

## GUARANTEE AND SECURITY AGREEMENT

GUARANTEE AND SECURITY AGREEMENT, dated as of \_\_\_ / \_\_\_ / \_\_\_ (“Agreement”), made by \_\_\_\_\_, (Insert Name of Guarantor) a \_\_\_\_\_ (“Guarantor”), in favor of Lek Securities Corporation, (“LSC”) a Delaware corporation, with its offices located at One Liberty Plaza, 52<sup>nd</sup> Floor New York, NY 10006.

WITNESSETH:

WHEREAS, \_\_\_\_\_, (Insert Name of Customer) a \_\_\_\_\_ (“Customer”), maintains one or more accounts at LSC (each, an “Account”, and collectively, the “Accounts”) with LSC pursuant to a Customer Margin Agreement between LSC and Customer (the “Margin Agreement”); and

WHEREAS, the Guarantor has agreed to guarantee the obligations of Customer in respect of the Accounts and under the Margin Agreement to LSC;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor hereby agrees as follows:

1. **GUARANTEE.** The Guarantor hereby guarantees, irrevocably, absolutely and unconditionally, as primary obligor and not merely as surety, to LSC the due and punctual payment in full when due, whether at stated maturity, upon acceleration or otherwise, of (i) all indebtedness, obligations and liabilities (including, without limitation, indemnities, fees, expenses (including, without limitation, to the reasonable fees and expenses of LSC’s counsel and other experts) and interest on any or all of the foregoing, including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) of Customer to LSC arising out of or in connection with the Accounts and/or the Margin Agreement in each case whether now existing or hereinafter incurred, direct or indirect, matured or unmatured, absolute or contingent and (ii) the due and punctual payment of all costs and expenses incurred by LSC in connection with the preservation, protection, collection or enforcement (including, without limitation, with respect to any action, suit or proceeding which may be instituted by LSC in connection with the preservation, protection, collection or enforcement) of any or all of the foregoing, or of any of its rights or remedies in respect of the Accounts and/or under the Margin Agreement (including, without limitation, the reasonable fees and expenses of LSC’s counsel and other experts) (collectively, the “Obligations”). The Guarantor waives notice of acceptance of this Agreement and notice of any liability to which it may apply, and waives diligence, presentment, demand of payment, protest, notice of dishonor or nonpayment of any such Obligations, notice of any suit or of the taking of any other action by LSC against, and any other notice to, any party liable thereon (including the Guarantor).

2. **COVENANTS.** The Guarantor hereby agrees that:

(a) This Agreement is an absolute, unconditional, irrevocable, present and continuing guarantee of payment and not of collection and the obligations of the Guarantor under this Agreement shall be primary, absolute and unconditional, irrespective of, and unaffected by:

- (i) the genuineness, validity, regularity or enforceability of the Accounts, the Margin Agreement or the Obligations, or any part thereof, or any other guarantee thereof or any security interest for any of the foregoing;
- (ii) the absence of any action to enforce this Agreement, the Margin Agreement or the Obligations or any other guaranty thereof or any security for any of the foregoing;
- (iii) the existence, value or condition of, or failure to perfect its lien against, any security for the Obligations or any other guaranty thereof or any action, or the absence of any

action, by LSC in respect thereof (including, without limitation, the release of any such security); or

- (iv) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

The Guarantor expressly waives all rights it may have now or in the future under any statute, or at law or in equity, or otherwise, to compel LSC to proceed in respect of the Obligations against Customer or any other party or against any security for the payment of the Obligations or other guaranty thereof before proceeding against, or as a condition to proceeding against, the Guarantor.

