, including any material portion of the Collateral; or (c) materially impairs or could reasonably be expected to materially impair the ability of the applicable Person to perform the Obligations.

"Maximum Rate" means that rate per annum which, under Applicable Law, may be charged without subjecting Lender to civil or criminal liability, or limiting Lender's rights under the Loan Documents as a result of being in excess of the maximum interest rate which Borrower is permitted to contract or agree to pay; except that the Maximum Rate on any amount upon which Lender is not permitted to charge interest will be zero percent.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA and in respect of which any Loan Party or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA.

"Obligations" means the Loan Obligations and the Interest Hedging Obligations.

"Party" refers only to a named party to this agreement or another Loan Document, as the context requires.

"Permits" mean any and all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required to be obtained from a Governmental Authority under any Applicable Law.

"Person" means an individual, a corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or other business entity, or a government or any agency or political subdivision thereof.

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

"Prepay" means to make a Prepayment.

"Prepayment" means a payment of all or a portion of the unpaid principal balance of the Loan prior to the date when due, whether voluntary, by reason of acceleration, or otherwise.

"Real Estate" means that portion of the Collateral which is real property, as opposed to personal property.

"Regulation U" means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder and thereof.

"Release" means any placing, spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing or migrating in, into or onto or through the environment.

"Secured Parties" means Lender and, as appropriate, any other Swap Counterparties.

"Subsidiary" of a Person which is anything other than an individual means a business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly by that Person. Unless otherwise specified, all references to a "Subsidiary" or to "Subsidiaries" shall refer to any Subsidiary or Subsidiaries, if any.

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"Swap Counterparty" means any party to an Interest Hedging Agreement related to an extension of credit under this agreement which can be Lender, or any other counterparty acceptable to Lender.

"Tenant" means each Person that is a lessee, tenant, renter or occupant under a Lease.

"Title Company" means the agent of the Title Insurer issuing the Title Policy on behalf of the Title Insurer.

"Title Insurer" means Fidelity National Title Insurance Company.

"Title Policy" means a 2006 ALTA lender's title insurance policy, extended coverage, in such form and with such endorsements as may be required by Lender, issued by Title Insurer insuring that the Collateral Documents which are mortgages, deeds of trust, or deeds to secure debt are and will continue to be an encumbrance against the fee simple title to the Real Estate, securing a debt in the amount of the Loan, prior and paramount to all other liens and encumbrances of any nature or kind whatsoever except such exceptions as Lender, in its sole discretion, may approve in writing.

"Transaction Documents" means the Loan Documents and all Interest Hedging Agreements.

"UCC" means the Uniform Commercial Code as enacted in the Governing Law State.

"U.S.A. Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (signed into law on October 26, 2001).

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

9.02 Accounting Matters. All accounting terms not specifically defined herein will be construed in accordance with GAAP. All financial covenants applicable to an individual will be calculated based on that individual's business, excluding personal assets and liabilities. Borrower will not change the manner in which either the last day of its fiscal year or the last days of the first three fiscal quarters of its fiscal years is calculated. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document Lender may amend that ratio or requirement to preserve the original intent thereof in light of that change.

9.03 Drafting Conventions. Unless expressly stated therein or the context otherwise requires, the Loan Documents will be interpreted in accordance with the following (the "Drafting Conventions"): (a) the words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation"; (b) unless otherwise expressly stated, terms and provisions applicable to two or more Persons shall apply on an individual, as well as collective basis; (c) headings and captions are provided for convenience only and do not affect the meaning of the text which follows; (d) references to a parcel or tract of real estate means, without limitation, the land described, and any and all improvements located thereupon and all easements or other rights or interests benefiting that land; (e) references to an agreement or instrument means that agreement or instrument, together with all extensions, renewals, modifications, substitutions and amendments thereof, subject to any restrictions thereon in that agreement or instrument or in the Loan Documents; (F) ANY REPORT OR DOCUMENT TO BE RECEIVED BY LENDER SHALL BE SATISFACTORY IN FORM AND CONTENT TO LENDER; (G) WHEREVER (I) LENDER EXERCISES ANY RIGHT GIVEN TO IT TO APPROVE OR DISAPPROVE, (II) ANY ARRANGEMENT OR TERM IS TO BE SATISFACTORY TO LENDER, OR (III) ANY OTHER DECISION OR DETERMINATION IS TO BE MADE BY LENDER, THEN EXCEPT AS MAY BE OTHERWISE EXPRESSLY AND SPECIFICALLY PROVIDED THEREIN, THE DECISION TO APPROVE OR DISAPPROVE, ALL DECISIONS THAT ARRANGEMENTS OR TERMS ARE SATISFACTORY OR NOT SATISFACTORY, AND ALL OTHER DECISIONS AND DETERMINATIONS MADE BY LENDER, SHALL BE IN THE SOLE DISCRETION OF LENDER, WITHOUT REGARD FOR THE ADEQUACY OF ANY SECURITY FOR THE OBLIGATIONS; (h) whenever by the terms of the Loan Documents, Borrower is prohibited from taking an action or permitting the occurrence of some circumstance, Borrower shall not, directly or indirectly take that action or permit that circumstance, or directly or indirectly permit any Subsidiary to take that action or permit that circumstance; (i) evidence of the occurrence or non-occurrence of any event, or the existence or non-existence of any circumstance to be delivered to Lender must be in a form satisfactory to Lender; (j) unless specified otherwise, references to a statute or regulation means that statute or regulation as amended or supplemented from time to time and any corresponding provisions of successor statutes or regulations; (k) unless otherwise specified, all references to a time of day are references to the time in California; (l) references to "month" or "year" are references to a calendar month or calendar year, respectively, unless otherwise specifically provided; (m) if any date specified in this agreement as a date for taking action falls on a day that is not a Business Day, then that action may be taken on the next Business Day; (n) a pronoun used in referring generally to any member of a class of Persons, or Persons and things, applies to each member of that class, whether of the masculine, feminine, or neuter gender; (o) references to "articles," "sections," "subsections," "paragraphs," "exhibits," and "schedules" reference articles, sections, subsections, paragraphs, exhibits, and schedules, respectively, of this agreement unless otherwise specifically provided; (p) the words "hereof," "herein," "hereunder," and "hereby" refer to this agreement as a whole and not to any particular provision of this agreement; (q) the definitions in this agreement apply equally to both singular and plural forms of the terms defined; and (r) for purposes of computing periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

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ARTICLE 10 - MISCELLANEOUS

10.01 Entire Agreement. This agreement and the other Loan Documents, collectively: (i) represent the sum of the understandings and agreements between Lender and Borrower concerning this credit; (ii) replace any prior oral or written agreements between Lender and Borrower concerning this credit; and (iii) are intended by Lender and Borrower as the final, complete and exclusive statement of the terms agreed to by them. In the event of any conflict between this agreement and any other agreements required by this agreement, this agreement will prevail.

10.02 Joint and Several Obligations. If Borrower consists of more than one Person, each Borrower (a) expressly acknowledges that it has benefited and will benefit, directly and indirectly, from the Loan and acknowledges and undertakes, together with the other Borrowers, joint and several liability for the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Loan Obligations; (b) acknowledges that this agreement is the independent and several obligation of each Borrower and may be enforced against each Borrower separately, whether or not enforcement of any right or remedy hereunder has been sought against any other Borrower; and (c) agrees that its liability hereunder and under any other Loan Document is absolute, unconditional, continuing and irrevocable. BORROWER EXPRESSLY WAIVES ANY REQUIREMENT THAT LENDER EXHAUST ANY RIGHT, POWER OR REMEDY AND PROCEED AGAINST THE OTHER BORROWERS UNDER THIS AGREEMENT, OR ANY OTHER LOAN DOCUMENTS, OR AGAINST ANY OTHER PERSON UNDER ANY GUARANTY OF, OR SECURITY FOR, ANY OF THE OBLIGATIONS.

10.03 Authority to Bind Borrower. If Borrower is comprised of multiple Persons, any Person comprising Borrower is authorized to bind all parties comprising Borrower. Without limitation of the foregoing, Lender may require any Loan Request or other request, authorization, or other action by or on behalf of Borrower be by one or more individuals designated in writing by the parties comprising Borrower (a "Designated Person"). Lender may, at any time and without notice, waive any prior requirement that requests, authorizations, or other actions be taken only by a Designated Person.

10.04 Binding Effect; Successors and Assigns. The Loan Documents will inure to the benefit of and be binding upon the parties and their respective successors and assigns, except that Borrower may not assign or transfer any of its rights or obligations under any Loan Document without prior written consent of the Lender.

10.05 Assignment; Participations. Borrower shall not assign its rights or obligations hereunder without Lender's consent. Lender may assign or sell participations in all or any portion of its interest in the Loan or under the Loan Documents to any Person. Lender may disclose to any actual or potential assignee or participant any information that Borrower has delivered to Lender in connection with the Loan Documents; and Borrower shall cooperate fully with Lender in providing that information. If Lender assigns or sells a participation in the Loan or the Loan Documents, the purchaser will have the right of set-off against Borrower.

10.06 Severability. Any provision of any Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of that Loan Document or affecting the validity or enforceability of that provision in any other jurisdiction; except that if such provision relates to the payment of any monetary sum, then Lender may, at its option, declare all Loan Obligations immediately due and payable.

10.07 Amendments in Writing. The Loan Documents may not be amended, changed, modified, altered or terminated without the prior written consent of all Parties to the respective Loan Document.

10.08 Governing Law. Except as expressly stated therein, the Loan Documents will be governed and interpreted by applying the laws of the State of California (the "Governing Law State") without regard to its conflict of laws principles.

10.09 JURISDICTION AND VENUE. BORROWER IRREVOCABLY AGREES THAT, AT THE OPTION OF LENDER, ALL ACTIONS, PROCEEDINGS OR COUNTERCLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT WILL BE LITIGATED IN THE SUPERIOR COURT OF CALIFORNIA, SACRAMENTO COUNTY, CALIFORNIA, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. BORROWER IRREVOCABLY CONSENTS TO SERVICE, JURISDICTION, AND VENUE OF THOSE COURTS FOR ALL SUCH ACTIONS, PROCEEDINGS AND COUNTERCLAIMS AND WAIVES ANY OTHER VENUE TO WHICH IT MIGHT BE ENTITLED BY VIRTUE OF DOMICILE, HABITUAL RESIDENCE OR OTHERWISE. FINAL JUDGMENT AGAINST BORROWER IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT, A CERTIFICATE OR EXEMPLIFIED COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. BORROWER IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW (A) ANY OBJECTION WHICH IT MAY HAVE NOW OR IN THE FUTURE TO THE LAYING OF THE VENUE OF ANY SUCH ACTION, SUIT OR PROCEEDING IN ANY COURT REFERRED TO IN THE FIRST SENTENCE ABOVE; (B) ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM; (C) ITS RIGHT OF REMOVAL OF ANY MATTER COMMENCED BY ANY OTHER PARTY IN THE COURTS OF THE STATE OF CALIFORNIA TO ANY COURT OF THE UNITED STATES OF AMERICA; (D) ANY IMMUNITY WHICH IT OR ITS ASSETS MAY HAVE IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT FROM ANY SUIT, EXECUTION, ATTACHMENT (WHETHER PROVISIONAL OR FINAL, IN AID OF EXECUTION, BEFORE JUDGMENT OR OTHERWISE) OR OTHER LEGAL PROCESS; AND (E) ANY RIGHT IT MAY HAVE TO REQUIRE THE MOVING PARTY IN ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY OF THE COURTS REFERRED TO ABOVE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT TO POST SECURITY FOR THE COSTS OF BORROWER OR TO POST A BOND OR TO TAKE SIMILAR ACTION.

10.10 Counterpart Execution. The Loan Documents may be executed in counterparts, each of which will be an original and all of which together are deemed one and the same instrument.

10.11 Optically Imaged Reproductions. Lender may make an optically imaged reproduction of any or all Loan Documents and, at its election, destroy the original or originals. Borrower consents to the destruction of the original or originals and agrees that a copy of the optically imaged reproduction of any Loan Document will be the equivalent of and for all purposes constitute an "original" document. For purposes of this section, "for all purposes" includes use of the optically imaged reproduction (a) to prove the content of the original document at trial, mediation, arbitration or administrative hearing; (b) for any business purpose; (c) for internal or external audits and/or examination by or on behalf of Governmental Authorities; (d) in canceling or transferring any document; and (e) in conjunction with any other transaction evidenced by the original document.

10.12 Necessary Action. Lender is authorized to execute any other documents or take any other actions necessary to effectuate the Loan Documents and the consummation of the transactions contemplated therein.

10.13 Credit Report. Lender is authorized to order a credit report and verify all other credit information, including past and present loans and standard references from time to time to evaluate the creditworthiness of Borrower. Without limitation, a copy of the consent for release of information, general authorization or similar document on file with Lender shall authorize third Persons to provide the information requested from time to time.

10.14 No Construction Against Drafter. Each Party has participated in negotiating and drafting this agreement, so if an ambiguity or a question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this agreement.

10.15 INDEMNIFICATION. BORROWER SHALL DEFEND, INDEMNIFY AND HOLD LENDER AND ITS OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, AGENTS, ATTORNEYS AND AFFILIATES (THE "INDEMNIFIED PERSONS") HARMLESS AGAINST ANY AND ALL LOSSES OF ANY KIND OR NATURE WHATSOEVER THAT MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST ANY INDEMNIFIED PERSON ARISING OUT OF, IN ANY WAY CONNECTED WITH OR AS A RESULT OF: (I) THE EXECUTION OR DELIVERY OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THERETO OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY; (II) THE USE OF THE PROCEEDS OF THE LOANS; (III) THE FAILURE BY BORROWER TO BORROW THE AMOUNT SPECIFIED IN A LOAN REQUEST (INCLUDING ANY FAILURE RESULTING FROM THE FAILURE TO FULFILL THE APPLICABLE CONDITIONS PRECEDENT BUT EXCLUDING LENDER'S FAILURE TO LEND SUCH AMOUNT), INCLUDING ANY LOSS OF ANTICIPATED PROFITS AND LOSSES BY REASON OF THE LIQUIDATION OR REEMPLOYMENT OF DEPOSITS OR OTHER FUNDS ACQUIRED BY LENDER TO FUND THE LOAN; (IV) SUCH INDEMNIFIED PERSON'S ACTS OR OMISSIONS WHICH RESULT FROM COMMUNICATIONS GIVEN OR PURPORTED TO BE GIVEN, BY BORROWER OR ANY DESIGNATED PERSON, WHICH ARE INTERRUPTED, WHICH ARE MISUNDERSTOOD, OR WHICH ARE IN FACT FROM UNAUTHORIZED PERSONS, BUT WHICH LENDER BELIEVES IN GOOD FAITH TO BE FROM BORROWER OR ANY DESIGNATED PERSON; (V) THE VIOLATION BY BORROWER OF ANY APPLICABLE LAW, INCLUDING ANY ENVIRONMENTAL LAW; (VI) THE RELIANCE BY LENDER ON EACH NOTICE PURPORTEDLY GIVEN BY OR ON BEHALF OF BORROWER; (VII) ANY BREACH BY BORROWER OF ANY OF ITS REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS UNDER ANY LOAN DOCUMENT, INCLUDING ANY DEFAULT OR EVENT OF DEFAULT; OR (VIII) ANY CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATED TO ANY OF THE FOREGOING, WHETHER OR NOT ANY INDEMNIFIED PERSON IS A PARTY THERETO, OR ASSERTED AGAINST ANY INDEMNIFIED PERSON AS A RESULT OF LENDER BEING PARTY TO THIS AGREEMENT OR THE TRANSACTIONS CONSUMMATED PURSUANT TO THIS AGREEMENT; EXCEPT THAT BORROWER SHALL HAVE NO OBLIGATION TO AN INDEMNIFIED PERSON UNDER THIS SECTION WITH RESPECT TO LOSSES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT INDEMNIFIED PERSON AS DETERMINED BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. IF AND TO THE EXTENT THAT ANY INDEMNITY UNDER THE LOAN DOCUMENTS IN FAVOR OF INDEMNIFIED PARTIES IS UNENFORCEABLE FOR ANY REASON, BORROWER SHALL TO MAKE THE MAXIMUM CONTRIBUTION TO THE PAYMENT AND SATISFACTION THEREOF WHICH IS PERMISSIBLE UNDER APPLICABLE LAW. ALL INDEMNITIES UNDER THE LOAN DOCUMENTS IN FAVOR OF INDEMNIFIED PARTIES SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT..

