

FULLY PAID MASTER SECURITIES LOAN AGREEMENT

AMONG

PERSHING LLC, AS BORROWER AND PERSHING LLC, AS CLEARING BROKER

AND

(PRINT NAME)

THE LENDER

(SIGNATURE OF LENDER)

(DATE)

(CURRENT EMAIL ADDRESS)

ACCOUNT NUMBERS AFFECTED:

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				-					
				-					
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TAX ID:

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1. OVERVIEW

Pursuant to this Agreement, you (the “Lender”) are agreeing to enter into transactions from time to time to lend to Pershing LLC (in such capacity, the “Borrower”) securities held for your account (the “Account”), introduced to Pershing LLC by your broker, bank or introducing firm and carried by Pershing LLC as clearing broker (in such capacity, “Pershing” or the “Clearing Broker”), against a transfer of collateral to you to be held by the Clearing Broker for your account (which will be either cash or securities) in the amount of at least 100% of the value of the securities loaned. Each such transaction shall be referred to herein as a “Loan” and shall be governed by this Agreement. In all instances, when acting in its capacity as clearing broker, Pershing LLC shall be deemed to be a “securities intermediary” under the UCC. In consideration for entering into this securities lending arrangement, the Borrower will pay you a fee based on the value of any non-cash collateral received by you and the Clearing Broker will reinvest on your behalf any cash collateral received by you (less a cash collateral fee) pursuant to the terms of this Agreement. The Borrower may also be paying a fee to your broker, bank or introducing firm for introducing you to this securities lending arrangement.

There are certain limitations and risks involved in entering into this Agreement and securities lending transactions of which you should be aware:

- By entering into this Agreement, you give the Borrower permission to borrow your securities without contacting you and without your prior approval of any given Loan. You also do not have the right to choose which securities in your Account are borrowed. Borrower will have the right to transfer the borrowed securities to others. Pershing, in its capacity as Clearing Broker will send to you a schedule and receipt listing the loaned securities. In addition, Pershing will send to you a monthly account statement that will show which, if any, of your securities have been lent to Borrower;
- Pershing and your broker, bank or introducing firm will receive an agreed upon share of the Loan Fee (as defined below) in connection with any Loan made by Lender to Borrower under this Agreement. Your broker’s, bank’s or introducing firm’s agreed upon share of the Loan Fee may vary depending upon participation levels;
- The securities that Borrower will borrow from Lender will be those securities deemed to be needed by the borrower for any purpose as permitted under Regulation T (which governs the securities borrowing practices of US Broker-Dealers). These permitted purposes include borrowing securities to complete delivery obligations, cover short sales, satisfy customer possession and control requirements, or to on-lend to other broker-dealers (who must also meet the Regulation T requirements); **securities may be considered “hard to borrow”**;
- Lender may sell shares on Loan at any time;
- Borrower is not required to borrow Lender’s securities pursuant to this Agreement and may borrow equivalent securities from other parties in its sole discretion;
- Pershing, as the clearing broker, will administer your obligations with respect to the Agreement, such as transfers of securities, transfers of Collateral, or any distribution payments due hereunder;
- If a Loan of securities has been made and they have not been recalled prior to the record date of a vote involving those securities, your vote will be reduced to reflect the total amount of your securities of that issue that have been lent;
- To the extent that you are entitled to receive distributions, such as dividends, interest payments or securities pursuant to a stock split, on any security subject to a Loan, the Borrower will transfer cash to you for cash distributions on the date of the distribution and will hold any non-cash distributions as part of the Loan until the end of the Loan. The payments you receive will be substitute payments subject to special rules under the Internal Revenue Code, and generally will not be afforded treatment as dividends for tax purposes and are likely to be subject to a higher tax rate. You should consult your tax advisor regarding treatment of substitute payments under state tax laws as well as consulting regarding the Internal Revenue Code;



- There is the risk that Pershing will default in some way, for example by becoming insolvent, which could result in Pershing failing to return borrowed securities to you;
- IN THE CASE OF INSOLVENCY OF PERSHING, YOU MAY NOT BE ENTITLED TO THE PROTECTIONS OF THE SECURITY INVESTORS PROTECTION ACT MAKING THE COLLATERAL DELIVERED TO YOU THE ONLY SOURCE OF SATISFACTION OF THE BORROWER'S OBLIGATIONS WITH RESPECT TO LOANS AND YOUR RECOURSE TO THE COLLATERAL MAY BE LIMITED BY LAW;
- If you are a non-U.S. citizen, you should consult with your legal advisor to determine if it is legal for you to enter into a securities lending arrangement under the laws of your resident jurisdiction;
- If you are a non-U.S. citizen, you should consult with your tax advisor to understand the tax implications of entering into a securities lending arrangement under the laws of your resident jurisdiction;
- This Agreement is a legally binding agreement, cannot be modified by conduct, and no failure on the part of Pershing at any time to enforce its rights under the Agreement to the greatest extent permitted shall in any way be deemed to waive, modify, or relax any of the rights granted Pershing; and
- This Agreement constitutes the full and entire understanding between the parties with respect to a Loan of securities between you and Pershing, and there are no oral or other agreements in conflict with this Agreement, unless you have advised Pershing in writing of such conflict. Any future modification, amendment, or supplement to this Agreement or any individual provision of this Agreement can only be in writing signed by a representative of Pershing. You should carefully review this Agreement for the rights and limitations governing your securities lending relationship.

2. LOANS OF SECURITIES

- 2.1 Subject to the terms and conditions of this Agreement, Borrower may, from time to time, in its sole discretion, initiate a transaction in which Lender will lend Securities (defined herein) to Borrower. Borrower shall determine the issuer of the Securities, the amount of Securities to be lent, the length of time of the Loan, and the type of Collateral to be transferred by Borrower. Such Loan shall be confirmed by a schedule and receipt listing the Loaned Securities provided by Borrower to Lender in accordance with Section 3.2. Such confirmation (the "Confirmation"), together with the Agreement, shall constitute conclusive evidence of the terms of the Loan to which the Confirmation relates. In the event of any inconsistency between the terms of such Confirmation and this Agreement, this Agreement shall prevail.
- 2.2 Notwithstanding any other provision in this Agreement regarding when a Loan commences, unless otherwise agreed, a Loan hereunder shall not occur until the Loaned Securities and the Collateral therefore have been transferred in accordance with Section 15.

