
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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 **December 24, 2000** or

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 000-12933

LAM RESEARCH CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

94-2634797

(I.R.S. Employer Identification Number)

4650 Cushing Parkway
Fremont, California 94538

(Address of principal executive offices including zip code)

(510) 659-0200

(Registrant's telephone number, including area code)

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 reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO ,

As of December 24, 2000 there were 122,582,590 shares of Registrant's Common Stock outstanding.

LAM RESEARCH CORPORATION
TABLE OF CONTENTS

	<u>Page No.</u>
PART I. Financial Information	
Item 1. Financial Statements (unaudited):	
Condensed Consolidated Balance Sheets as of December 24, 2000 and June 25, 2000	<u>3</u>
Condensed Consolidated Statements of Income for the three and six months ended December 24, 2000 and December 26, 1999	<u>4</u>
Condensed Consolidated Statements of Cash Flows for the six months ended December 24, 2000 and December 26, 1999	<u>5</u>
Notes to Condensed Consolidated Financial Statements	<u>6</u>
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	<u>10</u>
Item 3. Quantitative and Qualitative Disclosures about Market Risk	<u>19</u>
PART II. Other Information	
Item 1. Legal Proceedings	<u>20</u>
Item 4: Submission of Matters to Vote of Security Holders	<u>21</u>
Item 6. Exhibits and Reports on Form 8-K	<u>21</u>
Signatures	<u>21</u>

PART I -- FINANCIAL INFORMATION

LAM RESEARCH CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except per share data)

	December 24, 2000	June 25, 2000
	-----	-----
	(unaudited)	
Assets		
Cash and cash equivalents.....	\$ 141,592	\$ 70,056
Short-term investments.....	255,597	301,666
Accounts receivable, net.....	424,205	323,935
Inventories.....	295,101	227,169
Prepaid expenses and other assets.....	34,690	22,001
Deferred income taxes.....	76,508	76,508
	-----	-----
Total Current Assets.....	1,227,693	1,021,335
Property and Equipment, net.....	130,272	119,192
Restricted cash.....	60,348	60,348
Deferred income taxes.....	12,317	12,317
Other assets.....	40,630	31,645
	-----	-----
Total Assets.....	\$ 1,471,260	\$ 1,244,837
	=====	=====
Liabilities and Stockholders' Equity		
Trade accounts payable.....	\$ 123,143	\$ 76,648
Accrued expenses and other current liabilities.....	273,669	203,476
Current portion of long-term debt and capital lease obligations.....	22,838	7,632
	-----	-----
Total Current Liabilities.....	419,650	287,756
Long-term debt and capital lease obligations, less current portion.....	312,483	321,657
	-----	-----
Total Liabilities.....	732,133	609,413
Temporary equity.....	52,898	--
Preferred stock: 5,000 shares authorized; none outstanding.....	--	--
Common Stock, at par value of \$0.001 per share Authorized -- 400,000 shares; issued and outstanding 122,583 shares at December 24, 2000 and 124,389 shares at June 25, 2000.....	123	124
Additional paid-in capital.....	384,371	441,949
Treasury stock.....	(51,785)	(26,438)
Accumulated other comprehensive loss.....	(6,673)	(7,501)
Retained earnings.....	360,193	227,290
	-----	-----
Total Stockholders' Equity.....	686,229	635,424
	-----	-----
Total Liabilities and Stockholders' Equity.	\$ 1,471,260	\$ 1,244,837
	=====	=====

See Notes to Condensed Consolidated Financial Statements.

LAM RESEARCH CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(in thousands, except per share data)
(unaudited)

Three Months Ended

Six Months Ended

	December 24, 2000	December 26, 1999	December 24, 2000	December 26, 1999
Total revenue.....	\$ 494,332	\$ 288,620	926,373	\$ 530,202
Cost of goods sold.....	263,411	162,944	496,206	303,715
Gross margin	230,921	125,676	430,167	226,487
Research and development...	58,722	40,284	115,253	79,548
Selling, general and administrative.....	62,161	38,000	115,102	72,500
Purchased technology for research and development..	8,000	7,460	8,000	7,460
Operating income	102,038	39,932	191,812	66,979
Other income, net.....	2,926	2,752	7,565	3,130
Income before taxes.....	104,964	42,684	199,377	70,109
Income tax expense.....	31,496	5,976	59,820	8,719
Net income.....	\$ 73,468	\$ 36,708	139,557	\$ 61,390
Net income per share				
Basic.....	\$ 0.60	\$ 0.31	1.13	\$ 0.52
Diluted.....	\$ 0.54	\$ 0.28	1.02	\$ 0.47
Number of shares used in per share calculations:				
Basic.....	123,420	119,343	123,949	118,296
Diluted.....	140,979	132,171	142,649	129,960

See Notes to Condensed Consolidated Financial Statements.

LAM RESEARCH CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Six Months Ended	
	December 24, 2000	December 26, 1999
Cash flows from operating activities:		
Net income.....	\$ 139,557	\$ 61,390
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization.....	26,740	22,843
Purchased technology for research and development	8,000	--
Change in working capital accounts.....	(65,399)	(45,220)
Net cash provided by operating activities.....	108,898	39,013
Cash flows from investing activities:		

Capital expenditures, net.....	(36,350)	(20,867)
Purchases of short-term investments.....	(2,344,824)	(1,805,611)
Sales/maturities of short-term investments.....	2,390,893	1,783,978
Investment in Strasbaugh.....	(6,000)	--
Other, net.....	(10,057)	(3,033)
Net cash used in investing activities.....	(6,338)	(45,533)
Cash flows from financing activities:		
Treasury stock repurchases.....	(50,523)	(5,146)
Reissuance of treasury stock.....	13,069	13,534
Sale of stock, net of issuance costs.....	1,271	13,272
Principal payments on long-term debt and capital lease obligations.....	(1,428)	(23,305)
Net proceeds from the issuance of short and long term debt.....	7,477	8,685
Net cash used in financing activities.....	(30,134)	7,040
Effect of exchange rate changes on cash.....	(890)	(6,594)
Net increase (decrease) in cash and cash equivalents.....	71,536	(6,074)
Cash and cash equivalents at beginning of period....	70,056	37,965
Cash and cash equivalents at end of period.....	\$ 141,592	\$ 31,891

See Notes to Condensed Consolidated Financial Statements.

LAM RESEARCH CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

NOTE A -- BASIS OF PRESENTATION

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting only of normal recurring adjustments) considered necessary for a fair presentation have been included. The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements of Lam Research Corporation (the "Company" or "Lam") for the fiscal year ended June 25, 2000, which are included in the Annual Report on Form 10-K, File Number 0- 12933. All prior year shares and per share amounts have been adjusted to reflect a three for one stock split effective March 7, 2000.

NOTE B -- RECENT ACCOUNTING PRONOUNCEMENTS

Revenue Recognition: Sales of the Company's equipment are generally recorded upon shipment. Estimated costs to be incurred by the Company related to equipment installation and warranty fulfillments are accrued at the date of shipment. Service revenue is recognized when services are provided. In December 1999, the Securities and Exchange Commission ("SEC") issued Staff Accounting Bulletin ("SAB") No. 101 "Revenue Recognition in Financial Statements." SAB 101 provides guidance on the recognition, presentation, and disclosure of revenue in financial statements of all

public registrants. SAB 101 may require that some or all of that revenue not be recognized until the product is accepted by the customer, an event which generally does not happen until sometime after shipment has occurred. Compliance with SAB 101 therefore will delay our recognition of some revenue, compared to our current practice, for one or more quarters, causing an adverse impact on our operating results during the quarters in which product has been shipped, but not yet accepted by the customer.

Changes in the Company's revenue recognition policy resulting from the interpretation of SAB 101 would be reported as a change in accounting principle. The impact of this change, if any, on previously recognized revenue would result in a cumulative adjustment to retained earnings as of the beginning of the fiscal year the Company adopts SAB 101. The SEC has delayed the required implementation date, which for the Company, will be the fourth quarter of fiscal 2001. Previously reported unaudited fiscal year 2001 quarterly operating results would be restated to reflect the impact, if any, of SAB 101 on the Company's revenue recognition policy. In October 2000, the SEC issued implementation guidance in the form of "Frequently Asked Questions". The Company is still in the process of assessing the impact of SAB 101 on its consolidated financial statements based on the SEC's most recently issued guidance.

Derivative Instruments and Hedging. On July 1, 2000, the Company adopted Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133"). SFAS 133 requires the Company to recognize all derivatives on the balance sheet at fair value. Derivatives that are not hedges must be adjusted to fair value through income. If the derivative is a hedge, depending on the nature of the hedge, changes in the fair value of the derivative are either offset against the change in fair value of assets, liabilities, or firm commitments through earnings (fair value hedges) or recognized in other comprehensive income until the hedged item is recognized in earnings (cash flow hedges). The ineffective portion of a derivative's change in fair value is immediately recognized in earnings. The adoption of SFAS 133 did not have a material impact on the Company's consolidated financial position or operating results.

Employee Stock Plans: In March 2000, the FASB issued FASB Interpretation No. 44 ("FIN 44"), "Accounting for Certain Transactions Involving Stock Compensation – an Interpretation of APB Opinion No. 25". FIN 44 is intended to clarify the application of APB Opinion No. 25 by providing guidance regarding among other issues: the definition of an employee for purposes of applying APB Opinion No. 25; the criteria for determining whether a plan qualifies as a noncompensatory plan; the accounting consequence of various modifications to the terms of previously fixed stock options or awards; and the accounting for an exchange of stock compensation awards in a business combination. FIN 44 was effective July 1, 2000. The adoption of FIN 44 did not have a material impact on the Company's consolidated financial position or results of operations.

Equity Derivatives in a Company's Own Stock: In November 2000, the FASB's Emerging Issues Task Force ("EITF") reached a final consensus on EITF Issue No. 00-19, "Determination of Whether Share Settlement is Within the Control of the Issuer" for purposes of applying EITF Issue No. 96-13, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock". EITF 00-19 addresses and clarifies whether specific contract provisions or other circumstances cause a net-share or physical settlement alternative to be within or outside the control of the issuer. EITF 96-13 addresses accounting for equity derivative contracts indexed to, and potentially settled in, a company's own stock by providing guidance for distinguishing between permanent equity, temporary equity and assets and liabilities. Under EITF 00-19, equity derivatives that were issued prior to September 20, 2000, and classified as permanent equity must meet certain criteria or be re-classified as temporary equity. To qualify as permanent equity all the following criteria must be met: the equity derivative contract must permit the company to settle in unregistered shares, the company must have sufficient authorized but unissued shares available to settle the contract, the contract must contain an explicit limit on the number of shares to be delivered in a share settlement, there can be no requirement in the contract to post collateral, there can be no "make whole" provisions in the contract and there can be no provisions in the contract that indicate the counterparty has rights that rank higher than those of a common shareholder.

Compliance with EITF 00-19 did not have a material impact on the Company's consolidated financial position but resulted in a reclassification from equity to temporary equity on the balance sheet. This reclassification is necessary because the put option contracts require that collateral be posted and require delivery of registered shares.

See Note E -- Stockholders' Equity for further discussion of compliance with EITF 00-19.

NOTE C -- INVENTORIES

Inventories consist of the following at:

December 24, June 25,

	2000	2000
	-----	-----
	(in thousands)	
Raw materials.....	\$ 193,437	\$ 153,721
Work-in-process.....	59,973	53,221
Finished goods.....	41,691	20,227
	-----	-----
	\$ 295,101	\$ 227,169
	=====	=====

NOTE D -- PROPERTY AND EQUIPMENT

Property and equipment consists of the following at:

	December 24, 2000	June 25, 2000
	-----	-----
	(in thousands)	
Equipment.....	\$ 148,532	\$ 137,526
Leasehold improvements.....	89,881	79,162
Furniture and fixtures.....	74,285	64,694
	-----	-----
	312,698	281,382
Less allowance for depreciation and amortization.....	(182,426)	(162,190)
	-----	-----
	\$ 130,272	\$ 119,192
	=====	=====

NOTE E -- STOCKHOLDERS' EQUITY

Under the provisions of EITF Issue No. 00-19 (as discussed in Note B) for purposes of applying EITF Issue No. 96-13, the Company has reclassified \$52.9 million from permanent equity to temporary equity as of December 24, 2000. This amount represents the value of the put option contracts the Company has entered into with independent third parties giving these third parties the right to sell to the Company 5.58 million shares of its Common Stock at a weighted average price of \$9.48 per share. This reclassification is necessary because the put option contracts require that collateral be posted and require delivery of registered shares.

Furthermore, in accordance with the transition provisions of EITF No. 00-19, the Company will reclass the fair value of its call and put options from equity to an asset or liability account on June 24, 2001, if such call and put option contracts are still in place. Subsequent changes in fair value will be recorded in earnings. As of December 24, 2000 the fair value of the call and put options is \$5.7 million, and would be recorded as an asset if the reclassification had been made as of December 24, 2000.

See the Liquidity and Capital Resources section of item 2, for discussion of the option contracts entered into by the Company.

NOTE F -- OTHER INCOME, NET

The significant components of other income, net are as follows:

	Three Months Ended		Six Months Ended	
	December 24, 2000	December 26, 1999	December 24, 2000	December 26, 1999
	-----	-----	-----	-----
	(in thousands)			
Interest expense.....	\$ (6,123)	\$ (4,910)	\$ (10,232)	\$ (9,755)
Interest income.....	7,568	6,147	16,776	11,622
Other.....	1,481	1,515	1,021	1,263
	-----	-----	-----	-----
	\$ 2,926	\$ 2,752	\$ 7,565	\$ 3,130
	=====	=====	=====	=====

NOTE G -- NET INCOME PER SHARE

Basic net income per share is calculated using the weighted average number of shares of Common Stock outstanding during the period. For the three and six months ended December 24, 2000, diluted net income per share includes the assumed exercise of employee stock options and the assumed conversion of the convertible subordinated notes to common shares. For the three and six months ended December 26, 1999, diluted net income per share includes the assumed exercise of employee stock options; the assumed conversion of the convertible subordinated notes to common shares was excluded from diluted net income per share because its effect would have been antidilutive.

The Company's basic and diluted net income per share amounts is as follows:

	Three Months Ended		Six Months Ended	
	December 24, 2000	December 26, 1999	December 24, 2000	December 26, 1999
	(in thousands, except per share data)			
Numerator:				
Numerator for basic net income per share.....	\$ 73,468	\$ 36,708	\$ 139,557	\$ 61,390
Add: Interest expense on convertible subordinated notes, net of taxes.....	3,025	--	6,050	--
Numerator for diluted net income per share.....	76,493	36,708	145,607	61,390
Denominator:				
Basic net income per share -- average shares outstanding.....	123,420	119,343	123,949	118,296
Effect of potential dilutive securities:				
Convertible subordinated notes.....	10,587	--	10,587	--
Employee stock plans.....	6,972	12,828	8,113	11,664
Diluted net income per share -- average shares outstanding and other potential common shares.....	140,979	132,171	142,649	129,960
Basic net income per share.....	\$0.60	\$0.31	\$1.13	\$0.52
Diluted net income per share.....	\$0.54	\$0.28	\$1.02	\$0.47

The components of comprehensive income, net of tax, are as follows:

	Three Months Ended		Six Months Ended	
	December 24, 2000	December 26, 1999	December 24, 2000	December 26, 1999
	(in thousands)			
Net income	\$ 73,468	\$ 36,708	\$ 139,557	\$ 61,390
Foreign currency translation adjustment.....	(3,603)	(1,007)	(1,150)	(6,594)
Unrealized gain on financial instruments.....	1,892	--	1,978	--
Comprehensive income	\$ 71,757	\$ 35,701	\$ 140,385	\$ 54,796

The accumulated other comprehensive loss of \$6.7 million presented on the accompanying consolidated condensed balance sheets consists of the accumulated foreign currency translation adjustment and activity related to derivatives classified as cash flow hedges held by the Company from June 26, 2000 through December 24, 2000.

NOTE I -- DERIVATIVE INSTRUMENTS AND HEDGING

On July 1, 2000, the Company adopted Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133"), as discussed in Note B.

In most countries, system sales are generally conducted in U.S. dollars while the sales of spare parts and services are generally conducted in the local country's currency. In Japan, the Company sells its systems and spare parts generally in Japanese Yen. Therefore, in the normal course of business, the Company's financial position is routinely subjected to market risk associated with foreign currency rate fluctuations.

The Company's policy is to ensure that material business exposure to foreign exchange risks are identified, measured

and minimized using the most effective and efficient methods to eliminate or reduce such exposures. To protect against the reduction in value of forecasted Yen denominated cash flows resulting from sales by the Company's Japanese subsidiary to third-party customers, the Company has instituted a foreign currency cash flow hedging program. The Company purchases foreign currency forward contracts generally expiring within 12 months, and no later than 24 months, to hedge portions of its forecasted revenue denominated in Japanese Yen. These foreign currency forward contracts are carried on the Company's balance sheet at fair value with the effective portion of the contracts' gain or loss recorded in other comprehensive income (a component of stockholders' equity) and subsequently recognized in earnings in the same period the hedged forecasted transaction affects earnings. The Company does not use derivatives for trading purposes.

Effectiveness tests for foreign currency forward contracts entered into prior to October 2000, compare the foreign currency spot rate at inception versus current balance sheet spot rate. Subsequent hedges are tested for effectiveness by comparing the foreign currency forward rate at inception versus the current balance sheet rate forward adjusted. The change reflects the Company's conclusion that under FAS 133 hedge effectiveness will not be impacted by including time value in hedge effectiveness testing, as the critical terms of the contract and the underlying, including maturity, are matched. For the three and six month periods ended December 24, 2000, the Company recognized a net gain of \$939,000 and \$1,674,000, respectively, related to the portion of the hedging instrument excluded from the assessment of hedge effectiveness.

At December 24, 2000, the Company expects to reclassify the amount accumulated in other comprehensive income to earnings during the next twelve months due to the recognition in earnings of the hedged forecasted transactions.

If a cash flow hedge should be discontinued because it is probable that the original forecasted transaction will not occur, the net gain or loss in accumulated other comprehensive income will be reclassified into earnings as a component of other income and expense. No such amounts were recorded in earnings during the three and six month periods ended December 24, 2000.

The following table summarizes activity in other comprehensive income related solely to derivatives classified as cash flow hedges held by the Company during the period from June 26, 2000 through December 24, 2000.

	(in thousands)
Cumulative effect of adopting FAS 133.....	\$ 494
Reclassified into income from other comprehensive income	(510)
Changes in fair value of derivatives, net.....	1,994

Other comprehensive income, net	\$ 1,978
	=====

Additionally, the Company enters into foreign currency forward contracts to hedge the gains and losses generated by the remeasurement of foreign currency denominated intercompany receivables recorded on Lam Research U.S. books into the U.S. dollar functional currency. These derivatives do not qualify for hedge accounting and therefore, the change in fair value of these derivatives are adjusted to fair value through income as a component of other income and expense as an offset to the change in fair value of the foreign currency denominated intercompany receivables.

NOTE J -- COMMITMENTS

During the second quarter of fiscal 2001, the Company entered into a five year Operating Lease Agreement ("the Agreement"), relating to certain buildings at its Fremont, California campus, in order to obtain more favorable terms and to reduce the amount of the Company's obligation. As part of the Agreement, the Company is required to provide a guaranteed residual value of \$27.5 million at the end of the lease term.

NOTE K -- LITIGATION

See Part II, item 1 for discussion of litigation.

NOTE L -- PURCHASED TECHNOLOGY FOR RESEARCH and DEVELOPMENT

During the second quarter of fiscal 2001, the Company purchased a portfolio of chemical mechanical planarization ("CMP") intellectual property rights from Strasbaugh. The Company recognized a one-time charge to income of \$8.0 million for the purchase of in process research and development technology and recorded a \$6.0 million investment in preferred stock and intangible assets. The Company's minority interest in Strasbaugh, will be accounted for under the equity method and the intangible assets will be amortized ratably over five years.

ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

With the exception of historical facts, the statements contained in this discussion are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, and are subject to the Safe Harbor provisions created by that statute. Such forward-looking statements include, but are not limited to, statements that relate to our future revenue, product development, demand, acceptance and market share, competitiveness, royalty income, gross margins, levels of research and development and operating expenses, our management's plans and objectives for our current and future operations, and the sufficiency of financial resources to support future operations and capital expenditures. Such statements are based on current expectations and are subject to risks, uncertainties, and changes in condition, significance, value and effect, including those discussed below under the heading Risk Factors, and other documents we may file from time to time with the Securities and Exchange Commission, specifically our last filed Annual Report on Form 10-K for the fiscal year ended June 25, 2000. Such risks, uncertainties and changes in condition, significance, value and effect could cause our actual results to differ materially from those expressed herein and in ways not readily foreseeable. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof and of information currently and reasonably known. We undertake no obligation to release any revisions to these forward-looking statements which may be made to reflect events or circumstances which occur after the date hereof or to reflect the occurrence or effect of anticipated or unanticipated events. This discussion should be read in conjunction with the Condensed Consolidated Financial Statements and Notes presented thereto on pages 6 to 10 of this Form 10-Q and the financial statements and notes in our last filed Annual Report on Form 10K for a full understanding of our financial position and results of operations for the three and six month periods ended December 24, 2000.

RESULTS OF OPERATIONS

Total Revenue

Our total revenue for the three and six months ended December 24, 2000 increased 71.3% and 74.7% respectively, compared to the corresponding periods in fiscal 2000. We experienced significant growth in our Etch and CMP/Clean product lines for the three and six month periods ending December 24, 2000.

The geographic breakdown of revenue is as follows:

	Three Months Ended		Six Months Ended	
	December 24, 2000	December 26, 1999	December 24, 2000	December 26, 1999
North America.....	32%	28%	33%	34%
Europe.....	25%	31%	24%	25%
Asia Pacific.....	27%	31%	28%	29%
Japan.....	16%	10%	15%	12%

Gross Margin

Our gross margin percentage increased to 46.7% and 46.4%, respectively in the three and six month periods ended December 24, 2000, compared to 43.5% and 42.7%, respectively, for the corresponding periods in the prior fiscal year. The increase in our gross margin percentage was mainly due to the favorable impact of higher sales volume, the efficiencies of "lean" manufacturing techniques, and continued material cost reductions.

Research and Development

Research and Development ("R&D") expenses for the three and six months ended December 24, 2000, were 45.8% and

44.9% higher than the year ago periods, respectively. However, as a percentage of revenue, R&D expenses were 11.9% and 12.4% of total revenue, respectively, for the three and six months periods of fiscal 2001, compared with 14.0% and 15.0% for the three and six month periods of fiscal 2000. The decrease in R&D expenses as a percent of revenue is mainly due to the significant increase in revenue for the three and six month periods of fiscal 2001. The increase in R&D expenses in absolute dollars was a result of our continued investments in advanced etch and CMP/Clean applications and enhancements to our existing products, including developing the technology necessary to support smaller feature size, copper based devices and 300 mm wafers. We believe that in order to remain competitive, we must continue to invest substantially in R&D.

Selling, General and Administrative

Selling, general and administrative ("SG&A") expenses for the three and six months ended December 24, 2000 increased in absolute dollars but decreased as a percentage of revenue compared to the corresponding periods in fiscal 2000. As a percentage of revenue SG&A expenses for the three and six month periods ended December 24, 2000 were 12.6% and 12.4%, respectively, compared to 13.2% and 13.7%, respectively, of total revenue for the three and six month periods in fiscal 2000. SG&A expenses decreased as a percent of revenue mainly due to the significant increase in revenue for the three and six-month periods ended December 24, 2000. The increase in SG&A expenses in absolute dollars for the three and six month periods of fiscal 2001 was largely a result of increased infrastructure related to higher sales, marketing and administrative support for our expanding business as well as higher incentive payments to our employees.

Purchased Technology for R&D

During the second quarter of fiscal 2001, we purchased a portfolio of chemical mechanical planarization ("CMP") intellectual property rights from Strasbaugh. We recognized a one-time charge to income of \$8.0 million for the purchase of in process research and development technology and recorded a \$6.0 million investment in preferred stock and intangible assets. Our minority interest in Strasbaugh, will be accounted for under the equity method and the intangible assets will be amortized ratably over five years.

Tax Expenses

Income tax was recorded using a 30% tax rate assumption based on our current revenue and profit outlook for fiscal 2001. Income tax was recorded using a 14% tax rate assumption for the second fiscal quarter 2000.

Transition to Single European Currency

During fiscal 1999, we established a team to address issues raised by the introduction of the Single European Currency ("Euro") for initial implementation as of January 1, 1999 and through the transition period to January 1, 2002. We met all related legal requirements by January 1, 1999, and we expect to meet all legal requirements through the transition period. We do not expect the cost of any related system modifications to be material and do not currently expect that the introduction and use of the Euro will materially affect our foreign exchange and hedging activities, or will result in any material increase in transaction costs. We will continue to evaluate the impact of the introduction of the Euro; however, based on currently available information, management does not believe that the introduction of the Euro has or will have a material adverse impact on our financial condition or results of our operations.

LIQUIDITY AND CAPITAL RESOURCES

As of December 24, 2000, we had \$457.5 million in cash, cash equivalents, short-term investments, and restricted cash compared with \$432.1 million at June 25, 2000. We had a total of \$100.0 million available under a syndicated bank line of credit, which is due to expire in April 2001. Borrowings are subject to our compliance with financial and other covenants set forth in the credit documents. During fiscal 1999, we amended the syndicated bank line of credit with respect to certain applicable covenant requirements and amended the line of credit borrowing rates to a range of 0.55% to 1.25% over LIBOR. At December 24, 2000, we were in compliance with all our financial and other covenants and had no borrowings against our line of credit.

Net cash provided by operating activities was \$108.9 million for the six months ending December 24, 2000. The increase in cash provided by operating activities primarily resulted from net income before non-cash charges of \$139.6 million, sales of accounts receivables of \$99.0 million and non cash charges for depreciation and amortization of \$26.7 million, offset by net uses of working capital of \$164.4 million (excluding the sales of accounts receivables of \$99 million). Increases in accounts receivables and inventory resulted from increased sales volume and were partially offset by increases in accounts payable and accrued liabilities.

Net cash used in investing activities for the six months ended December 24, 2000 was \$6.3 million. Cash outflows stemmed primarily from net capital expenditures of \$36.4 million, and the payment of \$14.0 million to Strasbaugh for the purchase of technology and equity. Use of cash in investing activities was partially offset by the net sales of short-term investments of \$46.1 million.

Net cash flows used in financing activities for the six months ended December 24, 2000 were \$30.1 million. We repurchased \$50.5 million of common stock and reissued \$13.1 million of our treasury stock through our employee option and stock purchase programs. Additionally, we made principal payments on long-term debt and capital lease obligations of \$1.4 million offset by proceeds from the issuance of short-term debt of \$7.5 million.

During fiscal 1999, we entered into certain option transactions with independent third parties (the "third parties") for the purchase and sale of our common stock. Our Board of Directors authorized us to acquire from the third parties options to purchase up to 10.5 million shares of our common stock. These call options were acquired in order to offset the anticipated dilutive effect of a potential conversion into common stock of the Convertible Subordinated Notes (the "Notes") previously issued by us, and due September 2, 2002. As part of the program, the Board of Directors also authorized us to enter into put options with the same third parties covering up to 15.75 million shares of our common stock. We anticipated that the premiums we would receive over the course of the program from the sale of the put options to the third parties would offset in full the premium cost of our purchase of the call options from those same third parties. Consequently, we do not expect to exchange cash over the course of the program with the third parties in conjunction with our purchase of the call options.

Pursuant to this authorization described above, we have as of December 24, 2000 acquired call options to purchase 3.72 million shares of our Common Stock; the weighted average exercise price of these options is \$11.29. The call options provide that our maximum benefit at expiration is \$17.97 per option share (the difference between \$29.26, which is the conversion price of the Notes, and the weighted average exercise price of the call options). We have also entered into put option contracts with the same third parties covering 5.58 million shares of our common stock, giving those third parties the right to sell to us shares of our Common Stock at a weighted average price of \$9.48 per share. Pursuant to EITF 00-19, the redemption value of the put option contracts, \$52.9 million, has been reclassified to temporary equity as of December 24, 2000.

The call and put options are European style options exercisable upon expiration; all of the options expire no later than September 3, 2002, which is the business day following the date on which the Notes must either be converted or retired. Upon option exercise, we have the ability, at our option, to permit the options to be physically settled (i.e., shares would be delivered to us against payment of the exercise price), settled in cash (i.e., by a payment from one party to the other of the value of the option being exercised) or "net settled" in shares (i.e., by delivery of a number of shares of common stock having a value equal to the value of the option being exercised). We can also terminate the options prior to expiration for a settlement value determined from time to time by the appropriate third Party. While the options are only exercisable at expiration, the terms of the contracts with the third parties provide for early termination and settlement of the options upon the occurrence of certain events (in a form determined by us which includes net settlement of shares), including without limitation our material breach of the agreement, default on certain indebtedness or covenants relating to our financial condition, reduction in our S&P credit rating below B or a drop in the price of our Common Stock to less than \$1.67 per share.

If the average stock price is below \$9.48 during any period, the required number of shares to net settle the Company's obligation under the put option agreement would be considered dilutive securities in our dilutive earnings per share ("EPS") calculation.

Given the cyclical nature of the semiconductor equipment industry, we believe that maintenance of sufficient liquidity reserves is important to ensure our ability to maintain levels of investment in R&D and capital infrastructure through ensuing business cycles. Based upon our current business outlook, our cash, cash equivalents, short-term investments, restricted cash and available lines of credit at December 24, 2000 are expected to be sufficient to support our current anticipated levels of operations and capital expenditures through at least the next 12 months.

RISK FACTORS

Our Quarterly Revenues and Operating Results are Unpredictable

Our revenues and operating results may fluctuate significantly from quarter to quarter due to a number of factors, not all of which are in our control. These factors include, but are not limited to:

- economic conditions in the semiconductor industry generally, and the equipment industry specifically;
- customer capacity requirements;
- the size and timing of orders from customers;
- customer cancellations or delays in our shipments;
- our ability in a timely manner to develop, introduce and market new, enhanced and competitive products;
- our competitors' introduction of new products;
- legal or technical challenges to our products and technology;
- new or modified accounting regulations;
- changes in average selling prices and product mix; and
- exchange rate fluctuations.

We manage our expense levels in part on our expectations of future revenues. If revenue levels in a particular quarter do not meet our expectations, our operating results are adversely affected.

We derive our revenue primarily from the sale of a relatively small number of high-priced systems. Our systems can range in price from approximately \$400,000 to \$4 million per unit. Our operating results for a quarter may suffer substantially if:

- we sell fewer systems than we anticipate in any quarter;
- we do not receive anticipated orders in time to enable actual shipment during that quarter;
- one or more customers delay or cancel anticipated shipments; or
- shipments are delayed by procurement shortages or manufacturing difficulties.

Our ability to recognize revenues might be delayed due to changes in accounting rules. SAB No. 101 "Revenue Recognition in Financial Statements" provides new guidance on the recognition, presentation and disclosure of revenue in financial statements of all public registrants. Currently, we generally recognize revenue on equipment upon shipment to our customers. The adoption of SAB 101 may require that some or all of that revenue not be recognized until the equipment is accepted by the customers, an event which generally does not happen until sometime after shipment has occurred. Compliance with SAB 101 therefore might delay our recognition of revenue, compared to our current practice, for one or more quarters, causing an adverse impact on our operating results during the quarters in which product has been shipped, but not yet accepted by the customer. The SEC has delayed the required implementation date of SAB 101, which for us, will be the fourth quarter of fiscal 2001. In October 2000, the SEC issued implementation guidance in the form of "Frequently Asked Questions". We are still in the process of assessing the impact of SAB 101 on our consolidated results of operations based upon the SEC's most recently issued guidance.

Further, because most of our manufacturing operations and capacity is located at our Fremont, California facility, natural, physical, logistical or other events or disruptions affecting this facility (including labor disruptions) could adversely impact our financial performance.

The Semiconductor Equipment Industry is Volatile, which Affects Our Revenues and Financial Results

Our business depends on the capital equipment expenditures of semiconductor manufacturers, which in turn depend on the current and anticipated market demand for integrated circuits and products using integrated circuits. The semiconductor industry is cyclical in nature and historically experiences periodic downturns. During the past three years the semiconductor industry has experienced severe swings of product demand and volatility in product pricing. In early fiscal 1998 and fiscal 1999, the semiconductor industry reduced or delayed significantly purchases of semiconductor manufacturing equipment and construction of new fabrication facilities because of an industry downturn. However, beginning in late fiscal 1999, we experienced a recovery in demand for our products, which drove sales growth throughout calendar year 2000. In the second half of the December 2000 quarter we began to see signs that this upturn was slowing and that customers are likely to reduce equipment purchases during at least the first half of calendar year 2001. Fluctuating levels of investment by the semiconductor manufacturers and pricing volatility will continue to materially affect our aggregate bookings, revenues and operating results. Even during periods of reduced revenues, we must continue to invest in research and development and to maintain extensive ongoing worldwide customer service and support capabilities to remain competitive, which may temporarily harm our financial results.

We Depend on New Products and Processes for Our Success. For this Reason, We Are Subject to Risks

Associated with Rapid Technological Change.

Rapid technological changes in semiconductor manufacturing processes subject us to increased pressure to develop technological advances enabling such processes. We believe that our future success depends in part upon our ability to develop, manufacture and successfully introduce new products with improved capabilities and to continue to enhance our existing products. Due to the risks inherent in transitioning to new products, we must forecast accurately demand for new products while managing the transition from older products. If new products have reliability or quality problems our performance may be impacted by reduced orders, higher manufacturing costs, delays in acceptance of and payment for new products, and additional service and warranty expenses. In the past, some product introductions have caused delays and reliability and quality problems. We may be unable to develop and manufacture new products successfully, or new products that we introduce may fail in the marketplace, which would materially and adversely affect our results from operations.

We expect to continue to make significant investments in research and development and to pursue joint development relationships with customers or other members of the industry. We must manage product transitions and joint development relationships successfully, as introduction of new products could adversely affect our sales of existing products. Future technologies, processes or product developments may render our current product offerings obsolete, or we may be unable in a timely manner to develop and introduce new products or enhancements to our existing products which satisfy customer needs or achieve market acceptance. In addition, in connection with the development of new products, we will invest in pilot production inventory. Our failure in a timely manner to complete commercialization of these new products could result in inventory obsolescence, which would adversely affect our financial results.

