

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-Q

(MARK ONE)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended APRIL 27, 1997 or  
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TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-6920  
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APPLIED MATERIALS, INC.  
(Exact name of registrant as specified in its charter)

Delaware 94-1655526

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(State or other jurisdiction (I.R.S. Employer  
of incorporation or organization) Identification No.)

3050 Bowers Avenue, Santa Clara, California 95054-3299

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Address of principal executive offices (Zip Code)

Registrant's telephone number, including area code (408) 727-5555  
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Indicate by check mark whether the registrant (1) has filed all reports  
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of  
1934 during the preceding 12 months (or for such shorter period that the  
registrant was required to file such reports), and (2) has been subject to  
such filing requirements for the past 90 days. Yes  No   
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Number of shares outstanding of the issuer's common stock as of April 27,  
1997: 181,509,733

## PART I. FINANCIAL INFORMATION

APPLIED MATERIALS, INC.  
 CONSOLIDATED STATEMENTS OF OPERATIONS  
 (UNAUDITED)

	Three Months Ended		Six Months Ended	
	April 27, 1997	April 28, 1996	April 27, 1997	April 28, 1996
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(In thousands, except per share amounts)				
Net sales	\$ 900,862	\$1,127,855	\$1,736,638	\$2,168,435
Cost of products sold	486,845	586,564	950,965	1,130,344
	-----	-----	-----	-----
Gross margin	414,017	541,291	785,673	1,038,091
Operating expenses:				
Research, development and engineering	131,973	124,918	248,465	235,270
Marketing and selling	74,965	80,587	141,236	157,869
General and administrative	59,617	54,820	119,225	104,375
Acquired in-process research and development	-	-	59,500	-
	-----	-----	-----	-----
Income from operations	147,462	280,966	217,247	540,577
Interest expense	4,935	4,917	10,735	10,085
Interest income	14,598	9,829	28,155	19,426
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Income from consolidated companies before taxes	157,125	285,878	234,667	549,918
Provision for income taxes	54,994	100,057	102,959	192,471
	-----	-----	-----	-----
Income from consolidated companies	102,131	185,821	131,708	357,447
Equity in net income/(loss) of joint venture	-	-	-	-
	-----	-----	-----	-----
Net income	\$ 102,131	\$ 185,821	\$ 131,708	\$ 357,447
	-----	-----	-----	-----
Earnings per share	\$ .54	\$ 1.01	\$ .71	\$ 1.94
	-----	-----	-----	-----
Average common shares and equivalents	187,899	183,699	186,762	183,921
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See accompanying notes to consolidated condensed financial statements.

APPLIED MATERIALS, INC.  
CONSOLIDATED CONDENSED BALANCE SHEETS\*

(In thousands)	April 27, 1997	Oct. 27, 1996
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 202,660	\$ 403,888
Short-term investments	872,190	633,744
Accounts receivable, net	807,181	822,384
Inventories	507,632	478,552
Deferred income taxes	278,352	281,586
Other current assets	83,295	72,915
Total current assets	2,751,310	2,693,069
Property, plant and equipment, net	900,041	919,038
Other assets	240,510	25,880
Total assets	\$3,891,861	\$3,637,987
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Notes payable	\$ 19,892	\$ 77,522
Current portion of long-term debt	7,659	22,640
Accounts payable and accrued expenses	875,808	791,897
Income taxes payable	147,713	43,168
Total current liabilities	1,051,072	935,227
Long-term debt	227,808	275,485
Deferred income taxes and other liabilities	107,601	56,850
Total liabilities	1,386,481	1,267,562
Stockholders' equity:		
Common stock	1,815	1,802
Additional paid-in capital	781,281	763,376
Retained earnings	1,731,272	1,599,564
Cumulative translation adjustments	(8,988)	5,683
Total stockholders' equity	2,505,380	2,370,425
Total liabilities and stockholders' equity	\$3,891,861	\$3,637,987

\* Amounts as of April 27, 1997 are unaudited. Amounts as of October 27, 1996 were obtained from the October 27, 1996 audited financial statements.

See accompanying notes to consolidated condensed financial statements.

APPLIED MATERIALS, INC.  
 CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS  
 (UNAUDITED)

(In thousands)	Six Months Ended	
	April 27, 1997	April 28, 1996
<b>Cash flows from operating activities:</b>		
Net income	\$ 131,708	\$ 357,447
Adjustments required to reconcile net income to cash provided by operations:		
Acquired in-process research & development	59,500	-
Deferred taxes	4,095	1,404
Depreciation and amortization	105,826	63,143
Equity in net income/(loss) of joint venture	-	-
Changes in assets and liabilities, net of amounts acquired:		
Accounts receivable	16,303	(228,277)
Inventories	(15,243)	(136,132)
Other current assets	(7,303)	12,963
Other assets	(317)	(2,047)
Accounts payable and accrued expenses	68,807	139,295
Income taxes payable	106,458	(81,332)
Other liabilities	5,284	10,325
Cash provided by operations	475,118	136,789
<b>Cash flows from investing activities:</b>		
Capital expenditures, net of dispositions	(76,521)	(249,206)
Cash paid for acquisitions, net of cash acquired	(246,565)	-
Proceeds from sales of short-term investments	244,937	328,489
Purchases of short-term investments	(483,383)	(287,407)
Cash used for investing	(561,532)	(208,124)
<b>Cash flows from financing activities:</b>		
Short-term debt activity, net	(58,318)	(9,568)
Long-term debt activity, net	(55,807)	8,506
Common stock transactions, net	771	(12,717)
Cash used for financing	(113,354)	(13,779)
Effect of exchange rate changes on cash	(1,460)	(738)
Decrease in cash and cash equivalents	(201,228)	(85,852)
Cash and cash equivalents - beginning of period	403,888	285,845
Cash and cash equivalents - end of period	\$ 202,660	\$ 199,993

For the six months ended April 27, 1997, cash payments for interest were \$9,908 and net income tax refunds were \$8,190. For the six months ended April 28, 1996, cash payments for interest and income taxes were \$12,053 and \$253,118, respectively.

See accompanying notes to consolidated condensed financial statements.

APPLIED MATERIALS, INC.  
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (UNAUDITED)  
SIX MONTHS ENDED APRIL 27, 1997  
(IN THOUSANDS)

1) Basis of Presentation

In the opinion of management, the unaudited consolidated condensed financial statements included herein have been prepared on a consistent basis with the October 27, 1996 audited consolidated financial statements and include all material adjustments, consisting of normal recurring adjustments, necessary to fairly present the information set forth therein. These interim financial statements should be read in conjunction with the October 27, 1996 audited consolidated financial statements and notes thereto.

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ materially from those amounts.

2) Acquisitions

During the first quarter of fiscal 1997, the Company acquired two companies (Opal, Inc. and Orbot Instruments, Ltd.) in separate transactions for approximately \$293 million, consisting primarily of cash. Opal, Inc. ("Opal") is a supplier of CD-SEM (critical dimension scanning electron microscope) systems for use in semiconductor manufacturing. Orbot Instruments, Ltd. ("Orbot") supplies wafer and reticle inspection systems for use in the production of semiconductors. The acquisitions were completed by the early part of January 1997, and have been accounted for using the purchase method of accounting; accordingly, the Company's consolidated results of operations for the six months ended April 27, 1997 include the operating results of Opal and Orbot subsequent to their acquisition dates.

In connection with the acquisitions, the Company incurred a \$59.5 million pre-tax charge, or \$0.32 per share after tax, for acquired in-process research and development. With the exception of this charge, the Company's results of operations for the six months ended April 27, 1997 were not materially impacted by the acquisitions. As of April 27, 1997, the Company had \$213 million of net intangible assets (see note 5) and \$46 million of deferred tax liabilities that resulted from the acquisitions. With the exception of these items, the Company's financial condition as of April 27, 1997 has not been materially impacted by the acquisitions.

The Company's pro-forma net sales, income from operations, net income and earnings per share for the six months ended April 27, 1997 and April 28, 1996, assuming the acquisitions occurred at the beginning of such periods, would not have been materially different from the actual amounts reported for such periods.

## 3) Earnings Per Share

Earnings per share has been computed using the weighted average number of common shares and equivalents outstanding during the period.

In February 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standard No. 128 (SFAS 128), "Earnings Per Share," which the Company is required to adopt in the first quarter of fiscal 1998. Under the requirements of SFAS 128, primary earnings per share will be replaced by basic earnings per share and the dilutive effect of stock options will be excluded from its calculation. For companies with potentially dilutive securities such as outstanding stock options, fully diluted earnings per share will be replaced with diluted earnings per share. Upon adoption of SFAS 128, the Company's basic earnings per share for the second quarter of fiscal 1997 and 1996 are expected to be \$0.56 and \$1.04, respectively, and diluted earnings per share for the same periods are expected to be \$0.54 and \$1.01, respectively.

## 4) Inventories

Inventories are stated at the lower of cost or market, with cost determined on a first-in, first-out (FIFO) basis. The components of inventories are as follows:

	April 27, 1997 -----	October 27, 1996 -----
Customer service spares	\$181,795	\$182,320
Systems raw materials	67,688	70,959
Work-in-process	178,588	140,964
Finished goods	79,561	84,309
	-----	-----
	\$507,632	\$478,552
	=====	=====

## 5) Other Assets

The components of other assets are as follows:

	April 27, 1997 -----	October 27, 1996 -----
Purchased technology, net	\$198,709	\$ -
Goodwill, net	14,375	-
Other	27,426	25,880
	-----	-----
	\$240,510	\$ 25,880
	=====	=====

Purchased technology and goodwill are presented at cost, net of accumulated amortization, and are being amortized using the straight-line method over their estimated useful lives of eight years. The Company periodically analyzes these assets to determine whether an impairment in carrying value has occurred. The Company does not believe that any impairment has occurred to date.

## 6) Accounts Payable and Accrued Expenses

The components of accounts payable and accrued expenses are as follows:

	April 27, 1997 -----	October 27, 1996 -----
Accounts payable	\$258,962	\$192,607
Compensation and benefits	158,043	170,881
Installation and warranty	188,258	187,873
Other	270,545	240,536
	-----	-----
	\$875,808	\$791,897
	=====	=====

## 7) Early Retirement of Debt

During the first quarter of fiscal 1997, the Company repaid its unsecured senior notes prior to their scheduled maturities. The noteholders received approximately \$56 million, representing principal, accrued interest and prepayment charges, on December 19, 1996. The prepayment charge was not material.

## 8) Litigation Settlement

On May 5, 1997, the Company announced a settlement of all outstanding litigation with Novellus Systems, Inc., pursuant to which the Company received \$80 million in damages from Novellus for past patent infringement. This amount will be reflected in the Company's results of operations for the third fiscal quarter ending July 27, 1997. Novellus also agreed to pay ongoing royalties for certain system shipments subsequent to the date of the settlement.

APPLIED MATERIALS, INC.  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION  
AND RESULTS OF OPERATIONS

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#### ACQUISITIONS

During the first quarter of fiscal 1997, the Company acquired Opal, Inc. ("Opal") and Orbot Instruments, Ltd. ("Orbot") in separate transactions for approximately \$293 million, consisting primarily of cash. Opal is a supplier of CD-SEM (critical dimension scanning electron microscope) systems for use in semiconductor manufacturing. Orbot supplies wafer and reticle inspection systems for use in the production of semiconductors. These acquisitions marked the Company's entry into the metrology and inspection semiconductor equipment markets. The acquisitions were completed by the early part of January 1997, and have been accounted for using the purchase method of accounting; accordingly, the Company's consolidated results of operations for the six months ended April 27, 1997 include the operating results of Opal and Orbot subsequent to their acquisition dates. In connection with the acquisitions, the Company recorded a one-time, pre-tax charge of \$59.5 million, or \$0.32 per share after tax, for acquired in-process research and development. With the exception of this charge, the acquisitions did not materially impact the Company's results of operations for the six months ended April 27, 1997.

#### RESULTS OF OPERATIONS

During the latter half of the Company's fiscal 1996, the semiconductor industry began a period of transition during which sharply lower memory device prices and excess production capacity caused the Company's customers to reduce their purchases of semiconductor manufacturing equipment and push out delivery of previously ordered systems. The Company's results of operations for the last four fiscal quarters have reflected this industry slowdown. The Company believes that the low point of its business cycle occurred in the fourth quarter of fiscal 1996, during which the Company received \$683 million of new orders. The Company's new orders have increased in each of the last two fiscal quarters, and net sales increased in the second quarter of fiscal 1997, compared to net sales in the first quarter of fiscal 1997. New orders and net sales are expected to increase modestly in each of the next two fiscal quarters. Although quarterly new orders and net sales are improving, they have not yet returned to the levels achieved during the first two quarters of fiscal 1996.



New orders of \$1,014 million were received during the second quarter of fiscal 1997, versus new orders of \$905 million in the first quarter of fiscal 1997. The increase in new orders is primarily the result of strengthening demand for the Company's advanced technologies, including 0.25 micron capable production systems, from logic and microprocessor device manufacturers, and selected strategic investments by DRAM manufacturers. North America (primarily the United States) new orders increased to \$406 million in the second quarter of fiscal 1997 from \$252 million in the first quarter of fiscal 1997; Europe increased to \$136 million from \$94 million; Japan increased to \$221 million from \$214 million; Korea decreased to \$66 million from \$135 million; and Asia-Pacific (Taiwan, China and Southeast Asia) decreased to \$185 million from \$210 million. Backlog at April 27, 1997 was \$1,485 million, versus \$1,448 million at January 26, 1997 and \$1,423 million at October 27, 1996.

The Company's net sales for the three and six months ended April 27, 1997 decreased 20.1 and 19.9 percent, respectively, from the corresponding periods of fiscal 1996. These decreases occurred in all regions except Asia-Pacific, and are primarily the result of the industry slowdown discussed earlier. Sales by region as a percentage of total sales were as follows:

	Three Months Ended		Six Months Ended	
	April 27, 1997	April 28, 1996	April 27, 1997	April 28, 1996
North America	39%	32%	37%	35%
Europe	14%	15%	19%	18%
Japan	15%	23%	15%	22%
Korea	11%	14%	9%	11%
Asia-Pacific	21%	16%	20%	14%

The Company's gross margin for the three and six months ended April 27, 1997 was 46.0 and 45.2 percent, respectively, compared to 48.0 and 47.9 percent for the corresponding periods of fiscal 1996. These decreases can be attributed primarily to reduced business volume and product pricing pressures associated with reduced demand for semiconductor manufacturing equipment. The Company's gross margin of 46.0 percent in the second quarter of fiscal 1997 improved from 44.5 percent in the first quarter of fiscal 1997 due to increased business volume, manufacturing material cost reductions and improved manufacturing efficiencies. For these same reasons, management expects the Company's gross margin to increase slightly in each of the next two fiscal quarters.

Excluding the charge for acquired in-process research and development incurred in connection with the acquisitions of Opal and Orbot, operating expenses as a percentage of net sales for the three and six months ended April 27, 1997 were 29.6 and 29.3 percent, respectively, versus 23.1 and 22.9 percent for the corresponding periods in fiscal 1996. These increases are primarily attributable to reduced business volume and additional research and development costs for 300mm wafer technology. Research and development spending is expected to increase in each of the next two fiscal quarters as the Company accelerates its 300mm product development programs.

Significant operations of the Company are conducted in foreign currencies, primarily Japanese yen. Forward exchange contracts and options are purchased to hedge certain existing firm commitments and foreign currency denominated transactions expected to occur during the next year. Gains and losses on hedge contracts are reported in income when the related transactions being hedged are recognized. Because the impact of movements in currency exchange rates on foreign exchange contracts generally offsets the related impact on the underlying items being hedged, these financial instruments are not expected to subject the Company to risks that would otherwise result from changes in currency exchange rates. Exchange gains and losses did not have a significant effect on the Company's results of operations for the three and six months ended April 27, 1997 or April 28, 1996.

Interest expense for the three and six months ended April 27, 1997 was \$4.9 million and \$10.7 million, respectively, compared to \$4.9 million and \$10.1 million, respectively, for the corresponding periods of fiscal 1996. The Company's debt consists mainly of long-term debt bearing interest at fixed rates. Therefore, fluctuations in interest expense from period to period were primarily due to changes in the Company's average short-term debt outstanding during those periods.

Interest income for the three and six months ended April 27, 1997 was \$14.6 million and \$28.2 million, respectively, compared to \$9.8 million and \$19.4 million, respectively, for the corresponding periods of fiscal 1996. These increases can be attributed primarily to higher average cash and investment balances.

The Company's effective income tax rate for the second quarter of fiscal 1997 was 35 percent, consistent with the rate for the three and six months ended April 28, 1996. For the six months ended April 27, 1997, the effective rate was higher than the expected rate of 35 percent, due to the non-deductible nature of the \$59.5 million acquisition related charge discussed above. Management anticipates that the Company's effective income tax rate for the remainder of fiscal 1997 will be 35 percent.

The Company's results of operations for the three and six months ended April 27, 1997 are not necessarily indicative of future operating results.

#### FINANCIAL CONDITION, LIQUIDITY AND CAPITAL RESOURCES

The Company's financial condition remained strong as of April 27, 1997, with a ratio of current assets to current liabilities of 2.6:1, compared to 2.9:1 at October 27, 1996. The Company had \$1.1 billion of cash and short-term investments as of April 27, 1997, slightly above the amount at the end of fiscal 1996, despite significant outflows related to the acquisitions of Opal and Orbot and early retirement of certain debt (discussed in note 7 to the Consolidated Condensed Financial Statements).

The Company generated \$475 million of cash from operations in the first six months of fiscal 1997. This resulted primarily from net income (plus non-cash charges for depreciation, amortization and acquired in-process research and development) of \$297 million, an increase in accounts payable and accrued expenses of \$69 million and an increase in income taxes payable of \$106 million.

Cash used for investing activities of \$562 million was primarily for acquisitions (\$247 million, net of cash acquired), net purchases of short-term investments (\$238 million) and net property, plant and equipment acquisitions of \$77 million.

Cash used for financing activities of \$113 million was primarily for net short-term debt repayments and the early retirement of certain long-term debt.

At April 27 1997, the Company's principal sources of liquidity consisted of \$1,075 million of cash, cash equivalents and short-term investments, \$194 million of unissued notes registered under the Company's medium-term note program and \$337 million of available credit facilities. During the second quarter of fiscal 1997, the Company amended its \$240 million line of credit (included in available credit facilities discussed above) to extend the expiration to April 2001 from February 2000. The Company's liquidity is affected by many factors, some of which are based on the normal on-going operations of the business, and others of which relate to the uncertainties of the industry and global economies. Although the Company's cash requirements will fluctuate based on the timing and extent of these factors, management believes that cash generated from operations, together with existing sources of liquidity, will be sufficient to satisfy the Company's requirements for the next twelve months.

Capital expenditures are expected to approximate \$350 million in fiscal 1997, up from the Company's prior estimate of \$250 million. This increase can be attributed primarily to additional applications lab and research and development capabilities for 300mm technology. The Company's estimated capital expenditures are based on its anticipated needs, which change from time to time as business conditions change. This amount includes funds for the continuation and completion of facilities improvements and investments in demonstration and test equipment, information systems and other capital equipment.

The Company is authorized to repurchase additional shares of its common stock in the open market through February 1999 in amounts that are intended to substantially offset the dilution resulting from its stock-based employee benefit and incentive plans. The Company repurchased 500,000 shares of its common stock during the first six months of fiscal 1997, for a total cash outlay of approximately \$25 million.

## RISKS AND UNCERTAINTIES

When used in this Management's Discussion and Analysis, the words "expect," "anticipate," "estimate" and similar expressions are intended to identify forward-looking statements. These statements are subject to risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, but are not limited to, those discussed below.

The semiconductor industry has historically been cyclical and subject to unexpected periodic downturns associated with sudden changes in supply and demand. Although the Company's new orders and net sales are improving, and the semiconductor industry appears to be recovering from the slowdown experienced in 1996, the Company's ability to accurately predict the industry's cycles and their effects on the semiconductor manufacturing equipment industry is limited. For this reason, the Company's expectations with respect to new orders and revenues for the next two fiscal quarters of 1997 may not be met. It is also possible that the length and severity of future industry cycles could be much different from those of previous cycles.

The Company's backlog as of April 27, 1997 was approximately \$1,485 million, up slightly from \$1,448 million as of January 26, 1997 and \$1,423 million as of October 27, 1996. The Company schedules production of its systems based upon order backlog and customer commitments. The backlog includes only those orders for which written authorizations have been accepted and shipment dates within 12 months have been assigned. Due to the potential for the cancellation of orders and changes in customer delivery schedules, the Company's backlog at any particular date is not necessarily indicative of actual sales for any succeeding period.

The Company sells systems to, and provides services for, semiconductor manufacturers located throughout the world. Each region in the global semiconductor equipment market exhibits unique characteristics which cause capital equipment investment patterns to vary from period to period. Although international markets provide the Company with significant growth opportunities, periodic economic downturns, trade balance issues, political instability and fluctuations in interest and foreign currency exchange rates are all risks which could affect global product and service demand. The Company actively manages its exposure to changes in foreign currency exchange rates; however, there can be no assurance that future changes in foreign currency exchange rates will not have a material effect on its results of operations or financial condition.

The Company operates in a highly competitive industry characterized by increasingly rapid technological changes. The Company's competitive advantage is therefore primarily dependent on its ability to timely and successfully develop new products, technologies, processes and services (including those for 300mm wafers and 0.25 micron and below devices), as well as its ability to successfully develop and/or penetrate new and existing markets and to ramp production to meet customer demands. If the Company is unable, for whatever reason, to introduce leading-edge products, technologies, processes and services to the market in a timely manner, its results of operations could be adversely affected.

The Company has a number of programs in place to reduce the cost of manufacturing its products and providing its services. These programs focus primarily on improving manufacturing efficiencies and partnering with the Company's suppliers to obtain materials at the lowest possible price. If the Company's programs are not successful or results of the programs are not achieved when anticipated, the Company's expected improvement in its gross margin in each of the next two fiscal quarters may not be attained. In addition, if the Company is not able, for whatever reason, to maintain its gross margin at the current level, its results of operations could be adversely affected.

The Company completed its acquisitions of Opal and Orbot during its first quarter of fiscal 1997. These acquisitions marked the Company's entrance into the metrology and inspection semiconductor manufacturing equipment market. To date, the Company's results of operations have not been materially impacted as a result of the acquisitions, except for a one-time charge for acquired in-process research and development. However, the Company does expect the acquired companies to contribute significantly to its results of operations at some point in the future. If the Company is not able to successfully integrate the operations of these newly acquired companies or expand their customer bases, the Company's expectations of its future results of operations may not be met. Also, to the extent that there is an impairment, for whatever reason, in the value of intangible assets recorded in connection with the acquisitions, the Company's results of operations could be adversely affected.

The Company is currently involved in litigation regarding patents and other intellectual property rights and could become involved in additional litigation in the future. There can be no assurance about the outcome of current or future litigation or patent infringement inquiries.

The Company undertakes no obligation to update the information, including the forward-looking statements, contained in this Form 10-Q.

## PART II OTHER INFORMATION

## Item 1. Legal Proceedings

In the first of two lawsuits filed by the Company, captioned Applied Materials, Inc. v. Advanced Semiconductor Materials America, Inc.(ASMA), Epsilon Technology, Inc. (doing business as ASM Epitaxy) and Advanced Semiconductor Materials International N.V. (collectively "ASM") (case no. C-91-20061-RMW), Judge William Ingram of the United States District Court for the Northern District of California ruled on April 26, 1994 that ASM's Epsilon I epitaxial reactor infringed three of the Company's United States patents and issued an injunction against ASM's use or sale of the atmospheric versions of ASM Epsilon I in the United States. On October 28, 1996, the U.S. Court of Appeals for the Federal Circuit decided ASM's appeal of this decision, affirming the trial court's judgment that one of the Company's patents is valid and infringed. A permanent injunction is now effective which prohibits ASM's use and sale of its epitaxial reactors in the United States.

The trial of the Company's second patent infringement lawsuit against ASM, captioned Applied Materials, Inc. v. ASM (case no. C-92-20643-RMW), was concluded before Judge Whyte in May 1995. On November 1, 1995, the Court issued its judgment holding that two of the Company's United States patents were valid and infringed by reduced pressure versions of ASM's Epsilon I epitaxial reactors. ASM appealed this decision. On December 17, 1996, the U.S. Court of Appeals for the Federal Circuit rejected ASM's appeal, and affirmed the District Court's ruling. A permanent injunction was entered on March 7, 1996 prohibiting ASM's manufacture, use or sale of reduced pressure versions of its Epsilon I epitaxial reactors within the United States. Trial in the District Court has been set for July 28, 1997 to determine ASM's liability, damages and willfulness, for both case no. C-91-20061-RMW and C-92-20643-RMW.

In a separate lawsuit filed by ASM against the Company involving one patent relating to the Company's single wafer epitaxial product line, captioned ASM America, Inc. v. Applied Materials, Inc. (case no. C-93-20853-RMW), the Court granted three motions for summary judgment in favor of the Company which eliminate the Company's liability on this patent. ASM has not indicated whether it intends to appeal this matter. The Company's counterclaims against ASM for inequitable conduct were denied by the Court on April 11, 1997. A separate action severed from ASM's case, captioned ASM America, Inc. v. Applied Materials, Inc. (case no. C-95-20169-RMW), involves one United States patent which relates to the Company's Precision 5000 product. A previously set trial date has been vacated; no trial date is currently

scheduled. In these cases, ASM seeks injunctive relief, damages and such other relief as the Court may find appropriate.

Further, the Company has filed a Declaratory Judgment action against ASM, captioned Applied Materials, Inc. v. ASM (case no. C-95-20003-RMW), requesting that an ASM United States patent be held invalid and not infringed by the Company's single wafer epitaxial product line. No trial date has been set. On April 10, 1996, the Court denied ASM's motion for summary judgment and granted the Company's motion for summary judgment finding several independent grounds why the Company's reactors do not literally infringe ASM's patent. With this ruling, the Company's liability has been substantially eliminated on this patent. ASM has not indicated whether it intends to appeal this decision. On July 7, 1996, ASM filed a lawsuit, captioned ASM America, Inc. v. Applied Materials, Inc. (case no. C95-20586-RMW), concerning alleged infringement of a United States patent by susceptors in chemical vapor deposition chambers. Discovery is proceeding, and no trial date has been scheduled.

On January 13, 1997, the Company filed a patent infringement suit against ASM, captioned Applied Materials, Inc. v. ASMA, et al. (case no. C-97-20045-RMW(EAI)) in the United States District Court, Northern District of California, regarding ASM's newly announced Epsilon 2000 reactor. Discovery is commencing, and no trial date has been scheduled.

In September 1994, General Signal Corporation filed a lawsuit against the Company, captioned General Signal Corporation v. Applied Materials, Inc. (case no. 94-461-JJF) in the United States District Court, District of Delaware. General Signal alleges that the Company infringes five of General Signal's United States patents by making, using, selling or offering for sale multi-chamber wafer fabrication equipment, including the Precision 5000 series machines, for example. General Signal seeks an injunction, multiple damages and costs, including reasonable attorneys' fees and interest, and such other relief as the court may deem appropriate. A previously scheduled trial date has been vacated; no trial date is currently scheduled.

On May 5, 1997, the Company entered into a comprehensive, global settlement with Novellus Systems, Inc. which included a termination of all outstanding litigation and cross licenses of patents related to certain aspects of chemical vapor deposition. Pursuant to the settlement, Novellus paid the Company \$80 million in damages for past patent infringement and will pay a royalty for all future shipments of TEOS-based systems. The parties have stipulated to dismiss the three cases pending between them in the United States District Court for the Northern District of California.



As a result of the Company's acquisition of Orbot, the Company is involved in a lawsuit captioned KLA Instruments Corporation v. Orbot (case no. C93-20886-JW) in the United States District Court, Northern District of California, alleging infringement of one patent regarding equipment for the inspection of masks or reticles, and seeking an injunction, damages and such other relief as the Court may find appropriate. There has been discovery, but no trial date has been scheduled.

In the normal course of business, the Company from time to time receives and makes inquiries regarding possible patent infringement. Management believes that it has meritorious defenses and intends to pursue these matters vigorously.

#### Item 4. Submission of Matters to a Vote of Security-Holders

The Annual Meeting of Stockholders was held on March 19, 1997 in Santa Clara, California. Eight incumbent directors were re-elected without opposition to serve another one-year term in office. The results of this election were as follows:

Name of Director	Votes For	Votes Withheld
James C. Morgan	142,829,156	468,407
Dan Maydan	142,790,061	507,502
Michael H. Armacost	142,843,023	454,540
Herbert M. Dwight, Jr.	142,843,748	453,815
Philip V. Gerdine	142,846,578	450,985
Tsuyoshi Kawanishi	142,841,398	456,165
Paul R. Low	142,836,568	460,995
Alfred J. Stein	142,846,313	451,250

On a proposal to amend the Company's 1995 Equity Incentive Plan to increase the number of shares issuable thereunder by 6,000,000 shares, there were 89,066,659 votes cast in favor, 51,484,911 votes cast against, 593,099 abstentions and 2,152,894 broker non-votes.

## Item 5. Other Information

The ratio of earnings to fixed charges for the six months ended April 27, 1997 and April 28, 1996, and for each of the last five fiscal years, was as follows:

Six Months Ended		Fiscal Year				
April 27, 1997	April 28, 1996	1996	1995	1994	1993	1992
11.73x	24.66x	20.14x	21.25x	13.37x	7.61x	3.63x
=====	=====	=====	=====	=====	=====	=====

The Company's ratio of earnings to fixed charges for the six months ended April 27, 1997 was computed on a consistent basis with the ratio for 1996, as detailed in Exhibit 12.1 of the Company's Annual Report on Form 10-K for its fiscal year ended October 27, 1996.

## Item 6. Exhibits and Reports on Form 8=K

- a) Exhibits are numbered in accordance with the Exhibit Table of Item 601 of Regulation S=K:

- 10.1 Amended and Restated Credit Agreement, dated April 4, 1997 among Applied Materials, Inc., the Banks party hereto, and Morgan Guaranty Trust Company of New York
- 10.2 Amendment No. 1 to Amended and Restated Credit Agreement, dated May 7, 1997
- 10.3 Resolution pertaining to the Amendment of the Applied Materials, Inc. 1995 Equity Incentive Plan, adopted by the Stock Option and Compensation Committee of the Board of Directors of Applied Materials, Inc. on December 12, 1996

- 10.4 Participation Agreement dated as of April 30, 1997 among Applied Materials, Inc. (as Lessee and Construction Agent), Credit Suisse Leasing 92A, L.P., (as Lessor and Borrower), Greenwich funding Corporation (as CP Lender), The Persons Named on Schedule I (as Eurodollar Lenders) and Credit Suisse First Boston (acting through its New York Branch, as Agent)
- 10.5 Appendix 1 to Participation Agreement, Master Lease Agreement and Loan Agreement, dated as of April 30, 1997 (Definitions and Interpretation) for Applied Materials, Inc.
- 10.6 Loan Agreement dated as of April 30, 1997 among Credit Suisse Leasing 92A, L.P. (as Borrower), Greenwich Funding Corporation (as CP Lender), The Persons Named on Schedule I (as Eurodollar Lenders) and Credit Suisse First Boston (acting through its New York Branch as Agent) for Revolving Commercial Paper, Eurodollar Credit and Base Rate Program
- 10.7 Real Estate and Equipment Facility Master Lease dated as of April 30, 1997 between Credit Suisse Leasing 92A, L.P. (as Lessor), and Applied Materials, Inc. (as Lessee)

- b) A Report on Form 8-K was filed on May 13, 1997. The report contained a press release dated May 5, 1997, announcing a litigation settlement with Novellus Systems, Inc. The report also included the Company's financial statements for the period ended April 27, 1997, as attached to its earnings release dated May 13, 1997.

SIGNATURE

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.

APPLIED MATERIALS, INC.

June 10, 1997

By: \s\Gerald F. Taylor  
-----  
Gerald F. Taylor  
Senior Vice President and  
Chief Financial Officer  
(Principal Financial  
Officer)

By: \s\Michael K. O'Farrell  
-----  
Michael K. O'Farrell  
Vice President and  
Corporate Controller  
(Principal Accounting  
Officer)

## INDEX TO EXHIBITS

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## AMENDED AND RESTATED CREDIT AGREEMENT

AMENDED AND RESTATED CREDIT AGREEMENT dated as of April 4, 1997 among APPLIED MATERIALS, INC., the BANKS party hereto, and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Agent.

WHEREAS, the parties hereto are parties to a Credit Agreement dated as of September 8, 1994 as heretofore amended (the "EXISTING AGREEMENT");

WHEREAS, the parties hereto desire to amend the Existing Agreement to (i) extend the Termination Date from February 11, 2000 to April 4, 2001, (ii) reduce the rates of interest and fees payable thereunder, (iii) permit the Company to replace the Lease Agreements (as defined therein) with a new master lease with Credit Suisse Leasing, 92A, L.P., (iv) permit the Company to elect a shorter Interest Period with respect to Money Market Absolute Rate Borrowings, (v) permit the Company to use the proceeds of loans made thereunder to finance certain acquisitions and (vi) make certain other changes; and

WHEREAS, in connection with such amendment, the parties hereto desire to restate the Existing Agreement in its entirety to read as set forth in the Existing Agreement with the amendments specified below;

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Definitions; References. (a) Unless otherwise specifically defined herein, each term used herein which is defined in the Existing Agreement has the meaning assigned to such term in the Existing Agreement. Each reference to "hereof", "hereunder", "herein" and "hereby" and each other similar reference and each reference to "this Agreement" and each other similar reference contained in the Existing Agreement shall from and after the Restatement Effective Date refer to the Existing Agreement as amended and restated hereby.

(b) Each reference to the Existing Agreement contained in (i) Exhibits A, B, C, D and H thereto or (ii) any Note issued pursuant thereto shall, from and after the Restatement Effective Date, refer to the Existing Agreement as amended and restated hereby (and as further amended from time to time).

(c) "Amendment and Restatement" means this Amended and Restated Credit Agreement dated as of April 4, 1997 among the parties hereto, amending and restating the Existing Agreement.

(d) "Restatement Effective Date" means the date this Amendment and Restatement becomes effective in accordance with Section 11 hereof.

SECTION 2. Extension of Termination Date. The definition of "Termination Date" in Section 1.01 of the Existing Agreement is amended by changing the date specified therein from "February 11, 2000" to "April 4, 2001"

SECTION 3. Amendments to Definitions. Section 1.1 of the Existing Agreement is amended as follows:

(a) The following new definitions are added in the appropriate alphabetical order:

"Company's 1996 Form 10-K" means the Company's annual report on Form 10-K for 1996, as filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

"Excess Lease Financed Amount" means the amount (if any) by which the Lease Financed Amount exceeds (i) \$250,000,000 at any time when the Company does not have an Improved Rating or (ii) \$500,000,000 at any time when the Company does have an Improved Rating.

"Improved Rating" means a rating of senior long-term unsecured debt securities of the Company without any third-party credit enhancement as either (i) BBB+ or higher by Standard & Poor's Ratings Services or (ii) Baa1 or higher by Moody's Investors Service, Inc.

"Lease Financed Amount" means the sum of the aggregate outstanding principal amount of the Loans (as defined in the Lease Agreements) and the outstanding Investment Amounts (as defined in the Lease Agreements).

"Margin Stock" means "margin stock" as such term is defined in Regulation U.

"Permitted Lease Collateral" means Cash Collateral (as defined in the Lease Agreements) or Treasuries (as defined in the Lease Agreements) pledged pursuant to the Pledge Agreement (as defined in the Lease Agreements), in each case securing the obligations of the Company under the Lease Agreements.

(b) The definition of "Company's 1995 Form 10-K" is deleted.

(c) Clause (5) of the definition of "Interest Period" is amended by changing the words "but not less than 30 days" to read "but not less than 7 days".

(d) The definition of "Lease Agreements" is amended to read as follows:

"Lease Agreements" means the Master Lease dated as of April 11, 1997 between the Company and Credit Suisse Leasing, 92A, L.P. and the Operative Documents (as defined therein), as they may be amended from time to time; provided that, except in the case of substantially unimproved land, the property and other assets leased pursuant to the Lease Agreements, while leased thereunder, are not included in the assets of the Company and its Consolidated Subsidiaries under GAAP.

(e) The last sentence of the definition of "Debt" is amended to read as follows:

The Company's obligations under the Lease Agreements shall be excluded from this definition; provided that (i) no such exclusion shall be made if and to the extent that GAAP would require such obligations to be classified as debt for borrowed money and (ii) in any event the term "Debt" shall include the Excess Lease Financed Amount (if any).

(f) The last sentence of the definition of "Guarantees" is amended by deleting the words "until December 31, 1995".

(g) The last sentence of the definition of "Lien" is amended to read as follows:

The Lease Agreements and the arrangements set forth therein shall be excluded from this definition; provided that:

(i) if any portion of the Lease Financed Amount is included in Debt under the last sentence of the definition of Debt, then, for purposes of Section 5.11(j), the Lease Agreements and the arrangements set forth therein shall be deemed to create a Lien securing such Debt; and

(ii) if the Lease Agreements and the arrangements set forth therein create a lien on any property or assets other than (x) the property and assets leased pursuant to the



Lease Agreements, (y) rights of the Company as sublessor of any portion of such property and assets and (z) Permitted Lease Collateral, such lien shall not be excluded from this definition.

(h) The definition of "Consolidated Quick Assets" is amended by adding at the end of such definition the words "excluding Permitted Lease Collateral".

SECTION 4. Limitation on Long-Term Leases. The last sentence of Section 5.13 is amended to read in full as follows:

For purposes of this Section 5.13 only, Rentals shall not include any payments required under the Lease Agreements.

SECTION 5. Reduced Pricing. The Pricing Schedule to the Existing Agreement is deleted and replaced with the Pricing Schedule attached hereto. Interest (if any) and fees accrued prior to the Restatement Effective Date shall be payable at the rates specified in the original Pricing Schedule. Interest and fees accruing on or after the Restatement Effective Date shall be payable at the rates specified in the Pricing Schedule attached hereto.

SECTION 6. Use of Proceeds. Section 5.08 of the Existing Agreement is amended to read as follows:

SECTION 5.08. Use of Proceeds. The proceeds of the Loans made under this Agreement will be used by the Company to backstop its commercial paper and for other general corporate purposes. None of such proceeds will be used, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock unless, at all times when any such proceeds are used to buy or carry Margin Stock, not more than 25% of the value (as determined by any reasonable method) of the assets subject to any restriction in Section 5.07 or 5.11 consists of Margin Stock.

SECTION 7. Updated Representations and Warranties. (a) Sections 4.04, 4.05 and 4.07 of the Existing Agreement are amended by changing the reference to "the Company's 1995 Form 10-K" to "the Company's 1996 Form 10-K," wherever it appears therein.

(b) Section 4.04 of the Existing Agreement is amended by changing the date "October 29, 1995" to "October 27, 1996," wherever it appears therein.

SECTION 8. Additional Representations and Warranties. (a) The Company represents and warrants that as of the Restatement Effective Date,

immediately after giving effect to the amendment and restatement of the Existing Agreement provided for herein:

(i) no Default shall have occurred and be continuing; and

(ii) each representation and warranty of the Company set forth in the Existing Agreement (as amended hereby) will be true as though made on and as of the Restatement Effective Date.

(b) Each of the Banks represents to the Agent and each of the other Banks that it in good faith is not relying upon any Margin Stock as collateral in the extension or maintenance of the credit provided for in this Amendment and Restatement.

SECTION 9. Specification of Certain Dates. The words "the date of this Agreement" in Section 8.02 of the Existing Agreement and the words "the date hereof" wherever they appear in Section 8.03 thereof, are changed to "April 4, 1997".

SECTION 10. Counterparts. This Amendment and Restatement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 11. Conditions to Effectiveness. This Amendment and Restatement shall become effective, and the Existing Agreement will be amended and restated in its entirety to read as set forth in the Existing Agreement with the amendments specified above, on the date when the Agent shall have received all of the following:

(a) counterparts of this Amendment and Restatement signed by the Company and all of the Banks that are parties to the Existing Agreement (or, in the case of any such Bank from which a signed counterpart shall not have been received, the Agent shall have received, in form satisfactory to it, facsimile or other written confirmation from such Bank that it has signed a counterpart hereof);

(b) an opinion of counsel for the Company, substantially in the form of Exhibit A hereto and covering such additional matters relating to the transactions contemplated hereby as the Required Banks may reasonably request; and

(c) all documents the Agent may reasonably request relating to the existence of the Company, the corporate authority for and the validity of the Existing Agreement as amended and restated hereby, and any other matters relevant hereto, all in form and substance satisfactory to the Agent.

The Agent shall promptly notify the Company and the Banks of the Restatement Effective Date, and such notice shall be conclusive and binding on all parties hereto.

SECTION 12. Governing Law. Submission to Jurisdiction. This Amendment and Restatement shall be governed by and construed in accordance with the laws of the State of New York. The Company hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in New York City for purposes of all legal proceedings arising out of or relating to this Amendment and Restatement or the transactions contemplated hereby. The Company irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment and Restatement to be duly executed by their respective authorized officers as of the day and year first above written.

APPLIED MATERIALS, INC.

By /s/ Gerald Taylor

-----  
Name: Gerald F. Taylor  
Title: Senior Vice President and Chief  
Financial Officer

By /s/ Nancy Handel

-----  
Name: Nancy H. Handel  
Title: Vice President, Corporate Finance and  
Treasurer

MORGAN GUARANTY TRUST  
COMPANY OF NEW YORK

By /s/ Kathryn Sayko-Yanes

-----  
Title:

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION

By /s/ Kevin McMahon

-----  
Title: Managing Director

UNION BANK OF CALIFORNIA, N.A.

By /s/ Wanda Headrick  
-----  
Title: Vice President

ABN AMRO BANK N.V. SAN  
FRANCISCO INTERNATIONAL  
BRANCH

By /s/ Robin S. Yim  
-----  
Title: Group Vice President

By /s/ Richard DaCosta  
-----  
Title: Assistant Vice President

BANQUE NATIONALE DE PARIS

By /s/ Rafael C. Lumanlan  
-----  
Title: Vice President

By /s/ Charles H. Day  
-----  
Title: Assistant Vice President

CITICORP USA, INC.

By /s/ Steven Victorin  
-----  
Title: Attorney-in-Fact

CREDIT SUISSE FIRST BOSTON

By /s/ Marilou Palenzuela  
-----  
Title: Vice President

By /s/ Thomas F. Clausen  
-----  
Title: Vice President

DEUTSCHE BANK AG, NEW YORK  
AND/OR CAYMAN ISLANDS  
BRANCHES

By /s/ Vishwanie S. Sewsankae  
-----  
Title: Assistant Vice President

By /s/ Robert M. Wood, Jr.  
-----  
Title: Director

MELLON BANK, N.A.

By /s/ Edwin H. Wiest  
-----  
Title: First Vice President

MORGAN GUARANTY TRUST  
COMPANY OF NEW YORK, as Agent

By /s/ Kathryn Sayko-Yanes  
-----  
Title:

## PRICING SCHEDULE

The "EURO-DOLLAR MARGIN", "CD MARGIN" and "FACILITY FEE RATE" for any day are the respective rates per annum set forth below in the applicable row in the column corresponding to the Pricing Level that applies on such day:

PRICING LEVEL	LEVEL I	LEVEL II	LEVEL III	LEVEL IV	LEVEL V
Euro-Dollar Margin	0.150%	0.185%	0.240%	0.300%	0.400%
CD Margin	0.275%	0.310%	0.365%	0.425%	0.525%
Facility Fee Rate	0.075%	0.090%	0.110%	0.150%	0.225%

For purposes of this Pricing Schedule, the following terms have the following meanings:

"LEVEL I PRICING" applies on any day if, on such day, the Company's long-term debt is rated A-or higher by S&P or A3 or higher by Moody's.

"LEVEL II PRICING" applies on any day if on such day, (i) the Company's long-term debt is rated BBB+ by S&P or Baal by Moody's and (ii) Level I Pricing does not apply.

"LEVEL III PRICING" applies on any day if, on such day, (i) the Company's long-term debt is rated BBB by S&P or Baa2 by Moody's and (ii) neither Level I Pricing nor Level II Pricing applies.

"LEVEL IV PRICING" applies on any day if, on such day, (i) the Company's long-term debt is rated BBB- by S&P or Baa3 by Moody's and (ii) none of Level I Pricing, Level II Pricing or Level III Pricing applies.

"LEVEL V PRICING" applies on any day if, on such day, no other Pricing Level applies.

"MOODY'S" means Moody's Investors Service, Inc.

"PRICING LEVEL" means any one of the five pricing levels represented by Level Pricing, Level II Pricing, Level III Pricing, Level IV Pricing and Level V Pricing.

"S&P" means Standard & Poor's Ratings Services.

The ratings to be utilized for purposes of this Pricing Schedule are those assigned to the senior unsecured long-term debt securities of the Company without

third-party credit enhancement, and any rating assigned to any other debt security of the Company shall be disregarded. The rating in effect on any day is the rating in effect at the close of business on such day.

## EXHIBIT A

OPINION OF COUNSEL  
FOR THE COMPANY

[Amendment Effective Date]

To the Banks and the Agent  
Referred to Below  
c/o Morgan Guaranty Trust Company  
of New York, as Agent  
60 Wall Street  
New York, New York 10260

Ladies and Gentlemen:

I have acted as counsel to Applied Materials, Inc. (the "COMPANY") in connection with the execution and delivery of that certain Amended and Restated Credit Agreement (the "CREDIT AGREEMENT") dated as of April 4, 1997 among the Company, the Banks signatory thereto and Morgan Guaranty Trust Company of New York, as Agent. Except as otherwise defined herein, all terms used herein and defined in the Credit Agreement or any agreement delivered thereunder shall have the meanings assigned to them therein.

In connection with this opinion, I have examined executed copies of the Credit Agreement and the Notes and such other documents, records, agreements and certificates as I have deemed appropriate. I have also reviewed such matters of law as I have considered relevant for the purpose of this opinion.

Based upon the foregoing, I am of the opinion that:

1. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware; has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged; and is duly licensed or qualified and is in good standing as a foreign corporation in the State of California.

2. The execution, delivery and performance by the Company of the Credit Agreement and the Notes are within the Company's corporate powers, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not contravene, or constitute a default under, any provision of applicable law or regulation or of the certificate of incorporation or by-laws of the Company or, to



the best of my knowledge, of any agreement, judgment, injunction, order, decree or other instrument binding upon the Company or any of its Subsidiaries or, result in the creation or imposition of any Lien on any asset of the Company or any of its Restricted Subsidiaries.

3. To the best of my knowledge, except as set forth under the heading "Legal Proceedings" in the Company's 1996 Form 10-K, there are no pending or threatened actions, suits or proceedings against or affecting the Company or any of its Subsidiaries before any court, governmental agency or arbitrator in which there is a reasonable possibility of an adverse determination which would have a Material Adverse Effect, or which in any manner draws into question the validity of the Credit Agreement or the Notes.

4. The Credit Agreement constitutes a valid and binding obligation of the Company and each Note constitutes a valid and binding agreement of the Company, in each case enforceable in accordance with its terms.

#### Certain Assumptions

With your permission I have assumed the following: (a) the authenticity of original documents and the genuineness of all signatures; (b) the conformity to the originals of all documents submitted to me as copies and the truth, accuracy, and completeness of the information, representations and warranties contained in the records, documents, instruments and certificates I have reviewed; and (c) the absence of any evidence extrinsic to the provisions of the written agreements between the parties that the parties intended a meaning contrary to that expressed by those provisions.

#### Certain Limitations and Qualifications

I express no opinion as to laws other than laws of the State of California, the federal law of the United States of America and the General Corporation Law of the State of Delaware.

With your permission, I have assumed for the purpose of rendering this opinion that the laws of the State of California govern the transaction, notwithstanding that the Credit Agreement and the Notes state that they are to be governed by New York law.

My opinion that any document is legal, valid, binding, or enforceable in accordance with its terms is qualified as to:

(a) limitations imposed by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium, or other similar laws relating to or affecting the enforcement of creditors' rights generally;

(b) general principles of equity, including without limitation concepts of mutuality, reasonableness, good faith and fair dealing, and the possible unavailability of specific performance or injunctive relief, regardless of whether such enforceability is considered in a proceeding in equity or at law;

(c) the possibility that certain covenants and provisions for the acceleration of the maturity of the Notes may not be enforceable if enforcement would be unreasonable under the then existing circumstances, but in my opinion acceleration would be available if an event of default occurred as a result of a material breach of a material covenant;

(d) the unenforceability under certain circumstances of provisions imposing penalties, forfeiture, late payment charges or an increase in interest rate upon delinquency in payment or the occurrence of any event of default;

(e) rights to indemnification and contribution which may be limited by applicable law and equitable principles; and

(f) the unenforceability under certain circumstances of provisions expressly or by implication waiving broadly or vaguely stated rights (including, without limitation, waivers of any objection to venue and forum non conveniens and the right to a jury trial), the benefits of statutory constitutional provisions, unknown future rights, and defenses to obligations or rights granted by law, where such waivers are against public policy or prohibited by law.

The phrase "to the best of my knowledge" is intended to indicate that, during the ordinary course of the performance of my duties as counsel for the Company, no information that would give me current actual knowledge of the inaccuracy of such statement has come to my attention.

#### Use of Opinion

This opinion is solely for your benefit (and the benefit of any Assignee which becomes a Bank pursuant to Section 9.06(c) of the Credit Agreement) in connection with the transaction covered by the first paragraph of this letter and may not be relied upon, used, circulated, quoted or referred to, nor may copies hereof be delivered to, any other person without my prior written approval. I disclaim any obligation to update this opinion for events occurring or coming to my attention after the date hereof.

Very truly yours,

AMENDMENT NO. 1  
TO  
AMENDED AND RESTATED CREDIT AGREEMENT

AMENDMENT dated as of May 7, 1997 to the Amended and Restated Credit Agreement dated as of April 4, 1997 (the "AMENDMENT AND RESTATEMENT") among Applied Materials, Inc. (the "COMPANY"), the BANKS party thereto (the "BANKS") and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Agent (the "AGENT").

W I T N E S S E T H :

WHEREAS, the parties hereto desire to amend the Amendment and Restatement to change the date of the Master Lease (as defined therein) from April 11, 1997 to April 30, 1997.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Definitions; References. Unless otherwise specifically defined herein, each term used herein which is defined in the Amendment and Restatement has the meaning assigned to such term in the Amendment and Restatement. Each reference to "hereof", "hereunder", "herein" and "hereby" and each other similar reference and each reference to "this Agreement" and each other similar reference contained in the Amendment and Restatement shall, after this Amendment becomes effective, refer to the Amendment and Restatement as amended hereby.

SECTION 2. Definition of Lease Agreements. The definition of "Lease Agreements" in Section 3(d) of the Amendment and Restatement is amended by changing the date "April 11, 1997" to "April 30, 1997".

SECTION 3. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 4. Counterparts. This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 5. Effectiveness. This Amendment shall become effective on the date when the Agent shall have received from each of the Borrower and the Required Banks a counterpart hereof signed by such party or facsimile or other written confirmation (in form satisfactory to the Agent) that such party has signed a counterpart hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

APPLIED MATERIALS, INC.

By /s/ Gerald F. Taylor

-----  
Name: Gerald F. Taylor  
Title: Senior Vice President and Chief  
Financial Officer

By /s/ Nancy H. Handel

-----  
Name: Nancy H. Handel  
Title: Vice President, Corporate Finance and  
Treasurer

MORGAN GUARANTY TRUST  
COMPANY OF NEW YORK

By /s/ Kathryn Sayko-Yanes

-----  
Title: Vice President

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION

By /s/ Kevin McMahon

-----  
Title: Managing Director

UNION BANK OF CALIFORNIA, N.A.

By /s/ Wanda Headrick

-----  
Title: Vice President

ABN AMRO BANK N.V. SAN  
FRANCISCO INTERNATIONAL  
BRANCH

By /s/ Robin S. Yim

-----  
Title: Group Vice President

By /s/ Candace J. Hsu

-----  
Title: Corporate Banking Officer

BANQUE NATIONALE DE PARIS

By /s/ Rafael C. Lumanlan

-----  
Title: Vice President

By /s/ Charles Day

-----  
Title: Assistant Vice President

CITICORP USA, INC.

By /s/ David L. Harris

-----  
Title: Vice President

CREDIT SUISSE FIRST BOSTON

By /s/ David J. Worthington

-----  
Title: Managing Director

By /s/ Marilou Palenzuela

-----  
Title: Vice President

DEUTSCHE BANK AG, NEW YORK  
AND/OR CAYMAN ISLANDS  
BRANCHES

By /s/ Ralf Hoffmann

-----  
Title: Vice President

By /s/ Andreas Neumeier

-----  
Title: Vice President

MELLON BANK, N.A.

By /s/ Edwin H. Wiest

-----  
Title: First Vice President

RESOLUTION OF THE  
STOCK OPTION AND COMPENSATION COMMITTEE OF THE  
BOARD OF DIRECTORS OF  
APPLIED MATERIALS, INC.

Adopted on December 12, 1996

AMENDMENT OF 1995 EQUITY INCENTIVE PLAN

WHEREAS, this Company sponsors the 1995 Equity Incentive Plan (the "1995 Plan"); and

WHEREAS, this Committee has been presented with a form of Amendment No. 1 to the 1995 Plan to amend certain provisions of the 1995 Plan respecting restrictive stock awards;

NOW, THEREFORE, BE IT RESOLVED, that Amendment 1 to the 1995 Plan in the form annexed hereto as Exhibit B-1, be, and it is hereby adopted; and

RESOLVED, FURTHER, that the number of shares of Company Common Stock reserved for issuance under the 1995 Plan be increased by an amount not to exceed 11,000,000 shares.

RESOLVED, FURTHER, that the officers of this Company be, and they hereby are, authorized and directed, jointly and severally, to take any and all steps and do any and all things which they deem necessary or advisable in order to effectuate the purposes of this resolution.

EXHIBIT B

AMENDMENT NO. 1 TO THE  
APPLIED MATERIALS, INC.  
1995 EQUITY INCENTIVE PLAN

APPLIED MATERIALS, INC., having adopted the Applied Materials, Inc. 1995 Equity Incentive Plan (the "Plan"), hereby amends the Plan, effective as of December 12, 1996, as follows:

1. Section 2.35 is amended by adding the following sentence as the last sentence thereof:

Notwithstanding any contrary provision of the Plan, each Period of Restriction shall have a duration of not less than three years from the Grant Date unless otherwise approved by the holders of a majority of the Shares which are present in person or by proxy and entitled to vote at any Annual or Special Meeting of Stockholders, or unless approved by the Committee at its discretion solely by reason of death, Disability, Retirement or major capital change.

2. Section 7.5 is amended by substituting the following sentence for the second sentence thereof:

Subject to the minimum Period of Restriction specified in Section 2.35, the Committee, in its discretion, may accelerate the time at which any restrictions shall lapse or be removed.

IN WITNESS WHEREOF, Applied Materials, Inc., by its duly authorized officer, has executed this Amendment No. 1 on the date indicated below.

APPLIED MATERIALS, INC.

Dated: December \_\_, 1996

By \_\_\_\_\_  
Title:

EXHIBIT B-1

-----  
PARTICIPATION AGREEMENT  
dated as of April 30, 1997

among

APPLIED MATERIALS, INC.,  
as Lessee and Construction Agent,

CREDIT SUISSE LEASING 92A, L.P.,  
as Lessor and Borrower,

GREENWICH FUNDING CORPORATION,  
as CP Lender,

THE PERSONS NAMED ON SCHEDULE I HERETO,  
as Eurodollar Lenders,

and

CREDIT SUISSE FIRST BOSTON,  
acting through its New York Branch,  
as Agent

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## PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT, dated as of April 30, 1997 (this "Participation Agreement"), is entered into by and among APPLIED MATERIALS, INC., a Delaware corporation, as Lessee and as Construction Agent; CREDIT SUISSE LEASING 92A, L.P., as Lessor and as Borrower; GREENWICH FUNDING CORPORATION, a Delaware corporation, as CP Lender; the Persons listed on Schedule I hereto (together with their respective permitted successors, assigns and transferees each a "Eurodollar Lender" and collectively "Eurodollar Lenders") and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, not in its individual capacity except as expressly stated herein, but solely as Agent for Lenders.

## PRELIMINARY STATEMENT

In accordance with the terms of this Participation Agreement, the Lease, the Construction Agency Agreement, the Loan Agreement, the Capital Asset Purchase Agreement and the other Operative Documents:

A. At the request of Lessee, on the initial Advance Date, Lessor contemplates acquiring the Existing Sites and, on subsequent Advance Dates from time to time during the Commitment Period, (i) interests in Land (either fee simple or ground leasehold interests), (ii) interests in Facilities and/or (iii) interests in Equipment.

B. Should Lessor acquire interests in Land or Land and Facilities that constitute Construction Sites, using Advances funded by Participants, Construction Agent on behalf of Lessor contemplates either constructing Facilities on such Land or renovating or rebuilding Facilities that exist on such Land.

C. Lessor intends to lease to Lessee and Lessee intends to lease from Lessor pursuant to the Lease (i) the Developed Sites and the Existing Sites, (ii) the Construction Sites and, upon completion of construction, the Facilities constructed thereon, and (iii) the Equipment.

D. As directed by Lessee, Lessor is willing to provide 3% of the funding for Site acquisitions, Facilities construction and/or for Equipment acquisitions and will obtain the remaining 97% of the costs of such acquisitions or construction from limited recourse financing from (i) Eurodollar Lenders pursuant to the Loan Agreement and (ii) CP Lender, out of the proceeds from the issuance of

commercial paper by CP Lender and the loan of such proceeds to Lessor, pursuant to the Loan Agreement.

E. The Lenders are willing to provide limited recourse financing to Lessor for 97% of the acquisition cost of such Site acquisitions, Facilities construction and Equipment acquisitions.

F. A Capital Asset Purchase Agreement dated as of the date hereof is being entered into among CP Lender, Purchasers and Agent, as liquidity agent and as administrative agent, pursuant to which Purchasers will extend commitments to purchase ratable shares of all or a portion, as the case may be, of CP Lender's interest in the Tranche A CP Notes and the Tranche B CP Notes to enable CP Lender to make payments in respect of CP Lender's Commercial Paper.

G. To induce Lenders and Agent to make loans under the Loan Agreement and to enter into this Participation Agreement and the transactions contemplated hereby, AMAT desires to enter, and it is a condition to the effectiveness hereof that AMAT enter, into the Note Guarantee.

H. To secure their respective Investment Amounts and Loans, Participants will have the benefit of a Lien on the Leased Property and on substantially all of Lessor's rights against Lessee under the Lease, and CP Lender will assign to Agent for the benefit of Purchasers certain of its rights in respect of such Lien.

In consideration of the mutual agreements contained in this Participation Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### ARTICLE 1.

##### DEFINITIONS; INTERPRETATION

Unless the context shall otherwise require, capitalized terms used and not defined herein shall have the meanings assigned thereto in Appendix 1 hereto for all purposes hereof; and the rules of interpretation set forth in Appendix 1 hereto shall apply to this Participation Agreement.

## ARTICLE 2.

## INITIAL CLOSING DATE

The Document Closing Date shall occur on the earliest date (on or before May 15, 1997) on which all the conditions precedent thereto set forth in Appendix 2 hereto shall have been satisfied or waived by the applicable parties as set forth therein.

## ARTICLE 3.

## ACQUISITIONS AND FUNDINGS

SECTION 3.1. Existing Sites. Subject to the terms and conditions of this Participation Agreement, on the initial Advance Date (i) Agent shall make an advance, the proceeds of which shall be used to fund the Existing Sites Purchase Price and the Transaction Expenses incurred on or prior to such Advance Date, (ii) Lessor shall acquire the Existing Sites and (iii) Lessor and Lessee shall enter into a Site Lease Supplement for each such Site pursuant to which Lessor shall lease to Lessee the Existing Sites.

SECTION 3.2. Sites. Subject to the terms and conditions of this Participation Agreement, on each Advance Date that constitutes a Site Acquisition Date, (i) Agent shall make an advance (such advance or an advance pursuant to Section 3.1, a "Site Advance"), the proceeds of which shall be used to fund the Site Acquisition Cost of the Developed Sites or Construction Sites to be acquired on such Acquisition Date and related Transaction Expenses, (ii) Lessor shall acquire such Sites and (iii) Lessor and Lessee shall enter into a Site Lease Supplement for each such Site pursuant to which Lessor shall lease (or with respect to Land leased to Lessor pursuant to a Ground Lease, sublease) to Lessee such Developed Sites or Construction Sites.

SECTION 3.3. Construction Costs. Subject to the terms and conditions of this Participation Agreement, on each Advance Date that constitutes a Construction Cost Funding Date, Agent shall make an advance (a "Construction Advance"), the proceeds of which shall be used to reimburse Construction Agent for the payment of Construction Costs, and to fund Capitalized Interest and Capitalized Yield relating to any interest and Yield accrued during the Interest Period immediately preceding such Construction Advance on the aggregate outstanding principal amount of any Construction Advances made prior to such Advance Date.

SECTION 3.4. Equipment. Subject to the terms and conditions of this Participation Agreement, on each Advance Date

that constitutes an Equipment Acquisition Date, (i) Agent shall make an advance (an "Equipment Advance"), the proceeds of which shall be used to fund the Equipment Purchase Price and related Transaction Expenses with respect to the Units of Equipment in the Equipment Group to be acquired on such Equipment Acquisition Date, (ii) Lessor shall acquire such Units of Equipment, and (iii) Lessor and Lessee shall enter into an Equipment Lease Supplement pursuant to which Lessor shall lease to Lessee each Equipment Group funded by such Advance. Notwithstanding anything herein to the contrary, to the extent that, in connection with an acquisition of a Site or the making of a Construction Advance, Agent is also making an Advance for the acquisition of Equipment or related Transaction Expenses, the portion of such Advance that relates to the Equipment Cost of the Equipment so being acquired and the Transaction Expenses related thereto shall be considered an Equipment Advance separate from the Site Advance or Construction Advance relating to the Site for the purposes of this Participation Agreement.

SECTION 3.5. Refinancing of Loans. Subject to the terms and conditions hereof, on each Advance Date that constitutes a Refinancing Date, Agent shall make an Advance the proceeds of which will be used to repay all or portion of outstanding Eurodollar Loans or CP Loans (a "Refinancing Advance"). Notwithstanding anything to the contrary in Section 3.6 below, Lessor shall not be obligated to Fund any portion of a Refinancing Advance.

SECTION 3.6. Lessor Participation. Subject to the terms and conditions hereof, Lessor shall Fund (as Lessor's portion of an Advance pursuant to Sections 3.1 through 3.4 hereof) to Agent for an Advance by Agent to Lessee or Construction Agent, at the request of either such party from time to time during the Commitment Period on each Advance Date, an amount (each an "Investment" or "Investment Amount") in immediately available funds equal to Lessor's Commitment Percentage of the amount of the Advance being funded on such Advance Date. Notwithstanding any other provision hereof and in addition to the limitations set forth in Section 3.10, Lessor shall not be obligated to make available any Investment if the amount of the proposed Investment exceeds the Available Lessor Commitment. Subject to the terms and conditions hereof, all or part of the Investment may be repaid to Lessor and readvanced. Subject to the terms and conditions hereof, Lessor shall acquire ownership (either fee or leasehold, as the case may be) of each Site and Unit of Equipment and lease (or sublease) such Site or Unit of Equipment to Lessee pursuant to the Lease and a Lease Supplement relating thereto.

SECTION 3.7. CP Lender Participation. (a) Subject to the terms and conditions hereof and of the Loan Agreement, CP Lender may make CP Loans to Lessor at the request of Lessee or



Construction Agent from time to time during the Commitment Period on each Advance Date in an amount equal to the Eurodollar Lenders' aggregate Commitment Percentage of the amount of the Advance being funded on such Advance Date. If CP Lender elects to make a CP Loan hereunder, the proceeds of each such CP Loan shall be Funded by CP Lender to Agent as CP Lender's portion of an Advance pursuant to Sections 3.1 through 3.5 hereof. Notwithstanding any other provision hereof and in addition to the limitations set forth in Section 3.10 hereof, CP Lender shall not make available to Agent and Agent shall not make an Advance of any CP Loan if the amount of the proposed CP Loan exceeds the aggregate Available Eurodollar Lender Commitments. Subject to the terms and conditions hereof, CP Loans may be repaid in part or in full to CP Lender pursuant to Section 3.5 and readvanced.

(b) Each CP Loan for a Site acquisition, whether for Existing Sites, Developed Sites or Construction Sites, payment or reimbursement of Construction Costs, or to repay any outstanding Eurodollar Loan previously made for such purposes, shall be recorded by Agent on the grid relating to the two Site Notes, each such Site Note issued to Agent, on behalf of CP Lender, on the Document Closing Date and repayable in accordance with the terms of the Loan Agreement (the Tranche A CP Site Note, to be substantially in the form of Exhibit A-CS of the Loan Agreement, and representing the aggregate portion of the CP Loans to which the AMAT Recourse Amount for the Sites will be applied pursuant to Section 5.4 of the Loan Agreement and the Tranche B CP Site Note, to be substantially in the form of Exhibit B-CS of the Loan Agreement, and representing the remaining portion of the CP Loans). Each CP Loan for Equipment acquisitions or used to repay any outstanding Eurodollar Loan previously made for such purpose shall be recorded by Agent on the grid relating to the two Equipment Notes, each issued to Agent, on behalf of CP Lender, on the Document Closing Date and repayable in accordance with the terms of the Loan Agreement (the Tranche A CP Equipment Note, to be substantially in the form of Exhibit A-CE of the Loan Agreement, and representing the aggregate portion of the CP Loans to which the AMAT Recourse Amount for all outstanding Equipment Groups will be applied pursuant to Section 5.4 of the Loan Agreement and the Tranche B CP Equipment Note, to be substantially in the form of Exhibit B-CE of the Loan Agreement, and representing the remaining portion of the CP Loans).