3. TRANSFER OF LOANED SECURITIES

- 3.1 Loaned Securities shall be transferred to Borrower's account by Clearing Broker hereunder on or before the Cutoff Time on the date chosen by Borrower for the commencement of a Loan.
- 3.2 The Clearing Broker shall provide Lender with a schedule listing the Loaned Securities. Such schedule shall consist of a Confirmation or other document provided to Lender by Clearing Broker. Clearing Broker shall also provide Lender with a monthly statement dated as of the end of the month indicating which, if any, of Lender's Securities were lent and returned during the month or have been lent and not returned and as of the date of the statement.
- 3.3 Notwithstanding any other provision in this Agreement, the parties hereto agree that they intend the Loans hereunder to be loans of Securities.

4. COLLATERAL

- 4.1 Borrower shall, prior to or concurrently with the transfer of the Loaned Securities to Borrower, but in no case later than the Close of Business on the day of such transfer, transfer to Lender's Account with Clearing Broker, Collateral with a Market Value or, in the case of bank letters of credit, a stated amount, at least equal to the Applicable Percentage defined in Sections 4.2 and 4.3 below
- 4.2 In the case of U.S. Collateral, the Applicable Percentage shall be 100%;
- 4.3 In the case of Foreign Collateral, the Applicable Percentage shall be (1) 102% of the then market value of the securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the securities are primarily traded if the Foreign Collateral posted is denominated in the same currency as the securities lent, or (2) 105% of the then market value of the securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the securities are primarily traded if the Foreign Collateral posted is denominated in a different currency than the securities lent;
- 4.4 The Collateral transferred by Borrower to Lender, as adjusted pursuant to Section 9, shall be security for Borrower's obligations in respect of such Loan and for any other obligations of Borrower to Lender hereunder. Borrower hereby pledges with, assigns to, and grants Lender a continuing first priority security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Securities to Borrower and which shall cease upon the transfer of the Loaned Securities by Borrower to Lender. In addition to the rights and remedies given to Lender hereunder, Lender shall have all the rights and remedies of a secured party under the UCC. It is understood that Clearing Broker will invest the Collateral on Lender's behalf and Lender shall receive a loan fee as set forth in Section 5. Clearing Broker shall, during the term of any Loan hereunder, segregate Collateral from all securities or other assets in the Account. Lender may Retransfer Collateral only in the event of a Default by Borrower.
- 4.5 Except as otherwise provided herein, upon transfer to Lender's Account with Clearing Broker of the Loaned Securities on the day a Loan is terminated pursuant to Section 6, Lender shall transfer the Collateral (as adjusted pursuant to Section 9) from the Account to Borrower no later than the Cutoff Time on such day or, if such day is not a day on which a transfer of such Collateral may be effected under Section 15, the next day on which such a transfer may be effected.
- 4.6 If the Loaned Securities are transferred to Borrower and Borrower does not transfer Collateral to Lender as provided in Section 4.1, Lender shall have the absolute right to the return of the Loaned Securities.
- 4.7 Borrower may substitute Collateral for Collateral securing any Loan or Loans; provided, however, that such substituted Collateral shall have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral for the Loaned Securities, shall equal or exceed the Applicable Percentage.

5. FEES FOR LOAN

- 5.1 Borrower and Clearing Broker agree to pay Lender a loan fee (a "Loan Fee"), computed daily on each Loan based on the amount of cash or non-cash collateral held by Lender as Collateral as defined herein. Loan Fees shall accrue from and including the date on which the Loaned Securities are transferred to Borrower to, but excluding, the date on which such Loaned Securities are returned to Lender.
- 5.2 The Loan Fee as determined hereunder will be paid to the Lender by way of a credit posted to the Lender's cash account at the Clearing Broker.
- 5.3 Unless otherwise agreed, any Loan Fee payable hereunder shall be payable:
 - (a) in the case of any Loan of Securities other than Government Securities, upon the earlier of (i) the first ten calendar days of the month following the calendar month in which such fee was incurred

- (b) in the case of any Loan of Government Securities, upon the termination of such Loan and at such other times, if any, as may be customary in accordance with market practice.

Notwithstanding the foregoing, all Loan Fees shall be payable by Borrower immediately in the event of a Default hereunder by Borrower.

6. TERMINATION OF A LOAN/RIGHT TO RECALL

- 6.1 (a) Either party may terminate a Loan on a termination date established by notice given to the other party prior to the Close of Business on a Business Day. The termination date established by a termination notice shall be a date no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Securities (in the case of a notice given by Lender) or the non-cash Collateral securing the Loan (in the case of a notice given by Borrower) entered into at the time of such notice, which date shall, unless Borrower and Lender agree to the contrary, be (i) in the case of Government Securities, the next Business Day following such notice and (ii) in the case of all other Securities, the third Business Day following such notice.
- (b) Notwithstanding paragraph (a) and unless otherwise agreed, Borrower may terminate a Loan on any Business Day by giving notice to Clearing Broker on behalf of Lender and transferring the Loaned Securities to Lender's Account with Clearing Broker before the Cutoff Time on such Business Day if (i) the Collateral for such Loan consists of cash or Government Securities or (ii) Lender is not permitted, pursuant to Section 4.6, to Retransfer Collateral.
- 6.2 Unless otherwise agreed, Borrower shall, on or before the Cutoff Time on the termination date of a Loan, transfer the Loaned Securities to Lender and Lender shall transfer the Collateral (as adjusted pursuant to Section 9) to Borrower in accordance with Section 4.7.

7. RIGHTS IN RESPECT OF LOANED SECURITIES AND COLLATERAL

- 7.1 Except as set forth in Sections 8.1 and 8.2, until Loaned Securities are required to be redelivered to Lender's Account with Clearing Broker upon termination of a Loan, Borrower shall have all of the incidents of ownership of the Loaned Securities, including the right to transfer the Loaned Securities to others. Lender hereby waives the right to vote, or to provide any consent or to take any similar action with respect to, the Loaned Securities in the event that the record date or deadline for such vote, consent or other action falls during the term of the Loan.
- 7.2 Except as set forth in Sections 8.3 and 8.4, if Lender may, pursuant to Section 4.4, Retransfer Collateral, Borrower hereby waives the right to vote, or to provide any consent or take any similar action with respect to, any such Collateral in the event that the record date or deadline for such vote, consent or other action falls during the term of a Loan and such Collateral is not required to be returned to Borrower pursuant to Section 4.6 or Section 9.