We Are Subject to Risks Associated with the Introduction of New Products

Once new products are introduced, we expect to face significant competition from multiple current and future competitors. We believe that other companies are developing systems and products that are competitive to ours and are planning to introduce new products to this market, which may affect our ability to sell our new products. Furthermore, new products represent significant investments of our resources and their success, or lack thereof, could have a material affect on our financial results.

We Are Subject to Risks Relating to Product Concentration and Lack of Product Revenue Diversification

We derive a substantial percentage of our revenues from a limited number of products, and we expect these products to continue to account for a large percentage of our revenues in the near term. Continued market acceptance of our primary products is, therefore, critical to our future success. Our business, operating results, financial condition and cash flows could therefore be adversely affected by:

- a decline in demand for our products;
- a failure to achieve continued market acceptance of our products;
- an improved version of products being offered by a competitor in the market we participate in;
- technological change that we are unable to address with our products; and
- a failure to release new enhanced versions of our products on a timely basis.

We are Dependent Upon a Limited Number of Key Suppliers

We obtain certain components and sub-assemblies included in our products from a single supplier or a limited group of suppliers. Each of our key suppliers has a one year blanket purchase contract under which we may issue purchase orders. We may renew these contracts periodically. Each of these suppliers sold us products during at least the last four years, and we expect that we will continue to renew these contracts in the future or that we will otherwise replace them with competent alternative source suppliers. Nevertheless, a prolonged inability to obtain certain components could adversely affect our operating results and result in damage to our customer relationships.

We May Encounter Difficulties Obtaining Sufficient Personnel, Components and Other Resources to Meet Current Demands

During calendar year 2000, the semiconductor equipment industry experienced significant demand for its products. This demand has increased our requirements for qualified management, technical and engineering personnel needed for our business operations globally. Competition for adequate personnel, particularly in Taiwan and the San Francisco Bay

Area, is intense, and we have at times experienced difficulty in identifying and hiring such personnel. The loss of the services of key management or technical and engineering employees could have a material adverse effect on our business, operating results, financial condition, cash flows, market perceptions and price of our common stock.

We might also experience shortages in components and other resources of all types required to satisfy customer demand for our products. If we are unable to satisfy customer demand, we might drive them to purchase products elsewhere, which might have a material adverse effect on our operating results and could result in damage to our customer relationships.

Once a Semiconductor Manufacturer Commits to Purchase a Competitor's Semiconductor Manufacturing Equipment, the Manufacturer Typically Continues to Purchase that Competitor's Equipment, Making it More Difficult for Us to Sell our Equipment to that Customer

Semiconductor manufacturers must make a substantial investment to qualify and integrate capital processing equipment into a semiconductor production line. We believe that once a semiconductor manufacturer selects a particular supplier's processing equipment, the manufacturer generally relies upon that equipment for that specific production line application. Accordingly, we expect it to be more difficult to sell to a given customer if that customer initially selects a competitor's equipment. We believe that to remain competitive we will require significant financial resources to offer a broad range of products, to maintain customer service and support centers worldwide, and to invest in product and process research and development.

We May Lack the Financial Resources or Technological Capabilities of Certain of Our Competitors Needed to Capture Increased Market Share

Certain of our competitors have substantially greater financial resources and more extensive engineering, manufacturing, marketing and customer service and support resources than we do and therefore are increasingly dominating the semiconductor equipment industry. In addition, there are smaller emerging semiconductor equipment companies that may provide innovative technology that may have performance advantages over systems we currently, or expect to, offer.

We anticipate our competitors will continue to improve the design and performance of their current products and processes and to introduce new products and processes with enhanced performance characteristics. If our competitors enter into strategic relationships with leading semiconductor manufacturers covering products similar to those we sell or may develop, it could adversely affect our ability to sell products to those manufacturers. In addition, competitors with higher levels of financial resources than we have may continue to deeply discount products similar to those we sell. For these reasons, we may fail to continue to compete successfully worldwide.

Our present or future competitors may be able to develop products comparable or superior to those we offer or that adapt more quickly to new technologies or evolving customer requirements. In particular, while we currently are developing additional product enhancements that we believe will address customer requirements, we may fail in a timely manner to complete the development or introduction of these additional product enhancements successfully, or these product enhancements may not achieve market acceptance or be competitive. Accordingly, we may be unable to continue to compete effectively in our markets, competition may intensify or future competition may have a material adverse effect on our revenues, operating results, financial condition and cash flows.

Our Future Success Depends on International Sales

International sales accounted for approximately 71% of our total revenue in fiscal 2000, 54% in fiscal 1999, and 55% in fiscal 1998. We expect that international sales will continue to account for a significant portion of our total revenue in future years. International sales are subject to risks, including, but not limited to:

- foreign exchange risks;
- foreign trade disputes; and
- economic, political, banking and currency problems in the relevant region.

We currently enter into foreign currency forward contracts to minimize the short-term impact of exchange rate fluctuations on yen-denominated sales and assets, and will continue to enter into hedging transactions in the future.

A Failure to Comply with Environmental Regulations May Adversely Affect Our Operating Results

We are subject to a variety of governmental regulations related to the discharge or disposal of toxic, volatile or otherwise hazardous chemicals. We believe that we are in general compliance with these regulations and that we have obtained (or will obtain or are otherwise addressing) all necessary environmental permits to conduct our business. These permits generally relate to the disposal of hazardous wastes. Nevertheless, the failure to comply with present or future regulations could result in fines being imposed on us, suspension of production, cessation of our operations or reduction in our customers' acceptance of our products. These regulations could require us to alter our current operations, to acquire significant equipment or to incur substantial other expenses to comply with environmental regulations. Our failure to control the use, sale, transport or disposal of hazardous substances could subject us to future liabilities.

Our Ability to Manage Potential Growth or Decline; Integration of Potential Acquisitions and Potential Disposition of Product Lines and Technologies Creates Risks for Us

Our management may face significant challenges in maintaining adequate financial and business controls, management processes, information systems and procedures on a timely basis, and expanding, training and managing our work force if we experience additional growth. There can be no assurance that we will be able to perform such actions successfully. Alternatively, we may be faced with a sudden decrease in demand for our products, which would challenge our management to reduce spending on operations and inventory. In the future, we may make acquisitions of complementary companies, products or technologies, or we may reduce or dispose of certain product lines or technologies, which no longer fit our long-term strategy. Managing an acquired business or disposing of product technologies entails numerous operational and financial risks, including difficulties in assimilating acquired operations and new personnel or separating existing business or product groups, diversion of management's attention to other business concerns, amortization of acquired intangible assets and potential loss of key employees or customers of acquired or disposed operations. Our success will depend, to a significant extent, on the ability of our executive officers and other members of our senior management to identify and respond to these challenges effectively. There can be no assurance that we will be able to achieve and manage successfully any such growth, decline, integration of potential acquisitions or disposition of product lines or technologies, or that our management, personnel or systems will be adequate to support continued operations. Any such inabilities or inadequacies would have a material adverse effect on our business, operating results, financial condition and cash flows.

An important element of our management strategy is to review acquisition prospects that would complement our existing products, augment our market coverage and distribution ability, or enhance our technological capabilities. We may acquire additional businesses, products or technologies in the future. Any acquisitions could result in changes such as potentially dilutive issuances of equity securities, the incurrence of debt and contingent liabilities and the amortization expense related to goodwill and other intangible assets, any of which could materially adversely affect our business, financial condition and results of operations and/or the price of our Common Stock.

The Market for Our Common Stock is Volatile, which May Affect our Ability to Raise Capital or Make Acquisitions

The market price for our Common Stock is extremely volatile and has fluctuated significantly over the past years. The trading price of our Common Stock could continue to be highly volatile and fluctuate widely in response to factors, including the following:

- general market or semiconductor industry conditions;
- global economic fluctuations;
- variations in our quarterly operating results;
- variations in our revenues or earnings from levels securities analysts forecast;
- announcements of restructurings, technological innovations, reductions in force, departure of key employees, consolidations of operations or introduction of new products;
- government regulations;
- developments in or claims relating to patent or other proprietary rights;
- disruptions with key customers; or
- political, economic or environmental events occurring globally or in our key sales regions.

In addition, the stock market has, in recent years, experienced increasing significant price and volume fluctuations.

Recent volatility in the price of our Common Stock was tied in part to the actual or anticipated movement in interest rates and the price of and markets for semiconductors. These broad market and industry factors may adversely affect the price of our Common Stock, regardless of our actual operating performance. In the past, following volatile periods in the price of stock, many companies become the object of securities class action litigation. If we are sued in a securities class action, we could incur substantial costs and it could divert management's attention and resources and have an unfavorable impact in the price for our Common Stock.

Risk Associated with Our Call and Put Options

We have entered into third party option transactions for the purchase and sale of our stock. The option positions will be of value to us if our stock price exceeds the exercise price of the call options at the time the options are exercised. Conversely, our stock price could also decline. If our stock price on the exercise date of the options were below the put option exercise price, we would have to settle the put obligation by paying cash or the equivalent value of our Common Stock obligation.

If settlement were to occur prior to option expiration because of the occurrence of an event giving the third parties the right to terminate the transactions, we will be required both to pay to the third parties the value of their position (which would depend on a number of factors, including the time remaining to expiration and the volatility of Lam Common Stock) which could be greater or lesser than the difference between the options' exercise prices and the then market price of Lam Common Stock, as well as any costs or expenses incurred by the third parties as a result of unwinding the transactions.

The Potential Anti-Takeover Effects of Our Bylaws Provisions and the Rights Plan We Have in Place May Affect Our Stock Price and Inhibit a Change of Control Desired by Some of Our Stockholders

On January 23, 1997, we adopted a Rights Plan (the "Rights Plan") in which rights were distributed as a dividend at the rate of one right for each share of our Common Stock, held by stockholders of record as of the close of business on January 31, 1997, and thereafter. In connection with the adoption of the Rights Plan, our Board of Directors also adopted a number of amendments to our Bylaws, including amendments requiring advance notice of stockholder nominations of directors and stockholder proposals.

The Rights Plan may have certain anti-takeover effects. The Rights Plan will cause substantial dilution to a person or group that attempts to acquire Lam in certain circumstances. Accordingly, the existence of the Rights Plan and the issuance of the related rights may deter certain acquirers from making takeover proposals or tender offers. The Rights Plan, however, is not intended to prevent a takeover. Rather it is designed to enhance the ability of our Board of Directors to negotiate with a potential acquirer on behalf of all of our stockholders.

In addition, our Certificate of Incorporation authorizes issuance of 5,000,000 shares of undesignated Preferred Stock. Our Board of Directors, without further stockholder approval, may issue this Preferred Stock on such terms as the Board of Directors may determine, which also could have the effect of delaying or preventing a change in control of Lam. The issuance of Preferred Stock could also adversely affect the voting power of the holders of our Common Stock, including causing the loss of voting control. Our Bylaws and indemnity agreements with certain officers, directors and key employees provide that we will indemnify officers and directors against losses that they may incur in legal proceedings resulting from their service to Lam. Moreover, Section 203 of the Delaware General Corporation Law restricts certain business combinations with "interested stockholders", as defined by that statute.

Intellectual Property and Other Claims Against Us Can Be Costly and Could Result in the Loss of Significant Rights which are Necessary to our Continued Business and Profitability

Other parties may assert infringement, unfair competition or other claims against us. Additionally, from time to time, other parties send us notices alleging that our products infringe their patent or other intellectual property rights. In such cases, it is our policy either to defend the claims or to negotiate licenses on commercially reasonable terms. However, we may be unable in the future to negotiate necessary licenses on commercially reasonable terms, or at all, and any litigation resulting from these claims by other parties may materially adversely affect our business and financial results.

In October 1993, Varian Associates, Inc. sued us in the United States District Court for the Northern District of California, seeking monetary damages and injunctive relief based on our alleged infringement of certain patents Varian held. We asserted defenses that the subject patents are invalid and unenforceable, and that our products do not infringe these patents. Litigation is inherently uncertain and we may fail to prevail in this litigation. However, we believe that the Varian lawsuit will not materially adversely affect our operating results or financial position. See Part II Item 2 of this Form 10-Q for a discussion of the Varian lawsuit.

Additionally, in September 1999, Tegal Corporation sued us in the United States District Court for the Eastern District of Virginia, seeking monetary damages and injunctive relief based on our alleged infringement of certain patents Tegal holds. Specifically, Tegal identified our 4520XLe™ and Exelan™ products as infringing the patents Tegal is asserting. Litigation is inherently uncertain and we may fail to prevail in this litigation. However, we believe that the Tegal lawsuit will not materially adversely affect our operating results or financial position. See Part II Item 1 of this Form 10-Q for a discussion of the Tegal lawsuit.

We May Fail to Protect Our Proprietary Technology Rights, which Would Affect Our Business

Our success depends in part on our proprietary technology. While we attempt to protect our proprietary technology through patents, copyrights and trade secret protection, we believe that our success also depends on increasing our technological expertise, continuing our development of new systems, increasing market penetration and growth of our installed base, and providing comprehensive support and service to our customers. However, we may be unable to protect our technology in all instances, or our competitors may develop similar or more competitive technology independently. We currently hold a number of United States and foreign patents and pending patent applications. However, other parties may challenge or attempt to invalidate or circumvent any patents the United States or foreign governments issue to us or these governments may fail to issue pending applications. In addition, the rights granted or anticipated under any of these patents or pending patent applications may be narrower than we expect or in fact provide no competitive advantages.

ITEM 3. Quantitative And Qualitative Disclosures about Market Risk

For financial market risks related to changes in interest rates and foreign currency exchange rates, refer to Part II, Item 7A, Quantitative and Qualitative Disclosures About Market Risk, in the Company's Annual Report on Form 10-K for the year ended June 25, 2000.

During fiscal 1999, we entered into third party option transactions for the purchase and sale of our Common Stock, in order to offset the dilutive effect of a potential conversion into Common Stock of the Convertible Subordinated Notes we previously issued and which are due September 2, 2002. We have as of December 24, 2000 acquired call options to purchase 3.72 million shares of our Common Stock. The weighted average exercise price of these options is \$11.29. The call options provide that our maximum benefit at expiration is \$17.97 per option share (the difference between \$29.26, which is the conversion price of the Notes, and the weighted average exercise price of the call options). We have also entered into put option contracts with the same third parties covering 5.58 million shares of our Common Stock, giving those third parties the right to sell to us shares of our Common Stock at a weighted average price of \$9.48 per share. Pursuant to EITF 00-19, the redemption value of the put option contracts, \$52.9 million, has been reclassified to temporary equity as of December 24, 2000.

Below is a table showing, at assumed exercise prices for the put and call options and market prices for our Common Stock, our gain or (loss) under the put and call options upon exercise or upon maturity of the options transaction.

		At December 24, 2000		At Maturity
		----- (in thousands) -----		
Stock Value				
\$5.00	\$	(23,520)	\$	(24,998)
\$15.00	\$	5,729	\$	13,814
\$25.00	\$	21,922	\$	51,029
\$35.00	\$	31,978	\$	66,878
\$45.00	\$	38,680	\$	66,878
\$55.00	\$	43,368	\$	66,878

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

In October 1993, Varian Associates, Inc. ("Varian") brought suit against us in the United States District Court, for the Northern District of California, seeking monetary damages and injunctive relief based on our alleged infringement of

certain patents held by Varian. By order of the Court, those proceedings were bifurcated into an initial phase to determine the validity of the Varian patents and our infringement (if any), and a secondary phase to determine damages to Varian (if any) and whether our infringement (if shown) was willful. On April 13, 1999, the Court issued an interlocutory order construing the meaning of the terms of the patent claims at issue in the action. In September 1999, a hearing was held on a summary judgment motion, which might dispose of a number of Varian's claims. After the quarter ended, in early January, the Court issued an order determining that we did not literally infringe Varian's patents, but the Court also held that a question of fact remained as to whether we may have infringed those patents by the doctrine of equivalents. A trial date previously scheduled for March 2000 was vacated, pending the court's decision of certain motions. There have been no findings in the action, which have caused us reasonably to believe that any infringement, if found, or any damages, if awarded, would have a material adverse effect on our operating results or our financial position.

In September 1999, Tegal Corporation ("Tegal") brought suit against us in the United States District Court for the Eastern District of Virginia, seeking monetary damages and injunctive relief based on our alleged infringement of certain patents held by Tegal. Specifically, Tegal identified our 4520XLe and Exelan products as infringing the patents Tegal is asserting. On our motion, this case was transferred to California and is now pending in the United States District Court for the Northern District of California. To date, however, there has been no determination as to the actual scope of those claims, or whether our products have infringed or are infringing Tegal's patents. No trial date is currently scheduled in the action. Furthermore, there have been no findings in the action, which have caused us reasonably to believe that any infringement, if found, or any damages, if awarded, could have a material adverse effect on our operating results or our financial position.

From time to time, we have received notices from third parties alleging infringement of such parties' patent or other intellectual property rights by our products. In such cases, it is our policy to defend the claims or negotiate licenses on commercially reasonable terms, where considered appropriate. However, no assurance can be given that we will be able in the future to negotiate necessary licenses on commercially reasonable terms, or at all, or that any litigation resulting from such claims would not have a material adverse effect on our consolidated financial position or operating results.

ITEM 4. Submission of Matters to Vote of Security Holders

Not applicable.

ITEM 6. Exhibits and Reports on Form 8-K

a. Exhibits

Exhibit	10.73	Lease Agreement between Lam Research Corporation and Cushing 2000 Trust, dated December 6, 2000.
Exhibit	10.74	Participation Agreement between Lam Research Corporation and Cushing 2000 Trust, dated December 6, 2000.

b. Reports on Form 8-K

We did not file any reports on Form 8-K during the quarter ended December 24, 2000.

LAM RESEARCH CORPORATION

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be

signed on its behalf by the undersigned thereunto duly authorized.

Date: February 7, 2001

LAM RESEARCH CORPORATION

(Registrant)

By: /s/ Mercedes Johnson

Mercedes Johnson

Vice President, Finance & Chief Financial Officer

(Principal Financial Officer)

EXHIBIT INDEX

- | | | |
|---------|-------|--|
| Exhibit | 10.73 | Lease Agreement between Lam Research Corporation and Cushing 2000 Trust dated December 6, 2000 |
| Exhibit | 10.74 | Participation Agreement between Lam Research Corporation and Cushing 2000 Trust dated December 6, 2000 |
-

LEASE

between

CUSHING 2000 TRUST,

as Lessor,

and

LAM RESEARCH CORPORATION,

as Lessee

 Dated as of December 6, 2000

This Lease is subject to a security interest in favor of The Bank of Nova Scotia as agent (the "Agent"), under a Credit Agreement, dated as of December 6, 2000. 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 of the States of California or New York, as applicable), no security interest in this Lease may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by the Agent on the signature page hereof.

LEASE**BETWEEN****CUSHING 2000 TRUST****AND****LAM RESEARCH CORPORATION**

This Lease (this "**Lease**"), dated as of December 6, 2000, between **Cushing 2000 Trust**, a Delaware business trust, as lessor ("**Lessor**"), and **Lam Research Corporation**, a Delaware corporation, having its principal office at 4650 Cushing Parkway, Fremont, California 94538, as lessee ("**Lessee**").

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

1.
 1. **Definitions.** Capitalized terms used but not otherwise defined in this Lease have the respective meanings specified in Annex A to the Participation Agreement dated as of the date hereof among Lessee, Lessor, Agent and the Lenders and Holders named therein.
2.
 1. **Property.** Subject to the terms and conditions hereinafter set forth, and contained in the Lease Supplement, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Property more fully described in Schedule 1 to the Lease Supplement Land and Schedule 1 to the Lease Supplement Improvements.
 2. **Lease Term.** The Property is leased for the Term, unless extended or earlier terminated in accordance with the provisions of this Lease.
 3. **Title.** The Property is leased 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 Legal Requirements. Lessee shall in no event have any recourse against Lessor for any defect in title to the Property except for the failure of Lessor to remove Lessor Liens at the expiration or earlier termination of this Lease.
 4. **Lease Supplement.** On the Funding Date, Lessee and Lessor shall each execute and deliver a Lease Supplement Land and a Lease Supplement Improvements for each Property to be leased on such date in substantially the form of Exhibit A and Exhibit B respectively and thereafter each such Lease Supplement shall incorporate all of the terms and conditions of this Lease.
3.
 1. **Rent.**
 - a. On each applicable Payment Date and on any date when this Lease shall terminate, Lessee shall pay Basic Rent for the Property.

- b. Basic Rent shall be due and payable in lawful money of the United States and shall be paid by wire transfer of immediately available funds on the due date therefor to such account or accounts at such bank or banks or to such other Person or in such other manner as Lessor shall from time to time direct.
 - c. Neither Lessee's inability or failure to take possession of all, or any portion, of the Property when delivered by Lessor, nor Lessor's inability or failure to deliver all or any portion of the Property to Lessee, 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 in accordance with the terms of this Lease.
2. **Payment of Basic Rent.** 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. **Supplemental Rent.**
 - a. Lessee shall pay to Lessor or the Person entitled thereto any and all Supplemental Rent promptly as the same shall become due and payable, and if Lessee fails to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of Basic Rent. Lessee shall pay to Lessor as Supplemental Rent, among other things, on demand, to the extent permitted by applicable Requirements of Law, 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 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. 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 or any other Operative Agreement, 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 for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent.
 - b. Lessee shall make a payment of Supplemental Rent equal to the Maximum Residual Guarantee Amount in accordance with Section 21.1(c).
4. **Performance on a Non-Business Day.** If any payment is required hereunder on a day that is not a Business Day, then such payment shall be due on the next succeeding Business Day (subject to the definition of the term "**Interest Period**").
5. **Method of Payment.** Each payment of Rent payable by Lessee to Lessor under this Lease or any other Operative Agreement shall be made by Lessee to Lessor prior to 10:00 a.m. Pacific Time to the Account in immediately available funds consisting of lawful currency of the United States of America on the date when such payment shall be due. Payments received after 10:00 a.m. Pacific Time on the date due shall for the purpose of Section 17.1 hereof be deemed received on such day; *provided, however*, that for the purposes of the second sentence of Section 3.3(a), such payments shall be deemed received on the next succeeding Business Day and shall accrue interest at the Overdue Rate as provided in such Section 3.3(a).
4.
 1. **Impositions; Utility Charges.** Lessee shall pay, or cause to be paid, all Impositions and/or the use, occupancy, operation, repair, access, maintenance or operation thereof, and all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents and utilities used in or on the Property during the Term. Upon Lessor's request made from time to time, Lessee shall provide Lessor with evidence of all such payments referenced in the foregoing sentence. Unless an Event of Default shall have occurred and be continuing, Lessee shall be entitled to receive any credit or refund with respect to any Imposition or 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 incurred by Lessor in obtaining such credit or refund, shall be promptly paid over to Lessee. If an Event of Default shall have occurred and be continuing, Lessor shall elect to do any or all of the following: (i) apply any such credit or refund to amounts then due and owing by Lessee hereunder, to the extent that such action would not adversely affect Lessor's rights and remedies under the Operative Agreements; (ii) hold such credits or refunds as additional collateral, or (iii) return such amounts to Lessee. All charges for Impositions or utilities imposed with respect to the Property for a billing period during which this Lease expires or terminates shall be adjusted and prorated on a daily basis between Lessor and Lessee, and each party shall pay or reimburse the other for each party's pro rata share thereof.
5.
 1. **Quiet Enjoyment.** Subject to the rights of Lessor contained in this Lease and the other Operative Agreements, and so long as no Event of Default shall have occurred and be continuing, Lessee shall peaceably and quietly have, hold and enjoy the Property for the Term, free of any claim or other action by Lessor or anyone rightfully claiming by, through or under Lessor with respect to any matters arising from and after the Closing Date. Such right of quiet enjoyment is independent of, and shall not affect the rights of Lessor (or anyone claiming by, through or under Lessor) otherwise to initiate legal action to enforce, the obligations of Lessee under this Lease.
6.
 1. **Net Lease; No Setoff; Etc.** This Lease shall constitute a net lease and, notwithstanding any other provision of this Lease, it is intended that Basic Rent and Supplemental Rent shall be paid without counterclaim, setoff, deduction or defense of any kind and without abatement, suspension, deferment, diminution or reduction of any kind, and Lessee's obligation to pay all such amounts, throughout the Term, is absolute and unconditional. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected for any reason, including, without limitation, to the maximum extent permitted by law: (a) any defect in the condition, merchantability, design, construction, quality or fitness for use of any portion of the Property, or any failure of the Property to comply with all Legal Requirements, including any inability to occupy or use the Property by reason of such noncompliance; (b) any damage to, abandonment, loss, contamination of or Release from or destruction of or any requisition or taking of the Property or any part thereof, including eviction; (c) any restriction, prevention or curtailment of or interference with any use of the Property or any part thereof, including eviction; (d) any defect in title to or rights to the Property or any Lien on such title or

rights or on the Property; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by Participant; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Lessee, or any Participant, or any action taken with respect to this Lease by any trustee or receiver of any Participant or any other Person, or by any court, in any such proceeding; (g) any claim that Lessee has or might have against any Person, including, without limitation any Participants; (h) any failure on the part of Lessor to perform or comply with any of the terms of this Lease, any other Operative Agreement or of any other agreement; (i) any invalidity, unenforceability or disaffirmance against or by Lessee of this Lease, or any of the other Operative Agreements, or any provision hereof or thereof; (j) the impossibility or illegality of performance by Lessee, Lessor or either of them; (k) any action by any court, administrative agency or other Governmental Authority; (l) any restriction, prevention or curtailment of or any interference with the construction on or any use of the Property or any part thereof; or (m) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Lessee shall have notice or knowledge of any of the foregoing. This Lease shall be noncancellable by Lessee for any reason whatsoever except as expressly provided herein, and Lessee, to the extent permitted by Legal Requirements, waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease, or to any diminution, abatement or reduction of Rent payable by Lessee hereunder. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, except as otherwise expressly provided herein, Lessee shall, unless prohibited by any Requirements of Law, nonetheless pay to Lessor (or, in the case of Supplemental Rent, to whomsoever shall be entitled thereto) an amount equal to each Rent payment at the time and in the manner that such payment would have become due and payable under the terms of this Lease if it had not been terminated in whole or in part, and in such case, so long as such payments are made and no Event of Default shall have occurred and be continuing, Lessor will deem this Lease to have remained in effect. Each payment of Rent made by Lessee hereunder shall be final and, absent manifest error in the computation of the amount thereof, Lessee shall not seek or have any right to recover all or any part of such payment from Lessor or any Financing Party or any party to any agreements related thereto for any reason whatsoever. Lessee assumes the sole responsibility for the condition, use, operation, maintenance and management of the Property and Lessor shall have no responsibility in respect thereof or any liability for damage to the property of Lessee or any subtenant of Lessee on any account or for any reason whatsoever. Nothing in this Article 6 shall relieve Lessor from liability to Lessee arising from the gross negligence or willful misconduct of, or breach of its obligations by, Lessor hereunder.

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 any Participant, or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator of any Participant or by any court with respect to any Participant, except as otherwise expressly provided herein. Lessee hereby waives all right (i) to terminate or surrender this Lease, except as otherwise expressly 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 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.

7.

1. **Ownership of the Property.** The parties hereto intend that (a) for financial accounting purposes with respect to Lessee and any Participants (i) this Lease will be treated as an "operating lease" pursuant to Statement of Financial Accounting Standards (SFAS) No. 13, as amended, (ii) Lessor will be treated as the owner and lessor of the Property, and (iii) Lessee will be treated as the lessee of the Property, but (a) for federal, state and local income tax and all other purposes (i) this Lease will be treated as a financing arrangement, (ii) Lessor and Lenders will be treated as lenders making loans to Lessee in an amount equal to the sum of the Lessor Contribution and the outstanding principal amount of the Loans, which loans are secured by the Property, and (iii) Lessee will be treated as the owner of the Property and will be entitled to all tax benefits ordinarily available to an owner of land and improvements like the Property for such tax purposes.
2. **Liens and Security Interests.**
 - a. The parties hereto further intend and agree that, for the purpose of securing Lessee's obligations for the repayment of all sums due under this Lease, including the above-described loans, (i) this Lease shall also be deemed to be a security agreement, fixture filing, and financing statement within the meaning of Article 9 of the Uniform Commercial Code and a real property mortgage or deed of trust, as applicable; (ii) Lessee grants to Lessor a security interest in Lessee's interest in the Trust Property (defined in subsection 7.2(c) below); (iii) the conveyance provided for in Article 2 shall be deemed a grant of a security interest in Lessee's beneficial ownership interest in the 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, for the benefit of Lessor to secure Lessee's payment of all amounts owed by Lessee under this Lease and the other Operative Agreements and Lessor holds title to the Property so as to create and grant a first lien and prior security interest in the Property (A) pursuant to this Lease for the benefit of Lessor to secure to Lessor the obligations of Lessee under the Lease and (B) pursuant to the Deed of Trust to secure to Agent the obligations of the Lessor under the Deed of Trust and the Notes; (iv) the possession by Lessor or any of its 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 (v) notifications to Persons holding such property, and acknowledgments, 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 law. In such event, Lessor shall have all of the rights, powers and remedies of a grantee and a secured party available under applicable law, including, without limitation, judicial or nonjudicial foreclosure or power of sale, as and to the extent available under applicable law. The filing of this Lease (or a memorandum hereof) shall be deemed to constitute the filing of a deed to secure debt and the filing of any financing statement in connection with this Lease shall be deemed to constitute the filing of a financing statement to perfect the deed to secure debt and security interests in the Property as aforesaid to secure the payment of all amounts due from time to time from Lessee to Lessor under this Lease and the other Operative Documents. If this transaction is treated as a financing, the obligation arising hereunder shall be with full recourse to Lessee and shall not be treated as recourse only to the Property. To the fullest extent permitted by applicable law, Lessor and Lessee intend that the Property (other than the Land) be and remain at all times personal property regardless of the manner or extent to which any of the Property (other than the Land) may be attached or affixed to any real property.

Except as required by applicable law, Lessee shall not under any circumstances take any action or make any filing or recording which could cause the Property (other than the Land) to be deemed to be real property or permit any Person to obtain any interest in the Property (other than the Land) as a result of the Property (other than the Land) being deemed to be in whole or in part real property. This Lease secures and shall be security for any and all future advances made by Lessor to Lessee. Nothing contained herein shall be deemed an obligation on the part of Lessor to make any further advances. The parties hereto shall, to the extent consistent with this Lease, take such actions as may be necessary to ensure that, if this Lease were deemed to create a security interest in the Property in accordance with this Section 7.2, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the Term. Nevertheless, Lessee acknowledges and agrees that neither Lessor nor any Participant has provided nor will provide tax, accounting or legal advice to Lessee regarding this Lease, the Operative Agreements or the transactions contemplated hereby and thereby, or made any representations or warranties concerning the tax, accounting or legal characteristics of the Operative Agreements, and that Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Agreements as it deems appropriate.

- b. The parties hereto further intend and agree that in the event of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statutes of the United States of America or any State or Commonwealth thereof affecting any party hereto, the transactions evidenced by this Lease shall be regarded as loans made by an unrelated third party lender to Lessee.
- c. Specifically, but without limiting the foregoing or the generality of Section 7.1, Lessee, as trustee, hereby grants, bargains, sells, warrants, conveys, aliens, remises, releases, assigns, sets over and confirms to Lessor, as beneficiary, WITH POWER OF SALE, AND RIGHT OF ENTRY AND INSPECTION, all of Lessee's present and future right, title, and interest in and to the following (collectively, the "**Trust Property**"): (i) the Land and the Property and Appurtenant Rights relating thereto and all proceeds, both cash and noncash thereof; (ii) all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Land and the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Lessee; (iii) all articles of personal property of every kind and nature whatsoever, tangible or intangible, now, heretofore or hereafter acquired with any proceeds of the Advances, and now, heretofore or hereafter (A) arising out of or related to the ownership of the Property, or (B) located in, on or about the Property, or (C) used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Property; (iv) all right, title and interest of Lessee in any and all leases, rental agreements and arrangements of any sort now or hereafter affecting the Property or any portion thereof and providing for or resulting in the payment of money to Lessee for the use of the Property or any portion thereof, whether the user enjoys the Property or any portion thereof as tenant for years, licensee, tenant at sufferance or otherwise, and irrespective of whether such leases, rental agreements and arrangements be oral or written, and including any and all extensions, renewals and modifications thereof (the "**Subject Leases**") and guaranties of the performance or obligations of any tenants or lessees thereunder, together with all income, rents, issues, profits and revenues from the Subject Leases (including all tenant security deposits and all other tenant deposits, whether held by Lessee or in a trust account, and all other deposits and escrow funds relating to any Subject Leases), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Lessee of, in and to the same; *provided, however*, that although this Lease contains (and it is hereby agreed that this Lease contains) a present, current, unconditional and absolute assignment of all of said income, rents, issues, profits and revenues, Lessee shall collect and apply such rental payments and revenues as provided in the Lease and the other Operative Agreements; (v) all right, title and interest of Lessee to and under all agreements, management contracts, consents, authorizations, certificates and other rights of every kind and character of any Governmental Authority affecting the Property, to the extent the same are transferable, service contracts, utility contracts, leases of equipment, documents and agreements relating to the construction of any Improvements (including any and all construction contracts, architectural contracts, engineering contracts, designs, plans, specifications, drawings, surveys, tests, reports, bonds and governmental approvals) and all other contracts, licenses and permits now or hereafter affecting the Property or any part thereof and all guaranties and warranties with respect to any of the foregoing (the "**Subject Contracts**"); (vi) all right, title and interest of Lessee in any insurance policies or binders now or hereafter relating to the Property, including any unearned premiums thereon, as further provided in this Lease; (vii) all right, title and interest of Lessee in any and all awards, payments, proceeds and the right to receive the same, either before or after any foreclosure hereunder, as a result of any temporary or permanent injury or damage to, taking of or decrease in the value of the Property by reason of casualty, condemnation or otherwise as further provided in this Lease; (viii) all right, title and interest of Lessee in all utility, escrow and all other deposits (and all letters of credit, certificates of deposit, negotiable instruments and other rights and evidence of rights to cash) now or hereafter relating to the Property or the purchase, construction or operation thereof; (ix) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action; and (x) all Modifications, extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds of any of the foregoing, and all property of any nature constituting proceeds acquired with proceeds of any of the property described hereinabove; all of which foregoing items are hereby declared and shall be deemed to be a portion of the security for the indebtedness and Advances herein described, a portion of the above described collateral being located upon the Land.