- (b) This Agreement is made for the purpose of guaranteeing LSC's claim against Customer with respect to the Obligations; and upon the failure of Customer to duly and punctually repay any of the Obligations when due, then LSC shall receive payment from the Guarantor.
- (c) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of the Obligations, or any part thereof, is rescinded or must otherwise be restored or returned by LSC upon the insolvency, bankruptcy or reorganization of Customer or the Guarantor or any other guarantor, all as though such payment has not been made.
- (d) The Guarantor waives, and agrees that it shall not at any time insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshalling of assets or redemption laws, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by Guarantor of its obligations under, or the enforcement by LSC of, this Agreement.
- (e) LSC may at any time or from time to time, with or without the consent of, or prior notice to the Guarantor:
  - (i) change or extend the manner, place or terms of payment of, or renew or alter all or any portion of, the Obligations, but subject to any requirement of consent of or notice to Customer under the Margin Agreement to which it is a party;
  - (ii) take any action under or in respect of the Obligations, the Margin Agreement or any other guaranty thereof or any security for any of the foregoing in the exercise of any remedy, power or privilege contained therein or available to it at law, equity or otherwise, or waive or refrain from exercising any such remedies, powers or privileges; or
  - (iii) amend or modify, in any manner whatsoever, the Obligations or the Margin Agreement, but subject to any requirement of consent of or notice to Customer under the Margin Agreement to which it is a party; and/or
  - (iv) extend or waive the time for any of Customer's or any other person's performance of, or compliance with, any term, covenant or agreement on its part to be performed or observed under the Margin Agreement or any agreement evidencing any other guaranty of or any security for any of the Obligations, or waive such performance or compliance or consent to a failure of, or departure from such performance or compliance;

and LSC shall not incur any liability to the Guarantor pursuant hereto as a result thereof, and no such action shall impair or release the obligations of Guarantor under this Agreement.

- (f) The Guarantor hereby agrees that all amounts due to the Guarantor by Customer are subordinated to all Obligations of Customer to LSC under the Accounts and the Margin

Agreement until payment in full thereof and termination thereof. The Guarantor hereby irrevocably waives all rights by operation of law or otherwise which it may have in connection with this Agreement or the performance of its obligations hereunder to be subrogated to any of the rights of LSC against Customer or against any collateral security or any other guaranty or right of offset held by LSC for the payment of the amounts due to LSC by the Customer in respect of the Obligations until the later of termination of the Accounts and indefeasible payment in full of the Obligations.

### 3. SECURITY INTEREST.

- (a) Grant of Security Interest. As security for the full payment and performance of the Obligations, whether now existing or hereafter arising, the Guarantor hereby assigns, pledges, grants and conveys to LSC, and grants to LSC a continuing first-priority lien and security interest (the "Security Interest") in and to the following whether now owned or existing or hereafter owned or existing (collectively, the "Collateral"):
- (i) each account maintained by the Guarantor with LSC (each, a "Securities Account" and collectively, the "Securities Accounts") and all stocks, bonds, security entitlements, financial assets and other securities, contracts, options, including put and call option contracts, and investment property now or hereafter in or credited to the Securities Accounts (the "Securities");
  - (ii) all credit balances, accounts, contract rights, general intangibles, instruments, chattel paper, documents, monies, certificates of deposit and other property of whatever kind or description now or hereafter held in or credited to the Securities Accounts; and
  - (iii) all dividends, interest and proceeds of any of the property described in clauses (i) and (ii) above, including without limitation, proceeds of proceeds.

The Guarantor and LSC expressly agree for the benefit of LSC that all of the property described in clauses (i), (ii) and (iii) is to be treated as a financial asset for purposes of the Uniform Commercial Code as in effect from time to time in the State of New York (the "UCC"; defined terms used in this Section 3 and not otherwise herein shall have the meanings specified in the UCC).