8. DISTRIBUTIONS

- 8.1 Lender shall be entitled to receive all Distributions made on or in respect of the Loaned Securities which are not otherwise received by Lender, to the full extent it would be so entitled if the Loaned Securities had not been lent to Borrower.
- 8.2 Any cash Distributions made on or in respect of the Loaned Securities, which Lender is entitled to receive pursuant to Section 8.1, shall be paid by the transfer of cash to Lender's Account with Clearing Broker by Borrower, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Lender is not in Default at the time of such payment. Non-cash Distributions that Lender is entitled to receive pursuant to Section 8.1 shall be added to the Loaned Securities on the date of distribution and shall be considered such for all purposes, except that if the Loan has terminated, Borrower shall forthwith transfer the same to Lender.
- 8.3 Borrower shall be entitled to receive all Distributions made on or in respect of non-cash Collateral which are not otherwise received by Borrower, to the full extent it would be so entitled if the Collateral had not been transferred to Lender.
- 8.4 Any cash Distributions made on or in respect of such Collateral, which Borrower is entitled to receive pursuant to Section 8.3, shall be paid by the transfer of cash to Borrower from Lender's Account to the extent available, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Borrower is not in Default at the time of such payment. Non-cash Distributions that Borrower is entitled to receive pursuant to Section 8.3 shall be added to the Collateral on the date of distribution and shall be considered such for all purposes, except that if each Loan secured by such Collateral has terminated, it shall be transferred to Borrower. Any cash Distribution in excess of cash available in Lender's Account shall be payable by Lender by the method agreed upon by Borrower and Lender.
- 8.5 (a) If (i) Borrower is required to make a payment (a "Borrower Payment") with respect to cash Distributions on Loaned Securities under Sections 8.1 and 8.2 ("Securities Distributions"), or (ii) Lender is required to make a payment (a "Lender Payment") with respect to cash Distributions on Collateral under Sections 8.3 and 8.4 ("Collateral Distributions"), and (iii) Borrower or Lender, as the case may be ("Payor"), shall be required by law to collect any withholding or other tax, duty, fee, levy or charge required to be deducted or withheld from such Borrower Payment or Lender Payment ("Tax"), then Clearing Broker shall (subject to subsections (b) and (c) below), adjust such payments as may be necessary in order that the net amount of the Borrower Payment or Lender Payment received by the Lender or Borrower, as the case may be ("Payee"), after payment of such Tax equals the net amount of the Securities Distribution or Collateral Distribution that would have been received if such Securities Distribution or Collateral Distribution had been paid directly to the Payee.
- (b) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that Tax would have been imposed on a Securities Distribution or Collateral Distribution paid directly to the Payee.
- (c) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that such Payee is entitled to an exemption from, or reduction in the rate of, Tax on a Borrower Payment or Lender Payment subject to the provision of a certificate or other documentation, but has failed timely to provide such certificate or other documentation.
- (d) Each party hereto shall be deemed to represent that, as of the commencement of any Loan hereunder, no Tax would be imposed on any cash Distribution paid to it with respect to (i) Loaned Securities subject to a Loan in which it is acting as Lender or (ii) Collateral for any Loan in which it is acting as Borrower, unless such party has given notice to the contrary to the other party hereto (which notice shall specify the rate at which such Tax would be imposed). Each party agrees to notify the other of any change that occurs during the term of a Loan in the rate of any Tax that would be imposed on any such cash Distributions payable to it.

9. MARK TO MARKET

- 9.1 Borrower shall daily mark to market any Loan hereunder and in the event that at the Close of Trading on any Business Day the Market Value of the Collateral for any Loan to Borrower shall be less than the Applicable Percentage Borrower shall transfer to Lender additional Collateral no later than the Close of Business on the next Business Day so that the Market Value of such additional Collateral, when added to the Market Value of the other Collateral for such Loan, shall equal the Applicable Percentage.
- 9.2 Subject to Borrower's obligations under Section 9.1, if at any time the Market Value of all Collateral for Loans to Borrower shall be greater than the Applicable Percentage Clearing Broker shall transfer to Borrower such amount of the Collateral selected by Borrower so that the Market Value of the Collateral for such Loans, after deduction of such amounts, shall thereupon not exceed the Applicable Percentage. Borrower shall provide notice of such transfer to Lender.
- 9.3 If Borrower shall effect a transfer as described under Sections 9.1 or 9.2, the Borrower shall transfer Collateral as provided in such Section no later than the Close of Business on such day, provided the transfer may be effected in accordance with Section 15.

10. REPRESENTATIONS

The parties to this Agreement hereby make the following representations and warranties, which shall continue during the term of any Loan hereunder:

- 10.1 Each party hereto represents and warrants that (a) it has the power to execute and deliver this Agreement, to enter into the Loans contemplated hereby and to perform its obligations hereunder, (b) it has taken all necessary action to authorize such execution, delivery and performance, and (c) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.
- 10.2 Each party hereto represents and warrants that it has not relied on the other for any legal, tax or accounting advice concerning this Agreement and that it has made its own determination as to the tax and accounting treatment of any Loan and any dividends, remuneration or other funds received hereunder.
- 10.3 Each party hereto represents and warrants that it is acting for its own account unless it expressly specifies otherwise in writing and complies with Section 11.1.
- 10.4 Borrower represents and warrants that it has, or will have at the time of transfer of any Collateral, the right to grant a first priority security interest therein subject to the terms and conditions hereof.
- 10.5 Borrower represents and warrants that it (or the person to whom it relends the Loaned Securities) is borrowing or will borrow Loaned Securities that are Equity Securities for the purpose of making delivery of such Loaned Securities in the case of short sales, failure to receive securities required to be delivered, or as otherwise permitted pursuant to Regulation T as in effect from time to time.
- 10.6 Lender represents and warrants that it has, or will have at the time of transfer of any Loaned Securities, the right to transfer the Loaned Securities subject to the terms and conditions hereof.
- 10.7 Lender acknowledges and warrants that the Loan Fee that it negotiates with Borrower shall be reasonable.

