

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

FORM 10-Q

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

For the quarterly period ended March 31, 2001

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 0-28018

YAHOO! INC.

(Exact name of registrant as specified in its charter)

Delaware

77-0398689

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

**701 First Avenue
Sunnyvale, California 94089**

(Address of principal executive offices)

Registrant's telephone number, including area code: **(408) 349-3300**

Indicate by check mark whether the Registrant (1) has filed all reports required by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days: Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding at March 31, 2001
Common Stock, \$0.001 par value	566,905,000

YAHOO! INC.

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PART I - FINANCIAL INFORMATION**Item 1. Financial Statements**

YAHOO! INC.
Condensed Consolidated Balance Sheets
(unaudited, in thousands)

	March 31, 2001	December 31, 2000
ASSETS		
Current assets:		
Cash and cash equivalents	\$371,475	\$456,877
Restricted cash	30,000	30,000
Restricted short-term investments	27,035	-
Short-term investments in marketable securities	582,447	663,353
Accounts receivable, net	55,727	90,561
Prepaid expenses and other current assets	62,473	50,078
Total current assets	1,129,157	1,290,869
Long-term investments in marketable securities	598,273	625,981
Restricted long-term investment	166,073	-
Property and equipment, net	147,521	109,781
Other assets, net	368,601	242,945
Total assets	\$2,409,625	\$2,269,576
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$16,675	\$26,040
Accrued expenses and other current liabilities	184,514	168,029
Deferred revenue	127,236	117,165
Total current liabilities	328,425	311,234
Other liabilities	36,890	32,115
Minority interests in consolidated subsidiaries	29,084	29,313
Stockholders' equity:		

Common Stock	567	562
Additional paid-in capital	1,980,752	1,830,526
Retained earnings	30,994	42,480
Accumulated other comprehensive income	2,913	23,346
Total stockholders' equity	2,015,226	1,896,914
Total liabilities and stockholders' equity	\$2,409,625	\$2,269,576

The accompanying notes are an integral part of these condensed consolidated financial statements.

YAHOO! INC.
Condensed Consolidated Statements of Operations
(unaudited, in thousands except per share amounts)

	Three Months Ended	
	March 31, 2001	March 31, 2000
Net revenues	\$180,215	\$230,807
Cost of revenues	40,636	35,145
Gross profit	139,579	195,662
Operating expenses:		
Sales and marketing	107,228	83,959
Product development	33,121	27,112
General and administrative	19,194	16,433
Amortization of intangibles	12,804	4,062
Acquisition-related costs	-	415
Total operating expenses	172,347	131,981
Income (loss) from operations	(32,768)	63,681
Other income, net	23,276	56,962
Minority interests in operations of consolidated subsidiaries	229	(1,837)
Income (loss) before income taxes	(9,263)	118,806
Provision for income taxes	2,223	51,207
Net income (loss)	\$(11,486)	\$67,599
Net income (loss) per share - basic	(\$0.02)	\$0.13
Net income (loss) per share - diluted	(\$0.02)	\$0.11
Shares used in per share calculation - basic	565,447	539,020
Shares used in per share calculation - diluted	565,447	616,607

The accompanying notes are an integral part of these condensed consolidated financial statements.

YAHOO! INC.
Condensed Consolidated Statements of Cash Flows
(unaudited, in thousands)

	Three Months Ended	
	March 31, 2001	March 31, 2000
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	\$(11,486)	\$67,599
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	30,211	14,458

Tax benefits from stock options	2,058	47,627
Minority interests in operations of consolidated subsidiaries	(229)	1,837
Non-cash (gains) losses from investments	15,023	(40,656)
Other non-cash charges	3,415	6,505
Changes in assets and liabilities, net of effects of acquisitions:		
Accounts receivable, net	36,874	(5,570)
Prepaid expenses and other assets	(12,044)	(5,818)
Accounts payable	(12,521)	2,128
Accrued expenses and other current liabilities	10,165	16,935
Deferred revenue	9,587	24,766
Net cash provided by operating activities	71,053	129,811
CASH FLOWS FROM INVESTING ACTIVITIES:		
Acquisition of property and equipment	(41,455)	(15,801)
Purchases of marketable securities	(469,405)	(332,592)
Proceeds from sales and maturities of marketable securities	548,607	184,525
Increase in restricted investments	(193,108)	-
Acquisitions and purchases of other investments	(19,980)	-
Cash acquired in acquisitions and proceeds from the sale of other investments	7,709	1,557
Net cash used in investing activities	(167,632)	(162,311)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of Capital Stock, net	16,495	124,682
Other	-	3,000
Net cash provided by financing activities	16,495	127,682
Effect of exchange rate changes on cash and cash equivalents	(5,318)	(569)
Net change in cash and cash equivalents	(85,402)	94,613
Cash and cash equivalents at beginning of period	456,877	277,136
Cash and cash equivalents at end of period	\$371,475	\$371,749

The accompanying notes are an integral part of these condensed consolidated financial statements.

YAHOO! INC.

Notes to Condensed Consolidated Financial Statements (unaudited)

Note 1 - The Company and Basis of Presentation

Yahoo! Inc. (“Yahoo!” or the “Company”) is a global Internet communications, commerce, and media company that offers a comprehensive branded network of services to millions of worldwide users daily. The Company, a Delaware corporation, commenced operations in 1995.

The accompanying unaudited condensed consolidated interim financial statements reflect all adjustments, consisting of only normal and recurring adjustments, which in the opinion of management, are necessary for a fair presentation of the results of operations for the periods shown. The results of operations for such periods are not necessarily indicative of the results expected for the full fiscal year or for any future period.

These financial statements should be read in conjunction with the consolidated financial statements and related notes included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2000. Certain prior period balances have been reclassified to conform to current period presentation. The condensed consolidated financial statements for the period ended March 31, 2000 have been restated to reflect the August 2000 acquisition of eGroups, Inc. which was accounted for as a pooling of interests.

Note 2 - Recent Accounting Pronouncements

Effective January 1, 2001 the Company adopted Statement of Financial Accounting Standards (“SFAS”) No. 133, “Accounting for Derivative Instruments and Hedging Activities.” SFAS 133 establishes methods of accounting for derivative financial instruments and hedging activities related to those instruments as well as other hedging activities. The adoption of SFAS 133 on January 1 did not have a material effect on the Company's financial position or results of operation. During the period ended March 31, 2001, the Company recorded in other income, losses on derivatives of approximately \$3.5 million related to investments in equity instruments of other companies.

Note 3 – Other Assets, net (in thousands)

	March 31, 2001	December 31, 2000
Intangible assets (principally goodwill), net	\$207,948	\$77,977
Investment in Yahoo! Japan	78,317	77,703
Investments in privately-held companies	64,525	69,500
Other	17,811	17,765
	\$368,601	\$242,945

Note 4 – Basic and Diluted Net Income (Loss) per Share

Basic net income (loss) per share is computed using the weighted average number of common shares outstanding during the period. Diluted net income (loss) per share is computed using the weighted average number of common and, if dilutive, common equivalent shares outstanding during the period. Common equivalent shares consist of the incremental common shares issuable upon conversion of convertible preferred stock (using the if-converted method) and shares issuable upon the exercise of stock options and warrants (using the treasury stock method). For the three month period ended March 31, 2001, options to purchase shares of 31.1 million were not included in the computation because they were antidilutive. For the three month period ended March 31, 2000, common share equivalents approximated 77.6 million shares and were primarily related to shares issuable upon the exercise of stock options.

Note 5 – Comprehensive Income (Loss)

The components of comprehensive income (loss), net of tax, are as follows (in thousands):

	Three Months Ended March 31,	
	2001	2000
Net income (loss)	(\$11,486)	\$67,599
Unrealized losses on available-for-sale securities	(15,115)	(18,958)
Foreign currency translation losses	(5,318)	(569)
Comprehensive income (loss)	(\$31,919)	\$48,072

Accumulated other comprehensive income consists of the unrealized gains or losses on available-for-sale securities, net of tax and the cumulative translation adjustment, as presented on the accompanying condensed consolidated balance sheets.

Note 6 – Acquisition of Kimo.com

In January 2001, the Company completed the acquisition of Kimo.com through the issuance of approximately 2.2 million shares of Yahoo! Common Stock for a total purchase price of \$135.7 million. The purchase price was allocated to the assets acquired, principally goodwill and other intangibles of \$128.9 million which are being amortized on a straight-line basis between two to four years, and liabilities assumed based on their estimated fair values at the date of acquisition. The Company is also obligated to make up to \$50 million in future payments contingent on the achievement of certain milestones by the acquired company. Such payments will be capitalized as part of the purchase price if and when the milestones are attained. Results of operations for Kimo.com for periods prior to the acquisition were not material to the Company and accordingly, pro forma results of operations have not been presented. Results of operations for Kimo.com are included with those of the Company for the period subsequent to the acquisition date.

Note 7 – Stockholder Rights Plan

In March 2001, the Company adopted a Stockholder Rights Plan. Under the plan, Rights will be distributed as a dividend at the rate of one Right for each share of Common Stock held by stockholders of record as of the close of business on March 20, 2001. The Rights Plan was not adopted in response to any effort to acquire control of the Company. The Rights will expire on March 1, 2011.

Note 8 – Stock Repurchase Program

On March 7, 2001, the Company announced that its Board of Directors had authorized the Company to repurchase up to \$500 million of its outstanding shares of Common Stocks in the open market from time to time over the next two years, depending on market conditions, share price and other factors. Although the Company has not yet repurchased any shares of its Common Stock under the stock repurchase program as of March 31, 2001; repurchases may constitute a major use of future cash resources. The Company may utilize equity instrument contracts to facilitate its repurchase of Common Stock. If utilized, such equity instruments

are expected to be exercisable only at date of expiration, with the expiration dates expected to range from 3 months to 1 year. The Company anticipates that any put obligations will permit net-share settlement at the Company's option and, therefore, will not result in a put obligation liability on the Company's consolidated statement of financial position, nor are they expected to have a material effect on diluted earnings per common share.

Note 9 – Segment Information

Based on the criteria established by SFAS No. 131, “Disclosures about Segments of an Enterprise and Related Information,” the Company operates in two principal business segments globally. The Company does not allocate any operating costs to its business services segment as management does not use this information to measure the performance of the operating segment. Management does not believe that allocating these expenses is material in evaluating the segment’s performance.

Summarized information by segment as excerpted from the internal management reports is as follows (in thousands):

	Three Months Ended March 31,	
	2001	2000
Net revenues		
Advertising	\$149,884	\$209,498
Business services	30,331	21,309
	\$180,215	\$230,807

Revenue is attributed to individual countries according to the international online property that generated the revenue. International revenues accounted for 18% and 14% of net revenues during the quarters ended March 31, 2001 and 2000, respectively. No single foreign country accounted for more than 10% of net revenues for the quarters ended March 31, 2001 and 2000.

Note 10 – Lease

During 1999, the Company entered into agreements for the development of an office complex in Sunnyvale, California, to serve as the Company's new headquarters. Construction began in 2000 and buildings in the first phase of the project will be ready for occupancy in the second quarter of 2001. Upon substantial completion of this phase in March 2001, the Company collateralized a lease facility with deposited funds drawn on the facility by the lessors. The amount collateralized was approximately \$193.1 million, of which, \$166.1 million has been classified as a restricted long-term investment and \$27.0 million has been classified as a restricted short-term investment. Buildings in the second phase of the project will be ready for occupancy in the third quarter of 2001. This second phase will also be collateralized upon substantial completion. Rent obligations for these phases will bear a direct relationship to the lessor's carrying costs, estimated at \$270 million. Additionally, the Company will participate as one of the lenders in the lease transaction. The Company has collateralized \$30 million of excess costs per the terms of the development agreement which is classified as restricted cash in current assets at March 31, 2001.

Note 11 – Commitments and Contingencies

From time to time, the Company is subject to legal proceedings and claims in the ordinary course of business, including claims of alleged infringement of trademarks, copyrights and other intellectual property rights, and a variety of claims arising in connection with the Company’s email, message boards, auction sites, shopping services, and other communications and community features, such as claims alleging defamation or invasion of privacy. In addition, from time to time, third parties assert patent infringement claims against the Company in the form of letters, lawsuits and other forms of communication. Currently, the Company is engaged in two lawsuits regarding patent issues and has been notified of a number of other potential patent disputes.

The Company is not currently aware of any legal proceedings or claims that the Company believes are likely to have a material adverse effect on the Company’s financial position, results of operations or cash flows. However, the Company may incur substantial expenses in defending against third party claims. In the event of a determination adverse to the Company, the Company may incur substantial monetary liability, and be required to change its business practices. Either of these could have a material adverse effect on the Company’s financial position, results of operations, or cash flows.

Note 12 – Subsequent Event

In April 2001, the Company announced a plan to restructure its operations. This plan includes a reduction of its 3,510 employees by approximately 12 percent, and a reduction in its leased facilities. As a result of this plan to reduce operating costs, Yahoo! estimates it will record restructuring-related charges in the range of \$40 to \$60 million in the second quarter of 2001. These charges will primarily relate to severance and other benefits for impacted employees and the termination and/or sublease of its excess facilities. Should facility lease rates continue to decrease in these markets or should it take longer than expected to find suitable tenants to sublease the Company’s facilities, the actual charge could exceed the estimate.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

This Report contains 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, as amended including, without limitation, statements regarding the Company's expectations, beliefs, intentions or future strategies that are signified by the words "expects", "anticipates", "intends", "believes", or similar language. All forward-looking statements included in this document are based on information available to the Company on the date hereof, and the Company assumes no obligation to update any such forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements. In evaluating the Company's business, prospective investors should carefully consider the information set forth below under the caption "Risk Factors" set forth herein. The Company cautions investors that its business and financial performance are subject to substantial risks and uncertainties.

Overview

Yahoo! Inc. ("Yahoo!" or the "Company") is a global Internet communications, commerce, and media company that offers a comprehensive branded network of services to more than 192 million individuals each month worldwide. As the first online navigational guide to the Web, www.yahoo.com is the leading guide in terms of traffic, advertising, household and business user reach. Yahoo! is the No. 1 Internet brand globally and reaches the largest audience worldwide. The company also provides online business and enterprise services designed to enhance the productivity and Web presence of Yahoo!'s clients. These services include Corporate Yahoo!, a popular customized enterprise portal solution; audio and video streaming; store hosting and management; and Web site tools and services. The Company's global Web network includes 24 World properties. Yahoo! has offices in Europe, the Asia Pacific, Latin America, Canada, and the United States, and is headquartered in Sunnyvale, California. The Company, a Delaware corporation, commenced operations in 1995.