SECTION 3.8. Eurodollar Lenders Participation. (a) Subject to the terms and conditions hereof and of the Loan Agreement, each Eurodollar Lender severally shall make Eurodollar Loans to Lessor at the request of Lessee or Construction Agent from time to time during the Commitment Period on each Advance Date, in an amount in immediately available funds equal to such Lender's Commitment Percentage of the amount of the Advance being funded on such Advance Date. The proceeds of each such

Eurodollar Loan shall be Funded by Eurodollar Lenders to Agent as Eurodollar Lender's portion of an Advance pursuant to Sections 3.1 through 3.5 hereof. Notwithstanding any other provision hereof and in addition to the limitations set forth in Section 3.10, no Eurodollar Lender shall be obligated to make any Eurodollar Loan if the amount of such Eurodollar Lender's Eurodollar Loan exceeds such Eurodollar Lender's Available Eurodollar Lender Commitment. Subject to the terms and conditions hereof, Eurodollar Loans may be repaid in part or in full to Lenders and readvanced.

(b) Each Eurodollar Loan made by a Eurodollar Lender for a Site acquisition, whether for Existing Sites, Developed Sites or Construction Sites, or payment or reimbursement of Construction Costs shall be recorded on the grid relating to the two Site Notes, each issued to Agent, on behalf of the Eurodollar Lenders, on the Document Closing Date and repayable in accordance with the terms of the Loan Agreement (the Tranche A Eurodollar Site Note, to be substantially in the form of Exhibit A-ES of the Loan Agreement, and the Tranche B Eurodollar Site Note, to be substantially in the form of Exhibit B-ES of the Loan Agreement). Each Eurodollar Loan made by a Eurodollar Lender for Equipment acquisitions shall be recorded on the grid relating to the two Equipment Notes, each issued to Agent, on behalf of the Eurodollar Lenders, on the Document Closing Date and repayable in accordance with the terms of the Loan Agreement (the Tranche A Eurodollar Equipment Note, to be substantially in the form of Exhibit A-EE of the Loan Agreement, and the Tranche B Eurodollar Equipment Note, to be substantially in the form of Exhibit B-EE of the Loan Agreement).

SECTION 3.9. Notations on Notes. Agent, on behalf of each Lender, is hereby authorized to record on the grid attached to the Tranche A CP Site Note, the Tranche B CP Site Note, the Tranche A Eurodollar Site Note, the Tranche B Eurodollar Site Note, the Tranche A CP Equipment Note, the Tranche B CP Equipment Note, the Tranche A Eurodollar Equipment Note, or the Tranche B Eurodollar Equipment Note, as applicable, held by Agent, on behalf of the Lenders, the date and amount of each Funding, the amount of all Capitalized Interest, each payment or repayment of principal, the type of interest rate applicable thereto from time to time, the length of each Interest Period with respect thereto (including, in the case of a Eurodollar Loan for which the Base Rate may, from time to time, be applicable, the period for which such Base Rate applies) and the interest rate for such Interest Period. Any such recordation shall constitute prima facie evidence of the accuracy of the information so recorded; provided, that the failure to make any such recording or errors in such recordation, or to provide the copies or calculations described below, shall not affect the obligation of Borrower under such instrument or the corresponding obligation of Lessee

to pay Rent. Agent shall also determine with respect to each Note and the Investment Amount the portion thereof attributable to each Site and Equipment Group in order to establish the Site Balance of, and the AMAT Recourse Amount relating to, each such Site and the Equipment Group Balance of, and the AMAT Recourse Amount relating to, each such Equipment Group, which determination shall be conclusive and binding on Lessee and the Participants absent manifest error. Lessee may from time to time request from any Agent, but not more frequently than once each fiscal quarter of Lessee, copies of the grids maintained by Agent, on behalf of the Lenders, with respect to the Notes, and if requested by Lessee and not previously furnished to Lessee by Agent, the Agent's calculation of any recordation on such grid.

SECTION 3.10. Advances; Limitations and Limits; CP Lender Advance Limitations.

(a) In addition to any other provision hereof, Agent shall not be obligated to make an Advance to Lessee or Construction Agent, and no Lender shall be obligated to Fund any Loan, and Lessor shall not be required to Fund the portion of its Investment on such Advance Date if the amount of such Advance would exceed the aggregate Available Commitments or, after giving effect to such Advance, the aggregate outstanding amount of Loans and Investment Amounts would exceed the Aggregate Commitment Amount.

(b) The aggregate amount funded by each of the Lenders and Lessor hereunder outstanding at any time shall not exceed the Aggregate Commitment Amount. The amount of the initial Site Advance shall be used solely to pay for the Site Acquisition Cost of the Existing Sites and any Transaction Expenses incurred through the initial Advance Date. Following the initial Advance Date, each Site Advance requested by Lessee shall be used solely for payment of the Aggregate Property Costs for such Site. Each Advance for Equipment acquisitions must apply to at least one or more entire Equipment Groups and shall be used solely for payment of the Equipment Purchase Price for such Equipment and any Transaction Expenses incurred by Lessee in connection with the purchase of such Equipment. Each Site Advance and Equipment Advance may, without the consent of all Participants, only be used to acquire Sites or Units of Equipment located in any State of the United States of America.

(c) The initial Advance Date shall occur on or before May 15, 1997. Each Advance Date shall be a Business Day, and there shall be no more than one Advance during any calendar month (excluding any Advance made solely to pay Capitalized Interest and Capitalized Yield pursuant to Section 4.6). Each Advance shall be in a minimum amount equal to \$1,000,000, or an integral multiple of \$100,000 in excess thereof except with respect to any

Equipment Advance, which may be in a minimum amount equal to \$500,000, or an integral multiple of \$100,000 in excess thereof; provided, that so long as an Advance is for the full amount of the aggregate Available Participant Commitment and exceeds the minimum threshold of \$1,000,000 or \$500,000, as the case may be, such Advance need not be in an integral multiple of \$100,000. Notwithstanding anything herein to the contrary, (i) the aggregate amount of Equipment Advances shall not exceed \$10,000,000, (ii) no more than two Equipment Pools shall exist at any time, and (iii) the period from the Equipment Pool Period Commencement Date for such Equipment Pool through the Maturity Date shall equal or exceed three years. All remittances made by Lessor and Lenders for the Funding of any Advance shall be made in immediately available federal funds by wire transfer to Agent for deposit not later than 1:00 p.m., New York time, on the applicable Advance Date to such account as Lessee or Construction Agent, as applicable, shall have indicated in the Advance Request. The Funding by Lessor and each Lender to Agent of its respective portion of an Advance shall constitute authorization and direction by such party to Agent to make an Advance pursuant to Article 3.

(d) Notwithstanding anything contained herein or in the Loan Agreement to the contrary, with respect to each CP Loan and each CP Rate Period specified in the applicable Advance Request or Continuation Notice related thereto, CP Lender shall not make or continue a CP Loan with such CP Rate Period on any Advance Date, Refinancing Date or Continuation Date if, on such date, the interest rate (stated on a per annum basis) payable on the Commercial Paper to be issued by CP Lender with such CP Rate Period exceeds the interest rate (stated on a per annum basis) set forth below opposite the relevant CP Rate Period:

Interest Rate -----	Requested CP Rate Period -----
24%	Less than or equal to 45 days
21%	Less than or equal to 51 days and more than 45 days
18%	Less than or equal to 60 days and more than 51 days
15%	Less than or equal to 72 days and more than 60 days
12%	Less than or equal to

	90 days and more than 72 days
9%	Less than or equal to 120 days and more than 90 days
6%	Less than or equal to 180 days and more than 120 days

SECTION 3.11. Termination of Commitments. Notwithstanding anything in this Participation Agreement to the contrary, the Commitments shall terminate and Agent shall not be obligated to make any Advance, and no party hereto shall be obligated to make any Fundings, and no Advance Date may thereafter occur upon the occurrence of the earlier of (i) 2:00 p.m. New York time on the first (1st) Business Day immediately preceding the commencement of (a) in the case of Equipment Advances, the first Remarketing Period elected pursuant to Article XXII of the Lease, and (b) in the case of Site Advances, the first Site Remarketing Period elected pursuant to Section 22.1 of the Lease with respect to a Site or the first Equipment Remarketing Period elected on or after the fifth anniversary of the Document Closing Date pursuant to Section 22.2 of the Lease with respect to an Equipment Pool, except, in the case of a Construction Site, to the extent of future Construction Advances that do not, when aggregated with all Construction Advances previously Funded for such Site, exceed the Original Estimated Construction Costs for such Construction Site, (ii) 2:00 p.m. New York time on the thirtieth (30th) Business Day immediately preceding the Maturity Date, or (iii) a termination of the Eurodollar Lenders' Commitments pursuant to Section 6.2 of the Loan Agreement.

SECTION 3.12. Obligations of Participants Several. The obligations of the Participants hereunder or elsewhere in the Operative Documents shall be several and not joint; and no Participant shall be liable or responsible for the acts or defaults of any other party hereunder or under any other Operative Document.

SECTION 3.13. Procedures for Advances.

(a) Each Advance Date. With respect to the Funding of each Advance, Lessee shall give Lessor and Agent irrevocable written notice not later than 1:00 p.m. New York time five (5) Business Days prior to a Site Advance or an Equipment Advance and three (3) Business Days prior to any Construction Advance or Refinancing Advance (which in either case does not also constitute a Site Advance or an Equipment Advance, but any Advance Request may relate to more than one type of Advance),

pursuant to an Advance Request substantially in the form of Exhibit E (an "Advance Request") specifying for each type of Advance requested on such Advance Date:

(i) the proposed Advance Date;

(ii) the amount of the Advance requested and whether the Advance is a Site Advance, a Construction Advance (including a statement of the amount thereof, if any, that constitutes Capitalized Interest and Capitalized Yield), an Equipment Advance or Refinancing Advance;

(iii) whether the Loans to Fund such Advance shall be CP Loans or Eurodollar Loans and the amount of each, and the amount of such Advance which shall constitute a Refinancing Advance;

(iv) if the Loans to Fund such Advance are Eurodollar Loans, whether such Eurodollar Loans during the initial Interest Period commencing on the date of such Advance shall accrue interest at the Base Rate or the Eurodollar Rate and if the Loans to fund such Advance are CP Loans, the Interest Period or Interest Periods applicable to such CP Loans; provided, however, that in no event shall Lessee select Loans and Interest Periods such that more than five Payment Dates occur in any calendar month;

(v) with respect to an Equipment Advance, a description of the Equipment Group and the Units of Equipment included therein to be acquired on such Advance Date, the Equipment Cost, the Equipment Purchase Price and location of each such Unit, the Transaction Expenses to be Funded on such Advance Date and information satisfactory to Agent in order for Agent to (a) estimate the Fair Market Value of each Unit of Equipment as of the Original Equipment Pool Expiration Date, (b) estimate the useful life of each Unit of Equipment (which Fair Market Value and useful life shall be satisfactory to Agent and Lessor) and (c) prepare an amortization schedule for Fixed Rent to attach to the Equipment Lease Supplement to be delivered pursuant to Section 6.3(c);

(vi) with respect to a Site Advance, whether such Advance is for the Existing Sites, any other Developed Site or a Construction Site, a brief description of each Site (including a legal description) and the Aggregate Property Cost for each such Site (including the allocation of such amount among the Site Acquisition Costs (which, for the Existing Sites, is equal to the Existing Sites Purchase Price), the Original Estimated Construction Costs, if any, and the applicable Transaction Expenses);

(vii) with respect to a Construction Advance, whether Lessor is to acquire fee simple title to or a ground leasehold interest in the Land;

(viii) with respect to a Site Acquisition Date for a Construction Site, the anticipated Construction Completion Date;

(ix) with respect to a Construction Cost Funding Date, the Remaining Estimated Construction Cost;

(x) if such Advance is to be used to pay any Person or to reimburse Lessee for Transaction Expenses, a description of the type and amount of each such Transaction Expense and the allocation of such Transaction Expenses between Equipment Advances and Site Advances;

(xi) that Lessee certifies that such Advance complies with the limitations and conditions set forth at Section 3.10; and

(xii) wire transfer instructions for the disbursement of funds.

Lessor and Agent shall promptly forward a copy of such Advance Request to CP Lender or each Eurodollar Lender, as applicable. All documents and instruments required to be delivered on the Document Closing Date and the initial Advance Date pursuant to this Participation Agreement shall be delivered at the offices of Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019-5820, or at such other location as Required Participants, Agent and Lessee may agree. Any documents and instruments required to be delivered on any Advance Date following the initial Advance Date shall be delivered to Agent at its address set forth on Schedule II, or at such other location as Agent may direct pursuant to Section 13.3. Other than documents and instruments to be recorded or filed with a Governmental Authority and each Participant's copy of the Operative Documents required to be delivered on such Advance Date, all documents and instruments may be delivered by facsimile with overnight delivery on the next day.

(b) Application and Payments.

(i) Lessee shall apply or cause to be applied all Advances solely for the purposes permitted herein and pursuant to the description set forth in the Advance Request for such Advance.

(ii) The parties to this Participation Agreement hereby agree that any payment required to be made to

Participants by Lessor pursuant to any Operative Document shall be made directly to Agent by Lessee for the benefit of Participants, in lieu of the corresponding payment required to be made by Lessee to Lessor and Lessor to Participants pursuant to any Operative Document. Such payment by Lessee to Agent shall be deemed to constitute (A) the required payment from Lessee to Lessor and (B) the corresponding payment by Lessor to Participants.

SECTION 3.14. Subordinated Mortgage; Subordinated Security

Agreement. (a) On each Site Acquisition Date, Lessor shall deliver to Lessee a duly executed Subordinated Mortgage dated such Site Acquisition Date and relating to the Site acquired on such date (including such modifications as are necessary to comply with the Applicable Laws and Regulations of the State in which such Site is located).

(b) On the Document Closing Date, Lessor shall deliver to Lessee a duly executed Subordinated Security Agreement dated such Document Closing Date.

SECTION 3.15. Lessee Option to Increase Original Estimated

Construction Cost. With respect to any Construction Site, after the related Acquisition Date, Lessee shall have the option at any time during the related Site Term to effect an increase in the Original Estimated Construction Cost of such Construction Site by requesting Agent and Participants to obtain a new appraisal, at Lessee's expense, of such Site, which appraisal must meet the requirements of Section 6.2(a), based upon different or revised Plans and Specifications provided by Lessee and by causing the provision of additional title insurance coverage and effecting amendments to the related Site Lease Supplement, the Notes issued to Agent, on behalf of CP Lender in the case of CP Notes and each Eurodollar Lender in the case of Eurodollar Notes, with respect to a Funding made or to be made for such Site, and Security Documents to the extent reasonably requested by Agent and Participants to reflect such increased Original Estimated Construction Cost. Notwithstanding the foregoing, Lessee may at its option, in lieu of increasing the Original Estimated Construction Cost as specified above pay the additional construction costs from its own funds as specified in Section 4.1 of the Construction Agency Agreement.

SECTION 3.16. Lessee Directions. Lenders, Agent, Lessee and Lessor

hereby agree that, so long as no Loan Event of Default exists, Lessee shall have, subject to the terms and conditions set forth in the Loan Agreement, the exclusive right to exercise the rights of "Borrower" under Section 2 of the Loan Agreement (other than under Section 2.1(f) of the Loan Agreement), including, without limitation:



(a) the exclusive right to make Extension Requests pursuant to Section 2.2(e) of the Loan Agreement;

(b) the exclusive right to give a notice pursuant to Section 2.3 of the Loan Agreement;

(c) the exclusive right to replace a Non-Consenting Eurodollar Lender and to exercise all other rights of Borrower pursuant to Section 2.2(e) of the Loan Agreement; and

(d) the exclusive right to give a Continuation Notice pursuant to Section 2.5 of the Loan Agreement.

#### ARTICLE 4.

##### YIELD; INTEREST; COMMITMENT FEES

SECTION 4.1. Yield. (a) The amount of Investment Amounts outstanding from time to time shall accrue Yield at the per annum rate equal to the Yield Rate. Yield shall be due and payable by Lessee as Basic Rent on each applicable Payment Date and on each applicable Site Expiration Date and the Equipment Pool Expiration Date. If all or any portion of the Investment Amount, any Yield payable thereon or any other amount payable hereunder shall not be paid when due (whether at stated maturity, the acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the Overdue Rate and shall be payable from time to time on demand as Supplemental Rent. Subject to the order of priority for distribution of funds set forth at Section 5.3 of the Loan Agreement, Lessee may prepay at any time, without penalty, any Investment Amount.

(b) Lessor hereby directs Lessee to pay in accordance with the Lease to Agent, for the account of Lessor, the portion of Basic Rent representing Yield and the portion of Supplemental Rent representing other amounts owing to Lessor under the Lease from time to time. There is no scheduled amortization of the Investment Amounts prior to the Maturity Date. Notwithstanding the foregoing, Lessor shall be entitled to repayment of the Investment Amounts from a portion of payments made by Lessee pursuant to Section 20.1 and Article XXII of the Lease, and any amounts paid by Lessee pursuant to Article XV of the Lease or otherwise with respect to a termination of any Leased Property as a result of a Casualty or Condemnation, which amounts shall be payable to Lessor in the amounts and subject to the priority in Section 5 of the Loan Agreement. Lessor shall keep records with respect to the date and amount of each Funding, the Yield, each payment of principal and the length of each Interest Period with respect thereto. Such records shall constitute prima facie

evidence of the accuracy of the information so recorded; provided, that the failure to make any such recording or errors in such recordation or to provide the copies of such records as provided below shall not affect the obligation of Lessee to pay Rent. Lessor shall provide to Lessee, not more than once a month upon Lessee's request, copies of such records which have not previously been provided to Lessee.

SECTION 4.2. Interest on CP Loans. (a) Each CP Loan shall accrue interest computed and payable in accordance with the terms of the Loan Agreement.

(b) Lessor shall pay (and hereby directs Lessee to pay in accordance with the Lease) to Agent, for the account of CP Lender the Basic Rent (determined on the basis of interest on the CP Loans) received from Lessee under the Lease from time to time.

SECTION 4.3. Interest on Eurodollar Loans. (a) Each Eurodollar Loan shall accrue interest computed and payable in accordance with the terms of the Loan Agreement.

(b) Lessor shall pay (and hereby directs Lessee to pay in accordance with the Lease) to Agent, for the account of the Eurodollar Lenders the Basic Rent (determined on the basis of interest on the Eurodollar Loans) received from Lessee under the Lease from time to time.

SECTION 4.4. Computations. For all purposes under the Operative Documents, all computations of interest, Yield and other accrued amounts pursuant to the Operative Documents (including, without limitation, amounts based on the Overdue Rate) shall be made by Agent on the basis of the actual number of days elapsed and, when such interest and Yield is based on the Eurodollar Rate or interest is based on the CP Rate, a 360-day year basis, otherwise, including when such interest and Yield is based on the Base Rate, a 365- (or, if applicable, 366-) day year basis. Agent shall notify Lessee of the applicable Eurodollar Rate or Base Rate promptly upon the determination thereof, but in any event not later than three (3) Business Days prior to each Payment Date. Any change in the interest rate or Yield on an Advance or an Investment Amount or Loan resulting from a change in the Base Rate shall become effective as of the opening of business on the day on which such change becomes effective. Agent shall as soon as practicable notify Lessor, Lessee and Participants of the effective date and the amount of each such change in interest rate. Agent shall, at the request of any party, deliver to such party a statement showing the quotations used by Agent in determining any rate used to calculate interest or Yield. Agent shall deliver an invoice to Lessee at least two (2) Business Days before any Payment Date, specifying the Basic Rent due on such Payment Date. Notwithstanding the foregoing,

any failure by Agent to deliver any notice or invoice described in this Section 4.4 shall not in any way relieve Lessee of its obligation to make the Basic Rent payment on such Payment Date.

SECTION 4.5. Highest Lawful Rate. It is the intention of the parties hereto to conform strictly to applicable usury laws and, anything herein to the contrary notwithstanding, the obligations of (a) Lessee to Lessor under this Participation Agreement and the Lease, (b) Lessor to the Lenders under the Loan Agreement, (c) any party under the Capital Asset Purchase Agreement, (d) Lessor to the Lenders under the Notes and (e) of either Lessee or Lessor or any other party under any other Operative Document, shall be subject to the limitation that payments of interest or of other amounts constituting interest under applicable law shall not be required to the extent that receipt thereof would be in excess of the Highest Lawful Rate (as defined below), or otherwise contrary to provisions of law applicable to the recipient limiting rates of interest which may be charged or collected by the recipient. Accordingly, if the transactions or the amount paid or otherwise agreed to be paid for the use, forbearance or detention of money under this Participation Agreement, the Lease, the Loan Agreement, the Capital Asset Purchase Agreement, the Notes and any other Operative Document would exceed the Highest Lawful Rate or otherwise be usurious under applicable law (including without limitation the federal and state laws of the United States of America, or of any other jurisdiction whose laws may be mandatorily applicable) with respect to the recipient of any such amount, then, in that event, notwithstanding anything to the contrary in this Participation Agreement, the Lease, the Loan Agreement, the Capital Asset Purchase Agreement, or any other Operative Document, it is agreed as follows as to the recipient of any such amount:

(a) the provisions of this Section 4.5 shall govern and control over any other provision in this Participation Agreement, the Lease, the Loan Agreement, the Capital Asset Purchase Agreement, the Notes and any other Operative Document and each provision set forth therein is hereby so limited;

(b) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, charged or received under this Participation Agreement, the Lease, the Loan Agreement, the Capital Asset Purchase Agreement, the Notes or any other Operative Document shall under no circumstances exceed the maximum amount of interest allowed by applicable law (such maximum lawful interest rate, if any, with respect to such recipient herein called the "Highest Lawful Rate"), and all amounts owed under this Participation Agreement, the Lease, the Loan Agreement, the

Capital Asset Purchase Agreement, the Notes and any other Operative Document shall be held subject to reduction and (i) the amount of interest which would otherwise be payable to the recipient hereunder and under the Lease, the Loan Agreement, the Capital Asset Purchase Agreement, the Notes and any other Operative Document, shall be automatically reduced to the amount allowed under applicable law and (ii) any unearned interest paid in excess of the Highest Lawful Rate shall be credited to the payor by the recipient (or, if such consideration shall have been paid in full, refunded to the payor);

(c) all sums paid, or agreed to be paid for the use, forbearance and detention of the money under this Participation Agreement, the Lease, the Loan Agreement, the Capital Asset Purchase Agreement, the Notes or any other Operative Document shall, to the extent permitted by applicable law be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest is uniform throughout the full term thereof;

(d) if at any time the interest, together with any other fees, late charges and other sums payable pursuant to or in connection with this Participation Agreement, the Lease, the Loan Agreement, the Capital Asset Purchase Agreement, the Notes and any other Operative Document executed in connection herewith or therewith, and deemed interest under applicable law exceeds that amount which would have accrued at the Highest Lawful Rate, the amount of interest and any such fees, charges and sums to accrue to the recipient of such interest, fees, charges and sums pursuant to the Operative Documents shall be limited, notwithstanding anything to the contrary in the Operative Documents to that amount which would have accrued at the Highest Lawful Rate for the recipient, but any subsequent reductions, as applicable, shall not reduce the interest to accrue pursuant to the Operative Documents below the recipient's Highest Lawful Rate until the total amount of interest payable to the recipient (including all consideration which constitutes interest) equals the amount of interest which would have been payable to the recipient (including all consideration which constitutes interest), plus the amount of fees which would have been received but for the effect of this Section 4.5.

SECTION 4.6. Capitalized Interest and Capitalized Yield. On each date which is three Business Days prior to any Payment Date (unless (i) with respect to a Construction Period Site, such Payment Date occurs after the Outside Completion Date and the Construction Completion Date has not occurred prior to such

Outside Completion Date, in which case Construction Agent shall fund the portion of Site Rent attributed to the amounts described below from its own funds, or (ii) Construction Agent at least three Business Days prior to such Payment Date gives written notice to Lessor and Agent that it is not requesting such Funding and that Construction Agent intends to fund the portion of Site Rent attributed to the amounts described below from its own funds), Construction Agent shall be deemed to have requested a Construction Advance in an amount equal to Capitalized Interest and Capitalized Yield accrued on the outstanding Investment Amounts and Loans with an Interest Period ending on such Payment Date allocated to Construction Advances for Construction Period Sites. The Advance Date with respect to any such Construction Advance for accrued Capitalized Interest and Capitalized Yield shall be the relevant Payment Date (subject to the terms and conditions for a Construction Advance set forth in this Participation Agreement) and the proceeds of such Construction Advance shall be applied to pay such accrued Capitalized Interest and Capitalized Yield. On each such Advance Date, the Investment shall be increased by an amount equal to the Capitalized Yield Funded on such date with respect to each Construction Period Site, the outstanding principal on the applicable Site Notes shall be increased by an amount equal to the Capitalized Interest Funded on such date with respect to each Construction Period Site, and the Construction Costs of each Construction Period Site shall be increased by an amount equal to the Capitalized Yield and Capitalized Interest relating to such Construction Period Site.

SECTION 4.7. Commitment Fees. Lessee shall pay to Agent for the account of each Eurodollar Lender and Lessor a commitment fee (the "Commitment Fees") for the period from and including the Document Closing Date to the Maturity Date, computed, in the case of such Participant, at a rate per annum equal to the Commitment Fee Rate on the average daily amount of the Available Participant Commitment of each such Participant (and prorated for any such period which is less than a calendar quarter), payable quarterly in arrears on each Commitment Fee Payment Date, commencing on the first such date to occur after the Document Closing Date. If all or a portion of any Commitment Fee shall not be paid when due, such overdue amount shall bear interest, payable by Lessee on demand, at a rate per annum equal to the Overdue Rate from the date of such nonpayment until such amount is paid in full (as well after as before judgment).

SECTION 4.8. Collateralization. Lessee agrees that it will not collateralize the outstanding principal amounts of the Tranche A Notes or the Available Eurodollar Lender Commitment relating to Tranche A Loans until such time as the Custodial Agreement has been duly executed and delivered by all parties thereto.

## ARTICLE 5.

## CERTAIN INTENTIONS OF THE PARTIES

SECTION 5.1. Nature of Transaction. It is the intention of the parties that:

(a) the Overall Transaction constitutes an "operating lease" pursuant to SFAS No. 13 from Lessor to Lessee for purposes of Lessee's financial reporting;

(b) for federal, state and local income or franchise tax, bankruptcy (including the substantive law upon which bankruptcy proceedings are based), real estate and Uniform Commercial Code purposes:

(i) the Overall Transaction constitutes a loan by Participants to Lessee and preserves beneficial ownership in the Leased Property in Lessee, and the obligations of Lessee to pay Site Rent and Equipment Variable Rent shall be treated as payments of interest, and the payment by Lessee of any amounts in respect of the Equipment Fixed Rent and the Lease Balance shall be treated as repayments of principal;

(ii) the Lease grants a security interest and a mortgage lien, as the case may be, in all of the Sites, the Equipment and the other Collateral in favor of Lessor; and

(ii) the Mortgage and the Security Agreement create liens and security interests in the Collateral in favor of Agent for the benefit of all Participants.

Accordingly, and notwithstanding any provision of this Participation Agreement to the contrary, the parties hereto agree and declare that: (i) the transactions contemplated by the Lease and the other Operative Documents are intended to have a dual, rather than single, form, as evidenced by the statements set forth in Sections 5.1(a) and (b) above and Article XXVI of the Lease, and (ii) all references in this Participation Agreement to the "lease" of the Leased Property which fail to reference such dual form do so as a matter of convenience only and do not reflect the intent of the parties hereto as to the true characterization of such arrangements. Notwithstanding the intentions of the parties set forth above, Lessee acknowledges and agrees that none of Agent, any Participant or their representatives have made any representations or warranties concerning the tax, accounting or legal characteristics of the Operative Documents and that Lessee has obtained and relied upon

such tax, accounting and legal advice from its own experts concerning the Operative Documents as it deems appropriate.

(c) Specifically, without limiting the generality of the foregoing, the parties hereto intend and agree that, for purposes of filing federal, state and local returns, reports and other statements relating to income or franchise taxes, or any other taxes imposed upon or measured by income: (i) the transactions contemplated by the Operative Documents shall be treated as conditional sales and Lessee shall be entitled to take any deduction, credit, allowance or other reporting position consistent with such treatment, and (ii) neither Lessor nor any Participant shall take an initial position on its federal, state and local returns, reports and other statements relating to income or franchise taxes that is inconsistent with such treatment.

(d) Prior to the Lease Expiration Date, neither Lessor nor any Participant shall claim any federal or state tax attributes or benefits (including depreciation) relating to the Leased Property unless required to do so by an appropriate taxing authority or after a change in Applicable Laws and Regulations; provided, however, that if an appropriate taxing authority shall require Lessor or any Participant to claim any such federal or state tax attributes or benefits or such Person otherwise intends to claim such attributes or benefits as otherwise permitted hereunder, such Person shall promptly notify Lessee thereof and shall permit Lessee to contest such requirement in a manner similar to the contest rights provided in, and subject to any applicable limitation to a contest contained in, Section 11.2(b) hereof (it being understood, however, that any such contest of an item on a net income or franchise tax return of Lessor or any Participant shall be based upon a tax opinion of, and shall be conducted and controlled in good faith by, tax counsel selected by Lessor or the applicable Participant and reasonably approved by Lessee).

SECTION 5.2. Amounts Due. (a) Anything else herein or elsewhere to the contrary notwithstanding, it is the intention of Lessee, Participants and Agent that: (i) the amount and timing of installments of Basic Rent due and payable from time to time from Lessee under the Lease shall be equal to the aggregate payments due and payable in respect of principal and interest on the Loans and Yield on each Payment Date (to the extent such interest and Yield are not funded by additional Loans and Investment Amounts); (ii) if Lessee elects the Purchase Option or becomes obligated to purchase any of the Leased Properties under the Lease, the Loans, Investment Amounts, all interest, Yield and Commitment Fees thereon and all other obligations of Lessee owing to the Participants and Agent which are attributable to the applicable Site or Equipment Group to be purchased, as allocated

pursuant to the Loan Agreement, shall be paid in full by Lessee in accordance with Article XX of the Lease; (iii) if Lessee properly elects a Remarketing Option and remarkets the related Leased Property in accordance with Article XXII of the Lease, as applicable, Lessee shall only be required to pay to Agent the Gross Proceeds, subject to the limitation set forth at Section 22.1 of the Lease with respect to 25% Property, of the sale of such Leased Property, the AMAT Recourse Amount, all in accordance with Article XXII of the Lease and any amounts due pursuant to Section 11.9 of this Participation Agreement and Section 22.5 of the Lease (which aggregate amounts under Article XXII of the Lease may be less than the Lease Balance); and (iv) upon a Lease Event of Default resulting in an acceleration of Lessee's obligation to purchase the Leased Properties under the Lease, the amounts then due and payable by Lessee under the Lease shall include all amounts necessary to pay in full the Lease Balance, plus all other amounts then payable by Lessee to Participants and Agent under the Operative Documents.

(b) Anything else herein or in any other Operative Document to the contrary notwithstanding, it is the intention of AMAT, Participants and Agent that the amount of the total obligations of AMAT under the Operative Documents, including the Lease and the Note Guarantee, on any date, shall not exceed the sum of the aggregate outstanding principal amount of all Loans, plus all interest accrued thereon, plus the aggregate outstanding Investment Amounts, plus all accrued Yield thereon, plus all other costs, expenses and indemnities (including, without limitation, any amounts payable by Borrower pursuant to Section 6.2(i) of the Loan Agreement) for which Lessee is liable under the Operative Documents; provided, however, that the foregoing limitation shall not apply to any damages or amounts otherwise payable by Lessee as a result of Lessee's breach of its obligation to make payments to Agent rather than Lessor in accordance with the Assignment of Lease and the Consent to Assignment, unless Lessee is required by a court order of a Governmental Authority having jurisdiction to make such payments to Lessor.

#### ARTICLE 6.

##### CONDITIONS PRECEDENT TO ACQUISITIONS AND ADVANCES

SECTION 6.1. Conditions to Each Advance. The obligation of each Participant to perform its obligations on any Advance Date shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to Agent), or the waiver in writing by, Agent of the conditions precedent set forth in this Section 6.1 and the other applicable conditions precedent set



forth in this Article 6 on or prior to such Advance Date (except that the obligation of any party hereto shall not be subject to such party's own performance or compliance):

(a) Advance Request. Lessee (or Construction Agent) shall have delivered an Advance Request conforming with the applicable requirements of Section 3.10 in respect of the proposed Advance Date.

(b) Performance. Each party to any Operative Document shall have performed and complied with all conditions and agreements contained in this Article 6 and, in all material respects, with all other agreements and conditions contained herein and in any other Operative Document to which it is a party required to be performed or complied with by it on or prior to such Advance Date.

(c) Representations and Warranties True; Absence of Defaults. Each representation and warranty of AMAT (including those made by AMAT as Lessee and Construction Agent) contained herein or in any other Operative Document shall be true and correct in all material respects as though made on and as of such Advance Date, except that any such representation or warranty which is expressly made only as of a specified date need be true only as of such date. No Lease Default or Lease Event of Default shall have occurred and be continuing or will occur immediately after giving effect to such Advance. Each Funding on an Advance Date shall be deemed to be a representation and warranty of AMAT to each of the other parties hereto that (i) the matters specified in clause (b) above are true and correct as of such Advance Date, (ii) after giving effect to such Advance, none of the limitations or conditions set forth in Section 3.10 will be violated, (iii) to the extent that such Funding relates to a Site Advance, Equipment Advance, initial Construction Advance or the first Construction Advance of any fiscal quarter of Lessee, each of the representations and warranties of Lessee contained in the Operative Documents is true and correct as of such Advance Date, except that any such representation or warranty which is expressly made only as of a specified date is true only as of such date, and (iv) if such Advance relates to a Site, that as of such Advance Date, no Significant Casualty or Significant Condemnation has occurred with respect to the related Site.

(d) Transaction Expenses. Lessee shall have paid in full on or prior to such Advance Date all Transaction Expenses for which Lessee has received an invoice no later than five (5) Business Days prior to such Advance Date to the parties to whom such Transaction Expenses are payable; provided, that the Arrangement Fee shall be paid on the initial Advance Date. All other Transaction Expenses shall be paid by Lessee within the time period specified in Section 13.9(a); provided, further, that

the Transaction Expenses incurred in connection with the initial Advance if invoiced within two (2) Business Days prior to the Advance Date shall be paid in full on the initial Advance Date. Such payments shall be made by wire transfer of immediately available funds (x) if to Agent, pursuant to the wire transfer information provided from time to time to Lessee by Agent (initially as set forth in Schedule II) or (y) if to any other Person, if the necessary wire transfer information for such payment is provided to Lessee at least one Business Day prior to such Advance Date.

(e) Proceedings Satisfactory, Etc. All proceedings taken in connection with such Advance Date and all documents relating thereto shall be reasonably satisfactory to Agent and its counsel.

(f) Taxes. All taxes, charges, fees and costs, if any, payable in connection with the execution, delivery, recording and filing of the Operative Documents and the transactions contemplated to be consummated on such Advance Date shall have been paid by Lessee, or arrangements for such payment shall have been made by Lessee to the satisfaction of Agent and Lessor.

(g) Insurance. Insurance complying with the provisions of Article XIV of the Lease shall be in full force and effect as evidenced by certificates of insurance, broker's reports or insurance binders delivered on or prior to the Advance Date to Agent and Lessor in form and substance reasonably satisfactory to Agent and Lessor.

SECTION 6.2. Conditions to Site Advance. The obligation of each Participant to perform its obligations on an Advance Date which is a Site Acquisition Date with respect to a Developed Site (including the initial advance for the Existing Sites) or a Construction Site shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to the addressee or beneficiary thereof), or the waiver in writing by, such Participant of the conditions precedent set forth in this Section 6.2 with respect to each such Site and the other applicable conditions precedent set forth in Section 6.1 on or prior to the initial Advance Date (except that the obligation of any party hereto shall not be subject to such party's own performance or compliance):

(a) Real Estate and Appraisal Matters. Not less than five (5) Business Days prior to each Site Advance Date, Lessee will deliver to Lessor and Agent (and with respect to Section 6.2(b) below, sufficient copies for, and addressed to, each Participant):

(i) with respect to a Site Advance for a Construction Site, a copy of the Plans and Specifications; and

(ii) an appraisal in form and substance reasonably satisfactory to Agent and Lessor which shall establish (by the use of appraisal methods satisfactory to Participants) (A) the Fair Market Value of the Site as of the Advance Date, (B) with respect to each Developed Site and Existing Site, the Fair Market Value of the Site as of the last day of the Term, without regard to any renewals, (C) with respect to a Construction Site, the "as built" Fair Market Value of such Site (assuming the Completion of the Facility on or before the Outside Completion Date) as of the last day of the Term, without regard to any renewals, (D) that the Fair Market Value of the Site as determined in accordance with items (A) and (B) of this Section 6.2(a)(ii) with respect to a Developed Site, and in accordance with item (C) of this Section 6.2(a)(ii), with respect to a Construction Site, will be not be less than 75% of the Aggregate Property Cost with respect to such Site, (E) with respect to each Developed Site and Existing Site, the percentage of the Fair Market Value of such Site attributable to the Land and the percentage of the Fair Market Value of such Site attributable to the Facility located thereon, and (F) with respect to a Construction Site, the percentage of the Fair Market Value of such Site on an "as built" basis attributable to the Land and the percentage of the Fair Market Value of such Site on an "as built" basis attributable to the Facility. The portion of the appraisal described in clause (A) above shall be prepared in accordance with FIRREA, and the entire appraisal will be performed by an independent appraisal company chosen by Agent. The portion of such appraisal described in clauses (C) and (F) above shall assume that all scheduled portions of the Facility shall have been completed or renovated in a good and workmanlike manner in compliance with Applicable Laws and Regulations and otherwise in accordance with the Lease and the applicable Plans and Specifications for such Site.

(b) Filings and Recordings. All applicable filings or recordings enumerated and described in Schedule III hereof, as well as all other filings and recordings necessary or appropriate, including financing statements, precautionary financing statements and fixture filings, in the opinion of counsel to Agent, to perfect the rights, titles and respective interests of Participants and Agent (including those with respect to any future Advances for the Site) intended to be created by the Operative Documents shall have been made, or shall have been arranged to be made promptly thereafter, in the appropriate places or offices, including any recordings and filings necessary

to create, perfect, preserve and protect (i) Lessor's interest in the Site, (ii) the first mortgage lien and deed of trust of record on the Site, subject to Permitted Exceptions and the rights of Lessee under the Lease and (iii) the first priority perfected security interest in all fixtures appurtenant to the Site, subject to Permitted Exceptions, granted to Agent. All recording and filing fees, charges and taxes with respect to any recordings or filings made pursuant to this Section 6.2(b) shall have been paid in full by Lessee, or arrangements for such payment shall have been made by Lessee, to the satisfaction of Agent.

(c) Opinions of Counsel. With respect to a Site Advance following the initial Advance, Agent and Participants shall have received, (i) an opinion of Lessee's in-house counsel substantially in the form of Exhibit V with respect to the Operative Documents executed and delivered by Lessee on such Site Advance Date (but excluding the opinion described at paragraph 4 of such Exhibit), and (ii)(A) if the Site or Sites are located in the State of California, an opinion of counsel substantially in the form of Exhibit W-1 with respect to the Operative Documents executed and delivered by Lessee on such Site Advance Date or (B) if the Site or Sites are not located in the State of California, an opinion of counsel substantially in the form of Exhibit W-2.

(d) Title and Title Insurance Commitment. Agent shall have received from the Title Insurance Company its commitment to issue an ALTA owner's policy of title insurance (1970 Form), acceptable in form and substance to Agent and Lessor, insuring that Lessor has good and marketable title to the Site (fee and/or leasehold), subject to the Lease, Permitted Exceptions and such other exceptions to title as are acceptable to Agent and Lessor, in an amount equal to the Aggregate Property Costs for such Site together with complete, legible copies of all encumbrances, maps and surveys of record, and together with such reinsurance (with direct access to the reinsurers thereunder) or coinsurance agreements as Agent shall require. Agent, for the benefit of Participants, shall have received from the Title Insurance Company its commitment to issue an ALTA form of lender's policy of title insurance (1970 Form), acceptable in form and substance to Agent, insuring the creation under the Mortgage in favor of Agent of a valid first priority Lien against the Collateral, subject to Permitted Exceptions and such exceptions to title as are reasonably acceptable to Agent, in an amount equal to the Site Acquisition Costs, together with complete, legible copies of all encumbrances and plats of record, and together with such reinsurance (with direct access to the reinsurers thereunder) or coinsurance agreements as Agent shall require. Such Title Policies shall be dated as of the initial Advance Date relating to such Site, and, to the extent permitted under Applicable Laws

and Regulations, shall (w) contain affirmative endorsements as to mechanics liens, doing business, usury, zoning, easements and rights-of-way, Form B-1 comprehensive coverage, encroachments, the nonviolation of covenants and restrictions, rights of access and survey matters, (x) delete the creditors' rights exclusion, (y) contain endorsements regarding the effect of recharacterization, and (z) contain such other endorsements reasonably requested by Agent. Notwithstanding the above, with respect to any Construction Site Advance, Lessee shall be required to deliver such Title Policies only on the earlier of the initial Advance or the entering into a Ground Lease in connection with such Construction Site, provided, that the foregoing limitations shall not relieve Lessee's obligation to deliver the date-down endorsement required by Section 7(d)(ii).

(e) Survey. Lessee shall have delivered, or shall have caused to be delivered, to Lessor and Agent an ALTA/1992 (Urban) survey of the Site certified to the Participants and the Agent in a form satisfactory to the Title Insurance Company in order to issue the Title Policies and showing no state of facts unsatisfactory to any of the Participants or the Agent. Notwithstanding the above, with respect to any Construction Site Advance, Lessee shall be required to deliver such Survey only on the initial Advance in connection with such Construction Site and upon completion pursuant to Section 7(b).

(f) Environmental Review. Not less than five (5) Business Days prior to the Advance Date, each Participant and Agent shall have received the Environmental Audit for the Site, which shall have been delivered to and approved by Participants and Agent in their sole and absolute discretion, and each Participant and Agent shall have received an acknowledgement (in form and substance satisfactory to each of them) from the firm that prepared the Environmental Audit that each Participant and Agent may rely on the Environmental Audit. Notwithstanding the above, with respect to any Construction Site Advance, Lessee shall be required to deliver such Environmental Audit only on earlier of the initial Advance or entering into a Ground Lease in connection with such Construction Site.

(g) Transfer Documents. Lessor shall have received from the owner of such Site (x) a Bill of Sale, and (y) a grant deed with respect to each Site located in the State of California and a general warranty deed for any Site located outside of the State of California (a "Deed"), in conformity with Applicable Laws and Regulations and appropriate for recording with the applicable Governmental Authorities, conveying fee simple title to the Site to Lessor, subject only to Permitted Exceptions or if the Land with respect to any Construction Site is owned by Lessee, a Ground Lease.

(h) Site Lease Supplement. Agent shall receive an original counterpart of the Site Lease Supplement (with sufficient copies for each Participant) executed by Lessee and Lessor with respect to the Site (which Site Lease Supplement for a Construction Site shall specify, among other things, the Permitted Uses of such Site as designated in the Plans and Specifications delivered to the Appraiser pursuant to Section 6.2(a)); provided that only Agent shall retain the copy thereof marked as the sole original counterpart for UCC purposes.

(i) Mortgage. Lessor shall have delivered to Agent a Mortgage executed by Lessor with respect to the Site.

(j) Assignment of Lease Supplement. Lessor shall have delivered to Agent a Supplement to the Assignment of Lease executed by Lessor with respect to the Site.

(k) Consent of Lessee to Assignment of Lease. Lessee shall have delivered to Lessor and Agent (with sufficient copies for each Participant) a consent to the Supplement to the Assignment of Lease executed by Lessee with respect to the Site.

(l) FIRPTA Affidavit. Lessee shall have caused the seller of such Developed Site to deliver to Agent and Lessor (i) a FIRPTA Affidavit in customary form or if such seller is a "foreign person" as defined in Section 1445 of the Code, evidence that a portion of the sales price to be paid to such seller has been withheld, if so required, in accordance with the provisions of the Code and Regulations and (ii) any comparable form and affidavits required with respect to the purchase and sale of the Site by any state.

(m) No Significant Casualty or Condemnation. With respect to a Site Advance or a Construction Advance, no Significant Casualty and no Significant Condemnation shall have occurred with respect to such Site. No action shall be pending or, to the knowledge of Lessee, threatened by a Governmental Authority to initiate a Condemnation of a Site which would constitute a Significant Condemnation.

(n) Construction Agency Agreement Supplement. With respect to a Construction Site, Lessee, as Construction Agent, shall have delivered to Agent (with sufficient copies for each Participant) a Construction Agency Agreement Supplement executed by Lessee, as Construction Agent, and Lessor with respect to such Construction Site.

(o) Environmental Indemnity. Lessee shall have delivered to Agent (with sufficient copies for each Participant) an Unsecured Environmental Indemnity executed by Lessee.

(p) Remarketing Option. Lessee shall not have given written notice to Lessor of Lessee's exercise of any Site Remarketing Option with respect to a Site pursuant to Section 22.1 of the Lease or, on or after the fifth anniversary of the Document Closing Date, an Equipment Remarketing Option with respect to an Equipment Pool pursuant to Section 22.2 of the Lease.

SECTION 6.3. Conditions to each Equipment Advance. The obligation of each Participant to perform its obligations on each Equipment Acquisition Date shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to Agent), or the waiver in writing by Agent of the conditions precedent set forth in this Section 6.3 and the other applicable conditions precedent set forth in Section 6.1 on or prior to such Equipment Acquisition Date with respect to each Equipment Group to be Funded on such Advance Date (except that the obligation of any party hereto shall not be subject to such party's own performance or compliance):

(a) Filings and Recordings. All applicable filings or recordings enumerated and described in Schedule III hereof, as well as all other filings and recordings necessary or advisable, including financing statements, precautionary financing statements and fixture filings, in the opinion of counsel to Agent, to perfect the rights, titles and interests of Agent and Participants intended to be created by the Operative Documents shall have been made, or shall have been arranged to be made promptly thereafter, in the appropriate places or offices, including any recordings and filings necessary to create, perfect, preserve and protect (i) Lessor's interest in the Units of Equipment in the Equipment Group and (ii) the first priority perfected security interest of record and Lien granted to Agent in such Units of Equipment, subject in each case, to Permitted Exceptions and the rights of Lessee under the Lease. All recording and filing fees and taxes with respect to any recordings or filings made pursuant to this Section 6.3(a) shall have been paid in full by Lessee, or arrangements for such payment shall have been made by Lessee, to the satisfaction of Agent.

(b) Invoices and Bills of Sale. Agent shall have received (i) the invoices signed by the vendor or manufacturer, as appropriate, for the Units of Equipment in the Equipment Group and (ii) duly executed Bill(s) of Sale conveying to Lessor such Units of Equipment, with customary warranties reasonably acceptable to Lessor and Agent.

(c) Equipment Lease Supplement. Lessee shall have delivered an original counterpart of the Equipment Lease

Supplement executed by Lessee and Lessor with respect to the Equipment Group to Lessor and Agent (with sufficient copies for each Participant) setting forth an amortization schedule for the Equipment Fixed Rent attributable to such Units of Equipment proposed by Agent, and approved by Lessor and Lessee; provided that only Agent shall receive the copy thereof marked as the sole original counterpart for UCC purposes.

(d) Assignment of Lease Supplement. Lessor shall have delivered to Agent a Supplement to the Assignment of Lease executed by Lessor with respect to the related Units of Equipment.

(e) Consent of Lessee to Assignment of Lease. Lessee shall have delivered to Lessor and Agent a consent to the Supplement to the Assignment of Lease executed by Lessee with respect to the related Units of Equipment.

(f) Opinions. On the date of the initial Equipment Advance, Agent and Participants shall have received an opinion of Lessee's in-house counsel substantially in the form of Exhibit V with respect to the Operative Documents being executed and delivered by Lessee on such date (but excluding the opinion described at paragraph 4 of such Exhibit). For each state in which a Unit of Equipment is located, if no other Unit of Equipment already subject to the Lease is located in such state, Agent (with sufficient copies for and addressed to each of the Participants) shall have received an opinion (in form and content reasonably satisfactory to Participants) from counsel reasonably satisfactory to each Participant and Agent and qualified with respect to the laws of such jurisdiction substantially to the effect that (i) as to the validity and perfection of Agent's lien in such Units of Equipment, (ii) no other filings or recordings are required to establish and perfect such Lien in the Units of Equipment, (iii) the descriptions of the Collateral in such filings and recordings are adequate for the purpose of establishing and perfecting such Lien, and (iv) that there are no requirements in such state requiring Agent, Lessor or any other Participant to qualify to do business or pay any fee or tax other than normal filing and recording fees payable by Lessee.

(g) Searches. Lessor and Agent shall have received a report satisfactory to Lessor and Agent, as of a date not more than thirty (30) days prior to the Advance Date, of judgment liens, tax liens and Uniform Commercial Code filings with respect to Lessee and the Leased Property filed of record in each applicable jurisdiction.

(h) Waiver. If such Units of Equipment are to be located on property leased by Lessee, Agent shall have received a waiver from the owner of such property and any lien holder which



has a lien thereon, in form and substance reasonably acceptable to Agent and Lessor, with respect to such Units of Equipment.

(i) Proposed Fair Market Value, Useful Life and Amortization Schedules. Agent shall have received Lessee's approval of Agent's (i) estimate of the Fair Market Value as of the applicable Original Equipment Pool Expiration Date and useful life of each such Unit of Equipment and (ii) proposed amortization schedule for each such Unit of Equipment, in each case determined by Agent from the information provided by Lessee pursuant to Section 3.13(a)(v).

(j) Remarketing Option. Lessee shall not have given written notice to Lessor of Lessee's exercise of a Remarketing Option pursuant to Article XXII of the Lease.

SECTION 6.4. Conditions to each Construction Cost Funding. The obligation of each Participant to perform its obligations on a Construction Cost Funding Date shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to Agent), or the waiver in writing by Agent of the conditions precedent set forth in this Section 6.4 and in Section 6.1 on or prior to such Construction Cost Funding Date with respect to each Construction Site for which a Construction Advance is being made on such Advance Date (except that the obligation of any party hereto shall not be subject to such party's own performance or compliance):

(a) Plans and Specifications and Architect's Agreement; Assignment. Prior to the first Construction Advance under this Section 6.4 for the Construction Site, Agent and Lessor shall have received, upon request, (i) the first page of a copy of the Plans and Specifications signed, and all other pages thereof initialed, by Lessee, as Construction Agent, and Construction Agent's general contractor (if any) and, if requested by Agent, a copy of Construction Agent's agreement with the Architect, if any, (ii) a copy of the general construction contract (if any) and a copy of each Major Construction Document entered into by Construction Agent or by Construction Agent's general contractor, as the case may be, and (iii) an assignment, from Lessee in favor of Lessor, of Lessee's interest, as Construction Agent, in the Plans and Specifications, the Architect's agreement and the general construction contract in the form required by the Construction Agency Agreement, and either (A) attached thereto is the Architect's and general contractor's written consent to such assignment, in the form required by the Construction Agency Agreement, or (B) included in such assignment is a certification of Lessee that the applicable Architect's Agreement includes a provision in substance identical to such consent.

(b) Assurance of Completion. If requested by Agent, Agent and Lessor shall have received from Lessee, as Construction Agent, a written certification that the Available Commitments for such Facility together with the other Facilities being constructed or renovated on all other Construction Sites for which construction has not been completed is sufficient to complete the construction of such Facilities in accordance with the respective Plans and Specifications therefor, and that all of such construction or renovation is capable of being completed prior to the anticipated Construction Completion Date for each such Construction Site. In the event that at any time or from time to time the Available Commitments are not sufficient to fully pay for the Completion of the Facility on any Construction Site, Lessee, as Construction Agent, covenants that it shall contribute, on an unsecured basis and without recourse to the Leased Property, to Agent or the Participants for repayment its own funds to pay costs of such construction or renovation, prior to making any further request for any Construction Advance to pay for such construction or renovation until the remaining Available Commitments are sufficient to fully pay for the completion of such construction or renovation without further contributions from Lessee.

(c) Construction Progress Information. With respect to the construction or renovation of a Facility on the Construction Site, Lessee, as Construction Agent, shall furnish to Agent and Lessor upon request, such details concerning the construction or renovation of such Facility as Agent or Lessor may reasonably require, including a detailed breakdown of the applicable percentages of completion and projected costs of the various phases of construction or renovation of such Facility, showing the amounts expended to date for such construction or renovation and the amounts then due and unpaid and an itemized estimate of the amount necessary to complete construction or renovation of such Facility in its entirety.

#### ARTICLE 7.

##### COMPLETION DATE CONDITIONS

The occurrence of the Construction Completion Date with respect to any Construction Site shall be subject to the fulfillment to the satisfaction of, or waiver by, Required Participants of the following conditions precedent:

(a) Construction Completion. The construction or renovation of the Facility located on such Construction Site shall have been completed in all material respects in accordance with (i) the Plans and Specifications (except as any timing of construction or renovation and completion specified in such Plans

and Specifications may be modified pursuant to Section 2.8 of the Construction Agency Agreement) for such Facility and (ii) Applicable Laws and Regulations. Such Facility shall also be ready for occupancy and operation. All fixtures, furniture, furnishings, equipment and other property contemplated under such Plans and Specifications to be incorporated into or installed in such Facility shall have been incorporated or installed free and clear of all Liens except for Permitted Liens and Liens in favor of Lessor or Agent.

(b) Architect's Certificate. Lessee shall have furnished to Lessor and Agent a certificate of the Architect (substantially in the form of Exhibit C) dated at or about the Construction Completion Date and stating that (i) the construction or renovation of the Facility located on such Construction Site has been completed in all material respects in accordance with its Plans and Specifications (except as any timing of construction or renovation and completion specified in such Plans and Specifications may be modified pursuant to Section 2.8 of the Construction Agency Agreement) and such Facility is ready for use and occupancy and (ii) such Facility, as so completed, complies in all material respects with all applicable laws and ordinances, and certifying that attached thereto are true and complete copies of an "as built" or "record" set of the Plans and Specifications.

(c) Construction Agent's Certification. Construction Agent shall have furnished to Agent and Lessor with a certification of Lessee (substantially in the form of Exhibit D) as follows:

(i) The representations and warranties of Lessee with respect to such Construction Site and Facility set forth in Section 8.1(i), (l), (m), (n) and (o) are true and correct in all material respects as of the Construction Completion Date for such Facility. All amounts owing to third parties for the construction or renovation of such Facility have been paid in full (other than contingent obligations for which Lessee has made adequate reserves or has made other provision for payment in a manner and in amounts reasonably acceptable to Lessor and Agent);

(ii) No changes or modifications were made to the related Plans and Specifications after the related Site Acquisition Date that have had or may have, individually or in the aggregate, a Material Adverse Effect on the Facility;

(iii) there are no defects to such Facility including the plumbing, heating, air conditioning and electrical systems thereof which have had or may have,

individually or in the aggregate, a Material Adverse Effect on the Facility; and

(iv) all water, sewer, electric, gas, telephone and drainage facilities and all other utilities required to adequately service such Facility for its intended use are available pursuant to adequate permits (including any that are required under applicable Environmental Laws) the unavailability of which have had or may have, individually or in the aggregate, a Material Adverse Effect on the Facility.

(d) As Built Survey; Title Insurance Endorsements.

Construction Agent shall have furnished to Agent true, correct and complete copies, certified by the Construction Agent, of the following (to the extent not previously delivered to Agent):

(i) an "as built" ALTA survey of the Site, certified to Agent and Lessor, showing the location of the completed Facility, the location of all points of access to the Site and the location of all easements affecting the Site and certifying that there are no encroachments of the Facility onto any easements affecting the Site or onto any adjoining property (other than Permitted Liens) and that all applicable setback requirements and other restrictions have been complied with;

(ii) a date-down endorsement, dated not earlier than the date of substantial completion of the Facility on such Site, to the applicable Title Insurance Policy (or, if not available under the applicable state law, then such other evidence of the lack of recorded and unrecorded mechanics' liens affecting (or inchoate rights thereto which could affect) the Site as Agent may reasonably request; and

(iii) in the event that the applicable Title Insurance Policy is required to include a zoning endorsement pursuant to the provisions of Section 6.2(d), ALTA 3.1 Zoning Endorsement (with express parking coverage).

#### ARTICLE 8.

##### REPRESENTATIONS AND WARRANTIES

SECTION 8.1. Representations and Warranties of Lessee. As of the date hereof, the Document Closing Date and the dates specified in Section 6.1(c), Lessee makes the representations and warranties set forth in this Section 8.1 to each of the other parties hereto, except that any such representation or warranty

which is expressly made only as of a specified date is true only as of such date.

(a) Due Organization, etc. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and Lessee has all requisite corporate power and authority to conduct its business as presently and presently proposed to be conducted, to own or hold under lease its properties, to enter into and perform its obligations under each of the Operative Documents to which it is or is to be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Document Closing Date and each Advance Date in connection with or as contemplated by each such Operative Document to which it is or is to be a party, and it is duly qualified as a foreign corporation authorized to do business and is in good standing in California and in every jurisdiction in which its failure to be so qualified would have a Material Adverse Effect.

(b) Authorization; No Conflict. The execution and delivery by Lessee of each of the Operative Documents to which it is a party, and the performance by Lessee of its obligations under such Operative Documents, have been duly authorized by all necessary corporate action on its part, and do not and will not: (i) contravene any Applicable Laws and Regulations currently in effect applicable to or binding on it or the Leased Property; (ii) violate any provision of its charter or bylaws; (iii) result in a breach of or constitute a default under any indenture, loan or credit agreement, or any other agreement or instrument to which Lessee is a party or by which Lessee or its properties may be bound or affected; (iv) result in, or require, the creation or imposition of any Lien of any nature upon or with respect to any of the properties now owned or hereafter acquired by Lessee (other than the security interests created pursuant to the Operative Documents); or (v) require any Governmental Action by any Governmental Authority, except, in the case of this clause (v), (A) for the filings and recordings listed on Schedule III to perfect the rights of Lessor, Participants and Agent intended to be created by the Operative Documents, and (B) for those Governmental Actions required with respect to Lessee or any of its Affiliates listed on Schedule IV, each of which have been duly effected; and except in the case of each clause above, where the contravention, violation or failure to be so effected will not, individually or in the aggregate, have a Material Adverse Effect; and Lessee is not in default under or in violation of its certificate of incorporation or bylaws.

(c) Enforceability, etc. Each Operative Document to which Lessee is a party constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with the terms thereof, except as such enforceability may be

limited by applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and by general equitable principles.

(d) Litigation. Except as described under the heading "Legal Proceedings" in Lessee's Form 10-Q for the period ended January 27, 1997 filed with the SEC, there is no action, proceeding or investigation pending or, to Lessee's knowledge, threatened which questions the validity of the Operative Documents to which Lessee is a party or any action taken or to be taken pursuant to the Operative Documents to which Lessee is a party, and there is no action, proceeding or investigation pending or, to Lessee's knowledge, threatened which, if adversely determined, would have a Material Adverse Effect.

(e) Taxes. Lessee has filed or caused to be filed all United States Federal and all other tax returns that are required to be filed by Lessee, except where the failure to so file such returns (other than in connection with federal or state income tax returns) would not have a Material Adverse Effect, and has paid or caused to be paid all taxes shown to be due and payable on such returns or on any assessment received by Lessee to the extent that such taxes have become due and payable except to the extent that taxes due, but unpaid, are being contested in good faith by Lessee by appropriate action or proceeding and, to the extent (if any) that such taxes are not due and payable, has established or caused to be established reserves that are adequate for the payment thereof in accordance with GAAP.

(f) Rights in Respect of the Leased Property. Lessee is not a party to any contract or agreement to sell any interest in the Leased Property or any part thereof other than pursuant to or in accordance with this Agreement and the Lease.

(g) No Lease Default, Loss, etc. No Lease Default or Lease Event of Default has occurred and is continuing; there is no action pending or, to Lessee's knowledge, threatened by a Governmental Authority to initiate a Significant Condemnation.

(h) Chief Executive Office of Lessee. The principal place of business and chief executive office, as such terms are used in Section 9-103(3) of the UCC, of Lessee are each located at 3050 Bowers Avenue, Santa Clara, California.

(i) Compliance With Law. With respect to each Developed Site and each Construction Site for which the Construction Completion Date has occurred, (i) Lessee has complied and is in compliance with all Applicable Laws and Regulations, except for any violations which would not have, individually or in the aggregate, a Material Adverse Effect on Lessee or any such Site; and (ii) each such Site and the use

thereof by Lessee and its agents, assignees, employees, invitees, lessees, licensees and tenants complies with all Applicable Laws and Regulations (including all zoning, subdivision and land use laws and regulations and Environmental Laws) and insurance requirements, except for any noncompliance which would not have, individually or in the aggregate, a Material Adverse Effect. With respect to each Construction Site, the related Plans and Specifications have been or will be prepared in all material respects in accordance with Applicable Laws and Regulations (including applicable Environmental Laws and building, planning, zoning, subdivision and fire codes, laws, rules and regulations) and such Facility and the other improvements to be constructed on such Site will not, encroach in any manner onto any adjoining land (except as permitted by express written easements or as insured by appropriate title insurance). Except as disclosed in the Environmental Audit with respect to each Site, there are no underground storage tanks at such Site.

(j) Investment Company Act. Lessee is not an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940.

(k) Public Utility Holding Company. Lessee is not subject to regulation as a "holding company," an "affiliate" of a "holding company", or a "subsidiary company" of a "holding company", within the meaning of the Public Utility Holding Company Act of 1935.

(l) Licenses, Registrations and Permits. All material Governmental Actions required for (x) the use, treatment, storage, transport, disposal or disposition of any Hazardous Substance on, at, under or from each Construction Site during the construction of the Facility thereon, (y) construction of each Facility in accordance with the related Plans and Specifications and the Construction Agency Agreement and (z) the use and occupancy of the Sites and for the operation thereof (including a certificate or certificates of occupancy for such Site or other legally equivalent permission to occupy such Site) have either been obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, or will be obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, prior to commencing any such construction or use and operation, as applicable, except for any Governmental Action, the failure to have obtained, would not, individually or in the aggregate, have a Material Adverse Effect.

(m) Nature, Condition and Use of Sites. Each Site to be acquired on a Site Acquisition Date consists of either a Developed Site on which a Facility exists on the Site Acquisition

Date or a Construction Site on which a Facility will be constructed pursuant to the Construction Agency Agreement. The present condition and use of each Site conforms with all conditions or requirements of all existing permits and approvals issued with respect to such Site, and the present use of each Site and Lessee's intended use of each Site under the Lease does not and will not, violate any Applicable Laws and Regulations, except for failures to conform or violations which would not, individually or in the aggregate, have a Material Adverse Effect. No notices, complaints or orders of violation or noncompliance or liability of any nature whatsoever have been issued or, to Lessee's knowledge, threatened by any Governmental Authority or, in writing by, any other Person with respect to any of the Sites or any present or intended future use thereof, except for such violations and instances of noncompliance as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on any such Site, and Lessee is not aware of any circumstances which could give rise to the issuance of any such notices, complaints or orders.

(n) Utility Services. Each Site has available all material services of public facilities and other utilities necessary for use and operation of the Facility thereon for its primary intended purposes including adequate water, gas and electrical supply, storm and sanitary sewerage facilities, telephone and means of access between such Facility and public highways for pedestrians and motor vehicles. All utilities serving each Site, or proposed to serve such Site in accordance with the related Plans and Specifications, are located in, and vehicular access to the Facility on such Property is provided by, either public rights-of-way abutting such Site or by Appurtenant Rights.

(o) Use and Operation of Sites. All material agreements, easements and other rights, public or private, which are necessary to permit the lawful use and operation of each Site as Lessee intends to use each such Site under the Lease and which are necessary to permit the lawful intended use and operation of all presently intended utilities, driveways, roads and other means of egress and ingress to and from the same (including certificates of occupancy) have been obtained and are in full force and effect (or with respect to Construction Sites will be obtained and be in full force and effect on or prior to the Completion of the Facility thereon) and Lessee has no actual knowledge of any pending modification or cancellation of any of the same.

(p) Securities Act. Neither Lessee nor anyone authorized to act on its behalf has, directly or indirectly, in violation of Section 5 of the Securities Act or any state securities laws, offered or sold any interest in the Notes, the



Leased Property or the Lease, or in any security or lease the offering of which, for purposes of the Securities Act or any state securities laws, would be deemed to be part of the same offering as the offering of the aforementioned securities or leases, or solicited any offer to acquire any of the aforementioned securities or leases.

(q) Title. Neither Lessee nor any of its Affiliates has taken or caused to be taken any action which would have an adverse effect on Lessor's title to the Sites from that indicated in the Title Policies to be delivered pursuant to Section 6.2(d). Neither Lessee nor any of its Affiliates has created, consented to, incurred or suffered to exist any Lien upon the Leased Property, including any of the Sites, other than Permitted Liens.