11. COVENANTS

- 11.1 Each party agrees to be liable as principal with respect to its obligations hereunder.
- 11.2 Promptly upon (and in any event within seven (7) Business Days after) demand by Lender, Borrower shall furnish Lender with Borrower's most recent publicly-available financial statements and any other financial statements mutually agreed upon by Borrower and Lender. Unless otherwise agreed, if Borrower is subject to the requirements of Rule 17a-5(c) under the Exchange Act, it may satisfy the requirements of this Section by furnishing Lender with its most recent statement required to be furnished to customers pursuant to such Rule.

12. EVENTS OF DEFAULT

All Loans hereunder may, at the option of the non-defaulting party (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), be terminated immediately upon the occurrence of any one or more of the following events (individually, a "Default"):

- 12.1 if any Loaned Securities shall not be transferred to Lender upon termination of the Loan as required by Section 6;
- 12.2 if Borrower shall fail to transfer Collateral as required by Section 9;
- 12.3 if Borrower (a) shall fail to transfer to Lender amounts in respect of Distributions required to be transferred by Section 8, and (b) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15;
- 12.4 if an Act of Insolvency occurs with respect to either party;
- 12.5 if any representation made by either party in respect of this Agreement or any Loan or Loans hereunder shall be incorrect or untrue in any material respect during the term of any Loan hereunder;
- 12.6 if either party notifies the other of its inability to or its intention not to perform its obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder; or
- 12.7 if either party (a) shall fail to perform any material obligation under this Agreement not specifically set forth in clauses 12.1 through 12.6, above, including but not limited to the payment of fees as required by Section 5, and the payment of transfer taxes as required by Section 14, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15.

The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice as promptly as practicable to the defaulting party of the exercise of its option to terminate all Loans hereunder pursuant to this Section 12.

13. REMEDIES

- 13.1 Upon the occurrence of a Default under Section 12 entitling Lender to terminate all Loans hereunder or a termination by Lender pursuant to Section 6 (provided that the Borrower does not return the Loaned Securities in accordance with Section 6), Lender shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Loaned Securities ("Replacement Securities") in the principal market for such Loaned Securities in a commercially reasonable manner, (b) to sell any Collateral in the principal market for such Collateral in a commercially reasonable manner and (c) to apply and set off the Collateral and any proceeds thereof (including any amounts drawn under a letter of credit supporting any Loan) against the payment of the purchase price for such Replacement Securities and any amounts due to Lender under Sections 5, 8, 14 and 16. In the event that Lender shall exercise such rights, Borrower's obligation to return a like amount of the Loaned Securities shall terminate. Lender may similarly apply the Collateral and any proceeds thereof to any other obligation of Borrower under this Agreement, including Borrower's obligations with respect to Distributions paid to Borrower (and not forwarded to Lender) in respect of Loaned Securities. In the event that (i) the purchase price of Replacement Securities (plus all other amounts, if any, due to Lender hereunder) exceeds (ii) the amount of the Collateral, Borrower shall be liable to Lender for the amount of such excess together with interest thereon at a rate equal to (A) in the case of purchases of Foreign Securities, LIBOR, (B) the case of purchases of any other Securities (or other amounts, if any, due to Lender hereunder), the Federal Funds Rate, in each case as such rate fluctuates from day to day, from the date of such purchase until the date of payment of such excess. As security for Borrower's obligation to pay such excess, Lender shall have, and Borrower hereby grants, a security interest in any property of Borrower then held by or for Lender and a right of setoff with respect to such property and any other amount payable by Lender to Borrower. The purchase price of Replacement Securities purchased under this Section 13.1 shall include, and the proceeds of any sale of Collateral shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses, including reasonable attorneys fees incurred by the Lender for legal action arising out of default on the loans related to such purchase or sale (as the case may be). In the event Lender exercises its rights under this Section 13.1, Lender may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Securities or selling all or a portion of the Collateral, to be deemed to have made, respectively, such purchase of Replacement Securities or sale of Collateral for an amount equal to the price therefore on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 18, upon the satisfaction of all obligations hereunder, any remaining Collateral shall be returned to Borrower.
- 13.2 Upon the occurrence of a Default under Section 12 entitling Borrower to terminate all Loans hereunder, Borrower shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Collateral ("Replacement Collateral") in the principal market for such Collateral in a

commercially reasonable manner, (b) to sell a like amount of the Loaned Securities in the principal market for such Loaned Securities in a commercially reasonable manner and (c) to apply and set off the Loaned Securities and any proceeds thereof against (i) the payment of the purchase price for such Replacement Collateral, (ii) Lender's obligation to return any cash or other Collateral, and (iii) any amounts due to Borrower under Sections 5, 8 and 16. In such event, Borrower may treat the Loaned Securities as its own and Lender's obligation to return a like amount of the Collateral shall terminate; provided, however, that Lender shall immediately return any letters of credit supporting any Loan upon the exercise or deemed exercise by Borrower of its termination rights under Section 12. Borrower may similarly apply the Loaned Securities and any proceeds thereof to any other obligation of Lender under this Agreement, including Lender's obligations with respect to Distributions paid to Lender (and not forwarded to Borrower) in respect of Collateral. In the event that (i) the sales price received from such Loaned Securities is less than (ii) the purchase price of Replacement Collateral (plus the amount of any cash or other Collateral not replaced by Borrower and all other amounts, if any, due to Borrower hereunder), Lender shall be liable to Borrower for the amount of any such deficiency, together with interest on such amounts at a rate equal to (A) in the case of Collateral consisting of Foreign Securities, LIBOR, (B) in the case of Collateral consisting of any other Securities (or other amounts due, if any, to Borrower hereunder), the Federal Funds Rate, in each case as such rate fluctuates from day to day, from the date of such sale until the date of payment of such deficiency. As security for Lender's obligation to pay such deficiency, Borrower shall have, and Lender hereby grants, a security interest in any property of Lender then held by or for Borrower and a right of setoff with respect to such property and any other amount payable by Borrower to Lender. The purchase price of any Replacement Collateral purchased under this Section 13.2 shall include, and the proceeds of any sale of Loaned Securities shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Borrower exercises its rights under this Section 13.2, Borrower may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Collateral or selling all or a portion of the Loaned Securities, to be deemed to have made, respectively, such purchase of Replacement Collateral or sale of Loaned Securities for an amount equal to the price therefore on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 18, upon the satisfaction of all Lenders obligations hereunder, any remaining Loaned Securities (or remaining cash proceeds thereof) shall be returned to Lender.