8.

1. **Condition of the Property.** LESSEE ACKNOWLEDGES AND AGREES THAT IT IS RENTING THE PROPERTY "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY LESSOR AND SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW, AND (D) VIOLATIONS OF LEGAL REQUIREMENTS WHICH MAY EXIST ON THE DATE HEREOF. NEITHER LESSOR NOR ANY PARTICIPANT HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED, INCLUDING THE CONDITION OF ANY IMPROVEMENTS THEREON, THE SOIL CONDITION, OR ANY ENVIRONMENTAL OR HAZARDOUS MATERIAL CONDITION) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE, VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION OR FITNESS FOR USE OF THE PROPERTY (OR ANY PART

THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER (EXPRESS OR IMPLIED), WITH RESPECT TO THE PROPERTY (OR ANY PART THEREOF) AND NEITHER LESSOR NOR ANY PARTICIPANT SHALL BE LIABLE FOR ANY LATENT, HIDDEN OR PATENT DEFECT THEREIN OR THE FAILURE OF THE PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY LEGAL REQUIREMENT.

2. **Possession and Use of the Property.** The Property shall be used at all times in compliance with all applicable municipal, state and federal and other governmental statutes, rules, requirements, regulations, laws and ordinances, including zoning ordinances and regulations, and covenants, easements and restrictions of record governing and relating to the use, occupancy or possession of the Property. Subject to the foregoing, the Property shall be used for office, manufacturing and research and development purposes. Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Property. Lessee shall not commit or permit any waste of the Property or any part thereof.

9.

1. **Compliance with Legal Requirements and Insurance Requirements.** Subject to the terms of Article 13 relating to permitted contests, Lessee, at its sole cost and expense, shall (a) comply with all Legal Requirements (including all Environmental Laws) and Insurance Requirements relating to the Property, including the use, construction, operation, maintenance, repair and restoration thereof, whether or not compliance therewith shall require structural or extraordinary changes in the Improvements or interfere with the use and enjoyment of the Property, and (b) procure, maintain and comply in all material respects with all licenses, permits, orders, approvals, consents and other authorizations required for the construction, renovation, use, maintenance and operation of the Property and for the use, operation, maintenance, repair and restoration of the Improvements.

10.

1. **Maintenance and Repair; Return.**

- a. Lessee, at its sole cost and expense, shall maintain the Property in good condition (ordinary wear and tear excepted) and make all necessary repairs thereto, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen, in each case as required by all Legal Requirements and Insurance Requirements and on a basis reasonably consistent with the operation and maintenance of commercial properties comparable in type and location to the Property subject, however, to the provisions of Article 15 with respect to Condemnation and Casualty.
- b. Under no circumstances shall Lessor itself be required to build any Improvements on the Property, make any repairs, replacements, alterations or renewals of any nature or description to the Property, make any expenditure whatsoever in connection with this Lease or maintain the Property in any way. Lessor shall not be required to maintain, repair or rebuild all or any part of the Property, and Lessee waives the right to (i) require Lessor to maintain, repair or rebuild all or any part of the Property, or (ii) make repairs at the expense of Lessor pursuant to any Legal Requirement, Insurance Requirement, contract, agreement, covenants, condition or restriction at any time in effect.
- c. Lessee shall, upon the expiration or earlier termination of the Term with respect to the Property not including a purchase thereof by Lessee, vacate, surrender and transfer the Property to Lessor or, at Lessor's request, the independent purchaser thereof, at Lessee's own expense, free and clear of all tenancies, free and clear of all Liens other than Permitted Liens and Lessor Liens, in as good condition as it was on the Closing Date, ordinary wear and tear excepted, and in compliance with all Legal Requirements and the other requirements of this Lease (and in any event without (x) any asbestos installed or maintained in any part of the Property, (y) any polychlorinated biphenyls (PCBs) in, on or used, stored or located at the Property, and (z) any other Hazardous Substances). Lessee shall cooperate with any independent purchaser of the Property in order to facilitate the ownership or leasing and operation by such purchaser of the Property after such expiration or earlier termination of the Term, including providing all books, reports and records regarding the maintenance, repair and ownership of the Property and all data and technical information relating thereto, granting or assigning all licenses necessary for the operation and maintenance of the Property and cooperating in seeking and obtaining all necessary licenses, permits and approvals of Governmental Authorities. Lessee shall have also paid the total cost for the completion of all Modifications commenced prior to such expiration or earlier termination of the Term. The obligation of Lessee under this Section 10.1(c) shall survive the expiration or termination of this Lease.
- d. If any component of the Property becomes worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, Lessee, at its own expense, within a reasonable time will replace such component with a replacement component which is free and clear of all Liens (other than Permitted Liens and Lessor Liens) and has a value, utility and useful life at least equal to the component replaced (assuming the component replaced had been maintained and repaired in accordance with the requirements of this Lease). All components which are added to the Property shall immediately become the property of (and title thereto shall vest in) Lessor and shall be deemed incorporated in the Property and subject to the terms of this Lease as if originally leased hereunder.
2. **Right of Inspection.** Lessor or Agent may, each not more than twice each year unless an Event of Default exists, at reasonable times, and with reasonable prior written notice and in a manner which minimizes the disruption of Lessee's use of the Property, enter upon, inspect and examine at its own cost and expense (unless an Event of Default exists, in which case the out-of-pocket costs and expenses of such parties shall be paid by Lessee), the Property. Lessee shall furnish to Lessor statements, no more than once per year, accurate in all material respects, regarding the condition and state of repair of the Property. Lessor shall have no duty to make any such inspection or inquiry and shall not incur any liability or obligation by reason of not making any such inspection or inquiry.
3. **Environmental Inspection.** Upon surrender of possession of the Property, or not more than one hundred twenty (120) days nor less than thirty (30) days prior to the Expiration Date or earlier termination of the Term (unless Lessee has previously irrevocably exercised the Purchase Option or Maturity Date Purchase Option), Lessee shall, at its sole cost and expense, provide to Lessor a report by an environmental consultant selected by Lessee and reasonably satisfactory to Lessor certifying that there has been no Release at, on or from the Property and Hazardous Substances have not at any time during the Term been generated, used, treated or stored on, transported to or from, or deposited at or on the Property other than (a) as necessary to use, operate, maintain, repair

and restore the Property and (b) in full compliance with all Environmental Laws, and no portion of the Property has been used for such purposes other than in full compliance with all Environmental Laws. If such is not the case, the report shall set forth a remedial response plan relating to the Property (which remedial response plan, if required by any Environmental Law or Governmental Authority, shall be approved by the appropriate Governmental Authority). Such remedial response plan shall include, if relevant, but shall not be limited to, plans for full response, remediation, removal or other corrective action, and the protection, or mitigative action associated with the protection, of natural resources including wildlife, aquatic species and vegetation associated with the Property, as required by all applicable Environmental Laws. If such report includes a remedial response plan, Lessee shall promptly deposit funds in escrow with Lessor sufficient to ensure the full execution and implementation of such plan.

11.

1. **Modifications, Substitutions and Replacements.**

- a. So long as no Event of Default has occurred and is continuing, Lessee, at its sole cost and expense, may at any time and from time to time make alterations, renovations, improvements and additions to the Property or any part thereof (collectively, "**Modifications**"); *provided*, that: (i) except for any Modification required to be made pursuant to a Legal Requirement or an Insurance Requirement, no Modification, individually, or when aggregated with any (A) other Modification or (B) grant, dedication, transfer or release pursuant to Section 12.2, shall impair the value of the Property or the utility or useful life of the Property from that which existed immediately prior to such Modification; (ii) the Modification shall be performed expeditiously and in a good and workmanlike manner; (iii) Lessee shall comply with all Legal Requirements (including all Environmental Laws) and all Insurance Requirements applicable to the Modification, including the obtaining of all permits and certificates of occupancy, and the structural integrity of the Property shall not be adversely affected; (iv) Lessee shall maintain or cause to be maintained builders' risk insurance at all times when a Modification is in progress; (v) subject to the terms of Article 13 relating to permitted contests, Lessee shall pay all costs and expenses and discharge any Liens arising with respect to the Modification; (vi) such Modifications shall comply with Sections 8.2 and 10.1 and shall not change the primary character of the Property; and (vii) the Improvements shall not be demolished in total in the making of the Modification. All Modifications (other than those that may be readily removed without impairing the value, utility or remaining useful life of the Property) shall remain part of the Improvements and shall be subject to this Lease, and title thereto shall immediately vest in Lessor. So long as no Event of Default has occurred and is continuing, Lessee may place upon the Property any inventory, trade fixtures, machinery, equipment or other property belonging to Lessee or third parties and may remove the same at any time during the term of this Lease; *provided* that such inventory, trade fixtures, machinery, equipment or other property, or their respective operations, do not materially impair the value, utility or remaining useful life of the Property.
- b. Lessee shall notify Lessor of the undertaking of any construction, repairs or alterations to the Property the cost of which is anticipated to exceed \$1,000,000. Prior to undertaking any such construction or alterations, Lessee shall deliver to Lessor (i) a brief narrative of the work to be done and a copy of the plans and specifications relating to such work; and (ii) an Officer's Certificate stating that such work when completed will not impair the value, utility or remaining useful life of the Property. Lessor, by itself or its agents, shall have the right, but not the obligation, from time to time to inspect such construction to ensure that the same is completed consistent with such plans and specifications.
- c. Lessee shall not, without the consent of Lessor, undertake any construction or alterations to the Property if such construction or alterations cannot, in the reasonable judgement of Lessor, be completed on or prior to the date that is one hundred eighty (180) days prior to the Expiration Date.

12.

1. **Warranty of Title.**

- a. Lessee agrees that, except as otherwise provided herein and subject to the terms of Article 13 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, other than a Lessor Lien, upon the Property or any Modifications or any Lien, attachment, levy or claim with respect to the Rent or with respect to any amounts held by the Agent pursuant to the Credit Agreement or the Pledge Agreement, other than with respect to the Property only, Permitted Liens. Lessee shall promptly notify Lessor in the event it receives actual knowledge that a Lien (other than a Permitted Lien) exists with respect to the Property or that a Lien exists with respect to the Rent or the Collateral.
 - 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 the Property or any part thereof. NOTICE IS HEREBY GIVEN THAT NEITHER LESSOR NOR ANY PARTICIPANT IS OR SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PROPERTY OR ANY PART 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 IN AND TO THE PROPERTY.
2. **Grants and Releases of Easements.** Provided that no Event of Default shall have occurred and be continuing and subject to the provisions of Articles 8, 9, 10 and 11, Lessor hereby consents 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 and incurring of other obligations of Lessee reasonably necessary or desirable for the development, construction, use, repair, renovation or maintenance of the Property as herein provided; (b) the release of existing easements or other rights in the nature of easements which are for the benefit of the Property or adjacent properties (owned by Lessee); (c) the dedication or transfer of unimproved portions of the Property for road, highway or other public purposes; (d) the execution of petitions to have the Property annexed to any municipal corporation or utility district; and (e) the execution of amendments to any covenants and restrictions affecting the Property; *provided*, that in each case Lessee shall have delivered to Lessor an Officer's Certificate stating that: (i) such grant, release, dedication or transfer does not materially impair the value, utility or remaining useful life of the Property, (ii) such grant, release, dedication or transfer is necessary in connection with the construction, use, maintenance,

alteration, renovation or improvement of the Property or adjacent properties (owned or leased by Lessee), (iii) 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 or transfer, had not been effected, and (iv) Lessee shall pay and perform any obligations of Lessor under such grant, release, dedication or transfer. Without limiting the effectiveness of the foregoing, provided that no Event of Default shall have occurred and be continuing, Lessor shall, upon the request of Lessee, and at Lessee's sole cost and expense, promptly execute and deliver any instruments necessary or appropriate to confirm any such grant, release, dedication or transfer to any Person permitted under this Section 12.2.

13.

1. **Permitted Contests Other Than in Respect of Impositions.** Except to the extent otherwise provided for in Section 12.2(f) of the Participation Agreement, Lessee, on its own or on Lessor's behalf but at Lessee's sole cost and expense, may contest, by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Legal Requirement, Imposition, or utility charges payable pursuant to Section 4.1, or any Lien, attachment, levy, encumbrance or encroachment, and Lessor agrees not to pay, settle or otherwise compromise any such item, provided that (a) the commencement and continuation of such proceedings shall not suspend the collection thereof from, nor suspend the enforcement thereof against, the Property, the Rent, the Collateral, or Participants; (b) there shall be no risk of the imposition of a Lien (other than a Permitted Lien) on the Property, or any Lien on any Rent or the Collateral, and no part of the Property nor any Rent nor any of the Collateral would be in any danger of being sold, forfeited, lost or deferred; (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability or civil liability on Lessor or any Participant for failure to comply therewith; and (d) in the event that, at any time, there shall be a material risk of extending the application of such item beyond the Expiration Date, then Lessee shall deliver to Lessor an Officer's Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1. Lessor, at Lessee's sole cost and expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in connection with any such contest and, if reasonably requested by Lessee, shall join as a party therein at Lessee's sole cost and expense.

14.

1. **Public Liability and Workers' Compensation Insurance.** During the Term, 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 the Property. Such insurance shall be on terms and in amounts that are no less favorable than insurance maintained by owners of similar properties, that are in accordance with normal industry practice. The policy shall be endorsed to name the Participants as additional insureds. 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 the Participants may have in force. Lessee shall, in the operation of the Property, comply with the applicable workers' compensation laws and protect the Participants against any liability under such laws.
2. **Hazard and Other Insurance.**
 - a. During the Term, Lessee shall keep the Property insured against loss or damage by fire, earthquake and other risks on terms and in amounts that are no less favorable than insurance maintained by owners of similar properties, that are in accordance with normal industry practice, and are in amounts at least equal to the Lease Balance and in the case of earthquake coverage, with a deductible which is commercially reasonable for the geographical location of the property. So long as no Event of Default exists, any loss payable under the insurance policy required by this Section 14.2 will be paid to and adjusted solely by Lessee, subject to Article 15. So long as no Event of Default exists, any loss payable under any title insurance policy covering the Property will be paid to and adjusted solely by Lessee, subject to Article 15.
 - b. If at any time during the Term the area in which the Property is located is designated a "flood-prone" area pursuant to the Flood Disaster Protection Act of 1973 or any amendments or supplements thereto, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as may be amended. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any other Legal Requirement concerning flood insurance to the extent that it applies to the Property.
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 as loss payee with respect to property insurance and the Participants as additional insureds with respect to liability insurance and showing the mortgagee endorsement required by Section 14.3(c). All such insurance may be maintained under blanket policies and shall be at the cost and expense of Lessee and provided by nationally recognized, financially sound insurance companies having a rating by A.M. Best's Key Rating Guide of at least an A and a Financial Performance Rating of at least VIII. Such certificates shall include a provision in which the insurer agrees to provide thirty (30) days' advance written notice by the insurer to Lessor (on behalf of the beneficiaries of such insurance coverage) in the event of cancellation or material alteration of such insurance. If an Event of Default has occurred and is continuing and Lessor so requests, Lessee shall deliver to Lessor copies of all insurance policies required by this Lease.
 - b. Lessee agrees that the insurance policy or policies required by this Lease 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. Lessee hereby waives any and all such rights against the Participants to the extent of payments made under such policies.
 - c. All insurance policies required by Section 14.2 shall include a "New York" or standard form mortgagee endorsement in favor of Lessor and the Agent.
 - d. None of the Participants shall carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Lease except that the same 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 such party 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 Lease 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 this Lease, shall renew or replace each policy prior to the expiration date thereof, shall promptly deliver to Lessor and Agent certificates for renewal and replacement policies, and otherwise maintain the coverage required by this Lease without any lapse in coverage.

15.

1. **Casualty and Condemnation.**

- a. Subject to the provisions of this Article 15 and Article 16 (in the event Lessee delivers, or is obligated to deliver, a Termination Notice), and prior to the occurrence and continuation of an Event of Default, Lessee shall be entitled to receive (and Lessor hereby irrevocably assigns to Lessee all of Lessor's right, title and interest during such time in) any award, compensation or insurance proceeds to which Lessee or Lessor may become entitled by reason of their respective interests in the Property (i) if all or a portion of the Property is damaged or destroyed in whole or in part by a Casualty or (ii) if the use, access, occupancy, easement rights or title to the Property or any part thereof is the subject of a Condemnation; *provided, however*, if a Default shall have occurred and be continuing, such award, compensation or insurance proceeds shall be paid directly to Lessor or, if received by Lessee, shall be held in trust for Lessor, and shall be paid over by Lessee to Lessor; and *provided, further*, that in the event of any Casualty or Condemnation, the estimated cost of restoration of which is in excess of \$3,000,000, any such award, compensation or insurance proceeds shall be paid directly to Lessor, or if received by Lessee, shall be held in trust for Lessor and shall be paid over by Lessee to Lessor, subject to disbursement in full to Lessee in accordance with Section 15.1(d) or (e), as applicable.
 - b. So long as no Event of Default has occurred and is continuing, 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 expenses thereof; *provided* that if the estimated cost of restoration of the Property or the payment on account of such title defect is in excess of \$3,000,000, then Lessor shall be entitled to participate in any such proceeding or action. At Lessee's reasonable request, and at Lessee's sole cost and expense, Lessor and the 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, Participants and Lessee in and to any such award, compensation or insurance payment.
 - c. If Lessor or Lessee shall receive notice of a Casualty or a possible Condemnation of the Property or any interest therein, then Lessor or Lessee, as the case may be, shall give notice thereof to the other and to the 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, Lessee shall, not later than thirty (30) days after such occurrence, deliver to Lessor and to the Agent an Officer's Certificate stating that either (i) (x) such Casualty is not a Significant Casualty or (y) such Condemnation is neither a Total Condemnation nor a Significant Condemnation and that this Lease shall remain in full force and effect with respect to the Property and, at Lessee's sole cost and expense, Lessee shall promptly and diligently restore the Property in accordance with the terms of Section 15.1(e) or (ii) this Lease shall terminate with respect to the Property in accordance with Section 16.1.
 - e. If pursuant to Section 15.1(d), this Lease shall continue in full force and effect following a Casualty or Condemnation with respect to the Property, then Lessee shall, at its sole cost and expense, promptly and diligently repair any damage to the Property 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 Property (as modified to give effect to any subsequent Modifications, any Condemnation affecting the Property and all applicable Legal Requirements) so as to restore the Property to the same condition, operation, function and value as existed immediately prior to such Casualty or Condemnation. In such event, title to the Property shall remain with Lessor.
 - f. In no event shall a Casualty or Condemnation with respect to which this Lease remains in full force and effect under this Section 15.1 affect Lessee's obligations to pay Rent pursuant to Section 3.1.
 - g. Notwithstanding anything to the contrary set forth in Section 15.1(a) or Section 15.1(e), if during the Term a Casualty occurs with respect to the Property or Lessee receives notice of a Condemnation with respect to the Property, and following such Casualty or Condemnation, the Property cannot reasonably be restored on or before the date which is one hundred eighty (180) days prior to the Maturity Date to substantially the same condition as existed immediately prior to such Casualty or Condemnation or before such day the Property is not in fact so restored, then Lessee shall exercise its Purchase Option with respect to the Property on the next Payment Date or irrevocably agree in writing to exercise the Maturity Date Purchase Option with respect to the Property, and in either such event such remaining Casualty or Condemnation proceeds shall be paid to Lessor, which shall pay such funds to Lessee upon the closing of the purchase of the Property on the Maturity Date.
2. **Environmental Matters.** Promptly upon Lessee's actual knowledge of the presence of Hazardous Substances in any portion of the Property in concentrations and conditions that constitute an Environmental Violation, Lessee shall notify Lessor and Agent 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 deliver to Lessor and Agent an Officer's Certificate and a Termination Notice with respect to the Property pursuant to Section 16.1, if applicable, or, at Lessee's sole cost and expense, promptly and diligently undertake any response, clean up, remedial or other action necessary to remove, clean up or remediate the Environmental Violation in accordance with the terms of Section 9.1. If Lessee does not deliver a Termination Notice with respect to the Property pursuant to Section 16.1, Lessee shall, upon completion of remedial action by Lessee, cause to be prepared by an environmental consultant reasonably acceptable to Lessor and Agent 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 full compliance with applicable Environmental Laws.
3. **Notice of Environmental Matters.** Promptly, but in any event within five (5) Business Days from the date Lessee has actual

knowledge thereof, Lessee shall provide to Lessor and Agent written notice of any material pending or threatened claim, action or proceeding involving any Environmental Law or any Release on or in connection with the Property. 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 and Agent, within five (5) Business Days after receipt, copies of all written communications with any Governmental Authority relating to any Environmental Violation in connection with the Property. Lessee shall also promptly provide such detailed reports of any such environmental claims as reasonably may be requested by Lessor or Agent.

16.

1. **Termination upon Certain Events.**

- a. If: (i) Lessor or Lessee shall have received notice of a Total Condemnation; or (ii) Lessee or Lessor shall have received notice of a Condemnation, and Lessee shall have delivered to Lessor and Agent an Officer's Certificate that such Condemnation is a Significant Condemnation; or (iii) a Casualty occurs, and Lessee shall have delivered to Lessor and Agent an Officer's Certificate that such Casualty is a Significant Casualty; or (iv) an Environmental Violation occurs or is discovered and Lessee shall have delivered to Lessor and Agent an Officer's Certificate stating that, in the reasonable, good-faith judgment of Lessee, the cost to remediate the same will exceed \$3,000,000; then Lessee shall, within thirty (30) days after Lessee receives notice of a Total Condemnation pursuant to the preceding clause (i), or simultaneously with the delivery of the Officer's Certificate pursuant to the preceding clause (ii), (iii) or (iv), deliver a notice of termination of this Lease to Lessor and Agent in the form described in Section 16.2(a) (a "**Termination Notice**").

2. **Procedures.**

- a. A Termination Notice shall contain: (i) notice of termination of this Lease on a date not more than thirty (30) days after Lessor's receipt of such Termination Notice (the "**Termination Date**"); (ii) a binding and irrevocable agreement of Lessee to pay the Termination Value and purchase the Property on such Termination Date; and (iii) the Officer's Certificate described in Section 16.1.
- b. On the Termination Date, Lessee shall pay to Lessor the Termination Value for the Property, plus all amounts owing in respect of Rent for such Property (including Supplemental Rent) theretofore accruing and Lessor shall convey the Property to Lessee (or Lessee's designee) all in accordance with Section 19.1.

17.

1. **Events of Default.** If any one or more of the following events (each an "**Event of Default**") shall occur:

- a. Lessee shall fail to make payment of (i) any Basic Rent within three (3) days after the same has become due and payable, (ii) the Maximum Residual Guarantee Amount, Purchase Option Price or Termination Value after the same has become due and payable or (iii) any Supplemental Rent other than as provided in clause (ii) within three (3) days after receipt of notice thereof; or
- b. Lessee shall fail to maintain insurance as required by Article 14 of this Lease; or
- c. Lessee shall fail to observe or perform any term, covenant or condition of Lessee under this Lease, the Participation Agreement or any other Operative Agreement to which it is a party (specifically including without limitation, that affirmative covenant of Lessee set forth in Section 9.3(f) of the Participation Agreement, but other than those set forth in Section 17.1(a) or (b), hereof) which failure, if capable of cure, continues for thirty (30) days after written notice thereof to Lessee by Lessor (*provided that*, in the event such cure cannot be reasonably completed within such 30-day period, then Lessee shall have such additional time as shall be reasonably necessary, so long as Lessee commences such cure within such 30-day period and diligently thereafter prosecutes same to completion) or any representation or warranty by Lessee set forth in this Lease or in any other Operative Agreement 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 way when made or deemed made; or
- d. 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, or (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
- 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 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; or
- f. Lessee shall fail to (i) provide the Pledged Collateral in accordance with the terms of the Operative Agreements, or (ii) replenish the Pledged Collateral as required by the terms of the Operative Agreements; or
- g. there shall be entered against Lessee or any Subsidiary one or more judgments or decrees in an aggregate amount at any one time outstanding in excess of \$10,000,000, and such judgments or decrees shall not have been satisfied, vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from entry thereof; or
- h. with respect to any Plan (other than a Multiemployer Plan) as to which Lessee or any ERISA Affiliate of Lessee may have any liability, there shall exist, for a period of thirty (30) days, a deficiency which is material to the consolidated financial

condition of Lessee and its Subsidiaries in the Plan assets available to satisfy the benefits guaranteeable under ERISA with respect to such Plan, and (i) steps are undertaken to terminate such Plan, (ii) such Plan is terminated, or (iii) any Reportable Event which presents a material risk of termination with respect to such Plan shall occur; or

- i. Lessee or any of its Subsidiaries (i) shall default in the payment beyond any applicable grace period, whether at stated maturity or otherwise, of principal, interest or rent in respect of Indebtedness in excess of \$10,000,000, including, without limitation, the Credit Facility and the Subordinated Notes; or (ii) shall fail to perform or observe any other condition or covenant, such that an event of default shall occur or exist, under any agreement or instrument relating to any such Indebtedness; or
- j. Any Operative Agreement shall cease to be in full force and effect or Lessee or any Person acting by or on behalf of Lessee shall deny or disaffirm its obligations thereunder or contest the validity of any Operative Agreement or any Lien granted thereunder in any respect, either directly or indirectly; or
- k. (i) any Person or two (2) or more Persons acting in concert shall have acquired beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934), directly or indirectly, of voting stock of Lessee (or other securities convertible into such voting stock) representing greater than fifty percent (50%) of the combined voting power of all voting stock of Lessee; or (ii) the first day on which a majority of the members of the board of directors of Lessee are not Continuing Directors. A "Continuing Director" shall mean any director who is either (A) a member of such board of directors on the Closing Date or (B) nominated or elected to such board of directors with the approval of a majority of the Continuing Directors who were members of such board at the time of such nomination or election; or (iii) any Person or two (2) or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of, the power to exercise, directly or indirectly, a controlling influence over the management or policies of Lessee, or control over voting stock of Lessee (or other securities convertible into such securities) representing more than forty-nine percent (49%) of the combined voting power of all voting stock of Lessee;

then, in any such event, Lessor may, in addition to the other rights and remedies provided for in this Article 17 and in Section 18.1, terminate this Lease by giving Lessee three (3) Business Days' notice of such termination, and this Lease shall terminate. Lessee shall, to the fullest extent permitted by law, pay as Supplemental Rent all costs and expenses incurred by or on behalf of Lessor, including fees and expenses of counsel, as a result of any Event of Default hereunder. A POWER OF SALE HAS BEEN GRANTED IN THIS LEASE. A POWER OF SALE MAY ALLOW LESSOR TO TAKE THE PROPERTY AND SELL THE PROPERTY WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON THE OCCURRENCE OF AN EVENT OF DEFAULT.

2. **Final Liquidated Damages.** If an Event of Default shall have occurred and be continuing, Lessor shall have the right to recover, by demand to Lessee and at Lessor's election, and Lessee shall pay to Lessor, exclusive of the indemnities payable under Section 11 of the Participation Agreement, and in lieu of all damages beyond the date of such demand, the sum of (a) the Termination Value, plus (b) all other amounts owing in respect of Rent and Supplemental Rent theretofore accruing under this Lease. Upon payment of the amount specified pursuant to the first sentence of this Section 17.2, Lessee shall be entitled to receive from Lessor, at Lessee's request and cost, an assignment of Lessor's right, title and interest in the Property, the Improvements, the Fixtures and the Modifications, in each case in recordable form and otherwise in conformity with local custom and free and clear of any Lessor Liens. The Property shall be conveyed to Lessee (or Lessee's designee) "AS IS" and in its then present physical condition. If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law; *provided* that Lessee shall not be entitled to receive an assignment of Lessor's interest in the Property, the Improvements, the Fixtures and the Modifications unless Lessee shall have paid in full the Termination Value of the Property and all such Rent and Supplemental Rent.
3. **Lease Remedies.** Lessor and Lessee intend that for commercial law and bankruptcy law purposes, this Lease will be treated as a financing arrangement, as set forth in Article 7. If, as a result of applicable state law, which cannot be waived, this Lease is deemed to be a lease of the Property, rather than a financing arrangement, and Lessor is unable to enforce the remedies set forth in Section 17.2, the following remedies shall be available to Lessor:
 - a. **Surrender of Possession.** If an Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall, upon thirty (30) days' written notice, surrender to Lessor possession of the Property and Lessee shall quit the same. Lessor may enter upon and repossess the Property by such means as are available at law or in equity, and may remove Lessee and all other Persons and any and all personal property and Lessee's equipment and personalty and severable Modifications from the Property. Lessor shall have no liability by reason of any such entry, repossession or removal performed in accordance with applicable law.
 - b. **Reletting.** If an Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessor may, but shall be under no obligation to, relet all, or any portion, of the Property, for the account of Lessee or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such purposes as Lessor may reasonably determine, and Lessor may collect, receive and retain the rents resulting from such reletting which rents shall be applied against amounts owing by Lessee. Lessor shall not be liable to Lessee for any failure to relet the Property or for any failure to collect any rent due upon such reletting.
 - c. **Damages.** None of (i) the termination of this Lease pursuant to Section 17.1; (ii) the repossession of the Property; or (iii) except to the extent required by applicable law, the failure of Lessor to relet all, or any portion, of the Property, the reletting of all or any portion thereof, nor the failure of Lessor to collect or receive any rentals due upon any such reletting shall relieve Lessee of its liability and obligations hereunder, all of which shall survive any such termination, repossession or reletting. If any Event of Default shall have occurred and be continuing and notwithstanding any termination of this Lease pursuant to Section 17.1, Lessee shall forthwith pay to Lessor all Basic Rent and other sums due and payable hereunder or under the Operative Agreements to and including the date of such termination. Thereafter, on the days on which the Basic Rent or Supplemental Rent, as applicable, are payable under this Lease or would have been payable under this Lease if the same had not been terminated pursuant to Section 17.1 and until the end of the Term or what would have been the Term in the absence

of such termination, Lessee shall pay Lessor, as current liquidated damages (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the Basic Rent and Supplemental Rent that are payable under this Lease or under the Operative Agreements or would have been payable by Lessee hereunder or under the Operative Agreements if this Lease had not been terminated pursuant to Section 17.1, less the net proceeds, if any, which are actually received by Lessor with respect to the period in question of any reletting of the Property or any portion thereof; *provided* that Lessee's obligation to make payments of Basic Rent and Supplemental Rent under this Section 17.3(c) shall continue only so long as Lessor shall not have received the amounts specified in Section 17.2 or Section 17.3(d). In calculating the amount of such net proceeds from reletting, there shall be deducted all of any Participants' reasonable expenses in connection therewith, including repossession costs, brokerage commissions, fees and expenses for counsel and any necessary repair or alteration costs and expenses reasonably incurred in preparation for such reletting. To the extent Lessor receives any damages pursuant to this Section 17.3(c), such amounts shall be regarded as amounts paid on account of Rent.

- d. **Acceleration of Rent.** If an Event of Default shall have occurred and be continuing, and this Lease shall not have been terminated pursuant to Section 17.1, and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.3(c), Lessor may upon written notice to Lessee accelerate all payments of Basic Rent due hereunder and, upon such acceleration, Lessee shall immediately pay Lessor, as and for final liquidated damages and in lieu of all current liquidated damages on account of such Event of Default beyond the date of such acceleration (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the sum of (i) all Basic Rent (assuming interest at a rate per annum equal to the Overdue Rate and including any charges for funding losses), as applicable, due from the date of such acceleration until the end of the Term, plus (ii) the Maximum Residual Guarantee Amount that would be payable under Section 21.1(c) assuming the proceeds of the sale pursuant to such Section 21.1(c) are equal to zero, which sum is then discounted to present value at a rate equal to the rate then being paid on United States treasury securities with maturities corresponding to the then remaining Term. Following payment of such amount by Lessee, Lessee will be permitted to stay in possession of the Property for the remainder of the Term, subject to the terms and conditions of this Lease, including the obligation to pay Supplemental Rent, provided that no further Event of Default shall occur and be continuing, following which Lessor shall have all the rights and remedies set forth in this Article 17 (but not including those set forth in this Section 17.3). If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law.
- e. **Subletting of the Property.** In addition to the other rights and remedies set forth herein, Lessor shall have the right to continue this Lease in effect and, as permitted by Section 1951.4 of the California Civil Code, to enforce, by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Lessee and exercise all of Lessor's rights and remedies under this Lease, including, without limitation, the right to recover Basic Rent and Supplemental Rent from Lessee as it becomes due under this Lease, even though Lessee shall have breached this Lease and abandoned the Property. Acts of maintenance or preservation, or efforts by Lessor or on Lessor's behalf to relet the Property, or the appointment of a receiver upon the initiative of Lessor to protect Lessor's interest under this Lease shall not constitute a termination of Lessee's right to possession of the Property; *provided, however*, that the foregoing enumeration shall not be construed as in any way limiting the actions Lessor may take without terminating Lessee's right to possession. In furtherance of the rights hereby granted to Lessor, and to the extent, permitted by law, Lessee hereby appoints Lessor its agent and attorney-in-fact, which appointment shall be deemed to be coupled with an interest and is irrevocable, with power of substitution, to enter the Property upon an Event of Default hereunder and remove therefrom all persons and property (with the right to store such property on the Property in a public warehouse or elsewhere at the cost and risk and for the account of Lessee) and to alter the Property in such manner as Lessor may deem necessary or advisable so as to put the Property in good order and to make the same rentable and from time to time sublet the Property or any part thereof for such term or terms whether or not extending beyond the then current term of this Lease (but such sublease may provide for a new and successive lease to commence immediately upon the termination of this Lease), at such rentals and upon such other terms as Lessor in its sole discretion may deem advisable, and with the right to make alterations and repairs to the Property; and Lessee agrees to pay to Lessor on demand all reasonable expenses incurred by Lessor in such subletting, and in altering, repairing and putting the Property in good order and condition, and in reletting the same, including fees of attorneys and architects, and all other reasonable expenses or commissions. Lessor shall be Lessee's agent and representative on the Property in respect of all matters arising under or in connection with any such sublease made for Lessee by Lessor. Under each such sublease, Lessee shall retain the right to enter upon and use the Property, subject to the terms and conditions of such sublease and the rights of the sublessee thereunder. Lessee further agrees to pay to Lessor, following the date of such subletting, to and including the date provided in this Lease for the expiration of the Lease Term, the sums of money which would have been payable by Lessee as Basic Rent and Supplemental Rent, deducting only the net amount of rent, if any, which Lessor shall actually receive (after deducting from the gross receipts the expenses, costs and payments of Lessor which in accordance with the terms of this Lease would have been borne by Lessee) in the meantime from and by any such subletting of the Property, and Lessee hereby agrees to remain liable for all sums otherwise payable by Lessee under this Lease, including, but not limited to, the expenses of Lessor aforesaid, as well as for any deficiency aforesaid. Lessor shall have the right from time to time to begin and maintain successive actions or other legal proceedings against Lessee for the recovery of such deficiency, expenses or damages or for a sum equal to any installments of Basic Rent or Supplemental Rent and other sums payable hereunder, and to recover the same upon the liability of Lessee herein provided, which liability it is expressly covenanted shall survive the commencement or determination of any action to secure possession of the Property. Nothing herein contained shall be deemed to require Lessor to wait to begin such action or other legal proceedings until the date when this Lease would have expired by limitation had there been no such Event of Default. Notwithstanding any such subletting without termination, pursuant to the terms hereof, Lessor shall retain the right to and may at any time thereafter elect to terminate this Lease or Lessee's right to possession of the Property for any previous breach which remains uncured or for any subsequent breach by giving Lessee written notice thereof as herein provided, and in such event Lessee shall forfeit any rights or interest under any such sublease and thereafter the obligations of any such sublessee shall run directly to Lessor for its own account. Upon application by Lessor, a receiver may be appointed to take possession of the Property, exercise all rights granted to Lessor as agent and attorney-in-fact for Lessee set forth in this Section 17.3(e) and apply any rentals collected from the Property as hereinabove provided. No taking of possession of the Property or other act by Lessor as the agent and attorney-in-fact for Lessee pursuant to the foregoing provisions, nor any subletting by Lessor for Lessee pursuant to the foregoing provisions, nor any such appointment of a receiver shall constitute or be construed as an election by Lessor to terminate this Lease or Lessee's right to possession of the Property unless a written notice of such intention be given to

Lessee.