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10.16 WAIVER OF TRIAL BY JURY. THE PARTIES (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY IN ANY ACTION OR PROCEEDING FOR THE RESOLUTION OF ANY DISPUTE, CONTROVERSY OR CLAIM THAT ARISES OUT OF OR RELATES TO: (I) THIS AGREEMENT; OR (II) ANY TRANSACTION DOCUMENT, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE (INDIVIDUALLY AND COLLECTIVELY, A "DISPUTE"); AND, (B) TO THE EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVE ALL RIGHT TO A TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY TRANSACTION DOCUMENT TO THE EXTENT SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THE PROVISIONS OF THIS SECTION ARE SEPARATELY GIVEN BY EACH PARTY KNOWINGLY AND VOLUNTARILY; AND ARE A MATERIAL INDUCEMENT FOR THE LENDER ENTERING INTO THE LOAN DOCUMENTS AND THE SWAP COUNTERPARTIES ENTERING INTO THE INTEREST HEDGING AGREEMENTS.

10.17 BALLOON PAYMENT. THIS AGREEMENT PROVIDES FOR A BALLOON PAYMENT. BORROWER ACKNOWLEDGES THAT LENDER HAS NOT AGREED TO REFINANCE THAT PAYMENT.

10.18 USA Patriot Act Notice. Federal law requires all financial institutions to obtain, verify and record information that identifies each person who obtains a loan. Lender will ask for the Borrower's legal name, address, tax ID number or social security number and other identifying information. Lender may also ask for additional information or documentation or take other actions reasonably necessary to verify the identity of Borrower, any guarantors or other related persons.

10.19 Treatment of Certain Information; Confidentiality.

(a) The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that the Lender shall exercise commercially reasonable efforts, to the extent practicable and not contrary to any request or order of any Governmental Authority or to applicable Law, to provide prompt prior written notice thereof to the Borrower to enable the Borrower to seek a protective order or otherwise prevent or condition such disclosure), (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement, (vii) with the consent of the Borrower or (viii) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender or any of its Affiliates on a nonconfidential basis from a source other than the Borrower.

(b) For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

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(c) The Lender acknowledges that (i) the Information may include material non public information concerning the Borrower or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with Applicable Law, including Federal and state securities laws.

[Signatures on Following Page]

The parties have signed this agreement effective as of the day and year first written above.

BORROWER

Address for notices:

100 Innovation Place
Santa Barbara, California 93108
Attention: John Neale

QAD ORTEGA HILL, LLC, a Delaware limited liability company

By: /s/ John Neale

JOHN NEALE
Manager

By: /s/ Kara Bellamy

KARA BELLAMY
Manager

LENDER

Address for notices:

33 East Carrillo St.
Santa Barbara, CA 93101
Attention: Commercial Lending Closing Department

RABOBANK, N.A.

By: /s/ Andy Clark

Name : ANDY CLARK
Title : SVP-Commercial Regional Manager

By: /s/ Jason Wilson

Name : JASON WILSON
Title : VP-Commercial Banking Officer

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SCHEDULE 1.04(b)**QAD Ortega Hill, LLC
CREDIT AGREEMENT****Principal Payments - Real Estate Term Loan**

| End Date (PMT Date) | Principal Schedule | Principal PMT |
|----------------------------|---------------------------|----------------------|
| 15-Jul-12 | 16,053,651.44 | 30,416.14 |
| 15-Aug-12 | 16,023,235.30 | 28,607.04 |
| 15-Sep-12 | 15,994,628.26 | 28,713.22 |
| 15-Oct-12 | 15,965,915.04 | 30,731.26 |
| 15-Nov-12 | 15,935,183.78 | 28,933.84 |
| 15-Dec-12 | 15,906,249.94 | 30,945.55 |
| 15-Jan-13 | 15,875,304.39 | 29,156.07 |
| 15-Feb-13 | 15,846,148.32 | 29,264.29 |
| 15-Mar-13 | 15,816,884.03 | 35,053.79 |
| 15-Apr-13 | 15,781,830.24 | 29,502.99 |
| 15-May-13 | 15,752,327.25 | 31,498.40 |
| 15-Jun-13 | 15,720,828.85 | 29,729.39 |
| 15-Jul-13 | 15,691,099.46 | 31,718.30 |
| 15-Aug-13 | 15,659,381.16 | 29,957.45 |
| 15-Sep-13 | 15,629,423.71 | 30,068.64 |
| 15-Oct-13 | 15,599,355.07 | 32,047.81 |
| 15-Nov-13 | 15,567,307.26 | 30,299.18 |
| 15-Dec-13 | 15,537,008.08 | 32,271.74 |
| 15-Jan-14 | 15,504,736.34 | 30,531.40 |
| 15-Feb-14 | 15,474,204.94 | 30,644.71 |
| 15-Mar-14 | 15,443,560.23 | 36,305.26 |
| 15-Apr-14 | 15,407,254.97 | 30,893.19 |
| 15-May-14 | 15,376,361.78 | 32,848.73 |
| 15-Jun-14 | 15,343,513.05 | 31,129.76 |
| 15-Jul-14 | 15,312,383.29 | 33,078.53 |
| 15-Aug-14 | 15,279,304.76 | 31,368.06 |
| 15-Sep-14 | 15,247,936.70 | 31,484.48 |
| 15-Oct-14 | 15,216,452.22 | 33,423.07 |
| 15-Nov-14 | 15,183,029.15 | 31,725.38 |
| 15-Dec-14 | 15,151,303.77 | 33,657.07 |
| 15-Jan-15 | 15,117,646.70 | 31,968.04 |
| 15-Feb-15 | 15,085,678.66 | 32,086.68 |
| 15-Mar-15 | 15,053,591.98 | 37,612.52 |
| 15-Apr-15 | 15,015,979.46 | 32,345.36 |
| 15-May-15 | 14,983,634.10 | 34,259.28 |
| 15-Jun-15 | 14,949,374.82 | 32,592.56 |
| 15-Jul-15 | 14,916,782.26 | 34,499.39 |
| 15-Aug-15 | 14,882,282.87 | 32,841.57 |
| 15-Sep-15 | 14,849,441.30 | 32,963.45 |
| 15-Oct-15 | 14,816,477.85 | 34,859.65 |
| 15-Nov-15 | 14,781,618.20 | 33,215.17 |
| 15-Dec-15 | 14,748,403.03 | 35,104.16 |
| 15-Jan-16 | 14,713,298.87 | 33,468.72 |
| 15-Feb-16 | 14,679,830.15 | 33,592.95 |
| 15-Mar-16 | 14,646,237.20 | 37,224.58 |
| 15-Apr-16 | 14,609,012.62 | 33,855.77 |
| 15-May-16 | 14,575,156.85 | 35,726.40 |
| 15-Jun-16 | 14,539,430.45 | 34,114.02 |
| 15-Jul-16 | 14,505,316.43 | 35,977.24 |
| 15-Aug-16 | 14,469,339.19 | 34,374.16 |
| 15-Sep-16 | 14,434,965.03 | 34,501.74 |
| 15-Oct-16 | 14,400,463.29 | 36,353.83 |
| 15-Nov-16 | 14,364,109.46 | 34,764.71 |
| 15-Dec-16 | 14,329,344.75 | 36,609.27 |
| 15-Jan-17 | 14,292,735.48 | 35,029.61 |
| 15-Feb-17 | 14,257,705.87 | 35,159.61 |
| 15-Mar-17 | 14,222,546.26 | 40,398.36 |
| 15-Apr-17 | 14,182,147.90 | 35,440.04 |
| 15-May-17 | 14,146,707.86 | 37,265.24 |
| 15-Jun-17 | 14,109,442.62 | 35,709.88 |
| 15-Jul-17 | 14,073,732.74 | 37,527.34 |
| 15-Aug-17 | 14,036,205.40 | 35,981.69 |
| 15-Sep-17 | 14,000,223.71 | 36,115.23 |
| 15-Oct-17 | 13,964,108.48 | 37,921.08 |
| 15-Nov-17 | 13,926,187.40 | 36,390.00 |

15-Dec-17

13,889,797.40

38,187.98

QAD Ortega Hill, LLC
Credit Agreement

| End Date (PMT Date) | Principal Schedule | Principal PMT |
|---------------------|--------------------|---------------|
| 15-Jan-18 | 13,851,609.42 | 36,666.79 |
| 15-Feb-18 | 13,814,942.63 | 36,802.88 |
| 15-Mar-18 | 13,778,139.75 | 41,888.12 |
| 15-Apr-18 | 13,736,251.63 | 37,094.93 |
| 15-May-18 | 13,699,156.70 | 38,872.70 |
| 15-Jun-18 | 13,660,284.00 | 37,376.87 |
| 15-Jul-18 | 13,622,907.13 | 39,146.56 |
| 15-Aug-18 | 13,583,760.57 | 37,660.89 |
| 15-Sep-18 | 13,546,099.68 | 37,800.66 |
| 15-Oct-18 | 13,508,299.02 | 39,558.19 |
| 15-Nov-18 | 13,468,740.83 | 38,087.77 |
| 15-Dec-18 | 13,430,653.06 | 39,837.07 |
| 15-Jan-19 | 13,390,815.99 | 38,376.98 |
| 15-Feb-19 | 13,352,439.01 | 38,519.41 |
| 15-Mar-19 | 13,313,919.60 | 43,444.28 |
| 15-Apr-19 | 13,270,475.32 | 38,823.61 |
| 15-May-19 | 13,231,651.71 | 40,551.82 |
| 15-Jun-19 | 13,191,099.89 | 39,118.20 |
| 15-Jul-19 | 13,151,981.69 | 40,837.97 |
| 15-Aug-19 | 13,111,143.72 | 39,414.95 |
| 15-Sep-19 | 13,071,728.77 | 39,561.23 |
| 15-Oct-19 | 13,032,167.54 | 41,268.30 |
| 15-Nov-19 | 12,990,899.24 | 39,861.23 |
| 15-Dec-19 | 12,951,038.01 | 41,559.69 |
| 15-Jan-20 | 12,909,478.32 | 40,163.41 |
| 15-Feb-20 | 12,869,314.91 | 40,312.47 |
| 15-Mar-20 | 12,829,002.44 | 43,533.92 |
| 15-Apr-20 | 12,785,468.52 | 40,623.65 |
| 15-May-20 | 12,744,844.87 | 42,300.27 |
| 15-Jun-20 | 12,702,544.60 | 40,931.42 |
| 15-Jul-20 | 12,661,613.18 | 42,599.21 |
| 15-Aug-20 | 12,619,013.97 | 41,241.43 |
| 15-Sep-20 | 12,577,772.54 | 41,394.50 |
| 15-Oct-20 | 12,536,378.04 | 43,049.01 |
| 15-Nov-20 | 12,493,329.03 | 41,707.90 |
| 15-Dec-20 | 12,451,621.13 | 43,353.43 |
| 15-Jan-21 | 12,408,267.70 | 42,023.60 |
| 15-Feb-21 | 12,366,244.10 | 42,179.56 |
| 15-Mar-21 | 12,324,064.54 | 46,762.50 |
| 15-Apr-21 | 12,277,302.04 | 42,509.66 |
| 15-May-21 | 12,234,792.38 | 44,132.20 |
| 15-Jun-21 | 12,190,660.18 | 42,831.23 |
| 15-Jul-21 | 12,147,828.95 | 44,444.55 |
| 15-Aug-21 | 12,103,384.40 | 43,155.13 |
| 15-Sep-21 | 12,060,229.27 | 43,315.30 |
| 15-Oct-21 | 12,016,913.97 | 44,914.76 |
| 15-Nov-21 | 11,971,999.21 | 43,642.75 |
| 15-Dec-21 | 11,928,356.46 | 45,232.83 |
| 15-Jan-22 | 11,883,123.63 | 43,972.61 |
| 15-Feb-22 | 11,839,151.02 | 44,135.80 |
| 15-Mar-22 | 11,795,015.22 | 48,535.99 |
| 15-Apr-22 | 11,746,479.23 | 44,479.75 |
| 15-May-22 | 11,701,999.48 | 46,045.83 |
| 1-Jun-22 | 11,655,953.65 | 11,655,953.65 |

QAD Ortega Hill, LLC
Credit Agreement

QAD Ortega Hill, LLC

Real Estate Term Loan: 353914-01

REAL ESTATE TERM LOAN NOTE

\$16,053,651.44

May 30, 2012

FOR VALUE RECEIVED, the undersigned ("Borrower"), hereby promises to pay to the order of RABOBANK, N.A., a national banking association ("Lender") the principal sum of Sixteen Million Fifty-Three Thousand Six Hundred Fifty-One and 44/100 Dollars and Five Cents (\$16,053,651.44) and interest at the rate specified in the Credit Agreement between Borrower and Lender dated as of the date hereof (the "Credit Agreement"). Principal and interest are payable to Lender at the times specified in the Credit Agreement. All payments shall be made to Lender in lawful money of the United States of America at 1498 Main Street, El Centro, CA 92243, or such other place as Lender directs, in same day funds. Each capitalized term used in this note that is defined in the Credit Agreement will have the meaning specified in the Credit Agreement. This note will be interpreted in accordance with the Drafting Conventions.

This note is referred to in, and is subject to the terms and conditions of the Credit Agreement. Without limitation, the Credit Agreement contains provisions for acceleration of the maturity hereof upon the occurrence of certain stated events.

This note is secured by the Collateral Documents and all Liens upon and security interests created under any other written instrument or agreement stating expressly that it secures the indebtedness, liabilities or obligations of Borrower under the terms and conditions of the Credit Agreement.

Borrower has signed this note effective as of the day and year first written above.

BORROWER**QAD ORTEGA HILL, LLC**, a Delaware limited liability companyBy: /s/ John Neale

JOHN NEALE

Manager

By: /s/ Kara Bellamy

KARA BELLAMY

Manager

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

RABOBANK, N.A.
33 East Carrillo St.
Santa Barbara, CA 93101
Attn: Commercial Lending Closing Department

Space above this line for Recorder's Use

QAD Ortega Hill, LLC

Real Estate Term Loan: 353914-01

DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

(Santa Barbara County, California)

THIS DOCUMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING UNDER SECTION 9-502 OF THE CALIFORNIA UNIFORM COMMERCIAL CODE

This deed of trust is dated as of May 30, 2012. It is by QAD ORTEGA HILL, LLC, a Delaware limited liability company (d/b/a QAD OH, LLC in California) ("Grantor"), as trustor and debtor, to and in favor of Rabobank, N.A., a national banking association ("Trustee"), whose address is 33 East Carrillo Street, Santa Barbara, Santa Barbara, California 93101, for the benefit of RABOBANK, N.A., a national banking association ("Lender") on behalf of itself and, if Borrower enters into Interest Hedging Agreements with Swap Counterparties, as agent for the other Secured Parties (as defined herein) ("Beneficiary"), as beneficiary and secured party.