- 13.3 Price therefore notwithstanding the foregoing, the Borrower may, in the event the Borrower fails to return the Loaned Securities as described above, replace Collateral, other than U.S. currency, with an amount of U.S. currency that is not less than the then current Market Value of the Collateral, provided, in the case of a Plan that such replacement is approved by the Lending Fiduciary.
- 13.4 In addition to its rights hereunder, the non-defaulting party shall have any rights otherwise available to it under any other agreement or applicable law.

14. TRANSFER TAXES

All transfer taxes with respect to the transfer of the Loaned Securities by Lender to Borrower and by Borrower to Lender upon termination of the Loan and with respect to the transfer of Collateral by Borrower to Lender and by Lender to Borrower upon termination of the Loan or pursuant to Section 4 or Section 9 shall be paid by Borrower.

15. TRANSFERS

- 15.1 All transfers by either Borrower or Lender of Loaned Securities or Collateral consisting of "financial assets" (within the meaning of the UCC) hereunder shall be effected by the crediting by the Clearing Broker of such financial assets to (i) the Borrower's "securities account" (within the meaning of the UCC) or (ii) the Account (which is a "securities account" within the meaning of the UCC maintained with the Clearing Broker in the case of the Lender).
- 15.2 All transfers of cash hereunder shall be by (a) crediting of cash balances to the Account of Lender or an account of Borrower on Clearing Broker's books, (b) wire transfer of immediately available, freely transferable funds or (c) such other means as Borrower and Lender may agree.
- 15.3 A transfer of Securities, cash may be effected under this Section 15 on any day except (a) a day other than a Business Day or (b) a day on which Pershing or a wire transfer system is closed, if the facilities of Pershing or wire transfer system are required to effect such transfer.
- 15.4 For the avoidance of doubt, the parties agree and acknowledge that the term "securities," as used herein (except in this Section 15), shall include any "security entitlements" with respect to such securities (within the meaning of the UCC). In every transfer of "financial assets" (within the meaning of the UCC) hereunder, the transferor shall take all steps necessary (a) to effect a delivery to the transferee under Section 8-301 of the UCC, or to cause the creation of a security entitlement in favor of the transferee under Section 8-501 of the UCC, (b) to enable the transferee to obtain "control" (within the meaning of Section 8-106 of the UCC), and (c) to provide the transferee with comparable rights under any applicable foreign law or regulation.

16. CONTRACTUAL CURRENCY

- 16.1 Borrower and Lender agree that (a) any payment in respect of a Distribution under Section 8 shall be made in the currency in which the underlying Distribution of cash was made, (b) any return of cash shall be made in the currency in which the underlying transfer of cash was made, and (c) any other payment of cash in connection with a Loan under this Agreement shall be in the currency agreed upon by Borrower and Lender in connection with such Loan (the currency established under clause (a), (b) or (c) hereinafter referred to as the "Contractual Currency"). Notwithstanding the foregoing, the payee of any such payment may, at its option, accept tender thereof in any other currency; provided, however, that, to the extent permitted by applicable law, the obligation of the payor to make such payment will be discharged only to the extent of the amount of Contractual Currency that such payee may, consistent with normal banking procedures, purchase with such other currency (after deduction of any premium and costs of exchange) on the banking day next succeeding its receipt of such currency.
- 16.2 If for any reason the amount in the Contractual Currency received under Section 16.1, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due in respect of this Agreement, the party required to make the payment will (unless a Default has occurred and such party is the non-defaulting party) as a separate and independent obligation and 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.
- 16.3 If for any reason the amount in the Contractual Currency received under Section 16.1 exceeds the amount in the Contractual Currency due in respect of this Agreement, then the party receiving the payment will (unless a Default has occurred and such party is the non-defaulting party) refund promptly the amount of such excess.

17. ERISA

If any of the Securities in the Account have been or shall be obtained, directly or indirectly, from or using the assets of any Plan, then Borrower shall conduct the Loan in accordance with the terms and conditions of Department of Labor Prohibited Transaction Exemption 2006-16, or any successor thereto (unless such Loan will be conducted in reliance on another exemption, or without relying on any exemption, from the prohibited transaction provisions of Section 406 of the Employee Retirement Income Security Act of 1974, as amended, and Section 4975 of the Internal Revenue Code of 1986, as amended). Without limiting the foregoing and notwithstanding any other provision of this Agreement, if the Loan will be conducted in accordance with Prohibited Transaction Exemption 2006-16, then:

- 17.1 Borrower represents and warrants to Lender that it is a broker-dealer registered under the Exchange Act.
- 17.2 Borrower represents and warrants that, during the term of any Loan hereunder, neither Borrower nor any affiliate of Borrower has any discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or renders investment advice (within the meaning of 29 C.F.R. Section 2510.3-21(c)) with respect to the assets of the Plan involved in the Loan. Lender agrees that, prior to or at the commencement of the Agreement or the addition of securities subject to a Plan to the Account, it will communicate to Borrower information regarding the Plan sufficient to identify to Borrower any person or persons that have discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or that render investment advice (as defined in the preceding sentence) with respect to the assets of the Plan involved in the Loan. In the event

Lender fails to communicate and keep current during the term of any Loan such information, Lender rather than Borrower shall be deemed to have made the representation and warranty in the first sentence of this Section 17.2.