(r) Federal Reserve Regulations. Neither Lessee nor Construction Agent, nor any Affiliate thereof will, directly or indirectly, use any of the proceeds of the sale of the Notes or the Investment or of the purchase by Lessor of the Sites or the Equipment for the purpose of purchasing or carrying any "margin security" or "margin stock" within the meaning of Regulation G, T, U or X of the Board of Governors of the Federal Reserve System, respectively, or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry a margin security or margin stock or for any other purpose which might cause any of the transactions contemplated by this Agreement or any other Operative Document to constitute a "purpose credit" within the meaning of Regulation G, T, U or X of the Board of Governors of the Federal Reserve System, or for the purpose of purchasing or carrying any security, and neither Lessee, nor Construction Agent, nor any Affiliate thereof has taken or will otherwise take or permit any action by Lessee or Construction Agent, or any of its Affiliates in connection with any of the transactions contemplated by any of the Operative Documents which would involve a violation of Regulation G, T, U, or X, or any other regulation of the Board of Governors of the Federal Reserve System.

(s) ERISA. (i) Neither Lessee, nor any ERISA Affiliate, presently maintains, participates in, or contributes to, a Plan (A) that has incurred any material current liability or any "accumulated funding deficiency" whether or not waived, as defined in Section 412 of the Code or Section 302 of ERISA, that remains unpaid as of the applicable Advance Date for which Lessee or any ERISA Affiliate has not reserved sufficient unencumbered assets to pay in full such liability or deficiency by the payment due date thereof, (B) that has incurred any material current liabilities with respect to terminations under Title IV of ERISA or with respect to which as of the applicable Advance Date, a "reportable event", as defined in Section 4043 of ERISA, has occurred, (C) which is subject to Title IV of ERISA, but is not a

Multiemployer Plan whose assets do not at least equal the present value of its accrued benefits based on the actuarial methods and assumptions included in the most recent actuarial valuation reports, (D) which is a Multiemployer Plan for which Lessee or any ERISA Affiliate has received notice that the plan is in reorganization or insolvent, (E) for which material actions, lawsuits or claims have been asserted, or (F) for which penalties or taxes have been imposed under Sections 502(i) and 502(l) of ERISA or Section 4975 of the Code. Neither Lessee nor any ERISA Affiliate has in the immediate six year period had a complete or partial withdrawal from any Multiemployer Plan and the liability to which Lessee or any ERISA Affiliate would become subject under ERISA were there to be a complete withdrawal from all Multiemployer Plans to which Lessee and its ERISA Affiliates contribute is not in excess of \$500,000. Neither Lessee, nor any ERISA Affiliate, maintains any "welfare plan" (as defined in Section 3(1) of ERISA) that obligates Lessee or any ERISA Affiliate to provide health or life insurance benefits to retired employees of Lessee or any ERISA Affiliate for which such liability could have a material effect on Lessee's ability to perform its obligations under any of the Operative Documents.

(ii) The execution and delivery of this Agreement, including the issuance and sale of the Notes and the consummation of the transactions contemplated hereby and thereby under the Operative Documents, will not involve any prohibited transactions, within the meaning of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975 of the Code.

(t) Financial Information.

(i) The consolidated balance sheet of Lessee and its Consolidated Subsidiaries as of October 27, 1996 and the related consolidated statements of operations and cash flows for the fiscal year then ended, reported on by Price Waterhouse LLP, as set forth (or incorporated by reference) in Lessee's 1996 Form 10-K, a copy of which has been delivered to each of Participants, fairly present, in conformity with GAAP, the consolidated financial position of Lessee and its Consolidated Subsidiaries as of such date and their consolidated results of operations and cash flows for such fiscal year.

(ii) The unaudited consolidated balance sheet of Lessee and its Consolidated Subsidiaries as of January 26, 1997 and the related unaudited consolidated statements of operations and cash flows for the portion of Lessee's fiscal year ended at the end of such quarter, set forth (or incorporated by reference) in Lessee's most current 10-Q, a copy of which has been delivered to each of Participants,

fairly present, in conformity with GAAP, the consolidated financial position of Lessee and its Consolidated Subsidiaries as of such date and their consolidated results of operations and cash flows for such fiscal quarter, subject to normal year-end auditing adjustments.

(iii) Since January 26, 1997, there has been no Material Adverse Effect.

(u) No Other Filings. On each Site Acquisition Date and Equipment Acquisition Date, except for the filings and recordings listed in Schedule III (which filings or recordings shall have been duly made on the applicable Advance Date, or shall have been arranged to be made promptly thereafter (including the payment of any fees or taxes relating to any of the foregoing) in a manner satisfactory to Agent), no other filings or recordings are necessary to validly and effectively convey to Lessor and Agent such interests in the Leased Property and the Collateral as contemplated by the Operative Documents, in each case free and clear of all Liens, other than Permitted Liens.

(v) Disclosure. The information disclosed or caused to be provided in writing by Lessee (or any Person authorized or employed by any such Person as agent or otherwise) to Participants in connection with the negotiation of the Operative Documents and the transactions contemplated thereby, when taken as a whole with all other written disclosures to such parties, do not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, misleading.

(w) Appraisal Data. The information provided by Lessee and its Affiliates to the Appraisers and forming the basis for the conclusions set forth in each Appraisal, taken as a whole, was true and correct in all material respects and did not omit any information known and available to Lessee necessary to make the information provided not materially misleading.

(x) Subjection to Government Regulation. Lessor will not become, solely by reason of entering into the Operative Documents or consummation of the transactions contemplated thereby (other than upon exercise of remedies under the Lease or upon the expiration thereof), subject to ongoing regulation of its operations by any Governmental Authority having jurisdiction solely by reason of Lessee's business activities or the specific use of the Leased Property; provided, however, that Lessee hereby makes no representation in respect of any regulation applicable to Lessor relating generally to all owners and lessors of real property (except as set forth in the succeeding sentence) or

equipment in the jurisdictions or of the type provided hereunder, the creation of security interests or lending and financing (including federal and state bank regulatory provisions). Except as may be required under federal and state bank regulatory provisions, Lessor, as a result of its ownership of the Sites, will not be required to obtain or hold any permits or licenses under Applicable Laws and Regulations.

(y) Solvency. The consummation by Lessee of the transactions contemplated by the Operative Documents did not and will not render Lessee insolvent, nor was it made in contemplation of Lessee's insolvency; the value of the assets and properties of Lessee at fair valuation and at their then present fair salable value is and, after such transactions, will be greater than Lessee's total liabilities, including contingent liabilities, as they become due; the property remaining in the hands of Lessee was not and will not be an unreasonably small amount of capital.

SECTION 8.2. Representations and Warranties of CSL. Effective as of the date of execution hereof and as of the initial Advance Date, Credit Suisse Leasing 92A, L.P., in its individual capacity (in such capacity, "CSL"), with respect to representations and warranties as to CSL, or as Lessor, with respect to representations and warranties as to Lessor, represents and warrants to each of the other parties hereto as follows:

(a) Chief Executive Office. CSL's chief executive office and principal place of business and the place where the documents, accounts and records relating to the Overall Transaction are kept is located at 11 Madison Avenue, 19th Floor, New York, New York.

(b) Due Organization, etc. CSL is a limited partnership duly organized and validly existing in good standing under the laws of the State of Delaware and is in good standing as a foreign limited partnership in the State of California and New York and has all corporate power and authority to execute, deliver and perform its obligations under this Agreement, the Subordinated Mortgage, the Subordinated Security Agreement, each other Operative Document to which it is or will be a party as Lessor, and each other agreement, instrument and document required to be executed and delivered by each Operative Document, the Subordinated Mortgage and the Subordinated Security Agreement. The general partner of CSL is Credit Suisse First Boston.

(c) Due Authorization; Enforceability, etc. This Agreement, the Subordinated Mortgage, the Subordinated Security Agreement and each other Operative Document to which Lessor is or

will be a party have been or will be, duly authorized, executed and delivered by or on behalf of Lessor and are, or upon execution and delivery will be, legal, valid and binding obligations of Lessor, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.

(d) Non-Contravention. Neither the execution and delivery by Lessor of the Subordinated Mortgage, the Subordinated Security Agreement and the Operative Documents to which it is or will be a party, either in its individual capacity, as Lessor, or both, nor compliance with the terms and provisions thereof, conflicts with, results in a breach of, constitutes a default under (with or without the giving of notice or lapse of time or both), or violates any of the terms, conditions or provisions of: (i) the certificate of limited partnership or limited partnership agreement of Lessor; (ii) any bond, debenture, note, mortgage, indenture, agreement, lease or other instrument to which Lessor, either in its individual capacity, as Agent, or both, is now a party or by which it or its property, either in its individual capacity, as Lessor, or both, is bound or affected, where such conflict, breach, default or violation would be reasonably likely to materially and adversely affect the ability of Lessor, either in its individual capacity, as Lessor or both, to perform its obligations under the Subordinated Mortgage, the Subordinated Security Agreement or any Operative Document to which it is or will be a party, either in its individual capacity, as Lessor, or both; or (iii) any of the terms, conditions or provisions of any Applicable Laws and Regulations applicable to it in its individual capacity, as Lessor, or both, where such conflict, breach, default or violation would be reasonably likely to materially and adversely affect the ability of Lessor, either in its individual capacity, as Lessor or both, to perform its obligations under the Subordinated Mortgage, the Subordinated Security Agreement or any Operative Document to which it is or will be a party.

(e) No Approvals, etc. Neither the execution and delivery by Lessor of the Subordinated Mortgage, the Subordinated Security Agreement or any of the Operative Documents to which it is a party requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority or other body governing its banking practices.

(f) Litigation. There is no action, proceeding or investigation pending or threatened against Lessor which questions the validity of the Subordinated Mortgage, the Subordinated Security Agreement or the Operative Documents, and

there is no action, proceeding or investigation pending or threatened which is likely to result, either in any case or in the aggregate, in any material adverse change in the ability of Lessor to perform its obligations under the Subordinated Mortgage, the Subordinated Security Agreement or the Operative Documents to which it is a party.

(g) Lessor Liens. The Leased Property is free and clear of all Lessor Liens attributable to CSL.

(h) Assignment. Lessor has not assigned or transferred any of its right, title or interest in or under the Lease except to Agent and Participants in accordance with this Agreement and the other Operative Documents.

(i) Defaults. No Loan Event of Default which does not also constitute a Lease Event of Default and which is attributable solely to a breach by Lessor of its obligations under the Subordinated Mortgage, the Subordinated Security Agreement or the Operative Documents has occurred and is continuing.

SECTION 8.3. Representations and Warranties of Agent. Credit Suisse First Boston, in its individual capacity (in such capacity, "Bank") or as Agent, as the case may be, hereby represents and warrants to the Participants as set forth in this Section 8.3.

(a) Organization and Governmental Authority. Bank is a bank duly organized and validly existing in good standing under the laws of Switzerland, operating through its New York Branch and has the corporate power and authority to enter into and perform its obligations under the Operative Documents.

(b) Authorization; Binding Effect. The Operative Documents to which Agent is or will be a party have been or will be, on the date required to be delivered hereby, duly authorized, executed and delivered by Agent, and this Participation Agreement is, and such other Operative Documents are, or, when so executed and delivered by Agent will be, valid, legal and binding agreements of Agent, enforceable against Agent in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(c) Non-Contravention. Neither the execution and delivery by Agent of the Operative Documents to which it is or will be a party, either in its individual capacity, or as Agent, or both, nor compliance with and performance of the terms and provisions thereof, conflicts with, results in a breach of,

constitutes a default under (with or without the giving of notice or lapse of time or both), or violates any of the terms, conditions or provisions of: (i) the articles of incorporation or bylaws of Bank; (ii) any bond, debenture, note, mortgage, indenture, agreement, lease or other instrument to which Bank, either in its individual capacity, or as Bank, or both, is now a party or by which it or its property, either in its individual capacity, or as Agent, or both, is bound or affected, where such conflict, breach, default or violation would be reasonably likely to materially and adversely affect the ability of Agent, either in its individual capacity, or as Agent, or both, to perform its obligations under any Operative Document to which it is or will be a party, either in its individual capacity, or as Agent, or both; or (iii) any of the terms, conditions or provisions of any law, rule, regulation, order, injunction or decree of any Governmental Authority applicable to it in its individual capacity, or as Agent, or both, where such conflict, breach, default or violation would be reasonably likely to materially and adversely affect the ability of Agent, either in its individual capacity, or as Agent, or both, to perform its obligations under any Operative Document to which it is or will be a party.

(d) Absence of Litigation, etc. There is no litigation (including derivative actions), arbitration or governmental proceedings pending or, to the best knowledge of Agent, threatened against it which would be reasonably likely to adversely affect Agent's ability to perform its obligations under the Operative Documents to which it is party.

(e) Consents, etc. No Governmental Action from any Governmental Authority is or will be required in connection with the execution and delivery by Agent of the Operative Documents to which it is party or the performance by Agent of its obligations under such Operative Documents.

#### ARTICLE 9.

##### COVENANTS OF LESSEE

SECTION 9.1. Further Assurances. Lessee, at its own cost and expense, will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as any Lender, Lessor or Agent reasonably may request from time to time in order to carry out more effectively the intent and purposes of this Agreement and the other Operative Documents and the Overall Transaction. Lessee, at its sole cost and expense, will cause all financing statements (including precautionary financing statements, continuation statements and amendments), fixture filings and other documents, to be recorded or filed at such places and times in such manner, and will take

all such other actions or cause such actions to be taken, as may be necessary or as may be reasonably requested by any Participant, Lessor or Agent in order to establish and perfect, and to maintain, preserve, protect at all times (i) the title of Lessor to the Leased Property and Lessor's rights under this Agreement and the other Operative Documents other than the Permitted Liens, (ii) the first and prior Lien of the Mortgages on the Collateral (other than Permitted Liens) and (iii) the first priority security interest of Agent on all Leased Property created pursuant to the Operative Documents other than the Permitted Liens.

SECTION 9.2. Consolidation, Merger, Sale, etc.

(a) Lessee shall not consolidate with any Person, merge with or into any Person or convey, transfer or lease to any Person all or substantially all of its assets in any single transaction (or series of related transactions); provided that Lessee may merge with another Person if immediately after giving effect to such transaction Lessee is the surviving entity and:

(i) no Lease Default or Lease Event of Default (including as a result of the breach of Section 9.12 hereof) shall have occurred or would occur as a result thereof and be continuing; and

(ii) the title of Lessor to the Leased Property and Lessor's rights under this Agreement and the other Operative Documents and the first and prior Lien of Agent in the Collateral shall not be adversely affected.

SECTION 9.3. Corporate Existence. Lessee shall at all times maintain its existence as a corporation in good standing under the laws of the State of Delaware and shall use commercially reasonable efforts to preserve and keep in full force and effect its franchises material to its business.

SECTION 9.4. Liens. Lessee shall not incur or suffer to exist any Lien on any of the Sites other than Permitted Liens.

SECTION 9.5. Compliance Certificates.

(a) Lease Defaults. Following the Document Closing Date and until the termination of the Lease, Lessee shall furnish to Agent (with sufficient copies for each Participant) a certificate of Lessee signed by a Responsible Officer of Lessee within five days after Lessee obtains knowledge that there exists a Lease Default or Lease Event of Default, which such certificate shall describe such Lease Default or Lease Event of Default in reasonable detail, with a statement of Lessee's action with respect thereto taken or proposed to be taken.



(b) Annual Certificates. Within ninety (90) days after the close of each fiscal year, Lessee shall deliver to Agent (with sufficient copies for each Participant) a certificate of Lessee signed by a Responsible Officer of Lessee to the effect that the signer is familiar with or has reviewed the relevant terms of this Agreement, the Lease and each other Operative Document to which Lessee is a party and has made, or caused to be made under his or her supervision, a review of the transactions contemplated hereby and thereby and the condition of the Leased Property during the preceding fiscal year, and to the knowledge of such signer during such fiscal year, no conditions or events have occurred which constituted a Lease Default or Lease Event of Default, nor does the signer have knowledge, after due inquiry, of the existence as at the date of such certificate, of any condition or event which constitutes a Lease Default, Lease Event of Default or Significant Event or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Lessee has taken or is taking or proposes to take with respect thereto. Notwithstanding the foregoing, Lessee shall not be required to deliver such certificate if Lessee has previously delivered such a certificate within ninety (90) days prior to the close of such fiscal year.

SECTION 9.6. Change of Name or Address. Lessee shall provide Agent fifteen (15) Business Days prior written notice of any change in name, identity or corporate structure (as such term is used in Section 9-402(7) of the New York UCC) or the address of its chief executive office and principal place of business or the office where it keeps its records concerning its accounts and the Leased Property.

SECTION 9.7. Compliance with Law, Environmental Matters. (a) Lessee shall comply at all times with all Applicable Laws and Regulations affecting the Leased Property except (i) where the necessity of compliance therewith is contested in good faith by proceedings constituting a Permitted Contest or (ii) where the violation of which, individually or in the aggregate, would not reasonably be expected to (x) result in a Material Adverse Effect or (y) if such violation is not remedied, result in any Lien other than a Permitted Lien, and Lessee shall maintain at any Site only such quantities of Permitted Hazardous Substances, if any, as are reasonably necessary for Lessee's operations at any Site; and (b) Lessee shall not cause or permit the installation of any underground storage tanks at any Site.

SECTION 9.8. Investigation by Governmental Authorities. Lessee shall deliver to Agent (with sufficient copies for each Participant), promptly upon Lessee's receipt, a copy of any notice of the intent by any Governmental Authority to (x) take an action which would constitute a Condemnation which if completed would reasonably be expected to reduce the Fair Market Value of

the Site by more than \$1,000,000, or which would otherwise constitute a Significant Event, (y) investigate any Site for a material violation of any Applicable Laws and Regulations on or at such Site, including any Environmental Law, under which liability may be imposed upon Agent or any Participant or under which liability having a Material Adverse Effect may be imposed on Lessee or (z) investigate any Site (other than routine fire, life-safety and similar inspections) for any violation of Applicable Laws and Regulations under which criminal liability may be imposed upon Agent or any Participant or under which liability having a Material Adverse Effect may be imposed on Lessee.

SECTION 9.9. Financial and Other Information. Lessee shall deliver to Agent (with sufficient counterpart originals for each Participant), the following financial and other information (provided that Lessee shall not be required to deliver additional copies of such documents to Agent for delivery to any Participant if Lessee has concurrently or previously delivered copies of such documents to such Participant within the time periods specified below pursuant to the Credit Agreement):

(a) Audited Statements. As soon as available and in any event within ninety (90) days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee and its Consolidated Subsidiaries at the end of such fiscal year and the related consolidated statements of operations, cash flows and shareholders' equity for such fiscal year, setting forth in each case in comparative form the figures at the end of, and for, the prior fiscal year, all reported on in a manner acceptable to the SEC by independent public accountants of nationally recognized standing (it being agreed that Lessee may satisfy the requirements of this Section 9.9(a) with the delivery of its Annual Report on Form 10-K filed with the SEC);

(b) Quarterly Statements. As soon as available and in any event within forty-five (45) days after the end of each of the first three quarters of each fiscal year of Lessee, the consolidated balance sheet of Lessee and its Consolidated Subsidiaries at the end of such quarter and the related consolidated statement of operations and cash flows of Lessee and its Consolidated Subsidiaries for such quarter and the portion of Lessee's fiscal year ended at the end of such quarter, setting forth in each case in comparative form the figures at the end of, and for, the corresponding quarter and the corresponding portion of Lessee's prior fiscal year; it being agreed that (i) delivery of such financial statements shall be deemed to be a representation by Lessee that such financial statements fairly present, in conformity with GAAP, the consolidated financial position of Lessee and its Consolidated Subsidiaries as of the close of such quarterly fiscal period and their consolidated

results of operations and cash flows for the portion of the fiscal year ending with such quarterly fiscal period (subject to normal year-end adjustments) and (ii) Lessee may satisfy the requirements of this Section 9.9(b) with the delivery of its Quarterly Report on Form 10-Q filed with the SEC;

(c) Shareholder Mailings. Promptly upon the mailing thereof to the shareholders of Lessee generally, copies of all financial statements, reports and proxy statements so mailed;

(d) Supplemental Environmental Information. Promptly upon receipt thereof, copies of all updates to the baseline study of the environmental condition of any of Sites as set forth in the Environmental Audits required to be delivered pursuant to Section 6.2(f);

(e) Ratings Change. Within five (5) Business Days of any change by S&P or Moody's in the rating for the unsecured long-term debt of Lessee, notice of the new rating established by S&P and/or Moody's.

(f) Other. With reasonable promptness, unless the disclosure of such data or information is protected by the attorney-client privilege or attorney work-product privilege pursuant to the laws of the jurisdiction in which such privilege arises or such disclosure is prohibited by Applicable Laws and Regulations, and subject to appropriate confidentiality undertakings with respect thereto, such other data and information (financial or otherwise) which is either maintained in the ordinary course of Lessee's business or can be obtained or derived without undue burden to Lessee as to the business of Lessee or the Leased Property or any portion thereof as from time to time may be reasonably requested in writing by Agent. Subject to the foregoing restrictions, Lessee shall permit Agent, Lessor and any other Participant during normal business hours to visit and inspect under Lessee's guidance and, so long as no Lease Default or Lease Event of Default shall have occurred and be continuing, upon not less than three (3) Business Days' prior notice, any of the properties of Lessee, or its Subsidiaries, to examine (to the extent material to ascertaining compliance with the terms and provisions hereof or to the extent reasonably related to the financial condition or material operations of Lessee or any of its Subsidiaries) all of their books of account, records, reports and other papers, to make copies and extracts therefrom and (to the extent material to ascertaining compliance with the terms and provisions hereof or to the extent reasonably related to the financial condition or material operations of Lessee or any of its Subsidiaries) to discuss their respective affairs, finances and accounts with their officers, employees (who are managers or officers), and independent public accountants (and by this provision Lessee authorizes such

accountants to discuss with Agent, Lessor or any other Participant the finances and affairs of Lessee and any of its Subsidiaries, provided, that such Person shall have given prior written notice to Lessee of its intention to discuss such finances and affairs with such accountants and have given Lessee the opportunity to participate in such discussions), all at such reasonable times and as often as may be reasonably requested.

SECTION 9.10. Securities. Lessee shall not, nor shall it permit anyone authorized to act on its behalf to, take any action which would subject the issuance or sale of the Notes, Investment, any portion of the Leased Property or the Lease, or in any security or lease the offering of which, for purposes of the Securities Act or any state securities laws, would be deemed to be part of the same offering as the offering of the aforementioned securities or leases to the registration requirements of Section 5 of the Securities Act or any state securities laws.

SECTION 9.11. Interest Rates. With respect to each determination of an interest rate pursuant to the Loan Agreement and this Participation Agreement, Lessee agrees to be bound by Sections 2.1 and 2.2 of the Loan Agreement and Article 4 of this Agreement.

SECTION 9.12. Revolving Credit Facility. Lessee covenants and agrees that, so long as any portion of the obligations of the Lessee under this Participation Agreement, the Lease or any other Operative Document shall remain unpaid or unperformed (other than performance of obligations that survive the expiration or termination of the Lease and that are inchoate and contingent as of the expiration or termination of the Lease), Lessee will, and will cause each of its Subsidiaries to, perform, comply with and be bound by all of its agreements, covenants and obligations contained in Sections 5.09 through 5.14 of the Credit Agreement (giving effect to any applicable grace and cure periods), whether or not any amounts are in fact outstanding under the Credit Agreement, as such Sections are in effect from time to time prior to the date upon which the first of the following shall occur (i) the ratings established or deemed established by either Moody's or S&P for the senior unsecured long-term debt of AMAT shall fall below Baa3 or BBB-, respectively, or neither Moody's or S&P shall have in effect a rating of such debt or (ii) the debt and obligations under the Credit Agreement are no longer outstanding and the Credit Agreement is no longer in full force and effect (such Sections and all other terms of the Credit Agreement to which reference is made herein, together with all related definitions and ancillary provisions, being hereby incorporated into this Participation Agreement by reference as though specifically set forth in herein). Upon the occurrence of any of clauses (i) or (ii), such Sections shall be the Sections

as of the date immediately preceding the date of such occurrence. In determining compliance with such Sections for purposes of this Participation Agreement at any time following the termination of the Credit Agreement, any action that would require consent or approval thereunder shall require the consent or approval of Required Participants.

#### ARTICLE 10.

##### OTHER COVENANTS AND AGREEMENTS

SECTION 10.1. Cooperation with Lessee. Agent, Lessor and each other Participant shall, to the extent reasonably requested by Lessee (but without assuming additional liability on account thereof), at Lessee's expense, cooperate to allow Lessee to (a) perform its covenants contained in Section 9.1, including at any time and from time to time, upon the reasonable request of Lessee, to promptly and duly execute and deliver any and all such further instruments, documents and financing statements (and continuation statements related thereto) as Lessee may reasonably request in order to perform such covenants and (b) further Lessee's requirements as lessee of the Leased Property, including to file any statement with respect to any tax abatements or other requirements.

##### SECTION 10.2. Covenants of Lessor.

(a) Discharge of Liens. Lessor covenants that it will not create or permit to exist at any time, and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens attributable to it and will cause restitution to be made to the Leased Property in the amount of any diminution of the value thereof as a result of its failure to comply with its obligations under this Section 10.2(a). Notwithstanding the foregoing, Lessor shall not be required to so discharge any such Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any meaningful danger of the impairment of the Liens granted by Lessor to Agent including the Liens of the Mortgages or of the sale, forfeiture or loss of, and shall not interfere with the use or disposition of, any part of the Lease, the Leased Property or title thereto or any interest therein or the payment of Rent; provided, however, that Lessor shall discharge any such Lessor Lien attributable to it, whether or not subject to contest as provided above, upon the purchase of the Leased Property by Lessee pursuant to the Lease or the sale of the Leased Property in connection with the Remarketing Option.

(b) Change of Principal Place of Business. Lessor shall give prompt notice to Lessee and Agent if Lessor's principal place of business or chief executive office, or the office where the records concerning the accounts or contract rights relating to the Leased Property or the Overall Transaction are kept, shall cease to be located at 11 Madison Avenue, 19th Floor, New York, New York or if it shall change its name or identity.

(c) Loan Agreement. As between Lessor and Lessee, Lessor and each Lender hereby agrees that, so long as the Lease is in effect, Lessor shall not consent to or permit any amendment of the terms and provisions of the Loan Agreement, the Mortgages or any Note, whether or not any Lease Event of Default shall have occurred and be continuing, other than amendments which are ministerial in nature and that do not have an adverse effect on Lessee, without the prior written consent of Lessee.

(d) Depreciation. Prior to the Lease Expiration Date, no Participant shall claim any federal or state tax attributes or benefits (including depreciation) relating to the Leased Property unless required to do so by an appropriate taxing authority or after a clearly applicable change in Applicable Laws and Regulations or as a protective response to a proposed adjustment by a Governmental Authority; provided, however, that if an appropriate taxing authority shall require any Participant to claim any such federal or state tax attributes or benefits, such Participant shall promptly notify Lessee thereof and shall permit Lessee to contest such requirement in a manner similar to the contest rights provided in, and subject to any applicable limitation to a context contained in, Section 11.2(b) hereof.

(e) Organization. Unless otherwise approved by Lessee, which approval shall not be unreasonably withheld, and provided that no Lease Default or Lease Event of Default shall have occurred and be continuing, CSL (i) shall at all times remain a solvent, multi-asset company with assets beyond its interest in the Leased Property and a limited partnership with Credit Suisse First Boston as its general partner, provided, however, that CSL may merge, consolidate or combine with an Affiliate or, as a result of a reorganization, transfer substantially all of its assets or partnership interests to an Affiliate if the surviving entity has a comparable net worth to Credit Suisse First Boston or if Credit Suisse First Boston guarantees such entity's general obligations except as provided for and subject in all cases to the limitations on liability set forth at Section 13.13 hereof, and (ii) shall not engage in any other business substantially different from (A) the business as conducted on the Document Closing Date (including engaging in the business of leasing personal and real property as lessor, or acting as agent, broker or advisor in leasing such property and

making, acquiring or servicing loans or other investments or extensions of credit in connection therewith or incidental thereto) or (B) the business as otherwise permitted in Lessor's certificate of limited partnership or other organizational documents as in effect on the Document Closing Date.

SECTION 10.3. Lessor Transfers.

(a) Lessor shall not assign, convey or otherwise transfer all or any portion of its right, title or interest in, to or under the Leased Property (except pursuant to Article VI of the Lease) or any of the Operative Documents without the prior written consent of Required Lenders, which consent may not be unreasonably withheld, except that without the prior written consent of Required Lenders, Lessor may assign (reserving all rights of Lessor to indemnification relating to the period prior to such transfer) all (but not less than all) of its right, title and interest in, to and under the Leased Property and the Operative Documents to an entity (i) that has a net worth of at least \$150,000,000, (ii) that has Credit Suisse First Boston as its general partner, or (iii) the obligations of which under the Operative Documents are guaranteed by Credit Suisse First Boston pursuant to a guaranty reasonably acceptable in form and substance to Lessee. Any such transfer pursuant to this Section 10.3 (x) shall be at Lessor's sole cost and expense, (y) shall not require other changes to the Operative Documents which would alter the obligations of Lessee under any of the Operative Documents and (z) so long as no Lease Event of Default shall be continuing, shall be further conditioned upon Lessor's receipt of Lessee's prior written consent, which consent shall not be unreasonably withheld. So long as no Lease Event of Default shall be continuing, Lessor shall provide at least five (5) Business Days' prior written notice of any such transfer to Lessee.

(b) Upon the occurrence and continuance of a Loan Event of Default specified in clause (b), (c), (d) or (e) of Section 6.1 of the Loan Agreement, Agent may (at the direction of the Required Lenders) direct Lessor to transfer, and Lessor shall promptly transfer, to a Eurodollar Lender or another entity (provided that in the case of a transfer to another entity each of the conditions set forth in Section 10.3(a) shall have been satisfied, except that the notice required by the last sentence of Section 10.3(a) may be given by Agent to Lessee) (the "Replacement Lessor") that is willing to accept the same, all of Lessor's right, title, interest, duties and obligations in respect of the Leased Property, the Investment, the Lease and the other Operative Documents (without recourse to Lessor and reserving all rights of Lessor to indemnification relating to the period prior to such transfer) for an amount payable to Lessor in immediately available funds that is equal to the outstanding Investment, accrued and unpaid Yield thereon plus all other amounts then owing to Lessor under the Operative Documents and

the assumption by such Replacement Lessor of the duties and obligations of Lessor under the Operative Documents; provided that such Replacement Lessor assumes the duties and obligations of Lessor under the Operative Documents. As a condition precedent to the effectiveness of such transfer, Lessor shall have obtained, at its expense, all necessary approvals from Governmental Authorities and other Persons for such transfers and shall have effected, at its expense, all recordings and filings necessary to perfect such transfers. All reasonable and documented expenses of Agent or Lessee incurred in connection with such transfer shall be reimbursed by Lessor promptly.

SECTION 10.4. Restrictions on and Effect of Transfer. No Lender shall assign, convey or otherwise transfer all or any portion of its right, title or interest in, to or under any Note or any of the other Operative Documents without the prior written consent of each of Agent (who may condition its approval upon the satisfaction of any of the conditions of subsections (a) through (g) below) Lessor, CP Lender and Lessee, except that without the prior written consent of Agent or Lessee (w) any bank or similar financial or commercial lending institution may pledge its interest in the ordinary course of its business (including to any Federal Reserve Bank), provided that no transfer upon a foreclosure pursuant to such a pledge may occur unless the other provisions of this Section 10.4 are complied with, (x) any Lender may transfer all or any portion of its interest to a member of its Consolidated Group upon compliance with subsections (a), (b) and (g) below, (y) any Lender may transfer all or any portion of its interest to any other existing Participant upon compliance with subsections (a), (b), (c), (f) and (g) below, and (z) any Lender may transfer any or all of such right, title and interest upon compliance with subsections (a) through (g) below; and provided, further, that the restrictions set forth in this Section 10.4 shall not apply to a participation, with respect to which Section 10.5 shall apply:

(a) Required Notice and Effective Date. Any Lender desiring to effect a transfer of its interest shall give written notice of each such proposed transfer to Lessee, Agent and each other Participant at least ten (10) days prior to such proposed transfer, setting forth the name of such proposed transferee, the percentage or interest to be retained by such Lender, if any, and the date on which such transfer is proposed to become effective. All reasonable out-of-pocket costs incurred by Agent and Lessee in connection with any such disposition by a Lender under this Section 10.4 shall be borne by such Lender. In the event of a transfer under this Section 10.4, any expenses incurred by the transferee in connection with its review of the Operative Documents and its investigation of the transactions contemplated thereby shall be borne by such



transferee or the relevant Lender, as they may determine, but shall not be considered costs and expenses which Lessee is obligated to pay or reimburse under Section 11.1 or as Supplemental Rent.

(b) Ratable Transfer; Assumption of Obligations. Each such transfer shall be to a transferee (or to one or more transferees in the same Consolidated Group) of a ratable and constant percentage of such Lender's interests (i) in all its Notes and (ii) its rights and obligations under the Capital Asset Purchase Agreement in accordance with Section 7 thereof. Any transferee pursuant to this Section 10.4 shall have executed and delivered to Agent a letter in substantially the form of the letter attached hereto as Exhibit Z, and thereupon the obligations of the transferring Lender under the Operative Documents shall be proportionately released and reduced to the extent of such transfer. Upon any such transfer as above provided, the transferee shall be deemed to be bound by all obligations (whether or not yet accrued) under, and to have become a party to, all Operative Documents to which its transferor was a party, shall be deemed the pertinent "Lender" for all purposes of the Operative Documents and shall be deemed to have made that portion of the payments pursuant to this Participation Agreement previously made or deemed to have been made by the transferor represented by the interest being conveyed; and each reference herein and in the other Operative Documents to the pertinent "Lender" shall thereafter be deemed a reference to the transferee, to the extent of such transfer, for all purposes. Upon any such transfer, Agent shall deliver to Lessee amended Schedules I and II to this Participation Agreement, revised to reflect the relevant information for such new Lender and the Commitment of such new Lender (and the revised Commitment of the transferor Lender if it shall not have transferred its entire interest).

(c) Employee Benefit Plans. No Lender may make any such assignment, conveyance or transfer to or in connection with any arrangement or understanding in any way involving any employee benefit plan (or its related trust), as defined in Section 3(3) of ERISA, or with the assets of any such plan (or its related trust), as defined in Section 4975(e)(1) of the Code (other than a governmental plan, as defined in Section 3(32) of ERISA), with respect to which Lessee or such Lender or any of their Affiliates is a party in interest within the meaning of ERISA or a "disqualified person" within the meaning of the Code.

(d) Financial Condition of Transferee. No transfer by a Lender shall be effective against the other parties to

this Participation Agreement unless the transferee (i) (x) has a credit rating of either BBB- by S&P or Baa3 by Moody's (or such transferee's Affiliate has such rating) and (y) is (A) a bank or other financial institution with a combined capital, surplus and undivided profits of at least \$75,000,000, or (B) any subsidiary of such a bank, financial institution or corporation, provided that such bank, financial institution or corporation furnishes a guaranty with respect to the transferee's obligations as a Lender, or (C) any other entity, provided the transferee's obligations as a Lender are guaranteed by the transferor Lender, the form of which guaranty shall be approved by Agent and, provided no Lease Event of Default has occurred and is continuing, by Lessee, which approval shall not be unreasonably withheld or (ii) is otherwise approved by Lessee, such approval not to be unreasonably withheld.

(e) Amounts. Any transfer of Notes shall be in a principal amount which is equal to or greater than \$5,000,000; provided that the foregoing limitation shall not apply to a Lender's transfer of the entire principal amount of such Lender's Notes.

(f) Effect. From and after any transfer of its Notes (other than a pledge) the transferring Lender shall be released, to the extent assumed by the transferee, from its liability and obligations hereunder and under the other Operative Documents to which such transferor is a party in respect of obligations to be performed on or after the date of such transfer. Upon any transfer by a Lender as above provided, any such transferee shall be deemed a "Lender" for all purposes of such documents and each reference herein to a Lender shall thereafter be deemed a reference to such transferee for all purposes, except as the context may otherwise require. Notwithstanding any transfer as provided in this Section 10.4, the transferor shall be entitled to all benefits accrued and all rights vested prior to such transfer, including, without limitation, rights to indemnification under this Participation Agreement or any other Operative Document.

(g) Transfer Fee. In connection with any transfer by a Lender pursuant to this Section 10.4, such Lender shall pay a fee of \$3,500 to Agent on or prior to the date of such transfer.

#### SECTION 10.5. Covenants and Agreements of Lenders.

(a) Participations. Notwithstanding anything in Section 10.4 to the contrary, each Lender covenants and agrees that it will not grant participations in its Notes to any Person

(a "Transferee") unless such Person (i) is a bank or other financial institution and (ii) represents and warrants, in writing, to such Lender for the benefit of the Lenders, Lessor and Lessee that no part of the funds used by it to acquire an interest in the Notes constitutes assets of any Plan or its related trust. Any such Person shall require any transferee of its interest in the Notes to make the representations and warranties set forth in the preceding sentence, in writing, to such Person for its benefit and the benefit of the Participants and Lessee. In the event of any such sale by a Lender of a participating interest to a Transferee, such Lender's obligations under this Participation Agreement and under the other Operative Documents shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of its Note for all purposes under this Participation Agreement and under the other Operative Documents, and Lessor, Agent and, except as set forth in Section 10.4(b), Lessee shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Participation Agreement and under the other Operative Documents. Any such participation shall be in a ratable and constant percentage of all of such Participant's Notes.

(b) Transferee Indemnities. Each Transferee shall be entitled to the benefits of Article VII with respect to its Notes or participation in the Loans outstanding from time to time; provided, that no Transferee shall be entitled to receive any greater amount pursuant to such Article than the transferor Lender would have been entitled to receive in respect of the amount of the Notes or participation transferred by such transferor Lender to such Transferee had no such transfer or participation occurred.

(c) Purchase Events Under the Capital Asset Purchase Agreement. Each Eurodollar Lender agrees that it will not make the notification described in clause (v), (vi) or (vii) of the definition of "Purchase Event" set forth in the Capital Asset Purchase Agreement unless it has first pursued the related indemnities from Lessee in accordance with Sections 11.4 and 11.5 and such indemnities are not being or, in such Eurodollar Lender's reasonable determination, will not be paid by Lessee.

(d) Amendments of the Capital Asset Purchase Agreement. As between the Lenders and Lessee, each Lender hereby agrees that, so long as the Lease is in effect and no Lease Event of Default shall have occurred and be continuing, such Lender shall not consent to or permit any amendment to the terms and provisions of the Capital Asset Purchase Agreement that would have a material adverse effect on Lessee or impose additional fees and costs on a party that would be indemnifiable or

reimbursed by Lessee, without the prior written consent of Lessee.

SECTION 10.6. Future Lenders. Each Lender, by its acceptance of its Note or Notes, shall be deemed to be bound by and, upon compliance with the requirements of Section 10.4, will be entitled to all of the benefits of the provisions of this Agreement.

SECTION 10.7. Agent under Participation Agreement and Mortgages. For purposes of this Agreement and the Mortgages, the parties hereto agree that Agent shall be the agent of Lessor and the Lenders, with Agent's duties and obligations hereunder and thereunder being subject to the limitations, and Agent being entitled to the rights set forth in Article 12 hereof.

#### ARTICLE 11.

##### INDEMNIFICATION

SECTION 11.1. General Indemnification. Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and to indemnify, protect, defend, save and keep harmless each Indemnitee from and against any and all Claims that may be imposed on, incurred by or asserted against such Indemnitee (whether because of action or omission by such Indemnitee or otherwise), whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person and whether or not such Claim arises or accrues prior to any Advance Date or after the Lease Expiration Date, in any way relating to or arising out of (a) any of the Operative Documents or any of the transactions contemplated thereby or any investigation, litigation or proceeding in connection therewith, and any amendment, modification or waiver in respect thereof; or (b) the Leased Property or any part thereof or interest therein; or (c) the acquisition, mortgaging, design, construction, preparation, installation, inspection, delivery, nondelivery, acceptance, rejection, purchase, ownership, possession, rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition or substitution, storage, transfer or title, redelivery, use, financing, refinancing, operation, condition, sale (including, without limitation, any sale pursuant to Articles XVI, XVII or XXII of the Lease), return or other disposition of all or any part of any interest in the Leased Property or the imposition of any Lien (or incurring of any liability to refund or pay over any amount as a result of any Lien) thereon, including, without limitation: (i) Claims or penalties arising from any violation of Applicable Laws and Regulations (including in tort (strict liability or otherwise)), (ii) latent or other defects, whether or not discoverable,

(iii) any Claim of BNP or in respect of any agreement with BNP to purchase the Existing Sites, including any Claim relating to a breach of any such agreement, and (iv) any Claim for patent, trademark or copyright infringement; (d) the offer, issuance, sale or delivery of the Notes or Investment; (e) the breach by Lessee of any representation or warranty made by it or deemed made by it in any Operative Document; (f) the transactions contemplated hereby or by any other Operative Document, in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA and any prohibited transaction described in Section 4975(c) of the Code or (g) any other agreement entered into or assumed by Lessee in connection with the Leased Property (including, in each case, matters based on or arising from the negligence of any Indemnitee, except any indemnification of Agent for its own negligence in the handling of funds as specifically excluded below); provided, however, Lessee shall not be required to indemnify under this Section 11.1 for (1) as to an Indemnitee, any Claim to the extent resulting from the willful misconduct or gross negligence of such Indemnitee (it being understood that no Indemnitee shall be deemed to be negligent, grossly negligent or to have acted wilfully and the parties acknowledge that this indemnity shall fully apply in connection with any Claim of BNP if Lessor fails to purchase the Sites upon the failure of any condition thereto set forth in Article 6 of this Participation Agreement), (2) any Claims in respect of Taxes (such Claims to be subject to Section 11.2), other than a payment necessary to make payments under this Section 11.1 on an after-tax basis; provided that the exclusion provided in this clause (2) does not apply to any taxes or penalties included in Claims against which the Indemnitee is provided an indemnification under clause (f) of this Section 11.1, (3) as to an Indemnitee, any Claim resulting from Lessor Liens which such Indemnitee is responsible for discharging under the Operative Documents (4) as to an Indemnitee, any Claim to the extent resulting from any transfer by such Indemnitee in violation of this Agreement or the Operative Documents (provided, however, that this clause (4) shall not affect the indemnification rights under this Section 11.1 of any Participant which becomes a Participant pursuant to a transfer under Section 10.3 or 10.4), (5) as to an Indemnitee, any Claim against such Indemnitee by another Indemnitee if such Claim is not related or connected in any way with any action or inaction of Lessee or any Claim by or against Lessee or for which Lessee is otherwise liable under the Operative Documents, (6) as to Lessor, any Claim against Lessor to the extent arising from any breach of a representation or warranty by Lessor set forth in Section 8.2 of this Agreement or in any other Operative Document or the Private Placement Letter or from the failure of Lessor to comply in all material respects with the terms of this Agreement or the other Operative Documents, (7) as to an Indemnitee, any Claim against such Indemnitee to the extent arising from a breach of a representation or warranty by such Indemnitee under this

Agreement or the other Operative Documents or from the failure of such Indemnitee to comply in all material respects with the material covenants in this Agreement and the other Operative Documents applicable to such Indemnitee, (8) as to Lessor, any Claim to the extent resulting from Lessor Liens, (9) as to an Indemnitee who purchases a Leased Property pursuant to Sections 22.1 or 22.2 of the Lease, any Claim to the extent attributable to acts or events occurring after the expiration of the Term or the return or remarketing of such Leased Property so long as Lessor, Agent and Participants are not exercising remedies against Lessee in respect of the Operative Documents and no Lease Default or Lease Event of Default has occurred and is continuing, (10) as to Agent, any Claim against Agent to the extent resulting from its own negligence in handling of funds, (11) as to any Indemnitee, any Claim against such Indemnitee to the extent resulting from the wrongful failure of such Indemnitee to distribute to any other party to this Agreement, as required by the Operative Documents, any funds received by such Indemnitee or (12) without limiting any provisions of the Operative Documents requiring Lessee to reimburse or pay the costs of an Indemnitee, any out-of-pocket or internal costs or expenses of any Indemnitee in connection with the day-to-day administration of the transactions under the Operative Documents and which are not included in the definitions of "Transaction Expenses" or "Supplemental Rent."

SECTION 11.2. General Tax Indemnity.

(a) Tax Indemnity. Lessee shall pay on an after-tax basis, and on written demand shall indemnify and hold each Indemnitee harmless from and against, any and all Taxes, howsoever imposed, on or with respect to any Indemnitee, the Leased Property or any portion thereof, any Operative Document or Lessee or any sublessee or user of the Leased Property, by the United States or by any state or local government or other taxing authority in the United States, or by any taxing authority outside the United States, in connection with or in any way relating to (i) the acquisition, mortgaging, design, construction, preparation, installation, inspection, delivery, nondelivery, acceptance, rejection, purchase, ownership, possession, rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition or substitution, storage, transfer of title, redelivery, use, financing, refinancing, operation, condition, purchase, repurchase, sale, return or other application or disposition of all or any part of the Leased Property or the imposition of any Lien (or incurrence of any liability to refund or pay over any amount as a result of any Lien) thereon, (ii) Basic Rent or Supplemental Rent or the receipts or earnings arising from or received with respect to the Leased Property or any part thereof, or any interest therein or any applications or dispositions thereof, (iii) any other amount

paid or payable pursuant to the Notes, Investment or any other Operative Documents, (iv) the Leased Property or any part thereof or any interest therein, (v) all or any of the Operative Documents, any other documents contemplated thereby and any amendments and supplements thereto, and (vi) otherwise with respect to or in connection with the transactions contemplated by the Operative Documents or the enforcement thereof; provided, however, that the indemnification obligation of this Section 11.2 shall not apply to (i) Taxes which are based upon or measured by the Indemnitee's net income, or which are expressly in substitution for, or relieve Indemnitee from, any actual Tax based upon or measured by Indemnitee's net income (except that Lessee shall pay or reimburse, and indemnify and hold harmless, any Indemnitee which is not incorporated under the laws of the United States, or a state thereof, and which has complied with Section 11.3, from any deduction or withholding of any United States Federal income tax); (ii) Taxes characterized under local law as franchise, net worth, or shareholder's capital (excluding, however, any value-added, sales, use, rental license, property or similar Taxes); (iii) Taxes based upon (A) the voluntary transfer, assignment or disposition by Agent, Lessor or any Participant of any interest in the Leased Property (other than a transfer pursuant to the exercise of remedies under the Operative Documents, transfers pursuant to the exercise of any Remarketing Option or Purchase Option, a transfer to Lessee or its designee or otherwise pursuant to the Lease), (B) any involuntary transfer or other disposition in connection with a bankruptcy or other proceeding for the relief of creditors in which such Indemnitee is the debtor or (C) any foreclosure sale of an asset of such Indemnitee; (iv) any Taxes which constitute withholding taxes to the extent imposed with respect to payments to an Indemnitee that is a transferee to the extent of the excess of such Taxes over the amount of such Taxes which would have been imposed had there not been a sale, assignment, transfer or other disposition (whether voluntary or involuntary) to such transferee; (v) Taxes imposed in respect of any period after the expiration or earlier termination of the Lease and the payment by Lessee of all amounts due under the Operative Documents or, if later during the exercise of remedies while Lease Event of Default is continuing; provided that the exceptions set forth in this clause (v) shall not apply to Taxes to the extent such Taxes relate to events or matters arising prior to or simultaneously with the time of the earliest occurrence of the events covered in this clause (v), and until Lessee has satisfied and fulfilled its obligations under the Lease; (vi) Taxes to the extent that such Taxes would not have been imposed on or with respect to an Indemnitee but for the willful misconduct, gross negligence or breach of any representation, warranty or covenant of such Indemnitee or Affiliate thereof; and (vii) any California taxes withheld pursuant to Section 26131-3 of Title 18 of the California Code of Regulations (the "California Regulations") as a result of such

Indemnitee's failing to qualify for any applicable exemption from the withholding required by Section 11.3 (for this purpose the term "exemption" shall include, without limitation, (A) having a "permanent place of business" in California within the meaning of such section; (B) qualifying as a "bank" or "banking association" within the meaning of such section; and (C) the character of such payment failing to constitute income from sources within the State of California within the meaning of Sections 23040 and 26131-1 of the California Regulations (it being understood, however, that until such time as it receives an opinion of independent counsel selected by Lessee and reasonably acceptable to Lessor to the effect that it is required to do so, Lessee will not withhold any amounts for payment to the California Franchise Tax Board with respect to Rent payable pursuant to the Operative Documents)).

(b) Contests. Lessee shall pay on or before the time or times prescribed by law any Taxes (except any Taxes excluded by the proviso to Section 11.2(a)); provided, however, that Lessee shall be under no obligation to pay any such Tax so long as the payment of such Tax is not delinquent or is being contested by a Permitted Contest. If any claim or claims is or are made against any Indemnitee solely for any Tax which is subject to indemnification as provided in Section 11.2(a), Indemnitee shall as soon as practicable, but in no event more than twenty (20) days after receipt of formal written notice of the Tax or proposed Tax, notify Lessee and if, in the reasonable opinion of Lessee and (in the case of any Tax which may reasonably be expected to exceed \$250,000 in the aggregate) tax counsel acceptable to the Indemnitee, there exists a reasonable basis to contest such Tax which satisfies the requirements of ABA Formal Opinion 85-352 (and if the provisos of the definition of "Permitted Contest" continue to be satisfied and so long as no Lease Event of Default exists), Lessee at its expense may, to the extent permitted by Applicable Laws and Regulations, contest such Tax, and subsequently may appeal any adverse determination, in the appropriate administrative and legal forums; provided, that in all other circumstances, upon notice from Lessee to such Indemnitee that there exists a reasonable basis to contest any such Tax which satisfies the requirements of ABA Formal Opinion 85-352 (as supported by an opinion of tax counsel to Lessee reasonably acceptable to the Indemnitee), the Indemnitee, at Lessee's expense, shall contest any such Tax (so long as the provisos of the definition of "Permitted Contest" continue to be satisfied and so long as no Lease Event of Default exists). Lessee shall pay all expenses incurred by the Indemnitee in contesting any such Tax (including, without limitation, all reasonable attorneys' and accountants' fees, including the allocated costs of internal counsel), upon demand by the Indemnitee. Lessee shall have the right to participate in the conduct of any proceedings controlled by the Indemnitee to the



extent that such participation by such Person does not interfere with the Indemnitee's control of such contest and Lessee shall in all events be kept informed, to the extent practicable, of material developments relative to such proceedings. The Indemnitee shall have the right to participate in the conduct of any proceedings controlled by Lessee and the Indemnitee shall in all events be kept informed, to the extent practicable, of material developments relative to such proceedings. The Indemnitees agree that a contested claim for which Lessee would be required to make a reimbursement payment hereunder will not be settled or compromised without Lessee's prior written consent (which consent shall neither be unreasonably delayed nor withheld), unless the provisos of the definition of "Permitted Contest" would not continue to be satisfied. Indemnitee shall endeavor to settle or compromise any such contested claim in accordance with written instructions received from Lessees; provided, that (x) Lessee on or before the date the Indemnitee executes a settlement or compromise pays the contested Tax to the extent agreed upon or makes an indemnification payment to the Indemnitee in an amount reasonably acceptable to the Indemnitee; and (y) the settlement or compromise does not, in the reasonable opinion of the Indemnitee materially adversely affect the right of such Lessor to receive Rent or the Lease Balance or any other payment pursuant to the Operative Documents, or involve a material risk of sale, forfeiture or loss of the Sites or any interest therein or any matter described in the provisos to the definition of "Permitted Contest". The failure of an Indemnitee to timely contest a claim against it for any Tax which is subject to indemnification under Section 11.2(a) and for which it has an obligation to Lessee to contest under this Section 11.2(b) in the manner required by Applicable Laws and Regulations or Regulations where Lessee has timely requested that such Indemnitee contest such claim shall relieve Lessee of its obligations to such Indemnitee under Section 11.2(a) with respect to such claim to the extent such failure results in the loss of an effective contest. If Applicable Laws and Regulations require the payment of a contested Tax as a condition to, or regardless of, its being contested, and Lessee chooses to contest such Tax or to direct the Indemnitee to contest such Tax in accordance with this Section 11.2(b), then Lessee shall provide the Indemnitee with the funds to pay such Tax, such provision of funds to be deemed a non-interest bearing loan by Lessee to the Indemnitee to be repaid by any recovery of such Tax from such contest and any remaining unpaid amount not recovered to offset Lessee's obligation to indemnify the Indemnitee for such Tax. Lessee shall indemnify the Indemnitee on a grossed-up basis in accordance with Section 11.8 for and against any adverse consequences of any such interest-free loan. In the event that the Indemnitee receives a refund (or like adjustment) in respect of any Tax for which the Indemnitee has been reimbursed by Lessee, the Indemnitee shall within ten (10) days remit the

amount of such refund (or like adjustment) to Lessee, net of all costs and expenses incurred by such Indemnatee; provided, however, that the Indemnatee shall not be required to remit any amount pursuant to this sentence in excess of the amounts previously paid by Lessee to, or on behalf of, such Indemnatee with respect to such Tax pursuant to this Article 11.

(c) Payments. Any Tax indemnifiable under Section 11.2(a) shall be paid by Lessee directly when due to the applicable taxing authority if direct payment is practicable and permitted. If direct payment to the applicable taxing authority is not permitted or is otherwise not made, any amount payable to an Indemnatee pursuant to Section 11.2(a) shall be paid within thirty days after receipt of a written demand therefor from such Indemnatee accompanied by a written statement describing in reasonable detail the amount so payable, but not before the date that the relevant Taxes are due. Any payments made pursuant to Section 11.2(a) directly to the Indemnatee entitled thereto or Lessee, as the case may be, shall be made in immediately available funds at such bank or to such account as specified by the payee in written directions to the payor, or, if no such direction shall have been given, by check of the payor payable to the order of the payee by certified mail, postage prepaid at its address as set forth in this Participation Agreement. Upon the request of any Indemnatee with respect to a Tax that Lessee is required to pay, Lessee shall furnish to such Indemnatee the original or a certified copy of a receipt for Lessee's payment of such Tax or such other evidence of payment as is reasonably acceptable to such Indemnatee.

(d) Reports. If any report, return or statement is required to be filed with respect to any Taxes that are subject to indemnification under Section 11.2(a), Lessee shall, if Lessee is permitted by Applicable Laws and Regulations, timely prepare and file such report, return or statement; provided, however, that if Lessee is not permitted by Applicable Laws and Regulations to file any such report, return or statement, Lessee will promptly so notify the appropriate Indemnatee, in which case the Indemnatee, at Lessee's expense, will file any such report after preparation thereof by Lessee.

(e) Tax Benefit. If, as a result any Taxes paid or indemnified against by Lessee under this Section 11.2, the aggregate Taxes paid by Indemnatee for any taxable year and not subject to indemnification pursuant to this Section 11.2 are less (whether by reason of a deduction, credit, allocation or apportionment of income or otherwise) than the amount of such Taxes that otherwise would have been payable by such Indemnatee (a "Tax Benefit"), then to the extent such Tax Benefit was not taken into account in determining the amount of indemnification payable by Lessee under Section 11.2(a) hereof and provided no

Event of Default shall be continuing, such Indemnatee shall pay to Lessee the lesser of (A)(x) the amount of such Tax Benefit, plus (y) an amount equal to any Tax Benefit resulting from the payment under clause (x) above and (B) the amount of the indemnity paid pursuant to this Section 11.2 giving rise to such Tax Benefit. If it is subsequently determined that the Indemnatee was not entitled to such Tax Benefit, the portion of such Tax Benefit that is repaid or recaptured will be treated as Taxes for which the Lessee must indemnify Indemnatee pursuant to this Section 11.2 without regard to the exclusions other than the exclusion in clause (vi) of Section 11.2(a).

(f) Independent Examination. Within 15 days after Lessee receives any computation from Indemnatee, Lessee may request in writing an independent public accounting firm selected by Indemnatee and reasonably acceptable to Lessee review and determine on a confidential basis the amount of any indemnity payment by Lessee to Indemnatee pursuant to this Section 11.2 or any payment by Indemnatee to Lessee pursuant to Section 11.2(b) or (e) hereof. Indemnatee shall cooperate with such accounting firm and supply it with all documentation and records necessary for the accounting firm to conduct such review and determination (including relevant data from Indemnatee's income tax returns but not such returns themselves); provided, that such accounting firm shall agree in writing in a manner satisfactory to Indemnatee to maintain the confidentiality of such information. The fees and disbursements of such accounting firm will be paid by Lessee, provided, that such fees and disbursements shall be paid by Indemnatee if the verification results in an adjustment in Lessee's favor of five percent (5%) or more of the indemnity payment or payments computed by Indemnatee.

SECTION 11.3. Withholding Tax Exemption. (a) At least five (5) Business Days prior to the first date on which any payment is due under any Note or Investment Amount for the account of any Participant not incorporated under the laws of the United States or a state thereof, such Participant agrees that it will have delivered to each of Lessee, Lessor and Agent two duly completed copies of United States Internal Revenue Service Forms 1001 or 4224, certifying in either case that such Participant is entitled to receive payments of interest and/or yield and a return of the principal amount of the Loans and/or Investment Amount, including Capitalized Interest and Capitalized Yield, as applicable, under the Operative Documents without deduction or withholding of any United States Federal income taxes. Each Participant which so delivers a Form 1001 or 4224 further undertakes to deliver to each of Lessee, Lessor and Agent two additional copies of such form (or a successor form) on or before the date that such form expires (currently, three successive calendar years for Form 1001 and one calendar year for Form 4224) or becomes obsolete or after the occurrence of any event requiring a change in the most recent

forms so delivered by it, and such amendments thereto or extensions or renewals thereof as may be reasonably requested by Lessee, Lessor or Agent, in each case certifying that such Participant is entitled to receive payments under the Operative Documents without deduction or withholding of any United States Federal income taxes, unless an event (including any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Participant from duly completing and delivering any such form with respect to it and such Participant advises Lessee, Lessor and Agent that it is not capable of receiving payments without any withholding of United States Federal income tax.

(b) For any period with respect to which a Participant has failed to provide Lessee with the appropriate form described in Section 11.3(a) (other than if such failure is due to a change in law subsequent to the date such form originally was required to be provided or if such form otherwise is not required under the first sentence of Section 11.3(a), such Participant shall not be entitled to indemnification under Section 11.2 with respect to Taxes imposed by the United States because of such failure; provided, however, that should a Participant become subject to Taxes because of such failure, Lessee shall take such steps as such Participant shall reasonably request to assist such Participant to recover such Taxes.

SECTION 11.4. Increased Costs and Reduced Return. (a) If the adoption of any Applicable Laws and Regulations, or any change in any Applicable Laws and Regulations, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Participant with any request or directive (whether or not having the force or law) of any such authority, central bank regulator or other Governmental Authority or comparable agency shall impose, modify, apply or deem applicable any reserve (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System, special deposit, insurance assessment or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Participant or shall impose on any Participant (or its Eurodollar Office) or on the London interbank market any other condition affecting its Loans or Investment Amounts, its Notes or its obligation to make Loans or Investment Amounts and the result of any of the foregoing is to increase the cost to such Participant making or maintaining any Loan or Investment Amounts, or to reduce the amount of any sum received or receivable by such Participant under the Operative Documents or under its Notes with respect thereto, by any amount deemed by such Participant to be material, then, within sixty (60) days after demand by such

Participant (with a copy to Agent), Lessee shall pay, subject to Section 11.7, to such Participant such additional amount or amounts (with interest or Yield on such Loans, Investment Amounts and additional amounts) as will compensate such Participant for such increased cost or reduction.

(b) If any Participant shall have determined that, after the date hereof, the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change in any such law, rule or regulation, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on capital of such Participant or its parent could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy) by an amount deemed by such Participant to be material, then from time to time, within sixty (60) days after demand by such Participant (with a copy to Agent), Lessee shall pay, subject to Section 11.7, to such Participant such additional amount or amounts (with interest or Yield on such Loans, Investment Amounts and additional amounts) as will compensate such Participant for such reduction.

(c) Each Participant will promptly notify the Lessee and Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle such Participant to compensation pursuant to this Section 11.4 and will designate a different applicable lending office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the sole judgment of such Participant, be otherwise disadvantageous to such Participant. A certificate of any Participant claiming compensation under this Section 11.4 and setting forth the additional amount or amounts to be paid to it hereunder shall show in reasonable detail the basis for calculating such amount or amounts and shall be conclusive in the absence of manifest error. In determining such amount, such Participant may use any reasonable averaging and attribution methods.

SECTION 11.5. Eurodollar Rate Illegal, Unavailable or Impracticable. If, on or after the Document Closing Date, the adoption of any Applicable Laws and Regulations, or any change in any Applicable Laws and Regulations, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency chartered with the interpretation or administration thereof, or compliance by any Participant (or its Eurodollar Lending Office) with any request

or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for any Participant (or its Eurodollar lending office) to make, maintain or fund its Eurodollar Loans or Investment Amounts and such Participant shall so notify Agent, Agent shall forthwith give notice thereof to the other Participants and Lessee, whereupon until such Participant notifies Lessee and Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Participant to make Eurodollar Loans and to Fund Investment Amounts shall be suspended. Before giving any notice to Agent pursuant to this Section 11.5, such Participant shall designate a different Eurodollar Lending Office if such designation will avoid the need for giving such notice and will not, in the sole judgment of such Participant, be otherwise disadvantageous to such Participant. If such Participant shall determine that it may not lawfully continue to maintain and fund any of its outstanding Eurodollar Loans or Investment Amounts to maturity and shall so specify in such notice, then the obligations of such Participant to make, continue or maintain any such investment shall, upon such determination, forthwith be suspended until such Participant shall notify Lessee that such circumstances no longer exist, and all Basic Rent (or interest and Yield) allocable to such Participant shall automatically be determined on a Base Rate basis beginning on the next immediately succeeding Payment Date with respect thereto or sooner, if required by such law, assertion or determination.

SECTION 11.6. Funding Losses. (a) Lessee shall pay to Agent, as additional Rent, such amounts as may be necessary to reimburse any Participant for any loss or expense (including, without limitation, any administration costs) incurred (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Participant to make, continue or maintain any portion of its investment in any Note or Investment on a Eurodollar Rate basis) as a result of (i) the failure of any Advance Date to occur on or before the date specified therefor in the Advance Request therefor or (ii) any payment of all or any portion of the Lease Balance for any reason on a date other than a Payment Date, including, without limitation, by reason of acceleration. Any Participant shall promptly notify Agent in writing of the amount of any claim under this Section 11.6, the reason or reasons therefor and the additional amount required fully to compensate such Participant for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on Lessee.

(b) If the Lessee (i) makes a payment of Basic Rent or (ii) purchases any Site or Unit of Equipment, in either case,

resulting in the payment of CP Notes on a date other than the date on which Commercial Paper matures, at a time when the CP Rate is applicable to the calculation of Basic Rent with respect thereto, the Lessee shall, on written demand by CP Lender (with a copy of such demand to Agent), pay to Agent for the account of CP Lender an amount equal to any loss or expense suffered by CP Lender during the period from the date of receipt of such payment or purchase to (but excluding) the maturity date of such Commercial Paper, if the rate of interest obtainable by CP Lender upon the redeployment of an amount of funds equal to the amount of such payment or purchase is less than the rate of interest applicable to such Commercial Paper. A certificate as to such matters submitted by CP Lender to Lessee shall be, absent manifest error, conclusive and binding.

SECTION 11.7. Limitations on Amounts Due Under Section 11.4. If any Participant fails to give Lessee any prompt notice required by Section 11.4(c), Lessee shall not be required to indemnify and compensate such Participant or Agent under Section 11.4 for any amounts attributable to the event or factual circumstance required to be disclosed in such notice and arising during or with respect to any period ending more than ninety (90) days before notice thereof has been delivered to Lessee; provided that this Section 11.7 shall in no way limit the right of any Participant or Agent to demand or receive compensation to the extent that such compensation relates to any law, rule, regulation, interpretation, administration, request or directive (or any change therein) which by its terms has retroactive application if such notice is given within ninety (90) days after the date of enactment or effectiveness of such retroactive law, rule, regulation, interpretation, administration, request or directive (or change therein).

SECTION 11.8. Gross-Up. If an Indemnitee shall not be entitled to a corresponding and equal deduction with respect to any payment or Tax which Lessee is required to pay or reimburse under any other provision of this Article 11 (each such payment or reimbursement under this Article 11, an "original payment") and which original payment constitutes income to such Indemnitee, then Lessee shall pay to such Indemnitee on demand the amount of such original payment on a gross-up basis such that, after subtracting all Taxes imposed on such Indemnitee with respect to such original payment by Lessee (including any Taxes otherwise excluded by Section 11.2(b) and assuming for this purpose that such Indemnitee was subject to taxation at the highest Federal marginal rates applicable to widely held corporations for the year in which such income is taxable and at an assumed state and local income tax rate of 18.58%), such payments shall be equal to the original payment to be received or paid (net of any credits, deductions or other tax benefits then actually recognized that arise from the payment by such

Indemnitee of any amount, including taxes, for which the payment to be received is made).