Lender has agreed to make a loan in the original principal sum of \$16,053,651.44 to Grantor under the terms and conditions of the Credit Agreement between Grantor and Lender dated as of the date of this deed of trust (the "Credit Agreement"). Each capitalized term used in this deed of trust that is defined in the Credit Agreement and not defined in this deed of trust will have the meaning specified in the Credit Agreement. This deed of trust will be interpreted in accordance with the Drafting Conventions.

Grantor may also enter into certain derivatives transactions under Interest Hedging Agreements with Swap Counterparties (Lender and, as applicable, any other Swap Counterparties are referred to herein individually and collectively as the "Secured Parties"), under which Grantor has or may incur Interest Hedging Obligations to Swap Counterparties.

ARTICLE 1 – GRANT

To secure repayment of the indebtedness evidenced by the Note (defined herein) and payment and performance of all other Secured Obligations (defined herein), Grantor irrevocably and unconditionally grants, bargains, sells, and conveys to Trustee, in trust, for the benefit of Beneficiary, WITH POWER OF SALE and right of entry and possession, all of Grantor's estate, right, title and interest in and to the following, wherever located, whether now owned or hereafter acquired or arising, and, except as indicated, whether constituting real estate or personal property (collectively, the "Property"):

(a) the real estate and any interest in the real estate located in Santa Barbara County, California, and described in EXHIBIT A (the "Land"). The Land or its address is commonly known as 101 Innovation Place, Santa Barbara, California 93108. The assessor's parcel number for the Land is APN: 005-110-33;

QAD Ortega Hill, LLC
Deed of Trust, Assignment of Rents, Security Agreement,
Fixture filing and Request for Notice

(b) all buildings, structures, improvements, fixtures, attachments, appliances, equipment, machinery and other articles now or hereafter erected on, affixed or attached to, or located in or on the Land, including all watering and irrigation apparatus, pumps, motors, generators, pipes, center pivot irrigators and sprinklers, windmills, and fences (the "Improvements");

(c) all easements, rights-of-way and rights appurtenant to the Land or used in connection the Land or as a means of access thereto ("Easements");

(d) the ground water on, under, pumped from or otherwise available to the Property or any drainage, retention, ditch, canal, reservoir, or other water rights, whether as a result of overlying groundwater rights, contractual rights, or otherwise and whether riparian, appropriative, or otherwise; the right to remove or extract any such ground water including any permits, rights or licenses granted by any Governmental Authority and any rights granted or created by any easement, covenant, agreement or contract with any Person; and any rights to which the Property or Grantor is entitled with respect to surface water, whether such rights are appropriative, riparian, prescriptive or otherwise and whether or not pursuant to historical use, contractual agreement, permit or other governmental authorization; any water right, water allocation for water not yet delivered, distribution right, delivery right, any prescriptive, contractual, easement or other rights necessary or convenient to convey any water to the Property, water storage right, or other water-related entitlement appurtenant to or otherwise applicable to the Property by virtue of the Property being situated within the boundaries of any governmental water district irrigation district or other local agency or within the boundaries of any private water company, mutual water company, or other non-governmental entity and any shares, or any rights under such shares, of any private water company, mutual water company, or other non-governmental entity pursuant to which Grantor or the Property may receive water (collectively, "Water Rights");

(e) all other tenements, hereditaments and appurtenances to the Land;

(f) minerals, oil, gas, and other hydrocarbon substances, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and other interests and estates in, under and on the Land and other oil, gas and mineral interests with which any of the foregoing interests or estates are pooled or unitized (the "Mineral Rights");

(g) timber now or hereafter standing or cut;

(h) leases, subleases, licenses, occupancy agreements, concessions and other agreements, granting a possessory interest in and to, or the right to extract, mine, reside in, sell, or use the Property (collectively, the "Leases");

(i) all utility contracts, maintenance agreements, management agreements, service contracts and other agreements directly related to the operation and maintenance of the Property;

(j) any certificated and uncertificated securities, securities entitlements, securities accounts and commodities accounts;

(k) working drawings, instructional manuals, and rights in processes directly related to the operation of the Property;

(l) building materials, equipment, work in process or other personal property of any kind, including but not limited to all software embedded therein, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed on or about the Land or Improvements;

(m) goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, including any and all software embedded therein, all of which shall be considered to the fullest extent of the law to be real property for purposes of this deed of trust;

(n) other tangible personal property of every kind and description, whether stored on the Land or elsewhere, including all goods, materials, supplies, tools, books, records, chattels, furniture, machinery and equipment or which is in all cases (i) directly related to the operation of the Property or acquired in connection with any construction or maintenance of the Land or the Improvements or (ii) affixed or installed, or to be affixed or installed, in any manner on the Land or the Improvements;

- (o) development and use rights, governmental permits, approvals and licenses, applications, and all permits and licenses relating or pertaining to the use or enjoyment of the Property;
- (p) general intangibles, accounts and other rights to the payment of money, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including earnest money sales deposits) or deposited by Grantor with third parties, including all utility deposits;
- (q) proceeds of and any unearned premiums on any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property (the "Insurance Claims");
- (r) all awards made for the taking by condemnation or the power of eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Real Estate (the "Condemnation Awards");
- (s) all deposit accounts at Lender and all other deposit accounts from which Grantor may from time to time authorize the Secured Parties to debit payments due on the Secured Obligations, and all money or other personal property of Grantor in addition to the foregoing deposited with or otherwise in Beneficiary's, Trustee's or the Secured Parties possession;
- (t) rights and interests under any Interest Hedging Agreements with the Swap Counterparties, including all rights to the payment of money from the Secured Parties or Trustee under the Credit Agreement between the parties dated May 30, 2012; and all accounts, deposit accounts, and general intangibles, including payment intangibles, described in any of the Interest Hedging Agreements;
- (u) the right, in the name and on behalf of Grantor, upon notice to Grantor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Trustee, Beneficiary or the Secured Parties in the Property;
- (v) letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) that Grantor may now have or hereafter acquire relating to the properties, rights, titles and interests referred to herein;
- (w) books and records pertaining to any and all of the property described herein, including computer-readable memory and any computer hardware or software necessary to access and process such memory; and
- (x) substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing, and all books, records and files relating to any of the foregoing, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data.

ARTICLE 2 - ASSIGNMENT OF RENTS

2.01 Assignment. Grantor irrevocably and unconditionally assigns Beneficiary all rents and other benefits derived from the Leases, and all other issues, profits, royalties, bonuses, income and other proceeds of the Property, whether now due, past due or to become due, including all prepaid rents, security deposits and other supporting obligations (the "Rents"). Beneficiary may collect Rents with or without taking possession of the Property. Beneficiary, by its acceptance of this deed of trust does not assume any duty or obligation under the Leases.

2.02 Grant of License. Notwithstanding the provisions of Section 2.01, Beneficiary confers upon Grantor a license to collect and retain the Rents as they become due and payable, so long as there is no Event of Default (the "License"). If an Event of Default has occurred, Beneficiary may terminate the License without notice to or demand upon Grantor.

2.03 Collection and Application of Rents. Subject to the License granted to Grantor under Section 2.02, Beneficiary has the right, power and authority to collect any and all Rents. Beneficiary may apply all amounts received by it pursuant to this assignment to pay Secured Obligations, expenses of leasing, operating, maintaining and managing the Property, taxes, charges, claims, assessments, any other liens, and premiums for insurance, in such amounts and in such order as Beneficiary deems appropriate.

2.04 Notice. All lessees under any and all Leases are hereby irrevocably authorized and notified by Grantor to rely upon and to comply with (and are fully protected in so doing) any notice or demand by Beneficiary for the payment to Beneficiary of Rents, or for the performance of any of lessees' undertakings under the Leases, and lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder.

2.05 Proceeds. Beneficiary may apply all amounts received by it pursuant to this assignment to pay any of the following in such amounts and in such order as Beneficiary deems appropriate: (a) any and all Secured Obligations; (b) all expenses of leasing, operating, maintaining and managing the Property, including without limitation, the salaries, fees, commissions and wages of a managing agent and such other employees, agents or independent contractors as Beneficiary deems necessary or desirable; (c) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Beneficiary deems necessary or desirable; (d) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property.

2.06 Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and Improvements, Beneficiary is not and shall not be deemed to be: (a) a "mortgagee in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor under any Lease or performing any obligation under any construction document; (c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or (d) liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it (except to the extent of its reckless or intentional misconduct).

2.07 Leasing. Except as may be expressly provided in the Credit Agreement; (a) Grantor shall not accept any prepayment of Rents for any rental period exceeding one month without Beneficiary's prior written consent, and (b) Grantor shall not lease or enter into an agreement to lease the Property or any part of it except with Beneficiary's prior written consent, which consent may be conditioned on, among other things, the execution, delivery and recordation of a subordination, non-disturbance and attornment agreement, in form and substance acceptable to Beneficiary. Grantor shall apply all Rents in a manner approved by Beneficiary.

ARTICLE 3 – SECURITY AGREEMENT

3.01 Grant of Security Interest. Grantor grants to Beneficiary a security interest in and pledges and assigns to Beneficiary all of Grantor's right, title and interest in and to the Property, to the extent characterized as personal property (the "Personalty").

3.02 Addresses of Debtor and Secured Party. The address of Grantor adjacent to its signature below is the mailing address of Grantor as debtor under the UCC. The address for Trustee specified in the first paragraph of this deed of trust is the address for Trustee as secured party under the UCC; and the address for Beneficiary specified in Article 9 is the address for Beneficiary as secured party under the UCC.

3.03 Fixture Filing. This deed of trust constitutes a financing statement filed as a fixture filing under the UCC, covering any Property which now is or later may become a fixture attached to the Land or any Improvement.

ARTICLE 4 – SECURED OBLIGATIONS

4.01 Secured Obligations. Grantor makes the grant, conveyance, transfer and assignment above, makes the irrevocable and absolute assignment in Section 2.01, and grants the security interest under Section 3.01, to secure payment and performance of the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(a) all Obligations (defined in the Credit Agreement), including (i) the Real Estate Term Loan Note dated as of the date of this deed of trust, from Grantor to Lender in the original principal amount of \$16,053,651.44 (the "Note"); (ii) all Interest Hedging Obligations; and all other indebtedness, liabilities and obligations of Grantor to Lender arising pursuant to any of the Transaction Documents, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several;

(b) all obligations of Grantor under this deed of trust;

(c) all future advances and other obligations that Grantor may agree to pay or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this deed of trust; and

(d) any of the foregoing that arises after the filing of a petition by or against Grantor under an Insolvency Proceeding.

4.02 Future Secured Obligations. The Secured Obligations include future advances made by Beneficiary or Secured Parties, at their option, and for any purpose, and all other future Secured Obligations. Those future advances and other future Secured Obligations are secured to the same extent as if made or incurred on the date of the execution of this deed of trust, and have priority as to third persons with or without actual notice from the time this deed of trust is filed for record as provided by law. If this deed of trust secures a line of credit or there is a future advance, the total amount of indebtedness secured by this deed of trust may decrease or increase from time to time. The unpaid balance of any revolving line of credit or Interest Hedging Obligations secured by this deed of trust may at certain times be zero. This deed of trust will remain in full force and effect notwithstanding any zero balance. Grantor shall not file for record any notice limiting the maximum amount secured by this deed of trust (a "Maximum Amount Notice"). A Maximum Amount Notice will be an Event of Default (defined herein). Nothing in this Section 4.02 will constitute a commitment to make additional or future advances or enter into future derivatives transactions in any amount.

4.03 Notice of terms of Secured Obligation Documents. All persons who have or acquire an interest in the Property will be deemed to have received notice of, and will be bound by, the terms of the Credit Agreement, the other Transaction Documents, and each other agreement or instrument made or entered into in connection with each of the Secured Obligations (the Transaction Documents and those other agreements or instruments, the "Secured Obligation Documents"). These terms include any provisions in the Secured Obligation Documents which permit borrowing, repayment and reborrowing, or which provide that the rate of interest on one or more of the Secured Obligations may vary from time to time.

4.04 Unsecured Obligations. This deed of trust does not secure any obligation which is unsecured pursuant to the express terms of the Credit Agreement or any other document, agreement or instrument.

ARTICLE 5 – WARRANTY OF TITLE

5.01 Warranty of Title. Grantor represents and warrants that Grantor lawfully possesses and holds fee simple title to all of the Land and the Improvements; that Grantor has the right, power and authority to grant, convey and assign the Property; and that the Property is unencumbered, except for Permitted Encumbrances (as defined below). Grantor especially agrees and declares that the separate estate of each of them, whether vested, contingent or in expectancy, is hereby conveyed and shall be bound for the payment and performance of the Secured Obligations.

5.02 Defense and Notice of Claims and Actions. At Grantor's sole expense, Grantor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this deed of trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Grantor must give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.03 Liens, Charges and Encumbrances. Grantor shall immediately discharge any lien on the Property other than Permitted Encumbrances, which Beneficiary has not consented to in writing. Grantor must pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether the lien, charge or encumbrance is or would be senior or subordinate to this deed of trust. "Permitted Encumbrances" shall mean those exceptions as set forth on Lender's policy of title insurance covering this deed of trust.