In January 2001, the Company completed the acquisition of Kimo.com through the issuance of approximately 2.2 million shares of Yahoo! Common Stock for a total purchase price of \$135.7 million. The purchase price was allocated to the assets acquired, principally goodwill and other intangibles of \$128.9 million which are being amortized on a straight-line basis between two to four years, and liabilities assumed based on their estimated fair values at the date of acquisition. The Company is also obligated to make up to \$50 million in future payments contingent on the achievement of certain milestones by the acquired company. Such payments will be capitalized as part of the purchase price if and when the milestones are attained. Results of operations for Kimo.com for periods prior to the acquisition were not material to the Company and accordingly, pro forma results of operations have not been presented. Results of operations for Kimo.com are included with those of the Company for the period subsequent to the acquisition date.

In April 2001, the Company announced a plan to restructure its operations. This plan includes a reduction of its 3,510 employees by approximately 12 percent, and a reduction in its leased facilities. As a result of this plan to reduce operating costs, Yahoo! estimates it will record restructuring-related charges in the range of \$40 to \$60 million in the second quarter of 2001. These charges will primarily relate to severance and other benefits for impacted employees and the termination and/or sublease of its excess facilities. Should facility lease rates continue to decrease in these markets or should it take longer than expected to find suitable tenants to sublease the Company's facilities, the actual charge could exceed the estimate.

Results of Operations

Net Revenues

Net revenues were \$180.2 million for the quarter ended March 31, 2001, a 22% decrease from net revenues of \$230.8 million during the first quarter in 2000. No one customer accounted for 10% or more of net revenues during the quarters ended March 31, 2001 and 2000. Advertising purchases by SOFTBANK and its consolidated affiliates, a 21% stockholder of the Company at March 31, 2001, were not material during the quarters ended March 31, 2001 and 2000, respectively. Contracted prices on these orders are comparable to those given to other similarly situated customers of the Company. International revenues accounted for 18% and 14% of net revenues during the quarters ended March 31, 2001 and 2000, respectively. Barter revenues represented less than 10% of net revenues during those periods.

Advertising Revenues. Of the total net revenues for the quarters ended March 31, 2001 and 2000, advertising revenues were \$149.9 million and \$209.5 million, respectively. The decrease was due primarily to the weak economic climate – many companies have held back on or reduced their marketing budgets in an effort to reduce costs. Additionally, the Company's dot.com customer base has decreased from the year ago period due to the scarcity of funds from the capital markets. Approximately 3,145 customers advertised on the Company's online media properties during the quarter ended March 31, 2001 as compared to approximately 3,565 during the first quarter of 2000. There can be no assurance that customers will continue to purchase advertising on the Company's Web pages, that advertisers will not make smaller and shorter-term purchases, or that market prices for Web-based advertising will not decrease due to competitive or other factors. Due to the Company's ongoing transition in its customer base from Internet companies toward companies in more traditional lines of business and the continued weakness in worldwide economic conditions, the Company believes that its 2001 advertising revenues will be considerably lower than its 2000 advertising revenues.

Business Services Revenues. Business services revenues consist of revenues generated from subscription-based hosting and premium services, broadcasting live and on-demand audio and video events, and enterprise services (Corporate Yahoo!). Business services revenues comprised \$30.3 million and \$21.3 million of total net revenues for the quarters ended March 31, 2001 and 2000, respectively. The year-to-year increases are primarily attributable to the increasing number of users of the various hosting and premium services and to Corporate Yahoo!. Yahoo! Store hosting fees comprised the most significant portion of revenues from hosting services. Yahoo! Store members totaled 13,200 and 10,500 as of March 31, 2001 and 2000, respectively. In June 2000, Corporate Yahoo! was launched to enable companies to integrate proprietary corporate content and applications with Yahoo!'s personalized Internet content and services behind existing firewalls. Revenues from this enterprise service are expected to become

an increasing portion of the Company's business services revenues during 2001. The Company's broadcasted events decreased to approximately 697 during the quarter ended March 31, 2001, as compared to 934 during the year ago quarter. For the 2001 fiscal year, the Company expects business services revenues to approach 20% of total revenues, up from 10% in 2000.

Cost of Revenues

Cost of revenues consists of the expenses associated with the production and usage of Yahoo! and the Company's other online media properties. These costs primarily consist of fees paid to third parties for content included on the Company's online media properties, Internet connection charges, live event production costs, amortization of purchased technology, license fees, equipment depreciation, and compensation related expenses. The Company does not allocate any cost of revenues or operating costs to its business services segment as management does not use this information to measure the performance of the operating segment. Management does not believe that allocating these expenses is material in evaluating the segment's performance. Cost of revenues were \$40.6 million for the quarter ended March 31, 2001, or 23% of net revenues, as compared to \$35.1 million, or 15% of net revenues for the quarter ended March 31, 2000. The absolute dollar increase in cost of revenues from quarter to quarter is primarily attributable to an increase in the quantity of content available on the Company's online media properties. As measured in page views (defined as electronic page displays), the Company delivered an average of approximately 1.1 billion page views per day in March 2001 compared with an average of approximately 633 million page views per day in March 2000. Yahoo! Japan, an unconsolidated joint venture of the Company, is included in these page views figures and accounted for an average of approximately 144 million per day in March 2001 and an average of approximately 65 million per day in March 2000. The Company anticipates that its content, Internet connection, license, and maintenance expenses for enterprise services will continue to increase in absolute dollars for the foreseeable future.

Sales and Marketing

Sales and marketing expenses were \$107.2 million, or 60% of net revenues for the quarter ended March 31, 2001 as compared to \$84.0 million, or 36% of net revenues for the quarter ended March 31, 2000. Sales and marketing expenses consist primarily of advertising and other marketing related expenses, compensation and employee related expenses, sales commissions, and travel costs. The year-to-year increases in absolute dollars are primarily attributable to an increase in advertising costs associated with the Company's aggressive brand-building strategy and increases in compensation expense associated with growth in its direct sales force and marketing personnel. The Company anticipates that sales and marketing expenses in absolute dollars will increase modestly in 2001 as compared to 2000 as it continues to pursue a brand-building strategy through advertising and continues to build its global direct sales organization.

Product Development

Product development expenses were \$33.1 million, or 18% of net revenues for the quarter ended March 31, 2001 as compared to \$27.1 million, or 12% of net revenues for the quarter ended March 31, 2000. Product development expenses consist primarily of payroll and related expenses incurred for enhancements to and maintenance of the Company's Web site, classification and organization of listings within Yahoo! properties, research and development expenses, and other operating costs. The increase in absolute dollars is primarily attributable to increases in the number of engineers that develop and enhance Yahoo! online media properties. The Company believes that significant investments in product development are required to remain competitive. Consequently, the Company anticipates that product development expenditures in absolute dollars will increase modestly in 2001 as compared to 2000.

General and Administrative

General and administrative expenses were \$19.2 million, or 11% of net revenues for the quarter ended March 31, 2001 as compared to \$16.4 million, or 7% of net revenues for the quarter ended March 31, 2000. General and administrative expenses consist primarily of compensation and fees for professional services, and the increase in absolute dollars is primarily attributable to increases in these areas. The Company anticipates that general and administrative expenses in absolute dollars will increase modestly in 2001 as compared to 2000, as a result of increased fees for professional services.

Amortization of Intangibles

Amortization expenses were \$12.8 million and \$4.1 million for the quarters ended March 31, 2001 and 2000, respectively. The increase is principally attributable to goodwill amortization resulting from the January 2001 Kimo.com acquisition which resulted in additional goodwill and other intangibles of \$128.9 million. Unamortized goodwill and other intangible assets totaled \$207.9 million as of March 31, 2001 and will be amortized through the first quarter of 2009.

Other – Nonrecurring Costs

For the quarter ended March 31, 2000, the Company recorded a non-recurring charge of \$415,000 relating to expenses incurred in connection with the acquisition of Arthas.com. As a result of a plan to reduce operating costs, Yahoo! estimates it will record restructuring-related charges in the range of \$40 to \$60 million in the second quarter of 2001.

Other Income, Net

Other income, which consists primarily of interest income and investment gains or losses, was \$23.3 million for the quarter ended March 31, 2001. This included \$15.6 million of derivative and investment impairment losses, income of \$9.0 million related to a contract termination fee, investment gains of \$3.0 million, and goodwill amortization of \$1.8 million related to the

Yahoo! Japan equity investment. For the quarter ended March 31, 2000, other income was \$57.0 million and included a gain from the exchange of certain equity investments in the amount of \$40.7 million. Other income in future periods may fluctuate as a result of fluctuations in average cash balances maintained by the Company, changes in the market rates or the sale of its investments, and impairment write-downs.

Minority Interests in Operations of Consolidated Subsidiaries

Minority interests in losses from operations of consolidated subsidiaries were \$0.2 million for the quarter ended March 31, 2001 compared to minority interests in income from operations of consolidated subsidiaries of \$1.8 million in the year ago quarter. The change is attributable to weaker economic climates in Europe and Korea during the quarter ended March 31, 2001 as compared to the year ago quarter. The Company expects that minority interests in operations of consolidated subsidiaries in the aggregate will continue to fluctuate in future periods as a function of the results from consolidated subsidiaries. If the consolidated subsidiaries are profitable, the minority interests adjustment on the statement of operations will reduce the Company's net income by the minority partners' share of the subsidiaries' net income.

Income Taxes

The Company's effective income tax rate for the quarter ended March 31, 2001 differs from the amount computed by applying the statutory federal rate principally due to nondeductible amortization charges related to acquisitions, nondeductible stock compensation charges, and foreign losses for which no tax benefit is provided. This rate may change during the remainder of 2001 if operating results or acquisition related costs differ significantly from current projections.

Net Income (Loss)

The Company recorded a net loss of \$11.5 million or \$0.02 per share diluted for the quarter ended March 31, 2001 compared to net income of \$67.6 million or \$0.11 per share diluted for the quarter ended March 31, 2000. The results for the quarter ended March 31, 2001 include amortization of purchased technology and intangible assets acquired in certain acquisitions of \$14.9 million, stock compensation expense of \$3.4 million, employer payroll taxes on option exercises of \$0.2 million, \$15.6 million of derivative and investment impairment losses, income of \$9.0 million related to a contract termination fee, investment gains of \$3.0 million, and goodwill amortization of \$1.8 million related to the Yahoo! Japan equity investment. The results for the quarter ended March 31, 2000 include stock compensation expense of \$6.5 million, employer payroll taxes on option exercises of \$6.4 million, amortization of purchased technology and intangible assets acquired in certain acquisitions of \$6.2 million, a non-recurring acquisition-related charge of \$0.4 million, and a non-cash gain from the exchange of certain equity investments of \$40.7 million.

Liquidity and Capital Resources

Yahoo! invests excess cash predominantly in debt instruments that are highly liquid, of high-quality investment grade, and predominantly have maturities of less than two years with the intent to make such funds readily available for operating purposes. The Company had cash and cash equivalents, investments in marketable debt securities, and restricted investments totaling approximately \$1.7 billion at March 31, 2001.

For the three months ended March 31, 2001, cash provided by operating activities of \$71.1 million was primarily attributable to changes in nonmonetary working capital of \$32.1 million, depreciation and amortization of \$30.2 million, and non-cash losses from investments of \$15.0 million, partially offset by a net loss of \$11.5 million. For the three months ended March 31, 2000, cash provided by operating activities of \$129.8 million was primarily attributable to earnings of \$67.6 million, tax benefits from stock options of \$47.6 million, changes in nonmonetary working capital of \$32.4 million, and depreciation and amortization of \$14.5 million, partially offset by a non-cash gain from investments of \$40.7 million.

Cash used in investing activities was \$167.6 million for the quarter ended March 31, 2001. Proceeds from sales and maturities (net of purchases) of investments in marketable securities during the period were \$79.2 million, offset by an increase in restricted investments of \$193.1 million, capital expenditures totaling \$41.5 million, and cash used in acquisitions and other investments, net of \$12.3 million. Cash used in investing activities was \$162.3 million for the quarter ended March 31, 2000. Purchases (net of proceeds and maturities) of investments in marketable securities during the period were \$148.1 million and capital expenditures totaled \$15.8 million.

For the three months ended March 31, 2001 and 2000, cash provided by financing activities of \$16.5 million and \$127.7 million, respectively were primarily from the issuance of Common Stock pursuant to the exercise of stock options.

During 1999, the Company entered into agreements for the development of an office complex in Sunnyvale, California, to serve as the Company's new headquarters. Construction began in 2000 and buildings in the first phase of the project will be ready for occupancy in the second quarter of 2001. Upon substantial completion of this phase in March 2001, the Company collateralized a lease facility with deposited funds drawn on the facility by the lessors. The amount collateralized was approximately \$193.1 million, of which, \$166.1 million has been classified as a restricted long-term investment and \$27.0 million has been classified as a restricted short-term investment. Buildings in the second phase of the project will be ready for occupancy in the third quarter of 2001. This second phase will also be collateralized upon substantial completion. Rent obligations for these phases will bear a direct relationship to the lessor's carrying costs, estimated at \$270 million. Additionally, the Company will participate as one of the lenders in the lease transaction. The Company has collateralized \$30 million of excess costs per the terms of the development agreement which is classified as restricted cash in current assets at March 31, 2001.

The Company currently has no material commitments other than those under operating lease agreements. The Company has experienced a substantial increase in its capital expenditures and operating lease arrangements since its inception, which is consistent with increased staffing, and anticipates that this will continue in the future. Additionally, the Company will continue to evaluate possible acquisitions of, or investments in businesses, products, and technologies that are complementary to those of the Company, which may require the use of cash. Management believes existing cash and investments will be sufficient to meet the Company's operating requirements for at least the next twelve months and the foreseeable future; however, the Company may sell additional equity or debt securities or obtain credit facilities to further enhance its liquidity position. The sale of additional securities could result in additional dilution to the Company's stockholders.