- f. **Repossession and Recoverable Amounts.** In the event of any termination of the Term pursuant to Section 17.1 or as permitted by law, Lessee shall quit and surrender the Property to Lessor, and Lessor may without further notice enter upon, reenter, possess and repossess the same by summary proceedings, ejectment or otherwise, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Lessee nor any Person claiming through or under Lessee by virtue of any law or an order of any court shall be entitled to possession or to remain in possession of the Property but shall forthwith quit and surrender the Property, and Lessor shall, notwithstanding any other provision of this Lease, be entitled to recover from Lessee the aggregate of all amounts Lessor is permitted to recover from Lessee, including without limitation:
- i. the worth at the time of award, as computed below, of the unpaid rent (including, without limitation, Basic Rent and Supplemental Rent) which had been earned at the time of termination of this Lease;
 - ii. the worth at the time of award of the amount by which the unpaid rent (including, without limitation, Basic Rent and Supplemental Rent) which would have been earned after the time of termination of this Lease until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;
 - iii. the worth at the time of award of the amount by which the unpaid rent (including, without limitation, Basic Rent and Supplemental Rent) for the balance of the Term after the time of award exceeds the amount of such rental loss for said balance of the Term that Lessee proves could be reasonably avoided; and
 - iv. any other amount necessary to compensate Lessor and Agent for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; including without limitation any loss or damage arising out of the failure of Lessor to receive the benefit of the performance by Lessee of any obligation to purchase the Property under the provisions of this Lease. Lessee acknowledges and agrees that, in reliance upon this Lease and Lessee's covenants and agreements hereunder and the creditworthiness and financial condition of Lessee, Lessor has entered into certain special transactions to finance the costs of acquiring the Land and the Improvements and, in connection with such financing transactions, Lessor has incurred and will continue to incur indebtedness and liabilities under and pursuant to the Participation Agreement and the other Operative Agreements. Lessee acknowledges and agrees that an Event of Default will cause Lessor and Agent substantial damage and detriment due to its obligations and liabilities under the Participation Agreement and the other Operative Agreements, including, without limitation, the failure of Lessor to be fully compensated for the Advances made to Lessee. Accordingly, in order to compensate Lessor for all detriment proximately caused by Lessee's failure to perform its obligations under this Lease, Lessor shall be permitted to recover from Lessee, without limitation, all amounts necessary for Lessor to be fully compensated for all of the Advances made to Lessee.

The "worth at the time of award," of the amounts referred to in the foregoing subsections 17.3(f) (i) and (ii) shall be computed by allowing interest at the Overdue Rate (or at the highest rate permitted by applicable law, whichever is less) on each rental installment from the date the same was due hereunder to the time of award. The "worth at the time of award" of the amount referred to in the foregoing subsection (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of New York at the time of the award plus one percent (1%). As used herein, the term "time of award" shall mean either (A) the date upon which Lessee pays to Lessor the amount recoverable by Lessor as hereinabove set forth or (B) the date of entry of any determination, order or judgment of any court, other legally constituted body, or any arbitrator(s), determining the amount recoverable, whichever first occurs. If the time of award is determined under clause (B), above, then the amount recoverable by Lessor hereunder shall bear interest from the time of award until paid at the Overdue Rate (or at the highest rate permitted by applicable law, whichever is less). Nothing herein contained shall limit or prejudice the right of Lessor, and Lessor is hereby expressly granted the right, in any bankruptcy or reorganization or insolvency proceedings, to prove for and obtain as damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law whether such amount shall be greater or less than the amounts referred to above.

4. **Waiver of Certain Rights.** If this Lease shall be terminated pursuant to Section 17.1, 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; and (d) any other rights which might otherwise limit or modify any of Lessor's rights or remedies under this Article 17.
5. **Assignment of Rights Under Contracts.** If an Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall upon Lessor's demand immediately assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to each agreement executed by Lessee in connection with the construction, renovation, development, use or operation of the Property (including, without limitation, all right, title and interest of Lessee with respect to all warranty, performance, service and indemnity provisions), as and to the extent that the same relate to the construction, renovation, and operation of the Property.
6. **Power of Sale and Foreclosure.** Except as expressly provided in this Lease, for purposes of this Section 17.6, presentment, demand, protest and all other notices of any kind are hereby expressly waived. In addition (subject to Article 21 below), upon the occurrence of any Event of Default, Lessor, as beneficiary, may immediately take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Lessee, as trustor, in and to the Trust Property, including the following actions, at such time and in such manner as Lessor may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lessor:
 - a. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Property or any part thereof, with or without legal action, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Property, or any part thereof (including entering into new leases of all or any part of the Trust Property) and, with or without taking possession of the Trust Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including

reasonable attorneys' fees, to the payment of all of Lessee's obligations hereunder (including, without limitation, the payment of Basic Rent, Supplemental Rent and the Termination Value or Purchase Option Price) (collectively, the "Lease Payment Obligations"), all in such order as Lessor may determine. The entering upon and taking possession of the Trust Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Property or the collection, receipt and application of rents, issues or profits, Lessor shall be entitled to exercise every right provided for herein and the other Operative Documents or by law.

- b. Bring an action in any court of competent jurisdiction to foreclose on the Trust Property, to appoint a receiver or to enforce any of the covenants, terms or conditions hereof and Lessor shall have the right to specific performance, injunction and any other equitable right or remedy as though other remedies were not provided in this Lease.
- c. Elect to cause the Trust Property or any part thereof to be sold as follows, Lessee hereby expressly waiving any right which it may have to direct the order in which any of the Trust Property may be sold:
 - (i) Lessor may proceed as if all of the Trust Property were real property, in accordance with subparagraph (ii) below, or Lessor may elect to treat any of the Trust Property which consists of personal property, in accordance with the Section of this Lease entitled "Security Agreement and Fixture Filing," separate and apart from the sale of the Land, the remainder of the Trust Property being treated as real property;
 - (ii) Lessor may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided or Lessor may delay any such sale or other disposition for such period of time as Lessor deems to be in its best interest. Should Lessor desire that more than one such sale or other disposition be conducted, Lessor may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Lessor may deem to be in its best interest;
 - (iii) Should Lessor elect to sell the Trust Property and Lessor elects to proceed under the laws governing foreclosure of or sales pursuant to deeds of trust, Lessor (or any trustee designated by Lessor) shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Lessor (or any trustee designated by Lessor), at the time and place specified by the notice of sale, shall sell such Trust Property, or any portion thereof specified by Lessor, at public auction to the highest bidder for cash in lawful money of the United States. Lessor may postpone, from time to time, the sale by public announcement thereof at the time and place noticed therefor. If the Trust Property consists of several lots or parcels, Lessor may elect to sell the Trust Property either as a whole or in separate lots or parcels. If Lessor elects to sell in separate lots or parcels, Lessor may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Lessee or Lessor, may purchase at the sale. Upon any sale, Lessor shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession;
 - (iv) In the event of a sale or other disposition of any such property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts, such as an Event of Default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payments of purchase money, and any other fact affecting the regularity or validity of such sale or disposition shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein; and
 - (v) After deducting all costs, fees and expenses of Lessor, including all costs of evidence of title and attorneys' fees in connection with sale, Lessor shall apply the proceeds of sale to payment of all sums so expended under the terms hereof not then repaid; the payment of all other sums then secured hereby; and the remainder, if any, to the Person or Persons legally entitled thereto;
- d. Exercise all other rights and remedies provided herein, in the other Operative Documents or otherwise available at law or equity.
- e. With or without notice, and without releasing Lessee from any obligation hereunder, to cure any default of Lessee and, in connection therewith, to enter upon the Property and to perform such acts and things as Lessor deems necessary or desirable to inspect, investigate, assess and protect the Property, including, without limitation of any of its other rights: to obtain a court order to enforce Lessor's right to enter and inspect the Property pursuant to California Civil Code Section 2929.5, to which the decision of Lessor as to whether there exists a release or threatened release of a Hazardous Substance onto the Property shall be deemed reasonable and conclusive as between the parties hereto; to have a receiver appointed pursuant to California Code of Civil Procedure Section 564 to enforce Lessor's right to enter and inspect the Property for Hazardous Substances; to appear in and defend any action or proceeding purporting to affect the Property or the rights or powers of Lessor hereunder; to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Lessor, is prior or superior hereto, the judgment of Lessor being conclusive as between the parties hereto; to pay any premiums or charges with respect to insurance required to be carried hereunder; and to employ counsel, accountants, contractors and other appropriate persons to assist Lessor;
- f. To commence and maintain an action or actions in any court of competent jurisdiction pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Lessor (collectively, the "**Environmental Costs**") incurred or advanced by Lessor relating to the cleanup, remediation or other response action required by Legal Requirements or which Lessor believes necessary to protect its interest in the Property, it being conclusively presumed between Lessor and Lessee that all such Environmental Costs incurred or advanced by Lessor relating to the cleanup, remediation or other response action of or to the Property were made by Lessor in good faith. All Environmental Costs incurred by Lessor pursuant to this Section 17.6(g) (including, without limitation, court costs, consultants' fees and attorneys' fees, whether incurred in

litigation or not and whether before or after judgment) shall bear interest at the Overdue Rate from the date of expenditure until said sums have been paid. Lessor shall be entitled to bid, at the sale of the Property held pursuant to Section 17.6(c) above, the amount of said costs, expenses and interest in addition to the amount of the other Lease Payment Obligations hereby secured as a credit bid, the equivalent of cash. For the purposes of any action brought under this Section 17.6(f), Lessee hereby waives the defense of laches and any applicable statute of limitations; and

- g. To waive its lien against the Property or any portion thereof, whether fixtures or personal property, to the extent such property is found to be environmentally impaired in accordance with California Code of Civil Procedure Section 726.5 and to exercise any and all rights and remedies of an unsecured creditor against Lessee and all of Lessee's assets and property for the recovery of any deficiency and Environmental Costs, including, but not limited to, seeking an attachment order pursuant to California Code of Civil Procedure Section 483.010. As between Lessor and Lessee, for purposes of California Code of Civil Procedure Section 726.5, Lessee shall have the burden of proving that Lessee or any related party (or any affiliate or agent of Lessee or any related party) was not in any way negligent in permitting the release or threatened release of the Hazardous Substance. For the purposes of any action brought under this paragraph, Lessee hereby waives the defense of laches and any applicable statute of limitations.
- h. All costs and expenses incurred by Lessor pursuant to this Section 17.6 (including without limitation court costs, consultants' fees and attorneys' fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Overdue Rate, from the date of expenditure until said sums have been paid. Lessor shall be entitled to bid, at the sale of the Property held pursuant to subsection 17.4(c) above, the amount of said costs, expenses and interest in addition to the amount of the other Lease Payment Obligations hereby secured as a credit bid, which shall be deemed the equivalent of cash.
- i. In no event shall Lessor (or any trustee designation by Lessor), in the exercise of the remedies provided in this Section 17.6 (including, without limitation, in connection with the appointment of a receiver and the entry of such receiver on to all or any part of the Trust Property), be deemed a "mortgagee in possession," and Lessor shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.
- j. Lessee hereby waives any right to require that any security given hereunder or under any other agreement securing the Lease Payment Obligations be marshaled and further waives any right otherwise available in respect to marshalling of assets which secure any Lease Payment Obligation or to require Lessor to pursue its remedies against any such assets.

7. **Security Agreement and Fixture Filing.**

- a. It is the intention of the parties hereto that this Lease shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "UCC") of the State of California. If an Event of Default shall occur under this Lease, then in addition to having any other right or remedy available at law or in equity, Lessor shall have the option of either (i) proceeding under the UCC and exercising such rights and remedies as may be provided to a secured party by the UCC with respect to all or any portion of the Trust Property which is personal property (including, without limitation, taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Trust Property in accordance with Lessor's rights, powers and remedies with respect to the real property (in which event the default provisions of the UCC shall not apply). If Lessor shall elect to proceed under the UCC, then ten (10) business days notice of sale of the personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Lessor shall include, but not be limited to, attorneys' fees and legal expenses. At Lessor's request, Lessee shall assemble the personal property and make it available to Lessor at a place designated by Lessor which is reasonably convenient to both parties.
 - b. Lessee and Lessor agree, to the extent permitted by law, that this Lease (or a memorandum thereof) upon recording or registration in the real estate records of the proper office shall constitute a financing statement filed as a "fixture filing" within the meaning of Sections 9313 and 9402 of the UCC.
 - c. Lessee, upon request by Lessor from time to time, shall execute, acknowledge and deliver to Lessor one or more separate security agreements, in form reasonably satisfactory to Lessor, covering all or any part of the Trust Property and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Lessor may reasonably request in order to perfect, preserve, maintain, continue or extend the security interest under and the priority of this Lease and such security instrument. Lessee further agrees to pay to Lessor on demand all reasonable costs and expenses incurred by Lessor in connection with the preparation, execution, recording, filing and re-filing of any such document and all reasonable costs and expenses of any record searches for financing statements Lessor shall reasonably require. Lessee shall from time to time, on request of Lessor, deliver to Lessor an inventory in reasonable detail of any of the Trust Property which constitutes personal property. If Lessee shall fail to furnish any financing or continuation statement within ten (10) days after request by Lessor, then pursuant to the provisions of the UCC, Lessee hereby authorizes Lessor, without the signature of Lessee, to execute and file any such financing and continuation statements. The filing of any financing or continuation statements in the records relating to personal property or chattels shall not be construed as in any way impairing the right of Lessor to proceed against any personal property encumbered by this Lease as real property, as set forth above.
8. **Remedies Cumulative.** The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise.
9. **Lessee's Right to Cure.** Notwithstanding any provision contained in this Lease or any other Operative Agreement, if an Event of Default has occurred and is continuing, Lessee shall have the right to cure such Event of Default by exercising its Purchase Option at any time prior to such time as a foreclosure upon or sale of the Property has been completed.

18.

1. **Lessor's Right to Cure Lessee's Defaults.** Lessor, without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) remedy any Event of Default for the account and at the sole cost and expense of Lessee, including the failure

by Lessee to maintain any insurance required by Article 14, and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of Lessee, enter upon the Property 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 out-of-pocket costs and expenses so incurred (including the 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 as Supplemental Rent.

19.

1. **Provisions Relating to Lessee's Termination of this Lease or Exercise of Purchase Options.** In connection with any termination of this Lease with respect to the Property pursuant to the terms of Section 16.2 or Article 17, or in connection with Lessee's exercise of its Purchase Option or Maturity Date Purchase Option, upon the date on which this Lease is to terminate with respect to the Property or upon the Expiration Date with respect to the Property, and upon tender by Lessee of the amounts set forth in Section 16.2(b), 17.2, 20.1 or 20.2, as applicable:
 - a. Lessor shall execute and deliver to Lessee (or to Lessee's designee) at Lessee's cost and expense an assignment of Lessor's entire interest in the Property, in each case in recordable form and otherwise in conformity with local law and custom and free and clear of the Lien of this Lease and any Lessor Liens; and
 - b. The Property shall be conveyed to Lessee or its designee "AS IS" and in its then present physical condition.

20.

1. **Purchase Option.** Subject to Section 17.8, Lessee shall have the option on any Payment Date (exercisable by giving Lessor irrevocable written notice (the "**Purchase Notice**") of Lessee's election to exercise such option not less than thirty (30) days prior to the date of purchase pursuant to such option) to purchase the Property on the date specified in such Purchase Notice at a price equal to the Termination Value plus all Basic Rent and Supplemental Rent due and owing on such date of purchase (the "**Purchase Option Price**") (which the parties do not intend to be a "bargain" purchase price) of the Property. If Lessee exercises its option to purchase the Property pursuant to this Section 20.1 (the "**Purchase Option**"), Lessor shall transfer to Lessee or Lessee's designee all of Lessor's right, title and interest in and to the 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 Agreement, in accordance with Section 19.1.
2. **Maturity Date Purchase Option.** Not less than one hundred eighty (180) days prior to the Maturity Date, Lessee may give Lessor and Agent irrevocable written notice (the "**Maturity Date Election Notice**") that Lessee is electing to exercise the Maturity Date Purchase Option or its option to remarket the Property pursuant to Section 21.1. If Lessee does not give a Maturity Date Election Notice on or before the date one hundred eighty (180) days prior to the Maturity Date, then Lessee shall be deemed to have exercised its Maturity Date Purchase Option. If Lessee has elected, or is deemed to have elected, to exercise the Maturity Date Purchase Option, then on the Maturity Date Lessee shall pay to Lessor an amount equal to the Termination Value plus all Basic Rent and Supplemental Rent due and owing on such date of purchase for the Property (which the parties do not intend to be a "bargain" purchase price) and, upon receipt of such amount plus all Rent and other amounts then due and payable under this Lease and any other Operative Agreement, Lessor shall transfer to Lessee or Lessee's designee all of Lessor's right, title and interest in and to the Property in accordance with Section 19.1.
3. **Extension of Expiration Date.** Lessee may extend the Expiration Date and the Maturity Date subject to, and in accordance with, the terms and conditions of Section 15 of the Participation Agreement.
4. **Separate Exercise of Purchase Options.** The purchase option rights granted in Section 20.1 and 20.2 above accrue to the separate Land and Improvements subject to the terms of each Lease Supplement. In the event that Lessee elects to exercise either the Purchase Option or the Maturity Date Purchase Option with respect to the Lease Supplement Land for any particular Property and a sale of Lessor's interest in the Improvements pursuant to the corresponding Lease Supplement Improvements for such Property has not been consummated before, and is not being consummated contemporaneously with, the sale of Lessor's interest in the Land, then Lessor and Lessee or other purchaser shall, as a condition to Lessor's obligation to transfer all of Lessor's right, title and interest in and to the Land, execute and deliver a ground lease covering the Land in form and substance satisfactory to Lessor in its sole discretion. In the event that Lessee elects to exercise either the Purchase Option or the Maturity Date Purchase Option with respect to the Lease Supplement Improvements for any particular Property and a sale of Lessor's interest in the Land pursuant to the corresponding Lease Supplement Land for such Property has not been consummated before, and is not being consummated contemporaneously with, the sale of Lessor's interest in the Improvements, Lessor shall retain and reserve all right, title and interest of Lessor in and to the Land and any rights or easements appurtenant to the Land.

21.

1. **Sale Procedure.**
 - a. Provided that no Default or Event of Default shall have occurred and be continuing, at the expiration of the Term, unless Lessee shall have (i) elected to extend the Expiration Date, (ii) elected (or be deemed to have elected) to purchase the Property and paid the Purchase Option Price with respect thereto, or (iii) otherwise terminated this Lease with respect thereto and paid the Termination Value with respect thereto, Lessee may elect to terminate this Lease and remarket the Property as provided in Section 21.1(b), in which event Lessee shall (i) pay to Lessor the Maximum Residual Guarantee Amount for the Property, and (ii) sell the Property to one or more third parties for cash in accordance with Section 21.1(b). In the event that Lessee elects to terminate the Lease and remarket the Property, Lessee hereby covenants and agrees that, to the extent the Property is not in compliance with all Legal Requirements, or would not be in such compliance upon its sale to a third party, Lessee shall pay such excess to Lessor immediately upon demand.
 - b. During the Marketing Period, Lessee, as nonexclusive broker for Lessor, shall use its best efforts to obtain bids for the cash purchase of the Property for the highest price available in the relevant market, shall notify Lessor promptly of the name and address of each prospective purchaser and the cash price which each prospective purchaser shall have offered to pay for the Property and shall provide Lessor with such additional information about the bids and the bid solicitation procedure as Lessor

may request from time to time. Lessor may reject any and all bids and may assume sole responsibility for obtaining bids by giving Lessee written notice to that effect; *provided, however*, that notwithstanding the foregoing, Lessor may not reject a bid if such bid is greater than or equal to the sum of the Limited Recourse Amount and all costs and expenses of sale and is a bona fide offer by a third party purchaser who is not an Affiliate of Lessee. If the price which a prospective purchaser shall have offered to pay for all or any of the Property is less than the sum of the Limited Recourse Amount and all costs and expenses of sale, Lessor may elect to retain the Property by giving Lessee at least two (2) Business Days' prior written notice of Lessor's election to retain the Property, and upon receipt of such notice, Lessee shall surrender the Property to Lessor pursuant to Section 10.1(c). Unless Lessor shall have elected to retain the Property pursuant to the preceding sentence, Lessor shall sell the Property free of any Lessor Liens attributable to it, without recourse or warranty, for cash to the purchaser or purchasers identified by Lessee or Lessor, as the case may be, and Lessee shall surrender the Property to such purchaser in the condition specified in Section 10.1.

- c. On the date during the Marketing Period on which the Property is sold pursuant to Section 21.1(b), or on the Maturity Date if the Property remains unsold, Lessee shall pay to Lessor the Maximum Residual Guarantee Amount for the Property.
2. **Application of Proceeds of Sale.** Lessor shall apply the proceeds of sale of the Property pursuant to the provisions of Section 13.2 of the Participation Agreement; *provided, however*, upon any sale of the Property pursuant to this Article 21, the Lessor shall obtain an appraisal which shall allocate the proceeds of such sale between the Land and the Improvements thereon. To the extent such appraisal indicates that the respective proceeds received with respect to Land and Improvements exceeds, after giving effect to the payment required under Section 21.1(c) hereof, the remaining Land Investment Balance and Improvements Investment Balance, respectively, such excess shall be promptly returned to Lessee. In no event shall any excess proceeds received with respect to the Land be applied to any deficiency with respect to the Improvements Investment Balance, nor shall any excess proceeds received with respect to the Improvements be applied to any deficiency with respect to the Land Investment Balance.
3. **Indemnity for Excessive Wear.** If the proceeds of the sale described in Section 21.1(b) with respect to the Property, less all expenses incurred by Lessor in connection with such sale, shall be less than the Limited Recourse Amount for the Property at the time of such sale and if it shall have been determined (pursuant to the Appraisal Procedure) that the Fair Market Sales Value of the Property shall have been impaired by greater than expected wear and tear during the Term, Lessee shall pay to Lessor within ten (10) days after receipt of Lessor's written statement (a) the amount of such excess wear and tear determined by the Appraisal Procedure or (b) the amount of the Net Sale Proceeds Shortfall, whichever amount is less.
4. **Appraisal Procedure.** For determining the Fair Market Sales Value of the Property or any other amount which may, pursuant to any provision of any Operative Agreement, be determined by an appraisal procedure, Lessor and Lessee shall use the following procedure (the "**Appraisal Procedure**"). Lessor and Lessee shall endeavor to reach a mutual agreement as to such amount for a period of ten (10) days from commencement of the Appraisal Procedure, and if they cannot agree within ten (10) days, then two qualified appraisers, one chosen by Lessee and one chosen by Lessor, shall mutually agree thereupon, but if either party shall fail to choose an appraiser within twenty (20) days after notice from the other party of the selection of its appraiser, then the appraisal by such appointed appraiser shall be binding on Lessee and Lessor. If the two appraisers cannot agree within twenty (20) days after both shall have been appointed, then a third appraiser shall be selected by the two appraisers or, failing agreement as to such third appraiser within thirty (30) days after both shall have been appointed, by the American Arbitration Association. The decisions of the three appraisers shall be given within twenty (20) days of the appointment of the third appraiser and the decision of the appraiser most different from the average of the other two shall be discarded and such average shall be binding on Lessor and Lessee; *provided* that if the highest appraisal and the lowest appraisal are equidistant from the third appraisal, the third appraisal shall be binding on Lessor and Lessee. The fees and expenses of all of the appraisers shall be paid by Lessee.
5. **Certain Obligations Continue.** During the Marketing Period, the obligation of Lessee to pay Rent with respect to the Property (including the installment of Basic Rent due on the Maturity Date) shall continue undiminished until payment in full to Lessor of the sale proceeds, the Maximum Residual Guarantee Amount, if any, the amount due under Section 21.3, if any, and all other amounts due to Lessor with respect to the Property. 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 21.

22.

1. **Holding Over.** If Lessee shall for any reason remain in possession of the Property after the expiration or earlier termination of this Lease (unless the 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 the Property and Lessee shall continue to pay Basic Rent at an annual rate equal to the rate payable hereunder immediately preceding such expiration or earlier termination; *provided, however*, that from and after the sixtieth (60th) day Lessee shall remain in possession of the Property after such expiration or earlier termination, Lessee shall pay Basic Rent at an annual rate equal to two hundred percent (200%) of the Basic Rent payable hereunder immediately preceding such expiration or earlier termination. 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 the Property. Nothing contained in this Article 22 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 the Property and nothing contained herein shall be read or construed as preventing Lessor from maintaining a suit for possession of the Property or exercising any other remedy available to Lessor at law or in equity.

23.

1. **Risk of Loss.** The risk of loss of or decrease in the enjoyment and beneficial use of the 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.

24.

1. **Subletting and Assignment.** Lessee may not assign this Lease or any of its rights or obligations hereunder in whole or in part. Lessee may, without the consent of Lessor, sublease the Property or a portion thereof to any Person. No sublease or other relinquishment of possession of the 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 Property, or any portion thereof, so sublet. Any sublease of the Property shall be made subject to and subordinate to this Lease and to the rights of Lessor hereunder, and shall expressly provide for the surrender of the Property after an Event of Default hereunder.
2. **Subleases.** Promptly following the execution and delivery of any sublease permitted by this Article 24, Lessee shall deliver a copy of such executed sublease to Lessor and Agent.

25.

1. **Estoppel Certificates.** At any time and from time to time upon not less than twenty (20) days' prior request by Lessor, Lessee shall furnish to Lessor a certificate signed by an individual having the office of vice president or higher in Lessee 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 Lessor 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 Lessor may reasonably request. Any such certificate furnished pursuant to this Article 25 may be relied upon by Lessor, and any existing or prospective mortgagee, purchaser or lender, and any accountant or auditor, of, from or to Lessor (or any Affiliate thereof).

26.

1. **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.

27.

1. **Acceptance of Surrender.** Except as otherwise expressly provided in this Lease, no surrender to Lessor of this Lease or of all or any portion of the Property or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and no act by Lessor or Agent or any representative or agent thereof, other than a written acceptance, shall constitute an acceptance of any such surrender.

28.

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 in the 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.

29.

1. **Notices.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be given in writing by nationally recognized courier service and any such notice shall become effective one Business Day after delivery to such nationally recognized courier service specifying overnight delivery and shall be directed to the address of such Person as indicated:

If to Lessee:

Lam Research Corporation

4650 Cushing Parkway

Fremont, California 94538

Attn: Craig Garber, Treasurer

Telephone No: (510) 572-1875

Facsimile No: (510) 572-1586

If to Lessor:

Cushing 2000 Trust

c/o Wilmington Trust Company, Owner Trustee

Rodney Square North

1100 North Market Street

Wilmington, DE 19890-0001

Attention: Corporate Trust Administration

Telephone No.: 302-651-8856

or such additional parties and/or other address as such party may hereafter designate.

- 30.
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 15, 16, 20 or 21, 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 and delivery of this Lease.
 2. **Amendments and Modifications.** Neither this Lease nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by Lessor and Lessee.
 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.
 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.
 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.
 6. **Governing Law.** THIS LEASE HAS BEEN DELIVERED IN, AND SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, EXCEPT AS TO MATTERS RELATING TO THE CREATION, PERFECTION AND ENFORCEMENT OF LIENS AND SECURITY INTERESTS AND THE EXERCISE OF REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.
 7. **Limitations on Recourse.** (a) Except as expressly set forth in the Operative Agreements, Lessee agrees to look solely to Lessor's estate and interest in the Property, the proceeds of sale thereof, any insurance proceeds or any other award or any third party proceeds received by Lessor in connection with the Property for the collection of any judgment requiring the payment of money by Lessor in the event of liability by Lessor, and no other property or assets of Lessor or any shareholder, owner or partner (direct or indirect) thereof, or any director, officer, employee, beneficiary, Affiliate of any of the foregoing shall be subject to levy, execution or other enforcement procedure for the satisfaction of Lessee's remedies under or with respect to this Lease, the relationship of Lessor and Lessee hereunder or Lessee's use of the Property or any other liability of Lessor to Lessee; *provided* that nothing in this Section 30.7 shall be construed to impair or limit the rights of Lessee against Lessor under the Operative Agreements. Nothing in this Section 30.7 shall be interpreted so as to limit the terms of Section 6.1 or 6.2.

(b) It is expressly understood and agreed by the parties hereto that (i) this Lease is executed and delivered by Wilmington Trust FSB, not individually or personally but solely as trustee of the Lessor in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of the Lessor is made and intended not as personal representations, undertakings and agreements by Wilmington Trust FSB but is made and intended for the purpose of binding only the Lessor, (iii) nothing herein contained shall be construed as creating any liability on Wilmington Trust FSB, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (iv) under no circumstances shall Wilmington Trust FSB be personally liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Lessor under this Lease or any other related documents.
 8. **Recordation of Lease.** A Memorandum of Lease and Lease Supplement Land, Deed of Trust and Fixture Filing as well as a Memorandum of Lease and Lease Supplement Improvements, Deed of Trust and Fixture Filing shall be recorded in the jurisdiction in which the Property is located, at Lessee's sole cost and expense.

In Witness Whereof, the parties have caused this Lease be duly executed and delivered as of the date first above written.

Lessee:

Lam Research Corporation

By: /s/ Craig Garber

Name: Craig Garber

Title: Vice President, Corporate Finance

and Treasurer

Lessor:

Cushing 2000 Trust

By: Wilmington Trust FSB, not in its individual capacity but solely as trustee

By: /s/ Daniel M. Reser

Name: Daniel M. Reser

Title: Vice President

**Exhibit A
LEASE SUPPLEMENT LAND**

This Lease Supplement Land (this "**Lease Supplement Land**") is dated as of December 6, 2000 between **Cushing 2000 Trust**, a Delaware business trust, as Lessor (the "**Lessor**"), and **Lam Research Corporation**, a Delaware corporation, as lessee (the "**Lessee**").

Whereas, Lessor is the owner or will be the owner of the Land described on Schedule 1 hereto (the "**Leased Property**") and wishes to lease the same to Lessee;

Now, Therefore, in consideration of the premises and the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions; Rules of Usage. For purposes of this Lease Supplement Land, capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in Annex A to the Participation Agreement dated as of December 6, 2000.

Section 2. The Land. Attached hereto as Schedule 1 is the legal description of the Land. Effective upon the execution and delivery of this Lease Supplement Land by Lessor and Lessee, all of the terms and provisions of the Lease are incorporated herein and made a part hereof.

Section 3. Ratification; Incorporation by Reference. Except as specifically modified hereby, the terms and provisions of the Lease and the Operative Agreements are hereby ratified and confirmed and remain in full force and effect. The Lease is hereby incorporated herein by reference as though restated herein in its entirety.

Section 4. Original Lease Supplement Land. The single executed original of this Lease Supplement Land marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt of the Agent therefor on or following the signature page thereof shall be the original executed counterpart of this Lease Supplement Land (the "**Original Executed Counterpart**"). To the extent that this Lease Supplement Land 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 Supplement Land may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

Section 5. GOVERNING LAW. THIS LEASE SUPPLEMENT LAND SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, EXCEPT AS TO MATTERS RELATING TO THE CREATION, PERFECTION AND ENFORCEMENT OF LIENS AND SECURITY INTERESTS AND THE EXERCISE OF REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

In Witness Whereof, each of the parties hereto has caused this Lease Supplement Land to be duly executed by an officer thereunto duly authorized as of the date and year first above written.