SECTION 11.9. Indemnity for Excessive Use and Sales Below Fair Market Value. If following the application of any amounts payable under Article XXII of the Lease with respect to the remarketing of any Site or Equipment Pool, the Property Balance for such Site or any Equipment Pool shall not have been reduced to zero, then Lessee shall promptly pay over to Agent on the applicable Site Expiration Date or the applicable Equipment Pool Expiration Date, as the case may be, the remaining Property Balance for such Site or such Equipment Pool unless Lessee delivers a report from an appraiser selected by Agent and approved by Lessee, which approval shall not be unreasonably withheld, in form and substance satisfactory to Required Participants and using approved methods satisfactory to Required Participants which establishes that the decline in value of such Site or any Unit of Equipment from (x) in the case of such Site, the aggregate amount anticipated for such date in the Appraisal delivered on the applicable Site Acquisition Date or (y) in the case of any Unit of Equipment, the Equipment Purchase Price related thereto, was not due to any of the following events, circumstances or conditions, whether or not permitted under the Lease: (i) the excessive use of the Equipment, (ii) failure to maintain such Site or Unit of Equipment or any portion thereof in accordance with the Lease or the other Operative Documents, (iii) any Modifications, alterations, restorations, repairs or replacements which reduced the value of such Site or Unit of Equipment (including any change to a Facility resulting from modifications to the Plans and Specifications for a Site provided to the appraiser who prepared the Appraisal delivered on the applicable Site Acquisition Date), (iv) any defect or exception to title of such Site or Unit of Equipment which is not a Permitted Exception or any adverse environmental conditions on, under or adjacent to such Site, whether or not such condition relates to or constitutes a Permitted Hazardous Substance, or (v) any other cause or condition within the power of Lessee to control or affect other than ordinary wear and tear.

SECTION 11.10. Environmental Indemnity. Without limitation of the other provisions of this Article 11 or under the Unsecured Environmental Indemnities, Lessee agrees to indemnify, hold harmless and defend each Indemnitee from and against any and all Claims (including without limitation third party claims for personal injury or real or personal property damage), losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings (including informal proceedings) and orders, judgments, remedial action, requirements, enforcement actions of any kind, and all reasonable and documented costs and expenses incurred in connection therewith (including but not limited to reasonable and documented attorneys' and/or



paralegals' fees and expenses), including, but not limited to, all costs incurred in connection with any investigation or monitoring of site conditions or any cleanup, remedial, removal or restoration work by any federal, state or local government agency, arising in whole or in part, out of

(a) the presence on, under or around any of the Sites or any portion thereof of any Hazardous Substances, or any releases or discharges of any Hazardous Substances on, under, from, onto or around any such Site or any portion thereof,

(b) any activity, including, without limitation, construction, carried on or undertaken on or off any Site or any portion thereof, and whether by either Lessee or any of its Affiliates or any predecessor in title or any employees, agents, sublessees, contractors or subcontractors of Lessee or any predecessor in title, or any other Persons (including such Indemnitee), in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Substances that at any time are located or present on, under or around or that at any time migrate, flow, percolate, diffuse or in any way move onto or under the Sites or any portion thereof,

(c) loss of or damage to any property or the environment arising from or in any way related to any Site or Lessee (including, without limitation, cleanup costs, response costs, remediation and removal costs, cost of corrective action, costs of financial assurance, fines and penalties and natural resource damages), or death or injury to any Person, and all expenses associated with the protection of wildlife, aquatic species, vegetation, flora and fauna, and any mitigative action required by or under Environmental Laws, in each case arising from or in any way related to any Site, Lessee or the Overall Transaction,

(d) any claim concerning lack of compliance with Environmental Laws, or any act or omission causing an environmental condition that requires remediation or would allow any Governmental Authority to record a Lien against any Site or any portion thereof, or

(e) any residual contamination on or under any of the Sites, or affecting any natural resources, and any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Substances, in each case arising from or in any way related to any Site, Lessee or the Overall Transaction, and irrespective of whether any of such activities were or will be undertaken in

accordance with applicable laws, regulations, codes and ordinances;

provided, however, that Lessee shall not be required to indemnify any Indemnitee under this Section 11.10 for any Claim to the extent resulting from the willful misconduct or gross negligence of such Indemnitee.

## ARTICLE 12.

### AGENT

#### SECTION 12.1. Appointment of Agent; Powers and Authorization to Take Certain Actions.

(a) Each Participant irrevocably appoints and authorizes Credit Suisse First Boston to act as its agent hereunder, with such powers as are specifically delegated to Agent by the terms hereof, together with such other powers as are reasonably incidental thereto. Each Participant authorizes and directs Agent to, and Agent agrees for the benefit of the Participant, that, on the Document Closing Date and each Advance Date it will accept the documents described in Article 6 of this Participation Agreement. Agent accepts the agency hereby created applicable to it and agrees to receive all payments and proceeds pursuant to the Operative Documents and disburse such payments or proceeds in accordance with the Operative Documents. Agent shall have no duties or responsibilities except those expressly set forth in the Loan Agreement and this Participation Agreement. Agent shall not be responsible to any Participant (or to any other Person) (i) for any recitals, statements, representations or warranties of any party contained in the Loan Agreement, this Participation Agreement, or in any certificate or other document referred to or provided for in, or received by any of them under, the Operative Documents, other than the representations and warranties made by Agent in Section 8.3, or (ii) for the value, validity, effectiveness, genuineness, enforceability or sufficiency of the Collateral or the title thereto (subject to Agent's obligations under Section 8.3) or of the Loan Agreement or any other document referred to or provided for therein or (iii) for any failure by any Lessee, Lessor or any other third party (other than Agent) to perform any of its obligations under any Operative Document. Agent may employ agents, trustees or attorneys-in-fact, may vest any of them with any property, title, right or power deemed necessary for the purposes of such appointment and shall not be responsible for the negligence or misconduct of any of them selected by it with reasonable care. Neither Agent nor any of its directors, officers, employees or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder, or in connection

herewith, except for its or their own gross negligence or willful misconduct or its failure to handle funds hereunder and under the other Operative Documents with ordinary care or, if stricter, the same care as Agent uses in handling its own funds.

(b) Agent shall not have any duty or obligation to manage, control, use, operate, store, lease, sell, dispose of or otherwise deal with the Leased Property, any Collateral or the Lease, or to otherwise take or refrain from taking any action under, or in connection with, this Participation Agreement or any related document to which Agent is a party, except as expressly provided by the terms hereof, and no implied duties of any kind shall be read into any Operative Document against Agent. The permissive right of Agent to take actions enumerated in this Participation Agreement or any other Operative Document shall never be construed as a duty, unless Agent is instructed or directed to exercise, perform or enforce one or more rights by the Required Participants (provided that Agent has received indemnification reasonably satisfactory to it). Subject to Section 12.1(c) below, no provision of the Operative Documents shall require Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its obligations under the Operative Documents, or in the exercise of any of its rights or powers thereunder. It is understood and agreed that the duties of Agent are ministerial in nature.

(c) Except as specifically provided herein, Agent is acting hereunder solely as agent and, except as specifically provided herein, is not responsible to any party hereto in its individual capacity, except with respect to any claim arising from Agent's gross negligence or willful misconduct or any breach of a representation or covenant made in its individual capacity.

(d) Agent may accept deposits from, lend money to and otherwise deal with Lessee or any of its Affiliates with the same rights as it would have if it were not the named Agent hereunder.

SECTION 12.2. Reliance. Agent may rely upon, and shall not be bound or obligated to make any investigation into the facts or matters stated in, any certificate, notice or other communication (including any communication by telephone, telecopy, telex, telegram or cable) reasonably believed by it to be genuine and correct and to have been made, signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Agent with due care (including any expert selected by Agent to aid Agent in any calculations required in connection with its duties under the Operative Documents). Any provision of this Agreement that requires the approval of Agent to its satisfaction or sole discretion or otherwise with respect to any matter shall not require Agent to take any action with respect to such matter

without the approval or direction of Participants or Required Participants, as the case may be.

SECTION 12.3. Action Upon Instructions Generally. Subject to Sections 12.4 and 12.6, upon written instructions of the Required Participants, Agent shall, on behalf of the Participants, give such notice or direction, exercise such right, remedy or power hereunder or in respect of the Leased Property, and give such consent or enter into such amendment to any document to which it is a party as Agent as may be specified in such instructions. Agent shall deliver to each Participant a copy of each notice, report and certificate received by Agent pursuant to the Operative Documents. Agent shall have no obligation to investigate or determine whether there has been a Lease Event of Default or a Lease Default. Agent shall not be deemed to have notice or knowledge of a Lease Event of Default or Lease Default unless a Responsible Officer of Agent is notified in writing of such Lease Event of Default or Lease Default; provided that Agent shall be deemed to have been notified in writing of any failure of Lessee to pay Rent in the amounts and at the times set forth in Article III of the Lease. If Agent receives notice of a Lease Event of Default, Agent shall give prompt notice thereof, at Lessee's expense, to each Participant. Subject to Sections 12.4, 12.6 and 13.5, Agent shall take action or refrain from taking action with respect to such Lease Event of Default as directed by the Required Participants or, in the case of a Payment Default, as directed by any Participant; provided, however, that Agent shall take action or refrain from taking action with respect to Section 6.1 of the Pledge Agreement as directed by the Required Lenders; and provided, further, that, unless and until Agent receives such directions, Agent may refrain from taking any action, or may act in its discretion, with respect to such Lease Event of Default or Payment Default. Notwithstanding the foregoing, in exercising the remedies of Participants and Agent hereunder and the other Operative Documents upon a Lease Event of Default, Agent shall proceed against the Securities Collateral concurrently with remedies being conducted with respect to the other Collateral to the extent that Agent determines, based on advice of counsel, that such concurrent action does not adversely affect the Participants' rights with respect to the other Collateral. Prior to the date the Lease Balance shall have become due and payable by acceleration pursuant to Section 17.2 of the Lease, the Required Participants may deliver written instructions to Agent to waive, and Agent shall waive pursuant thereto, any Lease Event of Default and its consequences; provided that in the absence of written instructions from all Participants, Agent shall not waive any (i) Payment Default or (ii) covenant or provision which, under Section 13.5, cannot be modified or amended without the consent of all Participants. As to any matters not expressly provided for by this Participation Agreement, Agent shall in all

cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Required Participants and such instructions of the Required Participants and any action taken or failure to act pursuant thereto shall be binding on each Participant.

SECTION 12.4. Indemnification. (a) Each Participant shall reimburse and hold Agent harmless, ratably in accordance with its Commitment at the time the indemnification is required to be given, (but only to the extent that any such indemnified amounts have not in fact been paid to Agent by, or on behalf of, Lessee in accordance with Section 11.1) from any and all claims, losses, damages, obligations, penalties, liabilities, demands, suits, judgments, or causes of action, and all legal proceedings, and any reasonable costs or expenses in connection therewith, including allocated charges, costs and expenses of internal counsel of Agent and all other reasonable attorneys' fees and expenses incurred by Agent, in any way relating to or arising in any manner out of (i) any Operative Document, the enforcement hereof or thereof or the consummation of the transactions contemplated thereby, or (ii) instructions from the Required Participants (including, without limitation, the costs and expenses that Lessee is obligated to and does not pay hereunder, but excluding normal administrative costs and expenses incident to the performance by Agent of its agency duties hereunder other than materially increased administrative costs and expenses incurred as a result of a Lease Event of Default); provided that no Participant shall be liable for any of the foregoing to the extent they arise from (a) the gross negligence or willful misconduct of Agent, (b) the inaccuracy of any representation or warranty or breach of any covenant given by Agent in Section 8.3 or in the Loan Agreement, (c) in the case of Agent's handling of funds, the failure to act with the same care as Agent uses in handling its own funds or (d) any taxes, fees or other charges payable by Agent based on or measured by any fees, commissions or compensation received by it for acting as Agent in connection with the transactions contemplated by the Operative Documents.

(b) Notwithstanding anything to the contrary contained in this Participation Agreement, CP Lender's obligation (i) to provide indemnity pursuant to Section 12.4(a) or (ii) to pay any sums due and owing to Lessee shall be payable by CP Lender solely from excess cash flow from CP Lender's operations which it is not otherwise required to repay when due under CP Notes issued by CP Lender. Notwithstanding the foregoing, to the extent a CP Loan is Funded by CP Lender, CP Administrative Agent shall remain obligated for all obligations under this Participation Agreement to the Agent, the other Participants and Lessee. The Agent may continue to deal solely and directly with CP Administrative Agent.

SECTION 12.5. Independent Credit Investigation. Each Participant by entering into this Participation Agreement agrees that it has, independently and without reliance on Agent or any other Participant and based on such documents and information as it has deemed appropriate, made its own credit analysis of Lessee and its own decision to enter into this Participation Agreement and each of the other Operative Documents to which it is a party and that it will, independently and without reliance upon Agent or any other Participant and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking action under this Participation Agreement and any related documents to which it is a party. Agent shall not be required to keep itself informed as to the performance or observance by Lessee of any other document referred to (directly or indirectly) or provided for herein or to inspect the properties or books of Lessee. Except for notices or statements which Agent is expressly required to give under this Participation Agreement and for notices, reports and other documents and information expressly required to be furnished to Agent alone (and not also to each Participant, it being understood that Agent shall forward copies of same to each Participant) hereunder or under any other Operative Document, Agent shall not have any duty or responsibility to provide any Participant with copies of notices or with any credit or other information concerning the affairs, financial condition or business of Lessee (or any of its Affiliates) that may come into the possession of Agent or any of its Affiliates.

SECTION 12.6. Refusal to Act. Except for notices and actions expressly required of Agent hereunder and except for the performance of its covenants in Section 8.3, Agent shall in all cases be fully justified in failing or refusing to act unless (a) it is indemnified to its reasonable satisfaction by the Participants, subject to the terms of Section 12.4(b) above, against any and all liability and reasonable expense which may be incurred by it by reason of taking or continuing to take any such action (provided that such indemnity shall not be required to extend to liability or expense arising from any matter described in clauses (a) through (d) of the proviso of Section 12.4(a), it being understood that no action taken by Agent in accordance with the instructions of the Required Participants shall be deemed to constitute any such matter) and (b) it is reasonably satisfied that such action is not contrary to any Operative Document or to any Applicable Laws and Regulations.

SECTION 12.7. Resignation or Removal of Agent; Appointment of Successor. Subject to the appointment and acceptance of a successor Agent as provided below, Agent may resign at any time by giving notice thereof to each Lessor and Lessee or may be removed at any time by written notice from Required Participants. Upon any such resignation or removal, Required Participants at

the time of the resignation or removal shall have the right to appoint a successor Agent with, if there exists no Lease Default or Event of Default, the consent of Lessee, which consent shall not be unreasonably withheld, which shall be a financial institution having a combined capital, surplus and undivided profits of not less than \$100,000,000. If, within 30 calendar days after the retiring Agent's giving of notice of resignation or receipt of a written notice of removal, a successor Agent is not so appointed and does not accept such appointment, then the retiring or removed Agent may appoint a successor Agent with, if there exists no Lease Default or Event of Default, the consent of Lessee, which consent shall not be unreasonably withheld, and transfer to such successor Agent all rights and obligations of the retiring Agent. Such successor Agent shall be a financial institution having combined capital, surplus and undivided profits of not less than \$100,000,000. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent and the retiring or removed Agent shall be discharged from duties and obligations as Agent thereafter arising hereunder and under any related document. If the retiring Agent does not appoint a successor, any Participant shall be entitled to apply to a court of competent jurisdiction for such appointment, and such court may thereupon appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided.

SECTION 12.8. Separate Agent. From time to time, (x) the Required Participants may, and if they fail to do so at any time when they are so required, Agent may, for the purpose of meeting any legal requirements of any jurisdiction in which the Collateral may be located, and (y) the Agent may, in the case of either clause (x) or (y) appoint one or more individuals or corporations either to act as co-agent jointly with Agent or to act as separate agent of all or any part of the Collateral, and vest in such individuals or corporations, in such capacity, such title to such Collateral, or any part thereof, and such rights or duties as Agent may consider necessary or desirable. Agent shall not be required to qualify to do business in any jurisdiction where it is not now so qualified. Agent shall execute, acknowledge and deliver all such instruments as may be required by any such co-agent or separate agent more fully confirming such title, rights or duties to such co-agent or separate agent. Upon the acceptance in writing of such appointment by any such co-agent or separate agent, it, she or he shall be vested with such interest in the Collateral or any part thereof, and with such rights and duties, not inconsistent with the provisions of the Operative Documents, as shall be specified in the instrument of appointment, jointly with Agent (except insofar as local law makes it necessary for any such co-agent or separate agent to act

alone), subject to all terms of the Operative Documents. Any co-agent or separate agent, to the fullest extent permitted by legal requirements of the relevant jurisdiction, at any time, by an instrument in writing, shall constitute Agent its attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its behalf and in its name. If any co-agent or separate agent shall die, become incapable of acting, resign or be removed, the interest in the Collateral and all rights and duties of such co-agent or separate agent shall, so far as permitted by law, vest in and be exercised by Agent, without the appointment of a successor to such co-agent or separate agent.

SECTION 12.9. Termination of Agency. The agency created hereby shall terminate upon the final disposition by Agent of all Collateral at any time subject hereto and the final distribution by Agent of all monies or other property or proceeds received pursuant to the Lease in accordance with their terms; provided, that at such time Lessee shall have complied fully with all the terms hereof.

SECTION 12.10. Compensation of Agency. Lessee shall pay Agent its reasonable fees, costs and expenses for the performance of Agent's obligations hereunder.

SECTION 12.11. Limitations. It is expressly understood and agreed by and among the parties hereto that, except as otherwise provided herein or in the other Operative Documents: (a) this Participation Agreement and the other Operative Documents to which Agent is a party are executed by Agent, not in its individual capacity (except with respect to the representations and covenants of Agent in Section 8.3), but solely as Agent under the Operative Documents in the exercise of the power and authority conferred and vested in it as such Agent; (b) each and all of the undertakings and agreements herein made on the part of Agent are each and every one of them made and intended not as personal undertakings and agreements by Agent, or for the purpose or with the intention of binding Agent personally, but are made and intended for the purpose of binding only the Collateral unless expressly provided otherwise; (c) actions to be taken by Agent pursuant to its obligations under the Operative Documents may, in certain circumstances, be taken by Agent only upon specific authority of the Participants; (d) nothing contained in the Operative Documents shall be construed as creating any liability on Agent, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director, employee or agent of, Agent to perform any covenants either express or implied contained herein, all such liability, if any, being expressly waived by the other parties hereto and by any Person claiming by, through or under them; and (e) so far as Agent,



individually or personally, is concerned, the other parties hereto and any Person claiming by, through or under them shall look solely to the Collateral and Lessee for the performance of any obligation under any of the instruments referred to herein; provided, however, that nothing in this Section 12.11 shall be construed to limit in scope or substance the general corporate liability of Agent in respect of its gross negligence or willful misconduct or those representations, warranties and covenants of Agent in its individual capacity set forth herein or in any of the other agreements contemplated hereby.

#### ARTICLE 13.

##### MISCELLANEOUS

SECTION 13.1. Survival of Agreements. The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Documents, and the parties' obligations under any and all thereof, shall survive the execution and delivery and the termination or expiration of this Agreement and any of the Operative Documents, including the termination of the Lease with respect to any Leased Property, the transfer or disposition of any interest in the Leased Property to or by Lessor as provided herein or in any other Operative Documents (and shall not be merged into the Deeds, Bills of Sale or any other conveyance or transfer document), the purchase and sale of the Notes or Lessor's interest as Lessor or its Investment, payment therefor and any disposition thereof and shall be and continue in effect notwithstanding any investigation made by any party hereto or to any of the other Operative Documents and the fact that any such party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Documents.

SECTION 13.2. No Broker, etc. Except for Lessee's dealing with Credit Suisse First Boston and any of its Affiliates and The Staubach Company, each of the parties hereto represents to the others that it has not retained or employed any broker, finder or financial advisor to act on its behalf in connection with the Overall Transaction, nor has it authorized any broker, finder or financial adviser retained or employed by any other Person so to act, nor has it incurred any fees or commissions to which any party hereto might be subjected by virtue of its entering into the transactions contemplated by this Agreement. Credit Suisse First Boston's sole compensation for acting hereunder other than as Agent and Participant is the receipt of the amounts, including reimbursement of expenses, provided for in the Operative Documents and the Arrangement Fee. Any party who is in breach of this representation shall indemnify and hold the other parties

harmless from and against any liability arising out of such breach of this representation.

SECTION 13.3. Notices. Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be made in writing and shall be deemed to have been given (i) in the case of notice by letter, the earlier of when delivered to the addressee by hand or courier if delivered on a Business Day and, if not delivered on a Business Day, the first Business Day thereafter or on the third Business Day after depositing the same in the mails, registered or certified mail, postage prepaid, return receipt requested, addressed as provided on Schedule II hereto, and (ii) in the case of notice by facsimile or bank wire, when receipt is confirmed if delivered on a Business Day and, if not delivered on a Business Day, the first Business Day thereafter, addressed as provided on Schedule II hereto, or to such other address as any of the parties hereto may designate by written notice. Copies of all notices given by facsimile or bank wire shall be contemporaneously sent by overnight courier.

SECTION 13.4. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same agreement.

SECTION 13.5. Amendments. Neither this Agreement nor any of the other Operative Documents nor any of the terms hereof or thereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought; provided, however, that no such amendment, supplement, waiver or modification shall amend, supplement, waive or modify any provision of this Participation Agreement limiting rights of any Person against CP Lender, the extent of the CP Lender Availability or CP Lender's right to make a CP Loan without the written consent of CP Administrative Agent; and no such termination, amendment, supplement, waiver or modification shall be effective unless a signed copy thereof shall have been delivered to Lessee and Agent. Lessor and Lessee shall not be permitted to amend, modify or supplement the Lease without the written consent of Agent and Required Lenders; provided, that without the prior written consent of each Lender and Agent, Lessor shall not:

(a) modify any of the provisions of this Section 13.5, change the definition of "Required Lenders" or "Required Participants", or modify or waive any provision of any Operative Document requiring action by any of the foregoing,

or release any collateral (except as otherwise specifically provided in any Operative Document);

(b) reduce the amount or change the time of payment of any amount of principal owing or interest owing or payable on any Note;

(c) modify, amend, waive or supplement any of the provisions of Articles XV, XVII, XX and XXII of the Lease;

(d) reduce, modify, amend or waive any indemnities in favor of any Lender or Agent;

(e) reduce the amount or change the time of payment of Rent or the Lease Balance;

(f) consent to any assignment of the Lease releasing Lessee from its obligations to pay Rent or the Lease Balance or changing the absolute and unconditional character of such obligations; or

(g) permit the creation of any Lien on the Collateral or any part thereof except as contemplated by the Operative Documents, or deprive any Lender of the benefit of the security interest and lien secured by the Collateral.

SECTION 13.6. Headings, etc. The Table of Contents and headings of the various Articles and Sections of this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

SECTION 13.7. Parties in Interest. Except as expressly provided herein, none of the provisions of this Agreement is intended for the benefit of any Person except the parties hereto, their successors and permitted assigns.

SECTION 13.8. GOVERNING LAW. THIS AGREEMENT AND EACH OTHER OPERATIVE DOCUMENT HAS BEEN DELIVERED IN NEW YORK AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND EACH OTHER OPERATIVE DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE, EXCEPT THAT THE PERFECTION AND THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTEREST IN EQUIPMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, SECTION 9- 103(1)(B) OF THE NEW YORK UCC AND THAT THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIEN ON A SITE SHALL BE GOVERNED BY THE LAWS OF THE JURISDICTION IN WHICH SUCH SITE IS LOCATED.

## SECTION 13.9. Payment of Transaction Expenses and Other Costs.

(a) Transaction Expenses. Except as provided in Section 6.1(d), whether or not the transactions contemplated hereby and by the other Operative Documents are consummated, Lessee shall promptly pay within thirty (30) days of receiving an invoice therefor the Transaction Expenses directly or furnish Agent funds sufficient to, and Agent shall make payment of such portion to the Person or Persons entitled to such payment upon receipt of such funds from Lessee and presentation to Agent of bills or invoices for the amount of such payment.

(b) Continuing Expenses. Lessee shall pay the fees specified in the Fee and Yield Letter to Agent as Supplemental Rent.

(c) Amendments, Supplements and Appraisal. Without limitation of the foregoing, Lessee agrees to pay to Agent, Lessor and Participants all reasonable costs and expenses (including reasonable legal fees and expenses) incurred by any of them in connection with: (i) the considering, evaluating, investigating, negotiating and entering into or giving or withholding of any amendments or supplements or waivers or consents with respect to any Operative Document; (ii) any Casualty or termination of the Lease or any other Operative Document; (iii) the negotiation and documentation of any restructuring or "workout," whether or not consummated, of any Operative Document; (iv) the enforcement of the rights or remedies under the Operative Documents; and (v) any transfer by Agent, Lessor or a Participant of any interest in the Operative Documents during the continuance of an Event of Default.

SECTION 13.10. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 13.11. Liabilities of Lenders. No Lender shall have any obligation to any other Lender or to Lessee or Agent with respect to the transactions contemplated by the Operative Documents except those obligations of such Lender expressly set forth in the Operative Documents or except as set forth in the instruments delivered in connection therewith, and no Lender shall be liable for performance by any other party hereto of such other party's obligations under the Operative Documents except as otherwise so set forth.

SECTION 13.12. Liabilities of Agent. Agent shall have no duty, liability or obligation to any party to this Agreement with respect to the transactions contemplated hereby except those duties, liabilities, or obligations expressly set forth in this Agreement or the Loan Agreement, and any such duty, liability or obligation of Agent shall be as expressly limited by this Agreement, the Loan Agreement, or the other Operative Documents as the case may be.

SECTION 13.13. Lessor Obligations Nonrecourse; Payment from Certain Lease and Guarantee Obligations and Certain Proceeds of Leased Property Only. All payments to be made by Lessor in respect of the Loans, the Notes and the Loan Agreement shall be made only from certain payments received under the Lease and the Note Guarantee and certain proceeds of the Leased Property and only to the extent that Lessor or Agent shall have received sufficient payments from such sources to make payments in respect of the Loans. Each Lender agrees that it will look solely to such sources of payments to the extent available for distribution to such Lender as herein provided and that neither Lessor nor Agent is or shall be personally liable to any Lender for any amount payable hereunder or under any Note. Nothing in the Loan Agreement, the Notes or any other Operative Document shall be construed as creating any liability (other than for willful misconduct or gross negligence) of Lessor in its individual capacity to pay any sum or to perform any covenant, either express or implied, in the Loan Agreement, the Notes or any other Operative Documents (all such liability, if any, being expressly waived by Lenders and Agent) and that each Lender and Agent, on behalf of itself and its successors and assigns, agrees in the case of any liability of Lessor hereunder or thereunder (except for such liability attributable to its willful misconduct or gross negligence) that it will look solely to those certain payments received under the Lease and the Note Guarantee and those certain proceeds of the Leased Property, provided, however, that Lessor in its individual capacity shall in any event be liable with respect to (i) the removal of Lessor Liens resulting from claims against or acts or breaches by Lessor in each case in its individual capacity or involving its gross negligence or willful misconduct or (ii) failure to turn over payments (other than Excepted Payments) to Agent as required by the terms of the Operative Documents; and provided further that the foregoing exculpation of Lessor shall not be deemed to be exculpations of Lessee or any other Person.

SECTION 13.14. Consideration for Consents to Waivers and Amendments. Lessee hereby agrees that it will not, and that it will not permit any of its Affiliates to, offer or give any consideration or benefit of any kind whatsoever to any Participant in connection with, in exchange for, or as an inducement to, such Participant's consent to any waiver in

respect of, any modification or amendment of, any supplement to, or any other consent or approval under, any Operative Document unless such consideration or benefit is offered ratably to all Participants.

SECTION 13.15. Payment Directions. It is understood and agreed that during the Term, for administrative convenience and notwithstanding the terms and provisions of the Lease or any Loan Document, Lessee will pay all amounts due Lessor under the Lease and this Agreement, on behalf of Lessor, to or at the direction of Agent (which direction may change from time to time, so long as such direction does not require Lessee to make any payment due on any date to more than one Person) for application in accordance with the terms of Article V of the Loan Agreement.

SECTION 13.16. Role of Arranger and its Affiliates. Each party hereto acknowledges hereby that it is aware of the fact that Credit Suisse First Boston has acted as an "arranger" with respect to the transactions contemplated by the Operative Documents in addition to being a Lender and Agent and that, as of the Document Closing Date, its Affiliate, Credit Suisse Leasing 92A, L.P. is Lessor. Each party releases Credit Suisse First Boston and its Affiliates from any liability as a result of their acting simultaneously and in their combined role as an "arranger", as Agent, as Lessor and as a Lender. The foregoing release shall not limit the obligations or rights of Agent under the Operative Documents, which obligations and rights of Agent shall be governed by Article 12.

SECTION 13.17. Notices to Lessor under Loan Agreement. Notwithstanding anything to the contrary in the Loan Agreement, the Lenders and Lessee hereby agree that any notice or demand to be delivered to or made on Lessor pursuant to Section 7.2 of the Loan Agreement shall, so long as no Lease Event of Default is continuing, be delivered directly to or made on Lessee, with a copy to Lessor, and Lessee shall be entitled to any rights inuring to Lessor in respect thereof.

SECTION 13.18. Submission to Jurisdiction; Waivers.

(a) Each party hereto irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Agreement or any other Operative Document, or for recognition and enforcement of any judgment in respect thereof, to the nonexclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(ii) consents that any such action or proceedings may be brought to such courts, and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address set forth on Schedule II or at such other address of which the other parties hereto shall have been notified pursuant to Section 13.3; and

(iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THE OPERATIVE DOCUMENTS AND FOR ANY COUNTERCLAIM THEREIN.

SECTION 13.19. No Proceedings. Each of Lessee, Lessor, the Eurodollar Lenders and Agent hereby agrees that it shall not institute against, or join any other Person in instituting against, CP Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding or other proceedings under any Federal or state bankruptcy or similar law, for one year and a day after the latest maturing CP Note issued by CP Lender is paid. This Section 13.19 shall survive termination of this Participation Agreement.

SECTION 13.20. Final Agreement. THIS AGREEMENT, TOGETHER WITH THE LEASE, THE LOAN DOCUMENTS, THE OTHER OPERATIVE DOCUMENTS AND OTHER DOCUMENTS EXECUTED IN CONNECTION HERewith OR THEREWITH REPRESENT THE ENTIRE FINAL AGREEMENT BETWEEN THE PARTIES HERETO WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND CANNOT BE MODIFIED, SUPPLEMENTED, AMENDED, RESCINDED OR CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES HERETO.

SECTION 13.21. Confidentiality. Each Participant and Agent agrees severally but not jointly (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to use reasonable precautions to keep confidential, in accordance with safe and sound banking practices, any non-public information supplied to it by Lessee

pursuant to this Agreement which is identified by Lessee as being confidential at the time the same is delivered to such Participant or Agent, provided that nothing herein shall limit the disclosure of any such information (i) to the extent required by statute, rule, regulation or, upon prompt prior written notice to Lessee (to the extent permitted by law), by judicial process, (ii) to counsel for any of Participants or Agent, (iii) to bank examiners, auditors or accountants, (iv) in connection with any litigation to which any one or more of Participants is a party, provided that Lessee has been given prompt prior written notice (to the extent permitted by law) of such proposed disclosure or (v) to any Participant (or prospective Participant) so long as such Assignee or Participant (or Prospective Assignee or Participant) agrees in writing to be bound by the terms of this Section 13.21; and provided further that in no event shall any Participant or Agent be obligated or required to return any materials furnished by Lessee.

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

APPLIED MATERIALS, INC., AS LESSEE AND  
CONSTRUCTION AGENT

By:/s/ GERALD F. TAYLOR  
-----  
Name: Gerald F. Taylor  
Title: Senior Vice President and  
Chief Financial Officer

By:/s/ NANCY H. HANDEL  
-----  
Name: Nancy H. Handel  
Title: Vice President,  
Corporate Finance and Treasurer

CREDIT SUISSE LEASING 92A, L.P., AS  
LESSOR AND BORROWER

By: CREDIT SUISSE FIRST BOSTON, acting  
through its New York Branch, as  
General Partner

By:/s/ CARL WEATHERLEY-WHITE  
-----  
Name: Carl Weatherley-White  
Title: Vice President

By:/s/ MATT MOSER  
-----  
Name: Matt Moser  
Title: Associate

GREENWICH FUNDING CORPORATION,  
AS CP LENDER

By: CREDIT SUISSE FIRST BOSTON, acting  
through its New York Branch, as  
Attorney-in-fact

By:/s/ THOMAS MEIER

-----  
Name: Thomas Meier  
Title: Vice President

By:/s/ ALBERTO ZONCA

-----  
Name: Alberto Zonca  
Title: Associate

CREDIT SUISSE FIRST BOSTON, ACTING  
THROUGH ITS NEW YORK BRANCH, AS AGENT

By:/s/ CARL WEATHERLEY-WHITE

-----  
Name: Carl Weatherley-White  
Title: Vice President

By:/s/ MATT MOSER

-----  
Name: Matt Moser  
Title: Associate

BANQUE NATIONALE DE PARIS, AS EURODOLLAR  
LENDER

By:/s/ RAFAEL C. LUMANLAN      CHARLES H. DAY

---

Name:   Rafael C. Lumanlan      Charles H. Day  
Title:  Vice President          Assistant Vice President

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PARTICIPATION AGREEMENT

CREDIT SUISSE FIRST BOSTON, AS  
EURODOLLAR LENDER

By:/s/ CARL WEATHERLEY-WHITE

-----  
Name: Carl Weatherley-White  
Title: Vice President

By:/s/ MATT MOSER

-----  
Name: Matt Moser  
Title: Associate

MELLON BANK, N.A., AS EURODOLLAR LENDER

By:/s/ EDWIN H. WIEST

-----  
Name: Edwin H. Wiest  
Title: First Vice President

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PARTICIPATION AGREEMENT

UNION BANK OF CALIFORNIA, N.A. AS  
EURODOLLAR LENDER

By: /s/ WANDA HEADRICK

-----  
Name: Wanda Headrick  
Title: Vice President

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PARTICIPATION AGREEMENT



## SCHEDULE I

## Participants' Commitments

Participant -----		Commitments -----	Commitment Percentage -----
Eurodollar Lenders:			
Banque Nationale de Paris	Tranche A Loan Commitment:	\$14,455,670.10	22.2566%
	Tranche B Loan Commitment:	\$ 2,644,329.90	4.0713%
Mellon Bank, N.A.	Tranche A Loan Commitment:	\$12,976,288.66	19.9789%
	Tranche B Loan Commitment:	\$ 2,373,711.34	3.6547%
Union Bank of California, N.A.	Tranche A Loan Commitment:	\$12,976,288.66	19.9789%
	Tranche B Loan Commitment:	\$2,373,711.34	3.6547%
Credit Suisse First Boston	Tranche A Loan Commitment:	\$12,850,752.58	19.7856%
	Tranche B Loan Commitment:	\$2,350,747.42	3.6193%
Lessor:			
Credit Suisse Leasing 92A, L.P.	Investment Amount Commitment:	\$1,948,500	3.0%

## SCHEDULE II

## Notice Information and Funding Offices

AMAT: Applied Materials, Inc.  
3050 Bowers Avenue, M/S 2036  
Santa Clara, CA 95050

Attention: Craig Garber  
Assistant Treasurer and  
Director of Treasury Operations

Telephone: (408) 748-5032  
Facsimile: (408) 986-7825

with a copy to:

Applied Materials, Inc.  
3050 Bowers Avenue, M/S 2036  
Santa Clara, CA 95050

Attention: Diane Gale  
Senior Treasury Manager  
Cash and Global Markets

Telephone: (408) 235-6663  
Facsimile: (408) 986-7825

Lessor Credit Suisse Leasing 92A, L.P.  
11 Madison Avenue  
19th Floor  
New York, NY 10010-3629

Attention: Director

Telephone: (212) 325-9138  
Facsimile: (212) 325-8094

Agent: Credit Suisse First Boston, acting through its New  
York Branch  
11 Madison Avenue  
19th Floor  
New York, NY 10010-3629

Attention: Diane Albanese

Telephone: (212) 325-9935  
Facsimile: (212) 325-8304

CP Lender: Greenwich Funding Corporation  
11 Madison Avenue  
19th Floor  
New York, NY 10010-3629

Attention: Thomas Meier

Telephone: (212) 325-9077  
Facsimile: (212) 325-6677

Eurodollar  
Lenders:

Banque Nationale de Paris  
180 Montgomery Street  
San Francisco, CA 94104

Attention (Credit): Rafael Lumanlan, Vice  
President

Telephone: (415) 956-0707  
Facsimile: (415) 296-8954

Attention (Operations): Donald A. Hart, Treasurer

Telephone: (415) 956-2511  
Facsimile: (415) 989-9041

Funding Office: Banque Nationale de Paris, San  
Francisco Branch  
180 Montgomery Street  
San Francisco, CA 94104

Telephone: (415) 956-0707  
Facsimile: (415) 296-8954

Wire Transfer Instructions:  
Pay to Federal Reserve Bank of San Francisco  
For the Account of Banque Nationale de Paris,  
San Francisco Branch  
ABA No. 121027234  
Reference: Applied Materials Lease

Mellon Bank, N.A.  
Three Mellon Bank Center  
23rd Floor, Loan Administration  
Pittsburgh, PA 15259

Attention (Credit Issues): Edwin H. Wiest  
435 Tasso Street  
Suite 100  
Palo Alto, CA 94301

Telephone: (415) 326-3005, Ext. 223  
Facsimile: (415) 326-2382

Attention (Administration/Operations):  
Mr. Damon Carr

Telephone: (412) 234-1872  
Facsimile: (412) 236-2027

Wire Transfer Instructions:  
Mellon Bank, N.A.  
ABA No. 043000261  
Loan Administration  
Further credit to Credit Suisse Leasing 92A,  
L.P., Account No. 990873800

Union Bank of California, N.A.  
400 California Street  
17th Floor  
San Francisco, CA 94104

Attention (Credit Contact/Documentation):  
Wanda Headrick, Vice President

Telephone: (415) 765-3003  
Facsimile: (415) 765-2634

Attention (Administrative/Operational):  
Stacie Burks-Garcia

Telephone: (415) 765-3641  
Facsimile: (415) 765-2634

Wire Transfer Instructions:  
Union Bank of California, N.A.  
San Francisco, CA  
ABA No. 1220-0049-6  
For credit to Corporate Note Department  
Account No. 001-2060232  
Reference: Applied Materials, Inc.

Credit Suisse First Boston  
11 Madison Avenue  
19th Floor  
New York, NY 10010-3629

Attention: Diane Albanese

Telephone: (212) 325-9935  
Facsimile: (212) 325-8304

Wire Transfer Instructions:  
Credit Suisse First Boston  
ABA No. 026009179  
Reference: Applied Materials, Inc.

## SCHEDULE III

## Filings and Recordings

For each Site, the following filings and recordings are required to perfect the rights of Lessor, Lenders and Agent intended to be created by the Operative Documents.

A. For each Site, the following Operative Documents must be recorded among the land records of the county where the applicable Site is located:

- The Deed
- The Site Lease Supplement
- The Mortgage

For each Existing Site, the following Operative Documents must be recorded in the Official Records of Santa Clara County, California:

- The Deed
- The Site Lease Supplement (California)
- The Mortgage

B. All UCC financing statements must be filed with the Secretary of State of the State where the applicable Site is located and in any other records required by the UCC in order to perfect the Lessor's, the Lender's and the Agent's rights intended to be created by the Operative Documents.

For each Existing Site, all UCC financing statements must be filed with the California Secretary of State.

SCHEDULE IV

GOVERNMENTAL ACTIONS

No other items except as set forth on Schedule III hereto.

APPENDIX 1  
TO PARTICIPATION AGREEMENT  
DATED AS OF APRIL 30, 1997

Definitions and Interpretation



APPENDIX 2  
TO  
PARTICIPATION AGREEMENT  
DATED AS OF APRIL 30, 1997

DOCUMENT CLOSING DATE CONDITIONS PRECEDENT

A. The occurrence of the Document Closing Date is subject to the following conditions precedent:

(a) Operative Documents. Each of the Operative Documents to be entered into on the Document Closing Date shall have been duly authorized, executed and delivered by the parties thereto, and shall be in full force and effect, including (i) this Participation Agreement, (ii) the Lease and each Lease Supplement, (iii) the Construction Agency Agreement, (iv) the Deeds for each Site, (v) the Bills of Sale, (vi) the Lease Supplement for each Site, (vii) the Note Guarantee, (viii) the Loan Agreement, (ix) the Capital Asset Purchase Agreement, (x) the Notes, (xi) the Mortgages for each Site, (xii) the Security Agreement, (xiii) the Assignment of Lease, from Lessor to Agent for the benefit of the Lenders, and consented to by Lessee pursuant to that certain Lessee's Consent, dated as of the Document Closing Date (the "Consent to Assignment") by Lessee, as obligor, in favor of Agent for the benefit of the Lenders, in each case in the respective forms set forth as Exhibit L and Exhibit M hereto; (xiv) the Consent to Assignment, (xv) the Assignment of Construction Agency Agreement dated as of the Document Closing Date from Lessor to Agent for the benefit of the Lenders, and consented to by Lessee pursuant to that certain Consent, dated as of the Document Closing Date (the "Consent to Construction Agency Agreement Assignment"), in each case in the respective forms set forth as Exhibit N and Exhibit O hereto; (xvii) the Fee and Yield Letter; (xviii) the Pledge Agreement; and (xix) the Consent to Construction Agency Agreement Assignment. Agent and Participants shall each have received a fully executed original or copy of each of the Operative Documents (other than the Notes and the Lease of which Agent shall receive the originals and Lessor shall receive specimens). The Operative Documents (or memoranda thereof), any supplements thereto and any financing statements in connection therewith required under the Uniform Commercial Code shall have been recorded, registered and filed, if necessary, in such manner as to enable Lessee's counsel to render its opinion referred to in clause (c) below.

(b) Taxes. All taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Documents shall have been paid or provisions for such payment shall have been made to the satisfaction of Agent and Participants.

(c) Opinions of Counsel. (i) Each of Orrick, Herrington & Sutcliffe LLP and Hallgrimson McNichols & McCann, special counsel to Lessee, shall have issued to Agent and Participants its opinion in the form set forth on Exhibit V-1 and V-2, respectively; and (ii) the Law Department of Lessee shall have issued to Agent and Participants his/her opinion in the form set forth on Exhibit V-3.

(d) Responsible Employee's Certificate of Lessee. Agent shall have received a Responsible Employee's Certificate, dated as of the Document Closing Date, of Lessee stating that (i) each and every representation and warranty of Lessee contained in the Operative Documents to which it is a party is true and correct in all material respects on and as of the Document Closing Date, except that any such representation or warranty which is expressly made only as of a specified date need be true only as of such date; (ii) no Lease Default or Lease Event of Default under the Lease or, to the best of such Responsible Officer's knowledge, the Loan Agreement has occurred and is continuing; (iii) each Operative Document to which Lessee is a party is in full force and effect with respect to it; and (iv) Lessee has duly performed and complied with all covenants, agreements and conditions contained in this Appendix 2 and, in all material respects, with all other agreements and conditions contained in the Participation Agreement and in any other Operative Document to which Lessee is a party required to be performed or complied with by it on or prior to the Document Closing Date.

(e) Lessee's Resolutions and Incumbency Certificate, etc. Agent shall each have received (i) a certificate of the Secretary or an Assistant Secretary of Lessee attaching and certifying as to (A) the resolutions of the Board of Directors duly authorizing the execution, delivery and performance by Lessee of each Operative Document to which it is or will be a party, (B) its certificate of incorporation and bylaws, and (C) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Documents to which it is a party, and (ii) a good standing certificate from the appropriate officer of each state in which Land Interests are proposed to be acquired on the Document Closing Date.

(f) Document Closing Date. The Document Closing Date shall occur on or prior to May 15, 1997.

(g) Officer's Certificate of Lessor. Lessee and Agent shall have received a certificate of an authorized officer of Lessor, dated as of the Document Closing Date, stating that (i) each and every representation and warranty of Lessor contained in the Operative Documents to which it is a party is true and correct in all material respects on and as of the

Document Closing Date, except that any such representation or warranty which is expressly made only as of a specified date need be true only as of such date, (ii) each Operative Document to which Lessor is a party is in full force and effect with respect to it, and (iii) Lessor has duly performed and complied with all covenants, agreements and conditions contained herein or in any Operative Document required to be performed or complied with by it on or prior to the Document Closing Date.

(h) Lessor's Resolutions and Incumbency Certificate, etc. Lessee and Agent shall have received (i) a certificate of Lessor attaching and certifying as to (A) the resolutions duly authorizing the execution, delivery and performance by Lessor of each Operative Document to which it is or will be a party, (B) its limited partnership agreement and certificate of limited partnership, certified as of a recent date by an appropriate officer of Lessor, and (C) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Documents to which it is a party.

(i) Opinion of Counsel. Each of the General Counsel of Lessor and Mayer, Brown & Platt, special New York counsel, shall have issued to Lessee, Lenders and Agent their opinion to the effect and in the form set forth on Exhibit X-1 and Exhibit X-2, respectively.

(j) Private Placement Certificate. Credit Suisse First Boston and Lessor shall have delivered to Lessee a Private Placement Certificate substantially in the form of Exhibit AA.

All documents and instruments required to be delivered on the Document Closing Date shall be delivered at the offices of Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019-5820 or at such other location as may be determined by Agent, Lessor and Lessee.

APPENDIX 1  
to  
Participation Agreement,  
Master Lease Agreement and Loan Agreement,  
each dated as of April 30, 1997  
(Applied Materials, Inc.)

DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

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

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

(ix) "or" is not exclusive; and

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

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

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

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

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

"Acquisition Date" means a Site Acquisition Date or an Equipment Acquisition Date, as the case may be.

"Administrative Fees" means the fees described in paragraph 3 of the Fee and Yield Letter.

"Advance" means an advance of funds by Agent pursuant to Article 3 of the Participation Agreement.

"Advance Date" means any Business Day on which Investment Amounts and Loans are funded pursuant to the Participation Agreement and the Loan Agreement.

"Advance Request" is defined in Section 3.13(a) of the Participation Agreement.

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

"Agent" means Credit Suisse First Boston, acting through its New York Branch, as agent for the Participants pursuant to the Loan Agreement, or any successor or additional agent appointed in accordance with the terms of the Loan Agreement.

"Aggregate Commitment Amount" means the aggregate of all Commitments; except with respect to a Refinancing Advance, in which case the "Aggregate Commitment Amount" means the aggregate Commitments of the Eurodollar Lenders.

"Aggregate Property Cost" means, (a) with respect to each Site, an amount as of the Site Acquisition Date for such Site equal to (i) the Site Acquisition Costs and any Transaction Expenses incurred or expected to be incurred by Lessee in connection with the acquisition or financing of such Site to be Funded in connection with such Advance, in the case of a Developed Site or Existing Site, or (ii) the sum of the Site Acquisition Costs and any Transaction Expenses incurred or expected to be incurred by Lessee in connection with the acquisition or financing of such Site to be Funded in connection with such Advance plus the Original Estimated Construction Costs, in the case of each Construction Site, and (b) with respect to each Equipment Group, an amount as of the Equipment Acquisition Date for such Equipment Group equal to (i) the Equipment Purchase Price with respect to such Equipment Group and (ii) any Transaction Expenses incurred or expected to be incurred by Lessee in connection with the acquisition of such Equipment Group to be Funded in connection with such Advance.

"AMAT" means Applied Materials, Inc.

"AMAT Recourse Amount" means, (i)(A) with respect to any Site (other than a Site that constitutes a 25% Property) or Unit of Equipment, an amount equal to the portion of the Tranche A Participant Balances, determined as of the applicable Site Expiration Date or Equipment Pool Expiration Date, relating to Tranche A Loans for such Site or Unit of Equipment and (B) with respect to any Site that constitutes a 25% Property, the product of an amount equal to the portion of the Tranche A Participant Balance, determined as of the applicable Site Expiration Date,

relating to the Tranche A Loans for such Site and the Improvements Percentage, plus (ii) in the case of a Site, the aggregate Withheld Amount, if any, relating to any sale of a portion of such Site pursuant to Section 20.1(b) of the Lease.

"Applicable Expiration Date" means a Site Expiration Date or an Equipment Pool Expiration Date, as applicable.

"Applicable Laws and Regulations" means all existing applicable laws, rules, regulations (including Environmental Laws) statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and written interpretations by, any Governmental Authorities, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety or the environment (including wetlands) and those pertaining to the construction, use or occupancy of the Leased Property) and any restrictive covenant or deed restriction or easement of record affecting the Leased Property.

"Applicable Margin" means, with respect to the Tranche A Loans, the Tranche A Applicable Margin, and with respect to the Tranche B Loans, the Tranche B Applicable Margin.

"Appraisal" means, (i) with respect to an appraisal in connection with an Advance, an appraisal prepared by a reputable appraiser selected by Agent and approved by Required Lenders, and (ii) with respect to any other appraisal, an appraisal prepared by a reputable appraiser selected by Agent and approved by Lessee, not to be unreasonably withheld.

"Appurtenant Rights" means (i) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to any Land or the Facilities, including the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to any Land and (ii) all permits, licenses and rights, whether or not of record, appurtenant to any Land.

"Architect" means a registered architect for Construction Agent or Lessee.

"Arrangement Fee" shall mean the fee payable to Credit Suisse First Boston, acting through its New York Branch, as arranger, as provided for in paragraph 1 of the Fee and Yield Letter.

"Assignment of Lease" is defined in Appendix 2 to the Participation Agreement.

"Available Commitments" means the aggregate of the Available Eurodollar Lender Commitments and Available Lessor Commitments.

"Available Eurodollar Lender Commitment" means as to any Eurodollar Lender at any time, an amount equal to the excess, if any, of (a) the amount of such Eurodollar Lender's Commitment over (b) the sum of (i) the aggregate principal amount of all Eurodollar Loans made by such Eurodollar Lender then outstanding and (ii) the amount equal to such Eurodollar Lender's Commitment Percentage multiplied by the aggregate principal amount of all CP Loans then outstanding, provided, however, that for purposes of determining the Commitment Fee and the Commitment Fee Rate on any date, Available Eurodollar Lender Commitment shall be calculated without reference to this clause (b)(ii).

"Available Lessor Commitment" means an amount equal to the excess, if any, of (a) Lessor's Commitment over (b) the aggregate amount of all Investments.

"Available Participant Commitment" means the Available Eurodollar Lender Commitment or the Available Lessor Commitment, as applicable.

"Bank" is defined in Section 8.3 of the Participation Agreement.

"Base Rate" means, with respect to any applicable Interest Period, the higher of (i) the base commercial lending rate announced from time to time by Credit Suisse First Boston, New York Branch, or (ii) the rate quoted to Credit Suisse First Boston at approximately 11:00 a.m. New York City time, by dealers in the New York Federal Funds Market for the overnight offering of U.S. dollars to Credit Suisse First Boston, for deposit, plus one-quarter of one percent (1/4%).

"Base Rate Period" means, with respect to any Eurodollar Loan or Investment Amount for which Lessee requests interest or Yield to be calculated based on the Base Rate, (i)(x) the period commencing on the date such rate becomes effective and ending on (but excluding) the last Business Day of the calendar month in which such rate became effective and (y) thereafter, each period commencing on (and including) the last Business Day of each calendar month and ending on (but excluding) the last Business Day of the next succeeding calendar month or (ii) if shorter than the periods described in clause (i), the period ending on the day preceding the first day of an Interest Period properly selected by Lessee pursuant to a Continuation Notice or an Advance Request.



"Basic Rent" means, the sum of (i) the Equipment Rent, calculated as of the applicable date on which Basic Rent is due, and (ii) Site Rent, calculated as of the applicable date on which Basic Rent is due and (iii) on the Special Prepayment Anniversary Date, the Deemed Yield.

"Beneficiaries" is defined in Section 1 of the Note Guarantee.

"Benefitted Lender" is defined in Section 7.6 of the Loan Agreement.

"Bill of Sale" means a bill of sale substantially in the form of Exhibit S to the Participation Agreement.

"BNP" means BNP Leasing Corporation, a Delaware corporation.

"Borrower" means Credit Suisse Leasing 92A, L.P., as Borrower under the Loan Agreement.

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

"California Regulations" is defined in Section 11.2(a) of the Participation Agreement.

"Capital Asset Purchase Agreement" means the Capital Asset Purchase Agreement among CP Lender, Agent and Purchasers, substantially in the form of Exhibit H to the Participation Agreement.

"Capital Expenditure Moratorium Period" means a temporary period during which the Treasurer of Lessee has generally restrained Lessee's capital expenditures.

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

"Capitalized Interest" means, with respect to each Site Note, all interest accruing on the principal portion of each such Note attributable to Construction Advances made during and for any Interest Period ending on or before the Outside Completion Date. Interest accruing during such Interest Periods on the principal portion of each Site Note attributable to such Construction Advances shall be allocated to each Construction

Site based upon the sum of the outstanding Construction Advances Funded by the Lenders with respect to such Site through the date of determination and shall be treated as Capitalized Interest, except to the extent that such amount is not to be capitalized because either (i) such amount exceeds the Available Eurodollar Lender Commitment, (ii) Construction Agent shall have elected to pay such amount from its own funds pursuant to Section 4.6 of the Participation Agreement or (iii) the Interest Period relating to such Construction Advance ends after the Outside Completion Date.

"Capitalized Yield" means, with respect to the Investment Amounts, all Yield accruing on the portion of such Investment Amounts attributable to Construction Advances for a Construction Site made during and for any Interest Period ending on or before the Outside Completion Date. Yield accruing during such Interest Periods on the portion of Investment Amounts attributable to such Construction Advances shall be allocated to such Construction Site based upon the sum of the outstanding Construction Advances Funded by Lessor with respect to such Site through the date of determination and shall be treated as Capitalized Yield, except to the extent that such amount is not to be capitalized because either (i) such amount exceeds the Available Lessor Commitment, (ii) Construction Agent shall have elected to pay such amount from its own funds pursuant to Section 4.6 of the Participation Agreement or (iii) the Interest Period relating to such Construction Advance ends after the Outside Completion Date.

"Casualty" means any damage or destruction of all or any portion of any Unit of Equipment or Site as a result of a fire or other casualty.

"Central Park Property" means the five building facility comprised of office space, laboratories and warehouses located at 2801 to 2889 Scott Boulevard, Santa Clara, California.

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

"Certifying Party" is defined in Section 27.1 of the Lease.

"Claims" means any and all obligations, liabilities, losses, actions, suits, judgments, penalties, fines, claims, demands, settlements, costs and expenses (including reasonable legal fees and expenses) of any nature whatsoever.

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

"Collateral" means all of the property now owned or hereafter acquired upon which a Lien is purported to be created by the Security Documents, including the "Collateral" as that term is defined in the Security Agreement and "Trust Property" as that term is defined in each of the Mortgages.

"Combined Tax Rate" means the highest Federal marginal rate applicable to widely held corporations for the applicable year plus an assumed state and local income tax rate of 3.5%.

"Commercial Paper" means promissory notes of CP Lender issued in the commercial paper market pursuant to the Commercial Paper Documents.

"Commercial Paper Documents" means collectively (a) the Commercial Paper and (b) the Capital Asset Purchase Agreement.

"Commitment" means (i) as to any Eurodollar Lender, the obligation of such Lender to make Eurodollar Loans to Lessor under the Loan Agreement in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Eurodollar Lender's name on Schedule I to the Participation Agreement, as such amount may be reduced or increased from time to time in accordance with the provisions of the Loan Agreement, and (ii) as to Lessor, the obligation of Lessor to make available the Investment Amounts to Lessee pursuant to Section 3.6 of the Participation Agreement in an aggregate principal amount at any one time not to exceed amount set forth opposite Lessor's name on Schedule I to the Participation Agreement.

"Commitment Fee Payment Date" means each Quarterly Payment Date and the Maturity Date or such earlier date as the Commitments shall terminate as provided in the Operative Documents.

"Commitment Fee Rate" means at any time the rate per annum set forth opposite the then applicable rating category for the senior unsecured long-term debt of AMAT (such rate changing from time to time on the date of each change in the rating for the unsecured long-term debt of AMAT):

RATING CATEGORY -----	APPLICABLE COMMITMENT FEE RATE -----
A or higher by S&P A2 or higher by Moody's	0.115%
A- by S&P A3 by Moody's	0.125%
BBB+ by S&P	

Baa1 by Moody's	0.150%
BBB by S&P Baa2 by Moody's	0.175%
BBB- by S&P Baa3 by Moody's	0.215%
lower than BBB- by S&P lower than Baa3 by Moody's	0.325%

If the ratings established or deemed established by Moody's and S&P shall fall in different categories, the higher rating category and, therefore, the lower applicable Commitment Fee Rate shall apply. If neither Moody's nor S&P shall have in effect a rating for such debt, then the highest Commitment Fee Rate shall apply. Notwithstanding the foregoing, for any day during an Interest Period, after the full collateralization of the outstanding principal amount of the Tranche A Eurodollar Notes as set forth in the definition of "Tranche A Applicable Margin", with respect to that portion of the aggregate Available Eurodollar Lender Commitment available to Fund Tranche A Eurodollar Loans which, on such day, is collateralized with Treasury Securities pursuant to the Pledge Agreement, the applicable Commitment Fee Rate for such day shall be 0.05%. For purposes of the foregoing sentence, the "portion of the aggregate Available Eurodollar Lender Commitment and the Available Lessor Commitment which Lessee has collateralized with Treasury Securities" shall be deemed to equal 95% of such Participant's Commitment Percentage of the Value (as defined in the Custodial Agreement) of Securities Collateral (as defined in the Custodial Agreement) pledged by Lessee pursuant to the Pledge Agreement as of the applicable Commitment Fee Payment Date.

"Commitment Fees" is defined in Section 4.7 of the Participation Agreement.

"Commitment Percentage" means, (i) as to any Eurodollar Lender at any time, the percentage which such Eurodollar Lender's Commitment then constitutes of the Aggregate Commitment Amount and (ii) as to Lessor at any time, the percentage which Lessor's Commitment then constitutes of the Aggregate Commitment Amount.

"Commitment Period" means the period from and including the Document Closing Date to but not including the Maturity Date or such earlier date on which the Commitments shall terminate as provided in the Operative Documents.

"Completion" means, with respect to a Construction Site, such time as the conditions set forth in Article 7 of the Participation Agreement are satisfied.

"Condemnation" means any condemnation, requisition, confiscation, seizure or other taking or sale of the use, access, occupancy, easement rights or title to any Site or Unit of Equipment or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain, including an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, any Site or alter the pedestrian or vehicular traffic flow to any Site so as to result in change in access to such Site, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action. A "Condemnation" shall be deemed to have occurred on the earliest of the dates that use, occupancy or title is taken.

"Consent to Assignment" is defined in Appendix 2 to the Participation Agreement and is substantially in the form of Exhibit M to the Participation Agreement.

"Consent to Construction Agency Agreement Assignment" is defined in Appendix 2 to the Participation Agreement.

"Consolidated Group" means, as to any Participant, all other Persons (whether now existing or hereafter acquired), the accounts of which, in accordance with GAAP, shall be consolidated with those of such Participant, in its consolidated financial statements if such statements were prepared as of such date.

"Consolidated Subsidiary" means, as of any date, any Subsidiary or other entity the accounts of which would, in accordance with GAAP, be consolidated with those of Lessee in its consolidated financial statements if such statements were prepared as of such date.

"Construction Advance" is defined in Section 3.3 of the Participation Agreement.

"Construction Agency Agreement" means the Construction Agency Agreement between Lessor and Construction Agent, substantially in the form of Exhibit B to the Participation Agreement.

"Construction Agency Agreement Assignment" is defined in Appendix 2 to the Participation Agreement and is substantially in the form of Exhibit N to the Participation Agreement.

"Construction Agency Agreement Supplement" means a supplement to the Construction Agency Agreement executed by the Construction Agent and Lessor on each Site Acquisition Date.

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

"Construction Agent" means Lessee, as construction agent under the Construction Agency Agreement.

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

"Construction Completion Date" means, with respect to a Construction Site, the date on which Completion for the Facility on such Site has occurred.

"Construction Cost" means with respect to any Construction Site the amount Advanced under the Participation Agreement to construct any Facility to be used on such Site in accordance with the Plans and Specifications therefor and the Operative Documents, as set forth in each applicable Advance Request therefor (including Capitalized Interest and Capitalized Yield).

"Construction Cost Funding Date" means any Business Day on which Investment Amounts and Loans with respect to Construction Advances are funded pursuant to the Participation Agreement and the Loan Agreement.

"Construction Documents" is defined in Section 2.6 of the Construction Agency Agreement.

"Construction Period" means, with respect to a Construction Site, the period commencing on the Construction Commencement Date for such Site and ending on the earlier of (i) the Completion Date and (ii) the Outside Completion Date, or the Extended Completion Date, as the case may be, for such Site.

"Construction Period Site" means, at any date of determination, any Construction Site as to which a Construction Period has commenced, and not ended, on or prior to such date.

"Construction Site" means land (which may be purchased by Lessor with Advances Funded by Participants or acquired by Lessor's receipt of a leasehold interest from Lessee pursuant to a Ground Lease) as to which a Construction Advance will be required to construct or renovate a Facility pursuant to the Construction Agency Agreement.

"Continuation Date" is defined at Section 2.5(c) of the Loan Agreement.

"Continuation Notice" is defined at Section 2.5(c) of the Loan Agreement.

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

"CP Administrative Agent" means Credit Suisse First Boston, acting through its New York Branch, as administrative agent for CP Lender.

"CP Lender" means Greenwich Funding Corporation.

"CP Loan" means a Loan made by CP Lender.

"CP Rate" means, with respect to Commercial Paper, the rate equivalent to the per annum rate (or if more than one rate, the weighted average of the rates) at which Commercial Paper was sold during the applicable Interest Period (which rate shall include Administrative Fees and Dealer Fees); provided, however, that if the rate (or rates) as agreed between any such placement agent or dealer and CP Lender is a discount rate (or rates), the rate for such Interest Period shall be the rate (or if more than one rate, the weighted average of the rates) resulting from CP Lender's converting such discount rate (or rates) to an interest-bearing equivalent rate per annum.

"CP Rate Period" means, with respect to any CP Loan, subject to the limitations set forth in Section 3.10(d) of the Participation Agreement, the period (not to exceed 180 days) specified in the Advance Request or Continuation Notice; provided that if no period is specified in the Advance Request or Continuation Notice, the "CP Rate Period" shall be the number of days set forth at the last paragraph of Section 2.5(c) of the Loan Agreement.

"Credit Agreement" means the \$240,000,000 Credit Agreement dated September 8, 1994, and amended by Amendment No. 1 dated as of February 12, 1996, as further amended and restated as of April 4, 1997, among AMAT, the Banks party thereto and Morgan Guaranty Trust Company of New York, as Agent, as such agreement is amended, modified, restated, replaced or refinanced from time to time, including any similar successor agreement or agreements or arrangement or arrangements providing for revolving or working capital indebtedness, whether or not secured; provided that if at any time there shall exist no such arrangement or agreement, the term "Credit Agreement" shall be deemed to refer to the last such agreement(s) or arrangement(s) to have been in effect, exclusive of any modification to the terms of such agreements or arrangements that were made in contemplation of the termination of such facility.

"CSL" is defined in Section 8.2 of the Participation Agreement.

"Custodial Agreement" means the Custodial Agreement dated as of April 30, 1997, among Lessee, Custodian and Agent, substantially in the form of Exhibit Q to the Participation Agreement.

"Custodian" means Mellon Bank, N.A., as custodian under the Custodial Agreement.

"Dealer Fees" means the fees described in paragraph 6 of the Fee and Yield Letter.

"Deed" is defined in Section 6.2(g) of the Participation Agreement and is substantially in the form of Exhibit T to such agreement.

"Deemed Yield" means, for any Interest Period during the Special Period, an amount equal to (i) the product of the Yield Rate for such Interest Period and (ii) \$10,000.

"Developed Site" means Land and the Facilities thereon and as to which no Construction Advances will be required under the Operative Documents.

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

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

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

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

(x) relating to pollution (or the cleanup, removal, remediation or encapsulation thereof, or any other response thereto), or the regulation or protection of human health,



safety or the environment, including air, water, vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life, or

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

in each case as amended and as now or hereafter in effect, and any common law or equitable doctrine (including injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries (whether personal or property) or damages due to or threatened as a result of the presence of, exposure to, or ingestion of, any Hazardous Substance, whether such common law or equitable doctrine is now or hereafter recognized or developed. Applicable Laws and Regulations include, but are not limited to, CERCLA; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321; the Refuse Act, 33 U.S.C. Section 401 et seq.; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. Section 1801-1812; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and the Occupational Safety and Health Act of 1970, each as amended and as now or hereafter in effect, and their state and local counterparts or equivalents, including any regulations promulgated thereunder.

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

"Equipment" means equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever purchased, leased or otherwise acquired by Lessor using the proceeds of the Loans or Investment Amounts in connection with an Equipment Advance.

"Equipment Acquisition Date" means each date occurring in an Equipment Pool Period on which Lessor acquires any Unit of Equipment pursuant to Article 3 of the Participation Agreement.

"Equipment Advance" is defined in Section 3.4 of the Participation Agreement.

"Equipment Charges" means freight, installation and applicable sales or use or similar taxes imposed on any Unit of Equipment.

"Equipment Cost" means, with respect to any Unit of Equipment, the amount advanced on each Equipment Acquisition Date to acquire a Unit of Equipment.

"Equipment Fixed Rent" means for any Quarterly Payment Date the sum of the amounts of Equipment Fixed Rent set forth on Schedule II to the Equipment Lease Supplements.