RISK FACTORS

We are in a highly competitive industry and some of our competitors may be more successful in attracting and retaining customers.

The market for Internet products and services is highly competitive and we expect that competition will continue to intensify. Negative competitive developments could have a material adverse effect on our business and the trading price of our stock.

We compete with many other providers of online navigation, information, entertainment, business, community, electronic commerce and broadcast services. As we expand the scope of our Internet offerings, we will compete directly with a greater number of Internet sites, media companies, and companies providing business services across a wide range of different online services, including:

- companies offering communications services either on a stand alone basis or integrated into other products and media properties;
- vertical markets where competitors may have advantages in expertise, brand recognition, and other factors;
- manufacturers of personal computers who may develop their own Internet portals to which they would direct their customers;
- online merchant hosting services; and
- online broadcasting of business events.

In particular, we face significant competition from the newly combined AOL Time Warner and Microsoft (MSN). The combination of America Online and Time Warner provides America Online with content from Time Warner's movie and television, music, books and periodicals, news, sports and other media holdings; access to a network of cable and other broadband delivery technologies; and considerable resources for future growth and expansion. The America Online/Time Warner combination also provides America Online with access to a broad potential customer base consisting of Time Warner's current customers and subscribers of its various media properties. To a less significant extent, we also face competition from other companies that have combined a variety of services under one brand in a manner similar to Yahoo! including CMGI (Alta Vista), Excite@Home, and Lycos. In certain of these cases, most notably AOL Time Warner and MSN, our competition has a direct billing relationship with the user, which we generally lack. This relationship permits our competitors to have several potential advantages including the potential to be more effective than us in targeting services and advertisements to the specific taste of their users. We also face competition from Web sites focused on vertical markets where expertise in a particular segment of the market may provide a competitive advantage. On an international level, we compete directly with local providers; they may have several advantages, including greater knowledge about the particular country or local market and access to significant financial or strategic resources in such local markets. We must continue to obtain more knowledge about our users and their preferences as well as increase our branding and other marketing activities in order to remain competitive and strengthen our market position.

A large number of these Web sites and online services as well as high-traffic e-commerce merchants such as Amazon.com, Inc. also offer or are expected to offer informational and community features that may be competitive with the services that we offer. In order to effectively compete, we may need to expend significant internal engineering resources or acquire other technologies and companies to provide or enhance such capabilities. Any of these efforts could have a material adverse effect on our business, operating results and financial condition and be dilutive to our stockholders.

Financial results for any particular period will not predict results for future periods.

Because of the uncertain nature of the rapidly changing market we serve, period-to-period comparisons of operating results are not likely to be meaningful. In addition, you should not rely on the results for any period as an indication of future performance. In particular, although we experienced strong revenue growth through the year 2000, revenues in the first quarter of 2001 was substantially lower than revenues in the fourth quarter of 2000 and we do not believe that the level of revenue growth in 2000 will be sustained in 2001 and in future periods, particularly on a long-term basis, and we recently announced that at the current time, we are basing our expense budgets on full year 2001 revenues which are expected to be substantially less than our full year 2000 reported revenues. In addition, we currently expect that our operating expenses will continue to increase as we expand our sales and marketing operations, continue to develop and extend the Yahoo! brand, fund greater levels of product development, develop and commercialize additional media properties, and acquire complementary businesses and technologies. Additionally, we are required under generally accepted accounting principles to review our intangible assets for impairment when events or changes in

circumstances indicate the carrying value may not be recoverable. We have experienced a decline in our stock price and market capitalization and our industry is experiencing a slower growth rate than historically realized. If such factors continue, we may be required to record a significant charge to earnings on our financial statements in the period any impairment of our goodwill or other intangible assets is determined. At March 31, 2001, our goodwill and other intangible assets approximated \$207.9 million. We also hold investments in securities of technology companies. Due to the recent volatility in the stock market in general, and the market prices of securities of technology companies in particular, we have realized decreases in the market value of such investments of \$163.2 million in the fourth fiscal quarter of 2000 and \$15.6 million in the first fiscal quarter of 2001 which have been recorded on our financial statements. We may realize further decreases in the market value of certain investments in future periods. Further, we are subject to employer payroll taxes when our employees exercise their non-qualified stock options. The employer payroll taxes are assessed on each employee's gain, which is the difference between the price of our common stock on the date of exercise and the exercise price. During a particular period, these payroll taxes could be material. Depending on the number of shares of our Common Stock for which options are exercised and the fair market value of shares of our Common Stock during such period, these employer payroll taxes would be recorded as a charge to operations in the period such options are exercised based on actual gains realized by employees. In addition to the net proceeds we would receive upon the exercise of stock options, we would receive tax deductions for gains realized by employees on the exercise of non-qualified stock options for which the benefit is recorded as additional paid-in capital. However, because we are unable to predict our future stock price and the number of optionees who may exercise during any particular period, we cannot predict what, if any, expense will be recorded in a future period and the impact on our future financial results. In addition, if revenue growth levels do not meet our expectations, our financial results will be adversely affected.

We rely heavily on revenues derived from Internet advertising, which are subject to uncertain demand from our current and potential clients and are difficult to forecast accurately.

Currently, the majority of our revenues come from advertisements displayed on our online properties. Our ability to continue to achieve substantial advertising revenue depends upon:

- growth of our user base;
- our user base being attractive to advertisers;
- our ability to derive better demographic and other information from our users;
- acceptance by advertisers of the Web as an advertising medium; and
- our ability to transition and expand into other forms of advertising.

In addition, we are experiencing a shift in the source of advertising revenues from Internet companies to companies in more traditional lines of business. These advertisers often have substantially different requirements and expectations than Internet companies with respect to advertising programs. If we are unsuccessful in adapting to the needs of our changing mix of advertisers, it could have a material adverse effect on our business, operating results and financial condition. In addition, Internet companies are ceasing to spend money on advertising at a faster pace than we anticipated and companies in more traditional lines of business are not spending money on advertising as quickly as we anticipated. These conditions could have a material adverse effect on our business, operating results and financial condition. We derive the majority of our revenues from the sale of advertisements under short-term contracts, which are difficult to forecast accurately.

Most of our revenues are currently derived from agreements with advertisers or sponsorship arrangements. These agreements generally have terms no longer than three (3) years and, in many cases, the terms are much shorter. In cases where the advertiser is providing services, the agreements often have payments contingent on usage levels. Many of our advertisers are Internet companies which, in certain cases, may lack financial resources to fulfill their commitments. Accordingly, it is difficult to accurately forecast these revenues. However, our expense levels are based in part on expectations of future revenues and are fixed over the short term with respect to certain categories. We may be unable to adjust spending quickly enough to compensate for any unexpected revenue shortfall. Accordingly, the cancellation or deferral of advertising or sponsorship contracts could have a material adverse effect on our financial results. Because our operating expenses are likely to increase significantly over the near term, to the extent that our expenses increase but our revenues do not, our business, operating results, and financial condition may be materially and adversely affected.

The rate structure of some of our sponsorship arrangements subjects us to financial risk.

A key element of our strategy is to generate advertising revenues through sponsored services and placements by third parties in our online media properties in addition to banner advertising. We typically receive sponsorship fees or a portion of transaction revenues in return for minimum levels of user impressions to be provided by us. These arrangements expose us to potentially significant financial risks in the event our usage levels decrease, including the following:

- the fees we are entitled to receive may be adjusted downwards;
- we may be required to "make good" on our obligations by providing alternative services;
- the sponsors may not renew the agreements or may renew at lower rates; and
- the arrangements may not generate anticipated levels of shared transaction revenues, or sponsors may default

on the payment commitments in such agreements as has occurred in the past.

Accordingly, any leveling off or decrease of our user base or the failure to generate anticipated levels of shared transaction revenues could result in a significant decrease in our revenue levels.

We have spent considerable amounts of money and resources to provide a variety of communications services, but such services may not prove to be successful in generating significant revenue for us.

Currently, a substantial portion of the traffic on our online properties is directed at our communications services, such as email, instant messaging, calendaring and chat rooms, and we expect this trend to continue for the foreseeable future. We provide these and other basic communications services free of charge to our users, as is the case with most of our competitors, and have not yet determined an effective means of generating revenues directly from the provision of such services. Alternative revenue models for our communications and electronic commerce services, such as subscription fees and commissions, are relatively unproven and may not generate sufficient revenues to be meaningful to us. Currently, we are dependent upon the use of other Yahoo! services to generate revenues from our communication services, and there is a risk that this relationship will not be sustained. As communications services become an increasingly important part of our total offering, we must continue to provide new communications applications which are compelling to users and utilize more sophisticated communications technologies to provide such applications to many types of access devices in addition to the personal computer, while continuing to develop an effective method for generating revenues for such services. In addition, the development of these technologies require long development cycles and a more significant investment by us. If we were unable to develop such applications or use such technologies, the size and rate of growth in our user base would be adversely affected. If we cannot develop a direct or indirect means by which we generate revenues from our communications services that are more than sufficient to offset the costs of providing such services, our business, operating results and financial condition would be materially adversely affected.

We may not be successful in expanding the number of users of our electronic commerce services and our ability to effectively provide these services is limited because we do not have a direct billing relationship with our users.

We have focused, and intend to continue to focus, significant resources on the development and enhancement of our electronic commerce properties. These properties, such as Yahoo! Shopping, link users with a network of retailers with which we have relationships. However, we merely provide a means through which our users can access the sellers of the products such users may wish to purchase and do not establish a direct billing relationship with our users as a result of any such purchase. In addition, a large number of our users currently utilize our online shopping services simply to gather information for future offline purchases. We will need to effectively induce information gatherers to make purchases in order for our electronic commerce properties to be successful. Finally, the success of our electronic commerce properties will also depend on, among other things, our ability to attract and retain well-known brands among our network of retailers. The revenue that we derive from our electronic commerce services is typically in the form of a bounty or a commission paid by the retailer from whom our user purchased a product. If the user had a favorable buying experience with a particular retailer, the user may subsequently contact that retailer directly rather than through our service. If our users bypass our electronic commerce properties, such as Yahoo! Shopping, and contact retailers directly, we will not receive any revenue for purchases made through such direct contact. Competing providers of online shopping, including merchants with which we have relationships, may be able to provide a more convenient and comprehensive online shopping experience due to their singular focus on electronic commerce. As a result, we may have difficulty competing with those merchants for users of electronic commerce services. The inability of our electronic commerce properties to generate significant revenues could have a material adverse effect on our business.

Our business and enterprise services, while costly to develop, may fail to gain market acceptance.

We have invested a significant amount of money and resources in the creation of our business and enterprise services, such as Yahoo! Webcast Studio, which allows business customers to create and stream their own corporate events, Corporate Yahoo!, a customized enterprise portal solution; and Yahoo! Website Services, a turnkey service enabling companies to manage their Web presence. Many of these services are unproven and may fail to gain market acceptance. Because the market for these business and enterprise services is new and evolving, it is difficult to predict the size of this market and its rate of growth, if any. In addition, it is uncertain whether businesses and other organizations will utilize the Internet to any significant degree as a means of broadcasting business conferences and other events. Potential business services customers must accept audio and video broadcast services over the Internet as a viable alternative to face-to-face meetings, television or audio, audio teleconferences and video conferencing. We cannot assure you that the market for business and enterprise services will continue to develop or be sustainable. If the market fails to develop, develops more slowly than expected or becomes more competitive than is currently expected, our operating results could be adversely affected.

We will continue to expand into international markets in which we have limited experience, are faced with relatively higher costs and are exposed to greater risks.

A key part of our strategy is to develop Yahoo!-branded online properties in international markets and we have developed, through joint ventures, subsidiaries and branch offices, Yahoo! properties localized for over 20 other countries. To date, we have only limited experience in developing localized versions of our products and marketing and operating our products and services internationally and we rely on the efforts and abilities of our foreign business partners in such activities.

We believe that in light of substantial anticipated competition, we need to move quickly into international markets in order to effectively obtain market share. However, in a number of international markets, especially those in Europe, we face substantial competition from Internet Service Providers (ISPs) that offer or may offer their own navigational services. Many of these ISPs have

a dominant market share in their territories. Further, foreign providers of competing online services may have a substantial advantage over us in attracting users in their country due to more established branding in that country, greater knowledge with respect to the tastes and preferences of users residing in that country and/or their focus on a single market. We have experienced and expect to continue to experience higher costs as a percentage of revenues in connection with the development and maintenance of international online properties. International markets we have selected may not develop at a rate that supports our level of investment. In particular, international markets typically are slower than domestic markets in adopting the Internet as an advertising and commerce medium.

In addition to uncertainty about our ability to continue to generate revenues from our foreign operations and expand our international presence, there are certain risks inherent in doing business on an international level, including:

- trade barriers and unexpected changes in regulatory requirements;
- difficulties in developing, staffing and simultaneously managing a large number of unique foreign operations as a result of distance, language and cultural differences;
- higher costs of doing business in foreign countries;
- longer payment cycles;
- currency exchange rate fluctuations;
- political instability and export restrictions;
- seasonal reductions in business activity;
- risks related to government regulation including those more fully described below; and
- potentially adverse tax consequences.

One or more of these factors could have a material adverse effect on our future international operations and, consequently, on our business, operating results, and financial condition.

We depend on key personnel who may not continue to work for us.

We are substantially dependent on the continued services of our key personnel, including our two founders, our chief executive officer, president, chief financial officer, chief technical officer, senior vice presidents, and vice presidents. These individuals have acquired specialized knowledge and skills with respect to Yahoo! and its operations or, in the cases of our chief executive officer and executive vice president for North American operations, only recently joined us. If any of these individuals were to leave Yahoo! unexpectedly, we could face substantial difficulty in hiring qualified successors and could experience a loss in productivity while any such successor obtains the necessary training and experience. We announced in April 2001 that our Board of Directors has concluded a search for our new chief executive officer. Effective May 1, 2001, Terry S. Semel became chairman and chief executive officer. Tim Koogle, our former chairman and chief executive officer, was appointed vice chairman, a transitional role he is expected to retain until August 2001, and is expected to remain a member of our Board of Directors and an advisor to the Company. In addition, we have recently experienced announcements of departures by certain management personnel of our international properties, including Heather Killen, our senior vice president, international operations and we may experience similar departures from our domestic or international business units in the future. Many of our management personnel have reached or will soon reach the four-year anniversary of their Yahoo! hiring date and, as a result, will have become or will shortly become fully vested in their initial stock option grants. While management personnel are typically granted additional stock options, which will usually vest over a period of four years, subsequent to their hire date to provide additional incentive to remain at Yahoo!, the initial option grant is typically the largest and an employee may be more likely to leave our employ upon completion of the vesting period for the initial option grant.