ARTICLE 6 - REPRESENTATIONS

6.01 Representations. Grantor represents to Beneficiary and the Secured Parties that:

(a) the Property does not represent the proceeds of unlawful activity under any state, federal or foreign law;

(b) the Property includes all property and rights which may be reasonably necessary or desirable to enable Grantor to use, enjoy and operate the Land and the Improvements for the present uses thereof;

(c) none of the Land or Improvements is subject to any Lien, offset or claim except any easements and restrictions expressly listed on a schedule of exceptions to coverage in the final commitment for title insurance or pro forma policy of title insurance received by Beneficiary prior to the Closing and not objected to by Beneficiary that are shown in the policy of title insurance insuring the validity and priority of this deed of trust (those Liens, offsets or claims, if any, the "Permitted Exceptions");

(d) Grantor owns the Personalty free and clear of any security interests, reservations of title or conditional sales contracts, and there is no presently valid financing statement affecting the Personalty on file in any public office;

(e) Grantor has title to, or (in the case of leased property) valid leasehold interests in, all of their properties and assets, real and personal, including the properties and assets and leasehold interests reflected in the Financial Information (other than any properties or assets disposed of in the ordinary course of business);

(f) the legal name of Grantor is as appears in the first paragraph of this agreement;

(g) Grantor has not used any trade name, assumed name or other name except Grantor's name stated in the first paragraph of this agreement;

(h) if Grantor is anything other than a natural Person, it has complied with all applicable laws concerning its organization, existence and the transaction of its business, and is in existence and good standing in its state of organization and each state in which it conducts its business;

(i) the execution, delivery and performance by Grantor of this deed of trust is within the powers and authority of Grantor and has been duly authorized;

(j) to Grantor's knowledge, this deed of trust does not conflict with any Applicable Law;

(k) this deed of trust is a legal, valid and binding agreement of Grantor, enforceable against Grantor in accordance with its terms, and any instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding and enforceable ;

(l) there has been no Material Adverse Effect as to Grantor since the effective date the Financial Information was provided to Beneficiary or the Secured Parties;

(m) there is no lawsuit, tax claim or other dispute pending or to Grantor's knowledge threatened against Grantor or the Property that, if determined adverse to Grantor, is reasonably likely to have a Material Adverse Effect;

(n) Grantor is not the subject of any Judgment which could reasonably be expected to have a Material Adverse Effect;

(o) this deed of trust does not conflict with, nor is Grantor in default on any credit agreement, indenture, purchase agreement, guaranty, capital lease, or other investment, agreement, or arrangement presently in effect providing for or relating to extensions of credit in respect of which Grantor is in any manner directly or contingently obligated;

(p) Grantor has filed all tax returns (federal, state, and local) required to be filed and has paid all taxes, assessments, and governmental charges and levies thereon, including interest and penalties;

(q) Grantor has complied with all current and future laws, regulations and ordinances or other requirements of any governmental authority relating to or imposing liability or standards of conduct concerning protection of health or the environment or hazardous substances ("Environmental Laws");

(r) Grantor has not received any notices of violations of any Applicable Laws; and Grantor is in material compliance with all Applicable Laws;

(s) there are no claims, actions, proceedings or investigations pending or threatened against Grantor or affecting the Property with respect to any violations of Applicable Laws;

(t) Grantor's place of business, or its chief executive office, if it has more than one place of business, is located at the address specified below; and

(u) unless otherwise disclosed to Beneficiary, Grantor is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986; and there is no Event of Default or event which, with notice or lapse of time would be an Event of Default.

ARTICLE 7 – COVENANTS

7.01 Performance of Secured Obligations. Grantor shall promptly pay and perform each Secured Obligation in accordance with its terms.

7.02 Maintenance and Preservation of Property. Grantor shall:

(a) immediately discharge any lien on the Property which Beneficiary has not consented to in writing, and shall also pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now or hereafter encumbers or appears to encumber all or part of the Property, whether the lien, charge or encumbrance is or would be senior or subordinate to this deed of trust;

(b) not alter, remove or demolish any portion of the Improvements, except as permitted or required by the Credit Agreement;

(c) maintain (or cause to be maintained) all policies of insurance required under the Credit Agreement and pay (or cause payment of) all premiums for that insurance on or prior to the date when due;

(d) promptly and completely repair and/or restore any portion of the Property which becomes damaged or destroyed, in a good and workmanlike manner in accordance with sound building practices, whether or not Grantor has received the proceeds of any Insurance Claim;

(e) not commit or allow any waste of the Property, nor do or suffer to be done any act whereby the value of any part of the Property may be lessened;

(f) not initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Credit Agreement;

(g) not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Grantor on the Property or any part of it under this deed of trust; and

(h) perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

7.03 Compliance with Applicable Law Grantor shall not commit, and shall use all commercially reasonable means to not allow, any act upon or use of the Property which would violate any Applicable Law, whether now existing or later to be enacted and whether foreseen or unforeseen, or any public or private covenant, condition, restriction or equitable servitude affecting the Property.

7.04 Taxes and Assessments. Grantor shall pay (a) prior to delinquency all taxes, levies, charges and assessments imposed by Applicable Law or any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it (individually and collectively "Impositions"); (b) any and all intangible taxes and documentary stamp taxes determined at any time to be due on or as a result of the Secured Obligations, this deed of trust or any other Transaction Documents, together with any and all interest and penalties thereon; and (c) taxes, levies, charges and assessments on Beneficiary's or Secured Parties' interest therein or upon this mortgage or the Secured Obligations (collectively, "Mortgage Taxes"); except that if the amount of Mortgage Taxes exceeds the Maximum Rate, Grantor will not be required to pay any such excess. If after the date of this deed of trust, the State of California passes any law deducting from the value of Land for the purpose of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes, so as to affect this deed of trust, then within 180 days after notice by Beneficiary to Grantor, Grantor shall pay all Secured Obligations. Notwithstanding the foregoing provisions of this Section 7.04, Grantor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (a) Beneficiary is satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (b) Grantor shall have posted a bond or furnished such other security required from time to time by Beneficiary.

7.05 Damages and Insurance and Condemnation Proceeds. Beneficiary may, at its option, (a) in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and it may make any compromise or settlement of the action or proceeding; (b) participate in any action or proceeding relating to any Condemnation Award; and (c) join Grantor in adjusting any Insurance Claim. All insurance proceeds, Condemnation Awards, and proceeds of any other claim based on warranty, or for damage, injury or loss to the Property which Grantor may receive or be entitled to must be paid to Beneficiary; provided however, in the event the aggregate proceeds of any claim or award are less than \$100,000, said proceeds may be paid direct to the Grantor. In each instance the proceeds are received by the Beneficiary, Beneficiary may apply those proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds or Condemnation Award, including Legal Fees. The balance shall, at Beneficiary's option, be applied to pay or Prepay some or all of the Secured Obligations in such order and proportions as it may choose. Notwithstanding the foregoing, Beneficiary will make casualty insurance proceeds available to the Grantor to repair or restore the Property subject to Beneficiary's receipt of a satisfactory budget for the repairs, satisfactory evidence that sufficient funds are available to complete the repairs, and subject to Beneficiary's customary requirements applicable to the disbursement of proceeds of construction loans. GRANTOR HEREBY SPECIFICALLY, UNCONDITIONALLY AND IRREVOCABLY WAIVES ALL RIGHTS OF A PROPERTY OWNER GRANTED UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1265.225(A), WHICH PROVIDES FOR ALLOCATION OF CONDEMNATION PROCEEDS BETWEEN A PROPERTY OWNER AND A LIENHOLDER, AND ANY OTHER LAW OR SUCCESSOR STATUTE OF SIMILAR IMPORT.

7.06 Site Visits, Observation and Testing. Beneficiary and its agents and representatives may enter and visit the Property at any reasonable time for the purposes of observing it, performing appraisals or inspections, taking and removing soil or groundwater samples, and conducting tests on any part of it, as provided in the Credit Agreement, and otherwise to determine Grantor's compliance with this deed of trust.

7.07 Prohibited Transfers. Grantor agrees that a material factor in Secured Parties' decision to enter into the Secured Obligation Documents is the expertise, financial status and other characteristics of Grantor. Grantor shall not make or permit any Prohibited Transfer. Upon any Prohibited Transfer Beneficiary may declare all Secured Obligations to be due and payable immediately. "Prohibited Transfer" means: (a) any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, lease of the Property not expressly permitted under this instrument or the other Secured Obligation Documents, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law or otherwise; (b) if Grantor is a corporation, any transfer or transfers of shares of the voting power or the direct or indirect beneficial ownership of Grantor; (c) if Grantor is a partnership, withdrawal or removal of any general partner, dissolution of the partnership under Applicable Law, or any transfer or transfers of the partnership interests; (d) if Grantor is a limited liability company, withdrawal or removal of any managing member (but not of any non-member manager), termination of the limited liability company or any transfer or transfers of the voting power or the ownership of the economic interest in the Grantor; or (e) if Grantor is a trust, withdrawal or removal of any trustee or revocation of the trust.

7.08 Compensation and Reimbursement of Costs and Expenses. Grantor shall pay (a) fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary or Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this deed of trust, including Beneficiary's providing a statement or Trustee's rendering of services in connection with a reconveyance; (b) all of Beneficiary's or Trustee's costs and expenses which may be incurred in rendering any such services; and (c) all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this deed of trust or protect the Property, including any rights or remedies afforded to Beneficiary or Trustee under Section 8.02, whether any lawsuit is filed or not, including any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, or in defending any action or proceeding arising under or relating to this deed of trust, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (defined herein) and any cost of evidence of title. If Beneficiary chooses to dispose of Property through more than one Foreclosure Sale, Grantor must pay all costs, expenses or other advances that may be incurred or made by Beneficiary or Trustee in each of those Foreclosure Sales.

7.09 Indemnification. GRANTOR SHALL INDEMNIFY TRUSTEE, BENEFICIARY AND THE SECURED PARTIES AGAINST AND SHALL HOLD THEM HARMLESS FROM ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER COSTS AND EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (A) IN PERFORMING ANY ACT REQUIRED OR PERMITTED BY THIS DEED OF TRUST OR ANY OF THE OTHER SECURED OBLIGATION DOCUMENTS OR BY LAW; (B) BECAUSE OF ANY FAILURE OF GRANTOR TO PAY OR PERFORM ANY OF THE SECURED OBLIGATIONS; OR (C) BECAUSE OF ANY ALLEGED OBLIGATION OF OR UNDERTAKING BY BENEFICIARY OR THE SECURED PARTIES TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS IN ANY DOCUMENT RELATING TO THE PROPERTY (OTHER THAN SUCH WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS IN THE SECURED OBLIGATION DOCUMENTS). THIS AGREEMENT BY GRANTOR TO INDEMNIFY TRUSTEE, BENEFICIARY AND THE SECURED PARTIES SURVIVES THE RELEASE AND CANCELLATION OF ANY OR ALL OF THE SECURED OBLIGATIONS AND THE FULL OR PARTIAL RELEASE AND/OR RECONVEYANCE OF THIS DEED OF TRUST.

7.10 Payments Due Under This Deed Of Trust. Grantor must pay all obligations to pay money arising under this deed of trust immediately upon demand by Trustee, Beneficiary or the Secured Parties. Each such obligation shall bear interest from the date the obligation arises at the Default Rate.

7.11 Impounds. Any time after the occurrence of an Event of Default, Beneficiary may require Grantor to maintain reserves for payment of taxes (including special assessments and other charges against the Property by governmental or quasi governmental bodies) or premiums on property insurance or both. The reserves shall be created by payment each month to Beneficiary of an amount determined by Beneficiary to be sufficient to produce by the date they are due amounts equal to the estimated taxes and insurance premiums to be paid. If at the time that payments are to be made the reserve for either taxes or insurance premiums is insufficient, Grantor shall upon demand pay such additional sum as Beneficiary shall determine to be necessary to cover the required payment. Beneficiary shall not charge a service charge for collecting reserves and paying taxes and insurance premiums. The reserves shall not constitute a trust. Grantor agrees that Beneficiary may commingle reserve funds with other funds of Beneficiary and need not invest them for the benefit of Grantor. Grantor agrees that Beneficiary need not pay Grantor interest on reserves, unless applicable statutes require payment of interest notwithstanding any contrary agreement.

ARTICLE 8 – EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. The following each shall be an event of default under this deed of trust (an "Event of Default"):

- (a) an Event of Default under the Credit Agreement, including a default termination event or other similar event under any Interest Hedging Agreement which is not cured within any grace or cure period specified therein, if any;
- (b) a Prohibited Transfer;
- (c) the Financial Information or any representation in this deed of trust is materially substantially incorrect or materially misleading;
- (d) the filing of any notice limiting the maximum amount secured by this deed of trust to a sum less than the maximum amount secured as specified herein, or if no such amount is specified, to any amount;
- (e) for more than 10 days after notice from Beneficiary, Grantor is in default under any term, covenant or condition of this deed of trust not previously described in this Section 8.01, which can be cured by the payment of a sum of money; or
- (f) for 30 days after notice from Beneficiary or the other Secured Parties, Grantor is in default under any term, covenant or condition of this deed of trust not previously described in this Section 8.01; provided that if (i) it is reasonably certain that the default can be cured by Grantor within that 30 day period and (ii) Grantor has commenced curing that default within that 30 day period and thereafter diligently and expeditiously proceeds to cure that default, then that 30 day period shall be extended for so long as reasonably required by Grantor in the exercise of due diligence to cure that default, up to a maximum of 90 days after the notice to Grantor of the Event of Default.

8.02 Remedies. At any time after an Event of Default:

- (a) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.
- (b) Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(c) Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may consider necessary and appropriate to protect the security of this deed of trust. Such other things may include: taking and possessing all of Grantor's or the then owner's books and records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying rents; collecting and receiving any payment of money owing to Grantor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Grantor will assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS BENEFICIARY AS GRANTOR'S ATTORNEY-IN-FACT TO PERFORM SUCH ACTS AND EXECUTE SUCH DOCUMENTS AS BENEFICIARY CONSIDERS APPROPRIATE IN CONNECTION WITH TAKING THESE MEASURES, INCLUDING ENDORSEMENT OF GRANTOR'S NAME ON ANY INSTRUMENTS. Regardless of any provision of this deed of trust or the other Secured Obligation Documents, Beneficiary shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Grantor to Beneficiary, unless Beneficiary has given express written notice of its election of that remedy in accordance with the UCC.

(d) Cure; Protection of Security. Trustee, Beneficiary or, if applicable, the other Secured Parties may cure any breach or default of Grantor, and if it chooses to do so in connection with any such cure, Trustee, Beneficiary or the other Secured Parties may also enter the Property and/or do any and all other things which it considers necessary or appropriate to protect the security of this deed of trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Trustee, Beneficiary or the other Secured Parties under, this deed of trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Trustee's, Beneficiary's or the other Secured Parties' judgment is or may be senior in priority to this deed of trust, such judgment of Trustee, Beneficiary or the other Secured Parties to be conclusive as among the parties to this deed of trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Credit Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Trustee, Beneficiary or the other Secured Parties. Trustee, Beneficiary and the other Secured Parties may take any of the actions permitted under this Section 8.02 either with or without giving notice to any person. Notwithstanding the foregoing, in no event will Trustee, Beneficiary or the other Secured Parties have any obligation to take any of the actions set forth in this clause (d).

- (e) Uniform Commercial Code Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

(f) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this deed of trust or to obtain specific enforcement of any of the covenants or agreements of this deed of trust.

(g) Power of Sale. Under the power of sale granted under this deed of trust (the "Power of Sale"), Beneficiary has the discretionary right to cause some or all of the Property, including the Personalty, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

(i) Sales of Personal Property. For purposes of the Power of Sale, Beneficiary may elect to treat as Personalty any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any Personalty separately from the sale of real property, in any manner permitted by Division 9 of the UCC, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation for purposes of Section 2924c of the California Civil Code.

(ii) **Non-Judicial Foreclosure Sales of Real Property or Mixed Collateral.** Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its discretion, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by the UCC. Grantor agrees that such a sale of Personalty together with real property constitutes a commercially reasonable sale of the personal property. For purposes of the Power of Sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with the UCC, will sometimes be referred to as a "**Non-Judicial Foreclosure Sale.**" Before any Non-Judicial Foreclosure Sale, Beneficiary or Trustee must give such notice of default and election to sell as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee must sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary have any obligation to make demand on Grantor before any Non-Judicial Foreclosure Sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request must, postpone any Non-Judicial Foreclosure Sale by public announcement at the time and place noticed for that sale. At any Non-Judicial Foreclosure Sale, Trustee must sell to the highest bidder at public auction for cash in lawful money of the United States. , Trustee must execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Non-Judicial Foreclosure Sale, are conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

(h) **Single or Multiple Foreclosure Sales.** If the Property consists of more than one lot, parcel or item of property, Beneficiary may: (i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and (ii) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the Power of Sale, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale;**" any two or more, "**Foreclosure Sales.**"). If it chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Non-Judicial Foreclosure Sale will terminate or affect the liens of this deed of trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

8.03 Credit Bids. At any Foreclosure Sale, any person, including Grantor, Trustee, Beneficiary or the Secured Parties, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for that property, Beneficiary or the Secured Parties may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Grantor is obligated to reimburse Trustee, Beneficiary or the Secured Parties; and

(b) Second, all other Secured Obligations in any order and proportions as Beneficiary or Secured Parties may choose.