"Equipment Group" means Units of Equipment which (i) have an aggregate Equipment Purchase Price of not less than \$500,000; (ii) are comprised of the type of Equipment described in items (i) or (ii) of the definition of Qualified Equipment; and (iii) are set forth on Schedule I to an Equipment Lease Supplement.

"Equipment Group Balance" means with respect to an Equipment Group an amount equal to the outstanding principal amount of the Loans and Investment Amounts Funded for the acquisition of the Units of Equipment in such Equipment Group.

"Equipment Invoice Cost" means with respect to any Unit of Equipment the aggregate cost of such Unit of Equipment (exclusive of Equipment Charges) reflected on the invoice therefor delivered to Lessor pursuant to Section 3.4 of the Participation Agreement.

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

"Equipment Notes" means the Tranche A Eurodollar Equipment Note, the Tranche A CP Equipment Note, the Tranche B Eurodollar Equipment Note, and the Tranche B CP Equipment Note.

"Equipment Pool" means the Units of Equipment for which Equipment Advances therefor occur during the same Equipment Pool Period.

"Equipment Pool Expiration Date" is defined in Section 2.5(b) of the Lease.

"Equipment Pool Period" means the period commencing on an Equipment Pool Period Commencement Date and ending on the day preceding the second anniversary of such Equipment Pool Period Commencement Date.

"Equipment Pool Period Commencement Date" means (i) for any Equipment Advance prior to the second anniversary of the Document Closing Date, the Document Closing Date, and (ii) for any Equipment Advance thereafter, the last biennial anniversary of the Document Closing Date immediately preceding the date of such Equipment Advance.

"Equipment Pool Remarketing Option" is defined in Section 22.2 of the Lease.

"Equipment Purchase Price" means for a Unit of Equipment the Equipment Invoice Cost.

"Equipment Remarketing Period" means, with respect to any Equipment Pool, the period commencing on the date 180 days prior to the Equipment Pool Expiration Date relating to such Equipment Pool and ending on such Equipment Pool Expiration Date.

"Equipment Renewal Effective Date" means, with respect to any Equipment Pool, the date on which the Equipment Renewal Term for such Equipment Pool becomes effective pursuant to Section 21.2 of the Lease.

"Equipment Renewal Option" is defined in Section 21.2 of the Lease Agreement.

"Equipment Renewal Request" is defined in Section 21.2 of the Lease.

"Equipment Renewal Term" means, for any Equipment Pool, the one-year period which immediately follows the Original Equipment Pool Expiration Date for such Equipment Pool and with respect to which the conditions for the Equipment Renewal Option set forth at Section 21.2 of the Lease have been satisfied.

"Equipment Rent" means the Equipment Fixed Rent and the Equipment Variable Rent.

"Equipment Term" is defined in Section 2.5(b) of the Lease.

"Equipment Variable Rent" means an amount payable on each Payment Date during the Term equal to the aggregate amount of interest payable on such Payment Date on the Equipment Notes and Yield payable on such Payment Date on Investment Amounts.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means each entity required to be aggregated with Lessee pursuant to the requirements of Section 414(b) or (c) of the Code.

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

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

"Eurodollar Lender Rate" means the sum of the Eurodollar Rate plus the Applicable Margin or, if required by Section 11.5 of the Participation Agreement, the Base Rate.

"Eurodollar Lenders" means the several banks from time to time party to the Loan Agreement as Eurodollar Lenders.

"Eurodollar Loan" means a Loan made by a Eurodollar Lender which may accrue interest at either the Eurodollar Rate or the Base Rate.

"Eurodollar Office" shall mean initially, the funding office of Agent designated as such in Schedule III to the Participation Agreement; and thereafter, such other office of Agent designated from time to time by notice from Agent to Lessee and the Participants, whether or not outside the United States, which shall be making or maintaining loans with reference to Eurodollar Loans.

"Eurodollar Rate" shall mean, with respect to any applicable Interest Period, the average (rounded upward, if necessary, to the next higher 1/16 of 1%) of the respective rates per annum at which deposits in dollars are offered to the Eurodollar Reference Bank in the London interbank market at approximately 11:00 a.m. (London time) two Business Days before the first day of such Interest Period in an amount approximately equal to the principal amount of the Eurodollar Loan of the Eurodollar Reference Bank to which such Interest Period is to apply and for a period of time comparable to such Interest Period. Notwithstanding the foregoing, for any day during an Interest Period, with respect to the portion of the outstanding principal amount of the Tranche A Eurodollar Notes which, on such day, are collateralized with Cash Collateral pursuant to the Pledge Agreement (which portion shall

be deemed to equal the dollar amount of such Cash Collateral on deposit on such day pursuant to the Pledge Agreement), the Eurodollar Rate for such day shall be zero with respect to the pro rata portion of each Eurodollar Lender's Tranche A Eurodollar Notes that have been so collateralized, except to the extent that any amount which constitutes interest, yield or earnings on such Cash Collateral is recovered in or through legal proceedings by any Person claiming by or through Lessee from a Eurodollar Lender or Depository (as defined in the Pledge Agreement), in which case the foregoing provision reducing the Eurodollar Rate to zero shall be deemed to have no effect, and the Eurodollar Rate determined in accordance with the preceding sentence shall be reinstated, to the extent of the amounts so recovered.

"Eurodollar Reference Bank" shall mean Credit Suisse First Boston.

"Excepted Payments" means:

(a) all indemnity payments (including indemnity and gross up payments made pursuant to Article 11 of the Participation Agreement) to which Agent or any Participant or any of their respective Affiliates, agents, officers, directors or employees is entitled;

(b) any amounts (other than Basic Rent or amounts payable by Lessee pursuant to Section 16.2 or Articles XVII, XX or XXII of the Lease) payable pursuant to the terms of any Operative Document to reimburse Agent or any Participant or any of their respective Affiliates (including the reasonable out-of-pocket expenses of Agent and any Participant incurred in connection with any such payment) for performing or complying with any of the obligations of Lessee under and as permitted by any Operative Document;

(c) any amount payable to any Participant by any transferee permitted under the Operative Documents of the interest of such Participant as the purchase price of such Participant's interest in the Notes or Investment Amount (or a portion thereof);

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

(e) any insurance proceeds under policies maintained by any Participant;

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

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

"Excess Gross Proceeds" means, as of any Applicable Expiration Date and only as to Sites and Equipment Pools for which the Remarketing Option was exercised and for which sales were completed prior to such Applicable Expiration Date, the aggregate of the amounts, if any, by which the Gross Proceeds for each such Site and Equipment Group received by Agent pursuant to Article XXII of the Lease exceeded the related Site Balance or Equipment Group Balance, respectively, for each such Site or Equipment Group to the extent such excess (x) was not previously applied against Prior Shortfalls and (y) was paid by Agent to Lessee pursuant to Article XXII of the Lease.

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

"Existing Sites" means the sites currently owned by BNP and leased to Lessee commonly referred to as the Central Park Property and the Garrett Drive Property.

"Existing Sites Purchase Price" means the sum of (a) the payout amount payable to BNP on the initial Advance Date to purchase the Existing Sites (which amount shall be paid by Agent to BNP on the initial Advance Date) plus (b) the difference between (x) \$64,950,000 and (y) the sum of the amount set forth in clause (a) above plus the Transaction Expenses Funded on the initial Advance Date. The Transaction Expenses Funded on the initial Advance Date not directly attributable to a Site together with the amount determined in clause (b) of the preceding sentence (which amount shall be paid by Agent to Lessee on the initial Advance Date) will be allocated pro rata between the Central Park Property and the Garrett Drive Property based on the portion of the payout amount referred to in clause (a) above attributable to each Existing Site.

"Expiration Date Purchase Obligation" means, with respect to any Site or Equipment Pool, Lessee's obligation, pursuant to Section 20.2 of the Lease, to purchase (i) such Site on the related Site Expiration Date and (ii) all (but not less than all) of the Equipment that constitutes such Equipment Pool on the related Equipment Pool Expiration Date.

"Extended Completion Date" means, with respect to a Construction Site for which construction has been properly delayed pursuant to Section 2.8 of the Construction Agency Agreement, the earlier of (a) six (6) months after the end of the Capital Expenditure Moratorium Period and (b) the Site Expiration Date.

"Extension Effective Date" is defined in Section 2.2(e) of the Loan Agreement.

"Extension Request" is defined in Section 2.2(e) of the Loan Agreement.

"Extension Response Date" is defined in Section 2.2(e) of the Loan Agreement.

"Facility" means all buildings, structures, Fixtures, and other Improvements (but excluding Units of Equipment) of every kind existing at any time and from time to time (including those purchased or constructed with amounts advanced by the Participants pursuant to the Participation Agreement) on the Land relating to a Site, together with any and all appurtenances to such buildings, structures or Improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways, and including all Modifications and other additions to or changes in the Improvements at any time.

"Fair Market Value" means, with respect to any Site, Unit of Equipment or Equipment Group, as applicable, the amount, which in any event shall not be less than zero, that would be paid in cash in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, for the ownership of such Leased Property. The Fair Market Value of any Leased Property shall be determined based on the assumption that, except for purposes of Section 11.9 of the Participation Agreement, such Leased Property is in the condition and state of repair required under Section 10.1 of the Lease and Lessee is in compliance with the other requirements of the Operative Documents.

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

"Fee and Yield Letter" means that certain letter agreement dated as of April 30, 1997 from Agent and Borrower to Lessee, as consented and agreed to by Lessee.

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

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

"Fund," "Funded" or "Funding" means the funding by Lessor and Lenders on any Advance Date of Investment Amounts and Loans, in the amounts in order to fund Lessor's or Lenders' portion of each Advance.

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

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

"Garrett Drive Property" means the two-story office building located at 3535 Garrett Drive, Santa Clara, California.

"Governmental Action" means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Applicable Laws and Regulations, and shall include, without limitation, all environmental and operating permits and licenses that are required for the use, occupancy, zoning and operation of any Site or Unit of Equipment.



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

"Gross Proceeds" means the gross proceeds from the sale of a Site (or portion thereof) or an Equipment Group pursuant to Article XX of the Lease or a sale of a Site or an Equipment Pool pursuant to Article XXII of the Lease, without deduction for any marketing, closing or other costs, prorations or commissions.

"Ground Lease" means a ground lease between Lessee and Lessor substantially in the form of Exhibit U to the Participation Agreement.

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

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

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

"Highest Lawful Rate" is defined in Section 4.5(b) of the Participation Agreement.

"Improvements" means all buildings, fixtures and improvements located on the Land from time to time, including but not limited to mechanical, electrical, HVAC and other building

systems attached to any buildings or improvements presently existing or to be constructed on the Land.

"Improvements Balance" means, with respect to any Site that constitutes a 25% Property, the product obtained by multiplying the Site Balance as of any date of determination by the Improvements Percentage.

"Improvements Percentage" means, with respect to any Site that constitutes a 25% Property, the percentage of the Fair Market Value of such Site (on an "as built" basis in the case of a Construction Site) attributable to the Facility related thereto, as specified in the Appraisal delivered on the related Site Advance Date pursuant to Section 6.2(a)(ii) of the Participation Agreement.

"Improvements Proceeds" means, with respect to any Site that constitutes a 25% Property, the product obtained by multiplying the Gross Proceeds by the Improvements Percentage.

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

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

"Interest Component" means, with respect to any Interest Period applicable to Commercial Paper:

(A) without duplication of the amount set forth in the immediately following clause (B), the sum of the daily interest accrued on the Commercial Paper outstanding on each day during such Interest Period equal, for any such day, to the product of (x) the outstanding principal amount of such Commercial Paper on such day, (y) the CP Rate on such day, and (z)  $1/360$ ; plus

(B) if any Commercial Paper has been issued during such Interest Period to fund the interest component on any other Commercial Paper maturing on a day other than such day, the sum of the daily interest accrued on such additional Commercial Paper outstanding on each day during such Interest Period equal, for any such day, to the product of (x) the outstanding principal amount of

such additional Commercial Paper, (y) the CP Rate on such day, and (z) 1/360.

"Interest Payment Loan" means any Loan made to fund the payment of Capitalized Interest with respect to a Construction Period Site.

"Interest Period" means (x) with respect to any Eurodollar Loan and Investment Amount for which Lessee requests a Base Rate, each Base Rate Period; (y) with respect to any Eurodollar Loan and Investment Amount for which Lessee requests a Eurodollar Rate, initially the period commencing on (and including) the Advance Date on which such amount is Advanced or a Continuation Date and ending on (but excluding) the next succeeding Quarterly Payment Date, and thereafter each period commencing on (and including) a Quarterly Payment Date and ending on (but excluding) the next succeeding Quarterly Payment Date and (z) with respect to any CP Note and any Investment Amount for which the related CP Loan accrues interest at the CP Rate, each CP Rate Period.

"Investment" or "Investment Amount" is defined in Section 3.6 of the Participation Agreement.

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

"Land" means either a fee title to or ground lease interest in the parcel of real property described on Schedule 1 of any Site Lease Supplement and all Appurtenant Rights attached thereto.

"Land Balance" means, with respect to any Site that constitutes a 25% Property, the product obtained by multiplying the Site Balance as of any date of determination by the Land Percentage.

"Land Percentage" means, with respect to any Site that constitutes a 25% Property, the percentage of the Fair Market Value of such Site (on an "as built" basis in the case of a Construction Site) attributable to the Land related thereto, as specified in the Appraisal delivered on the related Site Advance Date pursuant to Section 6.2(a)(ii) of the Participation Agreement.

"Land Proceeds" means, with respect to any Site that constitutes a 25% Property, the product obtained by multiplying the Gross Proceeds by the Land Percentage.

"Lease" or "Lease Agreement" means the Master Lease between Lessor and Lessee, together with any Lease Supplements thereto,

as the Lease may be amended or modified from time to time as permitted by the Operative Documents, substantially in the form of Exhibit A to the Participation Agreement.

"Lease Balance" means, as of any date of determination, an amount equal to the aggregate sum of the outstanding principal amount of the Loans and the outstanding Investment Amounts.

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

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

"Lease Expiration Date" means the last Site Expiration Date or Equipment Pool Expiration Date.

"Lease Supplement" means each Site Lease Supplement and Equipment Lease Supplement.

"Leased Property" means all Equipment and Sites.

"Lenders" means CP Lender and Eurodollar Lenders.

"Lessee" means Applied Materials, Inc., as lessee under the Lease, and its successors and assigns expressly permitted under the Operative Documents.

"Lessor" means Credit Suisse Leasing 92A, L.P., as Lessor under the Lease, and its successors and assigns expressly permitted under the Operative Documents.

"Lessor Lien" means any Lien, true lease or sublease or disposition of title arising as a result of (a) any claim against Lessor or the Bank not resulting from the transactions contemplated by the Operative Documents, (b) any act or omission of Lessor or the Bank which is not required by the Operative Documents or is in violation of any of the terms of the Operative Documents, (c) any claim against Lessor or Bank, with respect to Taxes or Transaction Expenses against which Lessee is not required to indemnify Lessor or the Bank, in its individual capacity, pursuant to Article 11 of the Participation Agreement or (d) any claim against Lessor arising out of any transfer by Lessor of all or any portion of the interest of Lessor in the Leased Properties or the Operative Documents other than the transfer of title to or possession of any Leased Properties by Lessor pursuant to and in accordance with the Lease, the Loan Agreement or the Participation Agreement or pursuant to the exercise of the remedies set forth in Article XVII of the Lease.

"Lien" means any mortgage, deed of trust, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including any irrevocable license, conditional sale or other title retention agreement, any lease in the nature thereof, or any other right of or arrangement with any creditor to have its claim satisfied out of any specified property or asset with the proceeds therefrom prior to the satisfaction of the claims of the general creditors of the owner thereof, whether or not filed or recorded, or the filing of, or agreement to execute as "debtor", any financing or continuation statement under the Uniform Commercial Code of any jurisdiction or any federal, state or local lien imposed pursuant to any Environmental Law.

"Loan" means a Tranche A Loan or a Tranche B Loan.

"Loan Agreement" means the Loan Agreement among Borrower, Agent and the Lenders, substantially in the form of Exhibit G to the Participation Agreement.

"Loan Agreement Default" means any event, act or condition which with notice or lapse of time, or both, would constitute a Loan Event of Default.

"Loan Event of Default" is defined in Section 6.1 of the Loan Agreement.

"Loan Documents" means the Loan Agreement, the Notes and the Security Documents.

"Loan Year" means a period of time from the Document Closing Date or any anniversary of the Document Closing Date to the immediately succeeding anniversary of the Document Closing Date.

"Loss Determination Notice" is defined in Section 16.1 of the Lease.

"Loss Notice" is defined in Section 15.1(f) of the Lease.

"Loss Settlement Date" is defined in Section 15.1(f)(i) of the Lease.

"Major Construction Document" is defined in Section 2.6 of the Construction Agency Agreement.

"Material Adverse Effect" means any change or changes, event or events, omission or omissions, effect or effects or condition or conditions that individually or in the aggregate are or are likely to be materially adverse to (i) the business, properties, financial condition or results of operation of Lessee and its Consolidated Subsidiaries, taken as a whole that would materially adversely affect the ability of Lessee to perform its obligations

set forth in the Operative Documents, (ii) the transactions contemplated by the Operative Documents, (iii) Lessor's title to or Lessor's or Agent's Lien on any Site, Equipment Group or the Collateral (except as expressly permitted by the Operative Documents), (iv) the ownership, use, operation, disposition, utility or Fair Market Value of any Site or Equipment Group or (v) the validity or enforceability of any of the Operative Documents or any rights or remedies under any thereof.

"Material Plan" means at any time a Plan or Plans having aggregate Unfunded Liabilities in excess of \$100,000,000.

"Maturity Date" means the fifth anniversary of the Document Closing Date, as such date may be extended from time to time pursuant to Section 2.1(e) of the Loan Agreement, in the case of CP Loans, and 2.2(e) of the Loan Agreement, in the case of Eurodollar Loans.

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

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means, with respect to any Site, a Mortgage and Security Agreement substantially in the form attached as Exhibit I to the Participation Agreement or a Deed of Trust and Security Agreement substantially in the form attached as Exhibit J to the Participation Agreement, in each case made by Lessor and Lessee (to the extent of its interest, if any, in the Leased Properties) in favor of Agent for the benefit of the Participants and satisfactory in form and substance to Agent and the Required Lenders in order to create a first priority mortgage lien on such Site.

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

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

"Non-Consenting Eurodollar Lender" is defined in Section 2.2(e)(C) of the Loan Agreement.

"Note Guarantee" means the Note Guarantee dated April 30, 1997 by Lessee in favor of the Indemnitees, substantially in the form of Exhibit F to the Participation Agreement.

"Notes" means the collective reference to the Tranche A Notes and the Tranche B Notes.

"Operative Documents" means the following:

- (a) the Participation Agreement;
- (b) the Loan Agreement;
- (c) the Capital Asset Purchase Agreement;
- (d) the Notes;
- (e) the Lease (including each Lease Supplement);
- (f) each of the Security Documents;
- (g) Deeds and Contracts of Sale for each Site;
- (h) Ground Leases;
- (i) Bills of Sale;
- (j) the Construction Agency Agreement and each Construction Agency Agreement Supplement;
- (k) the Note Guarantee;
- (l) the Unsecured Environmental Indemnities; and
- (m) the Fee and Yield Letter.

"Original Equipment Pool Expiration Date" means, with respect to any Equipment Pool, the third anniversary of the related Equipment Pool Period Commencement Date.

"Original Site Expiration Date" is defined in Section 2.5(a) of the Lease.

"Original Estimated Construction Costs" means, with respect to any Construction Site as of the related Site Acquisition Date (or as of any date of a redetermination thereof pursuant to Section 3.15 of the Participation Agreement), an amount equal to the aggregate amount which the Construction Agent in good faith expects to be expended in order to achieve Completion of construction on a Construction Site (including amounts expected to be expended to pay interest accruing on Loans and Yield accruing on Investment Amounts Funded with respect to any Construction Advance prior to completion).

"Original Executed Counterpart" is defined in Section 32.8 of the Lease Agreement.

"Outside Completion Date" means, with respect to a Construction Site, the earlier of (a)(i) for a building intended for a general office or research and development or manufacturing facility, the date which is twenty four (24) months after the Construction Commencement Date, or such later date approved by Required Participants on or before the Site Acquisition Date, but

no longer than thirty six (36) months after the Construction Commencement Date; (ii) for a demonstration and testing facility or laboratory, thirty (30) months after the Construction Commencement Date, or such later date approved by Required Participants on or before the Site Acquisition Date; provided, that each such completion date may be extended by up to an additional three (3) months due to the occurrence of a Force Majeure Event, (b) the applicable Site Expiration Date.

"Overall Transaction" means all the transactions and activities referred to in or contemplated by the Operative Documents.

"Overdue Rate" means the lesser of (a) the highest interest rate permitted by Applicable Laws and Regulations and (b) an interest rate per annum equal to, in the case of the Notes, the rate of interest otherwise payable with respect thereto plus 2%, and, in the case of the Investment, the Yield Rate plus 2%.

"Ownership Interest" is defined in the Capital Asset Purchase Agreement.

"Ownership Interest Conversion Date" is defined in Section 2.5(d) of the Loan Agreement.

"Part" is defined in Section 11.2 of the Lease.

"Participant Balance" means, for any Lender or Lessor as of any date of determination, an amount equal to the sum of the aggregate outstanding principal amount of all Loans of such Lender or the aggregate Investment Amounts of Lessor.

"Participants" means collectively Lenders and Lessor, and "Participant" means any one of the foregoing.

"Participation Agreement" means the Participation Agreement dated as of April 30, 1997 among Lessee, Construction Agent, Lessor, Agent and the Lenders.

"Payment Date" means (i) with respect to each payment of Equipment Fixed Rent, each Quarterly Payment Date, and (ii) with respect to each payment of Equipment Variable Rent or Site Rent, either the last day of any Interest Period (including each Refinancing Date) or if prepaid, the date of such prepayment.

"Payment Default" shall mean a Lease Event of Default described in Sections 17.1(a) or 17.1(b) of the Lease.

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



"Permitted Contest" shall mean actions taken by a Person to contest in good faith, by appropriate proceedings initiated timely and diligently prosecuted, the legality, validity or applicability to the Leased Property or any interest therein of any Person of: (a) any law, regulation, rule, judgment, order, or other legal provision or judicial or administrative requirements; (b) any term or condition of, or any revocation or amendment of, or other proceeding relating to, any authorization or other consent, approval or other action by any Governmental Authority; or (c) any Lien or Tax; provided that the initiation and prosecution of such contest would not: (i) result in, or materially increase the risk of, the imposition of any criminal liability on any Indemnitee, such determination to be made in the sole and reasonable judgment of such Indemnitee; (ii) materially and adversely affect the security interests created by the Operative Documents or the right, title or interest of Agent or Lessor in or to the Leased Property or the right of Lessor, Agent or any Participant to receive payment of the principal of or interest on any Note, Investment Amount of or Yield, Rent, the Lease Balance or any interest therein; or (iii) materially and adversely affect the fair market value, utility or remaining useful life of the Leased Property or any interest therein or the continued economic operation thereof; and provided further that in any event adequate reserves in accordance with GAAP are maintained against any adverse determination of such contest.

"Permitted Exceptions" means, with respect to a Site, all encumbrances, exceptions, restrictions, easements, rights of way, servitudes, encroachments and irregularities in title, other than Liens approved of by Agent prior to the applicable Site Advance Date and which are set forth in the Title Policy or commitment for such Site to be delivered pursuant to and conforming with the requirements of Section 6.2(d) of the Participation Agreement.

"Permitted Hazardous Substances" means with respect to a Site, only such quantities of Hazardous Substances, if any, that are: (i) reasonably necessary for the conduct of any Permitted Use at such Site and (ii) groundwater contaminants originating from a source and which have concentration levels not to exceed those described in the Environmental Audit for the Site described in Section 6.2(f) of the Participation Agreement (except for periodic and temporary increases in such concentration levels that do not, in any event, result in an Environmental Violation with respect to Lessee, Lessor or the Site); provided, however, that with respect to both clauses (i) and (ii) of this definition, the existence, holding and use of all such Hazardous Substances shall (x) in all events be and remain in compliance with all Applicable Laws and Regulations and (y) not constitute or become a Significant Event or constitute or result in a Material Adverse Effect; provided further, that upon transfer of a Site pursuant to Article XXII of the Lease, Permitted Hazardous

Substances shall include only those described in clause (ii) above.

"Permitted Liens" means:

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

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

(iii) Liens for Taxes that either are not yet due or are being contested in accordance with the provisions of Section 13.1 of the Lease or Section 11.2(b) of the Participation Agreement, as applicable;

(iv) Liens arising by operation of law, materialmen's, mechanics', workers', repairmen's, employees', carriers', warehousemen's and other like Liens relating to the construction of the Improvements or in connection with any Modifications or arising in the ordinary course of business for amounts that either are not more than 60 days past due or are being diligently contested in good faith by appropriate proceedings, so long as such proceedings satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 13.1 of the Lease;

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

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

(vii) Permitted Exceptions;

(viii) easements, rights of way and other encumbrances on title to real property pursuant to Section 12.2 of the Lease; and

(ix) Lessor Liens.

"Permitted Use" means with respect to any Site, (i) general office, (ii) distribution facility for storage and shipping of equipment and parts for the semiconductor and electronics industry, (iii) assembly (using parts manufactured elsewhere), repair, and testing of machinery and equipment for the semiconductor and electronics industry, or (iv) demonstration and testing facility or laboratory for machinery and equipment assembled by Lessee (using parts manufactured by Lessee at other locations) for the semiconductor and electronics industry.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, governmental authority or any other entity.

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

"Plans and Specifications" means, with respect to a Construction Site, the plans and specifications for the Facility to be constructed thereon and which are provided to the Appraiser to prepare the Appraisal required in Section 6.2(a)(ii) of the Participation Agreement.

"Pledge Agreement" means the Security and Pledge Agreement, dated as of April 30, 1997, between Lessee and Agent, substantially in the form of Exhibit P to the Participation Agreement.

"Pledge Collateral" is defined in Section 2.1 of the Pledge Agreement.

"Prior Shortfalls" means, as of any Applicable Expiration Date and only as to Sites and Equipment Pools for which the Remarketing Option was exercised and for which sales were completed prior to such Applicable Expiration Date, the aggregate of the amounts, if any, by which the Site Balance or Equipment Group Balance, respectively, for each such Site and Equipment

Pool exceeded the sum of Gross Proceeds and AMAT Recourse Amount required to be paid by Lessee to Agent in connection with each such respective sale pursuant to Article XXII of the Lease less Gross Proceeds and Excess Gross Proceeds applied to reduce such Prior Shortfalls pursuant to Article XXII of the Lease.

"Property Balance" means either a Site Balance or an Equipment Group Balance, as applicable.

"Property Costs" means (i) the Site Acquisition Cost, in the case of a Developed Site, (ii) the Site Acquisition Cost and the Original Estimated Property Cost, as revised from time to time, in the case of a Construction Site and (iii) the Equipment Purchase Price, in the case of any Unit of Equipment.

"Purchase Commitments" is defined in paragraph 3 of the Preliminary Statements to the Capital Asset Purchase Agreement.

"Purchaser" and "Purchasers" means each of the Banks which are Eurodollar Lenders in their role as "Purchasers" under the Capital Asset Purchase Agreement.

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

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

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

"Qualified Equipment" means Equipment to be purchased pursuant to a Advance Request and which is either office equipment, computers, network equipment, memory storage devices or peripherals (such as printers, scanners, mice, copy equipment, microphones, video phones and video cameras) together with any software incorporated in any of the foregoing or upgrades, additions and modifications to Equipment previously Funded.

"Quarterly Payment Date" means the last Business Day of each January, April, July and October of each year.

"Refinancing Advance" is defined in Section 3.5 of the Participation Agreement.

"Refinancing Date" means the last day of any Interest Period that is not the Maturity Date.

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

"Remaining Estimated Construction Costs" means, with respect to any Construction Site, the amount estimated by Lessee to complete the Facilities in accordance with the Plans and Specifications.

"Remarketing Notice" is defined in Section 22.3(a) of the Lease.

"Remarketing Option" means an Equipment Pool Remarketing Option or a Site Remarketing Option, as applicable.

"Remarketing Period" means the Equipment Remarketing Period or the Site Remarketing Period, as applicable.

"Removable Part" is defined in Section 11.2 of the Lease Agreement.

"Renewal Term" means the Equipment Renewal Term or the Site Renewal Term, as the case may be.

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

"Replaced Part" is defined in Section 15.1(h) of the Lease.

"Replaced Unit" is defined in Section 15.1(j) of the Lease.

"Replacement Lender" is defined in Section 2.2(e)(ii) of the Loan Agreement.

"Replacement Lessor" is defined in Section 10.3(b) of the Participation Agreement.

"Replacement Part" is defined in Section 15.1(h) of the Lease.

"Replacement Unit" is defined in Section 15.1(j) of the Lease.

"Requesting Party" is defined in Section 27.1 of the Lease.

"Required Equipment Alteration" is defined in Section 11.2 of the Lease Agreement.

"Required Lenders" means, at any time, Eurodollar Lenders having Commitment Percentages which aggregate at least 51% of the Aggregate Commitments of all Eurodollar Lenders.

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

"Required Participants" means, at any time, Lessor and/or such Eurodollar Lenders having Commitment Percentages which aggregate at least 51% of the Aggregate Commitments.

"Required Percentage Amount" means (a) an amount equal to the lesser of (i) 25% of the sum of (A) the greatest aggregate principal amount of Loans relating to the Sites outstanding at any time on or after the Document Closing Date, plus (B) the greatest aggregate Investment Amounts relating to the Sites outstanding at any time on or after the Document Closing Date or (ii) \$25,000,000, and (b) in the case of a purchase of an Equipment Group pursuant to Section 20.1(a) of the Lease, an amount equal to 75% of the greatest aggregate Equipment Group Balances of the Equipment Groups constituting the related Equipment Pool outstanding at any time on or after the Document Closing Date.

"Responsible Employee" means any employee of AMAT involved in, or responsible for, the administration of the construction of the Lease Properties and the other transactions contemplated by the Operative Documents.

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

"Responsible Officer" of any Person shall mean the Chairman or Vice Chairman of the Board of Directors, the Chairman or Vice Chairman of the Executive Committee of the Board of Directors, the President, any Senior Vice President or Executive Vice President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Secretary, any Assistant Treasurer or comptroller.

"S&P" means Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc.

"SEC" means Securities and Exchange Commission.

"Secured Obligations" is defined in Section 2.2 of the Security Agreement.

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

"Security Agreement" means the Security Agreement, dated as of April 30, 1997, among Lessee, Lessor and Agent substantially in the form of Exhibit R to the Participation Agreement.

"Security Documents" means the collective reference to the Security Agreement, the Pledge Agreement, the Custodial Agreement, the Mortgages, the Assignment of Lease and the Construction Agency Agreement Assignment and all other security documents hereafter delivered to Agent granting a Lien on any asset or assets of any Person to secure the obligations and liabilities of Lessor under the Loan Agreement and/or under any of the other Loan Documents and each of the consents executed by Lessee in connection herewith.

"SFAS No.13" means Statement of Financial Accounting Standards No. 13 issued by Financial Accounting Standards Board, as amended from time to time.

"Significant Casualty" means a Casualty that in the reasonable, good faith judgment of Lessee (as evidenced by a Responsible Employee's Certificate delivered to Lessor pursuant to Section 16.1 of the Lease) either (a) renders a Site or entire Equipment Group unsuitable for continued use as commercial property or equipment of the type of such Site or Equipment Group immediately prior to such casualty or (b) is so substantial in nature that restoration of such a Site or entire Equipment Group to substantially its condition as existed immediately prior to such Casualty would be impracticable or impossible.

"Significant Condemnation" means (i) a Condemnation that involves a taking of Lessor's entire title to the Land relating to a Site, or (ii) a Condemnation that in the reasonable, good faith judgment of Lessee (as evidenced by an Responsible Employee's Certificate delivered to Lessor pursuant to Section 16.1 of the Lease) either (a) renders the related Site unsuitable for continued use as commercial property of the type of such Site immediately prior to such Condemnation or (b) is such that restoration of such Site to substantially its condition as existed immediately prior to such Condemnation would be impracticable or impossible.

"Significant Event" means (i) a Significant Casualty, (ii) a Significant Condemnation, (iii) an Environmental Violation with respect to a Site which in the reasonable, good faith judgment of the Construction Agent or Lessee, as the case may be, (and with respect to Lessee as evidenced by a Responsible Employee's Certificate delivered to Lessor within the time period specified in Section 15.2 of the Lease) will cost in excess of \$5,000,000 to remediate, (iv) if Lessee fails to provide a Loss Determination Notice in accordance with the Lease, the occurrence of any event, the effect of which with respect to any Site, Lessor or the Required Lenders, in their respective reasonable good faith judgment, believes will cost in excess of \$5,000,000 to remediate or would otherwise constitute a Significant Casualty or Significant Condemnation, (v) a Condemnation, Casualty or

Force Majeure Event with respect to a Construction Site which in the reasonable, good faith judgment of the Construction Agent (as evidenced by a Responsible Employee's Certificate delivered to Lessor within fifteen (15) Business Days of such event pursuant to Section 16.1 of the Lease) is so substantial in nature that achieving Completion of the Facility on such Construction Site on or prior to the applicable Outside Completion Date would be impracticable or impossible, (vi) an event where the restoration of any Site subject to a Casualty or Condemnation shall not be completed prior to the earlier of (x) the 180th day prior to the Lease Expiration Date or (y) (A) eighteen (18) months following the occurrence of such Casualty or Condemnation or (B) if such Casualty or Condemnation occurs during the Construction Period, the Outside Completion Date, or (vii) a Total Loss.

"Site" means any of the Existing Sites, Construction Sites and Developed Sites.

"Site Acquisition Cost" means, with respect to any Site, the amount advanced on each Site Acquisition Date to acquire a Site as set forth in the Advance Request.

"Site Acquisition Date" means each date on which Lessor acquires a Site pursuant to Section 3.1 or 3.2 of the Participation Agreement.

"Site Advance" is defined in Section 3.2 of the Participation Agreement.

"Site Balance" means with respect to a Site an amount equal to the outstanding principal amount of the Loans and Investment Amounts related to such Site.

"Site Expiration Date" is defined in Section 2.5(a) of the Lease.

"Site Lease Supplement" means any of the Site Lease Supplements (California) and the Site Lease Supplements (Other States) and "Site Lease Supplements" means collectively both such supplements.

"Site Lease Supplement (California)" means a Site Lease Supplement substantially in the form of Exhibit A-1 to the Lease together with all attachments and schedules thereto, as such Site Lease Supplement may be supplemented, amended or modified from time to time.

"Site Lease Supplement (Other States)" means a Site Lease Supplement substantially in the form of Exhibit A-2 to the Lease together with all attachments and schedules thereto, as such Site



Lease Supplement may be supplemented, amended or modified from time to time.

"Site Notes" means the Tranche A Eurodollar Site Note, the Tranche A CP Site Note, the Tranche B Eurodollar Site Note and the Tranche B CP Site Note.

"Site Remarketing Option" with respect to a Site is defined in Section 22.1 of the Lease.

"Site Remarketing Period" means, with respect to a Site, the period commencing on the date 180 days prior to the Site Expiration Date for such Site and ending on such Site Expiration Date.

"Site Renewal Effective Date" means, with respect to a Site, the date on which the Site Renewal Term becomes effective pursuant to Section 21.1 of the Lease.

"Site Renewal Option" with respect to a Site is defined in Section 21.1 of the Lease Agreement.

"Site Renewal Request" with respect to a Site is defined in Section 21.1 of the Lease.

"Site Renewal Term" means, with respect to any Site, the 5-year period which immediately follows the fifth anniversary of the Site Acquisition Date for such Site with respect to which the conditions for the Site Renewal Option set forth at Section 21.1 of the Lease have been satisfied.

"Site Rent" means an amount payable on each Payment Date during the Term equal to the aggregate amount of interest payable on such Payment Date on the Site Notes and Yield payable on such Payment Date on the Investment Amounts which have been funded for Site Advances.

"Site Term" with respect to a Site is defined in Section 2.5(a) of the Lease.

"Special Period" means the period commencing on (and including) the Special Prepayment Date (on which date Borrower prepays \$10,000 of the outstanding Tranche B CP Loans pursuant to clause second of Section 5.2 of the Loan Agreement) and ending on (but excluding) the first day on or after the first anniversary of the Special Prepayment Date on which CP Lender may issue Commercial Paper so that it may make the Tranche B CP Loan in accordance with Section 2.1(f) of the Loan Agreement.

"Special Prepayment Anniversary Date" means the last day of the Special Period.

"Special Prepayment Date" means the first day after the third anniversary of the Document Closing Date on which Commercial Paper shall mature.

"Subject Property" is defined in Section 22.3 of the Lease.

"Subordinated Mortgage" means, with respect to each Site, a subordinated mortgage, substantially in the form of Exhibit CC to the Participation Agreement (modified as required by the Applicable Laws and Regulations of the State in which such Site is located), together with all attachments and schedules thereto, as such Subordinated Mortgage may be supplemented, amended or modified from time to time.

"Subordinated Security Agreement" means, with respect to the Equipment, a subordinated security agreement substantially in the form of Exhibit DD to the Participation Agreement, together with all attachments and schedules thereto, as such Subordinated Security Agreement may be supplemented, amended or modified from time to time.

"Subsidiary" of any Person means any corporation, partnership, joint venture, trust or estate of which (or in which) more than 50% of:

(a) the outstanding capital stock having Voting Power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have Voting Power upon the occurrence of any contingency),

(b) the interest in the capital or profits of such partnership or joint venture, or

(c) the beneficial interest of such trust or estate,

is at the time directly or indirectly owned by such Person, by such Person and one or more of its Subsidiaries or by one or more of such Person's Subsidiaries.

"Supplement to the Assignment of Lease" means each Supplement to the Assignment of Lease to be delivered on a Land Interest Acquisition Date substantially in the form of Exhibit L to the Participation Agreement.

"Supplemental Rent" means all amounts, liabilities, obligations, costs and expenses (other than Basic Rent, interest or principal under the Notes, Yield or Investment) which Lessee assumes or agrees to pay to Lessor or any other Person under the Lease, or under any of the other Operative Documents, including

payments of Ground Rent, payments of AMAT Recourse Amount and payments pursuant to Section 16.2 of the Lease and Articles XX and XXII of the Lease, or, subject to the limitations set forth in clause (v) of Section 5.2(b) of the Participation Agreement, which Borrower is obligated to pay or is liable for under any of the Loan Documents (other than payments which Borrower is obligated to make or for which it is liable on the Special Prepayment Date or the Special Prepayment Anniversary Date).

"Tax Benefit" is defined in Section 11.2(e) of the Participation Agreement.

"Taxes" and "Tax" shall mean any and all fees (including, without limitation, documentation, recording, license and registration fees), taxes (including, without limitation, income (whether net, gross or adjusted gross), gross receipts, sales, rental, use, turnover, value-added, property, excise and stamp taxes, levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon or additions thereto).

"Term" is defined in Section 2.5(c) of the Lease.

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

"Title Insurance Company" means First American Title for title insurance and Santa Clara Land Title for escrow purposes, and their respective successors and assigns.

"Title Policies" shall mean the title policies described in Section 6.2(d) of the Participation Agreement.

"Total Loss" means any Significant Event which results in the Lease Balance to decline below the Required Percentage Amount.

"Tranche A Applicable Margin" means, at any time of determination of the Eurodollar Rate, the rate per annum set forth opposite the then applicable rating category for the senior unsecured long-term debt of AMAT (such rate changing from time to time on the date of each change in the rating for the unsecured long-term debt of AMAT):

RATING CATEGORY -----	Applicable Margin -----
A or higher by S&P A2 or higher by Moody's	0.225%
A- by S&P A3 by Moody's	0.250%

BBB+ by S&P Baa1 by Moody's	0.300%
BBB by S&P Baa2 by Moody's	0.375%
BBB- by S&P Baa3 by Moody's	0.450%
lower than BBB- by S&P lower than Baa3 by Moody's	0.750%

If the ratings established or deemed established by Moody's and S&P shall fall in different categories, the higher rating category and, therefore, the lower Tranche A Applicable Margin shall apply. If neither Moody's nor S&P shall have in effect a rating for such debt, then the highest Tranche A Applicable Margin shall apply. Notwithstanding the foregoing, for any day during an Interest Period, with respect to the portion of the outstanding principal amounts of the Tranche A Eurodollar Notes which, on such day, are collateralized pursuant to the Pledge Agreement or the Custodial Agreement with Treasury Securities or Cash Collateral, the Tranche A Applicable Margin for such day shall be 0.150%. For purposes of the foregoing sentence, the "portion of the outstanding principal amount of the Tranche A Eurodollar Notes which Lessee has collateralized with Treasury Securities" for each Eurodollar Lender shall be deemed to equal 95% of such Eurodollar Lender's Commitment Percentage of the Value (as defined in the Custodial Agreement) of Securities Collateral (as defined in the Custodial Agreement) pledged by Lessee pursuant to the Pledge Agreement as of the applicable Payment Date.

"Tranche A CP Equipment Note" is defined in Section 2.1(c) of the Loan Agreement.

"Tranche A CP Loan" is defined in Section 2.1(b) of the Loan Agreement.

"Tranche A CP Notes" means the Tranche A CP Equipment Note and the Tranche A CP Site Note held by Agent on behalf of CP Lender.

"Tranche A CP Site Note" is defined in Section 2.1(c) of the Loan Agreement.

"Tranche A Equipment Percentage" means eighty-six percent (86%).

"Tranche A Eurodollar Equipment Note" is defined in Section 2.2(c) of the Loan Agreement.

"Tranche A Eurodollar Loan" is defined in Section 2.2(b) of the Loan Agreement.

"Tranche A Eurodollar Notes" means the Tranche A Eurodollar Equipment Note and the Tranche A Eurodollar Site Note held by Agent on behalf of each Eurodollar Lender.

"Tranche A Eurodollar Site Note" is defined in Section 2.2(c) of the Loan Agreement.

"Tranche A Lender" means CP Lender (to the extent it makes Tranche A Loans) and each Eurodollar Lender identified as such on Schedule I to the Participation Agreement.

"Tranche A Loan" means a Tranche A CP Loan or a Tranche A Eurodollar Loan, as applicable.

"Tranche A Notes" means the Tranche A Eurodollar Notes and the Tranche A CP Notes.

"Tranche A Participant Balance" means for each Tranche A Lender as of any date of determination an amount equal to the sum of such Lender's outstanding Tranche A Loans.

"Tranche A Percentage" means the Tranche A Equipment Percentage or the Tranche A Site Percentage, as applicable.

"Tranche A Site Percentage" means eighty-two percent (82%).

"Tranche B Applicable Margin" means, at any time of determination of the Eurodollar Rate, the rate per annum set forth opposite the then applicable rating category for the senior unsecured long-term debt of AMAT (such rate changing from time to time on the date of each change in the rating for the unsecured long-term debt of AMAT):

RATING CATEGORY -----	APPLICABLE MARGIN -----
A or higher by S&P A2 or higher by Moody's	0.325%
A- by S&P A3 by Moody's	0.350%
BBB+ by S&P Baa1 by Moody's	0.400%
BBB by S&P Baa2 by Moody's	0.475%
BBB- by S&P	

Baa3 by Moody's	0.550%
lower than BBB- by S&P	
lower than Baa3 by Moody's	1.000%

If the ratings established or deemed established by Moody's and S&P shall fall in different categories, the higher rating category and, therefore, the lower Tranche B Applicable Margin shall apply. If neither Moody's nor S&P shall have in effect a rating for such debt, then the highest Tranche B Applicable Margin shall apply.

"Tranche B CP Equipment Note" is defined in Section 2.1(c) of the Loan Agreement.

"Tranche B CP Loan" is defined in Section 2.1(b) of the Loan Agreement.

"Tranche B CP Notes" means the Tranche B CP Equipment Note and the Tranche B CP Site Note held by Agent on behalf of CP Lender.

"Tranche B CP Site Note" is defined in Section 2.1(c) of the Loan Agreement.

"Tranche B Equipment Percentage" means eleven percent (11%).

"Tranche B Eurodollar Equipment Note" is defined in Section 2.2(c) of the Loan Agreement.

"Tranche B Eurodollar Loan" is defined in Section 2.2(b) of the Loan Agreement.

"Tranche B Eurodollar Notes" means the Tranche B Eurodollar Equipment Note and the Tranche B Eurodollar Site Note held by Agent on behalf of each Eurodollar Lender.

"Tranche B Eurodollar Site Note" is defined in Section 2.2(c) of the Loan Agreement.

"Tranche B Lender" means CP Lender (to the extent it makes Tranche B Loans) and each Eurodollar Lender identified as such on Schedule I to the Participation Agreement.

"Tranche B Loan" means a Tranche B CP Loan or a Tranche B Eurodollar Loan, as applicable.

"Tranche B Notes" means the Tranche B Eurodollar Notes and the Tranche B CP Notes.

"Tranche B Participant Balance" means for each Tranche B Lender as of any date of determination an amount equal to the sum of such Lender's outstanding Tranche B Loans on such date.

"Tranche B Percentage" means the Tranche B Equipment Percentage or the Tranche B Site Percentage, as applicable.

"Tranche B Site Percentage" means fifteen percent (15%).

"Transaction Expenses" shall mean transaction costs and expenses incurred by Agent and Participants in connection with the consummation of the transactions contemplated by the Operative Documents, and the preparation, negotiation, execution and delivery of the Operative Documents, including (1) the reasonable fees, expenses and disbursements of Mayer, Brown & Platt, special documentation counsel; (2) the reasonable fees and expenses of Kaye, Scholer, Fierman, Hays & Handler, LLP, special counsel to CP Lender; (3) the reasonable fees and expenses of local counsel to Lessor, Agent and Participants; (4) all appraisal fees and reasonable expenses; (5) all recording and filing fees incurred in connection with the filing of the Site Lease Supplements, the Mortgages, all financing statements and any other documents, including fees and expenses of the Title Insurance Company; (6) all costs and expenses of each company engaged to survey the Land or to conduct environmental studies; (7) all fees, costs and expenses of Agent, other than Administrative Fees and Dealer Fees; and (8) the Arrangement Fee.

"Transferee" is defined in Section 10.5(a) of the Participation Agreement.

"25% Property" means a Site as to which the Fair Market Value of the Land equals or exceeds twenty-five percent (25%) of the Property Costs as determined by the appraisal for such Site delivered pursuant to Section 6.2(a)(ii) of the Participation Agreement (it being understood that each Existing Site shall, based on such Existing Site's appraisal, constitute 25% Property).

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

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

"Unit of Equipment" means an item of Equipment listed on Schedule I to an Equipment Lease Supplement.

"Unsecured Environmental Indemnity" means each Hazardous Materials Undertaking and Unsecured Indemnity executed by Lessee in favor of Agent and Participants, substantially in the form of Exhibit K to the Participation Agreement.

"Voting Power" means, with respect to securities issued by any Person, the combined voting power of all securities of such person which are issued and outstanding at the time of determination and which are entitled to vote in the election of directors of such Person, other than securities having such power only by reason of the happening of a contingency.

"Withheld Amount" means, with respect to the portion of any Site sold pursuant to Section 20.1(b) of the Lease, the product of (i) the gain (as determined by Lessee, subject to Agent's reasonable review and approval) realized by Lessee upon the sale of such portion and (ii) the Combined Tax Rate.

"Yield" shall mean, during the Term with respect to each Interest Period, (a) the Yield Rate for such Interest Period multiplied by (b) the aggregate Investment Amounts outstanding.

"Yield Margin" means the margin agreed upon by Credit Suisse Leasing 92A, L.P. and AMAT as stated in the Fee and Yield Letter.

"Yield Rate" shall mean, with respect to any applicable Interest Period, the rate at which Yield shall accrue during such Interest Period on the Investment Amounts, which rate shall be (a) for such period of time as interest on the related Loans is determined on a Eurodollar Rate basis or a CP Rate basis, the sum of the Eurodollar Rate (calculated for the applicable Interest Period) plus the Yield Margin, and (b) for such period of time as interest on the related Loans is determined on a Base Rate basis, the sum of the Base Rate plus the Yield Margin.



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LOAN AGREEMENT

dated as of April 30, 1997

among

CREDIT SUISSE LEASING 92A, L.P.,  
as Borrower,

GREENWICH FUNDING CORPORATION,  
as CP Lender,

THE PERSONS NAMED ON SCHEDULE I HERETO,  
as Eurodollar Lenders

and

CREDIT SUISSE FIRST BOSTON,  
acting through its New York Branch,  
as Agent

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Revolving Commercial Paper,  
Eurodollar Credit and Base Rate Program

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Schedule I - Eurodollar Lenders

Exhibit A-CE -	Form of Tranche A CP Equipment Note
Exhibit A-CS -	Form of Tranche A CP Site Note
Exhibit A-EE -	Form of Tranche A Eurodollar Equipment Note
Exhibit A-ES -	Form of Tranche A Eurodollar Site Note
Exhibit B-CE -	Form of Tranche B CP Equipment Note
Exhibit B-CS -	Form of Tranche B CP Site Note
Exhibit B-EE -	Form of Tranche B Eurodollar Equipment Note
Exhibit B-ES -	Form of Tranche B Eurodollar Site Note

## LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of April 30, 1997, is entered into by and among CREDIT SUISSE LEASING 92A, L.P., as Borrower (the "Borrower"), GREENWICH FUNDING CORPORATION, as CP Lender (the "CP Lender"), the Persons named on Schedule I to this Loan Agreement, as Eurodollar Lenders (the "Eurodollar Lenders"), and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Agent (the "Agent").

The parties hereto hereby agree as follows:

## SECTION 1.

## DEFINITIONS; INTERPRETATION

Unless the context shall otherwise require, capitalized terms used and not defined herein shall have the meanings assigned thereto in Appendix 1 to the Participation Agreement, dated as of April 30, 1997, among Applied Materials, Inc., as Lessee and Construction Agent (the "Lessee"), Borrower, CP Lender, Eurodollar Lenders and Agent (the "Participation Agreement"), for all purposes hereof; and the rules of interpretation set forth in such Appendix 1 shall apply to this Loan Agreement.

## SECTION 2.

## AMOUNT AND TERMS OF LENDERS' COMMITMENTS

## SECTION 2.1 CP Loan Facility.

(a) CP Loan Availability. Subject to the terms and conditions hereof and of the Participation Agreement, CP Lender may, in its sole discretion, issue Commercial Paper and, from the proceeds thereof, make CP Loans to Borrower from time to time on a revolving basis during the Commitment Period for the purpose of enabling Borrower to Fund Site Advances, Construction Advances (including Interest Payment Loans), Equipment Advances or Refinancing Advances, as contemplated in the Participation Agreement. Each such CP Loan shall be equal to the lesser of (i) the aggregate amount of borrowing requested by Borrower to be made on such date as a CP Loan and (ii) the net proceeds of the issuance of Commercial Paper received by CP Lender on such date; provided, however, that notwithstanding any other provision hereof or of the Participation Agreement or the Capital Asset Purchase Agreement and in addition to the limitations set forth in Section 3.10 of the Participation Agreement, CP Lender shall

not make available to Borrower and neither Borrower nor Agent shall request any CP Loan if the amount of the proposed CP Loan exceeds the aggregate Available Eurodollar Lender Commitments; provided further that advancing funds to refinance an outstanding Eurodollar Loan, to the extent used for such purpose, shall not be counted against such Available Eurodollar Lender Commitments. During the Commitment Period, Borrower may borrow from CP Lender, prepay the CP Loans in whole or in part, and reborrow, all in accordance with the terms and conditions hereof and of the Participation Agreement and the Capital Asset Purchase Agreement.

(b) CP Loan Tranches. Each CP Loan funded by CP Lender on an Advance Date shall be deemed to consist of a "Tranche A CP Loan" in an original principal amount equal to the Tranche A Percentage times the principal amount of such CP Loan and a "Tranche B CP Loan" in an original principal amount equal to the Tranche B Percentage times the principal amount of such CP Loan.

(c) Issuance of Notes to CP Lender. On the Document Closing Date, Borrower shall issue to Agent, on behalf of CP Lender, two Site Notes (a "Tranche A CP Site Note" substantially in the form of Exhibit A-CS and a "Tranche B CP Site Note" substantially in the form of Exhibit B-CS). Each such CP Site Note shall be in a maximum principal amount equal to the Tranche A Site Percentage, in the case of the Tranche A CP Site Note, and the Tranche B Site Percentage, in the case of the Tranche B CP Site Note, of the aggregate Participants' Commitments. On the Document Closing Date, Borrower shall issue to Agent, on behalf of CP Lender, two Equipment Notes (a "Tranche A CP Equipment Note" in substantially the form of Exhibit A-CE and a "Tranche B CP Equipment Note" in substantially the form of Exhibit B-CE). Each such CP Equipment Note shall be in a maximum principal amount equal to the Tranche A Equipment Percentage, in the case of the Tranche A CP Equipment Note, and the Tranche B Equipment Percentage, in the case of the Tranche B CP Equipment Note, of \$10,000,000. Each Note issued to Agent, on behalf of CP Lender, shall (i) be dated as of the Document Closing Date, (ii) be stated to mature on the Maturity Date, (iii) provide for the payment of interest in accordance with Section 2.1(d) and (iv) shall include a grid for purposes of recording the information specified in Section 2.4. The CP Site Notes shall provide that no principal amortization shall be required prior to the Maturity Date, except as provided for at Section 2.6(c). Each CP Equipment Note shall provide for ratable payments of principal on each Quarterly Payment Date in the amount equal to the product of (A) the aggregate Equipment Fixed Rent payable by Lessee on such date under the Equipment Lease Supplements and (B) the Tranche A Percentage, in the case of the Tranche A CP Equipment Note, and the Tranche B Percentage, in the case of the Tranche B CP Equipment Note.

(d) Interest Rate and Payment Dates. (i) Each outstanding CP Loan shall bear interest for each day during each Interest Period at the applicable CP Rate.

(ii) If all or a portion of the principal amount of any CP Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the sum of (x) the rate necessary for CP Lender to pay when due the Interest Component on the outstanding Commercial Paper plus (y) the Overdue Rate.

(iii) Interest accruing on each CP Loan shall be payable in arrears on each applicable Payment Date, Refinancing Date, Continuation Date or any other date of prepayment or conversion (on the amount prepaid or converted), and at maturity (whether by acceleration, demand or otherwise), in an amount necessary to repay the Interest Component of all Commercial Paper maturing on such date. Notwithstanding the foregoing, interest accruing pursuant to clause (ii) of this Section 2.1(d) shall be payable from time to time on demand and each prepayment of a CP Loan shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

(e) Extension of Maturity Date. The Maturity Date with respect to the CP Loans shall be deemed to be automatically extended for the same term as any extension of the term of the Purchase Commitments pursuant to the Capital Asset Purchase Agreement and the extension of the Maturity Date with respect to the CP Loans shall become effective as of the date on which the extension of the Purchase Commitments is effective.

(f) Special Prepayment Anniversary Funding. On the Special Prepayment Anniversary Date, CP Lender may, in its sole discretion (i) issue sufficient face amounts of Commercial Paper (taking into account Commercial Paper maturing on such date) so that it will have sufficient funds to loan to Borrower \$10,000 and (ii) loan to Borrower \$10,000 as an additional Funding on the outstanding Tranche B CP Loan; provided that CP Lender shall fund such Tranche B CP Loan only to the extent that it shall have received net proceeds of the issuance of Commercial Paper on such date (after repaying maturing Commercial Paper on such date). In any event, the principal amount of such Tranche B CP Loan, together with the outstanding principal amount of all Tranche A CP Loans and Eurodollar Loans, may not exceed the aggregate Eurodollar Lenders' Commitments.

## SECTION 2.2 Eurodollar Loans and Eurodollar Lender Commitments.

(a) Eurodollar Loan Commitments. (i) Subject to the terms and conditions hereof and of the Participation Agreement and the limitations set forth in clause (v) below and Section 3.10 of the Participation Agreement, each Eurodollar Lender severally agrees to make Eurodollar Loans to Borrower from time to time on a revolving basis during the Commitment Period for the purpose of enabling Borrower to Fund Site Advances, Construction Advances (including Interest Payment Loans), Equipment Advances and Refinancing Advances, as contemplated in the Participation Agreement.

(ii) Subject to the terms and conditions hereof and of the Participation Agreement and the limitations set forth in clause (v) below and in Section 3.10 of the Participation Agreement, each Eurodollar Lender severally agrees, on each Advance Date (including any Refinancing Date) that CP Lender does not make a requested CP Loan to Borrower pursuant to Section 2.1, to make a Eurodollar Loan to Borrower pursuant to Section 2.5(b) in an amount equal to the aggregate amount of borrowing requested by Borrower to be made on such date.

(iii) Subject to the terms and conditions hereof and of the Participation Agreement and the limitations set forth in clause (v) below and in Section 3.10 of the Participation Agreement, each Eurodollar Lender severally agrees, on each Advance Date (including any Refinancing Date) for which CP Loans are requested by Borrower pursuant to Section 2.1 and the proceeds from the issuance by CP Lender of Commercial Paper does not equal the borrowing requested by Borrower, to make a Eurodollar Loan to Borrower pursuant to Section 2.5(b) in an amount equal to the difference between the aggregate amount of borrowing requested by Borrower to be made on such date and the proceeds from the issuance by CP Lender of such Commercial Paper.

(iv) Subject to the terms and conditions hereof and of the Participation Agreement and the limitations set forth in clause (v) below and in Section 3.10 of the Participation Agreement, each Eurodollar Lender severally agrees, that on each Ownership Interest Conversion Date, the Ownership Interest of such Eurodollar Lender shall automatically and without further act be deemed to have been converted to, and shall become, a Eurodollar Loan as provided in Section 2.5(d).

(v) Notwithstanding any other provision hereof and of the Participation Agreement and the Capital Asset Purchase Agreement, each Eurodollar Lender's obligations to Fund Eurodollar Loans is subject to the limitations set forth at Sections 3.8(a) and 3.10 of the Participation Agreement. During

the Commitment Period Borrower may use the Commitments of Eurodollar Lenders by borrowing, prepaying the Eurodollar Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof and of the Participation Agreement. Eurodollar Loans shall be made by each Eurodollar Lender at its Eurodollar Office.

(b) Eurodollar Loan Tranches. Each Eurodollar Loan funded by a Eurodollar Lender on an Advance Date shall be deemed to consist of a "Tranche A Eurodollar Loan" in an original principal amount equal to the Tranche A Percentage times the principal amount of such Eurodollar Loan and a "Tranche B Eurodollar Loan" in an original principal amount equal to the Tranche B Percentage times the principal amount of such Eurodollar Loan.

(c) Issuance of Notes to Eurodollar Lenders. On the Document Closing Date, Borrower shall issue to Agent, on behalf of the Eurodollar Lenders, two Site Notes (a "Tranche A Eurodollar Site Note" substantially in the form of Exhibit A-ES and a "Tranche B Eurodollar Site Note" substantially in the form of Exhibit B-ES). Each such Eurodollar Site Note shall be in a maximum principal amount equal to the Tranche A Site Percentage, in the case of the Tranche A Eurodollar Site Note, and the Tranche B Site Percentage, in the case of the Tranche B Eurodollar Site Note, of aggregate Participants' Commitments. On the Document Closing Date, Borrower shall issue to Agent, on behalf of the Eurodollar Lenders, two Equipment Notes (a "Tranche A Eurodollar Equipment Note" in substantially the form of Exhibit A-EE and a "Tranche B Eurodollar Equipment Note" in substantially the form of Exhibit B-EE). Each such Eurodollar Equipment Note shall be in a maximum principal amount equal to the Tranche A Equipment Percentage, in the case of the Tranche A Eurodollar Equipment Note, and the Tranche B Equipment Percentage, in the case of the Tranche B Eurodollar Equipment Note of \$10,000,000. Each Note issued to Agent, on behalf of the Eurodollar Lenders, shall (i) be dated as of the Document Closing Date, (ii) be stated to mature on the Maturity Date, (iii) provide for the payment of interest in accordance with Section 2.2(d) and (iv) shall include a grid for purposes of recording the information specified in Section 2.4. The Eurodollar Site Notes shall provide that no principal amortization shall be required prior to the Maturity Date, except as provided for at Section 2.6(c). Each Eurodollar Equipment Note shall provide for payments of principal on each Quarterly Payment Date in the amount equal to the product of the aggregate Equipment Fixed Rent payable by Lessee on such date under the Equipment Lease Supplements multiplied by the Tranche A Percentage, in the case of the Tranche A Eurodollar Equipment Note, and the Tranche B Percentage, in the case of the Tranche B Eurodollar Equipment Note.



(d) Interest Rates and Payment Dates. (i) Each outstanding Eurodollar Loan shall bear interest for each day during each Interest Period at a rate per annum equal to either the Eurodollar Lender Rate or the Base Rate, as applicable, determined for such Interest Period.

(ii) If all or a portion of the principal amount of any Eurodollar Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the Overdue Rate.

(iii) Interest accruing on each Eurodollar Loan shall be payable in arrears on each applicable Payment Date, Refinancing Date, Continuation Date or any other date of prepayment or conversion (on the amount prepaid or converted), and at maturity (whether by acceleration, demand or otherwise). Notwithstanding the foregoing, interest accruing pursuant to paragraph (ii) of this Section 2.2(d)(iii) shall be payable from time to time on demand and each prepayment of Eurodollar Loans shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

(e) Extension of Eurodollar Lenders' Commitments. (i) Lessee on behalf of Borrower may, by written request to Agent and each Eurodollar Lender given not earlier than 180 days and not later than 90 days prior to each anniversary of the Document Closing Date, beginning with the first anniversary, and in no event more than once during each Loan Year, request (an "Extension Request") that the Maturity Date be extended to the date that is five years after such anniversary of the Document Closing Date. No later than the date (the "Extension Response Date") which is 45 days after such request has been delivered to Agent and each Eurodollar Lender, each Eurodollar Lender will notify Borrower in writing (with a copy to Agent) whether or not it consents to such Extension Request (which consent may be granted or denied by each Eurodollar Lender in its sole and absolute discretion and may be conditioned on receipt of such financial information or other documentation as may be specified by each Eurodollar Lender), provided that any Eurodollar Lender that fails to so advise Borrower on or prior to the Extension Response Date shall be deemed to have denied such Extension Request. The extension of the Maturity Date contemplated by any Extension Request shall become effective as of the first date (the "Extension Effective Date" with respect to such extension) on or after the Extension Response Date on which all of the following conditions have been satisfied:

(A) on both the date of the Extension Request and the Extension Effective Date, (w) each of the representations

and warranties made by Borrower in or pursuant to the Loan Documents and the Participation Agreement and by Lessee in or pursuant to the Participation Agreement shall be true and correct in all material respects as if made on and as of each such date, except that any such representation or warranty which was expressly made only as of a specified date was true only as of such date, (x) no Loan Default or Loan Event of Default shall have occurred and be continuing, (y) on each of such dates Lessee shall be deemed to have represented and warranted as to the matters set forth in clauses (w) and (x), and (z) on each of such dates Agent shall have received a certificate of Borrower as to the matters relating to Borrower set forth in clauses (w) and (x);

(B) Eurodollar Lenders holding at least 51% of the aggregate Eurodollar Loans outstanding at such time (or, if no Eurodollar Loans are outstanding at such time, Eurodollar Lenders having at least 51% of the aggregate Commitments of all Eurodollar Lenders at such time) shall have consented to such Extension Request in each such Eurodollar Lender's sole and absolute discretion;

(C) provided Lessee has obtained the consent described in subparagraph (B), all Eurodollar Lenders who do not consent to or deny such Extension Request (each a "Non-Consenting Eurodollar Lender") (1) shall have been replaced by Replacement Lenders in accordance with subsection (ii) of this Section 2.2(e) or (2) shall have had their outstanding Eurodollar Loans prepaid and, whether or not they have any Eurodollar Loans outstanding, have their Purchase Commitment under the Capital Asset Purchase Agreement terminated, such prepayment and termination to be made in accordance with subsection (iii) of this Section 2.2(e); and

(D) Excluding the initial Loan Year, Borrower shall have been granted an Extension Effective Date during the Loan Year immediately preceding the Loan Year in which the Extension Request is made.

(ii) For purposes of Section 2.2(e)(i)(C), Borrower shall be permitted to replace any Non-Consenting Eurodollar Lender with a replacement bank or other financial institution (a "Replacement Lender") at any time on or prior to the date which is 180 days after the relevant Extension Response Date; provided that (1) such replacement does not conflict with any Applicable Laws and Regulations, (2) the Replacement Lender shall purchase, at par, all Eurodollar Loans and other amounts owing to such Non-Consenting Eurodollar Lender on or prior to the date of replacement, (3) the Lessee shall be liable to such Non-Consenting Eurodollar Lender under Section 11.6 of the

Participation Agreement if any Eurodollar Loan owing to such Non-Consenting Eurodollar Lender shall be prepaid (or purchased) other than on the last day of the Interest Period relating thereto, (4) the Replacement Lender, if not already a Eurodollar Lender, shall be reasonably satisfactory to the Agent and Lessee, (5) such replacement shall be made in accordance with the provisions of Section 10.4 of the Participation Agreement (provided that Lessee or the relevant Replacement Lender shall be obligated to pay the Transaction Expenses arising in connection therewith), and (6) the Replacement Lender shall have agreed to be subject to all of the terms and conditions of this Loan Agreement (including the extension of the Maturity Date contemplated by the relevant Extension Request), the Participation Agreement and the other Operative Documents and shall have expressly assumed the obligations of such Non-Consenting Eurodollar Lender with respect to such Non-Consenting Eurodollar Lender's pro rata Purchase Commitment under the Capital Asset Purchase Agreement as it relates to outstanding CP Loans. Agent hereby agrees to cooperate with Borrower in Borrower's efforts to arrange one or more Replacement Lenders as contemplated by this Section 2.2(e)(ii).