We expect that we will need to hire additional personnel in all areas. The competition for qualified personnel is intense, particularly in the San Francisco Bay Area, where our corporate headquarters are located. At times, we have experienced difficulties in hiring personnel with the right training or experience, particularly in technical areas. We do not maintain key person life insurance for any of our personnel. If we do not succeed in attracting new personnel, or retaining and motivating existing personnel, our business will be adversely affected.

We may have difficulty scaling and adapting our existing architecture to accommodate increased traffic and technology advances.

Yahoo! is one of the most highly trafficked Web sites on the Internet and is regularly exceeding previous standards for numbers of simultaneous users, unique users and daily page views delivered. In addition, the services offered by Yahoo! and popular with users have changed significantly in the past and are expected to change rapidly in the future. Much of the architecture that we employ was not originally designed to accommodate levels or types of use that we currently experience on our online properties and it is unclear whether current or future anticipated levels of traffic will result in delays or interruptions in our service. In particular, the architecture utilized for our email and certain other communication services was not primarily designed for this purpose, is highly complex and may not provide satisfactory service in the future, especially as it becomes an increasingly important service offering. In the future,

we may be required to make significant changes to our architecture, including moving to a completely new architecture. If we are required to switch architectures, we may incur substantial costs and experience delays or interruptions in our service. If we experience delays or interruptions in our service due to inadequacies in our current architecture or as a result of a change in architectures, users may become dissatisfied with our service and move to competing providers of online services. Further, to the extent that demand for our broadcast services content increases, we will need to expand our infrastructure, including the capacity of our hardware servers and the sophistication of our software. This expansion is likely to be expensive, complex, and require additional technical expertise. Also, as we acquire users who rely upon us for a wide variety of services, it becomes more technologically complex and costly to retrieve, store and integrate data that will enable us to track each user's preferences. Any loss of traffic, increased costs, inefficiencies or failures to adapt to new technologies and the associated adjustments to our architecture would have a material adverse effect on our business.

Our competitors often provide Internet access or computer hardware to our customers and they could make it difficult for our customers to access our services.

Our users must access our services through an Internet service provider, or ISP, with which the user establishes a direct billing relationship using a personal computer or other access device. To the extent that an access provider, such as AOL Time Warner or MSN, or a computer or computing device manufacturer offers online services or properties that are competitive with those of Yahoo!, the user may find it more convenient to use the services or properties of that access provider or manufacturer. In addition, the access provider or manufacturer may make it difficult to access our services by not listing them in the access provider's or manufacturer's own directory. Also, because an access provider gathers information from the user in connection with the establishment of the billing relationship, an access provider may be more effective than Yahoo! in tailoring services and advertisements to the specific tastes of the user. To the extent that a user opts to use the services offered by his or her access provider or those offered by computer or computing device manufacturers rather than the services provided by Yahoo!, our business, operating results and financial condition will be materially adversely affected.

More individuals are utilizing non-PC devices to access the Internet and we may not be successful in developing a version of our service that will gain widespread adoption by users of such devices.

In the coming years, the number of individuals who access the Internet through devices other than a personal computer such as personal digital assistants, cellular telephones and television set-top devices is expected to increase dramatically. Our services are designed for rich, graphical environments such as those available on personal and laptop computers. The lower resolution, functionality and memory associated with alternative devices may make the use of our services through such devices difficult and we may be unsuccessful in our efforts to modify our online properties to provide a compelling service for users of alternative devices. As we have limited experience to date in operating versions of our service developed or optimized for users of alternative devices, it is difficult to predict the problems we may encounter in doing so and we may need to devote significant resources to the creation, support and maintenance of such versions. If we are unable to attract and retain a substantial number of alternative device users to our online services, we will fail to capture a sufficient share of an increasingly important portion of the market for online services. Further, as the majority of our revenues are derived through the sale of banner and other advertising optimized for a personal computer screen, we may not be successful at developing a viable strategy for deriving substantial revenues from online properties that are directed at the users of alternative devices. Any failure to develop revenue-generating online properties that are adopted by a significant number of handheld device users could have a material adverse effect on our business, operating results and financial condition.

We rely on the value of the Yahoo! brand and the costs of maintaining and enhancing our brand awareness are increasing.

We believe that maintaining and expanding the Yahoo! brand is an important aspect of our efforts to attract and expand our user and advertiser base. We also believe that the importance of brand recognition will increase due to the growing number of Internet sites and the relatively low barriers to entry. We have spent considerable money and resources to date on the establishment and maintenance of the Yahoo! brand. However, because the number of Internet navigation, commerce, community and service companies continues to grow dramatically, it has become increasingly difficult and, due to increased competition, expensive, to obtain quality television, radio, magazine, Internet and other advertising space. Further, the proliferation of Internet-based companies has resulted and will continue to result in increased consumer confusion. Consequently, we will spend increasing amounts of money on, and devote greater resources to, advertising, marketing and other brand-building efforts to preserve and enhance consumer awareness of the Yahoo! brand during 2001. We may not be able to successfully maintain or enhance consumer awareness of our brand and, even if we are successful in our branding efforts, such efforts may not be cost-effective. If we are unable to maintain or enhance consumer awareness of the Yahoo! brand in a cost-effective manner, our business, operating results and financial condition would be materially and adversely affected.

The successful operation of our business depends upon the supply of critical elements from other companies.

We will depend upon third parties, to a substantial extent, for several critical elements of our business including various technology, infrastructure, content development, software and distribution components.

Technology and Infrastructure. We rely on a private third-party provider, Frontier GlobalCenter, Inc., for our principal Internet connections. Email and other service Internet connections are provided to us by GTE. We rely on Network Appliances for key components of our email service. We also rely on Exodus Communications for the hosting of our users' homepages and Level 3 Communications for hosting and access to our broadcast services. Any disruption in the Internet access provided by these third-party providers or any failure of these third-party providers to handle current or higher volumes of use could have a material adverse effect on our business, operating results, and financial condition. We license technology and related databases from third parties for

certain elements of our properties, including, among others, technology underlying the delivery of news, stock quotes and current financial information, chat services, street mapping and telephone listings, streaming capabilities and similar services. We have experienced and expect to continue to experience interruptions and delays in service and availability for such elements. Furthermore, we are dependent on hardware suppliers for prompt delivery, installation, and service of servers and other equipment to deliver our products and services. Any errors, failures, interruptions, or delays experienced in connection with these third-party technologies and information services could negatively impact our relationship with users and adversely affect our brand and our business, and could expose us to liabilities to third parties.

Distribution Relationships. To increase traffic for our online properties and make them more available and attractive to advertisers and consumers, we have certain distribution agreements and informal relationships with leading Web browser providers such as Microsoft, operators of online networks and leading Web sites, software developers and computer manufacturers, such as Toshiba, Hewlett-Packard and Gateway, and telecommunications companies, such as Sprint PCS. These distribution arrangements typically are not exclusive and do not extend over a significant amount of time. Further, some of our distributors are competitors or potential competitors who may not renew their distribution contracts with us. Potential distributors may not offer distribution of our properties and services on reasonable terms, or at all. In addition, as new methods for accessing the Web become available, we may be required to enter into additional distribution relationships. Any failure to obtain distribution or to obtain distribution on terms that are reasonable, could have a material adverse effect on our business, results of operations, and financial condition.

Streaming Media Software. We rely on the two leading providers of streaming media products, RealNetworks and Microsoft, to license the software necessary to broadcast streaming audio and video content to our users. There can be no assurance that these providers will continue to license these products to us on reasonable terms, or at all. Our users are currently able to electronically download copies of the software to play streaming media free of charge, but providers of streaming media products may begin charging users for copies of their player software or otherwise change their business model in a manner that slows the widespread acceptance of these products. In order for our broadcast services to be successful, there must be a large base of users of these streaming media products. We have limited or no control over the availability or acceptance of streaming media software, and to the extent that any of these circumstances occur, the broadcast services portion of our business will be materially adversely affected.

Our dependence on third party content providers subjects us to risks.

Our future success depends upon our ability to aggregate compelling content and deliver that content through our online properties. Much of the content that attracts users to the Yahoo! online properties, such as news items, stock quotes, weather reports, maps and audio and video content, is licensed from third parties such as Reuters and TIBCO. In particular, Yahoo! Broadcast relies on major sports organizations, radio and television stations, record labels, cable networks, businesses, colleges and universities, film producers and distributors, and other organizations for a large portion of the content available on the site. Our ability to maintain and build relationships with third-party content providers will be critical to our success. We may be unable to enter into or preserve relationships with the third parties whose content we seek to obtain. Many of our current licenses for third-party content extend for a period of less than two years and there can be no guarantee that they will be renewed upon their expiration. In addition, as competition for compelling content increases both locally and abroad, Yahoo!'s content providers may increase the prices at which they offer their content to Yahoo! and potential content providers may not offer their content on terms agreeable to Yahoo!. An increase in the prices charged to us by third-party content providers could have a material adverse effect on our business, operating results and financial condition. Further, many of our content licenses with third parties are non-exclusive. Accordingly, other Webcasters may be able to offer similar or identical content. Likewise, most sports and entertainment content available on our online properties are also available on other media like radio or television. These media are currently, and for the foreseeable future will be, much more widely adopted for listening or viewing such content than the Web. These factors also increase the importance of our ability to deliver compelling editorial content and personalization of this content for users in order to differentiate ourselves. If we are unable to license or acquire compelling content, if other companies broadcast content that is similar to or the same as that provided by Yahoo!, or if we do not develop compelling editorial content or personalization services, the number of users on our online properties may not grow at all or at a slower rate than anticipated, which would decrease our advertising revenue.

As we provide more audio and video content, particularly music, we may be required to spend significant amounts of money on content acquisition and content broadcasts.

Until recently, the majority of the content that we provided to our users was in print, picture or graphical format and was either created internally or licensed to us by third parties for little or no charge. However, we have been providing recently and we intend to continue to provide increasing amounts of audio and video content to our users, such as the broadcast of music, film content, speeches, news footage, concerts and other special events, through our broadcast services division and our other media properties, and such content may require us to make substantial payments to third parties from whom we will license or acquire such content. For example, in order to broadcast music through our online properties, we are currently required to pay royalties both on the copyright in the musical compositions and the copyright in the actual sound recordings of the music to be broadcast. Through our broadcast services division, we currently have obtained rights from ASCAP, BMI and SESAC that permit us to engage in the public performance of musical compositions for which they control the rights. With respect to the copyrights in the specific sound recordings that we desire to broadcast, we have entered into an agreement with the recording industry that permits us to engage in the public performance of all copyrighted sound recordings. All of the above rights have been obtained pursuant to short-term agreements or are under negotiation. If the royalty rates under negotiation are above our expectations, if the royalty rates charged by the various performance rights societies increase or if any of these or other parties with music licensing rights impose terms that make it difficult or impossible to broadcast music, we may be unable to provide music content to our users in a cost-effective manner. We believe that users of Internet services such as the Yahoo! online properties will increasingly demand high-quality audio and video content. The revenue that we receive as a result of our audio and video broadcasts may not justify the costs of providing

such broadcasts. Our inability to cost-effectively provide high-quality audio and/or video content to our users could have a material adverse effect on our business, operating results and financial condition.

To successfully improve our rich media offerings, we must rely on the deployment of a true multicasting network.

The streaming services that we acquired upon our acquisition of broadcast.com originally deployed unicasting (one user per company originated stream) technology to broadcast audio and video programming to users over the Internet. Recently, it began to deploy another broadcast technology, multicasting (multiple users per company originated stream). We believe that demand for multicasting will continue to expand and, as a result, we must continue to enhance this capability in the future.

We will be required to test, deploy and successfully scale a multicast network infrastructure to serve mass audiences. There can be no assurance that we will be successful in doing so, that multicasting will be able to support a substantial audience or that an alternative technology will not emerge that offers superior broadcasting technology as compared to multicasting. In the event that multicasting technology is not successfully deployed in a timely manner or such an alternative technology emerges, we may be required to expend significant resources to deploy a technology other than multicasting, which could adversely affect our results of operations. If Yahoo! Broadcast Services fails to scale its broadcasts to large audiences of simultaneous users, such failure could adversely affect that portion of our business.

We must manage our growth successfully, including the integration of recently-acquired companies, in order to achieve our desired results.

We have experienced dramatic growth in personnel in recent years and expect to continue to hire additional personnel. As the number of Yahoo! employees grows, it will become increasingly difficult and more costly to manage our personnel. Further, as a result of recent acquisitions and international expansion, almost one-half of our employees are based outside of our Bay Area headquarters. If we are unable to effectively manage a large and geographically dispersed group of employees, our business will be adversely affected.

As part of our business strategy, we have completed several acquisitions and expect to enter into additional business combinations and acquisitions. Acquisition transactions are accompanied by a number of risks, including:

- the difficulty of assimilating the operations and personnel of the acquired companies;
- the potential disruption of our ongoing business and distraction of management;
- the difficulty of incorporating acquired technology or content and rights into our products and media properties and unanticipated expenses related to such integration;
- the negative impact on reported earnings if any of our planned transactions that are expected to qualify for pooling of interest accounting treatment for financial reporting purposes fail to so qualify;
- the correct assessment of the relative percentages of in-process research and development expense that can be immediately written off as compared to the amount which must be amortized over the appropriate life of the asset;
- the failure to successfully develop an acquired in-process technology resulting in the impairment of amounts currently capitalized as intangible assets;
- the impairment of relationships with employees and customers as a result of any integration of new management personnel; and
- the potential unknown liabilities associated with acquired businesses.

We may not be successful in addressing these risks or any other problems encountered in connection with such acquisitions.

Our intellectual property rights are costly and difficult to protect.