8.04 Application of Foreclosure Sale Proceeds. Trustee, Beneficiary and , if applicable, the other Secured Parties shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Grantor is obligated to reimburse Trustee, Beneficiary or the Secured Parties;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Trustee, Beneficiary or the Secured Parties under the terms of this deed of trust which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Beneficiary may choose; and

- (d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

8.05 Application of Rents and Other Sums. Beneficiary and Secured Parties must apply any and all Rents collected by it pursuant to the assignment provided in Article 2 of this deed of trust, and any and all other sums, other than the proceeds of a Foreclosure Sale, received or collected by Beneficiary or, if applicable, the other Secured Parties, in the following manner:

- (a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of collection of such sums incurred by Trustee, Beneficiary, the Secured Parties or any receiver appointed in accordance with this deed of trust;
- (b) Second, to pay any and all Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose, and any and all expenses incident to the Property as provided in Section 2.05, and in such order and proportions as Beneficiary in its sole discretion may choose; and
- (c) Third, to remit the remainder, if any, to the person or persons entitled thereto.

8.06 No Liability for Funds Not Received. Trustee, Beneficiary and the other Secured Parties have no liability for any funds which it does not actually receive.

ARTICLE 9 – NOTICES

All notices, approvals, consents, and other communications, under this deed of trust ("Notices") must be given in accordance with and will be subject to the terms and provisions of the Credit Agreement. Notices must be mailed or delivered, if to Grantor, to the address adjacent Grantor's signature below; if to Trustee, to the address in the first paragraph of this deed of trust; if to Beneficiary or Lender, to Rabobank, N.A., 33 East Carrillo St., Santa Barbara, CA 93101, Attention: Commercial Lending Closing Department; and in the case of any other Person, to the address designated by that Person in a notice to Grantor, Beneficiary, and Lender.

ARTICLE 10 –REQUEST FOR NOTICE

Grantor requests that a copy of any notice of default and any notice of sale be mailed to it at the address specified adjacent to its signature below.

ARTICLE 11 –TRUSTEE AND BENEFICIARY

11.01 Authority of Beneficiary. Without affecting the personal liability of any Person, including Grantor, for the payment of the Secured Obligations or the lien of this deed of trust on the remainder of the Property for the unpaid amount of the Secured Obligations, Trustee may perform any of the following acts when requested to do so by Beneficiary or a Secured Party in writing: (a) consent to the making of any plat or map of the Property or any part of it; (b) join in granting any easement or creating any restriction affecting the Property; (c) join in any subordination or other agreement affecting this deed of trust or the lien of it; or (d) reconvey the Property or any part of it without any warranty.

11.02 Exculpation of Trustee and Beneficiary. None of Beneficiary, Trustee or the Secured Parties will be directly or indirectly liable to Grantor or any other person as a consequence of any of the following: (a) the exercise of or failure to exercise any rights, remedies or powers granted to it in this deed of trust; (b) any failure or refusal to perform or discharge any obligation or liability of Grantor under any agreement related to the Property or under this deed of trust; or (c) any loss sustained by Grantor or any third party resulting from any failure to lease the Property or from any other act or omission in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Beneficiary, Trustee or the Secured Parties, respectively. GRANTOR HEREBY EXPRESSLY WAIVES AND RELEASES ALL LIABILITY OF THE TYPES DESCRIBED ABOVE, AND AGREES THAT NO SUCH LIABILITY BE ASSERTED AGAINST OR IMPOSED UPON TRUSTEE, BENEFICIARY or ANY SECURED PARTY.

11.03 Substitution of Trustee. Beneficiary may substitute a successor to any Trustee named in or acting under this deed of trust in any manner now or later to be provided at Applicable Law.

ARTICLE 12 – RECONVEYANCE

When all Secured Obligations have been paid in full, the Interest Hedging Agreements have been terminated and there are no further obligations under the Loan Documents, Trustee shall execute and deliver an instrument reconveying the Property, or so much of it as is then held under this deed of trust, without warranty to the person or persons legally entitled to it. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Trustee, Beneficiary and the Secured Parties will have no duty to determine the rights of persons claiming to be rightful grantees of any reconveyance of the Property.

ARTICLE 13– MISCELLANEOUS

13.01 Additional Provisions. The Secured Obligation Documents state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this deed of trust. The Secured Obligation Documents also grant further rights to Beneficiary and the Secured Parties and contain further agreements and affirmative and negative covenants by Grantor which apply to this deed of trust and to the Property.

13.02 Entire Agreement. This deed of trust and the other Secured Obligation Documents collectively: (i) represent the sum of the understandings and agreements between Beneficiary, the Secured Parties, if appropriate and Grantor concerning this credit; (ii) replace any prior oral or written agreements between Beneficiary, the Secured Parties, if applicable and Grantor concerning this credit; and (iii) are intended by Beneficiary, Secured Parties and Grantor as the final, complete and exclusive statement of the terms agreed to by them. In the event of any conflict between this deed of trust and any other agreements required by this deed of trust, this deed of trust will prevail.

13.03 Other Acts. Grantor shall cooperate with Beneficiary for the purposes of, and perform all acts which may be necessary or advisable to perfect any Lien provided for in this deed of trust or to carry out the intent of this agreement. Promptly (but in no event more than ten days) after request by Beneficiary, Grantor will execute, acknowledge and deliver any document which Beneficiary deems necessary or advisable for these purposes, and will, on demand, pay any expenses incurred by Beneficiary in the preparation, execution and filing of any such documents.

13.04 No Waiver or Cure. Each waiver by Trustee, Beneficiary or the other Secured Parties must be in writing, and no waiver is to be construed as a continuing waiver. No waiver is to be implied from any delay or failure by Trustee, Beneficiary or the other Secured Parties to take action on account of any default of Grantor. Consent by Trustee, Beneficiary or the other Secured Parties to any act or omission by Grantor must not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Trustee's, Beneficiary's or the other Secured Parties' consent to be obtained in any future or other instance. The exercise by Trustee, Beneficiary or the other Secured Parties of any right or remedy under this deed of trust or the other Secured Obligation Documents or under Applicable Law, shall not: cure or waive a breach, Event of Default or notice of default under this deed of trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Secured Obligation Documents, including any Interest Hedging Agreements, have been cured); or impair the security of this deed of trust; or prejudice Trustee, Beneficiary, the other Secured Parties or any receiver appointed in accordance with this deed of trust, in the exercise of any right or remedy afforded any of them under this deed of trust; or be construed as an affirmation by Beneficiary or the other Secured Parties of any tenancy, lease or option, or a subordination of the lien of this deed of trust.

13.05 Merger. No merger shall occur as a result of Beneficiary's or the Secured Parties' acquiring any other estate in or any other lien on the Property.

13.06 Waiver of Marshalling. Grantor waives all rights, legal and equitable, it may now or hereafter have to require marshalling of assets or to require upon foreclosure sales of assets in a particular order, including any rights provided by California Civil Code Sections 2899 and 3433, as those sections may be amended from time to time. Each successor and assign of Grantor, including any holder of a lien subordinate to this deed of trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

13.07 Waiver of Certain Other Laws. To the full extent Grantor may do so, Grantor agrees that Grantor 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 appraisal, valuation, stay, extension or redemption, and Grantor, for Grantor, and its representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, or notice of election to mature or declare due the whole of the Secured Obligations in the event of foreclosure of the lien created by this deed of trust.

13.08 Joint and Several Obligations. If Grantor consists of more than one Person, each Grantor (a) acknowledges and undertakes, together with the other Grantors, joint and several liability for the indebtedness, liabilities and obligations of Grantor under this deed of trust; (b) acknowledges that this deed of trust is the independent and several obligation of each Grantor and may be enforced against each Grantor separately, whether or not enforcement of any right or remedy hereunder has been sought against any other Grantor; and (c) agrees that its liability hereunder and under any other Secured Obligation Document shall be absolute, unconditional, continuing and irrevocable. GRANTOR EXPRESSLY WAIVES ANY REQUIREMENT THAT BENEFICIARY OR THE SECURED PARTIES EXHAUST ANY RIGHT, POWER OR REMEDY AND PROCEED AGAINST THE OTHER GRANTORS UNDER THIS DEED OF TRUST, OR ANY OTHER SECURED OBLIGATION DOCUMENTS, OR AGAINST ANY OTHER PERSON UNDER ANY GUARANTY OF, OR SECURITY FOR, ANY OF THE SECURED OBLIGATIONS.

13.09 Authority to Bind Grantor. If Grantor is comprised of multiple Persons, any Person comprising Grantor is hereby authorized to bind all parties comprising Grantor. Beneficiary or Secured Parties may, at any time and without notice, waive any prior requirement that requests, authorizations, or other actions be taken only by a Designated Person.

13.10 Binding Effect; Successors and Assigns. The Secured Obligation Documents shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns; provided, that Grantor shall not assign its rights or obligations hereunder without the Secured Parties' consent. However, this section does not waive the provisions of Section 7.07; and Grantor shall not assign its rights or obligations hereunder without Beneficiary's and, if applicable, the other Secured Parties' consent. Beneficiary and the Secured Parties may transfer all or any portion of their rights under the Secured Obligation Documents to any other Person. Beneficiary and the other Secured Parties may disclose to any actual or proposed transferee any information that Grantor has delivered to Beneficiary and the Secured Parties in connection with the negotiation of this deed of trust or pursuant to the Secured Obligation Documents; and Grantor shall cooperate fully with Beneficiary and the Secured Parties in providing that information to any actual or proposed transferee.

13.11 Rights and Remedies Cumulative. All rights and remedies under this deed of trust and the Secured Obligation Documents are cumulative, and the exercise of any one or more of them does not constitute an election of remedies.

13.12 Severability. Any provision of any Secured Obligation Document which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of that Secured Obligation Document or affecting the validity or enforceability of that provision in any other jurisdiction; except that if such provision relates to the payment of any monetary sum, then Beneficiary or, if applicable, the other Secured Parties may, at its option, declare all Secured Obligations immediately due and payable.

13.13 Amendments in Writing. This deed of trust may not be amended, changed, modified, altered or terminated without the prior written consent of Beneficiary and, if applicable, the other Secured Parties.

13.14 Governing Law. This deed of trust shall be governed and interpreted by applying the laws of the State of California (the "Governing Law State") without regard or reference to its conflict of laws principles.

13.15 JURISDICTION AND VENUE. GRANTOR IRREVOCABLY AGREES THAT, AT THE OPTION OF BENEFICIARY, ALL ACTIONS, PROCEEDINGS OR COUNTERCLAIMS ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR ANY OTHER TRANSACTION DOCUMENT WILL BE LITIGATED IN THE SUPERIOR COURT OF CALIFORNIA, SACRAMENTO COUNTY, CALIFORNIA, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. GRANTOR IRREVOCABLY CONSENTS TO SERVICE, JURISDICTION, AND VENUE OF THOSE COURTS FOR ALL SUCH ACTIONS, PROCEEDINGS AND COUNTERCLAIMS AND WAIVES ANY OTHER VENUE TO WHICH IT MIGHT BE ENTITLED BY VIRTUE OF DOMICILE, HABITUAL RESIDENCE OR OTHERWISE.

13.16 Counterpart Execution. This deed of trust may be executed in counterparts, each of which will be an original and all of which together are deemed one and the same instrument.

13.17 Necessary Action. Beneficiary is authorized to execute any other documents or take any other actions necessary to effectuate this deed of trust and the consummation of the transactions contemplated herein.

13.18 Credit Report. Beneficiary and the Secured Parties are authorized to order a credit report and verify all other credit information, including past and present loans and standard references from time to time to evaluate the creditworthiness of Grantor. Without limitation, a copy of the consent for release of information, general authorization or similar document on file with Beneficiary or the Secured Parties shall authorize third Persons to provide the information requested from time to time.

13.19 Time of the Essence. Time is of the essence of this deed of trust.

13.20 No Construction Against Drafter. Each Party has participated in negotiating and drafting this deed of trust, so if an ambiguity or a question of intent or interpretation arises, this deed of trust is to be construed as if the parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this deed of trust.

13.21 INDEMNIFICATION. GRANTOR SHALL DEFEND, INDEMNIFY AND HOLD TRUSTEE, BENEFICIARY AND THE SECURED PARTIES AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, AGENTS AND ATTORNEYS (THE "INDEMNIFIED PERSONS") HARMLESS AGAINST ANY AND ALL LOSSES OF ANY KIND OR NATURE WHATSOEVER THAT MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST THE INDEMNIFIED PERSONS: (I) INCURRED AS A RESULT OF THE FAILURE BY GRANTOR TO BORROW THE AMOUNT SPECIFIED IN A LOAN REQUEST (INCLUDING ANY FAILURE RESULTING FROM THE FAILURE TO FULFILL THE APPLICABLE CONDITIONS PRECEDENT BUT EXCLUDING LENDER'S FAILURE TO LEND SUCH AMOUNT), INCLUDING ANY LOSS OF ANTICIPATED PROFITS AND LOSSES BY REASON OF THE LIQUIDATION OR REEMPLOYMENT OF DEPOSITS OR OTHER FUNDS ACQUIRED BY LENDER TO FUND THE LOAN; (II) AS A RESULT OF ITS ACTS OR OMISSIONS WHICH RESULT FROM COMMUNICATIONS GIVEN OR PURPORTED TO BE GIVEN, BY GRANTOR OR ANY DESIGNATED PERSON, WHICH ARE INTERRUPTED, WHICH ARE MISUNDERSTOOD, OR WHICH ARE IN FACT FROM UNAUTHORIZED PERSONS, BUT WHICH LENDER BELIEVES IN GOOD FAITH TO BE FROM BORROWER OR ANY DESIGNATED PERSON; (III) ARISING OUT OF OR RESULTING FROM THE VIOLATION BY GRANTOR OF ANY ENVIRONMENTAL LAW; (IV) RESULTING FROM THE RELIANCE BY TRUSTEE, BENEFICIARY OR THE SECURED PARTIES ON EACH NOTICE PURPORTEDLY GIVEN BY OR ON BEHALF OF GRANTOR; AND (V) ARISING OUT OF CLAIMS ASSERTED AGAINST THE INDEMNIFIED PERSONS AS A RESULT OF TRUSTEE, BENEFICIARY OR THE SECURED PARTIES BEING PARTY TO THIS DEED OF TRUST OR THE TRANSACTIONS CONSUMMATED PURSUANT TO THIS DEED OF TRUST; except that Grantor shall have no obligation to an Indemnified Person under this section with respect to Losses resulting from the gross negligence or willful misconduct of that Indemnified Person as determined by a court of competent jurisdiction. If and to the extent that an Indemnity is unenforceable for any reason, Grantor shall to make the maximum contribution to the payment and satisfaction thereof which is permissible under Applicable Law. The provisions of all Indemnities shall survive the reconveyance of this deed of trust.