The Guarantor shall take all action that LSC requests or is reasonably necessary to ensure that LSC has a continuing perfected first-priority Security Interest in the Collateral while this Agreement is in effect. The Guarantor hereby authorizes the filing of a financing statement and one or more continuation statements thereof conforming to the Uniform Commercial Code in effect from time to time in any state or jurisdiction deemed appropriate by LSC describing the Collateral. Upon LSC's request, the Guarantor shall execute and deliver to LSC stock powers endorsed in blank with a medallion signature guarantee and such other documents as may be required in LSC's judgment, in order to perfect or maintain the perfection of the Security Interest, all in a form LSC considers acceptable. If the Guarantor fails to deliver to LSC any of the foregoing documents, LSC may, to the extent permitted by law and without limiting its other rights under this Agreement, execute and file, in the Guarantor's name, as the Guarantor's attorney-in-fact, such documents. Notwithstanding the foregoing, LSC may, in its discretion, cause any Securities included within the Collateral, to be registered in its name or the name of its nominee at any time and the Guarantor agrees to use all of its reasonable efforts, at its expense, to cause the issuer of such securities to effect such re-registration.

Set forth in the signature area below is the location of the Guarantor's principal place of business, the jurisdiction of the Guarantor's organization or formation, as well as the Guarantor's chief executive office and, if different, the location of the Guarantor's principal place of business. The Guarantor agrees to provide LSC with not less than 30 days' prior written notice of any change of any of the foregoing.

- (b) Power of Attorney to LSC. The Guarantor hereby irrevocably appoints LSC as the Guarantor's attorney-in-fact, coupled with an interest, with full power of substitution and with full authority in the place and stead of the Guarantor and in the name of Guarantor or otherwise, from time to time in LSC's discretion, at the expense of the Guarantor to do all acts and things and to sign, seal, execute, deliver, perfect and do all deeds, instruments, documents, acts and things which may be required for carrying out any obligation imposed on the Guarantor by or pursuant to this Agreement: (i) to take any action and to execute any instrument which LSC may deem necessary or advisable to protect, collect, realize upon and preserve the Collateral, (ii) to enforce LSC's rights in the Collateral, (iii) to file any claims or take any action or institute any proceedings which LSC may deem necessary or desirable for the collection of the Collateral, (iv) to transfer into the name of LSC or its designee any or all of the Collateral, and (v) to sell or otherwise dispose of any or all of the Collateral.
- (c) LSC's Duties. The powers conferred on LSC in this Agreement are solely to protect its interest in the Collateral and shall not impose any duty upon LSC to exercise any such powers. LSC shall not be liable for any acts, omissions, errors of judgment or mistakes of fact or law including, without limitation, acts, omissions, errors or mistakes with respect to the Collateral, except for the safe custody of any Collateral in its possession and the accounting for monies actually received by it hereunder, LSC shall have no duty as to the Collateral or as to the taking of any necessary steps to preserve rights against other parties or any other rights pertaining to any of the Collateral.
- (d) Remedies. In addition to LSC's rights and remedies described in this Agreement upon the failure of the Guarantor to pay any of the Obligations when due, LSC has the right to exercise any one or more of the rights and remedies of a secured creditor under the UCC. Upon failure of the Guarantor to pay any of the Obligations when due, LSC may, at its option: (i) liquidate any or all of the Collateral; (ii) withdraw and/or sell any or all of the Collateral; (iii) apply any or all of the Collateral as well as the proceeds of any such Collateral to the Obligations; (iv) transfer and register in its name or in the name of its nominee the whole or any part of the Collateral, to exercise all voting rights with respect thereto, to collect and receive all cash dividends or distributions and other distributions made thereon, and to otherwise act with respect to the Collateral as though LSC were the outright owner thereof, the Guarantor hereby irrevocably constituting and appointing LSC as the proxy and attorney-in-fact of the Guarantor, with full power of substitution to do so; provided, however, that LSC shall have no duty to exercise any such right or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so; and (v) exercise any and all other rights and remedies under this Agreement, all documents and agreements executed in connection with this Agreement, or applicable law.