LESSOR:

Cushing 2000 Trust, a Delaware business trust

By: Wilmington Trust FSB, not in its individual capacity but solely as trustee

By: /s/ Daniel M. Reser

Name: Daniel M. Reser

Title: Vice President

LESSEE:

Lam Research Corporation, a Delaware corporation

4650 Cushing Parkway
Fremont, California 94538

Attn: Craig Garber, Treasurer

Telephone No: (510) 572-1875

Facsimile No: (510) 572-1586

By: /s/ Craig Garber

Name: Craig Garber

Title: Vice President, Corporate Finance and Treasurer

SCHEDULE 1

To Lease Supplement Land

Legal Description

The land referred to below is situated in the State of California, County of Alameda, City of Fremont and is described as follows:

**Exhibit B
LEASE SUPPLEMENT IMPROVEMENTS**

This Lease Supplement Improvements (this "**Lease Supplement Improvements**") is dated as of December 6, 2000 between **Cushing 2000 Trust**, a Delaware business trust, as Lessor (the "**Lessor**"), and **Lam Research Corporation**, a Delaware corporation, as lessee (the "**Lessee**").

Whereas, Lessor is the owner or will be the owner of the Improvements described on Schedule 1 hereto (the "**Leased Property**") and wishes to lease the same to Lessee;

Now, Therefore, in consideration of the premises and the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions; Rules of Usage. For purposes of this Lease Supplement Improvements, capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in Annex A to the Participation Agreement dated as of December 6, 2000.

Section 2. The Improvements. Attached hereto as Schedule 1 is the description of the Improvements. Effective upon the execution and delivery of this Lease Supplement Improvements by Lessor and Lessee, all of the terms and provisions of the Lease are incorporated herein and made a part hereof. Without further action, any and all additional Equipment funded under the Operative Agreements and any and all modifications made to the Property shall be deemed to be titled to the Lessor and subject to the terms and conditions of this Lease Supplement Improvements.

Section 3. Ratification; Incorporation by Reference. Except as specifically modified hereby, the terms and provisions of the Lease and the Operative Agreements are hereby ratified and confirmed and remain in full force and effect. The Lease is hereby incorporated herein by reference as though restated herein in its entirety.

Section 4. Original Lease Supplement Improvements. The single executed original of this Lease Supplement Improvements marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt of the Agent therefor on or following the signature page thereof shall be the original executed counterpart of this Lease Supplement Improvements (the "**Original Executed Counterpart**"). To the extent that this Lease Supplement Improvements 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 Supplement Improvements may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

Section 5. GOVERNING LAW. THIS LEASE SUPPLEMENT IMPROVEMENTS SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, EXCEPT AS TO MATTERS RELATING TO THE CREATION, PERFECTION AND ENFORCEMENT OF LIENS AND SECURITY INTERESTS AND THE EXERCISE OF REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

In Witness Whereof, each of the parties hereto has caused this Lease Supplement Improvements to be duly executed by an officer thereunto duly authorized as of the date and year first above written.

LESSOR:

Cushing 2000 Trust, a Delaware business trust

By: Wilmington Trust FSB, not in its individual capacity but solely as trustee

By: /s/ Daniel M. Reser

Name: Daniel M. Reser

Title: Vice President

LESSEE:

Lam Research Corporation, a Delaware corporation

4650 Cushing Parkway

Fremont, California 94538

Attn: Craig Garber, Treasurer

Telephone No: (510) 572-1875

Facsimile No: (510) 572-1586

By: /s/ Craig Garber

Name: Craig Garber

Title: Vice President, Corporate Finance and Treasurer

SCHEDULE 1

To Lease Supplement Improvements

The Improvements located on the real property described as:

The land situated in the State of California, County of Alameda, City of Fremont, and as further described as follows:

Exhibit C

LAND AND IMPROVEMENTS BALANCES

Land \$16,660,714.00 56%

Improvements \$13,339,286.00 44%

Table Of Contents

	Page
Article 1	1
1.1 Definitions	1
Article 2	1
2.1 Property	1
2.2 Lease Term	1
2.3 Title	1
2.4 Lease Supplement	1
Article 3	2
3.1 Rent	2
3.2 Payment of Basic Rent	2
3.3 Supplemental Rent	2
3.4 Performance on a Non-Business Day	2
3.5 Method of Payment	3
Article 4	3
4.1 Impositions; Utility Charges	3
Article 5	3
5.1 Quiet Enjoyment	3
Article 6	3
6.1 Net Lease; No Setoff; Etc.	3
6.2 No Termination or Abatement	5
Article 7	5

7.1	Ownership of the Property	5
7.2	Liens and Security Interests	5
Article 8		8
8.1	Condition of the Property	8
8.2	Possession and Use of the Property	8
Article 9		8
9.1	Compliance with Legal Requirements and Insurance Requirements	8
Article 10		9
10.1	Maintenance and Repair; Return	9
10.2	Right of Inspection	10
10.3	Environmental Inspection	10
Article 11		10
11.1	Modifications, Substitutions and Replacements	10
Article 12		11
12.1	Warranty of Title	11
12.2	Grants and Releases of Easements	12
Article 13		12
13.1	Permitted Contests Other Than in Respect of Impositions	12
Article 14		13
14.1	Public Liability and Workers' Compensation Insurance	13
14.2	Hazard and Other Insurance	13
14.3	Coverage	14
Article 15		15
15.1	Casualty and Condemnation	15
15.2	Environmental Matters	16
15.3	Notice of Environmental Matters	16
Article 16		17
16.1	Termination upon Certain Events	17
16.2	Procedures	17
Article 17		17
17.1	Events of Default	17
17.2	Final Liquidated Damages	19

17.3	Lease Remedies	20
17.4	Waiver of Certain Rights	24
17.5	Assignment of Rights Under Contracts	24
17.6	Power of Sale and Foreclosure	24
17.7	Security Agreement and Fixture Filing	28
17.8	Remedies Cumulative	29
17.9	Lessee's Right to Cure	29
Article 18		29
18.1	Lessor's Right to Cure Lessee's Defaults	29
Article 19		29
19.1	Provisions Relating to Lessee's Termination of this Lease or Exercise of Purchase Options	29
Article 20		29
20.1	Purchase Option	29
20.2	Maturity Date Purchase Option	29
20.3	Extension of Expiration Date	30
20.4	Separate Exercise of Purchase Options	30
Article 21		31
21.1	Sale Procedure	31
21.2	Application of Proceeds of Sale	31
21.3	Indemnity for Excessive Wear	32
21.4	Appraisal Procedure	32
21.5	Certain Obligations Continue	32
Article 22		33
22.1	Holding Over	32
Article 23		33
23.1	Risk of Loss	33
Article 24		33
24.1	Subletting and Assignment	33
24.2	Subleases	33
Article 25		33
25.1	Estoppel Certificates	33
Article 26		34

26.1 No Waiver	34
Article 27	34
27.1 Acceptance of Surrender	34
Article 28	34
28.1 No Merger of Title	34
Article 29	34
29.1 Notices	34
Article 30	35
30.1 Miscellaneous	35
30.2 Amendments and Modifications	35
30.3 Successors and Assigns	35
30.4 Headings and Table of Contents	35
30.5 Counterparts	36
30.6 Governing Law	36
30.7 Limitations on Recourse	36
30.8 Recordation of Lease	36

Exhibits

A - LEASE SUPPLEMENT LAND

B - LEASE SUPPLEMENT IMPROVEMENTS

C - LAND AND IMPROVEMENTS INVESTMENT BALANCES

PARTICIPATION AGREEMENT

This Participation Agreement, dated as of December 6, 2000 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, this "Agreement"), is by and among **Lam Research Corporation**, a Delaware corporation (the "Lessee" or the "Guarantor"); the **Cushing 2000 Trust**, a Delaware business trust (the "Trust," "Borrower" or "Lessor"); **Wilmington Trust Company**, a banking corporation organized under the laws of the State of Delaware ("Wilmington Trust Company"); **Wilmington Trust FSB**, a federal savings bank (together with Wilmington Trust Company, the "Trust Companies"); **Scotiabanc Inc.**, a Delaware corporation, and the various banks and other lending institutions which are parties hereto from time to time as holders of certificates issued with respect to the Cushing 2000 Trust (subject to the definition of Holders in Annex A hereto, individually, a "Holder" and collectively, the "Holders"); **The Bank of Nova Scotia** and the various banks and other lending institutions which are parties hereto from time to time as lenders (subject to the definition of Lenders in Annex A hereto, individually, a "Lender" and collectively, the "Lenders"); and **The Bank of Nova Scotia**, as the administrative agent for the Lenders and with respect to the Security Documents, as agent for the Lenders and the Holders, to the extent of their interests (in such capacity, the "Agent"). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings set forth in Annex A hereto.

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. THE LOANS.

Subject to the terms and conditions of this Agreement and the other Operative Agreements and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, the Lenders have agreed to make Loans to the Trust from time to time in an aggregate principal amount of up to the aggregate amount of the Commitments of the Lenders in order for the Trust to acquire the Property and for the other purposes described herein, and in consideration of the receipt of proceeds of the Loans, the Trust will issue the Notes. The Loans shall be made and the Notes shall be issued pursuant to the Credit Agreement. Pursuant to Section 5 of this Agreement and Section 2 of the Credit Agreement, the Loans will be made to the Trust at the request of the Lessee to acquire the Property, in consideration for the Lessee agreeing pursuant to the Lease to lease the Property. The Loans and the obligations of the Trust under the Credit Agreement shall be secured by the Collateral.

2. HOLDER ADVANCES.

1. Subject to the terms and conditions of this Agreement and the other Operative Agreements, and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, each Holder shall make an advance of immediately available funds (a "Holder Advance") on a pro rata basis to the Trust, based on such Holder's percentage commitment set forth on Schedule 2.1 attached hereto (the "Holder Commitment"), *provided*, that Agent shall have received a Requisition from Lessee in accordance with Section 5 hereof. The aggregate amount of all Holder Advances shall be four percent (4%) of the amount of all Advances requested; *provided*, that no Holder shall be obligated to make any Holder Advance in excess of its pro rata share of the Available Holder Commitment. The aggregate amount of Holder Advances shall not exceed the aggregate amount of the Holder Commitments. No prepayment or any other payment with respect to any Advance shall be permitted such that the Holder Advances equal less than four percent (4%) of the outstanding amount of the Advances; except in connection with termination or expiration of the Term, or in connection with the exercise of remedies relating to the occurrence of a Lease Event of Default. To the extent the Trust, in its capacity as Borrower under the Credit Agreement, shall have elected to terminate or reduce the amount of the Lender Commitment pursuant to Section 2.4 of the Credit Agreement, a pro rata election shall be deemed to have been made with respect to the Holder Commitment. On any date on which the Lender Commitment shall be reduced to zero as a result of a Credit Agreement Event of Default, the Holder Commitment shall automatically be reduced to zero and the Trust shall prepay the Holder Advances in full, together with accrued but unpaid Holder Yield thereon and all other amounts owing under the Certificates.
2. The representations, warranties, covenants and agreements of the Holders herein and in the other Operative Agreements are several, and not joint or joint and several.

3. SUMMARY OF TRANSACTIONS.

1. **Operative Agreements.** On the Closing Date, each of the respective parties hereto and thereto shall execute and deliver this Agreement, the Lease, the Credit Agreement, the Notes, the Trust Agreement, the Certificates, the Pledge Agreement, the Deed of Trust and such other documents, instruments, certificates and opinions of counsel as agreed to by the parties hereto.
2. **Property Purchase.** On the Funding Date and subject to the terms and conditions of this Agreement (a) the Holders will each make a Holder Advance in accordance with Sections 2 and 5 of this Agreement and the terms and provisions of the Trust Agreement; (b) the Lenders will each make Loans in accordance with Sections 1 and 5 of this Agreement and the terms and provisions of the Credit Agreement; (c) the Trust will purchase and acquire good and marketable title to the Land and Improvements identified by the Lessee pursuant to a Deed or Deeds, and grant the Agent a lien on such Property by execution of the required Security Documents; (d) the Lessee and the Lessor shall execute and deliver separate Lease Supplements relating to the Land and the Improvements; and (e) the Term shall commence with respect to the Land and the Improvements.
3. **Interest on Loans.**
 - a. Each Loan shall accrue interest computed and payable in accordance with the terms of the Credit Agreement. Each Loan shall become due and payable at the dates and times provided under the Credit Agreement.
 - b. The Lessor shall distribute, in accordance with Section 13, the Lender Basic Rent and all other amounts due with respect to the Loans paid to the Lessor by the Lessee under the Lease from time to time.

4. Yield on Holder Certificates.

- a. The amount of the Holder Advances outstanding from time to time shall accrue yield ("Holder Yield") at the Yield Rate, calculated using the actual number of days elapsed and, when the Yield Rate is based on the Adjusted LIBOR, a 360-day

year basis and, if calculated at the ABR, a 360-day year basis if the ABR is calculated at the Federal Funds Effective Rate, and a 365-, or, if applicable, 366-, day year basis if the ABR is calculated at the Base Rate.

- b. Each Holder shall receive its pro rata portion of the Holder Yield on Holder Advances from the Trust Estate. Payment of Holder Yield to each Holder shall be made on each Scheduled Interest Payment Date, or as otherwise provided herein, in the Trust Agreement, or in the Credit Agreement. If not repaid sooner, the outstanding aggregate Holder Advances shall be due in full on the Maturity Date. On the Maturity Date, the Trust shall pay to each Holder its portion of the Holder Advances then due, together with all accrued but unpaid Holder Yield and all other amounts due to such Holder from the Trust.
 - c. The calculation of Holder Yield shall be made by the Agent, such calculation being conclusive and binding on the Trust and the Holders in the absence of manifest error. The Agent shall distribute, in accordance with Section 13, the Lessor Basic Rent and all other amounts due with respect to the Holder Advances paid to the Agent by the Lessee under the Lease or the other Operative Agreements from time to time.
 - d. If all or any portion of the Holder Advances, any Holder Yield payable thereon, or any other amount payable hereunder shall not be paid when due (whether at stated maturity, acceleration thereof or otherwise), such overdue amount shall, without limiting the rights of the Holders under any Operative Agreement, bear interest at a rate per annum equal to the Overdue Rate, in each case from the date of nonpayment until paid (whether before or after judgment). Upon the occurrence, and during the continuance of an Event of Default, the amount of, and, to the extent permitted by law, interest on (or Holder Yield on) the Holder Advances and any other amounts owing hereunder or under the other Operative Agreements shall bear interest, payable on demand, at a per annum rate equal to the Overdue Rate.
5. **Interest Period Selection Elections.** By delivering an Interest Period Selection Notice to the Trust and Agent with respect to Holder Advances and Loans, respectively, the Lessee may from time to time during the Term irrevocably select, on not less than three (3) nor more than five (5) Business Days' notice (other than the initial Interest Period with respect to the Advance to be made on the Closing Date, where such Advance is to bear interest at a rate equal to the ABR and notice may be given on the Closing Date), the duration for the next succeeding Interest Period; provided, however, that (a) in the absence of a delivery of an Interest Period Selection Notice with respect to any Loan or Holder Advance at least three (3) Business Days before the last day of the then current Interest Period with respect thereto, the Lessee shall be deemed to have selected that such Loan or Holder Advance have an Interest Period of one month, (b) each such selection shall be prorated among the applicable outstanding Loans and Holder Advances of all Financing Parties and (c) the outstanding Loans and Holder Advances may not be apportioned into more than three (3) separate Interest Periods at any one time. Each Interest Period Selection Notice so delivered or deemed delivered by the Lessee shall be deemed an effective election by the Borrower of the method for computing interest on the Loans under the Credit Agreement.
6. **Prepayments.**
- a. **Voluntary Prepayments.** The Lessee shall have the right to prepay an amount equal to the aggregate outstanding Land and/or Improvements Balance in whole, but not in part, pursuant to the exercise of the purchase options permitted under the Lease without premium or penalty.
 - b. **Mandatory Prepayments.** If at any time the sum of the aggregate amount of outstanding Loans and Holder Advances shall exceed the Aggregate Commitment Amount, the Lessee shall immediately make payment on the Loans or Holders Advances in an amount sufficient to eliminate such excess. Payments required to be made hereunder shall be applied first to ABR Loans or ABR Holder Advances and second to LIBOR Loans or LIBOR Holder Advances in direct order of their Interest Period maturities.
 - c. **Notice.** The Lessee will provide irrevocable notice to the Agent of any prepayment of Loans or Holder Advances at least three (3) Business Days prior to the date of prepayment.

4. THE CLOSING.

All documents and instruments required to be delivered on the Closing Date shall be delivered at the offices of Cooley Godward LLP, Palo Alto, California or at such other location as may be determined by the Trust, the Agent and the Lessee.

5. FUNDING OF ADVANCES; PLEDGED COLLATERAL.

1. **General.** To the extent funds have been made available to or advanced to the Borrower as Loans by the Lenders and as Holder Advances by the Holders, the Trust will use such funds from time to time in accordance with the terms and conditions of this Agreement and the other Operative Agreements (i) at the direction of the Lessee to acquire the Property in accordance with the terms of this Agreement and (ii) to pay Transaction Expenses; and (iii) to pay all other Project Costs.
2. **Procedures for Funding.**
 - a. The Lessee shall designate the date for Advances hereunder in accordance with the terms and provisions hereof which date shall not be earlier than three (3) Business Days following the Lessee's delivery to Agent of a Requisition in the form of **Exhibit A** hereto with respect to any such Advance; *provided, however*, it is understood and agreed that with respect to the Advance to be made on the Funding Date, such Advance is to bear interest at a rate equal to the ABR and notice may be given on the Funding Date.
 - b. Each Requisition shall: (i) be irrevocable, (ii) request funds in an amount that is not in excess of the total aggregate amount of the Available Commitments at such time, and (iii) request that the Holders make Holder Advances and that the Lenders make Loans to the Trust for the payment of Transaction Expenses, Property Acquisition Costs or other Property Costs that have previously been incurred or are to be incurred on the date of such Advance to the extent such were not subject to a prior Requisition, in each case as specified in the Requisition.
 - c. Subject to the satisfaction of the conditions precedent set forth in Section 6.1, (i) the Lenders shall make Loans based on

their respective Lender Commitments to the Borrower in an aggregate amount equal to ninety-six percent (96%) of the amount specified in any Requisition plus any additional amount of Transaction Expenses as referenced in Sections 8.1(a) and 8.1(b) and any additional amount respecting any indemnity payment as referenced in Section 12.6, unless any such funding of Transaction Expenses or any indemnity payment is declined in writing by each Lender and each Holder (such decision to be in the sole discretion of each Lender and each Holder) up to an aggregate principal amount equal to the aggregate of the Available Lender Commitments; (ii) the Holders shall make Holder Advances based on their respective Holder Commitments in an aggregate amount equal to four percent (4%) of the amount specified in such Requisition plus any additional amount of Transaction Expenses as referenced in Sections 8.1(a) and 8.1(b) and any additional amount respecting any indemnity payment as referenced in Section 12.6, unless any such funding of Transaction Expenses or any indemnity payment is declined in writing by each Lender and each Holder (such decision to be in the sole discretion of each Lender and each Holder), up to an aggregate amount equal to the aggregate of the Available Holder Commitments; and (iii) the total amount of such Loans and Holder Advances made on such date shall (x) be used by the Trust to pay Project Costs including Transaction Expenses or (y) be advanced by the Trust on the date of such Advance to the Lessee to pay Property Costs, as applicable. Notwithstanding that the Operative Agreements state that Advances shall be directed to the Trust, each Advance shall in fact be directed to the Lessee (for the benefit of the Trust) and applied by the Lessee (for the benefit of the Trust) pursuant to the requirements imposed on the Trust under the Operative Agreements.

- d. All Operative Agreements which are to be delivered to the Trust, the Agent, the Lenders or the Holders shall be delivered to the Agent, on behalf of the Trust, the Agent, the Lenders or the Holders, and such items (except for Notes, certificates, bills of sale, and chattel paper originals, with respect to which in each case there shall be only one original) shall be delivered with originals sufficient for the Trust, the Agent, each Lender and each Holder. All other items which are to be delivered to the Trust, the Agent, the Lenders or the Holders shall be delivered to the Agent, on behalf of the Trust, the Agent, the Lenders or the Holders, and such other items shall be held by the Agent. To the extent any such other items are requested in writing from time to time by the Trust, any Lender or any Holder, the Agent shall provide a copy of such item to the party requesting it.
 - e. Notwithstanding the completion of any closing under this Agreement pursuant to Sections 6.1 or 6.2, each condition precedent in connection with any such closing may be subsequently enforced by the Agent (unless such has been expressly waived in writing by the Agent).
3. **Allocation of Advances Between Land and Improvements.** In the event the Fair Market Sales Value of the Land leased pursuant to the Lease as set forth in the Appraisal is greater than twenty-five percent of the aggregate Fair Market Sales Value of the Property as set forth in the Appraisal, Lessor shall determine a separate Project Cost for each of the Land and Improvements, and Lessee shall execute and deliver a separate Lease Supplement for each of the Land and Improvements.

4. **Pledged Collateral.**

- a. **Mandatory Pledged Collateral.** If as of the last day of any Fiscal Quarter (i) the Lessee's EBITDA equals an amount less than \$200,000,000, or (ii) the Lessee's Cash Balance equals an amount less than \$200,000,000, *provided*, that if as of the date six (6) months prior to the Maturity Date, the Lessee has not refinanced the Subordinated Notes, there shall be deducted from the Cash Balance at all times thereafter the principal amount of such outstanding Subordinated Notes in determining the Cash Balance under this clause (ii), then (x) in the case of clause (i), on or before the third Business Day (or if such date is not a Business Day, the next succeeding Business Day) (the "*Deposit Date*") following the date on which financial statements are delivered pursuant to Section 9.3(b)(i) or (ii) hereof until the third Business Day following the date on which financial statements are delivered pursuant to Section 9.3(b)(i) or (ii) hereof for the Fiscal Quarter when the Lessee shall satisfy such tests, and (y) in the case of clause (ii), on such specified date (also, a "*Deposit Date*") for so long as any Obligations remain outstanding or until the third Business Day following the date on which financial statements are delivered pursuant to Section 9.3(b)(i) or (ii) hereof for the second consecutive Fiscal Quarter when the Lessee shall satisfy such tests, the Lessee shall deliver Pledged Collateral to the Collateral Agent in an amount equal to 100% of the aggregate outstanding Advances. Thereafter, the Lessee covenants to maintain the Value of the Pledged Collateral at a level equal to 100% of the aggregate outstanding Advances, and within two (2) Business Days after receipt of notice from the Collateral Agent that the Value of the Pledged Collateral is less than 100% of the aggregate outstanding Advances, the Lessee shall be obligated to deliver a portion of the Pledged Collateral in an amount required to maintain the Value of the Pledged Collateral at a level equal to 100% of the aggregate outstanding Advances. Each such deposit (collectively, the "*Pledge*") shall be the property of the Collateral Agent and shall be held and administered in accordance with the Pledge Agreement.
- b. **Optional Pledged Collateral.** Notwithstanding the requirements of Section 5.4(a), from time to time, the Lessee may make a deposit of additional Pledged Collateral to the Collateral Agent in an amount equal to not less than 100% of the aggregate outstanding Advances in order to have a lower Applicable Margin apply to the outstanding Advances. In order to maintain a lower Applicable Margin, the Lessee covenants to maintain the Value of the Pledged Collateral at a level equal to 100% of the aggregate outstanding Advances, and within two (2) Business Days after receipt of notice from the Collateral Agent that the Value of the Pledged Collateral is less than 100% of the aggregate outstanding Advances, the Lessee shall deliver a portion of Pledged Collateral in an amount required to maintain the Value of the Pledged Collateral at a level equal to 100% of the aggregate outstanding Advances. Each such deposit shall constitute part of the Pledge, shall be the property of the Collateral Agent and shall be held and administered in accordance with the Pledge Agreement.

6. **CONDITIONS OF THE CLOSING AND ADVANCES.**

1. **General Conditions to the Closing Date.** The Closing Date is subject to the satisfaction, immediately prior to or concurrently therewith, of the following conditions precedent:
 - a. **Operative Agreements.** Each of the Operative Agreements entered into on the Closing Date or subsequently shall have been duly authorized, executed, acknowledged and delivered by the parties thereto and shall be in full force and effect, and no Default shall exist thereunder (both before and after giving effect to the transactions contemplated by the Operative Agreements), and the Agent, Lenders, Holders and Lessor shall have received a fully executed copy of each of the Operative Agreements.

- b. **Taxes.** All taxes, fees and other charges in connection with the execution, delivery, and, where applicable, recording, filing and registration of the Operative Agreements shall have been paid or provisions for such payment shall have been made to the reasonable satisfaction of the Agent and the Lessor.
- c. **Governmental Approvals.** All necessary (or, in the reasonable opinion of the Agent, the Lessor and their respective counsel, advisable) Governmental Actions shall have been obtained or made and be in full force and effect.
- d. **Litigation.** No action or proceeding shall have been instituted before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority (i) to set aside, restrain, enjoin or prevent the full performance of this Agreement, any other Operative Agreement or any of the transactions contemplated hereby or thereby or (ii) other than as set forth on Schedule 7.3, which is reasonably likely to have a Material Adverse Effect.
- e. **Legal Requirements.** In the opinion of the Agent, the Lessor and their respective counsel, the transactions contemplated by the Operative Agreements do not and will not violate in any material respect any Legal Requirements and do not and will not subject the Lenders, the Holders or the Lessor to any adverse regulatory prohibitions or constraints.
- f. **Corporate Proceedings of the Lessee.** The Agent and the Lessor shall have received a copy of the resolutions or minutes, in form and substance reasonably satisfactory to the Agent and the Lessor, of the Board of Directors of the Lessee authorizing the execution, delivery and performance of this Agreement and the other Operative Agreements to which it is a party, certified by the Secretary or an Assistant Secretary of the Lessee as of the Closing Date, which certificate shall be in form and substance reasonably satisfactory to the Agent and the Lessor and shall state that the resolutions or minutes thereby certified have not been amended, modified, revoked or rescinded.
- g. **Lessee Incumbency Certificate.** The Agent and the Lessor shall have received a certificate of the Lessee, dated the Closing Date, as to the incumbency and signature of the officers of the Lessee executing any Operative Agreement reasonably satisfactory in form and substance to the Agent and the Lessor, executed by the Secretary or any Assistant Secretary of the Lessee.
- h. **Lessee's Officer's Certificate.** The Agent and the Lessor shall each have received a Certificate of the President or any Vice President of the Lessee, dated as of the Closing Date, stating that (i) each and every representation and warranty of the Lessee contained in the Operative Agreements to which it is a party is true and correct on and as of the Closing Date; (ii) no Default or Event of Default has occurred and is continuing under any Operative Agreement; (iii) each Operative Agreement to which the Lessee is a party is in full force and effect with respect to it; and (iv) the Lessee has duly performed and complied with all covenants, agreements and conditions contained herein or in any Operative Agreement required to be performed or complied with by it on or prior to the Closing Date.
- i. **Good Standing.** The Agent and the Lessor shall have received (i) Certificates of the Secretaries of State of the State of Delaware and the State of California dated as of a recent date stating that the Lessee is a corporation in good legal standing under the laws of such states, and (ii) Certificates of the Franchise Tax Boards of the State of Delaware and the State of California dated as of a recent date stating that the Lessee is in good standing under the laws of such states.
- j. **Lessee's Corporate Documents.** The Agent and the Lessor shall have received true and complete copies of the certificate or articles of incorporation and bylaws of the Lessee, certified as of the Closing Date as complete and correct copies thereof by the Secretary or an Assistant Secretary of the Lessee.
- k. **Consents, Licenses and Approvals.** The Agent and the Lessor shall have received a certificate of the President or a Vice President of the Lessee stating that any consents, licenses and filings required to consummate the transaction contemplated by this Agreement are in full force and effect, and each such consent, authorization and filing shall be in form and substance reasonably satisfactory to the Agent and the Lessor.
- l. **Legal Opinion.** The Agent and the Lessor shall have received the executed legal opinion of Heller Ehrman White & McAuliffe LLP, special counsel to the Lessee.
- m. **Environmental Audit.**
 - i. The Lessor and the Agent shall have received not less than ten (10) days prior to the Funding Date an Environmental Audit with respect to the Property being acquired on the Funding Date, prepared by the Environmental Engineer, and the results of the Environmental Audit shall be in form and substance satisfactory to the Lessor and the Agent; and
 - ii. the Lessor and the Agent shall have received letters from the Environmental Engineer stating, among other things, that the Agent, the Lenders, the Holders and the Lessor may rely in all respects on the Environmental Audit and other environmental reports with respect to the Property which have been prepared by such firm as if they were addressed to them.
- a. **Survey.** The Lessor and the Agent shall have received, and the Title Company shall have received, a survey of the Property being acquired on the Funding Date, certified to the Lessor and the Title Company in a manner satisfactory to them, dated as of a date within three (3) months of the Funding Date, by an independent professionally licensed land surveyor satisfactory to the Lessor, which survey shall be made in accordance with the Minimum Standard Detail Requirements for Land Title Surveys jointly established and adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1999, and, without limiting the generality of the foregoing, there shall be surveyed and shown on such survey the following: (i) the locations on such Property of all the buildings, structures and other improvements, if any, and the established building setback lines; (ii) the lines of streets abutting such Property; (iii) all access and other easements appurtenant to such Property; (iv) all roadways, paths, driveways, easements, encroachments and overhanging projections and similar encumbrances affecting such Property, whether recorded, apparent from a physical inspection of the Property or otherwise known to the surveyor; (v) any encroachments on any adjoining property by the building, structures and improvements on such Property; and (vi) if such Property is described as being on a filed map, a legend relating the survey to said map.

- b. **Appraisal.** The Lessor and the Agent shall have received an Appraisal of the Property, which Appraisal shall show as of the Funding Date the Fair Market Sales Value of the Property, and meet the other applicable requirements set forth in the definition of the term "*Appraisal*" contained in Annex A.
 - c. **Lien Searches.** The Lessor and the Agent shall have received the results of a recent search by a Person reasonably satisfactory to the Lessor and the Agent, of the Uniform Commercial Code, judgement and tax lien filings which may have been filed in State of California with respect to personal property of the Lessee, and the results of such search shall be satisfactory to the Lessor and the Agent.
 - d. **Representations.** The representations and warranties of the Lessee and the Lessor contained herein and in each of the other Operative Agreements shall be true and correct.
 - e. **Performance of Agreements.** The parties hereto and thereto shall have performed their respective agreements to be performed on or prior to the Closing Date contained herein and in the other Operative Agreements on or prior to the Closing Date.
 - f. **Fees.** The Lessor and the Holders and the Agent and the Lenders shall have received the fees pursuant to the Fee Letter.
 - g. **Lessor Certificate.** The Agent shall have received a certificate, executed by each Trust Company on behalf of the Lessor, dated as of the Closing Date in such form as is acceptable to the Agent, stating that (i) each and every representation and warranty of the Lessor contained in the Operative Agreements to which it is a party is true and correct on and as of the Closing Date, (ii) each Operative Agreement to which it 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 Agreement required to be performed or complied with by it on or prior to the Closing Date.
 - h. **Trust Company Certificates.** The Agent shall have received from each Trust Company (i) a certificate of the Secretary, an Assistant Secretary, Trust Officer or vice president of the Trust Company in such form as is acceptable to the Agent, attaching and certifying as to (A) the signing resolutions duly authorizing the execution, delivery and performance by such Trust Company of each of the Operative Agreements to which it is or will be a party, (B) such Trust Company's articles of association or other equivalent charter documents, and its bylaws, as the case may be, certified as of a recent date by an appropriate officer of such Trust Company, and (C) the incumbency and signature of persons authorized to execute and deliver on such Trust Company's behalf the Operative Agreements to which it is a party, and (ii) a good standing certificate from the Office of the Comptroller of the Currency.
 - i. **Lessor Legal Opinion.** Counsel for the Lessor acceptable to the Agent shall have issued to the Lessee, the Holders, the Lenders and the Agent its opinion in such form as is reasonably acceptable to the Agent.
1. **Conditions to Lenders' and Holders' Obligations to Make Loans and Holder Advances.** The agreement of each Lender to make the Loans to the Borrower, and of the Holders to make the Holder Advances is further subject to the satisfaction, immediately prior to or concurrently with the making of such Loans and Holder Advances, of the following conditions precedent:
- a. **Title.** Title to the Property being acquired on the Funding Date shall conform to the representations and warranties set forth in Section 7.3(w).
 - b. **Title Insurance.**

The Lessor shall have received an owner's title policy, or marked up unconditional binder for such insurance, dated the Funding Date, for the Property being acquired on the Funding Date, insuring the Lessor that the Lien of the Lease is a first and primary Lien in the Lessee's interest in the Improvements and the Land; and the Lessor shall have received evidence reasonably satisfactory to it that all premiums in respect of such policy have been paid or provision made therefor.

 - i. The Agent shall have received with respect to the Deed of Trust a mortgage title policy or marked up unconditional binder for such insurance dated the Funding Date; such policies shall (i) be in an amount equal to the aggregate amount of the Commitments (with a pending disbursements clause); (ii) be issued at ordinary rates; (iii) insure that the Deed of Trust insured thereby creates a valid first Lien on the Lessor's interest in the Lease and in the fee title to the Property, free and clear of all defects and encumbrances, except Permitted Exceptions; (iv) name the Agent for the benefit of the Lenders as the insured thereunder; (v) be in the form of ALTA Loan Policy - 1992; (vi) contain such endorsements and affirmative coverage as the Agent may reasonably request; and (vii) be issued by the Title Company; and the Agent shall have received evidence reasonably satisfactory to it that all premiums in respect of such policy, and all charges for mortgage recording tax with respect to the Deed of Trust have been paid or provision made therefor.
 - c. **Title Documents.** The Lessor shall have received a copy of all recorded documents referred to, or listed as exceptions to title in, the title policies referred to above.
 - d. **Insurance.** The Lessor and the Agent shall have received evidence in form and substance satisfactory to them that all of the requirements of Article 14 of the Lease shall have been satisfied.
 - e. **Lease.** The Lessor and the Agent shall have received each Lease Supplement, executed by the Lessee, and assuming proper recordation of each Memorandum of Lease, each Lease shall constitute a valid and perfected first lien on the Land and the Improvements, subject only to Permitted Exceptions.
 - f. **Actions to Perfect Liens.** The Lessor shall have received evidence in form and substance satisfactory to it that all filings, recordings, registrations and other actions, including, without limitation, the filing of duly executed financing statements on form UCC-1, necessary or, in the opinion of the Lessor and the Agent, desirable to perfect the Liens created by the Security Documents shall have been completed.