We regard our copyrights, patents, trademarks, trade dress, trade secrets, and similar intellectual property, including our rights to certain domain names, as critical to our success. We rely upon trademark, patent and copyright law, trade secret protection and confidentiality or license agreements with our employees, customers, partners and others to protect our proprietary rights. For example, we have obtained the registration for certain of our trademarks, including “Yahoo!” and “Yahooligans!.” Effective trademark, patent, copyright, and trade secret protection may not be available in every country in which our products and media properties are distributed or made available through the Internet, and while we attempt to ensure that the quality of our brand is maintained by our licensees, our licensees may take actions that could materially and adversely affect the value of our proprietary rights or the reputation of our products and media properties. We are aware that third parties have, from time to time, copied significant portions of Yahoo! directory listings for use in competitive Internet navigational tools and services. Protection of the distinctive elements of Yahoo! may not be available under copyright law. We cannot guarantee that the steps we have taken to protect our proprietary rights will be adequate.

We may be subject to intellectual property infringement claims, which are costly to defend and could limit our ability to use certain technologies in the future.

Many parties are actively developing search, indexing, e-commerce and other Web-related technologies, as well as a variety of online business models and methods. We believe that these parties will continue to take steps to protect these technologies, including, but not limited to, seeking patent protection. As a result, disputes regarding the ownership of these technologies and rights associated with online business are likely to arise in the future. In addition to existing patents and intellectual property rights, we anticipate that additional third-party patents related to our services will be issued in the future. From time to time, parties assert patent infringement claims against us in the form of letters, lawsuits and other forms of communications. Currently, we are engaged in two lawsuits regarding patent issues and have been notified of a number of other potential disputes.

In addition to patent claims, third parties have asserted and most likely will continue to assert claims against us alleging infringement of copyrights, trademark rights, trade secret rights or other proprietary rights, or alleging unfair competition or violations of privacy rights. In the event that we determine that licensing patents or other proprietary rights is appropriate, we cannot guarantee that we will be able to license such proprietary rights on reasonable terms or at all. We may incur substantial expenses in defending against third-party infringement claims regardless of the merit of such claims. In the event that there is a determination that we have infringed third-party proprietary rights such as patents, copyrights, trademark rights, trade secret rights or other third party rights such as publicity and privacy rights, we could incur substantial monetary liability or be prevented from using the rights, which could require us to change our business practices in the future.

We are aware of lawsuits filed against two of our competitors regarding the presentment of advertisements in response to search requests on “keywords” that may be trademarks of third parties. Initial rulings in these lawsuits were in favor of our competitors, but the plaintiffs in these lawsuits have appealed these initial rulings.

We are subject to U.S. and foreign government regulation of the Internet, the impact of which is difficult to predict.

There are currently few laws or regulations directly applicable to the Internet. The application of existing laws and regulations to Yahoo! relating to issues such as user privacy, defamation, pricing, advertising, taxation, gambling, sweepstakes, promotions, financial market regulation, content regulation, quality of products and services, and intellectual property ownership and infringement can be unclear. In addition, we will also be subject to new laws and regulations directly applicable to our activities. Any existing or new legislation applicable to us could expose us to substantial liability, including significant expenses necessary to comply with such laws and regulations, and dampen the growth in use of the Web.

Several recently passed federal laws could have an impact on our business. The Digital Millennium Copyright Act is intended to reduce the liability of online service providers for listing or linking to third-party Web sites that include materials that infringe copyrights or other rights of others. The Children’s Online Protection Act and the Children’s Online Privacy Protection Act are intended to restrict the distribution of certain materials deemed harmful to children and impose additional restrictions on the ability of online services to collect user information from minors. In addition, the Protection of Children From Sexual Predators Act of 1998 requires online service providers to report evidence of violations of federal child pornography laws under certain circumstances. Such legislation may impose significant additional costs on our business or subject us to additional liabilities.

We post our privacy policy and practices concerning the use and disclosure of user data. In addition, GeoCities, a company we acquired in 1999, is required to comply with a consent order between it and the Federal Trade Commission (the “FTC”), which imposes certain obligations and restrictions with respect to information collected from users. Any failure by us to comply with our posted privacy policy, the consent order, FTC requirements or other privacy-related laws and regulations could result in proceedings by the FTC or others which could potentially have an adverse effect on our business, results of operations and financial condition. In this regard, there are a large number of legislative proposals before the United States Congress and various state legislative bodies regarding privacy issues related to our business. It is not possible to predict whether or when such legislation may be adopted, and certain proposals, if adopted, could materially and adversely affect our business through a decrease in user registrations and revenues. This could be caused by, among other possible provisions, the required use of disclaimers or other requirements before users can utilize our services.

Due to the global nature of the Web, it is possible that the governments of other states and foreign countries might attempt to regulate its transmissions or prosecute us for violations of their laws. We might unintentionally violate such laws, such laws may be modified and new laws may be enacted in the future. Any such developments could have a material adverse effect on our business, operating results and financial condition.

We may be subject to legal liability for our online services.

We host a wide variety of services that enable individuals to exchange information, generate content, conduct business and engage in various online activities on an international basis, including public message posting and services relating to online auctions and homesteading. The law relating to the liability of providers of these online services for activities of their users is currently unsettled both within the United States and abroad. Claims have been threatened and have been brought against us for defamation, negligence, copyright or trademark infringement, unlawful activity, tort, including personal injury, fraud, or other theories based on the nature and content of information that we provide links to or that may be posted online or generated by our users or with respect to auctioned materials. For example, Yahoo! was recently the subject of a claim brought by certain entities in a French court regarding, among other things, the availability of certain content within our services which was alleged to violate French law. Due to the unsettled nature of the law in this area, we may be subject to similar actions in domestic or other international jurisdictions in the future. Our defense of any such actions could be costly and involve significant distraction of our management and other resources. In addition, we are aware that governmental agencies are currently investigating the conduct of online auctions.

We also periodically enter into arrangements to offer third-party products, services, or content under the Yahoo! brand or via distribution on various Yahoo! properties, including stock quotes and trading information. We may be subject to claims concerning these products, services or content by virtue of our involvement in marketing, branding, broadcasting or providing access to them, even if we do not ourselves host, operate, provide, or provide access to these products, services or content. While our agreements with these parties often provide that we will be indemnified against such liabilities, such indemnification may not be adequate.

It is also possible that, if any information provided directly by us contains errors or is otherwise negligently provided to users, third parties could make claims against us. For example, we offer Web-based email services, which expose us to potential risks, such as liabilities or claims resulting from unsolicited email, lost or misdirected messages, illegal or fraudulent use of email, or interruptions or delays in email service. Investigating and defending any of these types of claims is expensive, even to the extent that the claims do not ultimately result in liability.

Our stock price has been volatile historically, which may make it more difficult for you to resell shares when you want at prices you find attractive.

The trading price of our Common Stock has been and may continue to be subject to wide fluctuations. During 2000, the closing sale prices of our Common Stock on the Nasdaq Stock Market ranged from \$237.50 to \$25.625 per share and the sale price of our Common Stock closed at \$22.31 per share on May 1, 2001. Our stock price may fluctuate in response to a number of events and factors, such as quarterly variations in operating results, announcements of technological innovations or new products and media properties by us or our competitors, changes in financial estimates and recommendations by securities analysts, the operating and stock price performance of other companies that investors may deem comparable, and news reports relating to trends in our markets. In addition, the stock market in general, and the market prices for Internet-related companies in particular, have experienced extreme volatility that often has been unrelated to the operating performance of such companies. These broad market and industry fluctuations may adversely affect the price of our stock, regardless of our operating performance. Additionally, volatility or a lack of positive performance in our stock price may adversely affect our ability to retain key employees, all of whom have been granted stock options.

Management and one large stockholder beneficially own approximately 38% of our stock; their interests could conflict with yours; significant sales of stock held by them could have a negative effect on Yahoo!'s stock price.

Yahoo!'s directors and executive officers and SOFTBANK beneficially owned approximately 38% of our outstanding Common Stock as of March 31, 2001. Eric Hippeau is a member of our Board of Directors and is also the President and Executive Managing Director of SOFTBANK International Ventures, an affiliate of SOFTBANK. As a result of their ownership and positions, our directors and executive officers and SOFTBANK collectively are able to significantly influence all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. Such concentration of ownership may also have the effect of delaying or preventing a change in control of Yahoo!. In addition, sales of significant amounts of shares held by Yahoo!'s directors and executive officers and SOFTBANK, or the prospect of these sales, could adversely affect the market price of Yahoo! Common Stock.

Our operations could be significantly hindered by the occurrence of a natural disaster or other catastrophic event.

Our operations are susceptible to outages due to fire, floods, power loss, telecommunications failures, break-ins and similar events. In addition, the majority of our network infrastructure is located in Northern California, an area susceptible to earthquakes. In recent months, the western United States (and California in particular) has experienced repeated episodes of diminished electrical power supply. As a result of these episodes, certain of our operations or facilities may be subject to "rolling blackouts" or other unscheduled interruptions of electrical power. The prospect of such unscheduled interruptions may continue for the foreseeable future and we are unable to predict either their occurrence, duration or cessation. We do not have multiple site capacity for all of our services in the event of any such occurrence. Despite our implementation of network security measures, our servers are vulnerable to computer viruses, break-ins, and similar disruptions from unauthorized tampering with our computer systems. In addition, we are vulnerable to coordinated attempts to overload our systems with data, resulting in denial or reduction of service to some or all of our users for a period of time. We have experienced a coordinated denial of service attack in the past, and may experience such attempts in the future. We do not carry sufficient business interruption insurance to compensate us for losses that may occur as a result of any of these events. Any such event could have a material adverse effect on our business, operating results, and financial condition.

Anti-takeover provisions could make it more difficult for a third party to acquire us.

We recently announced our adoption of a stockholder rights plan and declared a dividend distribution of one right for each outstanding share of Common Stock to stockholders of record as of March 20, 2001. Each right entitles the holder to purchase one unit consisting of one one-thousandth of a share of our Series A Junior Participating Preferred Stock for \$250 per unit. Under certain circumstances, if a person or group acquires 15% or more of our outstanding Common Stock, holders of the rights (other than the person or group triggering their exercise) will be able to purchase, in exchange for the \$250 exercise price, shares of our Common Stock or of any company into which we are merged having a value of \$500. The rights expire on March 1, 2011 unless extended by our Board of Directors. Because the rights may substantially dilute the stock ownership of a person or group attempting to take us over without the approval of our Board of Directors, our rights plan could make it more difficult for a third party to acquire us (or a significant percentage of our outstanding capital stock) without first negotiating with our Board of Directors regarding such acquisition.

In addition, our Board of Directors has the authority to issue up to 10,000,000 shares of preferred stock (of which 2,000,000 shares have been designated as Series A Junior Participating Preferred Stock) and to determine the price, rights, preferences, privileges and

restrictions, including voting rights, of those shares without any further vote or action by the stockholders. The rights of the holders of Common Stock may be subject to, and may be adversely affected by, the rights of the holders of any preferred stock that may be issued in the future. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change of control of Yahoo! without further action by the stockholders and may adversely affect the voting and other rights of the holders of Common Stock. Further, certain provisions of our charter documents, including provisions eliminating the ability of stockholders to take action by written consent and limiting the ability of stockholders to raise matters at a meeting of stockholders without giving advance notice, may have the effect of delaying or preventing changes in control or management of Yahoo!, which could have an adverse effect on the market price of our stock. In addition, our charter documents do not permit cumulative voting, which may make it more difficult for a third party to gain control of our Board of Directors.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

The Company is exposed to the impact of interest rate changes, foreign currency fluctuations, and change in the market values of its investments.

Interest Rate Risk. The Company's exposure to market rate risk for changes in interest rates relates primarily to the Company's investment portfolio. The Company has not used derivative financial instruments to hedge its investment portfolio. The Company invests its excess cash in debt instruments of the U.S. Government and its agencies, and in high-quality corporate issuers and, by policy, limits the amount of credit exposure to any one issuer. The Company protects and preserves its invested funds by limiting default, market and reinvestment risk.

Investments in both fixed rate and floating rate interest earning instruments carries a degree of interest rate risk. Fixed rate securities may have their fair market value adversely impacted due to a rise in interest rates, while floating rate securities may produce less income than expected if interest rates fall. Due in part to these factors, the Company's future investment income may fall short of expectations due to changes in interest rates or the Company may suffer losses in principal if forced to sell securities which have declined in market value due to changes in interest rates.

Foreign Currency Risk. International revenues from the Company's foreign subsidiaries accounted for approximately 18% of total revenues for the quarter ended March 31, 2001. International sales are made mostly from the Company's foreign sales subsidiaries in their respective countries and are typically denominated in the local currency of each country. These subsidiaries also incur most of their expenses in the local currency. Accordingly, all foreign subsidiaries use the local currency as their functional currency.

The Company's international business is subject to risks typical of an international business, including, but not limited to differing economic conditions, changes in political climate, differing tax structures, other regulations and restrictions, and foreign exchange rate volatility. Accordingly, the Company's future results could be materially adversely impacted by changes in these or other factors.

The Company's exposure to foreign exchange rate fluctuations arises in part from intercompany accounts in which costs incurred in the United States are charged to the Company's foreign sales subsidiaries. These intercompany accounts are typically denominated in the functional currency of the foreign subsidiary in order to centralize foreign exchange risk with the parent company in the United States. The Company is also exposed to foreign exchange rate fluctuations as the financial statements of foreign subsidiaries are translated into U.S. dollars in consolidation. As exchange rates vary, these results, when translated, may vary from expectations and adversely impact overall expected profitability. The effect of foreign exchange rate fluctuations on the Company for the quarter ended March 31, 2001 was not material.

Investment Risk. The Company invests in equity instruments of privately-held companies for business and strategic purposes. These investments are included in other long-term assets and are accounted for under the cost method when ownership is less than 20% and the Company does not have the ability to exercise significant influence over operations. Since the Company's initial investment, certain of these investments in privately-held companies have become marketable equity securities upon the investees completing initial public offerings. Such investments, most of which are in the Internet industry, are subject to significant fluctuations in fair market value due to the volatility of the stock market, and are recorded as long-term investments. For these investments in public and privately-held companies, the Company's policy is to regularly review the assumptions underlying the operating performance and cash flow forecasts in assessing the carrying values.