LSC may exercise any or all of its rights under this Agreement without notice of sale or purchase, or other notice or advertisement, except as otherwise required by applicable law, and cannot be waived, at any exchange, broker's board or at public or private sale, in one or more sales or lots, at such prices as LSC may deem best, for cash or on credit or for future delivery, without assumption of any credit risk, and the purchaser of any or all of the Collateral so sold shall thereafter own the same, absolutely free from any claim, encumbrance or right of any kind whatsoever. LSC may, in its own name, or in the name of a designee or nominee, buy the Collateral at any public sale and, if permitted under applicable law, buy the Collateral at any private sale. Notwithstanding any provision to the contrary contained herein, the Guarantor agrees that any requirements of reasonable notice shall be met if such notice is received by the Guarantor at least ten (10) days before the time of the sale or disposition; provided, however, that LSC may give any shorter notice that is commercially reasonable under the circumstances. It is understood that the giving of any prior demand or call or prior notice of the time and place of such sale or purchase by LSC will not be considered a waiver of LSC's right to sell or buy without any such demand, call or notice as provided in this Agreement. Any excess amounts remaining with respect to the Collateral

after LSC has satisfied all of the obligations of the Guarantor hereunder, shall be promptly returned to the Guarantor or to whomever shall be entitled thereto, and this Agreement shall be terminated. The Guarantor shall remain liable for any deficiency.

#### 4. MISCELLANEOUS.

- (a) Waivers, Amendments. Unless specifically waived by LSC in writing, LSC shall not by any act, delay, omission or otherwise be deemed to have waived any rights or remedies hereunder or under the Margin Agreement. Such rights and remedies are cumulative and not exclusive of any rights or remedies provided by law. No waiver shall be valid unless signed by LSC. No amendment hereof, unless signed by LSC, and no course of dealing between the Guarantor and LSC or Customer and LSC, shall be effective to modify or discharge this Agreement.
- (b) Costs and Expenses. The Guarantor agrees to pay on written demand all reasonable costs and expenses of LSC, including without limitation the reasonable fees and out-of-pocket expense of counsel to LSC, in connection with the enforcement, collection, protection or preservation (whether through negotiations, legal proceedings or otherwise) of any of its rights or amounts due under this Agreement.
- (c) Notices. Except as otherwise specifically provided herein, all notices, requests, demands or other communications to LSC or the Guarantor shall be in writing and shall be effective when received by the addressee thereof whether by certified mail, return-receipt requested, hand delivery, courier or facsimile, if to LSC, at its address set forth above, Attention: Mr. Samuel F. Lek, fax number (212) 509-3540 or if to the Guarantor, at its address or fax number set forth below, or such other address as either LSC or the Guarantor shall hereafter specify to the other in writing.
- (d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Guarantor and LSC and their respective successors and assigns, except that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of LSC.
- (e) Right of Set-off. In addition to any rights and remedies of LSC provided by law or otherwise, LSC shall have the right, without prior notice to the Guarantor, any such notice being expressly waived by the Guarantor to the extent permitted by applicable law, to set-off and appropriate and apply against any amount becoming due and payable by the Guarantor hereunder (whether at the stated maturity, by acceleration or otherwise) any and all credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by LSC to or for the credit or the account of the Guarantor. LSC agrees promptly to notify the Guarantor after any such set-off and application made by LSC, provided that the failure to give such notice shall not affect the validity of such set-off and application.
- (f) Severability. Any provision hereof which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provisions in any other jurisdiction.
- (g) **GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

- (h) **CONSENT TO JURISDICTION.** ANY LEGAL ACTION OR PROCEEDING AGAINST THE GUARANTOR WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN NEW YORK COUNTY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE GUARANTOR HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. THE GUARANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE GUARANTOR AT ITS ADDRESS AS SET FORTH BELOW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE GUARANTOR IN ANY OTHER JURISDICTION.

THE GUARANTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IN THE COURTS REFERRED TO ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

- (i) **WAIVER OF JURY TRIAL.** THE GUARANTOR AND LSC, BY ITS ACCEPTANCE OF THIS AGREEMENT, HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered on behalf of the Guarantor by its duly authorized officer as of the date and year first written above.

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Address  
\_\_\_\_\_  
\_\_\_\_\_