- g. **Bringdown Certificate.** The Lessor and the Agent shall have received an Officer's Certificate on behalf of the Lessee dated as of the Funding Date (if different from the Closing Date) stating that (i) the representations and warranties of the Lessee contained herein and in each of the other Operative Agreements are true and correct in all material respects as of the Funding Date as though made as of the Funding Date, and (ii) no Default or Event of Default has occurred and is continuing.
 - h. **Performance of Agreements.** The parties hereto and thereto shall have performed their respective agreements contained herein and in the other Operative Agreements on or prior to such Funding Date.
- 2. **Restrictions on Liens.** On the date the Property is either sold to a third party in accordance with the terms of the Operative Agreements or, pursuant to Section 22.1(a) of the Lease Agreement, retained by the Lessor, the Lessee shall cause such Property to be free and clear of all Liens (other than Lessor Liens and such other Liens that are expressly set forth as title exceptions on the title commitment issued under Section 6.2(b) with respect to such Property, to the extent such title commitment has been approved by the Agent).
 - 3. **Payments.** All payments of principal, interest, Holder Advances, Holder Yield and other amounts to be made by the Lessee under this Agreement or any other Operative Agreement (excluding Excepted Payments which shall be paid directly to the party to whom such payments are owed) shall be made in Dollars and in immediately available funds, without setoff, deduction, or counterclaim, to the Agent at the address set forth on Schedule 6.4 hereto. Subject to the definition of "Interest Period" in Annex A attached hereto, whenever any payment under this Agreement or any other Operative Agreement shall be stated to be due on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time in such case shall be included in the computation of interest, Holder Yield and fees payable pursuant to the Operative Agreements, as applicable and as the case may be.

1. REPRESENTATIONS AND WARRANTIES.

- 1. **Representations and Warranties of the Trust Companies.** Effective as of the Closing Date and the date of each Advance, each Trust Company represents and warrants to each of the other parties hereto as follows:
 - a. Wilmington Trust Company is a banking corporation organized under the laws of the State of Delaware and Wilmington Trust FSB is a federal savings bank, each duly organized and validly existing and in good standing under the laws of the State of Delaware and the United States of America, as applicable, and each has the power and authority to enter into and perform its obligations under the Trust Agreement and (assuming due authorization, execution and delivery of the Trust Agreement by the Holders) each has the corporate and trust power and authority to act as a trustee and to enter into and perform the obligations under each of the other Operative Agreements to which it is or will be a party, and each other agreement, instrument and document to be executed and delivered by it on or before the Closing Date in connection with or as contemplated by each such Operative Agreement to which such Trust Company is or will be a party;
 - b. The execution, delivery and performance of each Operative Agreement to which it is or will be a party has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) does or will require any approval or consent of any trustee or holders of any of its indebtedness or obligations, (ii) does or will contravene any Legal Requirement relating to its banking or trust powers, (iii) does or will contravene or result in any breach of or constitute any default under, (A) its charter or bylaws, or (B) any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party, which contravention, breach or default under clause (B) would materially and adversely affect its ability to perform its obligations under the Operative Agreements to which it is a party or (iv) does or will require any Governmental Action by any Governmental Authority regulating its banking or trust powers;
 - c. This Agreement and each other Operative Agreement to which it is or will be a party, if any, have been, or on or before such Closing Date will be, duly executed and delivered by it, and the Trust Agreement constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against it in accordance with the terms thereof;
 - d. There is no action or proceeding pending or, to its knowledge, threatened to which it is or will be a party before any Governmental Authority that, if adversely determined, would materially and adversely affect its ability to perform its obligations under the Operative Agreements to which it is a party or would question the validity or enforceability of any of the Operative Agreements to which it is or will become a party;
 - e. Each Trust Company's principal place of business and chief executive office are located at:
 - i. In the case of Wilmington Trust Company:
Rodney Square North
1100 North Market Street
Wilmington, DE 19890-0001
 - ii. In the case of Wilmington Trust FSB:
100 Wilshire Boulevard, Suite 1230
Santa Monica, CA 90401
- (f) All documents, accounts and records relating to the transactions contemplated by this Agreement and the other Operative Agreements shall be located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware, 19890- 0001.
- 2. **Representations and Warranties of the Borrower.** The Borrower represents and warrants to each of the other parties hereto as of the Closing Date and the Funding Date as follows:

- a. It is a business trust and is duly formed and validly existing and in good standing under the laws of the State of Delaware and has the power and authority to enter into and perform its obligations under the Operative Agreements to which it is a party and (assuming due authorization, execution and delivery of the Trust Agreement by the parties thereto) has the trust power and authority to enter into and perform the obligations under each of the other Operative Agreements to which it is or will be a party, and each other agreement, instrument and document to be executed and delivered by it on or before the Closing Date in connection with or as contemplated by each such Operative Agreement to which it is or will be a party;
 - b. The execution, delivery and performance of each Operative Agreement to which it is or will be a party (assuming due authorization, execution and delivery of the Trust Agreement by the parties thereto) has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) does or will require any approval or consent of any trustee or holders of any of its indebtedness or obligations, (ii) does or will contravene any Legal Requirement relating to its trust powers, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property under, (A) the Trust Agreement or Certificate of Trust, or (B) any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party or by which it or its properties may be bound or affected, which contravention, breach, default or Lien under clause (B) would materially and adversely affect its ability to perform its obligations under the Operative Agreements to which it is a party or (iv) does or will require any Governmental Action by any Governmental Authority regulating its trust powers;
 - c. The Trust Agreement and, assuming the Trust Agreement is the legal, valid and binding obligation of the parties hereto, each other Operative Agreement to which the Borrower is or will be a party have been, or on or before such Closing Date will be, duly executed and delivered by it, and each Operative Agreement to which it is a party constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against it in accordance with the terms thereof;
 - d. There is no action or proceeding pending or, to its knowledge, threatened to which it is or will be a party before any Governmental Authority that, if adversely determined, would materially and adversely affect its ability to perform its obligations under the Operative Agreements to which it is a party or would question the validity or enforceability of any of the Operative Agreements to which it is or will become a party;
 - e. It has not assigned or transferred any of its right, title or interest in or under the Lease or its interest in the Property or any portion thereof, except in accordance with the Operative Agreements;
 - f. No Default or Event of Default under the Operative Agreements attributable to it has occurred and is continuing;
 - g. Except as otherwise contemplated in the Operative Agreements, the proceeds of the Loans and Holder Advances shall not be applied by it for any purpose other than the purchase and/or lease of the Property and the payment of Transaction Expenses and the fees, expenses and other disbursements referenced in Sections 8.1(a) and 8.1(b) of this Agreement;
 - h. Neither it nor any Person authorized by it to act on its behalf has offered or sold any interest in the Trust Estate or the Notes, or in any similar security relating to the Property, or in any security the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the aforementioned securities to, or solicited any offer to acquire any of the same from, any Person other than, in the case of the Notes, the Agent, and neither it nor any Person authorized by it to act on its behalf will take any action which would subject, as a direct result of such action alone, the issuance or sale of any interest in the Trust Estate or the Notes to the provisions of Section 5 of the Securities Act or require the qualification of any Operative Agreement under the Trust Indenture Act of 1939, as amended;
 - i. The principal place of business, chief executive office and office where the documents, accounts and records relating to the transactions contemplated by this Agreement and the other Operative Agreements are located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware, 19890-0001;
 - j. It is not engaged principally in, and does not have as one of its important activities, the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States), and no part of the proceeds of the Loans or the Holder Advances will be used by it to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations T, U, or X of the Board of Governors of the Federal Reserve System of the United States;
 - k. The Property is free and clear of all Lessor Liens attributable to it;
 - l. It is not (i) an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act, or (ii) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935; and
 - m. It is not a party to any documents, instruments or agreements other than the Operative Agreements executed by it.
3. **Representations and Warranties of the Lessee.** Subject to **Schedule 7.3** hereto, the Lessee represents and warrants to each of the other parties hereto as of the Closing Date and the Funding Date as follows:
- a. **Organization; Powers.** Each of the Lessee and its Subsidiaries (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, (iii) is qualified to do business in every jurisdiction where such qualification is required, except where the failure so to qualify would not result in a Material Adverse Effect, and (iv) has the power and authority to execute, deliver and perform its obligations under each of the Operative Agreements and each other agreement or instrument contemplated thereby to which it is or will be a party.
 - b. **Authorization.** The execution, delivery and performance by the Lessee of each of the Operative Agreements to which it is a party (i) have been duly authorized by all requisite action on the part of the Lessee, including, if required, stockholder action

and (ii) will not (A) violate (1) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or bylaws of the Lessee or any Subsidiary, (2) any order of any Governmental Authority, or (3) any provision of any indenture, agreement or other instrument to which the Lessee or any Subsidiary is a party or by which any of them or any of their property is or may be bound, including, without limitation, the Credit Facility and the Subordinated Notes, (B) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or (C) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by the Lessee or any Subsidiary except in accordance with the Operative Agreements.

- c. **Enforceability.** This Agreement and each of the other Operative Agreements to which the Lessee is a party has been duly executed and delivered by the Lessee and constitutes a legal, valid and binding obligation of the Lessee enforceable against the Lessee in accordance with its terms, subject, in each case as to enforceability, to bankruptcy, insolvency, reorganization and other similar laws affecting enforcement of creditor rights generally (insofar as any such law relates to the bankruptcy, insolvency, reorganization or similar event of the Lessee) and, as to the availability of specific performance or other injunctive relief, subject to the discretionary power of a court to deny such relief and to general equitable principles.
- d. **Governmental Approvals.** No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required by the Lessee in connection with the purchase, leasing or financing of the Property (the "*Transactions*"), except such as have been made or obtained and are in full force and effect.
- e. **Financial Statements.** The consolidated balance sheet of the Lessee and its Subsidiaries as at June 25, 2000, and the related consolidated statements of income and cash flows of the Lessee and its Subsidiaries for the fiscal year then ended, accompanied by an opinion of Ernst & Young LLP, independent auditors, copies of which have been furnished to the Lessor and the Agent, fairly present the consolidated financial condition of the Lessee and its Subsidiaries as at such date and the consolidated results of the Lessee and its Subsidiaries for the period ended on such date, all in accordance with GAAP consistently applied. Since June 25, 2000, no event has occurred which could have a Material Adverse Effect.
- f. **No Material Adverse Change.** As of the Closing Date, there has been no material adverse change in the business, assets, property or condition, financial or otherwise, of the Lessee and its Subsidiaries since June 25, 2000.
- g. **Title to Properties; Possession Under Leases.**
 - i. Each of the Lessee and its Subsidiaries has good and marketable title to, or valid leasehold interests in, all its material properties and assets. All such properties and assets are free and clear of Liens, other than Liens expressly permitted by any of the Operative Agreements.
 - ii. Each of the Lessee and its Subsidiaries has complied with all obligations under all leases to which it is a party and all such leases are in full force and effect. Each of the Lessee and its Subsidiaries enjoys peaceful and undisturbed possession under all such leases, except to the extent that Lessee is a sublandlord under a sublease of premises.

a. Litigation, Compliance with Laws.

- i. There are not any actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or threatened against the Lessee or any Subsidiary or any business, property or rights of any such person (A) which involve any Operative Agreements or the Transactions or (B) to the Lessee's knowledge, which might have a Material Adverse Effect.
- ii. Neither the Lessee nor any of its Subsidiaries is in violation of any law, rule or regulation, or in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default could reasonably be anticipated to result in a Material Adverse Effect.

- a. **Federal Reserve Regulations.** Neither the Lessee nor any of its Subsidiaries is engaged principally in, or has as one of its most important activities, the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulation U of the Board), and no part of the proceeds of the Advances will be used by it to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations T, U or X of the Board.
- b. **Investment Company Act; Public Utility Holding Company Act.** Neither the Lessee nor any of its Subsidiaries is (i) an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act, or (ii) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

c. Agreements.

- i. Neither the Lessee nor any of its Subsidiaries is a party to any agreement or instrument or subject to any corporate or other restriction that has resulted or could reasonably be anticipated to result in a Material Adverse Effect.
 - ii. Neither the Lessee nor any of its Subsidiaries is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other material agreement or instrument to which it is a party or by which it or any of its properties or assets are or may be bound, where such default could reasonably be anticipated to result in a Material Adverse Effect.
- a. **Tax Returns.** Each of the Lessee and its Subsidiaries has filed or caused to be filed all Federal, state, local and foreign tax returns required to have been filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns or on any assessments received by it, except taxes that are being contested in good faith by appropriate proceedings and for which the Lessee or such Subsidiary shall have set aside on its books adequate reserves.

- b. **No Material Misstatements.** No information, report, financial statement, exhibit or schedule furnished by or on behalf of the Lessee to the Lessor, the Holders, the Agent or any Lender in connection with the negotiation of any Operative Agreement or included therein or delivered pursuant thereto contained, contains or will contain any misstatement of a material fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading.
- c. **Employee Benefit Plans.** Each of the Lessee and its ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA and the regulations and published interpretations thereunder. No Reportable Event has occurred as to which the Lessee or any ERISA Affiliate was required to file a report with the PBGC, and the present value of all benefit liabilities under each Plan (based on those assumptions used to fund such Plan) did not, as of the last annual valuation date applicable thereto, exceed by more than \$1,000,000 the value of the assets of such Plan. Neither the Lessee nor any ERISA Affiliate has incurred any Withdrawal Liability which remains unpaid and that could result in a Material Adverse Effect. Neither the Lessee nor any ERISA Affiliate has received any notification that any Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA, and to the best knowledge of the Lessee no Multiemployer Plan is reasonably expected to be in reorganization or to be terminated, where such reorganization or termination has resulted or could reasonably be expected to result, through increases in the contributions required to be made to such Plan or otherwise, in a Material Adverse Effect.
- d. **Environmental Matters.** To the best of Lessee's knowledge after due inquiry, the Property is free of contamination from any Release of Hazardous Substances. Neither the Lessee nor any of its Subsidiaries has any material contingent liability related to noncompliance with any Environmental Laws, or related to any Release or threatened Release of a Hazardous Substance or the generation, use, storage or disposal of Hazardous Substances associated with the Property. The Lessee and each Subsidiary is conducting its respective business in compliance with all applicable Environmental Laws. Neither the Lessee nor any of its Subsidiaries has received notice of any failure to so comply. The Lessee and its Subsidiaries, at the Lessee's and its Subsidiaries' facilities, do not manage any hazardous wastes, hazardous substances, hazardous materials, toxic substances, toxic pollutants or substances similarly denominated, as those terms or similar terms are used in the Environmental Laws, in violation of any such law or any regulations promulgated pursuant thereto. Neither the Lessee nor any of its Subsidiaries has caused or suffered to occur any Release with respect to any Hazardous Substance at, under, above or upon any real property which it owns or leases or to which it transported, disposed or arranged for disposal of Hazardous Substances that would result in a Material Adverse Effect. Neither the Lessee nor any of its Subsidiaries is involved in operations which are reasonably likely to result in the imposition of any material liability on the Lessee or any of its Subsidiaries under any Environmental Law, and neither the Lessee nor any of its Subsidiaries has permitted any tenant or occupant of such premises to engage in any such activities.
- e. **Insurance.** The Lessee has obtained insurance coverage covering the Property which meets the requirements of Section 14.1 of Lease and such coverage is in full force and effect.
- f. **Nature of the Property.** The Lessee shall use the Property for office, manufacturing and research and development purposes.
- g. **Flood Zone.** No portion of the Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, or if the Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, then flood insurance has been obtained for such Property in accordance with Section 14.2(b) of the Lease and in accordance with the National Flood Insurance Act of 1968, as amended.
- h. **Legal Requirements.** The Property being acquired by the Trust complies with all Legal Requirements (including all zoning and land use laws and Environmental Laws).
- i. **Consents, etc.** All consents, licenses and building permits required by all Legal Requirements by the time required by such Legal Requirements for occupancy and operation of the Property have been or will be obtained and are or will be in full force and effect.
- j. **Solvency.** The fair salable value of Lessee's assets exceeds the fair value of its liabilities; the Lessee is not left with unreasonably small capital after consummation of the transactions contemplated by the Operative Agreements; and Lessee is able to pay its debts (including trade debts) as they mature.
- k. **[intentionally omitted]**
- l. **Title to Property.** As of the Funding Date, the Trust has a valid fee interest in the Land, subject only to the Permitted Exceptions. The Trust will at all times have good and marketable title to the Improvements, subject only to Permitted Exceptions.
- m. **Property-Related Matters.** The Property will comply with all Legal Requirements (including all applicable zoning and land use laws and Environmental Laws) and Insurance Requirements. No Improvements on the Property will encroach in any manner onto any adjoining land (except as permitted by express written easements or variance) and such Improvements and the use thereof by the Lessee and its agents, assignees, employees, invitees, lessees, licensees and tenants will comply with all applicable Legal Requirements (including all applicable Environmental Laws and building, planning, zoning and fire codes). There are no defects to such Improvements including, without limitation, the plumbing, heating, air conditioning and electrical systems thereof, and all water, sewer, electric, gas, telephone and drainage facilities and all other utilities required to adequately service such Improvements for their intended use will be available pursuant to adequate permits (including any that may be required under applicable Environmental Laws). There is no action, suit or proceeding (including any proceeding in condemnation or eminent domain or under any applicable Environmental Law) pending or threatened which adversely affects the title to, or the use, operation or value of, the Property. As of the Closing Date, no fire or other casualty with respect to the Property has occurred which fire or other casualty involves an uninsured loss in excess of \$1,000,000. As of each subsequent Funding Date, no fire or other casualty with respect to the Property has occurred after the Closing Date which fire or other casualty involves an uninsured loss in excess of \$500,000. All utilities serving the Property are located in, and in the

future will be located in, and vehicular access to the Improvements on the Property is provided by, either public rights-of-way abutting the Property or Appurtenant Rights. All applicable licenses, approvals, authorizations, consents, permits (including, without limitation, building, demolition and environmental permits, licenses, approvals, authorizations and consents), easements and rights-of-way, including proof of dedication, required for the use and operation of the Improvements as permitted pursuant to the Lease have been obtained from the appropriate Governmental Authorities having jurisdiction or from private parties.

1. **Lease Requirements** . The Improvements will comply with all requirements and conditions set forth in the Lease and all other conditions and requirements of the Operative Agreements.

1. PAYMENT OF CERTAIN EXPENSES.

1. Transaction Expenses.

- a. The Lessee agrees to pay, or cause to be paid, on the Closing Date, all Transaction Expenses arising from the Closing Date, including without limitation all reasonable fees, expenses and disbursements of the various legal counsels for the Lessor, the Trustees and the Agent in connection with the transactions contemplated by the Operative Agreements and incurred in connection with such Closing Date, the initial fees and expenses of the Trustees due and payable on such Closing Date, all fees, taxes and expenses for the recording, registration and filing of documents and all other reasonable fees, expenses and disbursements incurred in connection with such Closing Date, including syndication expenses and all expenses relating to the Appraisal.
 - b. All fees payable pursuant to the Operative Agreements shall be calculated on the basis of a year of three hundred sixty (360) days for the actual days elapsed.
2. **Brokers' Fees and Stamp Taxes.** Pay or cause to be paid brokers' fees and any and all stamp, transfer and other similar taxes, fees and excises, if any, including any interest and penalties, which are payable in connection with the transactions contemplated by this Agreement and the other Operative Agreements.
 3. **Certain Fees and Expenses.** Lessee agrees to pay or to cause to be paid (a) the initial and annual fee of the Trust Companies and all reasonable expenses of the Trust Companies and any co-trustees (including without limitation reasonable counsel fees and expenses) or any successor trustee and/or co-trustee, for acting as a trustee under the Trust Agreement; (b) all costs and expenses incurred by the Lessee, the Agent, the Lenders, the Holders or the Lessor in entering into any Lease Supplement and any future amendments, modifications, supplements, restatements and/or replacements with respect to any of the Operative Agreements, whether or not such Lease Supplement, amendments, modifications, supplements, restatements and/or replacements are ultimately entered into, or giving or withholding of waivers of consents hereto or thereto, which have been requested by the Lessee; (c) all costs and expenses incurred by the Agent, the Lenders, the Holders or the Lessor in connection with any exercise of remedies under any Operative Agreement or any purchase of the Property by the Lessee or any third party; and (d) all reasonable costs and expenses incurred by the Agent, the Lenders, the Holders or the Lessor in connection with any transfer or conveyance of Property, whether or not such transfer or conveyance is ultimately accomplished.
 4. **Commitment Fee.** From the Closing Date until the Commitment Termination Date, the Lessee agrees to pay or cause to be paid to the Agent for the account of the Lenders and the Holders, a commitment fee (the "Commitment Fee") on the average daily undrawn portion of the Aggregate Commitment Amount equal to the Commitment Fee Percentage for the applicable Pricing Level.
 5. **Other Fees.** Lessee agrees to pay or cause to be paid to the Agent, Lenders and Holders the fees set forth in the Fee Letter.

2. OTHER COVENANTS AND AGREEMENTS.

1. **Cooperation with the Lessee.** The Holders, the Lenders, the Lessor (at the direction of the Majority Secured Parties) and the Agent shall, at the expense of and to the extent reasonably requested by the Lessee (but without assuming additional liabilities on account thereof and only to the extent such is acceptable to the Holders, the Lenders, the Lessor (at the direction of the Majority Secured Parties) and the Agent in their reasonable discretion), cooperate with the Lessee in connection with the Lessee satisfying its covenant obligations contained in the Operative Agreements including without limitation at any time and from time to time, promptly and duly executing and delivering any and all such further instruments, documents and financing statements (and continuation statements related thereto) as the Lessee may reasonably request in order to perform such covenants. The Lessor agrees that, to the extent it shall obtain actual knowledge of the occurrence of a Default caused by the Lessor or any of its Affiliates, it shall promptly notify the Lessee describing the same in reasonable detail.
2. **Covenants of the Trust Companies, the Trust, and the Holders.** Each of the Trust Companies, the Trust, and the Holders hereby agrees that so long as this Agreement is in effect:
 - a. Neither the Trust Companies, the Trust nor any Holder will create or permit to exist at any time, and each of them 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 on the Property attributable to it; provided, however, that the Trust Companies, the Trust and the Holders 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 materially and adversely affect the rights of the Lessee under the Lease and the other Operative Agreements or involve any material danger of impairment of the Liens of the Security Documents or of the sale, forfeiture or loss of, and shall not interfere with the use or disposition of, the Property or title thereto or any interest therein or the payment of Rent;
 - b. Without prejudice to any right under the Trust Agreement of the Trust Companies to resign (subject to the requirement set forth in the Trust Agreement that such resignation shall not be effective until a successor shall have agreed to accept such appointment), or the Holders' rights under the Trust Agreement to remove the institution acting as the trustee (after consent to such removal by the Agent as provided in the Trust Agreement), each of the Trust Companies and the Holders hereby agrees with the Lessee and the Agent (i) not to terminate or revoke the trust created by the Trust Agreement except as permitted by Article X of the Trust Agreement, (ii) not to amend, supplement, terminate or revoke or otherwise modify any provision of the

Trust Agreement in such a manner as to adversely affect the rights of any such party without the prior written consent of such party and (iii) to comply with all of the terms of the Trust Agreement, the nonperformance of which would adversely affect such party;

- c. The Trust Companies or any successor may resign or be removed by the Holders as the trustee, a successor trustee may be appointed and a corporation may become the trustee under the Trust Agreement, only in accordance with the provisions of Article X of the Trust Agreement and, with respect to such appointment, with the consent of the Lessee (so long as there shall be no Lease Event of Default that shall have occurred and be continuing), which consent shall not be unreasonably withheld or delayed;
- d. The Trust shall not contract for, create, incur or assume any Indebtedness, or enter into any business or other activity or enter into any contracts or agreements, other than pursuant to or under the Operative Agreements;
- e. The Holders will not instruct the Trust Companies or the Trust to take any action in violation of the terms of any Operative Agreement;
- f. Neither any Holder, the Trust Companies nor the Trust shall (i) commence any case, proceeding or other action with respect to the Trust under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seek appointment of a receiver, trustee, custodian or other similar official with respect to the Trust or for all or any substantial benefit of the creditors of the Trust; and neither any Holder, the Trust Companies nor the Trust shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in this paragraph;
- g. Each Trust Company and the Trust shall give prompt notice to the Lessee, the Holders and the Agent if such party's principal place of business or chief executive office, or the office where the records concerning the accounts or contract rights relating to the Property are kept, shall cease to be located at the addresses set forth in Section 14.2 hereof, or if any such party shall change its name; and
- h. The Trust shall take or refrain from taking such actions and grant or refrain from granting such approvals with respect to the Operative Agreements and/or relating to the Property in each case as directed in writing by the Agent (until such time as the Loans are paid in full, and then by the Majority Holders); *provided, however*, that notwithstanding the foregoing provisions of this subparagraph (h) the Trust Companies, the Trust, the Agent, the Lenders and the Holders each acknowledge, covenant and agree that neither the Trust nor the Agent shall act or refrain from acting, regarding each Unanimous Vote Matter, until such party has received the approval of each Lender and each Holder affected by such matter.

3. Lessee Covenants, Consent and Acknowledgment.

- a. **Closure of Wells.** Lessee shall, at its sole cost and expense, on or before February 28, 2001, cause all monitoring wells located on the Property, as more specifically identified in the Environmental Audit, to be closed in full compliance with all Environmental Laws, and any state, federal and local rules, regulations or ordinances applicable thereto.
- b. **Information.** The Lessee will deliver to the Lessor and the Agent:
 - i. as soon as available and in any event within one hundred (100) days after the end of each fiscal year of the Lessee a statement of financial position of the Lessee and its consolidated subsidiaries as of the end of such fiscal year and the related consolidated statements of income, shareholder's equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent accountants of nationally recognized standing, together with an Officer's Compliance Certificate, in the form attached as Exhibit E hereto (the "Compliance Certificate"), from the chief financial officer of the Lessee substantially containing a computation of, and showing compliance with, each of the financial ratios and restrictions contained in this Section 9.3 and stating that no Default or Event of Default has occurred or is continuing or, if any Default or Event of Default has occurred and is continuing, describing it and the steps, if any, being taken to cure it;
 - ii. as soon as available and in any event within fifty (50) days after the end of each of the first three (3) quarters of each fiscal year of the Lessee, an unaudited consolidated statement of financial position of the Lessee as of the end of such period and the related consolidated statements of income, shareholders' equity and cash flows for such period and for the portion of the Lessee's fiscal year ended at the end of such period, setting forth in each case in comparative form the figures for the same period in the previous fiscal year, together with a Compliance Certificate of the chief financial officer of the Lessee or other officer responsible for the financial affairs of the Lessee containing a computation of, and showing compliance with, each of the financial ratios and restrictions contained in this Section 9.3 and stating that no Default or Event of Default has occurred or is continuing or, if any Default or Event of Default has occurred and is continuing, describing it and the steps, if any, being taken to cure it;
 - iii. promptly after the filing thereof, if applicable, copies of all reports on Forms 10-K, 10-Q and 8-K (or their equivalents), prospectuses and registration statements which the Lessee shall have filed with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended;
 - iv. if and when any member of the ERISA Group (1) gives or is required to give notice to the PBGC of any "reportable event" (as defined in Section 4043 of ERISA) with respect to any Plan which might constitute grounds for a termination of such Plan under Title IV or ERISA, or knows that the plan administrator of any Plan has given or is required to give notice of any such reportable event, a copy of the notice of such reportable event given or required to be given to the PBGC; (2) receives notice of complete or partial withdrawal liability under Title IV of ERISA or notice that any Multiemployer Plan is in reorganization, is insolvent or has been terminated, a copy of such notice; (3) receives notice from the PBGC under Title IV of ERISA of an intent to terminate, impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or appoint a

trustee to administer any Plan, a copy of such notice; (4) applies for a waiver of the minimum funding standard under Section 412 of the Code, a copy of such application; (5) gives notice of intent to terminate any Plan under Section 4041(c) of ERISA, a copy of such notice and other information filed with the PBGC; (6) gives notice of withdrawal from any Plan pursuant to Section 4063 of ERISA, a copy of such notice; or (7) fails to make any payment or contribution to any Plan or Multiemployer Plan or in respect of any Benefit Arrangement or makes any amendment to any Plan or Benefit Arrangement which has resulted or could result in the imposition of a Lien or the posting of a bond or other security, a certificate of the chief financial officer or the chief accounting officer of the Lessee setting forth details as to such occurrence and action, if any, which the Lessee or applicable member of the ERISA Group is required or proposes to take;

- v. promptly after the occurrence of any Default or Event of Default, notice thereof in writing by an authorized officer of the Lessee, together with information regarding the steps, if any, being taken or proposed to be taken to cure it;
 - vi. at least ten (10) Business Days prior to the expiration of any policy of insurance required by Section 14 of the Lease, confirmation of renewal;
 - vii. within three days of the end of each month during which Lessee is required to maintain Pledged Collateral pursuant to Section 5.4(a)(ii) hereof, a written certification of the Chief Financial Officer of Lessee as to Lessee's Cash Balance at the end of such month; and
 - viii. from time to time such additional information regarding the Lessee or the Property as the Lessor or the Agent, at the request of the Lessor or any Lender, may reasonably request.
- a. **Compliance with Laws.** The Lessee will, and will cause its Subsidiaries to, comply in all material respects with all applicable laws, ordinances, rules, regulations, orders and requirements of governmental authorities (including, without limitation, Environmental Laws and ERISA and the rules and regulations thereunder) except where the necessity of compliance therewith is contested in good faith by appropriate proceedings and such contest is not reasonably likely to result in a Material Adverse Effect.
- b. **Further Assurances.** The Lessee shall take or cause to be taken from time to time all action necessary to assure during the Term that title to the Property remains in the Lessor as contemplated by Section 12.1 of the Lease, that the Lessor holds a perfected Lien on the Property securing the Lease Balance as contemplated by Section 7.1 of the Lease, and that the Lessor and the Agent for the benefit of the Lenders hold a perfected Lien on the Pledged Collateral securing the Obligations.
- c. **Existence; Franchises; Businesses.** Except as otherwise expressly permitted in this Agreement, the Lessee shall, and shall cause each Subsidiary to (i) maintain in full force and effect its separate existence and all rights, licenses, leases and franchises reasonably necessary to the conduct of its business, and (ii) continue doing business as a whole in the substantially the same types of business in which they were engaged on the Closing Date.
- d. **Books and Records.** The Lessee shall, and shall cause each Subsidiary to, maintain its books and records in accordance with GAAP, and permit the Lessor and the Agent to make or cause to be made inspections and audits of any books, records and papers of the Lessee and its Subsidiaries and to make extracts therefrom at all such reasonable times and as often as any such Person may reasonably require.
- e. **Fundamental Changes.** The Lessee shall not, nor shall it permit any Subsidiary to, enter into any merger, consolidation or amalgamation, where it is not the surviving entity, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution); convey, sell, assign, transfer or otherwise dispose of all or substantially all of the property, business or assets of the Lessee and its Subsidiaries; *provided, however,* that if (i) at least thirty (30) days prior to the consummation of such transaction the Lessee shall have furnished to the Lessor and the Agent an Officer's Certificate of the chief financial officer of the Lessee that no Default or Event of Default shall occur after giving effect thereto, and (ii) no Default or Event of Default shall have occurred before or after giving effect thereto, then:
- i. any Subsidiary of the Lessee may be merged or consolidated with or into the Lessee (*provided, however,* that the Lessee shall be the continuing or surviving corporation) or with or into any one or more wholly-owned Subsidiaries of the Lessee (*provided, however,* that the wholly-owned Subsidiary or Subsidiaries shall be the continuing or surviving corporation); and
 - ii. any wholly-owned Subsidiary may sell, lease, transfer or otherwise dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Lessee or any other wholly-owned Subsidiary of the Lessee.
- a. **Liens.** The Lessee shall not create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for:
- i. any Lien existing on property of the Lessee on the Funding Date securing Indebtedness outstanding on such date;
 - ii. any Lien created under any Operative Agreement;
 - iii. Liens for taxes, fees, assessments or other governmental charges which are not delinquent or remain payable without penalty;
 - iv. carrier's, warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business which are not delinquent or remain payable without penalty;
 - v. Liens (other than any Lien imposed by ERISA) consisting of pledges or deposits required in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security

legislation;

- vi. Liens on the property of the Lessee securing (A) the non-delinquent performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, (B) contingent obligations on surety and appeal bonds, and (C) other non-delinquent obligations of a like nature; in each case, incurred in the ordinary course of business;
 - vii. Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository institution; *provided, however*, that (A) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Lessee in excess of those set forth by regulations promulgated by the Board, and (B) such deposit account is not intended by the Lessee or any Subsidiary to provide collateral to the depository institution;
 - viii. Permitted Liens; and
 - ix. Liens otherwise permitted under the Credit Facility.
- a. **Change in Name or Location.** The Lessee hereby covenants and agrees that it shall give prompt notice to the Agent if the Lessee's principal place of business or chief executive office, or the office where the records concerning the accounts or contract rights relating to Property are kept, shall cease to be located at 4650 Cushing Parkway, Fremont, California 94538, or if it shall change its name.
- b. **Financial Covenants of Lessee.** The Lessee and its Subsidiaries shall maintain, on a consolidated basis, all of the following financial covenants. The Lessee agrees and understands that (except as expressly provided herein) all covenants under this Section 9.3(j) shall be subject to compliance as measured as of the last day of each Fiscal Quarter.
- i. **Minimum Quick Ratio.** Maintain a Quick Ratio of not less than 1.35 to 1.0.
 - ii. **Maximum Senior Indebtedness Ratio.** Maintain a Senior Indebtedness Ratio of not greater than 0.25 to 1.0.
 - iii. **Minimum Tangible Net Worth.** Maintain Tangible Net Worth on any date of determination (such date to be referred to herein as a "*determination date*") which occurs after December 27, 1998 (such date to be referred to herein as the "*base date*") to be less than the *sum* on such determination date of the following: (A) \$350,000,000; *plus* (B) Seventy-five percent (75%) of the sum of the Lessee's consolidated quarterly net income (ignoring any quarterly losses) for each quarter ending after the base date through and including the quarter ending immediately prior to the determination date; *plus* (C) one hundred percent (100%) of the Net Issuance Proceeds of all Equity Securities issued by the Lessee and its Subsidiaries during the period commencing on the base date and ending on the determination date; *plus* (D) one hundred percent (100%) of the aggregate decrease in the total liabilities of the Lessee and its Subsidiaries resulting from conversions of convertible Subordinated Indebtedness or other liabilities of the Lessee and its Subsidiaries into Equity Securities of the Lessee and its Subsidiaries during the period commencing on the base date and ending on the determination date.
 - iv. **Minimum Debt Service Coverage Ratio.** Maintain a Debt Service Coverage Ratio of not less than 3.00 to 1.00
- a. **Agent to Act for Lessor.** The Lessor hereby instructs Lessee and Lessee hereby acknowledges and agrees, that until such time as the Loans and the Holder Advances are paid in full and the Liens evidenced by the Pledge Agreement, Security Agreement and the Deed of Trust have been released (i) any and all Rent (excluding Excepted Payments which shall be payable to each Holder or other Person as appropriate) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to any Person shall instead be paid directly to the Agent (excluding Excepted Payments which shall be payable to each Holder or other Person as appropriate) or as the Agent may direct from time to time for allocation and distribution in accordance with the procedures set forth in Section 13 hereof, (ii) all rights of the Lessor under the Lease shall be exercised by the Agent and (iii) Lessee shall cause all notices, certificates, financial statements, communications and other information which are delivered, or are required to be delivered, to the Lessor, to also be delivered at the same time to the Agent.
- b. **Appraisals.** The Lessee hereby covenants and agrees to cause an Appraisal or reappraisal (in form and substance satisfactory to the Agent and from an appraiser selected by the Agent) to be issued respecting the Property as requested by the Agent from time to time (i) at each and every time as such shall be required to satisfy any regulatory requirements imposed on the Agent, the Lessor, the Trust Company, any Lender and/or any Holder and (ii) after the occurrence of an Event of Default.
- c. **Supplemental Rent.** The Lessee hereby covenants and agrees that, except for amounts payable as Basic Rent, any and all payment obligations owing from time to time under the Operative Agreements by any Person to the Agent, any Lender, any Holder or any other Person shall (without further action) be deemed to be Supplemental Rent obligations payable by the Lessee. Without limitation, such obligations of the Lessee shall include the Supplement Rent obligations pursuant to Section 3.3 of the Lease, arrangement fees, administrative fees, participation fees, commitment fees, unused fees, prepayment penalties, breakage costs, indemnities, trustee fees and transaction expenses incurred by the parties hereto in connection with the transactions contemplated by the Operative Agreements.
1. **Appointment of the Agent by the Lenders, the Holders and the Trust.** The Holders hereby appoint the Agent to act as collateral agent for the Holders in connection with the Lien granted by the Security Documents to secure the Holder Amount and all other amounts due and owing to the Holders. The Lenders and the Holders acknowledge and agree and direct that the rights and remedies of the beneficiaries of the Lien of the Security Documents shall be exercised by the Agent on behalf of the Lenders and the Holders as directed from time to time by the Majority Secured Parties or, pursuant to Section 14.4, all of the Lenders and the Holders, as the case may be; provided, in all cases, the Agent shall allocate payments and other amounts received in accordance with Section 13.