13.22 WAIVER OF TRIAL BY JURY. GRANTOR (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY IN ANY ACTION OR PROCEEDING FOR THE RESOLUTION OF ANY CONTROVERSY OR CLAIM THAT ARISES OUT OF OR RELATES TO: (I) THIS DEED OF TRUST; OR (II) ANY SECURED OBLIGATION DOCUMENT, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE (INDIVIDUALLY AND COLLECTIVELY, A "CONTROVERSY OR CLAIM"); AND, (B) TO THE EXTENT PERMITTED BY APPLICABLE LAW, WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY CONTROVERSY OR CLAIM TO THE EXTENT SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THE PROVISIONS OF THIS SECTION ARE GIVEN KNOWINGLY AND VOLUNTARILY; AND ARE A MATERIAL INDUCEMENT FOR THE SECURED PARTIES ENTERING INTO THE SECURED OBLIGATION DOCUMENTS.

[Signatures on Following Page]

Grantor is signing and delivering this deed of trust effective as of the day and year first written above.

GRANTOR

QAD ORTEGA HILL, LLC, a Delaware limited liability company

Address for notices:

100 Innovation Place
Santa Barbara, California 93108
Attention: John Neale

By: /s/ John Neale

JOHN NEALE
Manager

By: /s/ Kara Bellamy

KARA BELLAMY
Manager

STATE OF CALIFORNIA)
) ss
COUNTY OF Santa Barbara _____)

On 5/30/2012, before me, LORI COLE, a notary public, personally appeared JOHN NEALE, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

/s/ Lori Cole

STATE OF CALIFORNIA)
) ss
COUNTY OF Santa Barbara _____)

On 5/30/2012, before me, LORI COLE, a notary public, personally appeared KARA BELLAMY, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

/s/ Lori Cole

LORI COLE Commission # 1828228

Notary Public-California

Santa Barbara County

My Comm. Expires Jan. 19, 2013

EXHIBIT A

QAD Ortega Hill, LLC
DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

Legal Description of Real Estate

Santa Barbara County, California

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

All that certain and situated in the State of California in the unincorporated area of the County of Santa Barbara, described as follows:

That portion of the Ortega Rancho, being a portion of the Outside Pueblo Lands of the City of Santa Barbara, in the County of Santa Barbara, State of California, according to the map thereof recorded in Book 1, at Page 20 of Maps and Surveys, records of said County, described as follows:

Beginning at an old stake set at the Northerly corner of the tract of land described in the Deed to Hiram Craig, dated August 2, 1894 and recorded in Book 47, Page 154 of Deeds; thence along the Southerly line of the old County Road over Ortega Hill North 54°53' West 316.7 feet; thence continuing along the Southerly line of said road North 63°24' West 565.68 feet, more or less to intersect the Southerly prolongation of the 32nd course of Parcel One as described in that certain Deed of Trust executed by D. C. Williams and wife, dated April 22, 1938 and recorded in Book 404, Page 375 of Official Records; thence along said prolongation North 12°22' East to the Southerly end of said 32nd course; thence along the Northerly and Westerly lines of Parcel One, in said Deed of Trust the following courses and distances; South 87°22' West 363.66 feet to an iron pipe survey monument set in the road bed; North 83°53' West 269.94 feet to an iron pipe set in road bed; South 37°52' West 132.66 feet to an iron pipe survey monument set in road bed; South 22°22' West 188.1 feet to an iron pipe survey monument set in road bed; South 53°07' West 266.64 feet to an iron pipe survey monument set in road bed; South 22°52' West at (240.42 feet, a galvanized iron rod set in road bed) 248.72 feet to an iron pipe survey monument set in road bed; South 61°58' East 28.04 feet to a nail in top of fence post marked "PC NO. 3"; South 51°13' East 24 feet to an iron pipe survey monument set in mound of rocks; South 13°43' East 50 feet to an iron pipe survey monument set in mound of rocks; and South 29°58' East to intersect the Northerly line of State Highway right of way as described in Deed to the State of California dated September 29, 1933, and recorded in Book 289, Page 291 of Official Records; thence leaving the line of said Deed of Trust and following along the Northerly line of said State Highway in an Easterly direction to intersect the Southerly prolongation of the Westerly line of the Craig Tract above referred to; thence along said prolongation and said Westerly line North 2°01' East to a point which lies South 2° 01' West 75.95 feet from the point of beginning; thence North 33°23'15" West, 12 .74 feet; thence North 08° 24' 53" East 54.74 feet; thence North 08°33' 08" East 11.25 feet to the point of beginning.

EXCEPTING therefrom those portions thereof conveyed to the State of California by Deeds recorded November 6, 1933 as Instrument No. 6970 in Book 289, Page 291 and recorded December 29, 1944 as Instrument No. 12819 in Book 630, Page 429, and recorded December 29, 1944 as Instrument No. 12820 in Book 630, Page 431, and recorded August 6, 1949 as Instrument No. 9672 in Book 867, Page 290, and recorded August 10, 1949 as Instrument No. 9352 in Book 868, Page 128, and recorded July 11, 1950 as Instrument No. 9776 in Book 928, Page 110, all of Official Records.

ALSO EXCEPTING therefrom 2.38 percent of the oil, gas and other hydrocarbon substances that maybe produced and saved from land as conveyed in Deed recorded Map 11, 1938 as Instrument No. 4073 in Book 436 Page 54 of Official Records.

ALSO EXCEPTING therefrom an undivided one-fourth (1/4) in and to all oil, gas and other hydrocarbon substances of every kind and nature that may be produced or developed from said land as reserved in Deed recorded December 28, 1954 as Instrument No. 22752 in Book 1288, Page 474 of Official Records.

APN: 005-110-33

ISDA®

International Swaps and Derivatives Association, Inc.

2002 MASTER AGREEMENT

dated as of **May 25, 2012**

Rabobank, N.A.

QAD Ortega Hill, LLC, a Delaware
limited liability company

and

have entered and/or anticipate entering into one or more transactions (each a “Transaction”) that are or will be governed by this 2002 Master Agreement, which includes the schedule (the “Schedule”), and the documents and other confirming evidence (each a “Confirmation”) exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this “Master Agreement”.

Accordingly, the parties agree as follows:—

1. Interpretation

(a) **Definitions.** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions.

2. Obligations**(a) General Conditions.**

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting of Payments.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

ISDA® 2002

(ii) **Liability.** If:—

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any “Additional Representation” is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

- (d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.
- (e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.
- (f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.
- (g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

- (a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—
- (i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;
 - (ii) any other documents specified in the Schedule or any Confirmation; and
 - (iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

- (b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.
- (c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.
- (d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.
- (e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

- (a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that party or any Transaction evidenced by such a Confirmation (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default Under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross-Default.** If “Cross-Default” is specified in the Schedule as applying to the party, the occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(i i) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, “X”) and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A “Designated Event” with respect to X means that:—

- (1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;
- (2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or
- (3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) ***Hierarchy of Events.***

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) ***Deferral of Payments and Deliveries During Waiting Period.*** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) ***Inability of Head or Home Office to Perform Obligations of Branch.*** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

6. Early Termination; Close-Out Netting

(a) ***Right to Terminate Following Event of Default.*** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i). Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

(iv) **Right to Terminate.**

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

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(c) **Effect of Designation.**

- (i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.
- (ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).

(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Payment Date.** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the “Early Termination Amount”) will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) *Two Affected Parties*. Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party “X”) and the lower amount so determined (by party “Y”) and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events*. If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party’s Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy*. In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event*. The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate*. The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off*. Any Early Termination Amount payable to one party (the “Payee”) by the other party (the “Payer”), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be (“X”) (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts (“Other Amounts”) payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

7. Transfer

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) **Amendments.** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) Counterparts and Confirmations.

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

(h) Interest and Compensation.

(i) **Prior to Early Termination.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:

(1) **Interest on Defaulted Payments.** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) **Compensation for Defaulted Deliveries.** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) *Interest on Deferred Payments. If:—*

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries. If:—*

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) **Early Termination.** Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) **Unpaid Amounts.** For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) **Interest on Early Termination Amounts.** If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) **Interest Calculation.** Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

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- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or
- (vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Details.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule;

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits:—
 - (1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or
 - (2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and
- (iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

(d) **Waiver of immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

“Additional Representation” has the meaning specified in Section 3.

“Additional Termination Event” has the meaning specified in Section 5(b).

“Affected Party” has the meaning specified in Section 5(b).

“Affected Transactions” means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

“Affiliate” means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“Agreement” has the meaning specified in Section 1(c).

“Applicable Close-out Rate” means:—

(a) in respect of the determination of an Unpaid Amount:—

- (i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
- (ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;
- (iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and
- (iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and

(b) in respect of an Early Termination Amount:—

- (i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—
 - (1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;
 - (2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and
 - (3) in all other cases, the Applicable Deferral Rate; and
- (ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—
 - (1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

- (2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;
- (3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and
- (4) in all other cases, the Termination Rate.

“Applicable Deferral Rate” means:—

- (a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;
- (b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and
- (c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(l) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

“Automatic Early Termination” has the meaning specified in Section 6(a).

“Burdened Party” has the meaning specified in Section 5(b)(iv).

“Change in Tax Law” means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction. **“Close-out Amount”** means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

(i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;

(ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or

(iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

(1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

"Confirmation" has the meaning specified in the preamble.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Contractual Currency" has the meaning specified in Section 8(a).

"Convention Court" means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Cross-Default" means the event specified in Section 5(a)(vi).

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“Defaulting Party” has the meaning specified in Section 6(a).

“Designated Event” has the meaning specified in Section 5(b)(v).

“Determining Party” means the party determining a Close-out Amount.

“Early Termination Amount” has the meaning specified in Section 6(e).

“Early Termination Date” means the date determined in accordance with Section 6(a) or 6(b)(iv).

“electronic messages” does not include e-mails but does include documents expressed in markup languages, and **“electronic messaging system”** will be construed accordingly.

“English law” means the law of England and Wales, and **“English”** will be construed accordingly.

“Event of Default” has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

“Force Majeure Event” has the meaning specified in Section 5(b).

“General Business Day” means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

“Illegality” has the meaning specified in Section 5(b).

“Indemnifiable Tax” means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

“law” includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and **“unlawful”** will be construed accordingly.

“Local Business Day” means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

“Local Delivery Day” means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

“Master Agreement” has the meaning specified in the preamble.

“Merger Without Assumption” means the event specified in Section 5(a)(viii).

“Multiple Transaction Payment Netting” has the meaning specified in Section 2(c).

“Non-affected Party” means, so long as there is only one Affected Party, the other party.

“Non-default Rate” means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

“Non-defaulting Party” has the meaning specified in Section 6(a).

“Office” means a branch or office of a party, which may be such party’s head or home office.

“Other Amounts” has the meaning specified in Section 6(f).

“Payee” has the meaning specified in Section 6(f).

“Payer” has the meaning specified in Section 6(f).

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

“Proceedings” has the meaning specified in Section 13(b).

“Process Agent” has the meaning specified in the Schedule.

“Rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

“Relevant Jurisdiction” means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

“Schedule” has the meaning specified in the preamble.

“Scheduled Settlement Date” means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

“Specified Entity” has the meaning specified in the Schedule.

“Specified Indebtedness” means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

“Specified Transaction” means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

“Stamp Tax” means any stamp, registration, documentation or similar tax.

“Stamp Tax Jurisdiction” has the meaning specified in Section 4(e).

“Tax” means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

“Tax Event” has the meaning specified in Section 5(b).

“Tax Event Upon Merger” has the meaning specified in Section 5(b).

“Terminated Transactions” means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

“Termination Currency” means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

“Termination Currency Equivalent” means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

“Termination Event” means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

“Termination Rate” means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

“Threshold Amount” means the amount, if any, specified as such in the Schedule.

“Transaction” has the meaning specified in the preamble.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

“Waiting Period” means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

Rabobank, N.A.

By: /s/ Jason Wilson _____

Name: Jason Wilson

Title: VP – Commercial Banking Officer

Date: 05/30/2012

QAD Ortega Hill, LLC, a Delaware limited liability company

By: /s/ John Neale _____

Name: John Neale

Title: Manager

Date: 05/30/2012

By: /s/ Brett Hamilton _____

Name: Brett Hamilton

Title: Regional Credit Officer

Date: 05/30/2012

By: /s/ Kara Bellamy _____

Name: Kara Bellamy:

Title: Manager

Date: 05/30/2012

ISDA®
International Swaps and Derivatives Association, Inc.

**SCHEDULE
to the
2002 Master Agreement**

dated as of **May 25, 2012**,

between

Rabobank, N.A.
("Party A")

and

QAD Ortega Hill, LLC, a Delaware limited liability company
("Party B")

Part 1. Termination Provisions.

- (a) **"Specified Entity"** means in relation to Party A for the purpose of:—

Section 5(a)(v), Not Applicable
Section 5(a)(vi), Not Applicable
Section 5(a)(vii), Not Applicable
Section 5(b)(v), Not Applicable

and in relation to Party B for the purpose of:—

Section 5(a)(v), All Affiliates
Section 5(a)(vi), All Affiliates
Section 5(a)(vii), All Affiliates
Section 5(b)(v), All Affiliates

- (b) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement.

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(c) The “**Failure to Pay or Deliver**” provisions of Section 5(a)(i) are hereby amended by inserting at the end of Section 5(a)(i): “provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if the failure to pay or deliver is caused by an error or omission of an administrative or operational nature and funds were available to such party to enable it to make the relevant payment or delivery when due and provided that such error or omission is remedied within three Local Business Days and/or three Local Delivery Days after notice of such failure being received;”.

(d) The “**Cross-Default**” provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B except that the following shall be inserted at the end of Section 5(a)(vi):

“provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if the default, Event of Default or other similar event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature and funds were available to such party to enable it to make the relevant payment when due and provided that such error or omission is remedied within three Local Business Days of notice of such failure being received;”.

“**Specified Indebtedness**” means with respect to Party A and Party B, any obligation (whether present or future, contingent or otherwise as principal or surety or otherwise) for the payment or repayment of any money.

“**Threshold Amount**” means, (i) in relation to Party A for the purposes of Section 5(a)(vi), USD 100,000,000.00 and (ii) in relation to Party B for the purposes of Section 5(a)(vi), the lesser of USD 10,000.00 or 3% of stockholder equity, shareholder’s equity, membership interests, partnership interests or the equivalent, as applicable, as determined by reference to the latest audited consolidated annual report (if any) or the equivalent in any other currency.

(e) The “**Credit Event Upon Merger**” provisions of Section 5(b)(v) will apply to Party A and will apply to Party B.

(f) The “**Automatic Early Termination**” provision of Section 6(a) will not apply.

(g) “**Termination Currency**” means United States Dollars.

(h) “**Additional Termination Event**” The following shall constitute Additional Termination Events:

(1) In the event the obligations created under the related Credit Agreement (excluding the obligations of Party B under this Agreement) are repaid in full, such Credit Agreement is terminated or cancelled, or Party A (or any member bank or Affiliate of Party A) as lender shall cease to remain a party thereto. Notwithstanding the foregoing, it shall not be an Additional Termination Event if the obligations under such Credit Agreement are repaid in full (a “Refinancing”) through a refinancing facility or a replacement facility, to which refinancing or replacement facility Party A is a lender and Party B’s obligations under this Agreement are secured, guaranteed and otherwise backed by the same collateral or persons securing, guaranteeing and backing such refinancing or replacement facility on at least a pari-passu basis with the lenders of such refinancing or replacement facility. For this Additional Termination Event, Party B shall be the sole Affected Party and the Transaction or Transactions associated with the hedging of the relevant Credit Agreement shall be the sole Affected Transaction(s), provided that if there is no other Credit Agreement outstanding, all Transactions shall be Affected Transactions.