The primary objective of the Company's investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, the Company maintains its portfolio of cash equivalents, short-term and long-term investments in a variety of securities, including both government and corporate obligations and money market funds. As of March 31, 2001, the net unrealized gains of \$11.9 million on these investments have been recorded net of deferred taxes of \$4.8 million as a separate component of stockholders' equity.

The Company is exposed to market risk as it relates to changes in the market value of its investments. The Company invests in equity instruments of public companies, certain of which will be classified as derivatives, for business and strategic purposes and has classified these securities as available-for-sale. These available-for-sale equity investments, primarily in Internet and technology companies, are subject to significant fluctuations in fair market value due to the volatility of the stock market and the industries in which these companies participate. The Company has realized gains and losses from both the sale of investments, as well as mergers and acquisitions of companies in which the Company has invested. As of March 31, 2001, the Company had available-for-sale equity investments with a fair market value of \$49.9 million and a cost basis of \$40.7 million. Net unrealized gains of \$12.7 million have been recorded net of deferred taxes of \$5.1 million as a separate component of stockholders' equity and losses on derivatives of \$3.5 million have been recorded in other income on the statement of operations. The Company's objective in managing its exposure

to stock market fluctuations is to minimize the impact of stock market declines to the Company's earnings and cash flows. Beyond the control of the Company, however, continued market volatility, as well as mergers and acquisitions, have the potential to have a material non-cash impact on the operating results of the Company in future periods.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

From time to time, the Company is subject to legal proceedings and claims in the ordinary course of business, including claims of alleged infringement of trademarks, copyrights and other intellectual property rights, and a variety of claims arising in connection with the Company's email, message boards, auction sites, shopping services, and other communications and community features, such as claims alleging defamation or invasion of privacy. In addition, from time to time, third parties assert patent infringement claims against the Company in the form of letters, lawsuits and other forms of communication. Currently, the Company is engaged in two lawsuits regarding patent issues and has been notified of a number of other potential patent disputes.

The Company is not currently aware of any legal proceedings or claims that the Company believes are likely to have a material adverse effect on the Company's financial position, results of operations or cash flows. However, the Company may incur substantial expenses in defending against third party claims. In the event of a determination adverse to the Company, the Company may incur substantial monetary liability, and be required to change its business practices. Either of these could have a material adverse effect on the Company's financial position, results of operations, or cash flows.

Item 2. Changes in Securities

On March 1, 2001 the Company's Board of Directors adopted a stockholder rights plan and declared a dividend distribution of one right for each outstanding share of Common Stock to stockholders of record as of March 20, 2001. Each right entitles the holder to purchase one unit consisting of one one-thousandth of a share of our Series A Junior Participating Preferred Stock for \$250 per unit. Under certain circumstances, if a person or group acquires 15% or more of the Company's outstanding Common Stock, holders of the rights (other than the person or group triggering their exercise) will be able to purchase, in exchange for the \$250 exercise price, shares of Yahoo! Common Stock or of any company into which Yahoo! is merged having a value of \$500. The rights expire on March 1, 2011 unless extended by the Company's Board of Directors.

On April 16, 2001, the Company sold one (1) million shares of Common Stock to Terry S. Semel, its new chairman and chief executive officer as of May 1, 2001. Mr. Semel purchased the shares for \$17,620,000 in cash. The shares were sold to Mr. Semel in reliance upon an exemption from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended.

Item 3. Defaults Upon Senior Securities

None.

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

On April 27, 2001, the Company held its Annual Meeting of Stockholders. At the meeting, the stockholders elected as directors Timothy Koogle (with 447,349,167 affirmative votes and 33,904,141 votes withheld), Jeff Mallett (with 447,397,301 affirmative votes and 33,856,006 votes withheld), Jerry Yang (with 447,315,340 affirmative votes and 33,937,968 votes withheld), Eric Hippeau (with 446,790,612 affirmative votes and 34,462,696 votes withheld), Arthur H. Kern (with 448,656,213 affirmative votes and 32,597,094 votes withheld), Michael Moritz (with 446,819,777 affirmative votes and 34,433,531 votes withheld), and Edward R. Kozel (with 448,745,115 affirmative votes and 32,508,193 votes withheld).

The stockholders also approved an amendment to the Company's 1996 Employee Stock Purchase Plan to increase the number of shares available for issuance under the plan by an aggregate of 4,000,000 shares to 7,600,000 shares (with 465,380,136 shares voting for, 13,878,377 against, and 1,994,794 abstaining).

The stockholders also ratified the appointment of PricewaterhouseCoopers LLP as the independent accountants for the Company for the year ending December 31, 2001 (with 478,976,285 shares voting for, 776,023 against, and 1,500,999 abstaining).

Item 5. Other Information

None.

Item 6. Exhibits and Reports on Form 8-K

a. Exhibits are incorporated herein by reference or are filed with this report as indicated below (numbered in accordance with Item 601 of Regulation S-K)

Description

2.1	Agreement and Plan of Merger dated as of June 27, 2000 by and among the Registrant, Hermes Acquisition Corporation and eGroups, Inc. (Filed as Exhibit 2.8 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2000 [the June 30, 2000 10-Q] and incorporated herein by reference.)
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3.1	Amended and Restated Certificate of Incorporation of Registrant (Filed as Exhibit 3.1 to the June 30, 2000 10-Q and incorporated herein by reference.)
3.2*	Amended Bylaws of Registrant
4.1	Form of Senior Indenture (Filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-3, Registration No. 333-46458, filed September 22, 2000 [the September 22, 2000 Form S-3] and incorporated herein by reference.)
4.2	Form of Subordinated Indenture (Filed as Exhibit 4.2 to the September 22, 2000 Form S-3 and incorporated herein by reference.)
4.3**	Form of Senior Note**
4.4**	Form of Subordinated Note**
4.5**	Form of Certificate of Designation for preferred stock (together with preferred stock certificate)**
4.6	Form of Deposit Agreement (together with Depository Receipt) (Filed as Exhibit 4.6 to the September 22, 2000 Form S-3 and incorporated herein by reference.)
4.7**	Form of Warrant Agreement (together with form of Warrant Certificate)**
4.8*	Certificate of Designation, Preferences and Rights of Series A Junior Participating Preferred Stock of the Registrant
4.9	Rights Agreement, dated as of March 15, 2001, between the Registrant and Equiserv Trust Company, A.A., as Rights Agent, including the form of Rights Certificate as Exhibit B and the summary of Rights to Purchase Preferred Stock as Exhibit C (Filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-k, dated March 19, 2001 and incorporated herein by reference)
10.1	Form of Indemnification Agreement with certain of the Registrant's officers and directors (Filed as Exhibit 10.1 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 1999 [the 1999 10-K] and incorporated herein by reference.)
10.2*	1995 Stock Plan, as amended
10.3	Form of Management Continuity Agreement with certain of the Registrant's Executive Officers (Filed as Exhibit 10.3 to the Registrant's Registration Statement on Form SB-2, Registration No. 333-2142-LA, declared effective on April 11, 1996 [the SB-2 Registration Statement] and incorporated herein by reference.)
10.4	Second Amended and Restated Investor Rights Agreement dated March 12, 1996 between the Registrant and certain shareholders (Filed as Exhibit 10.9 to the SB-2 Registration Statement and incorporated herein by reference.)
10.5†	Publishing Agreement dated June 2, 1995 between the Registrant and IDG Books Worldwide, Inc. (Filed as Exhibit 10.12 to the SB-2 Registration Statement and incorporated herein by reference.)
10.6	Sublease Agreement dated June 6, 1996 relating to the Registrant's office at 3400 Central Expressway, Suite 201, Santa Clara, California (Filed as Exhibit 10.15 to the 1996 10-K and incorporated herein by reference.)
10.7†	Agreement dated January 15, 1996 between the Registrant and Ziff-Davis Publishing Company (Filed as Exhibit 10.19 to the SB-2 Registration Statement and incorporated herein by reference.)
10.8	Amended and Restated 1996 Employee Stock Purchase Plan and form of subscription agreement (Filed as Exhibit 10.8 to the 2000 10-K and incorporated herein by reference.)
10.9	1996 Directors' Stock Option Plan, as amended (filed as Exhibit 10.16 to the 1999 10-K and incorporated herein by reference) and form of option agreement (Filed as Exhibit 10.21 to the SB-2 Registration Statement and incorporated herein by reference.)
10.10†	Yahoo! Canada Affiliation Agreement dated February 29, 1996 between the Registrant and Rogers Multi-Media Inc. (Filed as Exhibit 10.23 to the SB-2 Registration Statement and incorporated herein by reference.)
10.11	Standstill and Voting Agreement dated March 12, 1996 between the Registrant and SOFTBANK Holdings Inc. (Filed as Exhibit 10.26 to the SB-2 Registration Statement and incorporated herein by reference.)
10.12†	Joint Venture Agreement dated April 1, 1996 by and between the Registrant and SOFTBANK Corporation (Filed as Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q/A for the quarter ended September 30, 1996 [the September 30, 1996 10-Q] and incorporated herein by reference.)
10.13†	Yahoo! Japan License Agreement dated April 1, 1996 by and between the Registrant and Yahoo! Japan Corporation (Filed as Exhibit 10.3 to the September 30, 1996 10-Q and incorporated herein by reference.)
10.14†	SOFTBANK Letter Agreement dated April 1, 1996 by and between the Registrant and SOFTBANK Group (Filed as Exhibit 10.4 to the September 30, 1996 10-Q and incorporated herein by reference.)
10.15†	Joint Venture Agreement dated November 1, 1996 by and between the Registrant and SB Holdings (Europe) Ltd. (Filed as Exhibit 10.30 to the 1996 10-K and incorporated herein by reference.)
10.16†	Yahoo! UK License Agreement dated November 1, 1996 by and between the Registrant and Yahoo! UK (Filed as Exhibit 10.31 to the 1996 10-K and incorporated herein by reference.)
10.17†	Yahoo! Deutschland License Agreement dated November 1, 1996 by and between the Registrant and Yahoo! Deutschland (Filed as Exhibit 10.32 to the 1996 10-K and incorporated herein by reference.)
10.18†	Yahoo! France License Agreement dated November 1, 1996 by and between the Registrant and Yahoo! France (Filed as Exhibit 10.33 to the 1996 10-K and incorporated herein by reference.)
10.19	Restructuring Agreement dated as of July 29, 1997 among the Registrant, Visa International Service Association, Visa Marketplace, Inc., Sterling Payot Company, and Sterling Payot Capital, L.P. (Filed as Exhibit 4.1 to the Registrant's Current Report on Form 8-K, dated July 29, 1997 and incorporated herein by reference.)
10.20	Joint Venture Agreement, dated August 31, 1997 between the Registrant, SOFTBANK Korea Corporation, SOFTBANK Corporation, and Yahoo! Japan Corporation (Filed as Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1997 [the September 30, 1997 10-Q] and incorporated herein by reference.)
10.21	Sublease Agreement, dated September 11, 1997 between the Registrant and Amdahl Corporation (Filed as Exhibit 10.2 to the September 30, 1997 10-Q and incorporated herein by reference.)
10.22	Four11 Corporation 1995 Stock Option Plan (Filed as Exhibit 4.2 to the Registrant's Registration Statement on Form S-8, Registration No. 333-39105, dated October 30, 1997, and incorporated herein by reference.)
10.23†	Amendment Agreement dated September 17, 1997 by and between the Registrant and SOFTBANK Corporation (Filed as Exhibit 10.39 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 1997 [the 1997 10-K] and incorporated herein by reference.)
10.24†	Amendment to Yahoo! Japan License Agreement dated September 17, 1997 by and between the Registrant and Yahoo! Japan Corporation (Filed as Exhibit 10.40 to the 1997 10-K and incorporated herein by reference.)
10.25†	Services Agreement dated November 30, 1997 by and between Yahoo! Korea Corporation and SOFTBANK Korea Corporation (Filed as Exhibit 10.41 to the 1997 10-K and incorporated herein by reference.)
10.26†	Yahoo! Korea License Agreement dated November 30, 1997 by and between the Registrant, Yahoo! Korea Corporation, and Yahoo! Japan Corporation (Filed as Exhibit 10.42 to the 1997 10-K and incorporated herein by reference.)
10.27	Viaweb Inc. 1997 Stock Option Plan and form of Option Agreement thereunder (Filed as Exhibit 4.2 to the Registrant's

	Registration Statement on Form S-8, Registration No. 333-56781, dated June 12, 1998 [the S-8 Registration Statement dated June 12, 1998], and incorporated herein by reference.)
10.28	Forms of Viaweb Inc. 1996 Option Agreements (Filed as Exhibit 4.3 to the S-8 Registration Statement, dated June 12, 1998, and incorporated herein by reference.)
10.29	Amendment to Second Amended and Restated Investor Rights Agreement dated July 7, 1998 among the Registrant, SOFTBANK Holdings Inc., Sequoia Capital VI and Sequoia Technology Partners VI (Filed as Exhibit 10.2 to the September 30, 1998 10-Q and incorporated herein by reference.)
10.30	Content License Agreement dated January 8, 1998 between the Registrant and ZDNet (Filed as Exhibit 10.3 to the September 30, 1998 10-Q and incorporated herein by reference.)
10.31	Yoyodyne Entertainment, Inc. 1996 Stock Option Plan and form of Option Agreement thereunder (Filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-8, Registration No. 333-66067, dated October 23, 1998 and incorporated herein by reference.)
10.32†	Termination Agreement between the Registrant and Rogers Media Inc. dated January 6, 1999 (Filed as Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 1999 and incorporated herein by reference.)
10.33	Online Anywhere 1997 Stock Plan (Filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-8, Registration No. 333-81635, dated June 25, 1999 [the S-8 Registration Statement dated June 25, 1999] and incorporated herein by reference.)
10.34	Encompass, Inc. Stock Option Plan (Filed as Exhibit 4.2 to the S-8 Registration Statement dated June 25, 1999 and incorporated herein by reference.)
10.35	ISSG Stock Option Plan (Filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-8, Registration No. 333-93497, dated December 23, 1999 and incorporated herein by reference.)
10.36*	Employment Letter, dated as of March 19, 2001, between the Registrant and Gregory Coleman
10.37*	Participation Agreement, dated as of March 16, 2001, by and among the Registrant as Lessee, Lease Plan North America, Inc., as Lessor and Participant, ABN AMRO Bank N.V., as a Participant, the Other Banks and Financial Institutions from time to time Party hereto, as Participants, the Registrant, as Tranche Y Participant, and ABN AMRO Bank N.V., as Agent
10.38*	Master Lease, dated as of March 16, 2001, between Lease Plan North America, Inc., as the Lessor and the Registrant, as the Lessee

† Confidential treatment granted with respect to certain portions of this Exhibit.