17.3 Borrower shall mark to market daily each Loan hereunder pursuant to Section 9.1.

17.4 Borrower and Lender agree that:

- (a) the term "Collateral" shall have the meaning assigned in Section 25.13 of this Agreement;
- (b) prior to the making of any Loans hereunder, Borrower shall provide Lending Fiduciary with (i) the most recent available audited statement of Borrower's financial condition and (ii) the most recent available unaudited statement of Borrower's financial condition (if more recent than the most recent audited statement), and each Loan made hereunder shall be deemed a representation by Borrower that there has been no material adverse change in Borrower's financial condition subsequent to the date of the latest financial statements or information furnished in accordance herewith; and
- (c) the Loan may be terminated by Lender at any time, whereupon Borrower shall deliver the Loaned Securities to Lender within the lesser of (i) the customary delivery period for such Loaned Securities, (ii) five Business Days, or (iii) the time negotiated for such delivery between Borrower and Lender; provided, however, that Borrower and Lender may agree to a longer period only if permitted by Prohibited Transaction Exemption 2006-16.

18. SINGLE AGREEMENT

Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder constitute a single business and contractual relationship and have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted. In addition, Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that (a) each shall perform all of its obligations in respect of each Loan hereunder, and that a default in the performance of any such obligation by Borrower or by Lender (the "Defaulting Party") in any Loan hereunder shall constitute a default by the Defaulting Party under all such Loans hereunder, and (b) the non-defaulting party shall be entitled to set off claims and apply property held by it in respect of any Loan hereunder against obligations owing to it in respect of any other Loan with the Defaulting Party.

19. APPLICABLE LAW

THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

20. WAIVER

The failure of a party to this Agreement to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. All waivers in respect of a Default must be in writing.

21. SURVIVAL OF REMEDIES

All remedies hereunder and all obligations with respect to any Loan shall survive the termination of the relevant Loan, return of Loaned Securities or Collateral and termination of this Agreement.

22. NOTICES AND OTHER COMMUNICATIONS

Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by telephone, mail, facsimile, e-mail, electronic message, telegraph, messenger or otherwise to the individuals and at the facsimile numbers and addresses specified with respect to it in Schedule A hereto, or sent to such party at any other place specified in a notice of change of number or address hereafter received by the other party. Any notice, statement, demand or other communication hereunder will be deemed effective on the day and at the time on which it is received or, if not received, on the day and at the time on which its delivery was in good faith attempted; provided, however, that any notice by a party to the other party by telephone shall be deemed effective only if (a) such notice is followed by written confirmation thereof and (b) at least one of the other means of providing notice that are specifically listed above has previously been attempted in good faith by the notifying party.

23. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL

23.1 EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY SUCH COURT, SOLELY FOR THE PURPOSE OF ANY SUIT, ACTION OR PROCEEDING BROUGHT TO ENFORCE ITS OBLIGATIONS HEREUNDER OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY LOAN HEREUNDER AND (B) WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE.

23.2 EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. MISCELLANEOUS

24.1 Except as otherwise agreed by the parties, this Agreement supersedes any other agreement between the parties hereto concerning loans of Securities between Borrower and Lender. This Agreement shall not be assigned by either party without the prior written consent of the other party and any attempted assignment without such consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective heirs, representatives, successors and assigns. This Agreement may be terminated by either party upon notice to the other, subject only to fulfillment of any obligations then outstanding. This Agreement shall not be modified, except by an instrument in writing signed by the party against whom enforcement is sought. The parties hereto acknowledge and agree that, in connection with this Agreement and each Loan hereunder, time is of the essence. Each provision and agreement herein shall be treated as separate and independent from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

25. DEFINITIONS

For the purposes hereof:

- 25.1 "Account" shall mean the accounts of the Lender as designated in Schedule A, as may be amended from time to time.
- 25.2 "Act of Insolvency" shall mean, with respect to any party, (a) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party's seeking the appointment or election of a

receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (b) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (i) is consented to or not timely contested by such party, (ii) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (iii) is not dismissed within 15 days, (c) the making by such party of a general assignment for the benefit of creditors, or (d) the admission in writing by such party of such party's inability to pay such party's debts as they become due.