(iii) For purposes of Section 2.2(e)(i)(C), Lessee may, on behalf of Borrower, repay the outstanding Eurodollar Loans of each Non-Consenting Eurodollar Lender and all other amounts owing under the Operative Documents to such Non-Consenting Eurodollar Lender at any time on or prior to the date which is 180 days after the relevant Extension Response Date; provided that (1) Borrower, to the extent of amounts received from Lessee, shall repay all outstanding principal and accrued and unpaid interest on such Non-Consenting Eurodollar Lender's Eurodollar Loans and all other amounts owing under the Operative Documents to such Non-Consenting Eurodollar Lender on or prior to the date of such repayment, (2) the Lessee shall be liable to such Non-Consenting Eurodollar Lender under Section 11.6 of the Participation Agreement if any Eurodollar Loan owing to such Non-Consenting Eurodollar Lender shall be prepaid other than on the last day of the Interest Period relating thereto, (3) Lessee shall be obligated to pay the Transaction Expenses arising in connection with such repayment, if any, (4) the Commitment of such Non-Consenting Eurodollar Lender shall be terminated on and as of the relevant Extension Response Date, (5) the Aggregate Commitment Amount shall be reduced by the amount of the Commitment of such Non-Consenting Eurodollar Lender and may not be reborrowed after being so repaid (and no remaining Eurodollar Lender shall be obligated to Fund the Commitment of the Non-Consenting Eurodollar Lender) and (6) the obligations of such Non-Consenting Eurodollar Lender (in its capacity as a Purchaser) with respect to such Non-Consenting Eurodollar Lender's (in its capacity as a Purchaser) pro rata Purchase Commitment under the Capital Asset Purchase Agreement as it relates to outstanding CP

Loans shall be terminated on and as of the relevant Extension Response Date, and Borrower shall prepay CP Lender an amount equal to the product of (x) the outstanding principal amount of CP Loans and (y) a fraction, the numerator of which is such Non-Consenting Eurodollar Lender's (in its capacity as a Purchaser) pro rata Purchase Commitment and the denominator of which is the aggregate Purchase Commitment of all Eurodollar Lenders (in their capacity as Purchasers) and Lessee shall be liable to CP Lender for any amount owing under Section 11.6 of the Participation Agreement if such CP Loan is prepaid other than on the last day of any related Interest Period.

(iv) If Borrower is reasonably satisfied as to the matters set forth in Section 2.2(e)(i)(A)(w) (with respect to the truth and correctness of its own representations and warranties) and (x), Borrower shall promptly deliver the certificate described in Section 2.2(e)(i)(A)(z).

(v) The failure of Borrower to satisfy all of the conditions set forth in Section 2.2(e)(i) on or prior to the expiration of the time periods set forth above shall not constitute a breach or default hereunder but rather shall be deemed a revocation of Borrower's Extension Request and Borrower's rights under this Section 2.2(e) shall terminate.

SECTION 2.3 Interest Payment Loans. Subject to satisfaction of the applicable conditions precedent set forth in Section 6.4 of the Participation Agreement, on each date which is three Business Days prior to any Payment Date, with respect to Loans with Interest Periods maturing on such Payment Date, unless either (i) such Loan relates to a Construction Period Site, such Payment Date occurs after the Outside Completion Date and the Construction Completion Date has not occurred prior to such Outside Completion Date, in which case payment of such accrued interest shall be made with funds received from Lessee for such purpose, or (ii) otherwise requested by Borrower at least three Business Days prior to such Payment Date by written notice to Agent (stating that the payment of such accrued interest shall be made with funds received from Lessee for such purpose), Borrower shall be deemed to have requested a borrowing pursuant to Section 2.1 of a CP Loan (if such accrued interest relates to outstanding CP Loans with Interest Periods maturing on such Payment Date) or Section 2.2 of a Eurodollar Loan (if such accrued interest relates to outstanding Eurodollar Loans with Interest Periods maturing on such Payment Date) (an "Interest Payment Loan") in an amount equal to the aggregate amount of accrued Capitalized Interest due and payable on such date with respect to such CP Loans or Eurodollar Loans, as the case may be. The Funding date with respect to any such borrowing shall be the relevant Payment Date and the proceeds of such borrowing shall be deemed to be applied to pay such accrued Capitalized Interest.

On each such Funding date, an Interest Payment Loan shall be automatically deemed made in accordance with such deemed request, and the outstanding principal on the applicable Site Notes shall be increased by an amount equal to such Capitalized Interest.

SECTION 2.4 Notations on Notes. Agent, on behalf of each Lender, is hereby authorized to record on the grid attached to the Tranche A CP Site Note, the Tranche B CP Site Note, the Tranche A Eurodollar Site Note, the Tranche B Eurodollar Site Note, the Tranche A CP Equipment Note, the Tranche B CP Equipment Note, the Tranche A Eurodollar Equipment Note, or Tranche B Eurodollar Equipment Note as applicable, the date and amount of each Funding with respect to such Note, the amount of all Capitalized Interest and Interest Payment Loans, each payment or repayment of principal, the type of interest rate applicable thereto from time to time, the length of each Interest Period with respect thereto (including, in the case of a Eurodollar Note for which the Base Rate may, from time to time, be applicable, the period for which such Base Rate applies), and the interest rate for such Interest Period. Any such recordation shall constitute prima facie evidence of the accuracy of the information so recorded; provided, that the failure to make any such recording or errors in such recordation shall not affect the obligation of Borrower under such instrument.

SECTION 2.5 Procedure for Borrowing, Continuation or Ownership Interest Conversion.

(a) Advance Request. Subject to the terms, conditions and limitations set forth in the Participation Agreement and this Loan Agreement, Borrower shall borrow from CP Lender or from the Eurodollar Lenders pursuant to their Commitments on each Advance Date upon receipt by Agent from Lessee (either as Lessee or in its capacity as Construction Agent) of an Advance Request in accordance with Section 3.13 of the Participation Agreement.

(b) Notice to CP Lender or Eurodollar Lender. Agent shall notify either CP Lender, if Lessee shall have specified a CP Loan Funding in its Advance Request, or Eurodollar Lenders, if Lessee shall have specified a Eurodollar Loan Funding in its Advance Request, of Agent's receipt of such Advance Request on the date of such receipt. Based on such notice, on the Funding date either (i) CP Lender, if a CP Loan is specified, may make the amount of the borrowing available for the account of Borrower or (ii) each Eurodollar Lender, if a Eurodollar Loan is specified, will make the amount of its pro rata share of the borrowing available to Agent for the account of Borrower, in either case, at the office of Agent referred to in Section 3.10(c) of the Participation Agreement prior to 1:00 p.m., New York time, on the specified Advance Date in funds immediately available to Agent. If a CP Loan is specified in the

Advance Request and CP Lender elects not to make such CP Loan or does not make the full amount of the borrowing available, then such Advance Request shall be deemed to have specified a Eurodollar Loan Funding for the amount of borrowing not made by CP Lender, and, provided that Agent notifies each Eurodollar Lender prior to 2:00 p.m., New York time, on the specified Advance Date (otherwise on the next succeeding Business Day following such notice to the Eurodollar Lenders), each Eurodollar Lender will Fund the amount of its pro rata share of the borrowing not Funded by CP Lender in accordance with clause (ii) of this Section 2.5(b); provided that until Lessee specifies an interest rate based on the Eurodollar Rate in accordance with Section 2.5(c), the interest rate on such Eurodollar Loan shall be based on the Base Rate. The proceeds of all such Loans will be made available to Borrower by Agent by crediting the account of Borrower on the books of Agent, or such other account of Borrower as shall have been designated by Borrower to Agent, with the aggregate of the amounts made available by CP Lender and/or the Eurodollar Lenders, as the case may be, in like funds as received by Agent.

(c) Continuation of Outstanding Loans. Subject to the terms and conditions hereof and of the Participation Agreement, with respect to each outstanding Loan, (x) if on the third Business Day prior to the maturity of any Interest Period Agent shall not have received an Advance Request for a Refinancing Advance pursuant to Section 2.5(a), Borrower shall, or (y) on any Business Day from time to time during any Base Rate Period, Borrower may, give Agent irrevocable written notice (a "Continuation Notice") not later than 1:00 p.m., New York time, specifying the following:

(i) the last day of the maturing Interest Period, which, in the case of clause (y) above, shall be the day three Business Days after the date of delivery of the Continuation Notice (the "Continuation Date");

(ii) if the maturing Interest Period relates to a CP Loan, the length of the next succeeding Interest Period or Interest Periods and the principal amount relating to each such Interest Period; provided, however, that Borrower may not select Interest Periods such that more than five Payment Dates would fall due in any calendar month; and

(iii) if the maturing Interest Period relates to a Eurodollar Loan, whether a Eurodollar Rate or a Base Rate will be applicable to the next succeeding Interest Period.

In the absence of delivery of an Advance Request or a Continuation Notice at least three Business Days before the last day of the maturing Interest Period, (x) with respect to CP

Loans, such portion of the outstanding CP Loan as to which such expiring Interest Period relates shall, on the Continuation Date, continue as a CP Loan with a CP Rate Period of 30 days (except if the interest rate (on a per annum basis) on the Commercial Paper would exceed 24%, in which case such CP Loan shall automatically convert to a Eurodollar Loan with an interest rate based on the Base Rate until such time as the Eurodollar Rate is specified in accordance with clause (y) of the preceding sentence of this Section 2.5(c)), and (y) with respect to Eurodollar Loans, such portion of the outstanding Eurodollar Loan as to which such expiring Interest Period relates shall, on the Continuation Date, continue as a Eurodollar Loan with an interest rate of the same type as applied to the expiring Interest Period.

(d) Conversion of Ownership Interest. If, pursuant to the Capital Asset Purchase Agreement, the Eurodollar Lenders (in their capacity as Purchasers) are required to purchase Ownership Interests, then, on the date of the purchase of such Ownership Interest (the "Ownership Interest Conversion Date") Lessee automatically and without further act shall be deemed to have given an Advance Request requesting a borrowing of Eurodollar Loans, and each Eurodollar Lender automatically and without further act shall be deemed to have funded on the Ownership Interest Conversion Date Eurodollar Loans with an interest rate equal to the Eurodollar Rate, subject to Section 2.5(e), and the CP Loan in which such Eurodollar Lender acquires an Ownership Interest shall thereupon be converted to and be deemed a Eurodollar Loan.

(e) Conversion into Base Rate Upon Loan Event of Default. If a Loan Event of Default occurs and is continuing, then (i) each CP Loan shall, on the last day of the applicable Interest Period, convert to a Eurodollar Loan with an interest rate based on the Base Rate, (ii) with respect to each Eurodollar Loan with an interest rate based on the Eurodollar Rate, such interest rate shall, on the last day of the applicable Interest Period, convert to the Base Rate and (iii) the obligation of the Lenders to make, or to convert Loans into, CP Loans or Eurodollar Loans with interest based on the Eurodollar Rate shall be suspended; provided, however, that the interest rate of any Eurodollar Loan with an interest rate based on the Eurodollar Rate shall be converted to the Base Rate immediately upon the Loans (or any of them) being declared to be due and payable, or becoming payable, pursuant to Section 6.

(f) Fundings by Agent. Unless Agent shall have been notified in writing by any Eurodollar Lender prior to a borrowing that such Eurodollar Lender will not make its share of such borrowing available to Agent, Agent may assume that such Eurodollar Lender is making such amount available to Agent, and Agent may, in reliance upon such assumption, make available to

Borrower a corresponding amount. If such amount is not made available to Agent by the required time on the Funding date therefor, such Eurodollar Lender shall pay to Agent, on demand, such amount with interest thereon at a rate equal to the daily average Federal Funds Effective Rate for the period until such Eurodollar Lender makes such amount immediately available to Agent. A certificate of Agent submitted to any Eurodollar Lender with respect to any amounts owing under this Section 2.5(f) shall be conclusive in the absence of manifest error. If such Eurodollar Lender's share of such borrowing is not made available to Agent by such Eurodollar Lender within three Business Days of such Funding date, Agent shall also be entitled to recover such amount with interest thereon at the Base Rate, on demand, from Borrower.

#### SECTION 2.6 Prepayments.

(a) Scheduled Repayments. Borrower shall, on each Quarterly Payment Date, make scheduled repayments of principal to the Lenders in an amount equal to the aggregate Equipment Fixed Rent payable by Lessee on such date under the Equipment Lease Supplements. Agent shall, on the grid of each Note, allocate such scheduled repayments among CP Lender and Eurodollar Lenders, first to the Eurodollar Lenders and then to CP Lender as set forth in Section 5.2, such allocation to be final and conclusive absent manifest error. The amount to be applied to repayment of Eurodollar Loans shall be distributed pro rata among the Eurodollar Lenders based on each Eurodollar Lender's Commitment Percentage.

(b) Voluntary. Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty (subject to Section 11.6 of the Participation Agreement), upon at least four Business Days' written notice to Agent, specifying the date and amount of prepayment and the Site and/or Equipment Group to which such Loans are allocable. Upon receipt of any such notice Agent shall promptly notify either CP Lender, if such prepayment relates to CP Loans, or each Eurodollar Lender, if such prepayment relates to Eurodollar Loans, thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with any amounts payable pursuant to Section 11 (including without limitation Section 11.6) of the Participation Agreement. Notwithstanding the foregoing, if such prepayment relates to the prepayment of Eurodollar Loans with the proceeds of CP Loans or the repayment of CP Loans with Eurodollar Loans then the notice and manner of prepayment shall be carried out pursuant to Section 3.5 of the Participation Agreement and Section 5.6 hereof.

(c) Mandatory. Notwithstanding the foregoing, all applicable amounts payable by Lessee pursuant to Section 16.2 of



the Lease or Articles XX or XXII of the Lease shall be used to prepay the outstanding Loans and shall be applied to the outstanding Loans and the Borrower's Investment Amount in the manner set forth at Section 5.3.

SECTION 2.7 Computation of Interest. (a) All computations of interest (including amounts based on the Overdue Rate) shall be made by Agent pursuant to Section 4.4 of the Participation Agreement, subject to the limitations of Section 4.5 of the Participation Agreement. CP Lender shall as soon as practicable notify Borrower and Agent of each determination of a CP Rate. Agent shall as soon as practicable notify Borrower, Lessee and each Eurodollar Lender of each determination of a Eurodollar Rate. Any change in the interest rate on a Eurodollar Loan resulting from a change in the Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. Agent shall as soon as practicable notify Borrower, Lessee and each Eurodollar Lender of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by Agent or CP Lender in accordance with any provision of this Loan Agreement shall be conclusive and binding on Borrower and, in the case of a Eurodollar Loan, Eurodollar Lenders in the absence of manifest error. Agent shall, at the request of Borrower (which request shall not be made more frequently than once during each fiscal quarter of Lessee), deliver to Borrower a statement showing the quotations used by Agent in determining any interest rate pursuant to subsection (a) of this Section 2.7.

SECTION 2.8 Pro Rata Treatment and Payments. (a) Each borrowing by Borrower from Eurodollar Lenders hereunder shall be made pro rata among Eurodollar Lenders according to the respective Commitment Percentages of each such Eurodollar Lender and shall be allocated as Tranche A Eurodollar Loans and Tranche B Eurodollar Loans as provided for at Section 2.2. Except as otherwise provided in Section 5, each payment (including each prepayment) by Borrower on account of principal of and interest on the (i) Eurodollar Loans shall be made pro rata among Eurodollar Lenders (and their respective Tranche A Eurodollar Loans and Tranche B Eurodollar Loans) according to the respective outstanding principal amounts of the Eurodollar Loans then held by each such Eurodollar Lender, and (ii) CP Loans shall be made pro rata among CP Lender's respective Tranche A CP Loans and Tranche B CP Loans in accordance with the applicable Tranche A Percentage and Tranche B Percentage.

(b) All payments (including prepayments) to be made by Borrower hereunder and under the Notes, whether on account of principal, interest or otherwise, shall be made without setoff or

counterclaim and shall be made prior to 1:00 p.m., New York time, on the due date thereof to Agent, for the account of either CP Lender or Eurodollar Lenders, as the case may be, at Agent's office referred to in Section 13.3 of the Participation Agreement, in Dollars and in immediately available funds. Agent shall distribute such payments to Lenders promptly upon receipt in like funds as received; provided, however, that any payments for the benefit of CP Lender shall be paid to CP Administrative Agent. If any payment hereunder (other than payments on the Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

### SECTION 3.

#### CONDITIONS PRECEDENT

The agreement of each Lender to make the Loan requested to be made by it on any Advance Date is subject to the satisfaction of the conditions precedent thereto set forth in Article 6 of the Participation Agreement.

### SECTION 4.

#### COVENANTS AND LIMITATIONS

SECTION 4.1 Borrower Covenants. So long as the Commitments remain in effect, any Note remains outstanding and unpaid or any other amount is owing to any Lender or Agent hereunder or under the other Operative Documents:

(a) Further Assurances. At any time and from time to time, upon the written request of Agent, Borrower, at its sole expense, will promptly and duly execute and deliver such further instruments and documents and take such further action as Agent or the Required Lenders may reasonably deem necessary for the purpose of obtaining or preserving the full benefits of this Loan Agreement and the other Operative Documents and of the rights and powers herein or therein granted.

(b) Notices. If on any date Borrower shall obtain actual knowledge of the occurrence of a Lease Default or Lease Event of Default, Borrower will give written notice thereof to Agent within two Business Days after such date.

(c) Discharge of Liens. Borrower will not create or permit to exist at any time, and will, at its own expense, promptly take such action as may be necessary to duly discharge, or cause to be discharged, all Lessor Liens attributable to it, provided that Borrower shall not be required to discharge any Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any material danger of impairment of any of the Liens contemplated by the Security Documents or of the sale, forfeiture or loss of, and shall not materially interfere with the disposition of, any of the Leased Property or title thereto or any interest therein or the payment of Rent; provided, further, that a Lessor Lien applicable to a particular Site or Equipment Group shall be discharged by Borrower prior to any transfer or sale of such Site or Equipment Group, and all Lessor Liens shall be discharged by Borrower prior to the Maturity Date.

SECTION 4.2 Non-Recourse Obligations. Each Lender agrees that it and each successor, assign, or participant of any Loan or Note of such Lender will look solely to the amounts received by Agent under the Lease and the proceeds of all other Collateral for payment of any and all amounts due hereunder or under the other Operative Documents. No recourse to or against Borrower (other than in respect of any obligations that may arise solely as a result of Borrower's breach of its obligations under Section 4.1(c) or any misrepresentation or breach of warranty made by Borrower under Section 8.2 of the Participation Agreement) or any employee, officer, director, incorporator, stockholder or agent of Borrower shall be had for the payment of any amount owing by Borrower under this Agreement or the other Operative Documents, or for the payment by Borrower of any fee in respect hereof or any other obligation or claim of or against Borrower arising out of or based upon this Loan Agreement or the other Operative Documents.

#### SECTION 5.

##### DISTRIBUTIONS OF PAYMENTS AND COLLATERAL PROCEEDS

SECTION 5.1 [RESERVED].

SECTION 5.2 Basic Rent. Each payment of Basic Rent (and any payment of interest on overdue installments of Basic Rent) received by Agent shall be distributed by Agent as promptly as

possible (it being understood that any payments of Basic Rent received by Agent on a timely basis and in accordance with the provisions of the Lease shall be distributed on the date received in the funds so received) in the following order of priority:

first, so much of the Basic Rent as shall equal the Equipment Fixed Rent shall be distributed and paid pro rata to the Eurodollar Lenders to reduce the outstanding principal portion of the Eurodollar Equipment Loans;

second, so much of the Basic Rent as shall equal any remaining Equipment Fixed Rent shall be distributed and paid to CP Lender to reduce the outstanding principal portion of the CP Equipment Loans, plus, on the Special Prepayment Date, an additional \$10,000 of Basic Rent shall be distributed to CP Lender, applied against the outstanding principal portion of the Tranche B CP Loans and used to pay maturing Commercial Paper on such date, and shall not be distributed to Borrower as Yield pursuant to clause fifth;

third, so much of the Basic Rent as shall equal the aggregate amount of interest (as well as any interest on (to the extent permitted by Applicable Laws and Regulations) overdue interest) then due on the CP Loans and/or the Eurodollar Loans (but excluding any amounts described in clause fourth below), as the case may be, shall be distributed and paid pro rata to CP Lender and/or the Eurodollar Lenders, as applicable;

fourth, so much of the Basic Rent as shall equal the aggregate amount of the advance made by Credit Suisse First Boston pursuant to Section 2(k) of the Capital Asset Purchase Agreement, together with interest (as well as any interest on (to the extent permitted by Applicable Laws and Regulations) overdue interest) then due to Credit Suisse First Boston as a result of such advance, shall be distributed and paid to Credit Suisse First Boston; and

fifth, the balance, if any, of such Basic Rent payment remaining thereafter shall be distributed to Borrower as a payment of Yield due on the Investment Amount and Deemed Yield (as well as any interest on (to the extent permitted by Applicable Laws and Regulations) overdue Yield and Deemed Yield).

SECTION 5.3 Purchase Payments by Lessee. Any payment received by Agent as a result of:

(a) the purchase of any Site or Equipment Group in connection with Lessee's exercise of its Purchase Option under Section 20.1 of the Lease;

(b) Lessee's compliance with its obligation to purchase a Site or an Equipment Pool in accordance with Section 20.2 of the Lease;

(c) Lessee's purchase of a Site pursuant to the Construction Agency Agreement;

(d) the payment of the Equipment Group Balance in accordance with Section 15.1(f)(i) of the Lease;

(e) the payment of the Property Balance in accordance with Section 16.2(b) of the Lease; or

(f) the Lessee failing to fulfill one or more of the conditions to exercise of the Remarketing Option pursuant to Article XXII of the Lease and Agent's receipt pursuant to Article XXII of the Lease of (i) the Gross Proceeds, if any, from the sale of certain Sites and Equipment Pools, as the case may be, consented to by Agent, the Borrower and the Required Participants and (ii) the remainder of the Property Balance for such Site or Equipment constituting such Equipment Pool from the Lessee,

shall be distributed by Agent as promptly as possible (it being understood that any such payment received by Agent on a timely basis and in accordance with the provisions of the Lease shall be distributed on the date on which such funds are so received) as follows:

(x) in the case of a purchase or payment for all of the Leased Property remaining subject to the Lease, to the Participants pro rata in accordance with, and for application to, their respective Participant Balances; or

(y) in the case of a purchase of or payment relating to one or more Sites, but not of all Leased Property, to the Participants pro rata in the proportion that the unpaid principal amount of the related Site Loan held by each Lender or the Investment Amount funded by Borrower, respectively, in respect of such Site or Sites bears to the sum of (i) the aggregate unpaid principal amount of the Site Loans of all of the Lenders relating to such Site or Sites and (ii) all Investment Amounts funded with respect to such Site or Sites; or

(z) in the case of a purchase of or payment relating to one or more Equipment Groups (including an entire Equipment Pool), but not of all Leased Property, to the Participants pro rata in the proportion that the

unpaid principal amount of the related Equipment Loan held by each Lender or the Investment Amount funded by Borrower, respectively, in respect of such Equipment Group or Equipment Groups bears to the sum of (i) the aggregate unpaid principal amount of the Equipment Loans funded for such Equipment or Equipment Groups by all of the Lenders and (ii) all Investment Amounts funded for such Equipment Group or Equipment Groups.

SECTION 5.4 AMAT Recourse Amounts Payment by Lessee. The payment by Lessee to Agent of the AMAT Recourse Amount relating to a Site or an Equipment Pool plus, in the case of a Site that constitutes a 25% Property, the excess of the Land Balance over the Land Proceeds, in each case in accordance with Article XXII of the Lease upon Lessee's exercise of the Remarketing Option with respect to such Site or such Equipment Pool shall be distributed by Agent as promptly as possible (it being understood that any such payment received by Agent on a timely basis in accordance with the provisions of the Lease shall be distributed on the date on which such funds are so received) in the following order of priority:

first, to the Tranche A Lenders for application to pay the Tranche A Participant Balance relating to such Site or such Equipment Pool of each Tranche A Lender; and

second, to the Tranche B Lenders for application to pay the Tranche B Participant Balance relating to such Site or such Equipment Pool of each Tranche B Lender, and in the case where the amounts so distributed shall be insufficient to pay in full as aforesaid, then pro rata among the Tranche B Lenders without priority of one Tranche B Lender over the other in the proportion that each such Tranche B Lender's Tranche B Participant Balance bears to the aggregate Tranche B Participant Balances of all Tranche B Lenders; and

third, to Borrower for application to Borrower's Participant Balance.

SECTION 5.5 Sales Proceeds and Other Payments from Remarketing of Leased Properties. Any payments received by Agent as Gross Proceeds from the sale of a Site or an Equipment Pool pursuant to Lessee's exercise of the Remarketing Option pursuant to Article XXII of the Lease, together with any payment made by Lessee to the extent of Excess Gross Proceeds pursuant to Sections 21.1(d)(ii), 21.1(e) or 22.2(b) of the Lease or as a result of an appraisal pursuant to Section 22.5 of the Lease or Section 11.9 of the Participation Agreement, shall be distributed by Agent as promptly as possible (it being understood that any such payment received by Agent on a timely basis and in

accordance with the provisions of the Lease shall be distributed on the date received) in the funds so received in the following order of priority:

first, to the Tranche B Lenders for application to pay the Tranche B Participant Balance relating to such Site or such Equipment Pool of each Tranche B Lender, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among the Tranche B Lenders without priority of one Tranche B Lender over the other in the proportion that each Tranche B Lender's Tranche B Participant Balance bears to the aggregate Tranche B Participant Balances of all Tranche B Lenders,

second, to Borrower for application to Borrower's Participant Balance, and

third, the balance, if any, of such Gross Proceeds and payments remaining thereafter to, or as directed by, Lessee.

SECTION 5.6 Other Prepayment Amounts. Any Funding on an Advance Date of CP Loans, the proceeds of which are to be used to repay outstanding Eurodollar Loans or Eurodollar Loans the proceeds of which are to be used to repay CP Loans, as provided for at Section 3.5 of the Participation Agreement shall be distributed by Agent as promptly as possible (it being understood that any such proceeds received by Agent on a timely basis and in accordance with the provisions of the Participation Agreement shall be distributed on the date received in funds so received) as follows:

(i) if such Advance is funded with CP Loans, the proceeds from the CP Loans Funded on such Advance Date shall be paid to the Eurodollar Lenders to pay in full the Participant Balance of each Eurodollar Lender, and

(ii) if such Advance is funded with Eurodollar Loans, the proceeds from the Eurodollar Loans Funded on such Advance Date shall be paid to CP Lender to pay in full the Participant Balance of CP Lender.

SECTION 5.7 Supplemental Rent. All payments of Supplemental Rent received by Agent (excluding any amounts payable pursuant to any other provision of this Section 5) shall be distributed promptly by Agent upon receipt thereof to the Persons entitled thereto pursuant to the Operative Documents.

SECTION 5.8 Excepted Payments. Notwithstanding any other provision of this Loan Agreement or the Security Documents, any Excepted Payment received at any time by Agent shall be

distributed promptly to the Person entitled to receive such Excepted Payment pursuant to the Operative Documents.

SECTION 5.9 Distribution of Payments after Loan Event of Default.

(a) All payments received and amounts realized by Agent after a Loan Event of Default exists, including proceeds from the sale of any of the Collateral (other than Pledge Collateral, the distribution of which is provided in Section 5.14), proceeds of any amounts from any insurer or any Governmental Authority in connection with any Casualty or Condemnation, from Lessee as payment in accordance with the Lease, including any payment received from Lessee pursuant to Section 17 of the Lease, shall, if received by Borrower, be paid to Agent as promptly as possible and shall be distributed by Agent as promptly as possible (it being understood that any such payment received by Agent on a timely basis and in accordance with the provisions of the Operative Documents shall be distributed on the date received in the funds so received) in the following order of priority:

first, so much of such payment or amount as shall be required to reimburse Agent for any tax, expense or other loss incurred by Agent (to the extent not previously reimbursed and to the extent incurred in connection with any duties as Agent) and any unpaid ongoing fees of Agent shall be distributed to Agent for its own account;

second, so much of such payments or amounts as shall be required to reimburse the then existing or prior Participants for payments made by them to Agent pursuant to Section 12.4 of the Participation Agreement (to the extent not previously reimbursed); provided that, with respect to any Participant, such Participant shall not be entitled to reimbursement pursuant to this clause second for payments made by it under Section 12.4 of the Participation Agreement to the extent that the amounts to be reimbursed would constitute a Claim excluded from indemnification pursuant to Section 11.1 of the Participation Agreement;

third, so much of such amount as shall be required to pay in full each Lender's Participant Balance, and in the case that the amount so to be distributed shall be insufficient to pay in full as aforesaid, then, pro rata among Lenders without priority of one Lender over the other in the proportion that each Lender's Participant Balance bears to the aggregate Participant Balances of all of the Lenders;

fourth, so much of such amount or amounts as shall be required to pay in full the Participant Balance of Borrower; and



fifth, the balance, if any, of such payment or amounts remaining thereafter shall be promptly distributed to, or as directed by, the Lessee.

(b) During the occurrence and continuance of a Loan Event of Default, all amounts (other than Excepted Payments and proceeds from the liquidation of Pledge Collateral) received or realized by Agent and otherwise distributable pursuant to Sections 5.2 and 5.3 shall be distributed as provided for in Section 5.9(a) above.

SECTION 5.10 Other Payments. (a) Except as otherwise provided in Sections 5.2, 5.3, 5.9 and paragraph (b) below,

(i) any payment received by Agent for which no provision as to the application thereof is made in the Operative Documents or elsewhere in this Section 5, and

(ii) all payments received and amounts realized by Agent under the Lease or otherwise with respect to the Collateral to the extent received or realized at any time after indefeasible payment in full of the Participant Balances of all of the Lenders and any other amounts due and owing to Lenders or Agent,

shall be distributed forthwith by Agent in the order of priority set forth in Section 5.3 (in the case of any payment described in clause (i) above) or in Section 5.9 hereof (in the case of any payment described in clause (ii) above), except that in the case of any payment described in clause (ii) above, such payment shall be distributed omitting clause third of such Section 5.9; and the balance, if any, (in the case of any payment described in clause (i) or (ii) above) shall be distributed to, or as directed by, the Lessee.

(b) Except as otherwise provided in Sections 5.2 and 5.3 hereof, any payment received by Agent for which provision as to the application thereof is made in an Operative Document but not elsewhere in this Section 5 shall be distributed forthwith by Agent to the Person and for the purpose for which such payment was made in accordance with the terms of such Operative Document.

SECTION 5.11. Casualty and Condemnation Amounts. Any amounts payable to Agent as a result of a Casualty or Condemnation pursuant to Section 15.1 of the Lease (but excluding any amounts payable pursuant to Section 15.1(f)(i) or Section 16.2 of the Lease) shall, if no Lease Event of Default exists, be paid over to Lessee for the rebuilding or restoration of the Leased Property to which such Casualty or Condemnation applied, and any excess proceeds shall be applied pursuant to Section 5.10 of this Loan Agreement. If a Lease Event of Default exists, then

during the continuance of such Lease Event of Default, all such amounts shall be held by Agent as Collateral in the Account and upon exercise of Agent's remedies hereunder shall be distributed pursuant to Section 5.9.

SECTION 5.12 Order of Application. To the extent any payment made to any Participant pursuant to Sections 5.3, 5.4, 5.5, 5.8 or 5.13 is insufficient to pay in full the Participant Balance of such Participant, then each such payment shall first be applied to accrued interest or Yield and then to principal or Investment Amounts, as applicable.

SECTION 5.13 Distribution of Advance for Prepayment of Outstanding Loans. The portion of the proceeds of an Advance funded with a CP Loan received by Agent that is to be used to repay outstanding Eurodollar Loans, as set forth in the related Advance Request, shall be distributed by Agent to Eurodollar Lenders for application to pay in full each such Eurodollar Lenders' Participant Balance.

SECTION 5.14 Proceeds of Pledge Collateral. Any payments received by Agent as proceeds from the sale of the Pledge Collateral shall be distributed by Agent as promptly as possible (it being understood that any such payment received by Agent on a timely basis and in accordance with the provisions of the Pledge Agreement shall be distributed on the date received) in the funds so received in the following order of priority:

first, to the Tranche A Lenders for application to pay in full the Tranche A Participant Balance of each Tranche A Lender, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among the Tranche A Lenders without priority of one Tranche A Lender over the other in the proportion that each Tranche A Lender's Tranche A Participant Balance bears to the aggregate Tranche A Participant Balances of all Tranche A Lenders; and

second, the balance, if any, of such payment of proceeds remaining thereafter shall be promptly distributed to, or as directed by, the Lessee.

## SECTION 6.

### LOAN EVENT OF DEFAULT

SECTION 6.1 Loan Event of Default. Each of the following events shall constitute a "Loan Event of Default" (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with

any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority) and each such Loan Event of Default shall continue so long as, but only as long as, it shall not have been remedied:

(a) the failure by Borrower to make any (i) payment of interest or any repayment pursuant to Section 2.6(a) when due and such failure shall continue unremedied for a period of five (5) days, (ii) any prepayment when due pursuant to Section 2.6(b) or 2.6(c), or (iii) any payment due and payable on the Maturity Date; or

(b) the failure by Borrower in any material respect to timely perform any other covenant or condition herein and such failure shall continue for a period of ninety (90) days after written notice thereof to Borrower and Lessee from Agent; or

(c) any representation or warranty by Borrower in any Operative Document or in any certificate or document delivered thereunder shall have been incorrect in a material respect when made and shall remain material when discovered and if curable shall continue unremedied for a period of 30 days after written notice thereof to Borrower from Agent; or

(d) Borrower shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof, (iii) make a general assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver of itself or the whole or any substantial part of its property, (v) fail to cause the discharge of any custodian, trustee or receiver appointed for Borrower or the whole or a substantial part of its property within ninety (90) days after such appointment, (vi) file a petition or answer seeking or consenting to reorganization under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof, or (vii) take corporate action for the purposes of effectuating any of the foregoing;

(e) insolvency proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof shall be filed against Borrower and not dismissed within ninety (90) days from the date of its filing, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of Borrower, a receiver of Borrower or the whole or a substantial part of its property, and such order or decree shall not be vacated or set aside within sixty (60) days from the date of the entry thereof;

(f) a Lease Event of Default shall occur and be

continuing.

SECTION 6.2 Remedies.

(a) (i) Subject to the provisions of clause (h) of this Section 6.2, upon the occurrence of a Loan Event of Default, (A) if such event is a Loan Event of Default specified in clauses (d) or (e) of Section 6.1 or a Loan Event of Default arising from a Lease Event of Default specified in clause (f) or clause (h) of Section 17.1 of the Lease, automatically the Eurodollar Lenders' Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Loan Agreement and the Notes shall immediately become due and payable, and (B) if such event is any other Loan Event of Default, either or both of the following actions may be taken: (1) with the consent of the Required Lenders, Agent may, or upon the request of the Required Lenders, Agent shall, by notice of default to Borrower, declare the Eurodollar Lenders' Commitments to be terminated forthwith whereupon the Eurodollar Lenders' Commitments shall immediately terminate and (2) with the consent of the Required Lenders, Agent may, or upon the request of the Required Lenders, Agent shall, by notice of default to Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Loan Agreement and the Notes to be due and payable forthwith, whereupon the same shall immediately become due and payable; provided, however, that notwithstanding the existence of any Loan Event of Default, so long as any CP Loan shall be outstanding, no Eurodollar Lender's Commitment to the extent necessary to purchase its pro rata share of the Ownership Interests in such CP Loan under the Capital Asset Purchase Agreement shall terminate. Subject to the limitations set forth in Section 6.2(a)(ii) and Section 6.2(g), upon the occurrence of a Loan Event of Default, Agent shall, upon written instructions of the Required Lenders, exercise any or all remedies available to it under the Loan Documents by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Leased Property or any other property subject to any Lien held by Agent, or for the recovery of judgment for the indebtedness secured thereby (including the Investment Amounts due Lessor) or for the enforcement of any other proper, legal or equitable remedy available under Applicable Laws and Regulations; provided, however, notwithstanding the foregoing, if in accordance with the provisions of this clause (a)(i) Agent undertakes to foreclose (by the power of sale or judicial foreclosure) on the Leased Property or any other property subject to any Lien held by Agent, then, to the extent necessary (and only to the extent necessary)

to outbid any independent third party which may be bidding at such foreclosure sale, Agent shall credit bid for the Leased Property subject to the foreclosure an amount equal to the lesser of (i) the Fair Market Value of such Leased Property, and (ii) the amount secured by the Lien being foreclosed upon.

(ii) Notwithstanding anything stated to the contrary in Section 6.2(a)(i) or in the other Operative Documents, upon the occurrence of a Loan Event of Default specified in clause (b), (c), (d) or (e) of Section 6.1 that does not also constitute a Lease Event of Default, but subject to the proviso set forth below, Agent's sole remedy shall be to exercise its rights under Section 10.3 of the Participation Agreement to direct Borrower to transfer to a Replacement Lessor (as such term is defined in Section 10.3(b) of the Participation Agreement) all of Borrower's right, title, interest and duties and obligations in respect to the Leased Property; provided, however, if

(A) Borrower fails or refuses for any reason whatsoever to cause such transfer to a Replacement Lessor to be consummated within 60 days following Agent's direction to do so, or

(B) as a result of a court order or bankruptcy stay, Agent is prohibited for any reason from requesting Borrower to cause such transfer to a Replacement Lessor,

then the limitations on Agent's remedies set forth in this Section 6.2(a)(ii) shall no longer apply and Agent shall be free to exercise all rights set forth above in Section 6.2(a)(i) without limitation. Except as expressly provided above in this Section 6.2, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

(b) Upon the occurrence of any Loan Event of Default that is also a Lease Event of Default and at any time thereafter so long as any Loan Event of Default shall be continuing, Agent shall, upon the written instructions of the Required Participants, exercise any or all of the rights and powers and pursue any and all of the remedies available to it as the assignee of Borrower's rights under the Lease and the other Operative Documents for the benefit of all of the Participants.

(c) Without limiting the foregoing, upon the occurrence of any Loan Event of Default that is also a Lease Event of Default, Agent shall not, without the consent of Borrower, undertake any actions, suits or proceedings against the Collateral pursuant to Section 6.2(a)(i) above without also independently exercising substantial remedies in respect of the Lease.

(d) Except as expressly provided above, no remedy under this Section 6.2 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy provided under this Section 6.2 or under the other Operative Documents or otherwise available at law or in equity. The exercise by Agent or any Lender of any one or more of such remedies shall not preclude the simultaneous or later exercise of any other remedy or remedies. No express or implied waiver by Agent or any Lender of any Loan Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Loan Event of Default. The failure or delay of Agent or any Lender in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by Agent or any Lender shall not exhaust the same or constitute a waiver of any other right provided herein.

(e) No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(f) Notwithstanding the foregoing provisions of this Section 6.2 or the terms and conditions of the other Operative Documents, unless otherwise agreed to by the Required Lenders, it is agreed among the Participants that until all of the Loans and other amounts due and owing to Lenders have been indefeasibly paid in full, all causes of action and remedies which may be pursued for the benefit of the Participants will be brought only by Agent (or any co-agent permitted by the Operative Documents) at the direction of the Participants which direction shall be given pursuant to this Section 6.2 and Section 13.3 of the Participation Agreement.

(g) Notwithstanding anything to the contrary set forth in this Section 6.2, if there exists a Loan Event of Default and no Lease Event of Default exists, Agent shall not exercise remedies under the Security Documents against Lessee.

(h) Notwithstanding the termination of the Eurodollar Lenders' Commitments and the acceleration of the Loans and other amounts owing under this Loan Agreement in accordance with the provisions of Section 6.2(a), effective upon the transfer by Borrower to a Replacement Lessor of all of Borrower's right, title, interest and duties and obligations in respect to the Leased Property in accordance with the provisions of Section 10.3

of the Participation Agreement, the Eurodollar Lenders' Commitments shall automatically be reinstated and the Loan Event of Default(s) that gave rise to such acceleration shall be deemed cured.

(i) Borrower shall be liable for any and all accrued and unpaid amounts due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other reasonable costs and expenses incurred by Agent or any Lender by reason of the occurrence of any Loan Event of Default or the exercise of remedies with respect thereto.

#### SECTION 7.

##### MISCELLANEOUS

SECTION 7.1 Amendments and Waivers. Neither this Loan Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of Section 13.5 of the Participation Agreement.

SECTION 7.2 Notices. All notices, requests and demands to or upon the respective parties hereto shall be given in accordance with Section 13.3 of the Participation Agreement.

SECTION 7.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

SECTION 7.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Loan Agreement and the Notes and the making of the Loans hereunder.

SECTION 7.5 Successors and Assigns; Assignment. This Loan Agreement shall be binding upon and inure to the benefit of Borrower, Lenders, Agent, all future lenders and their respective successors and assigns, except that Borrower may not assign or transfer any of its rights or obligations under this Loan

Agreement and Lenders may not assign or transfer any of their rights or obligations under this Loan Agreement or their interest in the Notes held by Agent except in compliance with Section 10.4 of the Participation Agreement.

SECTION 7.6 Adjustments. If any Lender (a "Benefitted Lender") shall at any time receive any payment of all or part of its Loans, or interest thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by setoff, pursuant to events or proceedings of the nature referred to in Section 6.1(d) or (e), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Loans, or interest thereon, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Loan, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

SECTION 7.7 Counterparts. This Loan Agreement may be executed by one or more of the parties to this Loan Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Loan Agreement signed by all the parties shall be lodged with Borrower and Agent.

SECTION 7.8 Severability. Any provision of this Loan Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 7.9 Intention. This Loan Agreement and the other Operative Documents represent the agreement of Borrower, Agent and Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by Agent or any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Operative Documents.



SECTION 7.10 GOVERNING LAW. THIS LOAN AGREEMENT AND THE NOTES HAVE BEEN DELIVERED IN NEW YORK AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS LOAN AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE.

SECTION 7.11 Prohibited Proceeding. Each of Borrower, Eurodollar Lenders and Agent hereby agrees that, it shall not institute against, or join any other person in instituting against, CP Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding or other proceedings under any federal or state bankruptcy or similar law, for one year and a day after the latest maturing commercial paper note issued by CP Lender is paid. This Section 7.11 shall survive termination of this Agreement.

SECTION 7.12 Source of Funds. Notwithstanding anything to the contrary contained in this Loan Agreement, any obligations of CP Lender under Section 7.6 shall be payable by CP Lender solely from excess cash flow from CP Lender's operations which is not otherwise required to repay when due commercial paper notes issued by CP Lender.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

CREDIT SUISSE LEASING 92A, L.P., as Borrower

By: CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, its General Partner

By: /s/ CARL WEATHERLEY-WHITE
-----
Name: Carl Weatherley-White
-----
Title: Vice President
-----

By: /s/ MATT MOSER
-----
Name: Matt Moser
-----
Title: Associate
-----

CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Agent

By: /s/ CARL WEATHERLEY-WHITE
-----
Name: Carl Weatherley-White
-----
Title: Vice President
-----

By: /s/ MATT MOSER
-----
Name: Matt Moser
-----
Title: Associate
-----

GREENWICH FUNDING CORPORATION,  
as CP Lender

By: CREDIT SUISSE FIRST BOSTON,  
acting through its New York  
Branch, as Attorney-in-fact

By: /s/ THOMAS MEIER

-----  
Name: Thomas Meier

-----  
Title: Vice President

By: /s/ ALBERTO ZONCA

-----  
Name: Alberto Zonca

-----  
Title: Associate

BANQUE NATIONALE DE PARIS,  
as Eurodollar Lender

By: /s/ RAFAEL C. LUMANLAN  
-----  
Name: Rafael C. Lumanlan  
-----  
Title: Vice President  
-----

By: /s/ CHARLES H. DAY  
-----  
Name: Charles H. Day  
-----  
Title: Assistant Vice President  
-----

CREDIT SUISSE FIRST BOSTON,  
as Eurodollar Lender

By: /s/ CARL WEATHERLEY-WHITE  
-----  
Name: Carl Weatherley-White  
-----  
Title: Vice President  
-----

By: /s/ MATT MOSER  
-----  
Name: Matt Moser  
-----  
Title: Associate  
-----

MELLON BANK, N.A.,  
as Eurodollar Lender

By: /s/ EDWIN H. WIEST  
-----  
Name: Edwin H. Wiest  
-----  
Title: First Vice President  
-----

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LOAN AGREEMENT

UNION BANK OF CALIFORNIA, N.A.,  
as Eurodollar Lender

By: /s/ WANDA HEADRICK  
-----  
Name: Wanda Headrick  
-----  
Title: Vice President  
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LOAN AGREEMENT

SCHEDULE I

Eurodollar Lenders

Banque Nationale de Paris  
Credit Suisse First Boston  
Mellon Bank, N.A.  
Union Bank of California, N.A.



## TRANCHE A CP EQUIPMENT NOTE

U.S. \$8,600,000

April 30, 1997

FOR VALUE RECEIVED, the undersigned, Credit Suisse Leasing 92A, L.P. ("Borrower"), promises to pay, solely from amounts paid under the Lease and the Collateral, to the order of Credit Suisse First Boston, acting through its New York Branch, as Agent ("Agent"), on behalf of Greenwich Funding Corporation ("CP Lender"), the principal sum of Eight Million Six Hundred Thousand United States Dollars (U.S. \$8,600,000) or, if less, the aggregate unpaid amount of all Tranche A CP Loans made by CP Lender to Lessor to Fund Equipment Advances pursuant to the Loan Agreement among CP Lender, Borrower, the financial institutions parties thereto (the "Eurodollar Lenders") and Agent, dated as of April 30, 1997 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each such loan shall mature on the Maturity Date and be payable in accordance with the Loan Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Borrower promises to make payments of principal on each Quarterly Payment Date in the amount equal to the product of (A) the aggregate Equipment Fixed Rent payable by Lessee on such date under the Equipment Lease Supplements and (B) the Tranche A Percentage and (C) a fraction, the numerator of which is the outstanding principal amount of this Tranche A CP Equipment Note and the denominator of which is the aggregate outstanding principal amount of all Notes.

Borrower further promises to make payments of interest on the unpaid principal amount hereof from the date hereof until this Tranche A CP Equipment Note is paid in full, at the rates and the times provided for below and in the Loan Agreement:

(i) Each outstanding CP Loan shall bear interest for each day during each Interest Period at a rate per annum equal to the CP Rate.

(ii) If all or a portion of the principal amount of any CP Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the sum of (x) the rate necessary for CP Lender to pay when due the

Interest Component on the outstanding Commercial Paper plus (y) the Overdue Rate.

(iii) Interest accruing on each CP Loan shall be payable in arrears on each applicable Payment Date, Refinancing Date, Continuation Date or any other date of prepayment, conversion or continuation (on the amount prepaid, converted or continued), and at maturity (whether by acceleration, demand or otherwise), in an amount necessary to repay the Interest Component of all Commercial Paper maturing on such date. Notwithstanding the foregoing, interest accruing pursuant to clause (ii) above shall be payable from time to time on demand and each prepayment of a CP Loan shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid together with any breakage costs as contemplated by the Loan Agreement and the other Operative Documents.

As provided in the Loan Agreement, this Tranche A CP Equipment Note is required to be prepaid and may be accelerated under certain circumstances.

All payments hereunder shall be made at the payment office of Agent (and for the account of CP Lender as provided for in the Loan Agreement), or as Agent, on behalf of CP Lender, shall otherwise direct in writing, in lawful money of the United States of America and in immediately available funds, without setoff, counterclaim, withholding or deduction of any kind whatsoever.

The loans made pursuant to the Loan Agreement, the maturity thereof and the interest rate applicable thereto, and all payments on account of principal thereof, shall be recorded by Agent in its records. The entries in the records of Agent shall be prima facie evidence of amounts outstanding hereunder.

Borrower hereby waives presentment, demand, notice, protest and all other demands or notices in connection with the delivery, acceptance, performance, default or enforcement of this Tranche A CP Equipment Note. No course of action or delay or omission of Agent or CP Lender in exercising any right or remedy hereunder shall constitute or be deemed to be a waiver of any right or remedy hereunder, and a waiver on one occasion shall not operate as a bar to or a waiver of any such right or remedy on any further occasion.

Borrower agrees to pay on demand all out-of-pocket costs and expenses, including reasonable attorneys' costs and fees, incurred or paid by Agent or CP Lender in connection with the enforcement of this Tranche A CP Equipment Note.

The obligations of Borrower under this Tranche A CP Equipment Note and the other Operative Documents (other than any

obligations that may arise solely as a result of Borrower's breach of its obligations under Section 10.2 of the Participation Agreement or any misrepresentation or breach of warranty made by Borrower under Section 8.3 of the Participation Agreement) shall be satisfied solely from amounts received by Agent under the Lease and from proceeds of the Collateral. No recourse to or against Borrower or any employee, officer, director, incorporator, stockholder, partner or agent of Borrower shall be had for the payment for any amount owing by Borrower under this Tranche A CP Equipment Note or any other Operative Document.

THIS TRANCHE A CP EQUIPMENT NOTE HAS BEEN DELIVERED IN NEW YORK AND THE OBLIGATIONS OF BORROWER UNDER THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE. BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT IN CONNECTION WITH THIS TRANCHE A CP EQUIPMENT NOTE.

CREDIT SUISSE LEASING 92A, L.P.,  
AS BORROWER

By: CREDIT SUISSE FIRST BOSTON,  
acting through its New York  
Branch, as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## TRANCHE A CP SITE NOTE

U.S. \$ \_\_\_\_\_

April 30, 1997

FOR VALUE RECEIVED, the undersigned, Credit Suisse Leasing 92A, L.P. ("Borrower"), promises to pay, solely from amounts paid under the Lease and the Collateral, to the order of Credit Suisse First Boston, acting through its New York branch, as Agent ("Agent"), on behalf of Greenwich Funding Corporation ("CP Lender"), the principal sum of \_\_\_\_\_ United States Dollars (U.S. \$ \_\_\_\_\_)(1) or, if less, the aggregate unpaid amount of all Tranche A CP Loans made by CP Lender to Lessor to Fund Site Advances pursuant to the Loan Agreement among CP Lender, Borrower, the financial institutions parties thereto (the "Eurodollar Lenders") and Agent, dated as of April 30, 1997 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each such loan shall mature on the Maturity Date and be payable in accordance with the Loan Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Borrower promises to pay interest on the unpaid principal amount hereof from the date hereof until this Tranche A CP Site Note is paid in full, at the rates and the times provided for below and in the Loan Agreement:

(i) Each outstanding CP Loan shall bear interest for each day during each Interest Period at a rate per annum equal to the CP Rate.

(ii) If all or a portion of the principal amount of any CP Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the sum of (x) the rate necessary for CP Lender to pay when due the Interest Component on the outstanding Commercial Paper plus (y) the Overdue Rate.

(iii) Interest accruing on each CP Loan shall be payable in arrears on each applicable Payment Date, Refinancing Date,

-----  
(1) This amount should be eighty-two percent (82%) of the aggregate Commitment of all Participants.

Continuation Date or any other date of prepayment, conversion or continuation (on the amount prepaid, converted or continued), and at maturity (whether by acceleration, demand or otherwise), in an amount necessary to repay the Interest Component of all Commercial Paper maturing on such date. Notwithstanding the foregoing, interest accruing pursuant to clause (ii) above shall be payable from time to time on demand and each prepayment of a CP Loan shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid together with any breakage costs as contemplated by the Loan Agreement and the other Operative Documents.

No principal amortization shall be required prior to the Maturity Date, except as otherwise provided pursuant to Section 2.6(c) of the Loan Agreement.

As provided in the Loan Agreement, this Tranche A CP Site Note is required to be prepaid and may be accelerated under certain circumstances.

All payments hereunder shall be made at the payment office of Agent (and for the account of CP Lender as provided for in the Loan Agreement), or as Agent, on behalf of CP Lender, shall otherwise direct in writing, in lawful money of the United States of America and in immediately available funds, without setoff, counterclaim, withholding or deduction of any kind whatsoever.

The loans made pursuant to the Loan Agreement, the maturity thereof and the interest rate applicable thereto, and all payments on account of principal thereof, shall be recorded by Agent in its records. The entries in the records of Agent shall be prima facie evidence of amounts outstanding hereunder.

Borrower hereby waives presentment, demand, notice, protest and all other demands or notices in connection with the delivery, acceptance, performance, default or enforcement of this Tranche A CP Site Note. No course of action or delay or omission of Agent or CP Lender in exercising any right or remedy hereunder shall constitute or be deemed to be a waiver of any right or remedy hereunder, and a waiver on one occasion shall not operate as a bar to or a waiver of any such right or remedy on any further occasion.

Borrower agrees to pay on demand all out-of-pocket costs and expenses, including reasonable attorneys' costs and fees, incurred or paid by Agent or CP Lender in connection with the enforcement of this Tranche A CP Site Note.

The obligations of Borrower under this Tranche A CP Site Note and the other Operative Documents (other than any obligations that may arise solely as a result of Borrower's

breach of its obligations under Section 10.2 of the Participation Agreement or any misrepresentation or breach of warranty made by Borrower under Section 8.3 of the Participation Agreement) shall be satisfied solely from amounts received by Agent under the Lease and from proceeds of the Collateral. No recourse to or against Borrower or any employee, officer, director, incorporator, stockholder, partner or agent of Borrower shall be had for the payment for any amount owing by Borrower under this Tranche A CP Site Note or any other Operative Document.

THIS TRANCHE A CP SITE NOTE HAS BEEN DELIVERED IN NEW YORK AND THE OBLIGATIONS OF BORROWER UNDER THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE. BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT IN CONNECTION WITH THIS TRANCHE A CP SITE NOTE.

CREDIT SUISSE LEASING 92A, L.P.,  
AS BORROWER

By: CREDIT SUISSE FIRST BOSTON,  
acting through its New York  
Branch, as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANCHE A CP SITE NOTE

Date of Funding or Payment	Amount of CP Loan or Payment	Outstanding Principal of CP Loan (after such Funding or Payment)	CP Rate	CP Rate Period	Comments
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A-CS-8



## TRANCHE A EURODOLLAR EQUIPMENT NOTE

U.S. \$8,600,000

April 30, 1997

FOR VALUE RECEIVED, the undersigned, Credit Suisse Leasing 92A, L.P. ("Borrower"), promises to pay, solely from amounts paid under the Lease and the Collateral, to the order of Credit Suisse First Boston, acting through its New York branch, as Agent ("Agent"), on behalf of the Eurodollar Lenders, the principal sum of Eight Million Six Hundred Thousand United States Dollars (U.S. \$8,600,000) or, if less, the aggregate unpaid amount of all Tranche A Eurodollar Loans made by the Eurodollar Lenders to Lessor to Fund Equipment Advances pursuant to the Loan Agreement among Greenwich Funding Corporation ("CP Lender"), Borrower, the financial institutions parties thereto (the "Eurodollar Lenders") and Agent, dated as of April 30, 1997 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each such loan shall mature on the Maturity Date and be payable in accordance with the Loan Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Borrower promises to make payments of principal on each Quarterly Payment Date in the amount equal to the product of (A) the aggregate Equipment Fixed Rent payable by Lessee on such date under the Equipment Lease Supplements and (B) the Tranche A Percentage and (C) a fraction, the numerator of which is the outstanding principal amount of this Tranche A Eurodollar Equipment Note and the denominator of which is the aggregate outstanding principal amount of all Notes.

Borrower promises to make payments of interest on the unpaid principal amount hereof from the date hereof until this Tranche A Eurodollar Equipment Note is paid in full, at the rates and the times provided for below and in the Loan Agreement:

(i) Each outstanding Eurodollar Loan shall bear interest for each day during each Interest Period at a rate per annum equal to either the Eurodollar Lender Rate or the Base Rate, as applicable, determined for such Interest Period.

(ii) If all or a portion of the principal amount of any Eurodollar Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue

amount shall bear interest at a rate per annum which is equal to the Overdue Rate.

(iii) Interest accruing on each Eurodollar Loan shall be payable in arrears on each applicable Payment Date, Refinancing Date, Continuation Date or any other date of prepayment, conversion or continuation (on the amount prepaid, converted or continued), and at maturity (whether by acceleration, demand or otherwise). Notwithstanding the foregoing, interest accruing pursuant to clause (ii) above shall be payable from time to time on demand and each prepayment of a Eurodollar Loan shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid together with any breakage costs as contemplated by the Loan Agreement and the other Operative Documents.

As provided in the Loan Agreement, this Tranche A Eurodollar Equipment Note is required to be prepaid and may be accelerated under certain circumstances.

All payments hereunder shall be made at the payment office of Agent (and for the account of each Eurodollar Lender as provided for in the Loan Agreement), or as Agent, on behalf of the Eurodollar Lenders, shall otherwise direct in writing in lawful money of the United States of America and in immediately available funds, without setoff, counterclaim, withholding or deduction of any kind whatsoever.

The loans made pursuant to the Loan Agreement, the maturity thereof and the interest rate applicable thereto, and all payments on account of principal thereof, shall be recorded by Agent in its records. The entries in the records of Agent shall be prima facie evidence of amounts outstanding hereunder.

Borrower hereby waives presentment, demand, notice, protest and all other demands or notices in connection with the delivery, acceptance, performance, default or enforcement of this Tranche A Eurodollar Equipment Note. No course of action or delay or omission of Agent or any Eurodollar Lender in exercising any right or remedy hereunder shall constitute or be deemed to be a waiver of any right or remedy hereunder, and a waiver on one occasion shall not operate as a bar to or a waiver of any such right or remedy on any further occasion.

Borrower agrees to pay on demand all out-of-pocket costs and expenses, including reasonable attorneys' costs and fees, incurred or paid by Agent or any Eurodollar Lender in connection with the enforcement of this Tranche A Eurodollar Equipment Note.

The obligations of Borrower under this Tranche A Eurodollar Equipment Note and the other Operative Documents (other than any

obligations that may arise solely as a result of Borrower's breach of its obligations under Section 10.2 of the Participation Agreement or any misrepresentation or breach of warranty made by Borrower under Section 8.3 of the Participation Agreement) shall be satisfied solely from amounts received by Agent under the Lease and from proceeds of the Collateral. No recourse to or against Borrower or any employee, officer, director, incorporator, stockholder, partner or agent of Borrower shall be had for the payment for any amount owing by Borrower under this Tranche A Eurodollar Equipment Note or any other Operative Document.

THIS TRANCHE A EURODOLLAR EQUIPMENT NOTE HAS BEEN DELIVERED IN NEW YORK AND THE OBLIGATIONS OF BORROWER UNDER THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE. BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT IN CONNECTION WITH THIS TRANCHE A EURODOLLAR EQUIPMENT NOTE.

CREDIT SUISSE LEASING 92A, L.P.,  
AS BORROWER

By: CREDIT SUISSE FIRST BOSTON,  
acting through its New York  
Branch, as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANCHE A EURODOLLAR EQUIPMENT NOTE

Date of Funding or Payment	Amount of Eurodollar Loan or Payment	Outstanding Principal of Eurodollar Loan (after such Funding or Payment)	Eurodollar Rate or Base Rate	Interest Period	Comments
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-	-	-	-	-	-

## TRANCHE A EURODOLLAR SITE NOTE

U.S. \$ \_\_\_\_\_

April 30, 1997

FOR VALUE RECEIVED, the undersigned, Credit Suisse Leasing 92A, L.P. ("Borrower"), promises to pay, solely from amounts paid under the Lease and the Collateral, to the order of Credit Suisse First Boston, acting through its New York branch, as Agent ("Agent"), on behalf of the Eurodollar Lenders, the principal sum of \_\_\_\_\_ United States Dollars (U.S. \$ \_\_\_\_\_)(2) or, if less, the aggregate unpaid amount of all Tranche A Eurodollar Loans made by the Eurodollar Lenders to Lessor to Fund Site Advances pursuant to the Loan Agreement among Greenwich Funding Corporation ("CP Lender"), Borrower, the financial institutions parties thereto (the "Eurodollar Lenders") and Agent, dated as of April 30, 1997 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each such loan shall mature on the Maturity Date and be payable in accordance with the Loan Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Borrower promises to make payments of interest on the unpaid principal amount hereof from the date hereof until this Tranche A Eurodollar Site Note is paid in full, at the rates and the times provided for below and in the Loan Agreement:

(i) Each outstanding Eurodollar Loan shall bear interest for each day during each Interest Period at a rate per annum equal to either the Eurodollar Lender Rate or the Base Rate, as applicable, determined for such Interest Period.

(ii) If all or a portion of the principal amount of any Eurodollar Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the Overdue Rate.

(iii) Interest accruing on each Eurodollar Loan shall be payable in arrears on each applicable Payment Date, Refinancing Date, Continuation Date or any other date of prepayment,

---

(2) This amount should be eighty-two percent (82%) of the aggregate Commitment of all Participants.

conversion or continuation (on the amount prepaid, converted or continued), and at maturity (whether by acceleration, demand or otherwise). Notwithstanding the foregoing, interest accruing pursuant to clause (ii) above shall be payable from time to time on demand and each prepayment of a Eurodollar Loan shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid together with any breakage costs as contemplated by the Loan Agreement and the other Operative Documents.

No principal amortization shall be required prior to the Maturity Date, except as otherwise provided pursuant to Section 2.6(c) of the Loan Agreement.

As provided in the Loan Agreement, this Tranche A Eurodollar Site Note is required to be prepaid and may be accelerated under certain circumstances.

All payments hereunder shall be made at the payment office of Agent (and for the account of each Eurodollar Lender as provided for in the Loan Agreement), or as Agent, on behalf of the Eurodollar Lenders, shall otherwise direct in writing, in lawful money of the United States of America and in immediately available funds, without setoff, counterclaim, withholding or deduction of any kind whatsoever.

The loans made pursuant to the Loan Agreement, the maturity thereof and the interest rate applicable thereto, and all payments on account of principal thereof, shall be recorded by Agent in its records. The entries in the records of Agent shall be prima facie evidence of amounts outstanding hereunder.

Borrower hereby waives presentment, demand, notice, protest and all other demands or notices in connection with the delivery, acceptance, performance, default or enforcement of this Tranche A Eurodollar Site Note. No course of action or delay or omission of Agent or any Eurodollar Lender in exercising any right or remedy hereunder shall constitute or be deemed to be a waiver of any right or remedy hereunder, and a waiver on one occasion shall not operate as a bar to or a waiver of any such right or remedy on any further occasion.

Borrower agrees to pay on demand all out-of-pocket costs and expenses, including reasonable attorneys' costs and fees, incurred or paid by Agent or any Eurodollar Lender in connection with the enforcement of this Tranche A Eurodollar Site Note.

The obligations of Borrower under this Tranche A Eurodollar Site Note and the other Operative Documents (other than any obligations that may arise solely as a result of Borrower's breach of its obligations under Section 10.2 of the Participation

Agreement or any misrepresentation or breach of warranty made by Borrower under Section 8.3 of the Participation Agreement) shall be satisfied solely from amounts received by Agent under the Lease and from proceeds of the Collateral. No recourse to or against Borrower or any employee, officer, director, incorporator, stockholder, partner or agent of Borrower shall be had for the payment for any amount owing by Borrower under this Tranche A Eurodollar Site Note or any other Operative Document.

THIS TRANCHE A EURODOLLAR SITE NOTE HAS BEEN DELIVERED IN NEW YORK AND THE OBLIGATIONS OF BORROWER UNDER THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE. BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT IN CONNECTION WITH THIS TRANCHE A EURODOLLAR SITE NOTE.

CREDIT SUISSE LEASING 92A, L.P.,  
AS BORROWER

By: CREDIT SUISSE FIRST BOSTON,  
acting through its New York  
Branch, as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANCHE A EURODOLLAR SITE NOTE

Date of Funding or Payment	Amount of Eurodollar Loan or Payment	Outstanding Principal of Eurodollar Loan (after such Funding or Payment)	Eurodollar Lender Rate or Base Rate	Interest Period	Comments
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## TRANCHE B CP EQUIPMENT NOTE

U.S. \$1,100,000

April 30, 1997

FOR VALUE RECEIVED, the undersigned, Credit Suisse Leasing 92A, L.P. ("Borrower"), promises to pay, solely from amounts paid under the Lease and the Collateral, to the order of Credit Suisse First Boston, acting through its New York branch, as Agent ("Agent"), on behalf of Greenwich Funding Corporation ("CP Lender"), the principal sum of One Million One Hundred Thousand United States Dollars (U.S. \$1,100,000) or, if less, the aggregate unpaid amount of all Tranche B CP Loans made by CP Lender to Lessor to Fund Equipment Advances pursuant to the Loan Agreement among CP Lender, Borrower, the financial institutions parties thereto (the "Eurodollar Lenders") and Agent, dated as of April 30, 1997 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each such loan shall mature on the Maturity Date and be payable in accordance with the Loan Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Borrower promises to make payments of principal on each Quarterly Payment Date in the amount equal to the product of (A) the aggregate Equipment Fixed Rent payable by Lessee on such date under the Equipment Lease Supplements and (B) the Tranche B Percentage and (C) a fraction, the numerator of which is the outstanding principal amount of this Tranche B CP Equipment Note and the denominator of which is the aggregate outstanding principal amount of all Notes.