* Filed herewith.

** To be filed by a report on Form 8-K pursuant to Item 601 of Regulation S-K or, where applicable, incorporated herein by reference from a subsequent filing in accordance with Section 305(b)(2) of the Trust Indenture Act of 1939.

b. Reports on Form 8-K:

On January 10, 2001, the Company filed a report on Form 8-K which announced Yahoo's financial results for the quarter and year ended December 31, 2000. A copy of Yahoo's press release announcing the results was attached and incorporated by reference therein.

On January 19, 2001, the Company filed a report on Form 8-K/A which amended the Form 8-K/A previously filed on September 22, 2000. The original Form 8-K announced the completion of the Company's acquisition of eGroups, Inc. and included its press release therein. The Form 8-K/A included the consolidated financial statements for the six months ended June 30, 2000 and 1999 and the three years ended December 31, 1999 and the accompanying notes which reflect Yahoo!'s financial position and the results of operations as if eGroups, Inc. was a wholly-owned subsidiary of Yahoo! since inception.

On March 8, 2001, the Company filed a report on Form 8-K which (i) updated its previously reported financial guidance for its first quarter financial results and (ii) announced that its Board of Directors had initiated a search for a new chief executive officer and authorized a stock repurchase program. A copy of Yahoo's press release announcing these matters was attached and incorporated by reference therein.

On March 19, 2001, the Company filed a report on Form 8-K which announced that on March 1, 2001, its Board of Directors adopted a Stockholder Rights Plan. A copy of Yahoo's press release announcing this matter and the Rights Agreement were attached and incorporated by reference therein.

Signatures

In accordance with the requirements of the Exchange Act, the Registrant has caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

YAHOO! INC.

Dated: May 4, 2001

By: /s/ Susan L. Decker

Susan L. Decker

Senior Vice President, Finance and Administration, and Chief Financial Officer (Principal Financial Officer)

Dated: May 4, 2001

By: /s/ James J. Nelson

James J. Nelson
Vice President, Finance (Principal Accounting Officer)

YAHOO! INC.

Index to Exhibits

<u>Title</u>	<u>Exhibit No.</u>
Amended Bylaws of the Registrant	3.2
Certificate of Designation, Preferences and Rights of Series A Junior Participating Preferred Stock of the Registrant	4.8
1995 Stock Plan, as amended	10.2
Employment Letter, dated as of March 19, 2001, between the Registrant and Gregory Coleman	10.36
Participation Agreement, dated as of March 16, 2001, by and among the Registrant as Lessee, Lease Plan North America, Inc., as Lessor and Participant, ABN AMRO Bank N.V., as a Participant, the Other Banks and Financial Institutions from time to time Party hereto, as Participants, the Registrant, as Tranche Y Participant, and ABN AMRO Bank N.V., as Agent	10.37
Master Lease, dated as of March 16, 2001, between Lease Plan North America, Inc., as the Lessor and the Registrant, as the Lessee	10.38

AMENDED BYLAWS

OF

YAHOO! INC.

(as of May 1, 2001)

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BYLAWS

OF

YAHOO! INC.

ARTICLE I

CORPORATE OFFICES

1.1 **Registered Office.**

The address of the Corporation's registered office in the State of Delaware is 1013 Centre Road, Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

1.2 **Other Offices.**

The Board of Directors may at any time establish other offices at any place or places where the Corporation is qualified to do business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 **Place of Meetings.**

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the Corporation.

2.2 **Annual Meeting.**

(a) The annual meeting of stockholders shall be held each year on a date and at a time designated by the Board of Directors. In the absence of such designation, the annual meeting of stockholders shall be held on the third Tuesday of May in each year at 10:00 a.m. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day. At the meeting, directors shall be elected and any other proper business may be transacted.

(b) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice with respect to such meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of the notice provided for in this Section 2.2, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this Section 2.2.

(c) In addition to the requirements of Section 2.5, for nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (b) of this Section 2.2, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation and such business must be a proper matter for stockholder action under the General Corporation Law of Delaware. To be timely, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the Corporation not less than 60 days nor more than 90 days prior to the first anniversary of the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting is more than 30 days prior to or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the 90th day prior to such annual meeting and not later than the close of business on the later of the 60th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (B) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

(d) Only such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.2. The chairman of the meeting shall determine whether a nomination or any business proposed to be transacted by the stockholders has been properly brought before the meeting and, if any proposed nomination or business has not been properly brought before the meeting, the chairman shall declare that such proposed business or nomination shall not be presented for stockholder action at the meeting.

(e) For purposes of this Section 2.2, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service.

(f) Nothing in this Section 2.2 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

2.3 **Special Meeting.**

A special meeting of the stockholders may be called at any time by the Board of Directors, or by the chairman of the board, or by the president.

2.4 **Notice of Stockholder's Meetings; Affidavit of Notice.**

All notices of meetings of stockholders shall be in writing and shall be sent or otherwise given in accordance with this Section 2.4 of these Bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting (or such longer or shorter time as is required by Section 2.5 of these Bylaws, if applicable). The notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.5 **Advance Notice of Stockholder Nominees.**

Only persons who are nominated in accordance with the procedures set forth in this Section 2.5 shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section 2.5. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 60 days nor more than 90 days prior to the meeting; provided, however, that in the event that less than 60 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) the class and number of shares of the Corporation which are beneficially owned by such person and (iv) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including, without limitation, such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); and (b) as to the stockholder giving the notice (i) the name and address, as they appear on the Corporation's books, of such stockholder and (ii) the class and number of shares of the Corporation which are beneficially owned by such stockholder. At the request of the Board of Directors any person nominated by the Board of Directors for election as a director shall furnish to the secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.5. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by the Bylaws, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded.

2.6 **Quorum.**

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairman of the meeting or (b) the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 **Adjourned Meeting; Notice.**

When a meeting is adjourned to another time or place, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8 **Conduct of Business.**

The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including the manner of voting and the conduct of business.

2.9 **Voting.**

(a) The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these Bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

(b) Except as may be otherwise provided in the Certificate of Incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

2.10 **Waiver of Notice.**

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

2.11 **Record Date for Stockholder Notice; Voting.**

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. If the Board of Directors does not so fix a record date:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

2.12 **Proxies.**

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by a written proxy, signed by the stockholder and filed with the secretary of the Corporation, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

ARTICLE III

DIRECTORS

3.1 **Powers.**

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the Certificate of Incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

3.2 **Number of Directors.**

Upon the adoption of these Bylaws, the number of directors constituting the entire Board of Directors shall be eight. Thereafter, this number may be changed by a resolution of the Board of Directors or of the stockholders, subject to Section 3.4 of these Bylaws. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 **Election, Qualification and Term of Office of Directors.**

Except as provided in Section 3.4 of these Bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Elections of directors need not be by written ballot.

3.4 **Resignation and Vacancies.**

Any director may resign at any time upon written notice to the attention of the secretary of the Corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies. A vacancy created by the removal of a director by the vote of the stockholders or by court order may be filled only by the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute a majority of the quorum). Each director so elected shall hold office until the next annual meeting of the stockholders and until a successor has been elected and qualified.

Unless otherwise provided in the Certificate of Incorporation or these Bylaws:

(a) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(b) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Certificate of Incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board of Directors (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

3.5 **Place of Meetings; Meetings by Telephone.**

The Board of Directors of the Corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 **Regular Meetings.**

Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

3.7 **Special Meetings; Notice.**

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the Corporation. If the notice is mailed, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by telegram, it shall be delivered personally or by telephone or to the telegraph company at least 24 hours before the time of the holding of the meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate under the circumstances. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the Corporation.

3.8 **Quorum.**

At all meetings of the Board of Directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.9 **Waiver of Notice.**

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the

business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

3.10 **Board Action by Written Consent without a Meeting.**

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee. Written consents representing actions taken by the board or committee may be executed by telex, telecopy or other facsimile transmission, and such facsimile shall be valid and binding to the same extent as if it were an original.

3.11 **Fees and Compensation of Directors.**

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. No such compensation shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

3.12 **Approval of Loans to Officers.**

The Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiary, including any officer or employee who is a director of the Corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing in this Section 3.2 contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

3.13 **Removal of Directors.**

Unless otherwise restricted by statute, by the Certificate of Incorporation or by these Bylaws, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that if the stockholders of the Corporation are entitled to cumulative voting, if less than the entire Board of Directors is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire Board of Directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

3.14 **Chairman and Vice Chairman of the Board of Directors.**

The Corporation may also have, at the discretion of the Board of Directors, a chairman of the Board of Directors and a vice chairman of the Board of Directors, who shall not be considered officers of the Corporation.

ARTICLE IV

COMMITTEES

4.1 **Committees of Directors.**

The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, with each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in the Bylaws of the Corporation, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (a) amend the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided in Section 151(a) of the General Corporation Law of Delaware, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), (b) adopt an agreement of merger or consolidation under Sections 251 or 252 of the General Corporation Law of Delaware, (c) recommend to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, (d) recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or (e) amend the Bylaws of the Corporation; and, unless the board resolution establishing the committee, the Bylaws or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of Delaware.

4.2 **Committee Minutes.**

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

4.3 **Meetings and Action of Committees.**

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), and Section 3.10 (action without a meeting) of these Bylaws, with such changes in the context of such provisions as are necessary to substitute the

committee and its members for the Board of Directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the Board of Directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

ARTICLE V

OFFICERS

5.1 Officers.

The officers of the Corporation shall be a chief executive officer, a president, a secretary, and a chief financial officer. The Corporation may also have, at the discretion of the Board of Directors, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these Bylaws. Any number of offices may be held by the same person.

5.2 Appointment of Officers.

The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these Bylaws, shall be appointed by the Board of Directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 Subordinate Officers.

The Board of Directors may appoint, or empower the chief executive officer or the president to appoint, such other officers and agents as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

5.4 Removal and Resignation of Officers.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board of Directors at any regular or special meeting of the Board of Directors or, except in the case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the attention of the secretary of the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices.

Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

5.6 Chief Executive Officer.

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if any, the chief executive officer of the Corporation shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the Corporation. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the Board of Directors and shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.7 President.

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if any, or the chief executive officer, the president shall have general supervision, direction, and control of the business and other officers of the Corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.8 Vice Presidents.

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors, these Bylaws, the president or the chairman of the board.

5.9 Secretary.

The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required to be given by law or by these Bylaws. He or she shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

5.10 **Chief Financial Officer.**

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, shall render to the president, the chief executive officer, or the directors, upon request, an account of all his or her transactions as chief financial officer and of the financial condition of the Corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

5.11 **Representation of Shares of Other Corporations.**

The chairman of the board, the chief executive officer, the president, any vice president, the chief financial officer, the secretary or assistant secretary of this Corporation, or any other person authorized by the Board of Directors or the chief executive officer or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

5.12 **Authority and Duties of Officers.**

In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board of Directors or the stockholders.

ARTICLE VI

**INDEMNIFICATION OF DIRECTORS, OFFICERS,
EMPLOYEES, AND OTHER AGENTS**

6.1 **Indemnification of Directors and Officers.**

The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.1, a "director" or "officer" of the Corporation includes any person (a) who is or was a director or officer of the Corporation, (b) who is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was a director or officer of a Corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

6.2 **Indemnification of Others.**

The Corporation shall have the power, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.2, an "employee" or "agent" of the Corporation (other than a director or officer) includes any person (a) who is or was an employee or agent of the Corporation, (b) who is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

6.3 **Payment of Expenses in Advance.**

Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 or for which indemnification is permitted pursuant to Section 6.2 following authorization thereof by the Board of Directors shall be paid by the Corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Article VI.

6.4 **Indemnity Not Exclusive.**

The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the Certificate of Incorporation

6.5 **Insurance.**

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the General Corporation Law of Delaware.

6.6 **Conflicts.**

No indemnification or advance shall be made under this Article VI, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the Certificate of Incorporation, these Bylaws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

ARTICLE VII

RECORDS AND REPORTS

7.1 Maintenance and Inspection of Records.

The Corporation shall, either at its principal executive offices or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal place of business.

7.2 Inspection by Directors.

Any director shall have the right to examine the Corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the Corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

7.3 Annual Statement to Stockholders.

The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the Corporation.

ARTICLE VIII

GENERAL MATTERS

8.1 Checks.

From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 Execution of Corporate Contracts and Instruments.

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 Stock Certificates; Partly Paid Shares.

The shares of the Corporation shall be represented by certificates, provided that the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Corporation by the chairman or vice-chairman of the Board of Directors, or the chief executive officer or the president or vice-president, and by the chief financial officer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.4 Special Designation on Certificates.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.5 **Lost Certificates.**

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and canceled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or the owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

8.6 **Construction; Definitions.**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

8.7 **Dividends.**

The directors of the Corporation, subject to any restrictions contained in (a) the General Corporation Law of Delaware or (b) the Certificate of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock.

The directors of the Corporation may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

8.8 **Fiscal Year.**

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors and may be changed by the Board of Directors.

8.9 **Seal.**

The Corporation may adopt a corporate seal, which may be altered at pleasure, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.10 **Transfer of Stock.**

Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

8.11 **Stock Transfer Agreements.**

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

8.12 **Registered Stockholders.**

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE IX

AMENDMENTS

The Bylaws of the Corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the Corporation may, in its Certificate of Incorporation, confer the power to adopt, amend or repeal Bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal Bylaws.

CERTIFICATE OF DESIGNATION, PREFERENCES AND
RIGHTS OF SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

of

YAHOO! INC.

Pursuant to Section 151 of the General Corporation Law
of the State of Delaware

We, the undersigned officers of Yahoo! Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, in accordance with the provisions of Section 103 thereof, DO HEREBY CERTIFY:

That pursuant to the authority conferred upon the Board of Directors by the Amended and Restated Certificate of Incorporation of the said Corporation, the said Board of Directors on March 1, 2001, adopted the following resolution creating a series of two million (2,000,000) shares of Preferred Stock designated as Series A Junior Participating Preferred Stock:

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of its Amended and Restated Certificate of Incorporation, a series of Preferred Stock of the Corporation be and it hereby is created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof are as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" and the number of shares constituting such series shall be two million (2,000,000).