- 25.3 The term "affiliate" shall have the meaning assigned in section V(g) of PTE 2006-16.
- 25.4 "Automated Trading System" means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers such as an "alternative trading system" within the meaning of SEC's Reg. ATS 17 CFR part 242.300 as such definition may be amended from time to time, or an "automated quotation system" as described in section 3(a)(51)(A)(ii) of the Securities and Exchange Act of 1934 15 U.S.C. 78c(a)(51)(A)(ii).
- 25.5 "Bankruptcy Code" shall have the meaning assigned in Section 26.1.
- 25.6 "Borrower" shall have the meaning assigned in Section 1.
- 25.7 "Borrower Payment" shall have the meaning assigned in Section 8.5(a).
- 25.8 "Broker-Dealer" shall mean any person that is a broker (including a municipal securities broker), dealer, municipal securities dealer, government securities broker or government securities dealer as defined in the Exchange Act, regardless of whether the activities of such person are conducted in the United States or otherwise require such person to register with the U.S. Securities and Exchange Commission or other regulatory body.
- 25.9 "Business Day" shall mean, with respect to any Loan hereunder, a day on which regular trading occurs in the principal market for the Loaned Securities subject to such Loan, provided, however, that for purposes of determining the Market Value of any Securities hereunder, such term shall mean a day on which regular trading occurs in the principal market for the Securities whose value is being determined. Notwithstanding the foregoing, (a) for purposes of Section 9, "Business Day" shall mean any day on which regular trading occurs in the principal market for any Loaned Securities or for any Collateral consisting of Securities under any outstanding Loan hereunder and "next Business Day" shall mean the next day on which a transfer of Collateral may be effected in accordance with Section 15, and (b) in no event shall a Saturday or Sunday be considered a Business Day.
- 25.10 "Cash Collateral Fee" shall mean the amount of cash collateral fee set forth on the confirmation for any securities loan.
- 25.11 "Close of Business" shall be determined in accordance with market practice.
- 25.12 "Close of Trading" shall mean, with respect to any Security, the end of the primary trading session established by the principal market for such Security on a Business Day, unless otherwise agreed by the parties.
- 25.13 "Collateral" shall mean, whether now owned or hereafter acquired and to the extent permitted by applicable law, (a) any property which is transferred to Lender pursuant to Sections 4 or 9 (including as collateral, for definitional purposes, any letters of credit), (b) any property substituted therefore pursuant to Section 4.7, (c) all accounts in which such property is deposited and all securities and the like in which any cash collateral is invested or reinvested, and (d) any proceeds of any of the foregoing; provided, further, that "Collateral" shall constitute either "U.S. Collateral" or "Foreign Collateral" as defined in this Agreement. If any new or different Security shall be exchanged for any Collateral by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become Collateral in substitution for the former Collateral for which such exchange is made. For purposes of return of Collateral by Lender or purchase or sale of Securities pursuant to Section 13, such term shall include Securities of the same issuer, class and quantity as the Collateral initially transferred by Borrower to Lender, as adjusted pursuant to the preceding sentence.
- 25.14 "Collateral Distributions" shall have the meaning assigned in Section 8.5(a).
- 25.15 "Confirmation" shall have the meaning assigned in Section 2.1.
- 25.16 "Contractual Currency" shall have the meaning assigned in Section 16.1.
- 25.17 "Cutoff Time" shall mean a time on a Business Day by which a transfer of cash, securities or other property must be made by Borrower or Lender to the other, as shall be determined in accordance with market practice.
- 25.18 "Default" shall have the meaning assigned in Section 12.
- 25.19 "Defaulting Party" shall have the meaning assigned in Section 18.
- 25.20 "Distribution" shall mean, with respect to any Security at any time, any distribution made on or in respect of such Security, including, but not limited to: (a) cash and all other property, (b) stock dividends, (c) Securities received as a result of split ups of such Security and distributions in respect thereof, (d) interest payments, (e) all rights to purchase additional Securities, and (f) any cash or other consideration paid or provided by the issuer of such Security in exchange for any vote, consent or the taking of any similar action in respect of such Security (regardless of whether the record date for such vote, consent or other action falls during the term of the Loan). In the event that the holder of a Security is entitled to elect the type of distribution to be received from two or more alternatives, such election shall be made by Lender, in the case of a Distribution in respect of the Loaned Securities, and by Borrower, in the case of a Distribution in respect of Collateral.
- 25.21 "Equity Security" shall mean any security (as defined in the Exchange Act) other than a "non-equity security," as defined in Regulation T.
- 25.22 "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.
- 25.23 "Extension Deadline" shall mean, with respect to a letter of credit, the Cutoff Time on the Business Day preceding the day on which the letter of credit expires.
- 25.24 "FDIA" shall have the meaning assigned in Section 26.4.
- 25.25 "FDICIA" shall have the meaning assigned in Section 26.5.
- 25.26 "Federal Funds Rate" shall mean the rate of interest (expressed as an annual rate), as published in Federal Reserve Statistical Release H.15(519) or any publication substituted therefore, charged for federal funds (dollars in immediately available funds borrowed by banks on an overnight unsecured basis) on that day or, if that day is not a banking day in New York City, on the next preceding banking day.
- 25.27 "Foreign Collateral" shall mean, (1) Securities issued by or guaranteed as to principal and interest by the following Multilateral Development Banks—the obligations of which are backed by the participating countries, including the United States: The International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development and the International Finance Corporation; (2) foreign sovereign debt securities provided that at least one nationally recognized statistical rating organization has rated in one of its two highest categories either the issue, the issuer or guarantor; (3) the British pound, the Canadian dollar, the Swiss franc, the Japanese yen or the Euro; (4) irrevocable letters of credit issued by a Foreign Bank, other than the Borrower or an affiliate thereof, which has a counterparty rating of investment grade or better as determined by a nationally recognized statistical rating organization; or (5) any type of collateral described in Rule 15c3-3 of the Exchange Act as amended from time to time.

- 25.28 "Foreign Securities" shall mean, unless otherwise agreed, Securities that are principally cleared and settled outside the United States.
- 25.29 "Government Securities" shall mean government securities as defined in Section 3(a)(42)(A)-(C) of the Exchange Act.
- 25.30 "Lender" shall have the meaning assigned in Section 1.
- 25.31 "Lender Payment" shall have the meaning assigned in Section 8.5(a).
- 25.32 "LIBOR" shall mean for any date, the offered rate for deposits in U.S. dollars for a period of three months which appears on the Reuters Screen LIBOR page as of 11:00 a.m., GMT, on such date (or, if at least two such rates appear, the arithmetic mean of such rates).
- 25.33 "Loan" shall have the meaning assigned in Section 1.
- 25.34 The Loan Fee shall be seventy percent (70%) of the net interest spread between the cash collateral investment return received by the Clearing Broker and the Securities Lending rebate rate, to or from, the Borrower.
- 25.35 "Loaned Security" shall mean any Security transferred in a Loan hereunder until such Security (or an identical Security) is transferred back to Lender hereunder, except that, if any new or different Security shall be exchanged for any Loan Security by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become a Loan Security in substitution for the former Loan Security for which such exchange is made. For purposes of return of Loan Securities by Borrower or purchase or sale of Securities pursuant to Section 13, such term shall include Securities of the same issuer, class and quantity as the Loan Securities, as adjusted pursuant to the preceding sentence.
- 25.36 "Margin Deficit" shall have the meaning assigned in Section 9.1.
- 25.37 "Margin Excess" shall have the meaning assigned in Section 9.2.
- 25.38 "Market Value" shall have the meaning set forth in Annex I or otherwise agreed to by Borrower and Lender in writing. Notwithstanding the previous sentence, in the event that the meaning of Market Value has not been set forth in Annex I or in any other writing, as described in the previous sentence, Market Value shall be determined in accordance with market practice for the Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such source, plus accrued interest to the extent not included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8, unless market practice with respect to the valuation of such Securities in connection with securities loans is; to the contrary). If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation. The determinations of Market Value provided for in Annex I or in any other writing described in the first sentences of this Section 25.38 or, if applicable, in the preceding sentence shall apply for all purposes under this Agreement, except for purposes of Section 13.
- 25.39 "Payee" shall have the meaning assigned in Section 8.5(a).
- 25.40 "Payor" shall have the meaning assigned in Section 8.5(a).
- 25.41 "Plan" shall mean: (a) any "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 which is subject to Part 4 of Subtitle B of Title I of such Act; (b) any "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986; or (c) any entity the assets of which are deemed to be assets of any such "employee benefit plan" or "plan" by reason of Section 3(42) of ERISA
- 25.4 "Recognized Securities Exchange" means a U.S. securities exchange that is registered as a "national securities exchange" under section 6 of the Exchange Act of 1934 15 U.S.C. 78f or a designated offshore securities market as defined in Regulation S of the Securities Act of 1933 17 CFR part 230.902(B), as such definition may be amended from time to time, which performs with respect to securities, the functions commonly performed by a stock exchange within the meaning of the definitions under the applicable securities laws (e.g., 17 CFR part 240.3b-16).
- 25.4 "Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System, as in effect from time to time.
- 25.4 "Retransfer" shall mean, with respect to any Collateral, to pledge, repledge, hypothecate, rehypothecate, lend, relend, sell or otherwise transfer such Collateral in any name other than Borrower's.
- 25.45 "Securities" shall mean securities or, if agreed by the parties in writing, other assets.
- 25.46 "Securities Distributions" shall have the meaning assigned in Section 8.5(a).
- 25.47 "Tax" shall have the meaning assigned in Section 8.5(a).
- 25.48 "UCC" shall mean the New York Uniform Commercial Code.
- 25.49 "U.S. Collateral" shall mean (1) U.S. currency; (2) "government securities" as defined in section 3(a)(42)(A) and (B) of the Exchange Act; (3) "government securities" as defined in section 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the following corporations: The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association and the Financing Corporation; (4) mortgage-backed securities meeting the definition of a "mortgage related security" set forth in section 3(a)(41) of the Exchange Act; (5) negotiable certificates of deposit and bankers acceptances issued by a "bank" as that term is defined in section 3(a)(6) of the Exchange Act, and which are payable in the United States and deemed to have a "ready market" as that term is defined in 17 CFR 240.15c3-1; or; (6) irrevocable letters of credit issued by a U.S. Bank other than the Borrower or an affiliate thereof, or any combination, thereof.