Borrower further promises to make payments of interest on the unpaid principal amount hereof from the date hereof until this Tranche B CP Equipment Note is paid in full, at the rates and the times provided for below and in the Loan Agreement:

(i) Each outstanding CP Loan shall bear interest for each day during each Interest Period at a rate per annum equal to the CP Rate.

(ii) If all or a portion of the principal amount of any CP Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the sum of (x) the rate necessary for CP Lender to pay when due the

Interest Component on the outstanding Commercial Paper plus (y) the Overdue Rate.

(iii) Interest accruing on each CP Loan shall be payable in arrears on each applicable Payment Date, Refinancing Date, Continuation Date or any other date of prepayment, conversion or continuation (on the amount prepaid, converted or continued), and at maturity (whether by acceleration, demand or otherwise), in an amount necessary to repay the Interest Component of all Commercial Paper maturing on such date. Notwithstanding the foregoing, interest accruing pursuant to clause (ii) above shall be payable from time to time on demand and each prepayment of a CP Loan shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid together with any breakage costs as contemplated by the Loan Agreement and the other Operative Documents.

No principal amortization shall be required prior to the Maturity Date, except as otherwise provided pursuant to Section 2.6(c) of the Loan Agreement.

As provided in the Loan Agreement, this Tranche B CP Equipment Note is required to be prepaid and may be accelerated under certain circumstances.

All payments hereunder shall be made at the payment office of Agent (and for the account of CP Lender as provided for in the Loan Agreement), or as CP Lender shall otherwise direct in writing, in lawful money of the United States of America and in immediately available funds, without setoff, counterclaim, withholding or deduction of any kind whatsoever.

The loans made pursuant to the Loan Agreement, the maturity thereof and the interest rate applicable thereto, and all payments on account of principal thereof, shall be recorded by Agent in its records. The entries in the records of Agent shall be prima facie evidence of amounts outstanding hereunder.

Borrower hereby waives presentment, demand, notice, protest and all other demands or notices in connection with the delivery, acceptance, performance, default or enforcement of this Tranche B CP Equipment Note. No course of action or delay or omission of Agent or CP Lender in exercising any right or remedy hereunder shall constitute or be deemed to be a waiver of any right or remedy hereunder, and a waiver on one occasion shall not operate as a bar to or a waiver of any such right or remedy on any further occasion.

Borrower agrees to pay on demand all out-of-pocket costs and expenses, including reasonable attorneys' costs and fees,

incurred or paid by Agent or CP Lender in connection with the enforcement of this Tranche B CP Equipment Note.

The obligations of Borrower under this Tranche B CP Equipment Note and the other Operative Documents (other than any obligations that may arise solely as a result of Borrower's breach of its obligations under Section 10.2 of the Participation Agreement or any misrepresentation or breach of warranty made by Borrower under Section 8.3 of the Participation Agreement) shall be satisfied solely from amounts received by Agent under the Lease and from proceeds of the Collateral. No recourse to or against Borrower or any employee, officer, director, incorporator, stockholder, partner or agent of Borrower shall be had for the payment for any amount owing by Borrower under this Tranche B CP Equipment Note or any other Operative Document.

THIS TRANCHE B CP EQUIPMENT NOTE HAS BEEN DELIVERED IN NEW YORK AND THE OBLIGATIONS OF BORROWER UNDER THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE. BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT IN CONNECTION WITH THIS TRANCHE B CP EQUIPMENT NOTE.

CREDIT SUISSE LEASING 92A, L.P.,  
AS BORROWER

By: CREDIT SUISSE FIRST BOSTON,  
acting through its New York Branch,  
as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANCHE B CP EQUIPMENT NOTE

Date of Funding or Payment	Amount of CP Loan or Payment	Outstanding Principal of CP Loan (after such Funding or Payment)	CP Rate	CP Rate Period	Comments
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B-CE-4

EXHIBIT B-CS  
TO LOAN AGREEMENT

## TRANCHE B CP SITE NOTE

U.S. \$ \_\_\_\_\_

April 30, 1997

FOR VALUE RECEIVED, the undersigned, Credit Suisse Leasing 92A, L.P. ("Borrower"), promises to pay, solely from amounts paid under the Lease and the Collateral, to the order of Credit Suisse First Boston, acting through its New York branch, as Agent ("Agent"), on behalf of Greenwich Funding Corporation ("CP Lender"), the principal sum of \_\_\_\_\_ United States Dollars (U.S. \$ \_\_\_\_\_)(3) or, if less, the aggregate unpaid amount of all Tranche B CP Loans made by CP Lender to Lessor to Fund Site Advances pursuant to the Loan Agreement among CP Lender, Borrower, the financial institutions parties thereto (the "Eurodollar Lenders") and Agent, dated as of April 30, 1997 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each such loan shall mature on the Maturity Date and be payable in accordance with the Loan Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Borrower promises to pay interest on the unpaid principal amount hereof from the date hereof until this Tranche B CP Site Note is paid in full, at the rates and the times provided for below and in the Loan Agreement:

(i) Each outstanding CP Loan shall bear interest for each day during each Interest Period at a rate per annum equal to the CP Rate.

(ii) If all or a portion of the principal amount of any CP Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the sum of (x) the rate necessary for CP Lender to pay when due the Interest Component on the outstanding Commercial Paper plus (y) the Overdue Rate.

(iii) Interest accruing on each CP Loan shall be payable in arrears on each applicable Payment Date, Refinancing Date,

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(3) This amount should be fifteen percent (15%) of the aggregate Commitment of all Participants.

Continuation Date or any other date of prepayment, conversion or continuation (on the amount prepaid, converted or continued), and at maturity (whether by acceleration, demand or otherwise), in an amount necessary to repay the Interest Component of all Commercial Paper maturing on such date. Notwithstanding the foregoing, interest accruing pursuant to clause (ii) above shall be payable from time to time on demand and each prepayment of a CP Loan shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid together with any breakage costs as contemplated by the Loan Agreement and the other Operative Documents.

No principal amortization shall be required prior to the Maturity Date, except as otherwise provided pursuant to Section 2.6(c) of the Loan Agreement.

As provided in the Loan Agreement, this Tranche B CP Site Note is required to be prepaid and may be accelerated under certain circumstances.

All payments hereunder shall be made at the payment office of Agent (and for the account of CP Lender as provided for in the Loan Agreement), or as CP Lender shall otherwise direct in writing, in lawful money of the United States of America and in immediately available funds, without setoff, counterclaim, withholding or deduction of any kind whatsoever.

The loans made pursuant to the Loan Agreement, the maturity thereof and the interest rate applicable thereto, and all payments on account of principal thereof, shall be recorded by Agent in its records. The entries in the records of Agent shall be prima facie evidence of amounts outstanding hereunder.

Borrower hereby waives presentment, demand, notice, protest and all other demands or notices in connection with the delivery, acceptance, performance, default or enforcement of this Tranche B CP Site Note. No course of action or delay or omission of Agent or CP Lender in exercising any right or remedy hereunder shall constitute or be deemed to be a waiver of any right or remedy hereunder, and a waiver on one occasion shall not operate as a bar to or a waiver of any such right or remedy on any further occasion.

Borrower agrees to pay on demand all out-of-pocket costs and expenses, including reasonable attorneys' costs and fees, incurred or paid by Agent or CP Lender in connection with the enforcement of this Tranche B CP Site Note.

The obligations of Borrower under this Tranche B CP Site Note and the other Operative Documents (other than any obligations that may arise solely as a result of Borrower's

breach of its obligations under Section 10.2 of the Participation Agreement or any misrepresentation or breach of warranty made by Borrower under Section 8.3 of the Participation Agreement) shall be satisfied solely from amounts received by Agent under the Lease and from proceeds of the Collateral. No recourse to or against Borrower or any employee, officer, director, incorporator, stockholder, partner or agent of Borrower shall be had for the payment for any amount owing by Borrower under this Tranche B CP Site Note or any other Operative Document.

THIS TRANCHE B CP SITE NOTE HAS BEEN DELIVERED IN NEW YORK AND THE OBLIGATIONS OF BORROWER UNDER THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE. BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT IN CONNECTION WITH THIS TRANCHE B CP SITE NOTE.

CREDIT SUISSE LEASING 92A, L.P.,  
AS BORROWER

By: CREDIT SUISSE FIRST BOSTON,  
acting through its New York  
Branch, as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANCHE B CP SITE NOTE

Date of Funding or Payment	Amount of CP Loan or Payment	Outstanding Principal of CP Loan (after such Funding or Payment)	CP Rate	CP Rate Period	Comments
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B-CS-4



## TRANCHE B EURODOLLAR EQUIPMENT NOTE

U.S. \$1,100,000

April 30, 1997

FOR VALUE RECEIVED, the undersigned, Credit Suisse Leasing 92A, L.P. ("Borrower"), promises to pay, solely from amounts paid under the Lease and the Collateral, to the order of Credit Suisse First Boston, acting through its New York branch, as Agent ("Agent"), on behalf of the Eurodollar Lenders, the principal sum of One Million One Hundred Thousand United States Dollars (U.S. \$1,100,000) or, if less, the aggregate unpaid amount of all Tranche B Eurodollar Loans made by the Eurodollar Lenders to Lessor to Fund Equipment Advances pursuant to the Loan Agreement among Greenwich Funding Corporation ("CP Lender"), Borrower, the financial institutions parties thereto (the "Eurodollar Lenders") and Agent, dated as of April 30, 1997 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each such loan shall mature on the Maturity Date and be payable in accordance with the Loan Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Borrower promises to make payments of principal on each Quarterly Payment Date in the amount equal to the product of (A) the aggregate Equipment Fixed Rent payable by Lessee on such date under the Equipment Lease Supplements and (B) the Tranche B Percentage and (C) a fraction, the numerator of which is the outstanding principal amount of this Tranche B Eurodollar Equipment Note and the denominator of which is the aggregate outstanding principal amount of all Notes.

Borrower promises to make payments of interest on the unpaid principal amount hereof from the date hereof until this Tranche B Eurodollar Equipment Note is paid in full, at the rates and the times provided for below and in the Loan Agreement:

(i) Each outstanding Eurodollar Loan shall bear interest for each day during each Interest Period at a rate per annum equal to either the Eurodollar Lender Rate or the Base Rate, as applicable, determined for such Interest Period.

(ii) If all or a portion of the principal amount of any Eurodollar Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue

amount shall bear interest at a rate per annum which is equal to the Overdue Rate.

(iii) Interest accruing on each Eurodollar Loan shall be payable in arrears on each applicable Payment Date, Refinancing Date, Continuation Date or any other date of prepayment, conversion or continuation (on the amount prepaid, converted or continued), and at maturity (whether by acceleration, demand or otherwise). Notwithstanding the foregoing, interest accruing pursuant to clause (ii) above shall be payable from time to time on demand and each prepayment of a Eurodollar Loan shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid together with any breakage costs as contemplated by the Loan Agreement and the other Operative Documents.

No principal amortization shall be required prior to the Maturity Date, except as otherwise provided pursuant to Section 2.6(c) of the Loan Agreement.

As provided in the Loan Agreement, this Tranche B Eurodollar Equipment Note is required to be prepaid and may be accelerated under certain circumstances.

All payments hereunder shall be made at the payment office of Agent (and for the account of each Eurodollar Lender as provided for in the Loan Agreement), or as Agent, on behalf of the Eurodollar Lenders, shall otherwise direct in writing, in lawful money of the United States of America and in immediately available funds, without setoff, counterclaim, withholding or deduction of any kind whatsoever.

The loans made pursuant to the Loan Agreement, the maturity thereof and the interest rate applicable thereto, and all payments on account of principal thereof, shall be recorded by Agent in its records. The entries in the records of Agent shall be prima facie evidence of amounts outstanding hereunder.

Borrower hereby waives presentment, demand, notice, protest and all other demands or notices in connection with the delivery, acceptance, performance, default or enforcement of this Tranche B Eurodollar Equipment Note. No course of action or delay or omission of Agent or any Eurodollar Lender in exercising any right or remedy hereunder shall constitute or be deemed to be a waiver of any right or remedy hereunder, and a waiver on one occasion shall not operate as a bar to or a waiver of any such right or remedy on any further occasion.

Borrower agrees to pay on demand all out-of-pocket costs and expenses, including reasonable attorneys' costs and fees,

incurred or paid by Agent or any Eurodollar Lender in connection with the enforcement of this Tranche B Eurodollar Equipment Note.

The obligations of Borrower under this Tranche B Eurodollar Equipment Note and the other Operative Documents (other than any obligations that may arise solely as a result of Borrower's breach of its obligations under Section 10.2 of the Participation Agreement or any misrepresentation or breach of warranty made by Borrower under Section 8.3 of the Participation Agreement) shall be satisfied solely from amounts received by Agent under the Lease and from proceeds of the Collateral. No recourse to or against Borrower or any employee, officer, director, incorporator, stockholder, partner or agent of Borrower shall be had for the payment for any amount owing by Borrower under this Tranche B Eurodollar Equipment Note or any other Operative Document.

THIS TRANCHE B EURODOLLAR EQUIPMENT NOTE HAS BEEN DELIVERED IN NEW YORK AND THE OBLIGATIONS OF BORROWER UNDER THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE. BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT IN CONNECTION WITH THIS TRANCHE B EURODOLLAR EQUIPMENT NOTE.

CREDIT SUISSE LEASING 92A, L.P.,  
AS BORROWER

By: CREDIT SUISSE FIRST BOSTON,  
acting through its New York  
Branch, as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANCHE B EURODOLLAR EQUIPMENT NOTE

Date of Funding or Payment	Amount of Eurodollar Loan or Payment	Outstanding Principal of Eurodollar Loan (after such Funding or Payment)	Eurodollar Rate or Base Rate	Interest Period	Comments
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EXHIBIT B-ES  
TO LOAN AGREEMENT

## TRANCHE B EURODOLLAR SITE NOTE

U.S. \$ \_\_\_\_\_

April 30, 1997

FOR VALUE RECEIVED, the undersigned, Credit Suisse Leasing 92A, L.P. ("Borrower"), promises to pay, solely from amounts paid under the Lease and the Collateral, to the order of Credit Suisse First Boston, acting through its New York branch, as Agent ("Agent"), on behalf of the Eurodollar Lenders, the principal sum of \_\_\_\_\_ United States Dollars (U.S. \$ \_\_\_\_\_)(4) or, if less, the aggregate unpaid amount of all Tranche B Eurodollar Loans made by the Eurodollar Lenders to Lessor to Fund Site Advances pursuant to the Loan Agreement among Greenwich Funding Corporation ("CP Lender"), Borrower, the financial institutions parties thereto (the "Eurodollar Lenders") and Agent, dated as of April 30, 1997 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Each such loan shall mature on the Maturity Date and be payable in accordance with the Loan Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Borrower promises to make payments of interest on the unpaid principal amount hereof from the date hereof until this Tranche B Eurodollar Site Note is paid in full, at the rates and the times provided for below and in the Loan Agreement:

(i) Each outstanding Eurodollar Loan shall bear interest for each day during each Interest Period at a rate per annum equal to either the Eurodollar Lender Rate or the Base Rate, as applicable, determined for such Interest Period.

(ii) If all or a portion of the principal amount of any Eurodollar Loan, any interest payable thereon or any other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the Overdue Rate.

(iii) Interest accruing on each Eurodollar Loan shall be payable in arrears on each applicable Payment Date, Refinancing

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(4) This amount should be fifteen percent (15%) of the aggregate Commitment of all Participants.

Date, Continuation Date or any other date of prepayment, conversion or continuation (on the amount prepaid, converted or continued), and at maturity (whether by acceleration, demand or otherwise). Notwithstanding the foregoing, interest accruing pursuant to clause (ii) above shall be payable from time to time on demand and each prepayment of a Eurodollar Loan shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid together with any breakage costs as contemplated by the Loan Agreement and the other Operative Documents.

No principal amortization shall be required prior to the Maturity Date, except as otherwise provided pursuant to Section 2.6(c) of the Loan Agreement.

As provided in the Loan Agreement, this Tranche B Eurodollar Site Note is required to be prepaid and may be accelerated under certain circumstances.

All payments hereunder shall be made at the payment office of Agent (and for the account of each Eurodollar Lender as provided for in the Loan Agreement), or as Agent, on behalf of the Eurodollar Lenders, shall otherwise direct in writing, in lawful money of the United States of America and in immediately available funds, without setoff, counterclaim, withholding or deduction of any kind whatsoever.

The loans made pursuant to the Loan Agreement, the maturity thereof and the interest rate applicable thereto, and all payments on account of principal thereof, shall be recorded by Agent in its records. The entries in the records of Agent shall be prima facie evidence of amounts outstanding hereunder.

Borrower hereby waives presentment, demand, notice, protest and all other demands or notices in connection with the delivery, acceptance, performance, default or enforcement of this Tranche B Eurodollar Site Note. No course of action or delay or omission of Agent or any Eurodollar Lender in exercising any right or remedy hereunder shall constitute or be deemed to be a waiver of any right or remedy hereunder, and a waiver on one occasion shall not operate as a bar to or a waiver of any such right or remedy on any further occasion.

Borrower agrees to pay on demand all out-of-pocket costs and expenses, including reasonable attorneys' costs and fees, incurred or paid by Agent or any Eurodollar Lender in connection with the enforcement of this Tranche B Eurodollar Site Note.

The obligations of Borrower under this Tranche B Eurodollar Site Note and the other Operative Documents (other than any obligations that may arise solely as a result of Borrower's

breach of its obligations under Section 10.2 of the Participation Agreement or any misrepresentation or breach of warranty made by Borrower under Section 8.3 of the Participation Agreement) shall be satisfied solely from amounts received by Agent under the Lease and from proceeds of the Collateral. No recourse to or against Borrower or any employee, officer, director, incorporator, stockholder, partner or agent of Borrower shall be had for the payment for any amount owing by Borrower under this Tranche B Eurodollar Site Note or any other Operative Document.

THIS TRANCHE B EURODOLLAR SITE NOTE HAS BEEN DELIVERED IN NEW YORK AND THE OBLIGATIONS OF BORROWER UNDER THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE. BORROWER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT IN CONNECTION WITH THIS TRANCHE B EURODOLLAR SITE NOTE.

CREDIT SUISSE LEASING 92A, L.P.,  
AS BORROWER

By: CREDIT SUISSE FIRST BOSTON,  
acting through its New York  
Branch, as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANCHE B EURODOLLAR SITE NOTE

Date of Funding or Payment	Amount of Eurodollar Loan or Payment	Outstanding Principal of Eurodollar Loan (after such Funding or Payment)	Eurodollar Lender Rate or Base Rate	Interest Period	Comments
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MASTER LEASE

dated as of April 30, 1997

between

CREDIT SUISSE LEASING 92A, L.P.,  
as Lessor

and

APPLIED MATERIALS, INC.,  
as Lessee

-----

Real Estate and Equipment Facility

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This Lease is subject to a lien in favor of Credit Suisse First Boston, acting through its New York Branch, as Agent (the "Agent") under a Loan Agreement dated as of April 30, 1997 among Credit Suisse Leasing 92A, L.P., the Lenders, and Agent, as amended or supplemented from time to time. This Lease has been executed in several counterparts. To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no lien on this Lease may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by Agent on the signature page hereof.

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APPENDIX 1	Definitions and Interpretation
EXHIBIT A-1	Form of Site Lease Supplement (California)
EXHIBIT A-2	Form of Site Lease Supplement (Other States)
EXHIBIT B	Form of Equipment Lease Supplement

## MASTER LEASE

MASTER LEASE (including all Lease Supplements from time to time executed and delivered, this "Lease"), dated as of April 30, 1997, between CREDIT SUISSE LEASING, 92A, L.P., a Delaware limited partnership, having its principal office at 11 Madison Avenue, 19th Floor, New York, New York, as Lessor and APPLIED MATERIALS, INC., a Delaware corporation, having its principal office at 3050 Bowers Avenue, Santa Clara, California, as Lessee.

## W I T N E S S E T H:

A. Lessor will, subject to the terms and conditions of the Participation Agreement, (i) purchase the Existing Sites on the Document Closing Date, (ii) purchase from one or more third parties designated by Lessee on each Site Acquisition Date either (A) one or more Developed Sites and/or (B) one or more Construction Sites (provided, however, if the Land with respect to a Construction Site is owned by Lessee on the Site Acquisition Date, Lessee will lease such Land to Lessor pursuant to a Ground Lease), and (iii) purchase from one or more third parties designated by Lessee on each Equipment Acquisition Date certain Units of Equipment.

B. Lessor desires to lease (or sublease) to Lessee, and Lessee desires to lease (or sublease) from Lessor, each Site and each Unit of Equipment.

C. With respect to each Construction Site, Lessee, as Construction Agent, will construct the Facility which will, as constructed, be the property of Lessor and will become part of such Site subject to the terms of this Lease.

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

## ARTICLE I

## DEFINITIONS; INTERPRETATION

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

## ARTICLE II

## LEASE OF PROPERTIES; TERM

2.1 Acceptance and Lease of Site. On each Site Acquisition Date, Lessor, subject to the satisfaction or waiver of the conditions set forth in Article 6 of the Participation Agreement, hereby agrees to accept delivery on such Site Acquisition Date of the Land (fee title or, in the case of a Construction Site where the Land is owned by Lessee, a leasehold interest) to be delivered on such Site Acquisition Date together with any existing Facility thereon pursuant to the terms of the Participation Agreement and the applicable Site Lease Supplement and simultaneously to lease (or sublease) to Lessee for the Site Term (as defined in Section 2.5(a)), Lessor's interest in such Land and in such Facility together with any Facility or Modifications to an existing Facility which thereafter may be constructed thereon pursuant to the Construction Agency Agreement (in the case of any Construction Site) or this Lease, and Lessee hereby agrees, expressly for the direct benefit of Lessor, to lease commencing on such Site Acquisition Date from Lessor for the Site Term, Lessor's interest in such Land to be delivered on such Site Acquisition Date together with Lessor's interest in any existing Facility thereon or any Facility or Modification to an existing Facility which thereafter may be constructed thereon pursuant to the Construction Agency Agreement (in the case of any Construction Site) and this Lease.

2.2 Acceptance Procedure for Site. Lessor hereby authorizes one or more employees of Lessee, to be designated by Lessee, as the authorized representative or representatives of Lessor to accept delivery on behalf of Lessor of the Site identified on the applicable Advance Request. Lessee hereby agrees that such acceptance of delivery by such authorized representative or representatives and the execution and delivery by Lessee on each Site Acquisition Date of a Site Lease Supplement (appropriately completed) shall, without further act, constitute the irrevocable acceptance by Lessee of such Site which is the subject thereof for all purposes of this Lease and the other Operative Documents on the terms set forth therein and herein, and that such Site, together with any Facility or Modifications to a Facility constructed thereon pursuant to the Construction Agency Agreement and this Lease, shall be deemed to be included in the Leased Property and shall be subject to the terms and conditions of this Lease on such Site Acquisition Date.

2.3 Acceptance and Lease of Equipment. On each Equipment Acquisition Date, Lessor, subject to the satisfaction or waiver of the conditions set forth in Article 6 of the Participation Agreement, hereby agrees to accept delivery on such Equipment Acquisition Date of the interest in the Units of Equipment of an



Equipment Group to be delivered on such Equipment Acquisition Date pursuant to the terms of the Participation Agreement and the applicable Equipment Lease Supplement and simultaneously to lease to Lessee for the applicable Equipment Term (as defined in Section 2.5(b)) Lessor's interest in such Units of Equipment of an Equipment Group, and Lessee hereby agrees, expressly for the direct benefit of Lessor, to lease commencing on such Equipment Acquisition Date from Lessor for the applicable Equipment Term, Lessor's interest in such Units of Equipment to be delivered on such Equipment Acquisition Date.

2.4 Acceptance Procedure for Equipment. Lessor hereby authorizes one or more employees of Lessee, to be designated by Lessee, as the authorized representative or representatives of Lessor to accept delivery on behalf of Lessor of the Units of Equipment identified on Schedule I to each Equipment Lease Supplement executed by Lessee on the related Equipment Acquisition Date. Lessee hereby agrees that such acceptance of delivery by such authorized representative or representatives and the execution and delivery by Lessee on each Equipment Acquisition Date of an Equipment Lease Supplement (appropriately completed) shall, without further act, constitute the irrevocable acceptance by Lessee of such Units of Equipment which are the subject thereof for all purposes of this Lease and the other Operative Documents on the terms set forth therein and herein and that such Units of Equipment shall be deemed to be included in the leasehold estate of this Lease and shall be subject to the terms and conditions of this Lease on such Equipment Acquisition Date.

#### 2.5 Term.

(a) Site Term. The term of the Site Lease Supplement with respect to each Site (the "Site Term") shall begin on the Site Acquisition Date for such Site and shall end on the date (such date, the "Site Expiration Date") which is the earlier of (i) the day preceding the fifth (5th) anniversary of the Site Acquisition Date, or, if the Site Term is renewed in accordance with Article XXI hereof, the day preceding the anniversary date, requested by Lessee pursuant to Section 21.1, of the Site Renewal Effective Date, (ii) the date on which such Site Lease Supplement is terminated in accordance with the provisions of this Lease or (iii) the Maturity Date.

(b) Equipment Term. The term with respect to an Equipment Group subject to this Lease (the "Equipment Term") shall begin on the Equipment Acquisition Date for such Equipment Group and shall end on the date (such date, the "Equipment Pool Expiration Date") which is the earlier of (i) the day preceding the Original Equipment Pool Expiration Date relating to the Equipment Pool of which such Equipment Group constitutes a part,

or, if the Equipment Term relating to the entire Equipment Pool is renewed in accordance with Article XXI hereof, the day preceding the first (1st) anniversary of the Equipment Renewal Effective Date relating to such Equipment Pool, (ii) the date on which this Lease is terminated with respect to such Equipment Group in accordance with the provisions of this Lease or (iii) the Maturity Date.

(c) Lease Term. The term of this Lease (the "Term") shall begin on the Document Closing Date and shall end on the date of the last occurring Site Expiration Date or Equipment Pool Expiration Date.

2.6 Title. Each Site and Unit of Equipment is leased (or subleased) to Lessee without any representation or warranty, express or implied, by Lessor and subject to the rights of parties in possession, the existing state of title (including, without limitation, the Permitted Exceptions), and all Applicable Laws and Regulations. Lessee shall in no event have any recourse against Lessor for any defect in or exception to title to any Leased Property other than resulting from Lessor Liens.

2.7 Other Property. Lessee may from time to time own or hold under lease from Persons other than Lessor, furniture, trade fixtures, equipment and other tangible personal property (including software) located on or about any Site and which personal property is not subject to this Lease. Lessor shall from time to time, upon the reasonable request, and at the sole cost and expense of Lessee, which request shall be accompanied by such supporting information and documents as Lessor may reasonably require, promptly acknowledge in writing to Lessee or other Persons that the particular items of furniture, trade fixtures and equipment in question and which are located on a Site are not part of the Leased Property and that, subject to the rights of Lessor under any other Operative Documents, Lessor does not own or have any other right or interest in or to such furniture, trade fixtures and equipment (other than the Equipment).

### ARTICLE III

#### RENT

3.1 Rent. (a) During the Term, Lessee shall pay (i) Basic Rent when due as specified in Section 3.2 below and (ii) Supplemental Rent when due as specified in Section 3.3 below.

(b) Neither Lessee's inability or failure to take possession of all or any portion of any Leased Property when delivered by Lessor, nor Lessor's inability or failure to deliver

all or any portion of any Leased Property to Lessee on or before the applicable Site Acquisition Date or Equipment Acquisition Date, as the case may be, nor Lessor's inability or failure to timely deliver any invoice for Rent or notice relating to the calculation, method or place of payment, whether or not attributable to any act or omission of Lessee or any act or omission of Lessor, or for any other reason whatsoever, shall delay or otherwise affect Lessee's obligation to pay Rent for such Leased Property in accordance with the terms of this Lease.

3.2 Payment of Basic Rent. Lessee shall pay Basic Rent (i) on each Payment Date, (ii) on the date required under Section 20.1 in connection with Lessee's exercise of the Purchase Option, (iii) on the date required under Section 22.3 in connection with Lessee's exercise of a Site Remarketing Option or an Equipment Pool Remarketing Option, (iv) on demand as specified in Section 24.1 relating to a holdover by Lessee and (v) on any date on which this Lease shall terminate with respect to any or all of the Leased Property. Basic Rent shall be paid absolutely net to Lessor, so that this Lease shall yield to Lessor the full amount thereof, without setoff, deduction or reduction.

3.3 Payment of Supplemental Rent. Lessee shall pay to Lessor or the Person entitled thereto any and all Supplemental Rent promptly as the same shall become due and payable. Lessee shall pay to Lessor, as Supplemental Rent, on demand, among other things, (a) all amounts payable by Lessee to Lessor pursuant to (i) Section 18.1 hereof or otherwise representing amounts advanced (other than Advances) by any Participant or Agent directly on behalf of Lessee or for the Leased Property and for which Lessee is obligated to repay or to reimburse such Person pursuant to the Operative Documents, (ii) any provision hereof requiring Lessee to indemnify Agent, Lessor or any other Participant, and (iii) any provision requiring Lessee to make a payment upon termination of this Lease with respect to any or all of the Leased Property, and (b) to the extent permitted by Applicable Laws and Regulations, interest at the applicable Overdue Rate on any installment of Basic Rent not paid when due for the period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded, as the case may be, by Lessor for the period from the due date or the date of any such demand, as the case may be, until the same shall be paid. Supplemental Rent constituting Commitment Fees shall be paid in accordance with Section 4.7 of the Participation Agreement. All other amounts constituting Supplemental Rent, except for amounts relating to the Document Closing Date, which amounts shall be paid on or before such date, shall be paid by Lessee to Lessor within thirty (30) days of receiving an invoice therefor. The expiration or other termination of Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of Lessee with respect to Supplemental Rent.

Unless expressly provided otherwise in this Lease, in the event of any failure on the part of Lessee to pay and discharge any Supplemental Rent as and when due, Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added under any agreement with a third party for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent.

3.4 Method and Amount of Payment. Basic Rent and Supplemental Rent shall be paid to Lessor (or, in the case of Supplemental Rent, to such Person as may be entitled thereto) at such place as Lessor (or such other Person) shall specify in writing to Lessee pursuant to Section 13.3 of the Participation Agreement; provided that, so long as the Notes remain outstanding, Rent shall be paid directly to Agent to the account at the bank set forth on Schedule II to the Participation Agreement and to such other account or accounts at such other bank or banks or in such other manner as Agent shall from time to time otherwise direct at least three (3) Business Days prior to the date in which the payment of such Rent is due. Each payment of Rent shall be made by Lessee prior to 1:00 p.m. New York time (and payments made after such time shall be deemed to have been made on the next day) at the place of payment by wire transfer in funds consisting of lawful currency of the United States of America which (in the case of any amount payable to Lessor, Agent or any Participant) shall be immediately available on the scheduled date when such payment shall be due. The provisions of the foregoing sentence of this Section 3.4 shall be applicable only to Basic Rent and to Supplemental Rent payable to, or on behalf of or for the account of, Lessor, any Participant, Agent and any other Indemnitee. Any amounts payable by Lessee to Lessor hereunder shall be payable in accordance with Section 5.2 of the Participation Agreement.

3.5 Late Payments. If any Basic Rent shall not be paid when due, Lessee shall pay to Lessor, or if any Supplemental Rent payable to or on behalf of or for the account of Lessor, any Participant, Agent or other Indemnitee is not paid when due, Lessee shall pay to whomever shall be entitled thereto, in each case as Supplemental Rent, interest at the Overdue Rate (to the maximum extent permitted by law) on such overdue amount from and including the due date thereof (not including any applicable grace period) to but excluding the Business Day of payment thereof.

## ARTICLE IV

## UTILITY CHARGES

4.1 Utility Charges for Site. Lessee shall pay or cause to be paid all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents and utilities used in or on each Site during the Term. Lessee shall be entitled to receive any credit or refund with respect to any utility charge paid by Lessee and the amount of any credit or refund received by Lessor on account of any utility charges paid by Lessee, net of the costs and expenses reasonably incurred by Lessor in obtaining such credit or refund, shall be promptly paid over to Lessee. All charges for utilities imposed with respect to a Site for a billing period during which this Lease expires or terminates (except pursuant to Sections 20.1, 20.2 or 20.3) shall be adjusted and prorated on a daily basis between Lessee and the purchaser of the Site, and each such party shall pay or reimburse the other for its pro rata share thereof; provided, that in no event shall Lessor have any liability therefor.

## ARTICLE V

## QUIET ENJOYMENT

5.1 Quiet Enjoyment of Leased Property. Subject to the rights of Lessor contained in Article XVII and the other terms of the Operative Documents, Lessee (and any of its permitted subtenants) shall peaceably and quietly have, hold and enjoy the Leased Property for the applicable Site Term or Equipment Term, free of any claim or other action by Lessor or anyone rightfully claiming by, through or under Lessor (other than Lessee) with respect to any matters arising from and after the applicable Acquisition Date. Such right of quiet enjoyment is independent of, and shall not affect Lessor's, Agent's or, if permitted, any Participant's rights otherwise to initiate legal action to enforce, the obligations of Lessee under this Lease or the other Operative Documents.

## ARTICLE VI

## NET LEASE

6.1 Net Lease. This Lease shall constitute a net lease. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall Lessee be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to the Rent, nor shall the obligations of Lessee hereunder be affected (except as expressly

herein permitted and by performance of the obligations in connection therewith and subject to the limitations set forth in Section 5.2(b) of the Participation Agreement) by reason of: (i) any defect in the condition, merchantability, design, construction, quality or fitness for use of any Leased Property or any part thereof, or the failure of any Leased Property to comply with all Applicable Laws and Regulations, including any inability to occupy or use any Leased Property by reason of such noncompliance; (ii) any damage to, removal, abandonment, salvage, loss, contamination of or Release from, scrapping or destruction of or any requisition or taking of any Leased Property or any part thereof; (iii) any restriction, prevention or curtailment of or interference with any use of any Leased Property or any part thereof including eviction; (iv) any defect in title to or rights to any Leased Property or any Lien on such title or rights or on any Leased Property (other than Lessor Liens); (v) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by Lessor, Agent or any Participant; (vi) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Lessee, Lessor, Agent, any Participant or any other Person, or any action taken with respect to this Lease by any trustee or receiver of Lessee, Lessor, Agent, any Participant or any other Person, or by any court, in any such proceeding; (vii) any claim that Lessee has or might have against any Person, including without limitation Lessor, any vendor, manufacturer, contractor of or for any Leased Property, Agent or any Participant; (viii) any failure on the part of Lessor to perform or comply with any of the terms of this Lease, of any other Operative Document or of any other agreement; (ix) any invalidity or unenforceability or illegality or disaffirmance of this Lease against or by Lessee or any provision hereof or any of the other Operative Documents or any provision of any thereof; (x) the impossibility or illegality of performance by Lessee, Lessor or both; (xi) any action by any court, administrative agency or other Governmental Authority; (xii) any restriction, prevention or curtailment of or interference with the construction on or any use of any Leased Property or any part thereof; (xiii) the failure of Lessee to achieve any accounting or tax benefits or the characterization of the transaction intended by Article XXVI; or (xiv) any other cause or circumstances whether similar or dissimilar to the foregoing and whether or not Lessee shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Lessee hereunder shall be covenants and agreements that are separate and independent from any obligations of Lessor hereunder or under any other Operative Documents and the obligations of Lessee shall continue unaffected unless such obligations shall have been modified or terminated in accordance with an express provision of this Lease.

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

#### ARTICLE VII

##### SUBLETTING; ASSIGNMENT

7.1 Subletting and Assignment. Lessee may not assign this Lease or any of its rights or obligations hereunder in whole or in part to any Person. Lessee may, without the consent of Lessor, sublease all or any portion of any Leased Property to any Person. No sublease or other relinquishment of possession of any Leased Property shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder and Lessee shall remain directly and primarily liable under this Lease as to the Leased Property, or portion thereof, so sublet. Any sublease of any Leased Property shall be in writing, shall prohibit further subleases and may not have a term which extends beyond the applicable Site Expiration Date or Equipment Pool Expiration Date, as the case may be, unless Lessor and Agent have approved the sublease. Notwithstanding the foregoing, all subleases shall be made subject to and subordinated to this Lease and to the rights of Lessor hereunder, and unless Lessor, Lessee, and the subtenant have entered into a nondisturbance and attornment agreement acceptable to Lessor and Agent, shall expressly provide for the surrender of the related Leased Property after a Lease Event of Default hereunder. With respect to any sublease to any Person that is not an Affiliate of Lessee, Lessee shall not sublease the Leased Property to a person who shall then be engaged in any proceedings for relief under any bankruptcy or insolvency law or laws relating to relief of debtors. With respect to any sublease to a person who is not an Affiliate of Lessee, all of Lessee's right, title and interest in, to and

under each sublease are hereby pledged by Lessee to Agent, as collateral for Lessee's obligations under the Operative Documents, and Lessee shall, at its expense do any further act and execute, acknowledge, deliver, file, register and record any further documents which Agent may reasonably request in order to create, perfect, preserve and protect Agent's security interest in such sublease. Lessee shall not permit or consent to any renewal or extension of a sublease at any time when a Lease Event of Default has occurred and is continuing. Lessee shall promptly deliver to Agent and Lessor a copy of any sublease relating to fifty percent (50%) or more of the rentable square footage of a Facility or Site (computed on the basis of net rentable square feet) which Lessee enters into with a Person other than a Subsidiary of Lessee.

#### ARTICLE VIII

##### CONDITION OF LEASED PROPERTY

8.1 Condition of the Sites and the Units of Equipment. LESSEE ACKNOWLEDGES AND AGREES THAT ALTHOUGH LESSOR WILL OWN AND HOLD TITLE TO THE SITE, LESSEE IS SOLELY RESPONSIBLE UNDER THE TERMS OF THE CONSTRUCTION AGENCY AGREEMENT FOR THE DESIGN, DEVELOPMENT, BUDGETING AND CONSTRUCTION OF THE FACILITY AND ANY ALTERATIONS OR MODIFICATIONS. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT: (i) EACH OF THE UNITS OF EQUIPMENT LEASED BY IT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY LESSEE; (ii) LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES; AND (iii) NEITHER LESSOR, AGENT NOR ANY PARTICIPANT IS A MANUFACTURER THEREOF OR A DEALER IN LEASED PROPERTY OF SUCH KIND. LESSEE HAS EXAMINED THE SITES AND THE UNITS OF EQUIPMENT AND AS AMONG LESSEE, LESSOR, AGENT AND EACH OF THE PARTICIPANTS IN CONNECTION WITH THE OVERALL TRANSACTION HAS FOUND THE SAME TO BE SATISFACTORY IN ALL RESPECTS LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT IT IS LEASING EACH SITE AND UNIT OF EQUIPMENT "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY LESSOR, AGENT, OR ANY PARTICIPANT AND IN EACH CASE SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (C) ANY STATE OF FACTS WHICH A PHYSICAL INSPECTION OR AN ACCURATE SURVEY MIGHT SHOW, AND (D) VIOLATIONS OF APPLICABLE LAWS AND REGULATIONS WHICH MAY EXIST ON THE DATE HEREOF. NEITHER LESSOR, AGENT, NOR ANY PARTICIPANT HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE, VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, OR FITNESS FOR USE OF ANY SITE OR UNIT OF EQUIPMENT (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SITE OR UNIT OF EQUIPMENT (OR ANY PART THEREOF) AND NEITHER LESSOR, AGENT, NOR ANY PARTICIPANT



SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN OR THE FAILURE OF ANY LEASED PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY APPLICABLE LAWS AND REGULATIONS. Lessee has been afforded full opportunity to inspect the Leased Property, is satisfied with the results of its inspections and is entering into this Lease solely on the basis of the results of its own inspections, and all risks incident to the matters discussed in the preceding sentence, as between Lessor, Agent and Participants, on the one hand, and Lessee, on the other, are to be borne by Lessee. The provisions of this Article VIII have been negotiated, and, except to the extent otherwise expressly stated, the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by any of Lessor, Agent or Participants, express or implied, with respect to the Leased Property (or any portion thereof or interest therein), that may arise pursuant to any Applicable Laws and Regulations now or hereafter in effect or otherwise. Provided that no Lease Event of Default has occurred and is continuing, neither Section 6.1 nor this Section 8.1 shall prevent Lessee's right to enforce manufacturers' or suppliers' warranties with respect to any Leased Property against a manufacturer or supplier.

8.2 Possession and Use of the Leased Property. Each Site may be used for any Permitted Use that does not diminish or impair in any material respect (a) the value of such Site from the Fair Market Value as of the related Site Acquisition Date as stated in the appraisal delivered pursuant to Section 6.2(a) of the Participation Agreement or (b) the utility or useful life of such Site from that which existed on the related Site Acquisition Date and in a manner consistent with the standards applicable to properties of a similar nature and usage in the geographic area in which such Site is located and in any event not less than the standards applied by Lessee for other comparable properties owned or leased by Lessee or its Affiliates. Lessee shall not permit any Unit of Equipment or any Part relating to such Unit of Equipment to be used for any purpose other than the operation for which it was designed. Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Leased Property as contemplated by this Lease and, to the extent applicable, the Construction Agency Agreement. Lessee shall not commit or permit any waste of the Leased Property or any part thereof which would, individually or in the aggregate, have a Material Adverse Effect. Lessee shall at all times keep each Unit of Equipment in a location in which the security interest created in such Unit of Equipment by the Operative Documents shall remain a perfected, first priority security interest (other than Permitted Liens), and Lessee shall not move any Unit of Equipment without first making any filings or recordings necessary (including amendments and continuations) to maintain

the security interest therein as an uninterrupted, perfected, first priority security interest (other than Permitted Liens).

#### ARTICLE IX

##### COMPLIANCE WITH LEGAL AND INSURANCE REQUIREMENTS

9.1 Compliance with Applicable Laws and Regulations and Insurance Requirements. Subject to the terms of Article XIII relating to Permitted Contests, Lessee, at its sole cost and expense, shall (a) comply in all respects with all Applicable Laws and Regulations (including all Environmental Laws applicable to the record owner of the Sites) and Insurance Requirements relating to the Leased Property, including the use, construction, operation, maintenance, repair and restoration thereof and the remarketing thereof pursuant to Article XXII, whether or not compliance therewith shall require structural or extraordinary changes in the Facilities or interfere with the use and enjoyment of the Leased Property, except where the failure to so comply would not individually or in the aggregate have a Material Adverse Effect, and (b) procure, maintain and comply in all respects with all licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance, operation, repair and restoration of the Leased Property, except where the failure to so procure, maintain and comply would not, individually or in the aggregate, have a Material Adverse Effect.

#### ARTICLE X

##### MAINTENANCE

10.1 Maintenance and Repair; Return. (a) Lessee, at its sole cost and expense, shall maintain each Site and Unit of Equipment in good condition and in good repair (ordinary wear and tear excepted) and operating order, and make all necessary repairs thereto, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural, in each case as required by all Applicable Laws and Regulations and Insurance Requirements and shall make all Required Modifications and Required Equipment Alterations. All of the foregoing obligations shall be carried out by Lessee on a basis and within the time period consistent with the operation and maintenance of properties and equipment comparable in type to the applicable Site or Unit of Equipment, and in no event less than the standards applied by Lessee in the operation and maintenance of other comparable properties owned or leased by Lessee or its Affiliates. Lessee shall not permit the names, initials or insignia of any Person other than Lessor or Agent to

be placed on any Unit of Equipment as designation that may be interpreted as a claim of ownership or a Lien. Lessee shall maintain, and, upon reasonable notice during normal business hours, shall permit Lessor and Agent to inspect any records, logs and other materials required by any Governmental Authority having jurisdiction to be maintained or filed in respect of the Leased Property.

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

(c) Unless Lessee has exercised its rights to purchase and purchases in accordance with Section 20.1 a Site or Equipment Group pursuant to its Purchase Option, Lessee shall, upon the expiration or earlier termination of the applicable Site Lease Supplement or Equipment Group Supplement, vacate and surrender the Leased Property to Lessor free and clear of all Liens other than Permitted Exceptions and Lessor Liens, in as good condition as it was on the date it became subject to this Lease, ordinary wear and tear excepted, and in compliance with all Applicable Laws and Regulations (and in any event without (x) any asbestos installed or maintained in any part of any Facility, (y) any polychlorinated biphenyls (PCBs) in, on or used or located at any Site, and (z) any other Hazardous Substances, except for Permitted Hazardous Substances); provided, however, that if Lessee elects the Remarketing Option, nothing in this Section 10.1(c) shall relieve Lessee of its obligation to deliver an Environmental Audit and an environmental assessment satisfying the requirements of Section 22.1(b).

#### ARTICLE XI

##### MODIFICATIONS AND ALTERATIONS

11.1 Modifications of Sites. (a) Lessee, at its sole cost and expense, may at any time and from time to time make alterations, renovations, improvements and additions to any Site or any part thereof and substitutions and replacements therefor (collectively, "Modifications"); provided that: (i) except for

any Modification required to be made pursuant to Applicable Laws and Regulations or an Insurance Requirement (a "Required Modification"), no Modification shall impair in any material respect the value, utility or useful life of such Site or any part thereof from that which existed immediately prior to such Modification; (ii) the Modification shall be done expeditiously and in a good and workmanlike manner; (iii) Lessee shall comply in all material respects with all Applicable Laws and Regulations (including all Environmental Laws) and Insurance Requirements applicable to the Modification, including the obtaining of all permits and certificates of occupancy, and the structural integrity of the Site shall not be adversely affected in any material respect; (iv) subject to the terms of Article XIII relating to permitted contests, Lessee shall pay all costs and expenses and shall discharge (or cause to be insured or bonded over) within sixty (60) days after the same shall be filed (or otherwise become effective) any Liens arising with respect to the Modification; and (v) such Modifications shall comply with Sections 8.2 and 10.1. All Modifications (other than those that both are not Required Modifications and are readily removable without impairing in any material respect the value, utility or remaining useful life of the applicable Site) shall remain part of the realty and shall be subject to this Lease, and title thereto shall immediately vest in Lessor.

(b) Lessee shall deliver to Lessor and Agent a brief written narrative of the work to be done in connection with any Modification (excluding construction and alterations performed pursuant to the Construction Agency Agreement) to any Site the cost of which is anticipated to exceed \$5,000,000 in the aggregate.

11.2 Modifications and Alterations of Equipment. In case any Unit of Equipment, or any item of equipment, part or appliance therein (each, a "Part") is required to be altered, added to or modified in order to comply with any Applicable Laws and Regulations or Insurance Requirement (a "Required Equipment Alteration"), Lessee agrees to make such Required Equipment Alteration at its sole cost and expense. Lessee shall have the right to make any modification, alteration or improvement to any Unit of Equipment, or to remove any Part which has become worn out, broken or obsolete, provided in each case that Lessee continues to be in compliance with Section 9.1 and that such action (a) will not impair in any material respect the value, utility or useful life of the applicable Unit of Equipment or any Part thereof from that which existed immediately prior to such Alteration, or impair its originally intended use or function or decrease its economic useful life in any material respect, and (c) is done in a good and workmanlike manner. All Parts affixed to or installed as a part of any Unit of Equipment, excluding temporary replacements, shall thereupon become subject to the

security interest under this Lease. If no Lease Event of Default or Lease Default shall exist, Lessee may remove, at its expense, any Part at any time during the Term (such Part, a "Removable Part"): (i) which is in addition to, and not in replacement of or substitution for, any Part originally incorporated or installed in or attached to a Unit of Equipment on the date such item became subject to this Lease or any Part in replacement of or substitution for any such Part originally incorporated or installed or attached to such Unit of Equipment; (ii) which is not a Required Equipment Alteration; and (iii) which can be removed from any Unit of Equipment without causing damage to such Unit of Equipment or diminishing or impairing the value, utility or useful life which such Unit of Equipment would have had at such time had such addition not occurred; provided, that: (x) such removal will not impair the value, utility or useful life which the Unit of Equipment would have had at such time had such Part not been affixed or placed to or on such Unit of Equipment; and (y) such Part is not necessary for the continued normal use of such Unit of Equipment. Lessee shall repair all damage to any Unit of Equipment resulting from any alteration so as to restore such Unit of Equipment to the condition in which it existed prior to such alteration (ordinary wear and tear excepted). Neither Lessor, Agent nor any Participant shall have any obligation to pay for or to reimburse Lessee for any alteration required or permitted by this Section 11.2. All Parts incorporated or installed in or attached or added to any Unit of Equipment as the result of alterations, modifications or additions under this Section 11.2, except Removable Parts while removed from any Unit of Equipment, shall, without further act, vest in Lessor to secure Lessee's performance of its obligations under the Operative Documents, in the manner provided in Section 26.1(d) and the other applicable provisions of Article XII shall apply with respect to such Parts. Upon the removal by Lessee of any Removable Part as provided herein, such Removable Part shall no longer be deemed part of the Unit of Equipment from which it was removed. Any Removable Part not removed by Lessee as provided herein prior to the end of the applicable Site Term or Equipment Term or other termination of the Lease shall become part of the Leased Property.

## ARTICLE XII

### TITLE

12.1 Warrant of Title. (a) Lessee agrees that except as otherwise provided herein and subject to the terms of Article XIII relating to Permitted Contests, Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, attachment, levy, title retention agreement or claim upon

any Leased Property or any Modifications to a Site or any Unit of Equipment, or any Lien, attachment, levy or claim with respect to the Rent or with respect to any amounts held by Agent pursuant to the Loan Agreement or the other Loan Documents, other than Permitted Liens and Lessor Liens.

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

12.2 Grants and Releases of Easements on Sites. Provided that no Lease Event of Default shall have occurred and be continuing and subject to the provisions of Articles VIII, IX, X and XI, Lessor hereby consents in each instance to the following actions by Lessee, in the name and stead of Lessor, but at Lessee's sole cost and expense: (a) the granting of easements, licenses, rights-of-way and other rights and privileges in the nature of easements reasonably necessary or desirable for the use, repair, or maintenance of any Site as herein provided; (b) the release of existing easements or other rights in the nature of easements which are for the benefit of any Site; (c) the dedication or transfer of unimproved portions of any Site for road, highway or other public purposes; (d) the execution of petitions to have a Site annexed to any municipal corporation or utility district; and (e) the execution of amendments to any covenants and restrictions affecting any Site; provided, however, that in each case (i) such grant, release, dedication, transfer, annexation or amendment does not materially impair the value, utility or remaining useful life of the applicable Site, (ii) such grant, release, dedication, transfer, annexation or amendment is reasonably necessary or desirable in connection with the use, maintenance, alteration or improvement of the applicable Site, (iii) such grant, release, dedication, transfer, annexation or amendment will not cause the applicable Site or any portion thereof to fail to comply in any material respect with the provisions of this Lease or any other Operative Documents and in any material respect with all Applicable Laws and Regulations (including, without limitation, all applicable zoning, planning, building and subdivision ordinances, all applicable restrictive covenants and all applicable architectural approval

requirements); (iv) all governmental consents or approvals required prior to such grant, release, dedication, transfer, annexation or amendment have been obtained, and all filings required prior to such action have been made; (v) such grant, release, dedication, transfer, annexation or amendment will not result in any material down-zoning of the applicable Site or any portion thereof or a material reduction in the maximum density or development rights available to the applicable Site under all Applicable Laws and Regulations; (vi) Lessee shall remain obligated under this Lease and under any instrument executed by Lessee consenting to the assignment of Lessor's interest in this Lease as security for indebtedness, in each such case in accordance with their terms, as though such grant, release, dedication, transfer, annexation or amendment had not been effected and (vii) Lessee shall pay and perform any obligations of Lessor under such grant, release, dedication, transfer, annexation or amendment. Without limiting the effectiveness of the foregoing, provided that no Lease Event of Default shall have occurred and be continuing, Lessor shall, upon the request of Lessee, and at Lessee's sole cost and expense, execute and deliver any instruments necessary or appropriate to confirm any such grant, release, dedication, transfer, annexation or amendment to any Person permitted under this Section 12.2.

### ARTICLE XIII

#### PERMITTED CONTESTS

13.1 Permitted Contests in Respect of Applicable Laws and Regulations. If, to the extent and for so long as (a) a test, challenge, appeal or proceeding for review of any Applicable Laws and Regulations relating to any Site or Units of Equipment shall be prosecuted diligently and in good faith in appropriate proceedings by Lessee or (b) compliance with such Applicable Laws and Regulations shall have been excused or exempted by a valid nonconforming use, permit, waiver, extension or forbearance, Lessee shall not be required to comply with such Applicable Laws and Regulations but only if and so long as any such test, challenge, appeal, proceeding or noncompliance shall constitute a Permitted Contest.

Lessor will not be required to join in any proceedings pursuant to this Section 13.1 unless a provision of any Applicable Laws and Regulations requires, or, in the good faith opinion of Lessee, it is helpful to Lessee, that such proceedings be brought by or in the name of Lessor; and in that event Lessor will join in the proceedings or permit them or any part thereof to be brought in its name if and so long as (i) no Lease Event of Default or Lease Default has occurred and is continuing and (ii) Lessee pays all related expenses and indemnifies Lessor, Agent

and Participants to the satisfaction of the respective indemnitees.

#### ARTICLE XIV

##### INSURANCE

14.1 Public Liability and Workers' Compensation Insurance. During the Term for each Site and the Unit of Equipment, Lessee shall procure and carry, at Lessee's sole cost and expense, commercial general liability insurance for claims for injuries or death sustained by persons or damage to property while on or using such Leased Property and such other public liability coverages as are ordinarily procured by Lessee or its Affiliates who own or operate similar properties or as required by Lessor or Agent. Such insurance shall be on terms and in amounts that are no less favorable than insurance maintained by Lessee with respect to similar properties that it owns and that are in accordance with normal industry practice, but in any case shall provide liability coverage of at least \$10,000,000 per person and \$10,000,000 for property damage per occurrence. The policy shall be endorsed to name Lessor, Agent and each Participant as additional insureds (or the insurer shall issue a certificate to such Persons to such effect). The policy shall also specifically provide that the policy shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which Lessor, Agent or Participants may have in force. Lessee shall, in the construction of the Facilities (including in connection with any Modifications thereof) and the operation of the Sites and the Units of Equipment comply with the applicable workers' compensation laws and protect Lessor, Agent and Participants against any liability under such laws.

14.2 Hazard and Other Insurance. During the Term, Lessee shall keep, or cause to be kept, subject to the last sentence of this paragraph, each Site and the Equipment insured against loss or damage by fire and other risks on terms and in amounts that are no less than the full replacement cost of such Leased Property (without taking into account any depreciation) and no less favorable than insurance covering other similar properties or equipment owned by Lessee and that are in accordance with normal industry practice. During the construction of any Facility, Lessee shall also maintain builders' risk insurance. All insurance proceeds in respect of any loss or occurrence for which the proceeds related thereto are (i) less than or equal to \$1,000,000 for a Unit of Equipment or \$5,000,000 for a Site, in the absence of the occurrence and continuance of a Lease Event of Default or Lease Default, shall be adjusted by and paid to Lessee for application toward the reconstruction, repair or refurbishment of the applicable Leased Property and (ii) equal to



or greater than \$1,000,000 for a Unit of Equipment or \$5,000,000 for a Site shall be adjusted jointly by Lessee and Lessor (unless a Lease Event of Default or Lease Default has occurred and is continuing, in which case such proceeds shall be adjusted solely by Lessor) and held by Lessor for application in accordance with Article XV. In addition, Lessee shall at all times during the Term maintain business interruption insurance covering, for a period of no less than thirty (30) days, actual losses for any period during which the earnings of Lessee are impaired as a result of any property damage or other casualty. Notwithstanding the above or any other term in this Lease, Lessee may self-insure, by way of deductible provisions or retentions in insurance policies or otherwise, the risks required to be insured against by this Section 14.2.

14.3 Coverage. (a) Lessee shall furnish Lessor and Agent with certificates showing the insurance required under Sections 14.1 and 14.2 to be in effect and naming Lessor, Agent, and each Participant as additional insureds and showing the mortgagee endorsement required by Section 14.3(c). All such insurance shall be at the sole cost and expense of Lessee. Such certificates shall include a provision for thirty (30) days' advance written notice by the insurer to Lessor and Agent in the event of cancellation or reduction of such insurance.

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

(c) All such insurance shall be written by an insurance company or companies selected by Lessee which is rated in Best's Insurance Guide or any successor thereto (or if there be none, an organization having a similar national reputation) a general policyholder rating of at least "A" and a financial rating of at least "VIII" or be otherwise acceptable to Agent and Required Participants. All insurance policies required by Section 14.2 shall include a standard form mortgagee endorsement in favor of Agent.

(d) Lessor shall not carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Article XIV except that Lessor may

carry separate liability insurance so long as (i) Lessee's insurance is designated as primary and in no event excess or contributory to any insurance Lessor may have in force which would apply to a loss covered under Lessee's policy and (ii) each such insurance policy will not cause Lessee's insurance required under this Article XIV to be subject to a coinsurance exception of any kind.

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

#### ARTICLE XV

##### CASUALTY; CONDEMNATION; ENVIRONMENTAL MATTERS

15.1 Casualty and Condemnation. (a) Subject to the provisions of this Article XV and Article XVI (in the event Lessee delivers, or is obligated to deliver, a Loss Determination Notice certifying a Significant Event has occurred), and prior to the occurrence and continuation of a Lease Event of Default, Lessee shall be entitled to receive (and Lessor hereby irrevocably assigns to Lessee all of Lessor's right, title and interest in) any award, compensation or insurance proceeds to which Lessee or Lessor may become entitled by reason of their respective interests in the Leased Property (i) if all or a portion of the Sites or Equipment is damaged or destroyed in whole or in part by a Casualty or (ii) if the use, access, occupancy, easement rights or title to such Leased Property or any part thereof, is the subject of a Condemnation; provided, however, if a Lease Event of Default shall have occurred and be continuing, such award, compensation or insurance proceeds shall be paid directly to Agent or, if received by Lessee, shall be held in trust for Agent, and shall be paid over by Lessee to Agent (or, if the Loans have been fully paid, to Lessor) and held in accordance with the terms of this Section 15.1(a). If, contrary to such provision, any such award, compensation or insurance proceeds are paid to Lessor, any Lender, or Lessee rather than to Agent, Lessor, Lenders and Lessee, as the case may be, hereby agree to transfer any such payment to Agent. All amounts held by Lessor or Agent when a Lease Event of Default or Lease Default exists hereunder on account of any award, compensation or insurance proceeds either paid directly to Lessor or Agent or turned over to Lessor or Agent shall either be (i)

paid to Lessee for the repair of damage caused by such Casualty or Condemnation in accordance with Section 15.1(e), or (ii) applied to the purchase price of the related Leased Property on the related Termination Date, with any Excess Proceeds being payable to Lessee.

(b) Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any such Casualty or Condemnation and shall pay all costs and expenses thereof. At Lessee's reasonable request, and at Lessee's sole cost and expense, Lessor and Agent shall participate in any such proceeding, action, negotiation, prosecution or adjustment. Lessor and Lessee agree that this Lease shall control the rights of Lessor and Lessee in and to any such award, compensation or insurance payment.

(c) If Lessor or Lessee shall receive notice of a Casualty or of an actual, pending or threatened Condemnation of a Leased Property or any interest therein, which Casualty or Condemnation will in such party's reasonable good faith judgment have a cost in excess of \$1,000,000 to repair or restore or result in a reduction in Fair Market Value of \$1,000,000 or more with respect to a Site, and \$500,000 or more with respect to a Unit of Equipment, Lessor or Lessee, as the case may be, shall give notice thereof to the other and to Agent promptly after the receipt of such notice.

(d) In the event of a Casualty or receipt of notice by Lessee or Lessor of a Condemnation with respect to a Site which would give rise to a notification pursuant to Section 15.1(c), Lessee shall deliver to Lessor and Agent a Loss Determination Notice with respect to such Site pursuant to Section 16.1, which Loss Determination Notice may be given by Lessee together with the notice delivered pursuant to Section 15.1(c). If Lessee has not delivered such Loss Determination Notice within ninety (90) days after such occurrence, then, if Lessor has determined that a Significant Event has occurred, Lessor may deliver to Lessee within thirty (30) days after the end of the ninety (90) day period within which Lessee has to deliver a Loss Determination Notice, a written notice terminating the Lease with respect to such Site. If Lessee has not timely delivered the Loss Determination Notice and Lessor has not timely delivered a notice terminating the Lease with respect to a Site, then this Lease shall (subject to the terms and conditions thereof) remain in full force and effect as to such Site. If Lessee delivers a Loss Determination Notice certifying that a Significant Event has occurred or Lessor delivers the notice provided for above in this Subsection 15.1(d) within the time periods set forth above, this Lease shall terminate as to such Site (but not as to the remaining Sites) and Lessee shall purchase (or cause a designee

to purchase) such affected Site on the next Quarterly Payment Date (or, if such Quarterly Payment Date is within thirty (30) days of Lessor's receipt of such Loss Determination Notice, on the Quarterly Payment Date next following such Quarterly Payment Date) (a "Termination Date") pursuant to Article XVI hereof.

(e) If pursuant to this Section 15.1 this Lease shall continue in full force and effect following a Casualty or Condemnation with respect to the affected Site, Lessee shall, at its sole cost and expense (and, without limitation, if any award, compensation or insurance payment is not sufficient to restore such Site in accordance with this Section 15.1(e), Lessee shall pay the shortfall), diligently repair any damage to the applicable Site caused by such Casualty or Condemnation in conformity with the requirements of Sections 10.1 and 11.1 using the as-built Plans and Specifications for the applicable Site (as modified to give effect to any subsequent Modifications, any Condemnation affecting the Site and all Applicable Laws and Regulations) so as to restore the applicable Site to at least the same value and useful life as existed immediately prior to such Casualty or Condemnation. In such event, title to the applicable Site shall remain with Lessor. Upon completion of any restoration costing \$1,000,000 or more, Lessee shall furnish Lessor an architect's certificate of substantial completion and a Responsible Employee's Certificate confirming that such restoration has been completed pursuant to this Lease.

(f) Upon a Significant Casualty with respect to an Equipment Group, Lessee shall give prompt written notice thereof (a "Loss Notice") to Lessor, which notice shall specify whether Lessee will:

(i) repay the applicable Equipment Group Balance, plus all accrued and unpaid interest on the Loans, all accrued and unpaid Yield on the Investment Amounts, and all other amounts owing by Lessee under the Operative Documents with respect to such Equipment Group, which repayment shall be made no later than the next scheduled Quarterly Payment Date occurring after such Significant Casualty, provided, that in any event such repayment shall be made no later than the last day of the applicable Site Term or Equipment Term (the "Loss Settlement Date"); or

(ii) replace each of the Units of Equipment in the Equipment Group with respect to which the Significant Casualty has occurred pursuant to the provisions of Section 15.1(h); provided, that upon the occurrence and during the continuance of a Lease Event of Default or a Lease Default, Lessee shall be obligated, at the option of Required Participants, to make the payments referred to in clause (i)

above and shall not be entitled to exercise any right or election of replacement as set forth in this clause (ii).

If Lessee has elected, or is required, to pay the Equipment Group Balance and other amounts pursuant to clause (i) above, Lessee shall continue to make all payments of Rent, if any, due in respect of such Unit of Equipment until and including the Loss Settlement Date.

(g) In no event shall a Casualty or Condemnation with respect to any Unit of Equipment or Site as to which this Lease remains in full force and effect under this Section 15.1 affect Lessee's obligations to pay Rent pursuant to Article III or to perform its obligations and pay any amounts due on the Lease Expiration Date or pursuant to Articles XX and XXII.

(h) As soon as practicable after a Casualty involving a Unit of Equipment (unless such event constitutes a Significant Casualty, in which event the provisions of Section 15.1(f)(ii) hereof shall apply), Lessee shall repair and rebuild the affected portions of such Unit of Equipment (or cause such affected portions to be repaired and rebuilt) to the condition required to be maintained by Section 10.1. In the event that any Part which may from time to time be incorporated or installed in or attached to any Unit of Equipment becomes at any time worn out, damaged or permanently rendered unfit for use for any reason whatsoever, Lessee, at its sole cost and expense, will promptly replace, or cause to be replaced, such Part with a replacement Part (a "Replacement Part") in accordance with Lessee's customary practices, and as may be required to comply with Sections 10.1 and 11.2 hereof. In addition, Lessee may, at its sole cost and expense, remove in the ordinary course of maintenance, service, repair, overhaul or testing, any Part, whether or not worn out, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use; provided, that Lessee will, at its sole cost and expense, replace such Part with a Replacement Part as promptly as is commercially reasonable. All Replacement Parts shall be free and clear of all Liens (other than Permitted Liens and Lessor Liens) and shall be in as good operating condition as, and shall have a value and utility at least equal to, the Parts replaced, assuming such replaced Parts and the Units of Equipment were in the condition and repair required to be maintained by the terms of Section 10.1. Except as provided in Section 11.2 hereof, any Part at any time removed from any Unit of Equipment shall remain subject to this Lease no matter where located, until such time as such Part shall be replaced by a Part which has been incorporated or installed in or attached to such Unit of Equipment and which meets the requirements for a Replacement Part specified above. Immediately upon any Replacement Part becoming incorporated or installed in or attached to any such Unit of Equipment as above provided,

without further act: (i) title to the replaced Part (the "Replaced Part") shall thereupon vest in Lessee, free and clear of all rights of Lessor, and shall no longer be deemed a Part hereunder; (ii) such Replacement Part shall thereupon vest in Lessor, as provided in Section 26.1 (in the same manner as the underlying Unit of Equipment); and (iii) such Replacement Part shall become subject to this Lease, the security interest created hereunder, and the applicable Equipment Lease Supplement, and shall be deemed part of such Unit of Equipment for all purposes hereof to the same extent as the Parts incorporated or installed in or attached to such Unit of Equipment on the date such Unit of Equipment became subject to this Lease.