The Agent is further appointed to provide notices under the Operative Agreements on behalf of the Trust (as determined by the Agent, in its reasonable discretion), to receive notices under the Operative Agreements on behalf of the Trust and (subject to Section 10.2) to take such other action under the Operative Agreements on behalf of the Trust as the Agent shall determine in its reasonable discretion from time to time. The Agent hereby accepts such appointments. For purposes hereof, the provisions of Section 7 of the Credit Agreement, together with such other terms and provisions of the Credit Agreement and the other Operative Agreements as required for the full interpretation and operation of Section 7 of the Credit Agreement are hereby incorporated by reference as if restated herein for the mutual benefit of the Agent and each Holder as if each Holder were a Lender thereunder. Outstanding Holder Advances and outstanding Loans shall each be taken into account for purposes of determining Majority Secured Parties. Further, the Agent shall be entitled to take such action on behalf of the Trust as is delegated to the Agent under any Operative Agreement (whether express or implied) as may be reasonably incidental thereto. The parties hereto hereby agree to the provisions contained in this Section 9.4. Any appointment of a successor agent under Section 7.9 of the Credit Agreement shall also be effective as an appointment of a successor agent for purposes of this Section 9.4.

2. **Release of Properties, etc.** If the Lessee shall at any time purchase any Property pursuant to the Lease or if any Property shall be sold in accordance with Article XXII of the Lease, then, upon satisfaction by the Trust of its obligation to prepay the Loans, and Holder Advances in respect of such Property and all other amounts owing to the Lenders and the Holders under the Operative Agreements, the Agent is hereby authorized and directed to release such Property from the Liens created by the Security Documents to the extent of its interest therein. In addition, upon the termination of the Commitments and the Holder Commitments and the payment in full of the Loans, the Holder Advances and all other amounts owing by the Trust and the Lessee hereunder or under any other Operative Agreement the Agent is hereby authorized and directed to release such Property from the Liens created by the Security Documents to the extent of its interest therein. Upon request of the Trust following any such release, the Agent shall, at the sole cost and expense of the Lessee, execute and deliver to the Trust and the Lessee such documents as the Trust or the Lessee shall reasonably request to evidence such release.

3. Guaranty.

- a. **Guaranty of Payment and Performance.** Guarantor hereby unconditionally guarantees to each of Agent, Holders and Lenders (each a "Financing Party") the prompt payment and performance of the Company Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) or when such is otherwise to be performed; provided, notwithstanding the foregoing, the obligations of the Guarantors under this Section 9.6 (i) shall not constitute a direct guaranty of the indebtedness of the Borrower evidenced by the Notes but rather a guaranty of the Company Obligations arising under the Operative Agreements, (ii) shall not increase the obligations due under the Lease, and (iii) shall, to the extent paid or performed by Guarantor under this Section 9.6, offset and be fully credited against Lessee's obligations under the Lease. This Section 9.6 is a guaranty of payment and performance and not of collection and is a continuing guaranty and shall apply to all Company Obligations whenever arising. All rights granted to the Financing Parties under this Section 9.6 shall be subject to the provisions of Section 9.4.
- b. **Obligations Unconditional.** Guarantor agrees that the obligations of the Guarantor hereunder are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Operative Agreements, or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of or security for any of the Company Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety, guarantor or co-obligor, it being the intent of this Section 9.6(b) that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances. Guarantor agrees that this Section 9.6 may be enforced by the Financing Parties without the necessity at any time of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to the Notes, the Certificates or any other of the Operative Agreements or any collateral, if any, hereafter securing the Company Obligations or otherwise and Guarantor hereby waives the right to require the Financing Parties to proceed against the Lessee or any other Person (including without limitation a co-guarantor) or to require the Financing Parties to pursue any other remedy or enforce any other right. Guarantor further agrees that it hereby waives any and all right of subrogation, indemnity, reimbursement or contribution against the Lessee or any other guarantor of the Company Obligations for amounts paid under this Section 9.6 until such time as the Loans, Holder Advances, accrued but unpaid interest, accrued but unpaid Holder Yield and all other amounts owing under the Operative Agreements have been paid in full. Without limiting the generality of the waiver provisions of this Section 9.6, Guarantor hereby waives any rights to require the Financing Parties to proceed against the Lessee or any co-guarantor or to require Lessor to pursue any other remedy or enforce any other right. Guarantor further agrees that nothing contained herein shall prevent the Financing Parties from suing on any Operative Agreement or foreclosing any security interest in or Lien on any collateral, if any, securing the Company Obligations or from exercising any other rights available to it under any Operative Agreement, or any other instrument of security, if any, and the exercise of any of the aforesaid rights and the completion of any foreclosure proceedings shall not constitute a discharge of Guarantor's obligations hereunder; it being the purpose and intent of Guarantor that its obligations hereunder shall be absolute, independent and unconditional under any and all circumstances; provided that any amounts due under this Section 9.6 which are paid to or for the benefit of any Financing Party shall reduce the Company Obligations by a corresponding amount (unless required to be rescinded at a later date). Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Company Obligations and notice of or proof of reliance by any Financing Party upon this Section 9.6 or acceptance of this Section 9.6. The Company Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Section 9.6. All dealings between the Lessee and the Guarantor, on the one hand, and the Financing Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Section 9.6.
- c. **Modifications.** Guarantor agrees that (a) all or any part of the security now or hereafter held for the Company Obligations, if any, may be exchanged, compromised or surrendered from time to time; (b) no Financing Party shall have any obligation to protect, perfect, secure or insure any such security interests, liens or encumbrances now or hereafter held, if any, for the Company Obligations or the properties subject thereto; (c) the time or place of payment of the Company Obligations may be changed or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; (d) Lessee and any other party liable for payment under the Operative Agreements may be granted indulgences generally; (e) any of the provisions of the Notes, the Certificates or any of the other Operative Agreements may be modified, amended or waived; (f) any party (including any co-guarantor) liable for the payment thereof may be granted indulgences or be

released; and (g) any deposit balance for the credit of the Lessee or any other party liable for the payment of the Company Obligations or liable upon any security therefor may be released, in whole or in part, at, before or after the due date of the Company Obligations, all without notice to or further assent by Guarantor, which shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

- d. **Waiver of Rights.** Guarantor expressly waives to the fullest extent permitted by applicable law: (a) notice of acceptance of this Section 9.6 by any Financing Party and of all extensions of credit or other Advances to the Lessor or the Lessee by the Lenders pursuant to the terms of the Operative Agreements; (b) presentment and demand for payment or performance of any of the Company Obligations; (c) protest and notice of dishonor or of default with respect to the Company Obligations or with respect to any security therefor; (d) notice of any Financing Party obtaining, amending, substituting for, releasing, waiving or modifying any security interest, lien or encumbrance, if any, hereafter securing the Company Obligations, or any Financing Party's subordinating, compromising, discharging or releasing such security interests, liens or encumbrances, if any; and (e) all other notices to which Guarantor might otherwise be entitled. Without limiting the foregoing, Guarantor expressly waives, to the fullest extent permitted by applicable law, any defense to the enforcement of its obligations hereunder, and any rights and benefits which might otherwise be available to Guarantor, under New York law and California Civil Code Sections 2809, 2810, 2819, 2822(a), 2839, 2845, 2848, 2849, 2850, 2899 and 3433. The Guarantor waives all rights and defenses that the Guarantor may have because the Company Obligations may be secured by real property. This means, among other things: (1) the creditor may collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the debtor; (2) if a creditor forecloses on any real property collateral pledged by the debtor: (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; (B) the creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor. This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Company Obligations may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure. Notwithstanding anything to the contrary herein, Guarantor's payments hereunder shall be due five (5) Business Days after written demand by the Agent for such payment (unless the Company Obligations are automatically accelerated pursuant to the applicable provisions of the Operative Agreements in which case the Guarantor's payments shall be automatically due).
- e. **Reinstatement.** The obligations of the Guarantors under this Section 9.6 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Company Obligations is rescinded or must be otherwise restored by any holder of any of the Company Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and Guarantor agrees that it will indemnify each Financing Party on demand for all reasonable costs and expenses (including, without limitation, reasonable fees of counsel) incurred by any Financing Party in connection with such rescission or restoration, including without limitation any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.
- f. **Payment of Amounts to the Agent.** Each Financing Party hereby instructs Guarantor, and Guarantor hereby acknowledges and agrees, that, until such time as the Loans and the Holder Advances are paid in full and the Liens evidenced by the Pledge Agreement, Security Agreement and the Deed of Trust have been released, any and all Rent (excluding Excepted Payments which shall be payable to each Holder or other Person as appropriate) and any and all other amounts of any kind or type under any of the Operative Agreements due and owing or payable to any Person shall instead be paid directly to the Agent (excluding Excepted Payments which shall be payable to each Holder or other Person as appropriate) or as the Agent may direct from time to time for allocation and distribution in accordance with the procedures set forth in Section 13 hereof.

1. CREDIT AGREEMENT AND TRUST AGREEMENT.

1. **Lessee's Credit Agreement Rights.** Notwithstanding anything to the contrary contained in the Credit Agreement, the Agent, the Lenders, the Holders, and the Trust hereby agree that, prior to the occurrence and continuation of any Default or Event of Default, the Lessee shall have the following rights:
- a. the right to designate an account to which amounts funded under the Operative Agreements shall be credited pursuant to Section 2.3 of the Credit Agreement;
 - b. the right to terminate or reduce the Commitments pursuant to Section 2.4 of the Credit Agreement;
 - c. the right to exercise the conversion and continuation options pursuant to Section 2.6 of the Credit Agreement;
 - d. the right to approve any successor agent pursuant to Section 7.9 of the Credit Agreement; and
 - e. the right to consent to any assignment by a Lender pursuant to the Credit Agreement, which consent shall not be unreasonably withheld or delayed.
2. **Lessee's Trust Agreement Rights.** Notwithstanding anything to the contrary contained in the Trust Agreement, the Trust and the Holders hereby agree that, prior to the occurrence and continuation of any Default or Event of Default, the Lessee shall have the following rights:
- a. the right to exercise the removal options contained in Article IX of the Trust Agreement; provided, however, that no removal of either Trust Company and appointment of a successor trustee pursuant to such Article IX of the Trust Agreement shall be made without the prior written consent (not to be unreasonably withheld or delayed) of the Holders; and
 - b. the right to consent to any assignment by a Holder pursuant to the Trust Agreement, which consent shall not be unreasonably withheld or delayed.

2. TRANSFER OF INTEREST.

1. **Restrictions on Transfer.** Subject to Lessee's rights under Section 10 above, each Lender may participate, assign or transfer all or a portion of its interest hereunder and under the other Operative Agreements in accordance with Section 9 of the Credit Agreement. The Holders may, directly or indirectly, assign, convey or otherwise transfer any of their right, title or interest in or to the Trust Estate or the Trust Agreement and in accordance with the terms of Section 11.15 of the Trust Agreement. The Lessor may, subject to the rights of the Lessee under the Lease and the other Operative Agreements and to the Lien of the applicable Security Documents but only with the prior written consent of the Agent (which consent may be withheld by the Agent in its sole discretion) and (provided, no Default or Event of Default has occurred and is continuing) with the consent of the Lessee, directly or indirectly, assign, convey, appoint an agent with respect to enforcement of, or otherwise transfer any of its right, title or interest in or to the Property, the Lease, the Trust Agreement and the other Operative Agreements (including without limitation any right to indemnification thereunder), or any other document relating to the Property or any interest in the Property as provided in the Trust Agreement and the Lease. The provisions of the immediately preceding sentence shall not apply to the obligations of the Lessor to transfer the Property to the Lessee or a third party purchaser pursuant to Article XXII of the Lease upon payment for such Property in accordance with the terms and conditions of the Lease. Lessee may not assign any of the Operative Agreements or any of its rights or obligations thereunder or with respect to the Property in whole or in part to any Person without the prior written consent of the Agent, the Lenders, the Holders and the Lessor. Any participation, assignment or transfer effected in breach of this Section 11 shall be void.
2. **Effect of Transfer.** From and after any transfer effected in accordance with this Section 11, the transferor shall be released, to the extent of such transfer, from its liability hereunder and under the other documents to which it is a party in respect of obligations to be performed on or after the date of such transfer; provided, however, that any transferor shall remain liable hereunder and under such other documents to the extent that the transferee shall not have assumed the obligations of the transferor thereunder. Upon any transfer by the Lessor, a Holder or a Lender as above provided, any such transferee shall assume the obligations of the Lessor, the Holder or the Lender, as the case may be, and shall be deemed the "Lessor," or a "Holder" or "Lender," as the case may be, for all purposes of such documents and each reference herein to the transferor shall thereafter be deemed a reference to such transferee for all purposes, except as provided in the preceding sentence. Notwithstanding any transfer of all or a portion of the transferor's interest as provided in this Section 11, the transferor shall be entitled to all benefits accrued and all rights vested prior to such transfer including without limitation rights to indemnification under any such document.

3. INDEMNIFICATION.

1. **General Indemnity.** The Lessee, whether or not any of the transactions contemplated hereby shall be consummated, hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against any Claims which may be imposed on, incurred by or asserted against an Indemnified Person in any way relating to or arising or alleged to arise out of (a) the financing, refinancing, ground lease, purchase, acceptance, rejection, ownership, design, construction, delivery, acceptance, nondelivery, leasing, subleasing, possession, use, operation, repair, maintenance, modification, transportation, condition, operation, sale, return, repossession (whether by summary proceedings or otherwise), or any other disposition of the Property or any part thereof, (b) any latent or other defects in any property whether or not discoverable by an Indemnified Person or the Lessee; (c) a violation of any Legal Requirement or Requirement of Law, including any violation of Environmental Laws, the Release, presence or use of Hazardous Substances on, at, under or emanating from the Property or other loss of or damage relating to the Property; (d) the Operative Agreements, or any transaction contemplated thereby; (e) any breach by the Lessee of any of its representations or warranties under the Operative Agreements or failure by the Lessee to perform or observe any covenant or agreement to be performed by it under any of the Operative Agreements; (f) the invalidation of Lessee's insurance policies related to the Property; (g) personal injury, death or property damage relating to the Property, including Claims based on strict liability in tort; (h) the existence of any Lien on or with respect to the Property, the Improvements, the Equipment, any Basic Rent or Supplemental Rent, title thereto, or any interest therein, including any Liens which arise out of the possession, use, occupancy, construction, repair or rebuilding of the Property or by reason of labor or materials furnished or claimed to have been furnished to the Lessee, the Lessor, or any of their contractors or agents or by reason of the financing of the Property or any personally or equipment purchased or leased by the Lessee or Improvements or Modifications constructed by the Lessee, except Lessor Liens and Liens in favor of the Agent or the Lessor; and (i) the Transactions contemplated hereby or by any other Operative Agreement, 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; but in any event excluding (x) Claims to the extent such Claims arise solely out of events occurring after the expiration of the Term and after the Lessee's discharge of all its obligations under the Lease and the other Operative Agreements or (y) as to any Indemnified Person, any Claim to the extent resulting from the willful misconduct or gross negligence of such Indemnified Person. The Lessee shall be entitled to control, and shall assume full responsibility for the defense of, any Claim; *provided, however,* that any Indemnified Person named in such Claim may retain separate counsel reasonably acceptable to the Lessee at the expense of the Lessee in the event of and to the extent of an actual conflict. The Lessee and each Indemnified Person agree to give each other prompt written notice of any Claim hereby indemnified against but the giving of any such notice by an Indemnified Person shall not be a condition to the Lessee's obligations under this Section 12.1, except to the extent failure to give such notice materially prejudices the Lessee's rights hereunder. After an Indemnified Person has been fully indemnified for a Claim pursuant to this Section 12.1, and so long as no Event of Default shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person with respect to such Claim. None of the Indemnified Persons shall settle a Claim without the consent of the Lessee, which consent shall not be unreasonably withheld or delayed.
2. **General Impositions Indemnity.**
 - a. **Indemnification.** The Lessee shall pay and assume liability for, and does hereby agree to indemnify, protect and defend the Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis.
 - b. **Payments.**
 - i. Subject to the terms of Section 12.2(f), the Lessee shall pay or cause to be paid all Impositions directly to the taxing authorities where feasible and otherwise to the Indemnified Person, as appropriate, and the Lessee shall at its own expense, upon such Indemnified Person's reasonable request, furnish to such Indemnified Person copies of official receipts or other satisfactory proof evidencing such payment.
 - ii. In the case of Impositions for which no contest is conducted pursuant to Section 12.2(f) and which the Lessee pays directly to the taxing authorities, the Lessee shall pay such Impositions thirty (30) days prior to the latest

time permitted by the relevant taxing authority for timely payment. In the case of Impositions for which the Lessee reimburses an Indemnified Person, the Lessee shall do so within twenty (20) days after receipt by the Lessee of demand by such Indemnified Person describing in reasonable detail the nature of the Imposition and the basis for the demand (including the computation of the amount payable), but in no event shall the Lessee be required to pay such reimbursement prior to thirty (30) days before the latest time permitted by the relevant taxing authority for timely payment. In the case of Impositions for which a contest is conducted pursuant to Section 12.2(f), the Lessee shall pay such Impositions or reimburse such Indemnified Person for such Impositions, to the extent not previously paid or reimbursed pursuant to subsection (a), thirty (30) days prior to the latest time permitted by the relevant taxing authority for timely payment after conclusion of all contests under Section 12.2(f).

- iii. Impositions imposed with respect to the Property for a billing period during which the Lease expires or terminates (unless a Renewal Term is to apply or the Lessee has exercised the Purchase Option or the Maturity Date Purchase Option with respect to the Property) shall be adjusted and prorated on a daily basis between the Lessee and the Lessor, whether or not such Imposition is imposed before or after such expiration or termination and each party shall pay or reimburse the other for each party's *pro rata* share thereof.
 - iv. At the Lessee's request, the amount of any indemnification payment by the Lessee pursuant to subsection (a) shall be verified and certified by an independent public accounting firm mutually acceptable to the Lessee and the Indemnified Person. The fees and expenses of such independent public accounting firm shall be paid by the Lessee unless such verification shall result in an adjustment in the Lessee's favor of 10% or more of the payment as computed by the Indemnified Person, in which case such fee shall be paid by the Indemnified Person.
- a. **Reports and Returns.** (i) The Lessee shall be responsible for preparing and filing any real and personal property or ad valorem tax returns in respect of the Property. In case any other report or tax return shall be required to be made with respect to any obligations of the Lessee under or arising out of subsection (a) and of which the Lessee has knowledge or should have knowledge, the Lessee, at its sole cost and expense, shall notify the relevant Indemnified Person of such requirement and (except if such Indemnified Person notifies the Lessee that such Indemnified Person intends to file such report or return) (A) to the extent required or permitted by and consistent with applicable law, make and file in its own name such return, statement or report; and (B) in the case of any other such return, statement or report required to be made in the name of such Indemnified Person, advise such Indemnified Person of such fact and prepare such return, statement or report for filing by such Indemnified Person or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Lessee under or arising out of subsection (a), provide such Indemnified Person at the Lessee's expense with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Lessee under or arising out of subsection (a). Such Indemnified Person shall, upon the Lessee's request and at the Lessee's expense, provide any data maintained by such Indemnified Person (and not otherwise available to or within the control of the Lessee) with respect to the Property which the Lessee may reasonably require to prepare any required tax returns or reports. Each Indemnified Person agrees to use commercially reasonable efforts to send to the Lessee a copy of any written request or other notice that the Indemnified Person receives with respect to any reports or returns required to be filed with respect to the Property or the transactions contemplated by the Operative Agreements, it being understood that no Indemnified Person shall have any liability for failure to provide such copies.
 - b. **Income Inclusions.** If as a result of the payment or reimbursement by the Lessee of any expenses of any Lessor or the payment of any Transaction Expenses incurred in connection with the transactions contemplated by the Operative Agreements, the Lessor or any Lender shall suffer a net increase in any federal, state or local income tax liability, the Lessee shall indemnify such Persons (without duplication of any indemnification required by subsection (a)) on an After Tax Basis for the amount of such increase. The calculation of any such net increase shall take into account any current or future tax savings realized or reasonably expected to be realized by such person in respect thereof, as well as any interest, penalties and additions to tax payable by the Lessor, the Lender or such Affiliate, in respect thereof.
 - c. **Withholding Taxes.** As between the Lessee on one hand, and any Financing Party on the other hand, the Lessee shall be responsible for, and, subject to the provisions of Sections 12.2(g) and (h), the Lessee shall indemnify and hold harmless the Financing Parties (without duplication of any indemnification required by subsection (a)) on an After Tax Basis against, any obligation for United States or foreign withholding taxes imposed in respect of payments with respect to the Lender Advances or the Lessor Contribution or with respect to Rent payments under the Lease or payments of the Termination Value or the Purchase Option Price (and, if any Financing Party receives a demand for such payment from any taxing authority, the Lessee shall discharge such demand on behalf of such Financing Party).
- d. **Contests of Impositions.**
 - i. If a written claim is made against any Indemnified Person or if any proceeding shall be commenced against such Indemnified Person (including a written notice of such proceeding), for any Impositions, such Indemnified Person shall promptly notify the Lessee in writing and shall not take action with respect to such claim or proceeding without the consent of the Lessee for thirty (30) days after the receipt of such notice by the Lessee; *provided, however*, that, in the case of any such claim or proceeding, if action shall be required by law or regulation to be taken prior to the end of such 30-day period, such Indemnified Person shall, in such notice to the Lessee, inform the Lessee of such shorter period, and no action shall be taken with respect to such claim or proceeding without the consent of the Lessee before two days before the end of such shorter period; *provided, further*, that the failure of such Indemnified Person to give the notices referred to in this sentence shall not diminish the Lessee's obligation hereunder except to the extent such failure precludes the Lessee from contesting all or part of such claim.
 - ii. If, within thirty (30) days of receipt after such notice from the Indemnified Person (or such shorter period as the Indemnified Person has notified the Lessee as required by law or regulation for the Indemnified Person to commence such contest), the Lessee shall request in writing that such Indemnified Person contest such

Imposition, the Indemnified Person shall, at the expense of the Lessee, in good faith conduct and control such contest (including, without limitation, by pursuit of appeals) relating to the validity, applicability or amount of such Impositions (*provided, however,* that (A) if such contest involves a tax other than a tax on net income and can be pursued independently from any other proceeding involving a tax liability of such Indemnified Person, the Indemnified Person, at the Lessee's request, shall allow the Lessee to conduct and control such contest and (B) in the case of any contest, the Indemnified Person may request the Lessee to conduct and control such contest) by, in the sole discretion of the Person conducting and controlling such contest, (1) resisting payment thereof, (2) not paying the same except under protest, if protest is necessary and proper, or (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings.

- iii. The party controlling any contest shall consult in good faith with the non-controlling party and shall keep the non-controlling party reasonably informed as to the conduct of such contest; *provided,* that all decisions ultimately shall be made in the sole discretion of the controlling party. The parties agree that an Indemnified Person may at any time decline to take further action with respect to the contest of any Imposition and may settle such contest if such Indemnified Person shall waive its rights to any indemnity from the Lessee that otherwise would be payable in respect of such claim and shall pay to the Lessee any amount previously paid or advanced by the Lessee pursuant to this Section 12.2 by way of indemnification or advance for the payment of an Imposition other than expenses of such contest.
 - iv. Notwithstanding the foregoing provisions of this Section 12.2, an Indemnified Person shall not be required to take any action and the Lessee shall not be permitted to contest any Impositions in its own name or that of the Indemnified Person unless (A) the Lessee shall have agreed to pay in writing and shall pay to such Indemnified Person on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnified Person actually incurs in connection with contesting such Impositions, including, without limitation, all reasonable legal, accounting and investigatory fees and disbursements and the contested claim if ultimately required to be paid, (B) in the case of a claim that must be pursued in the name of an Indemnified Person (or an Affiliate thereof), the amount of the potential indemnity exceeds \$50,000, (C) the Indemnified Person shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of the Property or the Pledged Collateral, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability, (D) if such contest shall involve the payment of the Imposition prior to the contest, the Lessee shall provide to the Indemnified Person an interest-free advance in an amount equal to the Imposition that the Indemnified Person is required to pay (with no additional net after-tax cost to such Indemnified Person), (E) the Lessee shall have provided to such Indemnified Person an opinion of independent tax counsel selected by the Lessee and reasonably satisfactory to the Indemnified Person stating that a reasonable basis exists to contest such claim (or, in the case of an appeal of an adverse determination, an opinion of such counsel to the effect that the position asserted in such appeal will more likely than not prevail), and (F) no Event of Default shall have occurred and be continuing. In no event shall an Indemnified Person be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnified Person shall not be required to contest any claim in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 12.2, unless there shall have been a change in law (or interpretation thereof) and the Indemnified Person shall have received, at the Lessee's expense, an opinion of independent tax counsel selected by the Indemnified Person and reasonably acceptable to the Lessee stating that as a result of such change in law (or interpretation thereof), it is more likely than not that the Indemnified Person will prevail in such contest.
- a. **Documentation of Withholding Status.** Each Financing Party (or any successor thereto or transferee thereof) that is organized under the laws of a jurisdiction outside of the United States of America shall:
- i. on or before the date it becomes a party to any Operative Agreement, deliver to the Lessee any certificates, documents or other evidence that shall be required by the Code or Treasury Regulations issued pursuant thereto to establish its exemption from United States Federal withholding requirements, including (A) two (2) valid, duly completed, original copies of Internal Revenue Service Form W-8BEN or successor applicable form, properly and duly executed, certifying in each case that such party is entitled to receive payments pursuant to the Operative Agreements without deduction or withholding of United States Federal income taxes, and (B) a valid, duly completed, original copy of Internal Revenue Service Form W-8 or Form W-9 or applicable successor form, properly and duly executed, certifying that such party is entitled to an exemption from United States of America backup withholding tax; and
 - ii. or before the date that any such form described above expires or becomes obsolete, or after the occurrence of any event requiring a change in the most recent such form previously delivered to the Lessee, deliver to the Lessee two (2) further valid, duly completed, original copies of any such form or certification, properly and duly executed.
- a. **Limitation on Tax Indemnification.** The Lessee shall not be required to indemnify any Indemnified Person, or to pay any increased amounts to any Indemnified Person or tax authority with respect to any Impositions pursuant to this Section 12.2 to the extent that (i) any obligation to withhold, deduct, or pay amounts with respect to Tax existed on the date such Indemnified Person became a party to any Operative Agreement (and, in such case, the Lessee may deduct and withhold such Tax from payments pursuant to the Operative Agreements), or (ii) such Indemnified Person fails to comply with the provisions of Section 12.2(g) (and, in such case, the Lessee may deduct and withhold all Taxes required by law as a result of such noncompliance from payments made by the Lessee pursuant to the Operative Agreements). With respect to any transferee of any Financing Party (including a transfer resulting from any change in the designation of the lending office of a Financing Party), the transferee shall not be entitled to any greater payment or indemnification under this Section 12.2 than the transferor would have been entitled to.

1. **LIBOR Lending Unlawful.** Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof occurring after the Closing Date shall make it unlawful for any Financing Party to make, continue or maintain LIBOR Loans or LIBOR Holder Advances as contemplated by the Operative Agreements, (a) such Financing Party shall promptly give written notice of such circumstances to the Lessee, the Lessor and the Agent (which notice shall be withdrawn whenever such circumstances no longer exist), (b) such Financing Party shall undertake reasonable efforts to propose a money rate comparable to LIBOR (the "*LIBOR Alternative*"), (c) the commitment of such Lender or Holder, as the case may be, hereunder to make, continue or maintain LIBOR Loans or LIBOR Holder Advances shall forthwith be canceled and, until such time as it shall no longer be unlawful for such Financing Party to make, continue or maintain LIBOR Loans or LIBOR Holder Advances, such Financing Party shall then have a commitment only to make or maintain Loans or the Holder Advances based on ABR or the LIBOR Alternative, if any, when a LIBOR Loan or LIBOR Holder Advance is requested and (d) such Financing Party's Loans and Holder Advances then outstanding as LIBOR Loans or LIBOR Holder Advances, if any, shall be converted automatically to Loans or Holder Advances based on ABR or the LIBOR Alternative, if any, on the respective last days of the then current Interest Periods with respect to such Loans and Holder Advances or within such earlier period as required by law. If any such conversion of LIBOR Loans or LIBOR Holder Advances occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Lessee shall pay to such Financing Party such amounts, if any, as may be required pursuant to Section 12.6. In any such case, interest and principal (if any) shall be payable contemporaneously with the related LIBOR Loans or LIBOR Holder Advances of the other Financing Parties.
2. **Deposits Unavailable.** If any of the Financing Parties shall have determined that:
 - a. Dollar deposits in the relevant amount and for the relevant Interest Period are not available to the Financing Party in its relevant market; or
 - b. by reason of circumstances affecting the Financing Party's relevant market, adequate means do not exist for ascertaining the interest rate or Yield, as the case may be, applicable to such Financing Party's LIBOR Loans or LIBOR Holder Advances;

then, upon notice from such Financing Party to the Lessee and the other Financing Parties, (x) the obligations of the Financing Parties to make or continue any Loans or the Holder Advances as, or to convert any Loans or the Holder Advance into, LIBOR Loans or LIBOR Holder Advances shall be suspended, and (y) each outstanding LIBOR Loan or LIBOR Holder Advance shall automatically convert into a Loan or Holder Advance based on ABR or the LIBOR Alternative, if any, on the last day of the current Interest Period applicable thereto.

3. **Increased Costs, etc.**

- a. If the adoption of or any change in a Requirement of Law or in the interpretation or application thereof applicable to any Financing Party, or compliance by any Financing Party with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case made subsequent to the Closing Date (or, if later, the date on which such Financing Party becomes a Financing Party):
 - i. shall subject such Financing Party to any tax of any kind whatsoever with respect to any LIBOR Loans or LIBOR Holder Advances made, continued or maintained by it or its obligation to make, continue or maintain LIBOR Loans or LIBOR Holder Advances, or change the basis of taxation of payments to such Financing Party in respect thereof; or
 - ii. shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, Loans and the Holder Advances, advances or other extensions of credit by, or any other acquisition of funds by, any office of such Financing Party which is not otherwise included in the determination of the Adjusted LIBOR hereunder; or
 - iii. shall impose on such Financing Party any other condition (excluding any Tax of any kind) whatsoever in connection with the Operative Agreements;

and the result of any of the foregoing is to increase the cost to such Financing Party, by an amount which such Financing Party reasonably deems to be material, of making, continuing or maintaining LIBOR Advances or LIBOR Holder Advances or to reduce any amount receivable hereunder in respect thereof, then, in any such case, upon notice to the Lessee from such Financing Party, through the Lessor or the Agent, in accordance herewith, the Lessee shall pay such Financing Party any additional amounts necessary to compensate such Financing Party for such increased cost or reduced amount receivable; *provided*, that, in any such case, the Lessee may elect to convert the LIBOR Loans or LIBOR Holder Advances made by such Financing Party hereunder to Loans or Holder Advances based on ABR or the LIBOR Alternative, if any, by giving the Lessor and the Agent at least one (1) Business Day's notice of such election, in which case the Lessee shall promptly pay to such Financing Party, upon demand, without duplication, such amounts, if any, as may be required pursuant to Section 12.6. All payments required by this Section 12.5 shall be made by the Lessee within ten (10) Business Days after demand by the affected Financing Party. The Lessee shall not be obligated to reimburse any Financing Party for any increased cost or reduced return incurred more than one hundred eighty (180) days after the date that such Financing Party receives actual notice of such increased cost or reduced return unless such Financing Party gives notice thereof to the Lessee in accordance with this Section 12.5 during such one hundred eighty (180) day period. If any Financing Party becomes entitled to claim any additional amounts pursuant to this subsection, it shall provide prompt notice thereof to the Lessee, through the Lessor and Agent, certifying (x) that one of the events described in this clause (a) has occurred and describing in reasonable detail the nature of such event, (y) as to the increased cost or reduced amount resulting from such event, and (z) as to the additional amount demanded by such Financing Party and a reasonably detailed explanation of the calculation thereof (including the method by which such Financing Party allocated such amounts to the Lessee). Such a certificate as to any additional amounts payable pursuant to this clause submitted by such Financing Party, through the Agent and the Lessor, to the Lessee shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Loans and the Holder Advance and all other amounts payable hereunder.