“Credit Agreement” means each of the (i) Credit Agreement dated as of May 23, 2012, between Party B and Party A, as amended from time to time; and (ii) any other loan agreement or credit agreement between Party A and Party B, as amended from time to time.

(2) Any default, event of default or other similar condition or event (howsoever described) under a Credit Agreement (a) results in any indebtedness or obligation under such Credit Agreement becoming capable at such time of being declared due and payable before it would otherwise have been due and payable or (b) in making one or more payments on the due date for payment (after giving effect to any applicable notice requirement or grace period). For this Additional Termination Event, Party B shall be the sole Affected Party and the Transaction associated with the hedging of the relevant Credit Agreement shall be the sole Affected Transaction, provided that if there is no other Credit Agreement outstanding, all Transactions shall be Affected Transactions.

(3) In the event Party B makes a payment or prepayment under a Credit Agreement and the notional amount of the related swap confirmation or related swap confirmations is greater than the then outstanding principal balance of such Credit Agreement, there shall be an Additional Termination Event (“Partial Termination”) with respect to the Notional Amount of the swap confirmation minus the principal balance of the Credit Agreement (“Hedging Excess”). For this Additional Termination Event, Party B shall be the sole Affected Party and the Transaction or Transactions associated with the hedging of the relevant Credit Agreement shall be the sole Affected Transaction(s) with respect to the Hedging Excess only.

For the avoidance of doubt, a Partial Termination shall not constitute an Additional Termination Event with respect to the non-terminated portion of such Transaction and shall have no effect on the non-terminated portion, which shall continue in full force and effect (with the appropriate reduction in its Notional Amount) without regard to such Partial Termination. If requested by Party A, Party B shall execute a confirmation to reflect the Partial Termination and the Transaction with an amended Notional Amount.

Part 2. Tax Representations

Payer Tax Representations. For the purpose of Section 3(e) of this Agreement, Party A and Party B each make the following representations:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

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Payee Tax Representations. For the purpose of Section 3(f) of this Agreement, Party A and Party B each make the following representations, as applicable:

(i) Party A makes the following representations:

(a) It is a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes and an “Exempt recipient” within the meaning of section 1.6049-4(c)(1)(ii) of United States Treasury Regulations.

(ii) Party B makes the following representations:

It is a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes and an “Exempt recipient” within the meaning of section 1.6049-4(c)(1)(ii) of United States Treasury Regulations.

Part 3. Agreement to Deliver Documents.

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable:—

(a) Tax forms, documents or certificates to be delivered are: -

| Party required to deliver document | Form/Document/Certificate | Date by which to be delivered |
|---|--|--|
| Party A and Party B | Any document or certificate reasonably requested by the other party to permit payment without (or at a reduced rate of) deduction or withholding of tax | As soon as possible after request |
| Party B | A correct, complete and duly executed United States Internal Revenue Service Form W-9 (or any successor applicable form), in a manner reasonably satisfactory to Party A | (i) Upon execution of the Agreement and (ii) promptly upon reasonable demand |

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(b) Other documents to be delivered are: -

| Party required to deliver document | Form/Document/Certificate | Date by which to be delivered | Covered by Section 3(d) Representation |
|---|---|---|---|
| Party A and Party B | Such evidence of the due authorisation of the person(s) signing this Agreement and each Confirmation on its behalf as the other party may reasonably request | On execution and if requested on the occasion of each transaction | Yes |
| Party B | A duly certified copy of its constituent documents evidencing that it has the power to enter into the transactions of the nature hereby contemplated. | On execution | Yes |
| Party B | A copy of a Borrowing Resolution (Incumbency Certificate for Limited Liability Companies) of Party B approving Party B's entering into this Agreement and transactions of the nature hereby contemplated and authorising a named person or persons to execute this Agreement and each Confirmation on its behalf and to enter into each Transaction on its behalf | On execution | Yes |
| Party B | Any Credit Support Document specified in Part 4(f) | On execution | Yes |

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| | | | |
|---------|--|---------------------|-----|
| Party B | Such other documents as Party A may reasonably request, including without limitation, legal opinions in form and substance satisfactory to Party A, and such other written information with respect to the business, operations, financial condition or otherwise, of Party B and any Credit Support Provider of Party B | Promptly on request | Yes |
|---------|--|---------------------|-----|

Part 4. **Miscellaneous.**

(a) **Addresses for Notices.** For the purpose of Section 12(a) of this Agreement:—

Address for notices or communications to Party A:

Address: **Rabobank, N.A.**
915 Highland Point Drive, Suite 350
Roseville, CA 95678
Attention: Brett Hamilton
Telephone No.: 916 878 4601
Facsimile No.: 916 797 8231

In case of a notice or other communication under Section 5 or 6, to be effective, in addition to the above addressee, it must also be delivered to:

Address: **Rabobank, N.A.**
915 Highland Point Drive, Suite 350
Roseville, CA 95678
Attention: General Counsel
Telephone No.: 916 878 4650
Facsimile No.: 916 784 2347

and:

Address: **Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.**
(trading as Rabobank International), New York Branch
245 Park Avenue
New York, NY 10167, USA
Attention: Legal Department

Address for notices or communications to Party B:

Address: QAD Ortega Hill, LLC
100 Innovation Place
Santa Barbara, CA 93108
Attention: John Neale
Facsimile No.: 805 566 6080
Telephone No.: 805 566 5117
E-mail: jhn@qad.com

(b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:—

Party A appoints as its Process Agent: Not applicable

Party B appoints as its Process Agent: Not applicable

(c) **Offices.** The provisions of Section 10(a) will apply to Party B and will apply to Party A.

(d) **Multibranch Party.** For the purpose of Section 10(b) of this Agreement:—

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.

(e) **Calculation Agent.** The Calculation Agent is Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., “Rabobank International”.

(f) **Credit Support Document.** Details of any Credit Support Document:

With respect to Party A, none. With respect to Party B, the following:

any Credit Agreement;

“Loan Documents” as defined in any Credit Agreement;

any guaranty provided to guarantee the obligations under this Agreement; and

any other security agreements, pledge agreements, mortgages, deeds of trust, security deeds, collateral mortgages, environmental indemnity agreements and guaranties, whether now or hereafter existing, executed in connection with any loan or financial accommodation from Party A or any of its affiliates to Party B (i) with Party A included, whether directly or indirectly, in such documents as a pledgee, indemnitee, additional insured, lost payee, assignee, secured party or beneficiary or (ii) securing Party B’s obligations under this Agreement.

(g) **Credit Support Provider.** With respect to Party B, each party to a Credit Support Document, now existing or hereafter arising, as a borrower, guarantor, grantor, pledgor or in a similar role, other than Party B.

- (h) **Governing Law.** This Agreement and any matter arising out of or relating to this Agreement will be governed by and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).
- (i) **Netting of Payments.** "Multiple Transaction Payment Netting" will not apply for the purpose of Section 2(c) of this Agreement.
- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.
- (k) **Absence of Litigation.** For the purpose of Section 3(c):—
 - "Specified Entity"** means in relation to Party A all Affiliates.
 - "Specified Entity"** means in relation to Party B all Affiliates.
- (l) **No Agency.** The provisions of Section 3(g) will apply to this Agreement.
- (m) **Additional Representation** will apply. For the purpose of Section 3 of this Agreement, the following will constitute Additional Representations:
 - (i) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into this Agreement and each Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):—
 - (A) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party or Rabobank International or any of their respective affiliates as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party, Rabobank International, or any of their respective affiliates, will be deemed to be an assurance or guarantee as to the expected results of that Transaction.
 - (B) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
 - (C) **Status of Parties.** None of Party A, Party B, Rabobank International, or any of their respective affiliates, is acting as a fiduciary for or an adviser to either Party A or Party B in respect of that Transaction.

- (D) *Non-Speculative Purpose.* Party B is entering into each Transaction in connection with its line of business and to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by itself in the conduct of its business and not for purposes of speculation.
- (E) *Eligible Contract Participant, Eligible Swap Participant and Transaction Formation.* Each of Party A and Party B is an "eligible contract participant" as defined in the Commodity Exchange Act, as amended ("CEA"), 7 U.S.C. and the material terms of each Transaction will be individually negotiated and tailored by it. Each of Party A and Party B is an "eligible swap participant" as defined in 17 C.F.R. 35.1. Neither Party A nor Party B has executed, entered into, or traded, and neither party will execute, enter into, or trade, any Transaction on a "trading facility" as such term is defined in the CEA. Each Transaction hereunder constitutes a "swap agreement" as defined in Section 206A of the Gramm-Leach-Bliley Act.

- (n) **ERISA.** Party B represents it is not, and is not acting on behalf of, and for so long as this Agreement is in force and effect, it covenants it shall not be, or act on behalf of, (1) an "employee benefit plan" within the meaning of Section 3(3) of ERISA that is subject to Part 4 of Subtitle B of Title I of ERISA ("Title I"), (2) a "plan" within the meaning of Section 4975(e)(1) of the Tax Code, to which Section 4975 of the Tax Code applies, (3) a "governmental plan" as defined in ERISA or the Tax Code (or an entity that includes the assets of a governmental plan) that is subject to any federal, state, or local law that is substantively similar, or of similar effect to, Section 406 of ERISA or Section 4975 of the Tax Code, or (4) an entity whose underlying assets include "plan assets" subject to Title I or Section 4975 of the Tax Code by reason of Section 3(42) of ERISA and, as applicable, 29 CFR § 2510.3-101 or otherwise.
- (o) **Recording of Conversations.** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction and (ii) agrees, to the extent permitted by applicable law, that such recordings may be submitted in evidence of any Proceedings.
- (p) **Change of Account.** The following wording shall be added at the end of Section 2(b) of this Agreement: "If such new account shall not be in the same tax jurisdiction as the original account the prior written consent of the other party is required for such change."

Part 5. Other Provisions.

- (a) **Definitions.**
The 2006 ISDA Definitions as published by International Swaps and Derivatives Association, Inc, are incorporated by reference herein. In the event of any inconsistency between the provisions of this Agreement and the ISDA Definitions, this Agreement will prevail.
- (b) **Foreign Exchange and Currency Option Transactions.**
Reference is made to the 1998 ISDA FX and Currency Option Definitions (the "FX Definitions") published by ISDA, which are incorporated by reference in this Agreement. Unless agreed otherwise, any foreign exchange transaction or currency option (an "FX Transaction") into which the parties may enter or may have entered into prior to the date hereof shall be subject to the terms of this Agreement. Each such FX Transaction shall constitute a Transaction and any documents exchanged between the parties confirming those transactions shall be a Confirmation for the purposes of this Agreement.

(c) **Commodity Transactions.**

The 2005 ISDA Commodity Definitions, as published by the International Swaps and Derivatives Association, Inc. ("Commodity Definitions") are incorporated by reference in this Agreement. In the event of any inconsistency between the Commodity Definitions and this Agreement, this Agreement will govern.

(d) **Additional Agreements.**

Section 4 of this Agreement is hereby amended by adding at the end thereof the following subsections:

“(f) **Consent to Disclosure.** Each party agrees and consents to the communication and disclosure of all information in respect of this Agreement and any Transaction and all matters incidental hereto and thereto by the other party: (i) to the head office and all other branches and Affiliates of the other party, provided such communication and disclosure is for risk management and administrative purposes; and (ii) as required by any applicable law or regulation or any court or regulatory or other authority of competent jurisdiction. Party B hereby consents to Party A sharing, and instructs Party A to share, with Rabobank International or any affiliate, information Party A has with respect to Party B.

(g) **Amendment to this Agreement.** Party B agrees that in the event of a Refinancing, Party B shall amend this Agreement within 15 days of the Refinancing to revise, inter alia, the Credit Support Documents and Credit Support Providers.”

(e) **Credit Support Default.**

A new Section 5(a)(iii) (4) is inserted as follows:

(4) amendment of any Credit Support Document without prior written consent of Party A.

(f) **Set-off.** Section 6(f) of this Agreement is hereby amended replaced in its entirety by the following:

“(f) **Set-Off.** Upon the designation of any Early Termination Date, the party that is not the Defaulting Party or Affected Party ("X") may, without prior notice to the Defaulting or Affected Party ("Y"), set off any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by Y to X or any Affiliate of X (the "X Set Off Amount") against any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by X or any Affiliate of X to Y (the "Y Set Off Amount"). X will give notice to the other party of any set off effected under this Section 6(f).

For this purpose, either the X Set Off Amount or the Y Set Off Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If any obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

(g) ***Notices.***

Section 12(a)(vi) will not apply to this Agreement provided that if an Office notifies in writing, that it accepts e-mail communication, then Section 12(a)(vi) will apply from the time of such notice for Transactions through that Office.

(h) ***Waiver of Jury Trial.***

THE PARTIES HERETO HEREBY (i) WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR ANY OF THE MATTERS CONTEMPLATED HEREBY AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY AMONG OTHER THINGS, THE MUTUAL WAIVERS AND AGREEMENTS IN THIS SECTION.

(i) ***Incorporation of 2002 Master Agreement Protocol Terms.***

The parties agree that the definitions and provisions contained in the Annexes 1 to and including 15 of the 2002 Master Agreement Protocol published by the International Swaps and Derivatives Association, Inc. on 15th July, 2003 are incorporated into and apply to this Agreement. References in those definitions and provisions to any "ISDA Master Agreement" will be deemed to be references to this Agreement.

(j) ***OFAC and USA PATRIOT Act Representations.*** Each party represents that (a) it is not in material violation of any applicable laws or regulations relating to terrorism, money laundering, trade embargos, other restrictions on trade or restrictions on dealings with sanctioned persons (a "Sanctioned Person") or sanctioned countries, including laws and regulations, as applicable per jurisdiction, such as those administered by the United States Treasury Department's Office of Foreign Asset Control, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the "Patriot Act") and any such laws and regulations promulgated or administered by United Nations, Switzerland or the European Union and (b) it is not a Sanctioned Person.

ISDA® 2002

- (k) **USA PATRIOT Act Notice.** Party A hereby notifies Party B that pursuant to the Patriot Act, it is required to obtain, verify and record information that identifies Party B, which information includes the name and address of Party B and other information that will allow Party A to identify Party B in accordance with the Patriot Act.

In WITNESS WHEREOF the parties have executed this Schedule on the respective dates specified below with effect from the date specified on the first page of this Agreement.

Rabobank, N.A.

By: /s/ Jason Wilson
Name: Jason Wilson
Title: VP – Commercial Banking Officer
Date: 05/30/2012

By: /s/ Brett Hamilton
Name: Brett Hamilton
Title: VP – Regional Credit Officer
Date: 05/30/2012

QAD Ortega Hill, LLC, a Delaware limited liability company

By: /s/ John Neale
Name: John Neale
Title: Manager

By: /s/ Kara Bellamy
Name: Kara Bellamy
Title: Manager

Rabobank N.A.
Derivative Confirmations

Office Address **915 Highland Pointe Drive**
 Suite 350, Roseville, CA 95678

Telephone **916 878 4601**
Fax **916 772 0643**

04 June 2012

TO: QAD ORTEGA HILL, LLC
ATTN: JOHN NEALE
100 INNOVATION PLACE
SANTA BARBARA, CA 93108
UNITED STATES

From: RABOBANK NA
Attn: RNA Derivative Confirmations
Fax: 760 344 7365
Re: Swap Our Ref. No. 12N00477-RNA / 981410

AMENDED CONFIRMATION OF A SWAP TRANSACTION

The purpose of this letter agreement is to set forth the terms and conditions of the swap transaction traded between RABOBANK NA, ROSEVILLE ("Rabobank") and QAD ORTEGA HILL, LLC, SANTA BARBARA ("Counterparty") on the trade date specified below (the "Transaction"). This letter agreement constitutes a "Confirmation" as referred to in the Agreement specified below.