(i) Upon the satisfaction of the conditions specified in Section 15.1(h), and the Replacement Part becoming subject to this Lease and the security interest created hereunder, Lessor shall execute and deliver to Lessee such documents as may be reasonably necessary to release the Replaced Part from the terms and scope of this Lease (but without representations or warranties, except that the Replaced Part is free and clear of all Lessor Liens), in such form as may be reasonably requested by Lessee and are in form and substance satisfactory to Required Participants, all at the sole cost and expense of Lessee.

(j) In addition to the foregoing, if Lessee elects to replace any Unit of Equipment (a "Replaced Unit") with a substitute Unit of Equipment (a "Replacement Unit") as permitted by Sections 15.1(f)(ii) and (h) above:

(i) any such Replacement Unit shall satisfy one of the following conditions: (x) the Replacement Unit shall be of identical manufacture and model as the Replaced Unit and the condition of such Replacement Unit shall satisfy the provisions of this Lease, or (y) such Replacement Unit shall have a utility, a fair market value, and an economic useful life at least equal to those of the Replaced Unit immediately prior to such substitution, assuming that the Replaced Unit was in the condition and repair required to be maintained by the terms of this Lease, and, if the Equipment Purchase Price for the Replaced Unit was greater than \$500,000, Lessee shall have provided to Lessor and each Participant, at Lessee's expense, an Appraisal or other documentation satisfactory to Lessor and each Participant in their sole and absolute discretion with respect to the determination of such utility, Fair Market Value and economic useful life of the Replacement Unit or (z) such Replacement Unit shall otherwise be acceptable to each of the Participants in its respective sole and absolute discretion; and

(ii) Lessee shall have satisfied each of the conditions set forth in Sections 6.3(b), (c), (i) and (j) of the Participation Agreement, and if the Unit of Equipment has an Equipment Purchase Price of greater than \$500,000 or is being replaced as a result of a Significant Event, then also Sections 6.3(d), (e), (f), (g), and (h) of the Participation Agreement in connection with the acquisition of Equipment on an Equipment Acquisition Date with respect to the proposed replacement.

Upon the satisfaction of the conditions specified in this Section 15.1(j) and the Replacement Unit becoming subject to this Lease and the security interest created hereunder, Lessor shall execute and deliver to Lessee such instruments (without representation or warranty) as may be reasonably required to release the Replaced Unit from the terms and scope of this Lease, in such form as may be reasonably requested by Lessee and in form and substance satisfactory to Lessor, all at Lessee's sole cost and expense.

15.2 Environmental Matters. Upon Lessee's actual knowledge of the presence of Hazardous Substances in any portion of any Site in concentrations and conditions that constitute an Environmental Violation (i) Lessee shall comply with all notification obligations required under Applicable Laws and Regulations and (ii) if such condition would require in excess of \$1,000,000 in remediation costs, Lessee shall promptly notify Lessor in writing of such condition. In the event of such Environmental Violation, Lessee shall, not later than thirty (30) days after Lessee has actual knowledge of such Environmental Violation, either (x) if such Environmental Violation is a Significant Event, deliver to Lessor and Agent a Responsible Employee's Certificate and a Loss Determination Notice certifying that such Environmental Violation is a Significant Event with respect to the applicable Site pursuant to Section 16.1, or (y) if such Environmental Violation is not a Significant Event, deliver to Lessor and Agent a Loss Determination Notice certifying that such Environmental Violation is not a Significant Event and at Lessee's sole cost and expense, promptly and diligently commence any response, clean up, remedial or other action required by any Governmental Authority having jurisdiction in respect thereof. If such Environmental Violation is not a Significant Event, Lessee shall, upon completion of remedial action by Lessee, cause to be prepared by an environmental consultant reasonably acceptable to Lessor a report describing the Environmental Violation and the actions taken by Lessee (or its agents) in response to such Environmental Violation, and a statement by the consultant that the Environmental Violation has been remedied in compliance in all material respects with applicable Environmental Law. Each such Environmental Violation shall be remedied prior to the Lease Expiration Date. Nothing in

this Article XV shall reduce or limit Lessee's obligations under Sections 11.1, 11.2 or 11.3 of the Participation Agreement or the Unsecured Environmental Indemnities.

15.3 Notice of Environmental Matters. Promptly, but in any event within sixty (60) Business Days from the date Lessee has actual knowledge thereof, Lessee shall provide to Lessor written notice of any pending or, to Lessee's knowledge, threatened claim, action or proceeding involving any Environmental Law or any Release on or in connection with any Site, which claim, action or proceeding would require in excess of \$1,000,000 in remediation costs. All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and Lessee's proposed response thereto. In addition, Lessee shall provide to Lessor, within sixty (60) Business Days of receipt, copies of all material written communications with any Governmental Authority relating to any Environmental Law in connection with any Site. Lessee shall also promptly provide such detailed reports of any such material environmental claims as may reasonably be requested by Lessor and Agent.

#### ARTICLE XVI

##### NOTIFICATION UPON CASUALTY, CONDEMNATION OR ENVIRONMENTAL EVENT WITH RESPECT TO A SITE

16.1 Notification upon Certain Events. Lessee shall deliver a written notice in the form described in Section 16.2(a) (a "Loss Determination Notice") with respect to the affected Site, as specified in Sections 15.1(d) and 15.2, together with, if such event constitutes a Significant Event, a Responsible Employee's Certificate certifying that (A) in the case of a Condemnation, such Condemnation is a Significant Condemnation, (B) in the case of a Casualty, such Casualty is a Significant Casualty or (C) in the case of an Environmental Violation, in the reasonable, good-faith judgment of Lessee, the cost to remediate the same will cause the same to be a Significant Event.

16.2 Procedures. (a) A Loss Determination Notice shall contain: (i) a certification as to whether or not a Casualty, Condemnation or Environmental Violation constitutes a Significant Event and (ii) if a Significant Event is specified, (A) notice of termination of this Lease with respect to the affected Site on the next occurring Quarterly Payment Date (unless such Quarterly Payment Date is within thirty (30) days of Lessor's receipt of such Loss Determination Notice, in which event such notice shall specify the Quarterly Payment Date next following such Quarterly Payment Date) (the "Termination Date"), such termination to be effective upon Lessee's payment of the Property Balance and the other amounts specified in (b) below for such Site; and (B) a



binding and irrevocable agreement of Lessee to pay the Property Balance and the other amounts specified in (b) below for such Site and purchase such Site on such Termination Date.

(b) On each Termination Date (including, without limitation, any Termination Date described in Section 15.1(d)), Lessee shall pay to Lessor the Property Balance for the applicable Site, plus all other amounts owing in respect of Rent for such Site (including Supplemental Rent) theretofore accruing, and Lessor shall convey Lessor's interest in such Site or the remaining portion thereof, if any, to Lessee all in accordance with Section 19.1, as well as any Net Proceeds with respect to the Casualty or Condemnation giving rise to the termination of this Lease with respect to such Site theretofore received by Lessor; provided that if a Lease Event of Default or Lease Default shall have occurred and be continuing, the Excess Proceeds, if any, shall be paid to Lessor.

## ARTICLE XVII

### LEASE EVENTS OF DEFAULT

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

(a) Lessee shall fail to make payment of (i) any Basic Rent within five (5) days after the same has become due and payable or (ii) any Purchase Option Price, Property Balance or AMAT Recourse Amount, including, without limitation, amounts due pursuant to Articles XV and XVI or Sections 20.1, 20.2, 20.3, 22.1 or 22.2 after the same has become due and payable;

(b) Lessee shall fail to make payment of any Supplemental Rent (other than Supplemental Rent referred to in clause (a) of this Section) due and payable within thirty (30) days after receipt of notice thereof;

(c) Lessee shall (i) fail to maintain insurance as required by Article XIV of this Lease, provided, that so long as the required insurance coverage remains in place and there is a downgrade in the rating of an insurer who at the time of obtaining the insurance complied with such requirements, a default shall not arise hereunder if within thirty (30) days of the earlier of notice or the actual

knowledge of a Responsible Officer of Lessee of such downgrade, Lessee provides replacement coverage complying with Article XIV, or (ii) breach or fail to comply with Sections 9.2, 9.3 and 9.12 of the Participation Agreement;

(d) any representation or warranty set forth in this Lease or in any other Operative Document or in any document entered into in connection herewith or therewith or in any document, certificate or financial or other statement delivered in connection herewith or therewith shall be false or inaccurate in any material respect;

(e) Lessee shall fail to observe or perform any term, covenant or condition of Lessee under this Lease, the Participation Agreement or any other Operative Document to which it is a party other than those described in Section 17.1(a), (b), (c) or (d) hereof, and such failure shall remain uncured for a period of thirty-five (35) days after receipt of written notice thereof; provided, however, that as to any breach by Lessee or failure of Lessee to perform its obligations, if such failure is (1) capable of being cured, (2) cannot be cured within thirty-five (35) days, and (3) Lessee is at all times diligently and in good faith pursuing the cure thereof, then the cure period for such failures shall be extended for the period necessary for an additional fifty-five (55) days;

(f) Lessee shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof, (iii) make a general assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver of itself or the whole or any substantial part of its property, (v) fail to cause the discharge of any custodian, trustee or receiver appointed for Lessee or the whole or a substantial part of its property within sixty (60) days, after such appointment, (vi) file a petition or answer seeking or consenting to reorganization under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof, or (vii) take corporate action for the purposes of effectuating any of the foregoing.

(g) a Construction Agency Agreement Event of Default or Loan Event of Default shall have occurred and be continuing;

(h) insolvency proceedings or a petition under the United States bankruptcy laws or any other applicable

insolvency law or statute of the United States of America or any State or Commonwealth thereof shall be filed against Lessee and not dismissed within sixty (60) days from the date of its filing, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of Lessee, a receiver of Lessee or the whole or a substantial part of its property, and such order or decree shall not be vacated or set aside within sixty (60) days from the date of the entry thereof;

(i) any member of the ERISA Group shall fail to pay when due an amount or amounts aggregating in excess of \$10,000,000 which it shall have become liable to pay under Title IV of ERISA; or notice of intent to terminate a Material Plan shall be filed under Title IV of ERISA by any member of the ERISA Group, any plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate, to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer any Material Plan; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated; or there shall occur a complete or partial withdrawal from, or a default, within the meaning of Section 4219(c)(5) of ERISA, with respect to, one or more Multiemployer Plans which could cause one or more members of the ERISA Group to incur a current payment obligation in excess of \$10,000,000;

(j) a final judgment or final judgments for the payment of money are entered by a court or courts of competent jurisdiction against Lessee or any of its Subsidiaries and such judgment or judgments remain undischarged, unbonded or unstayed for a period (during which execution shall not be effectively stayed) of thirty (30) days; provided, that the aggregate of all such judgments exceeds \$10,000,000;

(k) (i) any Operative Document shall (except in accordance with its terms or with the written consent of Agent), in whole or in part, terminate, cease to be the legally valid, binding and enforceable obligation of Lessee in accordance with its terms; (ii) except as otherwise permitted under the Operative Documents, any Lien granted pursuant to any Operative Document shall, in whole or in part, cease to be a perfected first priority security interest (other than Permitted Liens), provided however, that with respect to any Lien which fails to be so effective or perfected, Lessee shall have the earlier of thirty (30) days from its knowledge of such condition or receipt of

notice thereof to cure such failure; or (iii) Lessee or any of its Affiliates shall, directly or indirectly, contest in any manner in any court the effectiveness, validity, binding nature or enforceability of any of the Security Documents or any Lien granted under any of the Operative Documents;

(1) there shall have occurred any event of default in the performance or observance of any obligation or condition with respect to any amount or amounts of indebtedness owing by or guaranteed by Lessee or its Subsidiaries the effect of which is to cause or permit the acceleration of the maturity of indebtedness (including the Credit Agreement) having a principal amount in excess of \$10,000,000 (individually or in the aggregate) prior to its expressed or stated maturity or to permit the beneficiary of any such guarantee of indebtedness having a principal amount in excess of \$10,000,000 (individually or in the aggregate) to make a demand for payment or performance thereunder.

17.2 Remedies. Upon the occurrence of any Lease Event of Default and at any time thereafter and subject to Lessee's rights to purchase Leased Property pursuant to Section 20.1, Lessor may, so long as such Lease Event of Default is continuing, do one or more of the following as Lessor in its sole discretion shall determine, without limiting any other right or remedy Lessor may have on account of such Lease Event of Default (including, without limitation, the obligation of Lessee to purchase the Leased Property as set forth in Section 20.3):

(a) Lessor may, by notice to Lessee, rescind or terminate this Lease as to any or all of the Leased Property as of the date specified in such notice subject to Lessee's rights to purchase Leased Property pursuant to Section 20.1; however, (A) no reletting, reentry or taking of possession of any Leased Property (or any portion thereof) by Lessor will be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee, (B) notwithstanding any reletting, reentry or taking of possession, Lessor may at any time thereafter elect to terminate this Lease for a continuing Lease Event of Default, and (C) no act or thing done by Lessor or any of its agents, representatives or employees and no agreement accepting a surrender of the Leased Property shall be valid unless the same be made in writing and executed by Lessor;

(b) Lessor may (i) demand that Lessee, and Lessee shall upon the written demand of Lessor, return any Leased Property demanded by Lessor promptly to Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Articles VIII, IX and X hereof as

if such Leased Property were being returned at the end of the applicable Site Term or Equipment Term, and Lessor shall not be liable for the reimbursement of Lessee for any costs and expenses incurred by Lessee in connection therewith and (ii) without prejudice to any other remedy which Lessor may have for possession of any Leased Property, and to the extent and in the manner permitted by Applicable Laws and Regulations, enter upon such Leased Property and take immediate possession of (to the exclusion of Lessee or any other person) such Leased Property or any part thereof and expel or remove Lessee and any other Person who may be occupying such Leased Property, by summary proceedings or otherwise, all without liability to Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise and, in addition to Lessor's other damages, Lessee shall be responsible for all costs and expenses incurred by Lessor and/or Agent in connection with any reletting, including, without limitation, brokers' fees and all costs of any alterations or repairs made by Lessor;

(c) Lessor may (i) sell all or any part of any one or more Sites or Units of Equipment at public or private sale, as Lessor may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or any proceeds with respect thereto (except to the extent required by clause (ii) below if Lessor shall elect to exercise its rights thereunder) in which event Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated or proportionately reduced, as the case may be; and (ii) if Lessor shall so elect, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (the parties agreeing that Lessor's actual damages would be difficult to predict, but the aforementioned liquidated damages represent a reasonable approximation of such amount) (in lieu of Basic Rent due for periods commencing on or after the Payment Date coinciding with such date of sale (or, if the sale date is not a Payment Date, the Payment Date next preceding the date of such sale)), an amount equal to (A) the excess, if any, of (1) the Lease Balance, calculated as of such Payment Date (plus all Supplemental Rent, Site Rent and Equipment Variable Rent due and unpaid to and including such Payment Date) over (2) the net proceeds of such sale (that is, after deducting all costs and expenses incurred by Lessor, Agent, and Participants incident to such conveyance, including, without limitation, repossession costs, brokerage commissions, prorations, transfer taxes, fees and expenses for counsel, title insurance fees, survey costs, recording

fees, and any repair or alteration costs); plus (B) interest at the Overdue Rate on the foregoing amount from such Payment Date until the date of payment;

(d) Lessor may, at its option, not terminate the Lease with respect to any Leased Property, and continue to collect all Basic Rent, Supplemental Rent, and all other amounts due Lessor (together with all costs of collection) and enforce Lessee's obligations under this Lease as and when the same become due, or are to be performed, and at the option of Lessor, upon any abandonment of any Leased Property by Lessee or re-entry of same by Lessor, Lessor may, in its sole and absolute discretion, elect not to terminate this Lease and may make such reasonable alterations and necessary repairs in order to relet such Leased Property, and relet such Leased Property or any part thereof for such term or terms (which may be for a long term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Lessor in its reasonable discretion may deem advisable; and upon each such reletting all rentals actually received by Lessor from such reletting shall be applied to Lessee's obligations hereunder and the other Operative Documents in such order, proportion and priority as Lessor may elect in Lessor's sole and absolute discretion; it being agreed that under no circumstances shall Lessee benefit from its default from any increase in market rents. If such rentals received from such reletting during any period be less than the Rent with respect to such Leased Property to be paid during that period by Lessee hereunder, Lessee shall pay any deficiency, as calculated by Lessor, to Lessor on the next Payment Date;

(e) Unless a Leased Property has been sold in its entirety, Lessor may, whether or not Lessor shall have exercised or shall thereafter at any time exercise any of its rights under paragraph (b), (c) or (d) of this Section 17.2 with respect to such Leased Property or portions thereof, demand, by written notice to Lessee specifying a date (a "Termination Date") not earlier than thirty (30) days after the date of such notice with respect to a Lease Event of Default arising under Section 9.12 of the Participation Agreement or ten (10) days with respect to any other Lease Event of Default, that Lessee purchase, on such Termination Date, such Leased Property (or the remaining portion thereof) in accordance with the provisions of Article XIX and Section 20.2;

(f) Lessor may exercise any other right or remedy that may be available to it under Applicable Laws and Regulations, or proceed by appropriate court action (legal or equitable) to enforce the terms hereof or to recover

damages for the breach hereof. Separate suits may be brought to collect any such damages for any period(s), and such suits shall not in any manner prejudice Lessor's right to collect any such damages for any subsequent period(s), or Lessor may defer any such suit until after the expiration of the Term, in which event such suit shall be deemed not to have accrued until the expiration of the Term.

(g) Lessor may retain and apply against Lessor's damages all sums which Lessor would, absent such Lease Event of Default, be required to pay to, or turn over to, Lessee pursuant to the terms of this Lease; or

(h) Lessee acknowledges that sales for cash or on credit to a wholesaler, retailer or user of any Equipment, at a public or private auction are all commercially reasonable. Any notice required by law of an intended disposition by Lessor shall be deemed reasonable and properly given if given at least ten (10) days before such disposition.

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

17.4 Power of Sale and Foreclosure. Lessee hereby grants a Lien against such Leased Property WITH POWER OF SALE, and that, upon the occurrence of any Lease Event of Default, Lessor shall have the power and authority, to the extent provided by law, after proper notice and lapse of such time as may be required by law, to sell such Leased Property at the time and place of sale fixed by Lessor in said notice of sale, either as a whole, or in separate lots or parcels or items and in such order as Lessor may elect, at auction to the highest bidder for cash in lawful money of the United States payable at the time of sale; accordingly, it is acknowledged that A POWER OF SALE HAS BEEN GRANTED IN THIS INSTRUMENT; A POWER OF SALE MAY ALLOW LESSOR TO TAKE THE APPLICABLE LEASED PROPERTY AND SELL IT WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY LESSEE UNDER THIS INSTRUMENT, and (ii) upon the occurrence of a Lease Event of Default, Lessor, in lieu of or in addition to exercising any power of sale hereinabove given, may proceed by a suit or suits in equity or at law, whether for a foreclosure hereunder, or for the sale of the Leased Property, or against Lessee on a recourse

basis for the Lease Balance and all accrued and unpaid interest on the Loans, all accrued and unpaid Yield on the Investment Amounts, and all other amounts owing by Lessee under the Operative Documents with respect to such Leased Property, or for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Leased Property, or for the enforcement of any other appropriate legal or equitable remedy.

17.5 Remedies Cumulative. The remedies herein provided and in each Lease Supplement shall be cumulative and in addition to (and not in limitation of) any other rights or remedies available under Applicable Laws and Regulations, equity or otherwise, including, without limitation, any mortgage foreclosure remedies.

#### ARTICLE XVIII

##### RIGHT TO PERFORM FOR LESSEE

18.1 Lessor's Right to Cure Lessee's Lease Defaults. Lessor, without waiving or releasing any obligation or Lease Event of Default, may (but shall be under no obligation to) remedy any Lease Default or Lease Event of Default for the account and at the sole cost and expense of Lessee, including the failure by Lessee to maintain the insurance required by Article XIV, and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of Lessee or any other person, enter upon any Site or location where Units of Equipment are maintained for such purpose and take all such action thereon as may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All reasonable out-of-pocket costs and expenses so incurred (including fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by Lessor, shall be paid by Lessee to Lessor on demand.

#### ARTICLE XIX

##### PROCEDURES FOR TRANSFER OF PROPERTIES

19.1 Conveyance of Leased Property; Exercise of Purchase Option or Obligation. (a) Subject to Article XX, in connection with any termination of this Lease or any Lease Supplement with respect to any Leased Property pursuant to the terms of Section 15.1 or Article XVI, or in connection with Lessee's exercise of its Purchase Option or Expiration Date Purchase Obligation, upon the date on which this Lease is to terminate with respect to the applicable Leased Property or upon the Site Expiration Date or



Equipment Pool Expiration Date, as the case may be, with respect to the applicable Leased Property, and upon tender by Lessee of the amounts set forth in Sections 15.1, 16.2(b), 20.1, 20.2 or 20.3, as applicable:

(i) Lessor shall execute and deliver to Lessee (or to Lessee's designee) at Lessee's sole cost and expense an assignment of Lessor's right, title and interest in the applicable Leased Property (which shall include an assignment of all of Lessor's right, title and interest in and to any Net Proceeds not previously received by Lessor), in each case in recordable form (with respect to any Site) and otherwise in conformity with local custom and free and clear of the Lien of the applicable Mortgage and any Lessor Liens; and

(ii) the applicable Leased Property shall be conveyed to Lessee "AS IS" and in its then present physical condition.

(b) If Lessee properly exercises the Remarketing Option with respect to any Leased Property then Lessee shall, upon consummation of any sale, and at its sole cost and expense, transfer possession of the applicable Leased Property to the independent purchaser(s) thereof, in each case by surrendering the same into the possession of Lessor or such purchaser(s), as the case may be, free and clear of all Liens other than Lessor Liens and the lien of the applicable Mortgage, in good condition (as modified by Modifications permitted by this Lease), ordinary wear and tear excepted, and in compliance with Applicable Laws and Regulations. As a condition to Lessee's rights hereunder, Lessee shall obtain all necessary governmental consents and approvals and make all governmental filings required by Lessee or Lessor in connection with any third party sale. Lessee shall, on and within a reasonable time before and up to one year after the Site Expiration Date or Equipment Expiration Date with respect to such Leased Property, cooperate reasonably with Lessor and the independent purchaser(s) of such Leased Property in order to facilitate the purchase by such purchaser(s) of such Leased Property, which cooperation shall include the following, all of which Lessee shall do on or before the Site Expiration Date or Equipment Expiration Date, as the case may be, or as soon thereafter as is reasonably practicable: providing all books and records regarding the maintenance and ownership of such Leased Property and all know-how, data and technical information relating thereto, providing a current copy of the Plans and Specifications for any Sites subject to such Remarketing Option, granting or assigning all licenses necessary for the operation and maintenance of such Leased Property and cooperating reasonably in seeking and obtaining all necessary Governmental

Action. The obligations of Lessee under this paragraph shall survive the expiration or termination of this Lease.

ARTICLE XX

PURCHASE OPTION

20.1 Purchase Option. (a) Provided that Lessee shall not have given notice of its intention to exercise the Remarketing Option with respect to any Equipment Pool or Site which it desires to purchase, and without limitation of Lessee's purchase obligation pursuant to Sections 20.2 or 20.3 and subject to the limitations herein, Lessee shall at any time have the option exercisable by giving Lessor irrevocable written notice (the "Purchase Notice") of Lessee's election to exercise such option to purchase one or more (including all) Sites or Equipment Groups (or, subject to the limitations set forth in clause (b) below, with respect to a Site, a portion thereof) on the date specified in such Purchase Notice at a price equal to the Property Balance (or, in the case of a purchase of a portion of a Site pursuant to clause (b) below, the purchase price paid by a third party for the portion of the Site as provided for in Subsection 20.1(b)(ix) below) with respect to such Site or Equipment Group (or, in the case of all Leased Property, the Lease Balance) (the "Purchase Option Price") plus all other amounts then due and payable in respect of Rent for such Leased Property (including Supplemental Rent) theretofore accruing; provided, however, that Lessee shall only be permitted to purchase an Equipment Group (unless Lessee purchases the entire related Equipment Pool) if, after taking into account such purchase, the aggregate Property Balance of the Units of Equipment then remaining subject to this Lease equals or exceeds the Required Percentage Amount.

(b) In addition to Lessee's option to purchase one or more Sites as provided above, Lessee shall also have the option to purchase a portion of a Site upon satisfaction of the following conditions: (i) Lessee shall deliver to Lessor, Agent and Participants an Appraisal setting forth the Fair Market Value (as separate and independent pieces of property) of the portion being purchased by Lessee as of the date of purchase and the remaining portion as of the applicable Site Expiration Date, (ii) the purchase price for such portion of a Site shall be equal to or greater than the Fair Market Value of such portion determined in such Appraisal, (iii) the sum of the purchase price of the portion being purchased by Lessee and the Fair Market Value as determined in such Appraisal of the remaining portion shall not be less than seventy-five percent (75%) of the Site Balance for such Site, (iv) the portion of the Site being purchased by Lessee and the remaining portion shall each constitute a legal parcel under applicable subdivision laws, (v) the remaining portion of

the Site shall not be dependant upon the portion being sold for services, utilities, parking or access unless perpetual easements have been granted for the benefit of the remaining portion of the Site in form satisfactory to Lessor and Agent and otherwise in accordance with applicable subdivision and zoning laws and regulations, (vi) any improvements situated on the remaining portion of the Site shall be situated entirely on the remaining portion of the Site and no portion of the improvements situated on the remaining portion of the Site shall be situated on the portion of the Site being purchased by Lessee, (vii) Lessee shall deliver to Lessor, Agent and Participants a Title Policy complying with the requirements of Section 6.2(d) of the Participation Agreement in an amount equal to the Fair Market Value of the remaining portion as determined in the Appraisal, with such endorsements as reasonably requested by Agent, including endorsements with respect to the subdivision map act and zoning laws and regulations, (viii) Lessee shall execute and deliver such modifications, amendments or supplements to the documents delivered on any Advance Date relating to the Site pursuant to Section 6.2 of the Participation Agreement as reasonably requested by Agent, (ix) Lessee shall have entered into a written agreement (a copy of which shall be given to Lessor and Agent prior to a purchase or sale of any portion of the Site) with an unrelated third party to sell to such third party the portion Lessee has elected to purchase hereunder and there shall not exist any understanding, agreement or arrangement whereby Lessee or any of its Affiliates agrees to repurchase or lease back such portion of the Site, which sale shall be consummated concurrently with Lessee's purchase hereunder (and Lessee may direct Lessor to deliver a deed directly to such third party) and the Gross Proceeds from the sale to the unrelated third party of the portion of the Site so sold less the amount, if any, Lessee may elect to retain from such Gross Proceeds (such amount not to exceed the Withheld Amount for such Site) shall be paid to Agent and (x) Lessee shall not enter into an agreement with respect to retaining or regarding any interest in such portion purchased within six (6) months following such sale to the third party.

(c) Lessee shall deliver the Purchase Notice to Lessor (x) if no Lease Event of Default exists, not more than one hundred eighty (180) days and not less than thirty (30) days prior to such purchase or (y) if a Lease Event of Default (other than a Lease Event of Default relating to the payment of Rent) exists, not more than thirty (30) days after the commencement of such Lease Event of Default (unless waived by Lessor) and not less than ten (10) days prior to such purchase or (z) if a Lease Event of Default in the payment of Rent exists (unless waived by Lessor), not more than ten (10) days after the commencement of such Lease Event of Default and not less than five (5) days prior to such purchase; provided that Lessee may not deliver a Purchase

Notice or exercise the Purchase Option if there exists a Lease Event or Default under Section 17.1(f) or (h). If Lessee exercises its option to purchase any Leased Property pursuant to this Section 20.1 (the "Purchase Option"), Lessor shall transfer to Lessee all of Lessor's right, title and interest in and to such Leased Property as of the date specified in the Purchase Notice upon receipt of the Purchase Option Price and all Rent and other amounts then due and payable under this Lease and any other Operative Document, in accordance with Section 19.1(a). If a Lease Event of Default or Lease Default relates solely to a specific Site or Equipment Group but not all Leased Property, the exercise of such Purchase Option and the purchase of such Leased Property in accordance with the requirements hereof shall be deemed to have cured such Lease Event of Default or Lease Default to the extent such Lease Event of Default or Lease Default is no longer continuing with respect to any Leased Property remaining subject to this Lease or Lessee after the consummation of the purchase pursuant to the exercise of such Purchase Option; provided, however, that at the time of such purchase, if any Site other than an Existing Site is then subject to the Lease, the exercise of such Purchase Option shall not cause the aggregate Lease Balance of the Leased Property then remaining subject to this Lease to decline below the Required Percentage Amount.

20.2 Expiration Date Purchase Obligation. With respect to any Site or Equipment Pool, unless (a) Lessee shall have properly exercised the Purchase Option pursuant to Section 20.1 and purchased such Site or Equipment Pool pursuant thereto, or (b) Lessee shall have properly exercised the Remarketing Option and shall have fulfilled all of the conditions of Sections 22.1 and 22.3, in the case of such Site, or Sections 22.2 and 22.3, in the case of such Equipment Pool, and Lessor shall have sold its interest in such Site or Equipment Pool pursuant thereto, then, subject to the terms, conditions and provisions set forth in this Article XX, and in accordance with the terms of Section 19.1(a), Lessee shall pay to Lessor on the Site Expiration Date the Site Balance plus all accrued and unpaid interest on the Loans, all accrued and unpaid Yield on the Investment Amounts, and all other amounts owing by Lessee under the Operative Documents with respect to such Site, in the case of any such Site, or on the Equipment Pool Expiration Date the aggregate Equipment Group Balances for the Equipment Groups constituting such Equipment Pool plus all accrued and unpaid interest on the Loans, all accrued and unpaid Yield on the Investment Amounts, and all other amounts owing by Lessee under the Operative Documents with respect to such Equipment Groups, in the case of such Equipment Pool, and Lessor shall convey to Lessee, on such Site Expiration Date or Equipment Pool Expiration Date, as applicable, all of Lessor's interest in such Site or Equipment Pool.

20.3 Acceleration of Purchase Obligation. Lessee shall be obligated to purchase for an amount equal to the Lease Balance plus all accrued and unpaid interest on the Loans, all accrued and unpaid Yield on the Investment Amounts, and all other amounts owing by Lessee under the Operative Documents, Lessor's interest in all of the Leased Property (notwithstanding any prior election to exercise its Purchase Option pursuant to Section 20.1) (i) automatically and without notice upon the occurrence of any Lease Event of Default specified in clause (g) or (h) of Section 17.1 and (ii) as provided for at Section 17.2(e), immediately upon written demand of Lessor upon the occurrence and continuance of any other Lease Event of Default.

#### ARTICLE XXI

##### RIGHT TO RENEW

21.1 Site Renewal. Subject to the conditions set forth herein, Lessee may, by written notice to Lessor, each Participant and Agent given not earlier than one hundred eighty (180) days and not later than ninety (90) days prior to the then current Site Expiration Date with respect to a Site, request (a "Site Renewal Request") that the Site Term be extended as to such Site to the date requested by Lessee which is not later than five (5) years after such Site Expiration Date (the "Site Renewal Option"). Such renewal shall be subject to and conditioned upon the following:

(a) on both the date of the Site Renewal Request and the date that such renewal becomes effective, no Lease Default or Lease Event of Default shall have occurred and be continuing, and Lessee shall be deemed to have represented the same to Lessor;

(b) Lessee shall not have exercised the Site Remarketing Option with respect to any Site or, on or after the fifth anniversary of the Document Closing Date, the Equipment Remarketing Option with respect to any Equipment Pool;

(c) the Maturity Date shall have been extended pursuant to Section 2.2(e) of the Loan Agreement such that the Site Renewal Term for such Site will expire on or before the extended Maturity Date;

(d) Lessor and Agent shall have obtained at Lessee's sole cost and expense an appraisal performed by an independent appraisal company chosen by Agent and acceptable to Lessee, not to be unreasonably withheld, and indicating the Fair Market Value of such Site on the date of such

appraisal and at the end of the Site Renewal Term, which Fair Market Value at the end of the Site Renewal Term shall equal or exceed 75% of the Site Balance with respect to such Site; and

(e) If the Site is a Construction Site, the Construction Completion Date shall have occurred as to such Construction Site.

21.2 Equipment Renewal. Subject to the conditions set forth herein, Lessee may, with respect to all but not less than all of the Equipment Groups constituting an Equipment Pool, by written notice to Lessor, each Participant and Agent given not earlier than one hundred eighty (180) days and not later than ninety (90) days prior to the Original Equipment Pool Expiration Date for such Equipment Pool, request (an "Equipment Renewal Request") that the Equipment Term for such Equipment Groups be extended to the date which is twelve (12) months after such Original Equipment Pool Expiration Date (the "Equipment Renewal Option"). Such renewal shall be subject to and conditioned upon the following:

(a) on both the date of the Equipment Renewal Request and the date that such renewal becomes effective, no Lease Default or Lease Event of Default shall have occurred and be continuing, and Lessee shall be deemed to have represented the same to Lessor;

(b) Lessee shall not have exercised any Remarketing Option; and

(c) the Equipment Renewal Term for the Equipment Groups constituting such Equipment Pool shall expire on or before the Maturity Date as in effect as of the date such renewal becomes effective.

(d) Lessor and Agent shall have received from Lessee documentation demonstrating to Agent that all of the Equipment in such Equipment Group has (i) a remaining useful life as of the date of such renewal and (ii) a Fair Market Value as of the date of such renewal and the end of such renewal period which is sufficient, in the reasonable judgment of Lessor and Agent, to support such additional twelve (12) month renewal.

## ARTICLE XXII

## REMARKETING

22.1 Option to Remarket Sites. Subject to the fulfillment of each of the conditions set forth in this Article XXII (other than Section 22.2), Lessee shall have the option (the "Site Remarketing Option") to market a Site subject to a Lease Supplement during the Site Remarketing Period related to such Site and sell such Site on the related Site Expiration Date.

Lessee's effective exercise and consummation of the Site Remarketing Option with respect to such Site shall be subject to the due and timely fulfillment of each of the following provisions:

(a) Satisfaction of the conditions set forth at Section 22.3, including the payment to Agent of the AMAT Recourse Amount pursuant to Section 22.3(h) and the Gross Proceeds pursuant to Section 22.3(i).

(b) Not later than ninety (90) days prior to such Site Expiration Date, Lessee shall deliver to Lessor an Environmental Audit for such Site. Such Environmental Audit shall be dated as of a date not earlier than the first day of such Site Remarketing Period and shall be prepared by an environmental consultant selected by Lessor in Lessor's reasonable discretion and shall contain conclusions reasonably satisfactory to Lessor as to the environmental status of such Site. If any such Environmental Audit indicates any exceptions, Lessee shall have also delivered a Phase Two environmental assessment by such environmental consultant at least sixty (60) days prior to such Site Expiration Date showing the completion of the remediation of such exceptions in compliance with Applicable Laws and Regulations, except that any such exception that existed on, and was disclosed in the Environmental Audit delivered prior to, the related Site Acquisition Date and for which a long-term remediation program complying with Applicable Laws and Regulations (and providing for remediation beyond the Site Expiration Date) was in place on the Site Acquisition Date, will not require completion of remediation prior to such Site Expiration Date so long as the Person or Persons responsible for such remediation are in compliance with such long-term remediation program on the Site Expiration Date.

(c) If such Site is a Construction Site, not later than one day prior to Lessor's receipt of the Site Remarketing Notice, the Construction Completion Date shall have occurred as to such Construction Site.

(d) If such Site is a 25% Property, then:

(i) If the Land Proceeds exceed the sum of the Land Balance with respect to such Site as of such Site Expiration Date and the Prior Shortfalls, if any, as of such Site Expiration Date, then the portion of the Land Proceeds in excess thereof shall be paid to Lessee on such Site Expiration Date. If the Land Proceeds are less than the Land Balance with respect to such Site as of such Site Expiration Date, Lessee shall pay to Agent, as Supplemental Rent, on such Site Expiration Date, in addition to the Land Proceeds, an additional amount equal to the amount that the Land Balance exceeds the Land Proceeds.

(ii) If the sum of the Improvements Proceeds and the AMAT Recourse Amount paid by Lessee with respect to such Site exceeds the sum of the Improvements Balance with respect to such Site as of such Site Expiration Date and the Prior Shortfalls, if any, as of such Site Expiration Date (without duplication of any Prior Shortfalls satisfied by clause (i) above), then the excess shall be paid to Lessee on such date. If the sum of the Improvements Proceeds and the AMAT Recourse Amount paid by Lessee with respect to such Site is less than the sum of the Improvements Balance with respect to such Site as of such Site Expiration Date and such Prior Shortfalls, Lessee also shall pay to Agent, as Supplemental Rent, on such Site Expiration Date, in addition to the Improvements Proceeds and any other amounts payable under this Section 22.1, an additional recourse payment equal to the lesser of (i) such deficiency and (ii) the Excess Gross Proceeds.

(e) If such Site is not a 25% Property, then: If the Gross Proceeds from the sale of such Site and the AMAT Recourse Amount paid by Lessee with respect to such Site exceed the sum of the Site Balance with respect to such Site as of such Site Expiration Date and the Prior Shortfalls as of such Site Expiration Date, then the excess shall be paid to Lessee on such Site Expiration Date. If the sum of the Gross Proceeds and the AMAT Recourse Amount paid by Lessee with respect to such Site is less than the Site Balance with respect to such Site on such Site Expiration Date, then Lessee also shall pay to Agent on such Site Expiration Date, in addition to the Gross Proceeds and any other amounts payable under this Section 22.1, an additional recourse payment equal to the lesser of (i) such deficiency and (ii) the Excess Gross Proceeds.



If any of the foregoing provisions shall not be fulfilled as of the dates set forth above with respect to such Site, or such Site is not purchased on the Site Expiration Date, then Lessor shall declare by written notice to Lessee the Site Remarketing Option to be null and void (whether or not it has been theretofore exercised by Lessee) as to such Site, in which event all of Lessee's rights with respect to such Site under this Section 22.1 shall immediately terminate and Lessee shall be obligated to purchase such Site pursuant to Section 20.2 on such Site Expiration Date. Except as expressly set forth herein, Lessee shall have no right, power or authority to bind Lessor in connection with any proposed sale of such Site.

22.2 Option to Remarket the Equipment. Subject to the fulfillment of each of the conditions set forth in this Section 22.2, Lessee shall have the option (the "Equipment Pool Remarketing Option") with respect to each Equipment Pool to market during the related Equipment Remarketing Period not less than all of the Equipment constituting such Equipment Pool and sell such Equipment on the related Equipment Pool Expiration Date.

Lessee's effective exercise and consummation of the Equipment Pool Remarketing Option with respect to such Equipment Pool shall be subject to the due and timely fulfillment of each of the following provisions:

(a) Satisfaction of the conditions set forth at Section 22.3, including the payment to Agent of the AMAT Recourse Amount pursuant to Section 22.3(h) and the Gross Proceeds pursuant to Section 22.3(i).

(b) If the sum of the Gross Proceeds from the sale of the Equipment constituting such Equipment Pool plus the AMAT Recourse Amount paid by Lessee with respect to such Equipment Pool exceeds the sum of (A) the aggregate Equipment Group Balances of the Equipment Groups constituting such Equipment Pool as of the related Equipment Pool Expiration Date and (B) the Prior Shortfalls, if any, as of such Equipment Pool Expiration Date, then the excess shall be paid to Lessee on such Equipment Pool Expiration Date. If the sum of the Gross Proceeds and the AMAT Recourse Amount with respect to such Equipment Pool is less than the aggregate Equipment Group Balances of the Equipment Groups constituting such Equipment Pool on the related Equipment Pool Expiration Date and such Prior Shortfalls, then Lessee also shall pay to Agent on or prior to such Equipment Pool Expiration Date, as Supplemental Rent, in addition to such Gross Proceeds and any other amounts payable pursuant to this Section 22.2, an additional

recourse amount equal to the lesser of (i) such deficiency and (ii) the Excess Gross Proceeds.

If any of the foregoing provisions shall not be fulfilled as of the dates set forth above with respect to an Equipment Pool, or all of the Equipment constituting such Equipment Pool is not purchased as aforesaid, then Lessor shall declare by written notice to Lessee the Equipment Pool Remarketing Option to be null and void (whether or not it has been theretofore exercised by Lessee) as to such Equipment Pool, in which event all of Lessee's rights with respect to the Equipment constituting such Equipment Pool under this Section 22.2 shall immediately terminate and Lessee shall be obligated to purchase all of the Equipment constituting such Equipment Pool pursuant to Section 20.2 on the related Equipment Pool Expiration Date. Except as expressly set forth herein, Lessee shall have no right, power or authority to bind Lessor in connection with any proposed sale of any Equipment.

22.3 Conditions to and Requirements of Remarketing Options. Lessee's effective exercise and consummation of a Remarketing Option with respect to a Site or an Equipment Pool (for purposes of Sections 22.1 and 22.2, the "Subject Property") shall be subject to the due and timely fulfillment of each of the following conditions and requirements as of the dates set forth below:

(a) Not earlier than three hundred sixty (360) or later than one hundred eighty (180) days prior to the Applicable Expiration Date, Lessee shall give to Lessor written notice of Lessee's exercise of its Remarketing Option with respect to the Subject Property, which exercise shall be irrevocable (the "Remarketing Notice"). If Lessee fails to give Lessor the Remarketing Notice prior to such date, Lessee shall have no right to exercise such Remarketing Option.

(b) On the date Lessor receives the Remarketing Notice and during the applicable Remarketing Period, no Lease Event of Default or Lease Default shall exist.

(c) All subleases with respect to the Subject Property shall have been terminated prior to Lessor's receipt of the Remarketing Notice and Lessee shall not enter into any additional subleases with respect to the Subject Property during the Remarketing Period.

(d) Lessee shall have completed in all material respects all Modifications (in the case of a Site) and restoration, repair and rebuilding of the Subject Property pursuant to Sections 11.1 and 15.1 (as the case may be), in

the case of a Site, or pursuant to Sections 11.2 and 15.1, in the case of the Equipment, and shall have fulfilled in all material respects all of the conditions and requirements in connection therewith pursuant to such Sections, in each case by the date on which Lessor receives the Remarketing Notice (time being of the essence), regardless of whether the same shall be within Lessee's control. Lessee shall have also paid the cost of all Modifications (in the case of a Site), restoration, repair and rebuilding commenced or to be commenced prior to the Site Expiration Date or the Equipment Pool Expiration Date, as applicable, relating to the Subject Property. Lessee shall not have been excused pursuant to Section 13.1 from complying with any Applicable Laws and Regulations that involved the extension of the ultimate imposition of such Applicable Laws and Regulations beyond the Site Expiration Date or the Equipment Pool Expiration Date, as the case may be, with respect to the Subject Property. Any Permitted Liens on the Subject Property shall have been removed prior to the Site Expiration Date or the Equipment Pool Expiration Date, as the case may be, relating to the Subject Property.

(e) Lessee shall, at its sole cost and expense, deliver to Lessor not less than thirty (30) days after the commencement of the Remarketing Period for the Subject Property reports of engineers and other experts as Lessor may reasonably request to determine if the Subject Property is in the condition and state of repair and maintenance required by this Lease. Lessee, at its sole cost and expense, shall cause the repair or other remediation of any discrepancies between the actual condition of the Subject Property and the condition required under this Lease, such repair or remediation to be completed not later than the applicable Site Expiration Date or Equipment Pool Expiration Date. Prior to entering into any agreement to sell the Subject Property during the applicable Remarketing Period, Lessee shall bond over with a reputable bonding company that is financially sound and solvent and otherwise reasonably appropriate considering the amount of the bond being provided by the bonding company, for the benefit of the prospective purchaser of the Subject Property, all Permitted Liens (other than Lessor Liens) described in clauses (iii), (iv) and (vi) of the definition of "Permitted Liens", including Permitted Liens that remain on the Subject Property following the sale or return thereof, and such bonding shall continue until all such Liens have been removed.

(f) During the applicable Remarketing Period, Lessee shall, as nonexclusive agent for Lessor, use its best commercial efforts to sell the Subject Property and will

attempt to obtain the highest all-cash purchase price therefor and for not less than the Fair Market Value thereof. Lessee, at its sole cost and expense, will be responsible for hiring brokers and making the Subject Property available for inspection by prospective purchasers. Lessee shall promptly upon request permit inspection of any Subject Property and any maintenance records relating to the Subject Property by Lessor, any Participant and any potential purchasers, and shall otherwise do all things necessary to sell and deliver possession of the Subject Property to any purchaser. All such marketing of the Subject Property shall be at Lessee's sole cost and expense and Lessee shall pay as Supplemental Rent the costs and expenses of Lessor and each Participant in connection with any such bidding and sale process pursuant to this Article XXII as well as all costs and expenses incurred by any Person (including a buyer or potential buyer) to place the Subject Property in the condition required by Sections 9.1 and 10.1, all of which shall be completed prior to the Site Expiration Date or the Equipment Pool Expiration Date, as the case may be. None of the foregoing costs or expenses shall be deducted from the Gross Proceeds. Lessee shall allow Lessor and any potential qualified purchaser reasonable access to the Subject Property for the purpose of inspecting the same.

(g) Lessee shall submit all bids to Lessor, Agent and Participants, and Lessor will have the right to review the same and the right to submit any one or more bids. All bids shall be on an all-cash basis unless Lessor, Agent and Participants shall otherwise agree in their sole discretion. Lessee shall procure bids from one or more bona fide prospective purchasers and shall deliver to Lessor, Agent and Participants within five (5) Business Days of the receipt of any bid a written certificate of Lessee specifying the terms and conditions of such bid together with a binding written unconditional irrevocable offer by such purchaser or purchasers offering such bid to purchase the Subject Property. No such purchaser shall be Lessee, or any Subsidiary or Affiliate of Lessee or any Person with whom Lessee or any Affiliate of Lessee has an understanding or arrangement regarding the future ownership or use of the Subject Property, but who may be Lessor or any Participant or any Affiliate thereof, or any Person contacted by Lessor. The written offer must specify the terms and conditions of such offer and the closing date as of the Site Expiration Date or the Equipment Pool Expiration Date, as applicable.

(h) Lessee shall pay to Agent on or prior to the Applicable Expiration Date (or to such other Person as Agent shall notify to Lessee in writing, or in the case of

Supplemental Rent, to the Person entitled thereto) an amount equal to the AMAT Recourse Amount with respect to the applicable Site or Equipment Pool plus all Rent and all other amounts hereunder which have accrued or will accrue prior to or as of the Applicable Expiration Date, in the type of funds specified in Section 3.4 hereof.

(i) After Lessee shall have certified to Lessor all bids received with respect to the Subject Property, Lessor or any Participant or any Affiliate thereof, or any Person contacted by Lessor may submit a further bid or bids to Lessee not later than thirty (30) Business Days after Lessor's receipt of notice thereof. In the event that Lessor or any Participant or any such Affiliate or any Person contacted by Lessor, any Participant or any such Affiliate shall not have submitted further bids to Lessee, and provided that no Lessee Default or Lessee Event of Default shall have occurred and be continuing on the date of such sale and no Significant Casualty, Significant Condemnation or Significant Event shall have occurred with respect to the Subject Property, Lessee shall consummate the sale of the Subject Property to the highest bidder therefor on the Site Expiration Date or the Equipment Pool Expiration Date, as the case may be, contemporaneously with Lessee's surrender of the Subject Property pursuant to Section 19.1(b); provided, however, that with respect to an Equipment Pool, in no event shall the bid to be accepted be less than, nor shall such sale be consummated if such bid is less than, the aggregate Tranche B Participant Balances attributable to such Equipment Pool. Upon consummation of a sale, Lessee shall cause such purchaser to pay in cash the Gross Proceeds directly to Agent. Upon Agent's receipt of such Gross Proceeds, (i) Lessee shall transfer all of Lessee's right, title and interest in the Subject Property to such highest bidder, and (ii) subject to the prior or current payment by Lessee of (x) the amounts set forth in paragraphs (d) or (e) of Section 22.1, in the case of a Site, or paragraph (b) of Section 22.2, in the case of an Equipment Pool, and, in the case of either a Site or an Equipment Pool, paragraph (k) of this Section 22.3 and Section 22.5 below and (y) all Rent and other amounts hereunder which have accrued or will accrue prior to or as of the Site Expiration Date or the Equipment Pool Expiration Date, as applicable (including all Supplemental Rent arising as a result of such sale), Lessor shall transfer by quitclaim deed, with a covenant against Lessor Liens, in form satisfactory to Lessor and Lessee, Lessor's right, title and interest in and to the Subject Property. Lessor shall not have any responsibility for procuring any purchaser.

(j) In connection with the sale of the Subject Property, Lessee will provide to the purchaser all customary "seller's" indemnities, representations and warranties regarding title, absence of Liens (except Lessor Liens) and the condition of the Subject Property, including, without limitation, an environmental indemnity. Lessee shall have obtained, at its sole cost and expense, all required governmental and regulatory consents and approvals and shall have made all filings as required by Applicable Laws and Regulations in order to carry out and complete the transfer of the Subject Property. As to Lessor, any such sale shall be made on an "as is, with all faults" basis without representation or warranty by Lessor other than the absence of Lessor Liens. Any agreement as to such sale shall be made subject to Lessor's rights hereunder.

(k) Lessee shall pay directly, and not from the Gross Proceeds, all prorations, credits, costs and expenses of the sale of the Subject Property, whether incurred by Lessor or Lessee, including without limitation, the cost of all title insurance, surveys, environmental reports, appraisals, transfer taxes, Lessor's reasonable attorneys' fees, Lessee's attorneys' fees, broker's fees, commissions, escrow fees, recording fees, and all applicable documentary and other transfer taxes.

22.4 Certain Obligations Continue. During the applicable Remarketing Period, the obligation of Lessee to pay Rent with respect to the Subject Property (including the installment of Basic Rent due on the Site Expiration Date or the Equipment Pool Expiration Date, as the case may be) shall continue undiminished until payment in full to Agent of the amounts set forth in Sections 22.1 and 22.3 above, with respect to a Site, or Sections 22.2 and 22.3 above, with respect to an Equipment Pool, and all other amounts due to Lessor and Agent with respect to the Subject Property under the Operative Documents. Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XXII.

22.5 Appraisal. If (a) with respect to a Site that is a 25% Property, at the end of the Site Remarketing Period the sum of the Land Balance and the Improvements Proceeds with respect to the sale of the Site plus the AMAT Recourse Amount with respect to such Site will be less than the outstanding Site Balance with respect to such Site as of the Site Expiration Date, or (b) with respect to a Site that is not a 25% Property, at the end of the Site Remarketing Period the sum of the Gross Proceeds with respect to the sale of the Site plus the AMAT Recourse Amount with respect to such Site will be less than the outstanding Site

Balance with respect to such Site as of the Site Expiration Date, or (c) with respect to an Equipment Pool, at the end of the Equipment Remarketing Period for such Equipment Pool the sum of the Gross Proceeds with respect to the sale of the Equipment constituting such Equipment Pool plus the aggregate AMAT Recourse Amounts with respect to the Equipment constituting such Equipment Pool will be less than the aggregate outstanding Equipment Group Balances with respect to the Equipment Groups constituting such Equipment Pool as of the related Equipment Pool Expiration Date, then, in the case of each of clauses (a), (b) and (c), Lessor (upon direction from any Participant) shall engage one or more appraisers, at Lessee's sole cost and expense, to determine (by appraisal methods satisfactory to Required Participants) the Fair Market Value of such Site on the Site Expiration Date or the Equipment constituting such Equipment Pool on the Equipment Pool Expiration Date, as the case may be. Such Appraisal may also be prepared for the purposes of the Excessive Use and End of Term Indemnity set forth at Section 11.9 of the Participation Agreement. If the Appraisal concludes that the Fair Market Value of the Site as of the Site Expiration Date or the aggregate Fair Market Value of the Equipment constituting such Equipment Pool as of the Equipment Pool Expiration Date, as the case may be, is in excess of the Gross Proceeds received therefor, Lessee shall promptly pay to Agent, as Supplemental Rent, an amount equal to (w) in the case of a Site that is a 25% Property, the product of such excess multiplied by the Improvements Percentage, which together with the Improvements Proceeds and the AMAT Recourse Amount so paid to Agent shall not exceed the Improvements Balance determined immediately before the application of the foregoing amounts, or (x) in the case of a Site that is not a 25% Property, such excess, which, together with the Gross Proceeds and the AMAT Recourse Amount with respect to such Site so paid to Agent, shall not exceed the Site Balance with respect to such Site determined immediately before the application of the foregoing amounts, or (y) in the case of such Equipment Pool, such excess, which, together with Gross Proceeds and the aggregate AMAT Recourse Amounts with respect to the Equipment constituting such Equipment Pool so paid to Agent, shall not exceed the aggregate Equipment Group Balances with respect to the Equipment constituting such Equipment Pool determined immediately before the application of the foregoing amounts.

## ARTICLE XXIII

[RESERVED]

## ARTICLE XXIV

## HOLDING OVER

24.1 Holding Over. If Lessee shall for any reason remain in possession of a Leased Property after the expiration or earlier termination of this Lease as to such Leased Property (unless such Leased Property is conveyed to Lessee), such possession shall be as a tenancy at sufferance during which time Lessee shall continue to pay Supplemental Rent that would be payable by Lessee hereunder were the Lease then in full force and effect with respect to such Leased Property and Lessee shall continue to pay Basic Rent at an annual rate equal to the average rate of Basic Rent payable hereunder during the Term; provided, however, that from and after the sixtieth (60th) day Lessee shall remain in possession of such Leased Property after such expiration or earlier termination, Lessee shall pay Basic Rent at an annual rate equal to the Overdue Rate. Such Basic Rent shall be payable from time to time upon demand by Lessor. During any period of tenancy at sufferance, Lessee shall, subject to the second preceding sentence, be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenants at sufferance, to continue its occupancy and use of such Leased Property. Nothing contained in this Article XXIV shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease as to any Leased Property (unless such Leased Property is conveyed to Lessee), and nothing contained herein shall be read or construed to relieve Lessee of its obligations to purchase or remarket the Leased Property on the Lease Expiration Date pursuant to Articles XX or XXII or as preventing Lessor from maintaining a suit for possession of such Leased Property or exercising any other remedy available to Lessor at law or in equity or hereunder.

## ARTICLE XXV

## RISK OF LOSS

25.1 Risk of Loss. During the Term the risk of loss of or decrease in the enjoyment and beneficial use of such Leased Property as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by Lessee, and Lessor shall in no event be answerable or accountable therefor.



## ARTICLE XXVI

## OWNERSHIP OF THE LEASED PROPERTY

26.1 Nature of Transaction. It is the intention of the parties that:

(a) the Overall Transaction constitutes an "operating lease" pursuant to SFAS No. 13 from Lessor to Lessee for purposes of Lessee's financial reporting;

(b) for federal, state and local income or franchise tax, bankruptcy (including the substantive law upon which bankruptcy proceedings are based), real estate and Uniform Commercial Code purposes:

(i) the Overall Transaction constitutes a loan by Participants to Lessee and preserves beneficial ownership in the Leased Property in Lessee, and obligations of Lessee to pay Site Rent and Equipment Variable Rent shall be treated as payments of interest, and the payment by Lessee of any amounts in respect of the Equipment Fixed Rent and the Lease Balance shall be treated as repayments of principal;

(ii) this Lease grants a security interest and a mortgage lien, as the case may be, in all of the Sites, the Equipment and the other Collateral in favor of the Lessor; and

(iii) the Mortgage and the Security Agreement create liens and security interests in the Collateral in favor of Agent for the benefit of all Participants.

Accordingly, and notwithstanding any provision of this Participation Agreement to the contrary, the parties hereto agree and declare that: (i) the transactions contemplated by this Lease are intended to have a dual, rather than single, form, as evidenced by the statements set forth in Sections 26.1(a) and (b) above, and (ii) all references in this Participation Agreement to the "lease" of the Leased Property which fail to reference such dual form do so as a matter of convenience only and do not reflect the intent of the parties hereto as to the true characterization of such arrangements. Notwithstanding the intentions of the parties set forth above, Lessee acknowledges and agrees that none of Agent, any Participant or their representatives have made any representations or warranties concerning the tax, accounting or legal characteristics of the Operative Documents and that Lessee has obtained and relied upon such tax, accounting and legal advice from its own experts concerning the Operative Documents as it deems appropriate.

(c) Specifically, without limiting the generality of subsection (b) of this Section 26.1, Lessor and Lessee intend and agree that with respect to the nature of the transactions evidenced by this Lease in the context of the exercise of remedies under the Operative Documents, including, without limitation, in the case of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State or Commonwealth thereof affecting Lessee, Lessor or any Participant or any enforcement or collection actions, the transactions evidenced by this Lease are loans made by Lessor and the Lenders as unrelated third party lenders to Lessee secured by the Leased Property (it being understood that Lessee hereby mortgages and warrants and grants a security interest in the Leased Property (consisting of a fee mortgage with respect to each Site transferred by the related Deed and all Facilities thereon from time to time) to Lessor and Agent for the benefit of all of the Participants to secure Lessee's obligations under the Lease and to pay all amounts thereunder and under the other Operative Documents, including Lessee's obligations under the Note Guarantee, effective in the case of each Leased Property on the related Site Acquisition Date or Equipment Acquisition Date, as the case may be).

(d) Specifically, without limiting the generality of subsection (b) of this Section 26.1, Lessor and Lessee further intend and agree that, for the purpose of securing Lessee's obligations for the repayment of the above-described amounts, (i) this Lease shall also be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code and a real property mortgage or deed of trust; (ii) the conveyance provided for in Article II shall be deemed to be a grant by Lessee to Lessor and the Lenders of a mortgage lien and security interest in all of Lessee's right, title and interest in and to the Leased Property and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property, whether in the form of cash, investments, securities or other property (it being understood that Lessee hereby mortgages and warrants and grants a security interest in all of the Leased Property to Lessor and Agent for the benefit of all of the Participants to secure Lessee's repayment of such amounts); (iii) the possession by Lessor, Agent, or any of their agents of notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-305 of the Uniform Commercial Code; and (iv) notifications to Persons holding such property, and acknowledgements, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of Lessee shall be deemed to have been given for the purpose of perfecting such

security interest under Applicable Laws and Regulations. Lessor and Lessee shall, to the extent consistent with this Lease, take such actions and execute, deliver, file and record such other documents, financing statements, mortgages and deeds of trust as may be necessary to ensure that such security interest is a perfected security interest of first priority under Applicable Laws and Regulations and will be maintained as such throughout the Term.

#### ARTICLE XXVII

##### ESTOPPEL CERTIFICATES

27.1 Estoppel Certificates. At any time and from time to time upon not less than twenty (20) days' prior request by Lessor or Lessee (the "Requesting Party"), the other party (whichever party shall have received such request, the "Certifying Party") shall furnish to the Requesting Party (but in the case of Lessor, as Certifying Party, not more than four times per year unless required to satisfy the requirements of any subleases and only to the extent that the required information has been provided to Lessor by Lessee or Agent) a certificate signed by an individual having the office of vice president or higher in the Certifying Party certifying that this Lease is in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications); the dates to which the Basic Rent and Supplemental Rent have been paid; to the best knowledge of the signer of such certificate, whether or not the Requesting Party is in default under any of its obligations hereunder (and, if so, the nature of such alleged default); and such other matters under this Lease as the Requesting Party may reasonably request. Any such certificate furnished pursuant to this Article XXVII may be relied upon by the Requesting Party, and any existing or prospective mortgagee, purchaser or lender, and any accountant or auditor, of, from or to the Requesting Party (or any Affiliate thereof).

#### ARTICLE XXVIII

##### INSPECTIONS; NO WAIVER

28.1 Right to Inspect. During the Term, Lessee shall upon reasonable notice from Lessor (except that no notice shall be required if a Lease Default or Lease Event of Default has occurred and is continuing), permit Lessor, Agent and their respective authorized representatives to inspect any Leased Property during normal business hours, provided that such inspections shall not reasonably interfere with Lessee's business operations at the Leased Property and shall be in accordance with

Lessee's standard security procedures and the confidentiality restrictions set forth in Section 13.21 of the Participation Agreement.

28.2 No Waiver. No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. To the fullest extent permitted by law, no waiver of any default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

#### ARTICLE XXIX

##### ACCEPTANCE OF SURRENDER

29.1 Acceptance of Surrender. No surrender to Lessor of this Lease or of all or any portion of any Leased Property or of any part thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and, prior to the payment or performance of all obligations under the Loan Agreement, this Lease and the other Operative Documents and termination of the Commitments, and no act by Lessor or Agent or any representative or agent of Lessor or Agent, other than a written acceptance, shall constitute an acceptance of any such surrender.

#### ARTICLE XXX

##### NO MERGER OF TITLE

30.1 No Merger of Title. There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in part, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) the fee estate or leasehold title in any Leased Property, except as may expressly be stated in a written instrument duly executed and delivered by the appropriate Person or (c) a beneficial interest in Lessor.

## ARTICLE XXXI

## NOTICES

31.1 Notices. Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be in writing and shall be delivered and shall be deemed to have been given in accordance with Section 13.3 of the Participation Agreement.

## ARTICLE XXXII

## MISCELLANEOUS

32.1 Miscellaneous. Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of Lessee or Lessor arising from events commencing prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. If any term or provision of this Lease or any application thereof shall be declared invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby. If any right or option of Lessee provided in this Lease, including any right or option described in Articles XV, XVI, XX, XXI or XXII, would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one (21) years after the date of death of the last survivor of the descendants of Franklin D. Roosevelt, the former President of the United States, Henry Ford, the deceased automobile manufacturer, and John D. Rockefeller, the founder of the Standard Oil Company, known to be alive on the date of the execution, acknowledgement and delivery of this Lease.

32.2 Amendment; Complete Agreements. Neither this Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. This Lease, together with the other Operative Documents, is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein and therein. No course of prior dealings between the parties or their officers, employees, agents or Affiliates shall be relevant or admissible to supplement, explain, or vary any of

the terms of this Lease or any other Operative Document. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their Affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease or any other Operative Document. No representations, undertakings, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth in the Operative Documents.

32.3 Successors and Assigns. All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

32.4 Headings and Table of Contents. The headings and table of contents in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

32.5 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

32.6 GOVERNING LAW. THIS LEASE HAS BEEN DELIVERED IN NEW YORK AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE, EXCEPT AS TO MATTERS RELATING TO THE CREATION OF THE LEASEHOLD AND SUBLEASEHOLD ESTATES HEREUNDER AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATES IN WHICH SUCH ESTATES ARE LOCATED. WITHOUT LIMITING THE FOREGOING, IN THE EVENT THAT THIS LEASE IS DEEMED TO CONSTITUTE A FINANCING, WHICH IS THE INTENTION OF THE PARTIES, THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAWS AND CONFLICTS RULES OF SUCH STATE, SHALL GOVERN THE CREATION, TERMS AND PROVISIONS OF THE INDEBTEDNESS EVIDENCED HEREBY, BUT THE LIEN CREATED HEREBY AND THE ENFORCEMENT OF SAID LIEN SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATES IN WHICH SUCH ESTATES ARE LOCATED.

32.7 Liability of Lessor Limited. The parties hereto agree that CSL shall have no personal liability whatsoever to Lessee or its respective successors and assigns for any Claim based on or in respect of this Lease or any of the other Operative Documents or arising in any way from the transactions contemplated hereby or thereby; provided, however, that CSL shall be liable in its individual capacity (a) for its own willful misconduct or gross

negligence (or negligence in the handling of funds), (b) for liabilities that may result from the incorrectness of any representation or warranty expressly made by it in its individual capacity in Section 8.2 of the Participation Agreement, (c) for any Tax based on or measured by any fees, commission or compensation received by it for acting as Lessor as contemplated by the Operative Documents, or (d) for any liabilities resulting solely from Lessor Liens. It is understood and agreed that, except as provided in the preceding proviso: (i) CSL shall have no personal liability under any of the Operative Documents as a result of acting pursuant to and consistent with any of the Operative Documents; (ii) all obligations of CSL to Lessee are solely nonrecourse obligations except to the extent that it has received payment from others; and (iii) all such personal liability of CSL is expressly waived and released as a condition of, and as consideration for, the execution and delivery of the Operative Documents by CSL.

32.8 Original Lease. The single executed original of this Lease marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt of Agent therefor on or following the signature page thereof shall be the Original Executed Counterpart of this Lease (the "Original Executed Counterpart"). To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

IN WITNESS WHEREOF, the parties have caused this Lease be duly executed and delivered as of the date first above written.

LESSEE:

APPLIED MATERIALS, INC.

By /s/ GERALD F. TAYLOR

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Name: Gerald F. Taylor  
Title: Senior Vice President and  
Chief Financial Officer

By /s/ NANCY H. HANDEL

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Name: Nancy H. Handel  
Title: Vice President,  
Corporate Finance and Treasurer

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LESSOR:

CREDIT SUISSE LEASING 92A, L.P.

BY: CREDIT SUISSE FIRST BOSTON, ACTING  
THROUGH ITS NEW YORK BRANCH, AS  
GENERAL PARTNER

By /s/ CARL WEATHERLEY-WHITE

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Name: Carl Weatherley-White  
Title: Vice President

By /s/ MATT MOSER

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Name: Matt Moser  
Title: Associate

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