- a. Each Financing Party shall use its reasonable efforts to reduce or eliminate any claim for compensation pursuant to this Section 12.5, including, without limitation, a change in the office of such Financing Party at which its obligations related to this Agreement are maintained if such change will avoid the need for or reduce the amount of, such compensation and will not, in the reasonable judgment of such Financing Party, be otherwise disadvantageous to it. If any such claim for compensation shall not be eliminated or waived, the Lessee shall have the right to replace the affected Financing Party with a

new financial institution that shall succeed to the rights of such Financing Party under this Participation Agreement; *provided*, that such Financing Party shall not be replaced hereunder until it has been paid in full such claim and all other amounts owed to it hereunder.

1. **Indemnifications Provided by the Lessor in Favor of the Other Indemnified Persons.** To the extent the Indemnity Provider is not obligated to indemnify each Indemnified Person with respect to the various matters described in this Section 12, the Lessor shall provide such indemnities (but only to the extent amounts sufficient to pay such indemnity are funded by the Lenders and the Holders) in favor of each Indemnified Person in accordance with this Section 12.6 and shall pay all such amounts owed with respect to this Section 12.6 with amounts advanced by the Lenders and the Holders (a) to the extent, but only to the extent, amounts are available therefor with respect to the Available Commitments and the Available Holder Commitments and (b) unless each Lender and each Holder has declined in writing to fund such amount. Notwithstanding any other provision in any other Operative Agreement to the contrary, all amounts so advanced shall be deemed added to the Property Cost.

Whether or not any of the transactions contemplated hereby shall be consummated, the Trust hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against any Claims, which may be imposed on, incurred by or asserted against an Indemnified Person by any third party, including without limitation Claims arising from the negligence of an Indemnified Person (but not to the extent such Claims arise from the gross negligence or willful misconduct of such Indemnified Person itself, as determined by a court of competent jurisdiction, as opposed to gross negligence or willful misconduct imputed to such Indemnified Person or breach of such Indemnified Person's obligations under this Agreement, the Lease or any other Operative Agreement) in any way relating to or arising or alleged to arise out of the execution, delivery, performance or enforcement of this Agreement, the Lease or any other Operative Agreement or on or with respect to any Property or any component thereof, including without limitation Claims in any way relating to or arising or alleged to arise out of the matters set forth in Sections 12.1(a) through 12.1(i).

The Trust shall pay and assume liability for, and does hereby agree to indemnify, protect and defend each Property and all Indemnified Persons, and hold them harmless against, all Impositions on an After Tax Basis, and all payments pursuant to the Operative Agreements shall be made free and clear of and without deduction for any and all present and future Impositions. Notwithstanding anything to the contrary in this paragraph, the Excluded Taxes shall be excluded from the indemnity provisions afforded by this paragraph.

1. DISTRIBUTION

1. **Basic Rent.** Each payment of Basic Rent (and any payment of interest on overdue installments of Basic Rent) received by the Lessor shall be distributed by the Agent first to the Lenders *pro rata* for application to the interest then due and payable on the Loans until such amounts are paid in full, and then to the Lessor in an amount equal to the Holder Yield then due and payable under the Operative Agreements.
2. **Purchase Payments by the Lessee.** Any payment received by the Lessor as a result of:
 - a. the purchase of the Property in connection with the exercise of the Purchase Option or Maturity Date Purchase Option under Section 20.1 or 20.2 of the Lease; or
 - b. compliance with the obligation to purchase the Property in accordance with Section 17.2 of the Lease; or
 - c. the payment of the Termination Value in accordance with Section 16.1 of the Lease;

shall be distributed by the Lessor to the Lessor and the Lenders in the following order of priority:

First, to the Lenders, *pro rata*, to pay the Lease Balance Debt; and

Second, to the Lessor to pay the Lease Balance Equity.

3. **Payment of Lease Balance Debt.** In accordance with Section 21.1 of the Lease upon the exercise of the remarketing option, the payment of the Maximum Residual Guarantee Amount received by the Lessor shall be distributed to the Agent on behalf of the Lenders for application to pay in full the Lease Balance Debt of each Lender, *pro rata* among the Lenders without priority of one over the other in the proportion that the Lease Balance Debt of each such Lender bears to the aggregate Lease Balance Debt of all Lenders.
4. **Sales Proceeds of Remarketing of Property.** Any payments received by the Lessor as proceeds from the sale of the Property sold pursuant to the exercise of the remarketing option pursuant to Article 21 of the Lease, together with any payment made as a result of an appraisal pursuant to Section 21.3 of the Lease, shall be distributed by the Lessor in the funds so received in the following order of priority:
 - First, to cover the costs and expenses of such sale;
 - Second, to the extent not previously paid as required by Section 13.3 hereof, an amount equal to the amount of the Lease Balance Debt remaining unpaid shall be distributed to the Lenders, *pro rata*, as set forth in Section 13.3;
 - Third, an amount equal to the aggregate Lease Balance Equity shall be distributed to the Holders, *pro rata*; and
 - Fourth, the balance, if any, shall be promptly paid to the Lessee.
5. **Supplemental Rent.** All payments of Supplemental Rent received by the Lessor (excluding any amounts payable pursuant to the preceding provisions of this Section 13) shall be distributed promptly by the Lessor upon receipt thereof to the Persons entitled thereto pursuant to the Operative Agreements.
6. **Distribution of Payments after Event of Default.**
 - a. During the continuance of an Event of Default and subject to clause (b) below, all proceeds received by the Lessor from the sale of the Property shall be distributed by the Lessor in the following order of priority:

First, so much of such payment or amount as shall be required to pay or reimburse the Lessor and the Agent for any tax, fees, expense, indemnification or other loss incurred by the Lessor or the Agent (to the extent incurred in connection with any duties as the Lessor or as the Agent), shall be distributed to the Lessor for its own account and that of the Agent in accordance with the amount of such payment or amount payable to such Person;

Second, so much of such payments or amounts as shall be required to pay the Financing Parties and the Lessor the amounts payable to them pursuant to any expense reimbursement or indemnification provisions of the Operative Agreements shall be distributed to each such Financing Party and the Lessor without priority of one over the other in accordance with the amount of such payment or payments payable to each such Person;

Third, to the Lenders for application to pay in full the Lease Balance Debt, *pro rata* among the Lenders without priority of one over the other in the proportion that the Lease Balance Debt of each such Lender bears to the aggregate Lease Balance Debt of all Lenders and, in the case where the amounts so distributed shall be insufficient to pay in full as aforesaid, then *pro rata* among the Lenders without priority of one over the other in the proportion that the Lease Balance Debt of each such Lender bears to the aggregate Lease Balance Debt of all Lenders;

Fourth, to the Lessor in an amount equal to the aggregate Lease Balance Equity for application to pay in full the Lease Balance Equity; 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. All payments received and amounts realized by the Lessor in connection with any Casualty or Condemnation during the continuance of an Event of Default shall be distributed by the Lessor as follows:
 - i. in the event that the Lessor elects to pay all or a portion of such amounts to the Lessee for the repair of damage caused by such Casualty or Condemnation, then such amounts shall be distributed to the Lessee; and
 - ii. in the event that the Lessor elects to apply all or a portion of such amounts to the purchase price of the Property, then such amounts shall be distributed in accordance with clause (a) above.

1. Other Payments.

- a. Except as otherwise provided in Sections 13.1, 13.2, 13.6 and clause (b) below, any payment received by the Lessor for which no provision as to the application thereof is made in the Operative Agreements or elsewhere in this Section 13 (including any balance remaining after the application in full of amounts to satisfy any expressed provision) shall be distributed *pro rata* among the Lenders and the Lessor for the Holders without priority of one over the other, in the proportion that the Lease Balances of each, as applicable, bears to the aggregate of all the Lease Balances, as applicable.
 - b. Except as otherwise provided in Sections 13.1, 13.2 and 13.6, all payments received and amounts realized by the Lessor under the Lease or otherwise with respect to the Property to the extent received or realized at any time after the indefeasible payment in full of the Lease Balances of all of the Lenders and the Holders and any other amounts due and owing to the Lenders or the Holders, shall be distributed forthwith by the Lessor, in the order of priority set forth in Section 13.6(a).
 - c. Except as otherwise provided in Sections 13.1 and 13.2, any payment received by the Lessor for which provisions as to the application thereof is made in an Operative Agreement but not elsewhere in this Section 13 shall be distributed forthwith by the Lessor to the Person and for the purpose for which such payment was made in accordance with the terms of such Operative Agreement.
2. **Casualty and Condemnation Amounts.** Subject to Section 13.6(b), any amounts payable to and received by the Lessor as a result of a Casualty or Condemnation pursuant to Section 15.1 of the Lease shall be distributed as follows:
- a. all amounts payable to and received by the Lessee for the repair of damage caused by such Casualty or Condemnation in accordance with Section 15.1(a) of the Lease shall be distributed to the Lessee; and
 - b. all amounts that are to be applied to the purchase price of the Property in accordance with Article 16 of the Lease shall be distributed by the Lessor upon receipt thereof to the Lenders and the Lessor in the following order of priority:

First, to the Lenders, *pro rata*, to pay the Lease Balance Debt; and

Second, to the Lessor to pay the Lease Balance Equity.

3. **Order of Application.** To the extent any payment made to any Lender or the Lessor for any Holder pursuant to Sections 13.2, 13.3, 13.4, 13.6 or 13.7 is insufficient to pay in full the Lease Balance of such Lender or Holder, then each such payment shall first be applied to accrued interest and then to principal on the Loans or the Holder Advances, as applicable.

1. MISCELLANEOUS.

1. **Survival of Agreements.** The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Agreements, and the parties' obligations under any and all thereof, shall survive the execution and delivery of this Agreement, the transfer of any Property to the Trust, the acquisition of the Property, any disposition of any interest of the Trust in the Property or any interest of the Holders in the Trust Estate, the payment of the Notes and any disposition thereof and shall be and continue in effect notwithstanding any investigation made by any party and the fact that any party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Agreements. Except as otherwise expressly set forth herein or in other Operative Agreements, the indemnities of the parties provided for in the Operative Agreements shall survive the expiration or termination of any thereof.
2. **Notices.** All notices required or permitted to be given under any Operative Agreement shall be in writing. Notices may be served by

certified or registered mail, postage paid with return receipt requested; by private courier, prepaid; by telex, facsimile, or other telecommunication device capable of transmitting or creating a written record; or personally. Mailed notices shall be deemed delivered five (5) days after mailing, properly addressed. Couriered notices shall be deemed delivered when delivered as addressed, or if the addressee refuses delivery, when presented for delivery notwithstanding such refusal. Telex or telecommunicated notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties at the following addresses:

If to the Lessee or the Guarantor, to such entity at the following address:

Lam Research Corporation

4650 Cushing Parkway

Fremont, CA 94538

Attention: Craig Garber, Treasurer

Telephone: (510) 572-1875

Facsimile: (510) 572-1586

If to the Trust, to it at the following address:

c/o Wilmington Trust Company

Rodney Square North

1100 North Market Street

Wilmington, DE 19890-0001

Attention: Corporate Trust Officer

Telephone: (302) 651-8856

Facsimile: (302) 651-8882

If to Wilmington Trust Company, to it at the following address:

Rodney Square North

1100 North Market Street

Wilmington, DE 19890-0001

Attention: Corporate Trust Administration

Telephone: (302) 651-8856

Facsimile: (302) 651-8882

If to Wilmington Trust FSB, to it at the following address:

100 Wilshire Boulevard, Suite 1230

Santa Monica, CA 90401

Attention: Daniel Reser, Vice President

Telephone: (310) 899-7022

Facsimile: (310) 899-7005

If to the Holder, to it at the following address:

Scotiabanc Inc.

600 Peachtree Street, Suite 2700

Atlanta, GA 30308

Attention: William Brown, Managing Director

Telephone: (404) 877-1501

Facsimile: (404) 888-8998

If to the Agent, to it at the following address:

The Bank of Nova Scotia
580 California Street, Suite 2100
San Francisco, CA 94104
Attention: Chris Osborn
Telephone: (415) 986-1100
Facsimile: (415) 397-0791

If to any Lender, to it at the address set forth for such Lender in Schedule 2.1 of the Credit Agreement.

From time to time any party may designate additional parties and/or another address for notice purposes by notice to each of the other parties hereto. Each notice hereunder shall be effective upon receipt or refusal thereof.

3. **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 instrument.
4. **Terminations, Amendments, Waivers, Etc.; Unanimous Vote Matters.** Each Operative Agreement may be terminated, amended, supplemented, waived or modified only by an instrument in writing signed by, subject to Article X of the Trust Agreement regarding termination of the Trust Agreement, the Majority Secured Parties and the Lessee (to the extent Lessee is a party to such Operative Agreement, and to the extent Lessee is not a party to such Operative Agreement but is expressly accorded rights in a particular provision therein, such provision may be terminated, amended, supplemented, waived or modified only by an instrument in writing signed by the Majority Secured Parties and Lessee). In addition, the Unanimous Vote Matters shall require the consent of each Lender and each Holder affected by such matter.

Notwithstanding the foregoing, no such termination, amendment, supplement, waiver or modification shall, without the consent of the Agent and, to the extent affected thereby, each Lender and each Holder (collectively, the "Unanimous Vote Matters") (i) reduce the amount of any Note or any Certificate, extend the scheduled date of maturity of any Note, extend the scheduled Expiration Date, extend any payment date of any Note or Certificate, reduce the stated rate of interest payable on any Note, reduce the stated Holder Yield payable on any Certificate (other than as a result of waiving the applicability of any post- default increase in interest rates or Holder Yields), modify the priority of or release any Lien in favor of the Agent under any Security Document, subordinate any obligation owed to any Lender or Holder, elect to decline the funding of any Transaction Expense with respect to Sections 8.1(a) or 8.1(b), elect to decline the funding of any indemnity payment by the Trust with respect to Section 12.8 or increase the amount or extend the expiration date of any Lender's Commitment or the Holder Commitment of any Holder; or (ii) terminate, amend, supplement, waive or modify any provision of this Section 14.4 or reduce the percentages specified in the definitions of Majority Lenders, Majority Holders or Majority Secured Parties, or consent to the assignment or transfer by the Trust of any of its rights and obligations under any Credit Document or release a material portion of the Collateral (except in accordance with Section 9.5) or release Lessee from its obligations under any Operative Agreement or otherwise alter any payment obligations of Lessee to the Lessor or any Financing Party under the Operative Agreements; or (iii) terminate, amend, supplement, waive or modify any provision of Section 9.1 of the Credit Agreement (which shall also require the consent of the Agent). Any such termination, amendment, supplement, waiver or modification shall apply equally to each of the Lenders and the Holders and shall be binding upon all the parties to this Agreement. In the case of any waiver, each party to this Agreement shall be restored to its former position and rights under the Operative Agreements, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

If at a time when the conditions precedent set forth in the Operative Agreements to any Loan are, in the opinion of the Agent, satisfied, any Lender shall fail to fulfill its obligations to make such Loan (any such Lender, a "Defaulting Lender") then, for so long as such failure shall continue, the Defaulting Lender shall (unless the Lessee and the Majority Lenders, determined as if the Defaulting Lender were not a "Lender," shall otherwise consent in writing) be deemed for all purposes relating to terminations, amendments, supplements, waivers or modifications under the Operative Agreements to have no Loans, shall not be treated as a "Lender" when performing the computation of Majority Lenders or Majority Secured Parties, and shall have no rights under this Section 14.4; provided that any action taken pursuant to the second paragraph of this Section 14.4 shall not be effective as against the Defaulting Lender.

If at a time when the conditions precedent set forth in the Operative Agreements to any Holder Advance are, in the opinion of the Majority Holders, satisfied, any Holder shall fail to fulfill its obligations to make such Holder Advance (any such Holder, a "Defaulting Holder") then, for so long as such failure shall continue, the Defaulting Holder shall (unless the Lessee and the Majority Holders, determined as if the Defaulting Holder were not a "Holder," shall otherwise consent in writing) be deemed for all purposes relating to terminations, amendments, supplements, waivers or modifications under the Operative Agreements to have no Holder Advances, shall not be treated as a "Holder" when performing the computation of Majority Holders or Majority Secured Parties, and shall have no rights under this Section 14.4; provided that any action taken pursuant to the second paragraph of this Section 14.4 shall not be effective as against the Defaulting Holder.

5. **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.
6. **Parties in Interest.** Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any Person except the parties hereto.
7. **GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL; VENUE.**
 - a. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. Any legal action or proceeding with respect to this Agreement or any other Operative Agreement may be brought in

the courts of the State of New York in the City of New York or of the United States for the Southern District of New York, and, by execution and delivery of this Agreement, each of the parties to this Agreement hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of such courts. Each of the parties to this Agreement further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address set out for notices pursuant to Section 14.2, such service to become effective three (3) days after such mailing. Nothing herein shall affect the right of any party to serve process in any other manner permitted by Law or to commence legal proceedings or to otherwise proceed against any party in any other jurisdiction.

- b. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, ANY OTHER OPERATIVE AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.
- c. Each of the parties to this Agreement hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Operative Agreement brought in the courts referred to in subsection (a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.
- d. The Agent on behalf of the Lenders and the Holders shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale granted under any Operative Agreement or under applicable Law or by judicial foreclosure and sale, including without limitation a proceeding to confirm the sale; (ii) all rights of self-help including without limitation peaceful occupation of real property and collection of rents, set-off and peaceful possession of personal property; (iii) obtaining provisional or ancillary remedies including without limitation injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding; and (iv) when applicable, a judgment by confession of judgment. Preservation of these remedies does not limit the power of an arbitrator to grant similar remedies that may be requested by a party in a Dispute.

The parties to this Agreement and/or any other Operative Agreement agree that they shall not have a remedy of special, punitive or exemplary damages against any other party in any Dispute and hereby waive any right or claim to special, punitive or exemplary damages they have now or which may arise in the future in connection with any Dispute.

8. **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.
9. **Liability Limited.**
 - a. The Lenders, the Agent, the Lessee, the Trust Companies, the Trust and the Holders each acknowledge and agree that the Trust Companies shall not be liable or accountable under any circumstances whatsoever for or on account of any statements, representations, warranties, covenants or obligations stated to be those of the Trust, Borrower or Lessor except for their own gross negligence or willful misconduct and as otherwise expressly provided herein or in the other Operative Agreements.
 - b. Anything to the contrary contained in this Agreement, the Credit Agreement, the Notes or in any other Operative Agreement notwithstanding, no Exculpated Person shall be personally liable in any respect for any liability or obligation arising hereunder or in any other Operative Agreement including without limitation the payment of the principal of, or interest on, the Notes, or for monetary damages for the breach of performance of any of the covenants contained in the Credit Agreement, the Notes, this Agreement, the Security Documents or any of the other Operative Agreements. The Lenders, the Holders and the Agent agree that, in the event any remedies under any Operative Agreement are pursued, neither the Lenders, the Holders nor the Agent shall have any recourse against any Exculpated Person, for any deficiency, loss or Claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively against the Trust Estate (excluding Excepted Payments) and the Lessee and the Guarantor (with respect to the Lessee's obligations under the Operative Agreements and the Guarantor's obligations under Section 9.6 hereof); but nothing contained herein shall be taken to prevent recourse against or the enforcement of remedies against the Trust Estate (excluding Excepted Payments) in respect of any and all liabilities, obligations and undertakings contained herein and/or in any other Operative Agreement. Notwithstanding the provisions of this Section, nothing in any Operative Agreement shall: (i) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes and/or the Certificates arising under any Operative Agreement or secured by any Operative Agreement, but the same shall continue until paid or discharged; (ii) relieve any Exculpated Person from liability and responsibility for (but only to the extent of the damages arising by reason of): active waste knowingly committed by any Exculpated Person with respect to any Property, any fraud, gross negligence or willful misconduct on the part of any Exculpated Person; (iii) relieve any Exculpated Person from liability and responsibility for (but only to the extent of the moneys misappropriated, misapplied or not turned over) (A) except for Excepted Payments, misappropriation or misapplication by the Lessor (i.e., application in a manner contrary to any of the Operative Agreements) of any insurance proceeds or condemnation award paid or delivered to the Lessor by any Person other than the Agent, or (B) except for Excepted Payments, any rent or other income received by the Lessor from Lessee that is not turned over to the Agent; or (iv) affect or in any way limit the Agent's rights and remedies under any Operative Agreement with respect to the Rents and rights and powers of the Agent under the Operative Agreements or to obtain a judgment against the Lessee's interest in the Properties or the Agent's rights and powers to obtain a judgment against the Lessor or the Lessee or Guarantor (provided, that no deficiency judgment or other money judgment shall be enforced against any Exculpated Person except to the extent of the Lessor's interest in the Trust Estate (excluding Excepted Payments) or to the extent the Lessor may be liable as otherwise contemplated in clauses (ii) and (iii) of this Section 14.9(b)).
10. **Rights of the Lessee.** If at any time all obligations (i) of the Borrower under the Credit Agreement, the Security Documents and the other Operative Agreements and (ii) of the Lessee under the Operative Agreements have in each case been satisfied or discharged in full, then the Lessee shall be entitled to (a) terminate the Lease and the Guaranty and (b) receive all amounts then held under the

Operative Agreements and all proceeds with respect to the Property. Upon the termination of the Lease and Guaranty pursuant to the foregoing clause (a), the Trust shall transfer to the Lessee all of its right, title and interest free and clear of the Lien of the Lease, the Lien of the Security Documents and all Lessor Liens in and to the Property then subject to the Lease and any amounts or proceeds referred to in the foregoing clause (b) shall be paid over to the Lessee.

11. **Further Assurances.** The parties hereto shall promptly cause to be taken, executed, acknowledged or delivered, at the sole expense of the Lessee, all such further acts, conveyances, documents and assurances as the other parties may from time to time reasonably request in order to carry out and effectuate the intent and purposes of this Participation Agreement, the other Operative Agreements and the transactions contemplated hereby and thereby (including without limitation the preparation, execution and filing of any and all Uniform Commercial Code financing statements, filings of the Deed of Trust and other filings or registrations which the parties hereto may from time to time request to be filed or effected). The Lessee, at its own expense and without need of any prior request from any other party, shall take such action as may be necessary (including without limitation any action specified in the preceding sentence), or (if the Trust shall so request) as so requested, in order to maintain and protect all security interests provided for hereunder or under any other Operative Agreement. In addition, in connection with the sale or other disposition of any Property or any portion thereof, the Lessee agrees to execute such instruments of conveyance as may be reasonably required in connection therewith.
12. **Financial Reporting/Tax Characterization.** Lessee agrees to obtain advice from its own accountants and tax counsel regarding the financial reporting treatment and the tax characterization of the transactions described in the Operative Agreements. Lessee further agrees that Lessee shall not rely upon any statement of any Financing Party or any of their respective Affiliates and/or Subsidiaries regarding any such financial reporting treatment and/or tax characterization.
13. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

2. RENEWALS.

1. **Extensions of Maturity Date and Expiration Date.** So long as the Lessee has not elected the remarketing option, and no Default or Event of Default shall then exist, the Lessee may, not earlier than one (1) year after the Closing Date and not later than one hundred eighty (180) days prior to the Maturity Date, direct a written request to the Lessor and the Agent that the Expiration Date then in effect under the Lease be extended on terms mutually agreeable to Lessor, Agent, Lenders and Lessee. Any renewal term shall be effective only upon the consent of all Financing Parties and each Financing Party may grant or deny its consent to a renewal of the Lease in its sole discretion.

[The signature pages follow.]

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

Lessee and Guarantor: Lam Research Corporation, a Delaware corporation, as the Lessee and as the Guarantor

By: /s/ Craig Garber

Name: Craig Garber

Title: Vice-President, Corporate Finance and

Treasurer

Trust, Borrower and Lessor: Cushing 2000 Trust, a Delaware business trust

By: Wilmington Trust FSB, a federal savings bank, not in its individual capacity but solely as trustee

By: /s/ Daniel M. Reser

Name: Daniel M. Reser

Title: Vice President

The Agent and the

Lenders: The Bank of Nova Scotia, as a Lender and as the Agent

By: /s/ Chris Osborn

Name: Chris Osborn

Title: Director

Fleet National Bank, as a Lender

By: /s/ Wm Rurodl

Name: Wm Rurodl

Title: MD

The

Holders: Scotiabanc Inc., a Delaware corporation

By: /s/ W.J. Brown

Name: W.J. Brown

Title: Managing Director

With respect to Section 7.1 of the
Participation Agreement only:

The Trust Companies: Wilmington Trust Company, a banking corporation organized
under the laws of the State of Delaware

By: /s/ Joseph B. Feil

Name: Joseph B. Feil

Title: Senior Financial Services Officer

Wilmington Trust FSB, a federal savings bank

By: /s/ Daniel M. Reser

Name: Daniel M. Reser

Title: Vice President

Schedule 2.1

HOLDER COMMITMENTS AND ADDRESSES

Name and Address of Holder Amount of Holder Commitment

Scotiabanc Inc. \$1,200,000 - 100%

600 Peachtree Street, Suite 2700

Atlanta, GA 30308

-

-

Schedule 6.4

AGENT'S PAYMENT ADDRESS

The Bank of Nova Scotia

One Liberty Plaza

New York, NY 10006

Telephone: (404) 877-1500

Facsimile: (404) 888-8998

Attn: Eudia Smith

Schedule 7.3

DISCLOSURE SCHEDULE

1. 4650 Cushing: Lessee recently completed various internal alterations to the building at 4650 Cushing Parkway. The City of Fremont approved the alterations on the condition that the Lessee subsequently complete one or more firewall or other fire suppression measures in order to remain in compliance with the City of Fremont Building Code. The alternatives Lessee is currently evaluating in order to meet City requirements are (1) installation of a deluge system over windows in a firewall that currently exists in the building, (2) installation of drop shutters over such windows and an upgrade of certain existing sprinkler lines, or (3) construction of another "functionally equivalent alternative method" of achieving the same level of fire protection as would be provided by the traditional firewalls under the Building Code.

2. Varian: In October 1993, Varian Associates, Inc. brought suit against Lessee in the United States District Court, Northern District of California, seeking monetary damages and injunctive relief based on Lessee's alleged infringement of certain patents held by Varian. Lessee has asserted defenses of invalidity and unenforceability of the patents that are the subject of the lawsuit, as well as non-infringement of such patents by Lessee's products. A trial date was tentatively scheduled in the action for March 2000; however, it is likely that that date will be re-scheduled pending the outcome of certain motions under consideration by the Court. While litigation is

subject to inherent uncertainties and no assurance can be given that Lessee will prevail in such litigation, or will obtain a license under such patents on commercially reasonable terms or at all if such patents are held valid and infringed by Lessee's products, Lessee believes that the Varian lawsuit will not have a material adverse effect on Lessee's consolidated financial statements.

3. Tegal Corporation: On September 1, 1999, Tegal Corporation brought suit against Lessee in the United States District Court for the Eastern District of Virginia, seeking monetary damages and injunctive relief based on Lessee's alleged infringement of certain patents held by Tegal. Tegal specifically identified Lessee's 4520XL and Exelan products as infringing the asserted patents. By recent court ruling, this action is being transferred to the United States District Court for the Northern District of California. Lessee has reviewed the asserted patents and believes they do not apply to Lessee equipment. While litigation is subject to inherent uncertainties and no assurance can be given that Lessee will prevail in such litigation, or will obtain a license under such patents on commercially reasonable terms or at all if such patents are held valid and infringed by Lessee's products, Lessee believes that the Tegal lawsuit will not have a material adverse effect on Lessee's consolidated financial statements.

-
472718 v02.SF (@4R2021.DOC)
2/6/01 10:10 AM (19594.0012)

-
Distribution List

The Bank of Nova Scotia, as the Agent and a Lender

Fleet National Bank, as a Lender

Scotiabanc, Inc., as a Holder

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as additional Holders

The various banks and other lending institutions which are parties to the Participation Agreement from time to time, as additional Lenders

Lam Research Corporation, as the Lessee and the Guarantor

The Cushing 2000 Trust

Wilmington Trust Company

Wilmington Trust FSB

PARTICIPATION AGREEMENT

Dated as of December 6, 2000

among

LAM RESEARCH CORPORATION,

as the Lessee,

CUSHING 2000 TRUST,

as the Lessor,

WILMINGTON TRUST COMPANY,

WILMINGTON TRUST FSB,

THE VARIOUS BANKS AND OTHER LENDING INSTITUTIONS WHICH ARE PARTIES HERETO FROM TIME TO TIME, as the Holders,

THE VARIOUS BANKS AND OTHER LENDING INSTITUTIONS WHICH ARE PARTIES HERETO FROM TIME TO TIME, as the Lenders,

and

THE BANK OF NOVA SCOTIA,

as the Administrative Agent for the Lenders and the Holders

Table Of Contents

	Page
SECTION 1. THE LOANS	1
SECTION 2. HOLDER ADVANCES	1
SECTION 3. SUMMARY OF TRANSACTIONS	2
3.1 Operative Agreements	2
3.2 Property Purchase	2
3.3 Yield on Holder Certificates	3
SECTION 4. THE CLOSING	4
SECTION 5. FUNDING OF ADVANCES; PLEDGED COLLATERAL	4
5.1 General	4
5.2 Procedures for Funding	4
5.3 Allocation of Advances Between Land and Improvements	6
5.4 Pledged Collateral	6
SECTION 6. CONDITIONS OF THE CLOSING AND ADVANCES	7
6.1 General Conditions to the Closing Date	7
6.2 Conditions to Lenders' and Holders' Obligations to Make Loans and Holder Advances	10
6.3 Restrictions on Liens	11
6.4 Payments	11
SECTION 7. REPRESENTATIONS AND WARRANTIES	12
7.1 Representations and Warranties of the Trust Companies	12
7.2 Representations and Warranties of the Borrower	13
7.3 Representations and Warranties of the Lessee	15
7.4 Lease Requirements	19
SECTION 8. PAYMENT OF CERTAIN EXPENSES	19
8.1 Transaction Expenses	19
8.2 Brokers' Fees and Stamp Taxes	20
8.3 Certain Fees and Expenses	20
8.4 Commitment Fee	20

8.5	Other Fees	20
SECTION 9.	OTHER COVENANTS AND AGREEMENTS	20
9.1	Cooperation with the Lessee	20
9.2	Covenants of the Trust Companies, the Trust, and the Holders	21
9.3	Lessee Covenants, Consent and Acknowledgment	22
9.4	Appointment of the Agent by the Lenders, the Holders and the Trust	27
9.5	Release of Properties, etc.	27
9.6	Guaranty	27
SECTION 10.	CREDIT AGREEMENT AND TRUST AGREEMENT	30
10.1	Lessee's Credit Agreement Rights	30
10.2	Lessee's Trust Agreement Rights	31
SECTION 11.	TRANSFER OF INTEREST	31
11.1	Restrictions on Transfer	31
11.2	Effect of Transfer	32
SECTION 12.	INDEMNIFICATION	32
12.1	General Indemnity	32
12.2	General Impositions Indemnity	33
12.3	LIBOR Lending Unlawful	37
12.4	Deposits Unavailable	38
12.5	Increased Costs, etc.	38
12.6	Indemnifications Provided by the Lessor in Favor of the Other Indemnified Persons	39
SECTION 13.	DISTRIBUTION	40
13.1	Basic Rent	40
13.2	Purchase Payments by the Lessee	40
13.3	Payment of Lease Balance Debt	41
13.4	Sales Proceeds of Remarketing of Property	41
13.5	Supplemental Rent	41
13.6	Distribution of Payments after Event of Default	41
13.7	Other Payments	42
13.8	Casualty and Condemnation Amounts	43
13.9	Order of Application	43

SECTION 14.	MISCELLANEOUS	43
14.1	Survival of Agreements	43
14.2	Notices	43
14.3	Counterparts	45
14.4	Terminations, Amendments, Waivers, Etc.; Unanimous Vote Matters	45
14.5	Headings, etc.	46
14.6	Parties in Interest	46
14.7	Governing Law; Submission to Jurisdiction; Waiver of Jury Trial; Venue	46
14.8	Severability	47
14.9	Liability Limited	48
14.10	Rights of the Lessee	49
14.11	Further Assurances	49
14.12	Financial Reporting/Tax Characterization	49
14.13	Successors and Assigns	49
SECTION 15.	RENEWALS	49
15.1	Extensions of Maturity Date and Expiration Date	49

SCHEDULES

2.1 - Holder Commitments and Addresses

6.4 - Agent's Payment Address

7.3 - Disclosure Schedule

EXHIBITS

A - Form of Requisition

B - Form of Officer's Certificate - Section 6.1(h)

C - Form of Secretary's Certificate - Section 6.1(f), (g) and (j)

D - Form of Officer's Certificate - Section 6.1(s)

E - Form of Officer's Compliance Certificate - Section 9.3(b)(i)

Annex A - Rules of Usage and Definitions