Notwithstanding anything to the contrary in the Agreement, the definitions and provisions contained in the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc. (the "Definitions") are incorporated into this Confirmation. To the extent that there is any inconsistency between those Definitions and Provisions and this Confirmation, this Confirmation will govern. For the purposes of the Definitions, all references to a "Transaction" in this Confirmation shall also be deemed to be references to a "Swap Transaction".

This Confirmation evidences a complete binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. In addition, you and we agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of an ISDA Master Agreement, with such modifications as you and we will in good faith agree. Upon the execution by you and us of such an agreement, this Confirmation will supplement, form a part of, and be subject to that agreement. All provisions contained in or incorporated by reference in that agreement upon its execution will govern this Confirmation except as expressly modified below. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to an ISDA Master Agreement (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us shall supplement, form part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement as if we had executed an agreement in such form (but without any Schedule except for the election of the laws of the State of New York as the governing law and USD as the Termination Currency) on the Trade Date of the first such Transaction between us. In the event of any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for purposes of this Swap Transaction.

Rabobank's recourse in the Transaction referred to in this Confirmation shall not be limited in any way unless specifically agreed to in writing by Rabobank to the contrary.

The terms of the particular Swap Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date: 09 May 2012
Effective Date: 01 June 2012
Termination Date: 01 June 2022
Notional Amount: As set forth in the attached Notional Schedule

Calculation Agent: Rabobank, unless otherwise specified in the Agreement.
Broker: None

Floating Amounts:

Floating Rate Payer: Rabobank
Floating Rate Payer Payment Date(s): Commencing on **15 July 2012**, and then every 1 month thereafter on the **15th** day of the month to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.
Period End Date(s): No adjustment applies
Floating Rate Option: USD-LIBOR-BBA
Designated Maturity: 1 month
Floating Rate for initial Calculation Period: 0.23875 percent (inclusive of Spread)
Floating Amount for initial Calculation Period: USD 4,684.54
Spread: None
Day Count Fraction: Actual/360
Reset Date(s): The first day of each relevant Calculation Period.
Compounding: Inapplicable
Business Days: New York, London

Fixed Amounts:

Fixed Rate Payer: Counterparty
Fixed Rate Payer Payment Date(s): Commencing on **15 July 2012**, and then every 1 month thereafter on the **15th** day of the month to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.
Period End Date(s): No adjustment applies
Fixed Rate: 2.06000 percent
Day Count Fraction: Actual/360
Fixed Amount for initial Calculation Period: **USD 40,419.53**
Business Days: New York, London
Compounding: Inapplicable

Early Termination:

Upon giving notice to the other party (which notice may be given orally, including by telephone), Rabobank has the right to terminate this Transaction as of the Optional Termination Date, whereupon a Termination Event will be deemed to have occurred in respect of this Transaction only as though the Optional Termination Date were an Early Termination Date and the other party was the sole Affected Party.

Any telephonic notice given under the terms of this provision shall be irrevocable and shall be confirmed in writing on the following Business Day. Failure to provide written confirmation on such day shall not in any way affect or suspend the effectiveness of the oral notice.

For the purpose of this section, "Optional Termination Date" shall mean 15 June 2012, subject to adjustment according to the Modified Following Business Day Convention.

Other Provisions:

For the purposes of this Transaction, the provisions of Section 6(e)(ii) of the ISDA Form will apply and the following shall constitute an Additional Termination Event: If the parties fail to negotiate, execute and deliver an agreement in the form of the ISDA Form with agreed Schedule thereto, on or before 30 calendar days after the Trade Date of this Transaction. For the purposes of this Additional Termination Date, there is one Affected Party and Counterparty shall be the Affected Party and Market Quotation shall apply.

Additional Representations. Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

(a) Non-Reliance. It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations relating to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

(b) Assessment and Understanding. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(c) Status of Parties. The other party is not acting as a fiduciary for an adviser to it in respect of that Transaction.

Account Details:

Account for payments to Rabobank:
USD

RABOBANK NAT. ASSOCIATION-ROSEVILLE
ABA: 122238420
FBO: RABOBANK, N.A. CUSTOMER INTEREST RATE SWAP SETTLEMENT
A/C: 1900188
ADDRESS: 90 EAST THOUSAND OAKS BOULEVARD
THOUSAND OAKS, CALIFORNIA 91360

Account for payments to Counterparty:
USD

Please provide

Offices:

Rabobank
Counterparty

The Office of Rabobank for this Transaction is ROSEVILLE; *and*
The Office of QAD Ortega Hill, LLC, for this Transaction is SANTA BARBARA.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it by fax to 916 772 0643 to the attention of Derivative Confirmations.

If you have any queries with this Confirmation please do not hesitate to contact us on the telephone number shown on the front page of this Confirmation. We are very pleased to have executed this Transaction with you.

RABOBANK NA, ROSEVILLE

By: /s/ Brett Hamilton_____
Name: Brett Hamilton
Title: VP – Regional Credit Officer

By:_____
Name:
Title:

Confirmed as of the date first written above:

QAD ORTEGA HILL, LLC, SANTA BARBARA

By: /s/ John Neale_____
Name: John Neale
Title: Manager

By:/s/ Kara Bellamy_____
Name: Kara Bellamy
Title: Manager

NOTIONAL AMOUNT SCHEDULE:

The Notional Amount is variable and will be determined in accordance with the following Notional Amount Schedule:

Notional Amount Schedule:

| <u>Period Start Dates</u> | <u>Period End Dates</u> | <u>Notional Amount</u> |
|---------------------------|-------------------------|------------------------|
| 01 June 2012 | 15 July 2012 | USD 16,053,651.44 |
| 15 July 2012 | 15 August 2012 | USD 16,023,235.30 |
| 15 August 2012 | 15 September 2012 | USD 15,994,628.26 |
| 15 September 2012 | 15 October 2012 | USD 15,965,915.04 |
| 15 October 2012 | 15 November 2012 | USD 15,935,183.78 |
| 15 November 2012 | 15 December 2012 | USD 15,906,249.94 |
| 15 December 2012 | 15 January 2013 | USD 15,875,304.39 |
| 15 January 2013 | 15 February 2013 | USD 15,846,148.32 |
| 15 February 2013 | 15 March 2013 | USD 15,816,884.03 |
| 15 March 2013 | 15 April 2013 | USD 15,781,830.24 |
| 15 April 2013 | 15 May 2013 | USD 15,752,327.25 |
| 15 May 2013 | 15 June 2013 | USD 15,720,828.85 |
| 15 June 2013 | 15 July 2013 | USD 15,691,099.46 |
| 15 July 2013 | 15 August 2013 | USD 15,659,381.16 |
| 15 August 2013 | 15 September 2013 | USD 15,629,423.71 |
| 15 September 2013 | 15 October 2013 | USD 15,599,355.07 |
| 15 October 2013 | 15 November 2013 | USD 15,567,307.26 |
| 15 November 2013 | 15 December 2013 | USD 15,537,008.08 |
| 15 December 2013 | 15 January 2014 | USD 15,504,736.34 |
| 15 January 2014 | 15 February 2014 | USD 15,474,204.94 |
| 15 February 2014 | 15 March 2014 | USD 15,443,560.23 |
| 15 March 2014 | 15 April 2014 | USD 15,407,254.97 |
| 15 April 2014 | 15 May 2014 | USD 15,376,361.78 |
| 15 May 2014 | 15 June 2014 | USD 15,343,513.05 |
| 15 June 2014 | 15 July 2014 | USD 15,312,383.29 |
| 15 July 2014 | 15 August 2014 | USD 15,279,304.76 |
| 15 August 2014 | 15 September 2014 | USD 15,247,936.70 |
| 15 September 2014 | 15 October 2014 | USD 15,216,452.22 |
| 15 October 2014 | 15 November 2014 | USD 15,183,029.15 |
| 15 November 2014 | 15 December 2014 | USD 15,151,303.77 |
| 15 December 2014 | 15 January 2015 | USD 15,117,646.70 |
| 15 January 2015 | 15 February 2015 | USD 15,085,678.66 |
| 15 February 2015 | 15 March 2015 | USD 15,053,591.98 |
| 15 March 2015 | 15 April 2015 | USD 15,015,979.46 |
| 15 April 2015 | 15 May 2015 | USD 14,983,634.10 |
| 15 May 2015 | 15 June 2015 | USD 14,949,374.82 |
| 15 June 2015 | 15 July 2015 | USD 14,916,782.26 |
| 15 July 2015 | 15 August 2015 | USD 14,882,282.87 |
| 15 August 2015 | 15 September 2015 | USD 14,849,441.30 |
| 15 September 2015 | 15 October 2015 | USD 14,816,477.85 |
| 15 October 2015 | 15 November 2015 | USD 14,781,618.20 |
| 15 November 2015 | 15 December 2015 | USD 14,748,403.03 |
| 15 December 2015 | 15 January 2016 | USD 14,713,298.87 |
| 15 January 2016 | 15 February 2016 | USD 14,679,830.15 |
| 15 February 2016 | 15 March 2016 | USD 14,646,237.20 |
| 15 March 2016 | 15 April 2016 | USD 14,609,012.62 |
| 15 April 2016 | 15 May 2016 | USD 14,575,156.85 |
| 15 May 2016 | 15 June 2016 | USD 14,539,430.45 |
| 15 June 2016 | 15 July 2016 | USD 14,505,316.43 |
| 15 July 2016 | 15 August 2016 | USD 14,469,339.19 |
| 15 August 2016 | 15 September 2016 | USD 14,434,965.03 |
| 15 September 2016 | 15 October 2016 | USD 14,400,463.29 |
| 15 October 2016 | 15 November 2016 | USD 14,364,109.46 |
| 15 November 2016 | 15 December 2016 | USD 14,329,344.75 |
| 15 December 2016 | 15 January 2017 | USD 14,292,735.48 |
| 15 January 2017 | 15 February 2017 | USD 14,257,705.87 |
| 15 February 2017 | 15 March 2017 | USD 14,222,546.26 |
| 15 March 2017 | 15 April 2017 | USD 14,182,147.90 |

| | | |
|-------------------|-------------------|-------------------|
| 15 April 2017 | 15 May 2017 | USD 14,146,707.86 |
| 15 May 2017 | 15 June 2017 | USD 14,109,442.62 |
| 15 June 2017 | 15 July 2017 | USD 14,073,732.74 |
| 15 July 2017 | 15 August 2017 | USD 14,036,205.40 |
| 15 August 2017 | 15 September 2017 | USD 14,000,223.71 |
| 15 September 2017 | 15 October 2017 | USD 13,964,108.48 |
| 15 October 2017 | 15 November 2017 | USD 13,926,187.40 |
| 15 November 2017 | 15 December 2017 | USD 13,889,797.40 |
| 15 December 2017 | 15 January 2018 | USD 13,851,609.42 |
| 15 January 2018 | 15 February 2018 | USD 13,814,942.63 |
| 15 February 2018 | 15 March 2018 | USD 13,778,139.75 |
| 15 March 2018 | 15 April 2018 | USD 13,736,251.63 |
| 15 April 2018 | 15 May 2018 | USD 13,699,156.70 |
| 15 May 2018 | 15 June 2018 | USD 13,660,284.00 |
| 15 June 2018 | 15 July 2018 | USD 13,622,907.13 |
| 15 July 2018 | 15 August 2018 | USD 13,583,760.57 |
| 15 August 2018 | 15 September 2018 | USD 13,546,099.68 |
| 15 September 2018 | 15 October 2018 | USD 13,508,299.02 |
| 15 October 2018 | 15 November 2018 | USD 13,468,740.83 |
| 15 November 2018 | 15 December 2018 | USD 13,430,653.06 |
| 15 December 2018 | 15 January 2019 | USD 13,390,815.99 |
| 15 January 2019 | 15 February 2019 | USD 13,352,439.01 |
| 15 February 2019 | 15 March 2019 | USD 13,313,919.60 |
| 15 March 2019 | 15 April 2019 | USD 13,270,475.32 |
| 15 April 2019 | 15 May 2019 | USD 13,231,651.71 |
| 15 May 2019 | 15 June 2019 | USD 13,191,099.89 |
| 15 June 2019 | 15 July 2019 | USD 13,151,981.69 |
| 15 July 2019 | 15 August 2019 | USD 13,111,143.72 |
| 15 August 2019 | 15 September 2019 | USD 13,071,728.77 |
| 15 September 2019 | 15 October 2019 | USD 13,032,167.54 |
| 15 October 2019 | 15 November 2019 | USD 12,990,899.24 |
| 15 November 2019 | 15 December 2019 | USD 12,951,038.01 |
| 15 December 2019 | 15 January 2020 | USD 12,909,478.32 |
| 15 January 2020 | 15 February 2020 | USD 12,869,314.91 |
| 15 February 2020 | 15 March 2020 | USD 12,829,002.44 |
| 15 March 2020 | 15 April 2020 | USD 12,785,468.52 |
| 15 April 2020 | 15 May 2020 | USD 12,744,844.87 |
| 15 May 2020 | 15 June 2020 | USD 12,702,544.60 |
| 15 June 2020 | 15 July 2020 | USD 12,661,613.18 |
| 15 July 2020 | 15 August 2020 | USD 12,619,013.97 |
| 15 August 2020 | 15 September 2020 | USD 12,577,772.54 |
| 15 September 2020 | 15 October 2020 | USD 12,536,378.04 |
| 15 October 2020 | 15 November 2020 | USD 12,493,329.03 |
| 15 November 2020 | 15 December 2020 | USD 12,451,621.13 |
| 15 December 2020 | 15 January 2021 | USD 12,408,267.70 |
| 15 January 2021 | 15 February 2021 | USD 12,366,244.10 |
| 15 February 2021 | 15 March 2021 | USD 12,324,064.54 |
| 15 March 2021 | 15 April 2021 | USD 12,277,302.04 |
| 15 April 2021 | 15 May 2021 | USD 12,234,792.38 |
| 15 May 2021 | 15 June 2021 | USD 12,190,660.18 |
| 15 June 2021 | 15 July 2021 | USD 12,147,828.95 |
| 15 July 2021 | 15 August 2021 | USD 12,103,384.40 |
| 15 August 2021 | 15 September 2021 | USD 12,060,229.27 |
| 15 September 2021 | 15 October 2021 | USD 12,016,913.97 |
| 15 October 2021 | 15 November 2021 | USD 11,971,999.21 |
| 15 November 2021 | 15 December 2021 | USD 11,928,356.46 |
| 15 December 2021 | 15 January 2022 | USD 11,883,123.63 |
| 15 January 2022 | 15 February 2022 | USD 11,839,151.02 |
| 15 February 2022 | 15 March 2022 | USD 11,795,015.22 |
| 15 March 2022 | 15 April 2022 | USD 11,746,479.23 |
| 15 April 2022 | 15 May 2022 | USD 11,701,999.48 |
| 15 May 2022 | 01 June 2022 | USD 11,655,953.65 |