26. INTENT

- 26.1 The parties recognize that each Loan hereunder is a "securities contract," as such term is defined in Section 741 of Title 11 of the United States Code (the "Bankruptcy Code") and Section 78eee of Title 15 of the United States Code (the "Securities Investors Protection Act"), as amended (except insofar as the type of assets subject to the Loan would render such definition inapplicable).
- 26.2 It is understood that each and every transfer of funds, securities and other property under this Agreement and each Loan hereunder is a "settlement payment" or a "margin payment," as such terms are used in Sections 362(b)(6) and 546(e) of the Bankruptcy Code.
- 26.3 It is understood that the rights given to Borrower and Lender hereunder upon a Default by the other constitute the right to cause the liquidation of a securities contract and the right to set off mutual debts and claims in connection with a securities contract, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code and Section 78eee of the Securities Investors Protection Act.
- 26.4 The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Loan hereunder is a "securities contract" and "qualified financial contract," as such terms are defined in the FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to the Loan would render such definitions inapplicable).
- 26.5 It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment obligation under any Loan hereunder shall constitute a "covered contractual payment"

entitlement” or “covered contractual payment obligation,” respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a “financial institution” as that term is defined in FDICIA).

- 26.6 Except to the extent required by applicable law or regulation or as otherwise agreed, Borrower and Lender agree that Loans hereunder shall in no event be “exchange contracts” for purposes of the rules of any securities exchange and that Loans hereunder shall not be governed by the buy-in or similar rules of any such exchange, registered national securities association or other self-regulatory organization.

27. DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS

- 27.1 WITHOUT WAIVING ANY RIGHTS GIVEN TO LENDER HEREUNDER, IT IS UNDERSTOOD AND AGREED THAT THE PROVISIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970 MAY NOT PROTECT LENDER WITH RESPECT TO LOANED SECURITIES HEREUNDER AND THAT, THEREFORE, THE COLLATERAL DELIVERED TO LENDER MAY CONSTITUTE THE ONLY SOURCE OF SATISFACTION OF BORROWER’S OBLIGATIONS IN THE EVENT BORROWER FAILS TO RETURN THE LOANED SECURITIES.
- 27.2 LENDER ACKNOWLEDGES THAT, IN CONNECTION WITH LOANS OF GOVERNMENT SECURITIES AND AS OTHERWISE PERMITTED BY APPLICABLE LAW, SOME SECURITIES PROVIDED BY BORROWER AS COLLATERAL UNDER THIS AGREEMENT MAY NOT BE GUARANTEED BY THE UNITED STATES.

28. MARKET VALUE

Unless otherwise agreed by Borrower and Lender:

1. If the principal market for the Securities to be valued is a national securities exchange in the United States, their Market Value shall be determined by their last sale price on such exchange at the most recent Close of Trading or, if there was no sale on the Business Day of the most recent Close of Trading, by the last sale price at the Close of Trading on the next preceding Business Day on which there was a sale on such exchange, all as quoted on the Consolidated Tape or, if not quoted on the Consolidated Tape, then as quoted by such exchange.
2. If the principal market for the Securities to be valued is the over-the-counter market, and the Securities are quoted on The Nasdaq Stock Market (“Nasdaq”), their Market Value shall be the last sale price on Nasdaq at the most recent Close of Trading or, if the Securities are issues for which last sale prices are not quoted on Nasdaq, the last bid price at such Close of Trading. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.
3. Except as provided in Section 4 of this section, if the principal market for the Securities to be valued is the over-the-counter market, and the Securities are not quoted on Nasdaq, their Market Value shall be determined in accordance with market practice for such Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such a source. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.
4. If the Securities to be valued are Foreign Securities, their Market Value shall be determined as of the most recent Close of Trading in accordance with market practice in the principal market for such Securities.
5. The Market Value of a letter of credit shall be the undrawn amount thereof.
6. All determinations of Market Value under Sections 1 through 4 of this section shall include, where applicable, accrued interest to the extent not already included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8 of the Agreement), unless market practice with respect to the valuation of such Securities in connection with securities loans is to the contrary.

PERSHING LLC, as Borrower and as Clearing Broker
and Securities Intermediary



BY: IRVING J. KLUBECK, MANAGING DIRECTOR

Names and Addresses for Communications

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