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series A Junior Participating Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on March 31, June 30, September 30 and December 31 of each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$.01 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, par value \$.001 per share, of the Corporation (the "Common Stock") since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Junior Participating Preferred Stock. In the event the Corporation shall at any time after March 1, 2001 (the "Rights Declaration Date") (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Junior Participating Preferred Stock as provided in Paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock).

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Junior Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Junior Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof. Section 3. Voting Rights. The holders of shares of Series A Junior Participating Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Junior Participating Preferred Stock shall entitle the holder thereof to one thousand (1,000) votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Junior Participating Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at any time dividends on any Series A Junior Participating Preferred Stock shall be in arrears in an amount equal to six (6) quarterly dividends thereon, the occurrence of such contingency shall mark the beginning of a period (herein called a "default period") which shall extend until such time when all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all shares of Series A Junior Participating Preferred Stock then outstanding shall have been declared and paid or set apart for payment. During each default period, all holders of Preferred Stock (including holders of the Series A Junior Participating Preferred Stock) with dividends in arrears in an amount equal to six (6) quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect two (2) directors.

(ii) During any default period, such voting right of the holders of Series A Junior Participating Preferred Stock may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(C) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that neither such voting right nor the right of the holders of any other series of Preferred Stock, if any, to increase, in certain cases, the authorized number of directors shall be exercised unless the holders of ten percent (10%) in number of shares of Preferred Stock outstanding shall be present in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Preferred Stock of such voting right. At any meeting at which the holders of Preferred Stock shall exercise such voting right initially during an existing default period, they shall have the right, voting as a class, to elect directors to fill such vacancies, if any, in the Board of Directors as may then exist up to two (2) directors or, if such right is exercised at an annual meeting, to elect two (2) directors. If the number which may be so elected at any special meeting does not amount to the required number, the holders of the Preferred Stock shall have the right to make such increase in the number of directors as shall be necessary to permit the election by them of the required number. After the holders of the Preferred Stock shall have exercised their right to elect directors in any default period and during the continuance of such period, the number of directors shall not be increased or decreased except by vote of the holders of Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to or pari passu with the Series A Junior Participating Preferred Stock.

(iii) Unless the holders of Preferred Stock shall, during an existing default period, have previously exercised their right to elect directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding, irrespective of series, may request, the calling of a special meeting of the holders of Preferred Stock, which meeting shall thereupon be called by the President, a Vice-President or the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of Preferred Stock are entitled to vote pursuant to this Paragraph (C)(iii) shall be given to each holder of record of Preferred Stock by mailing a copy of such notice to him at his last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than 20 days and not later than 60 days after such order or request or in default of the calling of such meeting within 60 days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding. Notwithstanding the provisions of this Paragraph (C)(iii), no such special meeting shall be called during the period within 60 days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) In any default period, the holders of Common Stock, and other classes of stock of the Corporation if applicable, shall continue to be entitled to elect the whole number of directors until the holders of Preferred Stock shall have exercised their right to elect two (2) directors voting as a class, after the exercise of which right (x) the directors so elected by the holders of Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may (except as provided in Paragraph (C)(ii) of this Section 3) be filled by vote of a majority of the remaining directors theretofore elected by the holders of the class of stock which elected the director whose office shall have become vacant. References in this Paragraph (C) to directors elected by the holders of a particular class of stock shall include directors elected by such directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Preferred Stock as a class to elect directors shall cease, (y) the term of any directors elected by the holders of Preferred Stock as a class shall terminate, and (z) the number of directors shall be such number as may be provided for in the Amended and Restated Certificate of Incorporation or Bylaws irrespective of any increase made pursuant to the provisions of Paragraph (C)(ii) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the certificate of incorporation or by-laws). Any vacancies in the Board of Directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining directors.

(D) Except as set forth herein, holders of Series A Junior Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Junior Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Junior Participating Preferred Stock outstanding shall have been paid in full, the Corporation shall not

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, except dividends paid ratably on the Series A Junior Participating Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Junior Participating Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Junior Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Junior Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under Paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Junior Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. (A) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Junior Participating Preferred Stock shall have received an amount equal to \$100 per share of Series A Participating Preferred Stock, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series A Liquidation Preference"). Following the payment of the full amount of the Series A Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series A Liquidation Preference by (ii) 1,000 (as appropriately adjusted as set forth in subparagraph (C) below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Series A Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series A Junior Participating Preferred Stock and Common Stock, respectively, holders of Series A Junior Participating Preferred Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Series A Junior Participating Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(C) In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of

Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Junior Participating Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Junior Participating Preferred Stock shall not be redeemable.

Section 9. Ranking. The Series A Junior Participating Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise.

Section 10. Amendment. At any time when any shares of Series A Junior Participating Preferred Stock are outstanding, neither the Amended and Restated Certificate of Incorporation of the Corporation nor this Certificate of Designation shall be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Junior Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series A Junior Participating Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. Series A Junior Participating Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Junior Participating Preferred Stock.

IN WITNESS WHEREOF, we have executed and subscribed this Certificate and do affirm the foregoing as true under the penalties of perjury this 15th day of March, 2001.

By: /s/ Susan L. Decker

Name: Susan L. Decker
Title: Senior Vice President,
Financial and Administration
and Chief Financial Officer

Attest:

By: /s/ Michael J. Callahan

Name: Michael J. Callahan
Title: Assistant Secretary

YAHOO! INC.
1995 STOCK PLAN
(MAY 1999 AMENDMENT)

1. *Purposes of the Plan.* The purposes of this 1995 Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees and Consultants of the Company and its Subsidiaries and to promote the success of the Company's business. Options granted under the Plan may be incentive stock options (as defined under Section 422 of the Code) or nonstatutory stock options, as determined by the Administrator at the time of grant of an option and subject to the applicable provisions of Section 422 of the Code, as amended, and the regulations promulgated thereunder. Stock purchase rights may also be granted under the Plan.

2. *Definitions.* As used herein, the following definitions shall apply:

- (a) "*Administrator*" means the Board or any of its Committees appointed pursuant to Section 4 of the Plan.
- (b) "*Affiliate*" shall mean an entity (including a partnership or limited liability company) in which the Company, directly or indirectly through any subsidiary, owns an equity interest, but which entity is not a Subsidiary.
- (c) "*Applicable Laws*" has the meaning set forth in Section 4(a) below.
- (d) "*Board*" means the Board of Directors of the Company.
- (e) "*Code*" means the Internal Revenue Code of 1986, as amended.
- (f) "*Committee*" means the Committee appointed by the Board of Directors in accordance with Section 4(a) of the Plan.
- (g) "*Common Stock*" means the Common Stock of the Company.
- (h) "*Company*" means Yahoo! Inc., a California corporation.
- (i) "*Consultant*" means any person, including a Director, who is engaged by the Company or any Parent, Subsidiary or Affiliate to render services and is compensated for such services.
- (j) "*Continuous Status as an Employee or Consultant*" means the absence of any interruption or termination of service as an Employee or Consultant. Continuous Status as an Employee or Consultant shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided that such leave is for a period of not more than ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (iv) in the case of transfers between locations of the Company or between the Company, its Subsidiaries or their respective successors. For purposes of this Plan, a change in status from an Employee to a Consultant or from a Consultant to an Employee will not constitute an interruption of Continuous Status as an Employee or Consultant.
- (k) "*Director*" means a member of the Board.
- (l) "*Employee*" means any person, including Named Executives, Officers and Directors, employed by the Company or any Parent, Subsidiary or Affiliate of the Company, with the status of employment determined based upon such minimum number of hours or periods worked as shall be determined by the Administrator in its discretion, subject to any requirements of the Code. The payment of a director's fee by the Company to a Director shall not be sufficient to constitute "employment" of the Director by the Company.
- (m) "*Exchange Act*" means the Securities Exchange Act of 1934, as amended.
- (n) "*Fair Market Value*" means, as of any date, the fair market value of Common Stock determined as follows:
 - (i) If the Common Stock is listed on any established stock exchange or a national market system including without limitation the National Market of the National Association of Securities Dealers, Inc. Automated Quotation ("Nasdaq") System, its Fair Market Value shall be the closing sales price for such stock as quoted on such system on the date of determination (if for a given day no sales were reported, the closing bid on that day shall be used), as such price is reported in The Wall Street Journal or such other source as the Administrator deems reliable;
 - (ii) If the Common Stock is quoted on the Nasdaq System (but not on the National Market thereof) or regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the bid and asked prices for the Common Stock on the date of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or
 - (iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Administrator.
- (o) "*Incentive Stock Option*" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable written option agreement.
- (p) "*Named Executive*" means any individual who, on the last day of the Company's fiscal year, is the chief executive officer of the Company (or is acting in such capacity) or among the four highest compensated officers of the Company (other than the chief executive officer). Such officer status shall be determined pursuant to the executive compensation disclosure rules under the Exchange Act.
- (q) "*Nonstatutory Stock Option*" means an Option not intended to qualify as an Incentive Stock Option, as designated in the applicable written option agreement.

- (r) "Option" means a stock option granted pursuant to the Plan.
- (s) "Optioned Stock" means the Common Stock subject to an Option or a Stock Purchase Right.
- (t) "Optionee" means an Employee or Consultant who receives an Option or a Stock Purchase Right.
- (u) "Parent" means a "parent corporation", whether now or hereafter existing, as defined in Section 424(e) of the Code, or any successor provision.
- (v) "Plan" means this 1995 Stock Plan.
- (w) "Reporting Person" means an Officer, Director, or greater than ten percent shareholder of the Company within the meaning of Rule 16a-2 under the Exchange Act, who is required to file reports pursuant to Rule 16a-3 under the Exchange Act.
- (x) "Restricted Stock" means shares of Common Stock acquired pursuant to a grant of a Stock Purchase Right under Section 11 below.
- (y) "Rule 16b-3" means Rule 16b-3 promulgated under the Exchange Act, as the same may be amended from time to time, or any successor provision.
- (z) "Share" means a share of the Common Stock, as adjusted in accordance with Section 13 of the Plan.
- (aa) "Stock Exchange" means any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time.
- (bb) "Stock Purchase Right" means the right to purchase Common Stock pursuant to Section 11 below.
- (cc) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code, or any successor provision.

3. *Stock Subject to the Plan.* Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares that may be optioned and sold under the Plan is 126,000,000 shares of Common Stock. The Shares may be authorized, but unissued, or reacquired Common Stock. If an Option should expire or become unexercisable for any reason without having been exercised in full, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an Option or Stock Purchase Right in order to satisfy the exercise or purchase price for such Option or Stock Purchase Right or any withholding taxes due with respect to such exercise shall be treated as not issued and shall continue to be available under the Plan.

4. *Administration of the Plan.*

(a) *Multiple Administrative Bodies.* If permitted by Rule 16b-3 and by the legal requirements relating to the administration of incentive stock option plans, if any, of applicable securities laws and the Code (collectively the "Applicable Laws"), grants under the Plan may be made by different bodies with respect to Directors, Officers who are not Directors and Employees or Consultants who are not Reporting Persons.

(b) *Administration With Respect to Reporting Persons.* With respect to grants of Options or Stock Purchase Rights to Employees or Consultants who are Reporting Persons, grants under the Plan shall be made by (A) the Board, if the Board may make grants under the Plan in compliance with Rule 16b-3, or (B) a Committee designated by the Board to make grants under the Plan, which committee shall be constituted in such a manner as to permit grants under the Plan to comply with Rule 16b-3, to qualify grants of Options to Named Executives as performance-based compensation under Section 162(m) of the Code and otherwise so as to satisfy the Applicable Laws.

(c) *Administration With Respect to Other Persons.* With respect to grants of Options or Stock Purchase Rights to Employees or Consultants who are not Reporting Persons, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which committee shall be constituted in such a manner as to satisfy the Applicable Laws.

(d) *General.* If a Committee has been appointed pursuant to subsection (ii) or (iii) of this Section 4(a), such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of the Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies, however caused, and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws, and, in the case of a Committee appointed under subsection (ii), to the extent permitted by Rule 16b-3, and to the extent required under Section 162(m) of the Code to qualify grants of Options to Named Executives as performance-based compensation.

(e) *Powers of the Administrator.* Subject to the provisions of the Plan and in the case of a Committee, the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, including the approval, if required, of any Stock Exchange, the Administrator shall have the authority, in its discretion:

- (i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(m) of the Plan;
- (ii) to select the Consultants and Employees to whom Options and Stock Purchase Rights may from time to time be granted hereunder;
- (iii) to determine whether and to what extent Options and Stock Purchase Rights or any combination thereof are granted hereunder;
- (iv) to determine the number of shares of Common Stock to be covered by each such award granted hereunder;
- (v) to approve forms of agreement for use under the Plan;
- (vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder, including, but not limited to, the share price and any restriction or limitation, the vesting of any Option or the acceleration of vesting or waiver of a forfeiture restructure, based in each case on such factors as the Administrator shall determine, in its sole discretion;

(vii) to determine whether and under what circumstances an Option may be settled in cash under Section 10(g) instead of Common Stock;

(viii) to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option shall have declined since the date the Option was granted;

(ix) to determine the terms and restrictions applicable to Stock Purchase Rights and the Restricted Stock purchased by exercising such Stock Purchase Rights; and

(x) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;

(xi) in order to fulfill the purposes of the Plan and without amending the Plan, to modify grants of Options or Stock Purchase Rights to participants who are foreign nationals or employed outside of the United States in order to recognize differences in local law, tax policies or customs.

(f) *Effect of Administrator's Decision.* All decisions, determinations and interpretations of the Administrator shall be final and binding on all holders of Options or Stock Purchase Rights.

5. Eligibility.

(a) *Recipients of Grants.* Nonstatutory Stock Options and Stock Purchase Rights may be granted to Employees and Consultants; provided, however, that no person subject to the reporting requirements of Section 16 of the Exchange Act may receive an option or stock purchase right unless such person is employed by or a consultant to the Company or any Parent or Subsidiary. Incentive Stock Options may be granted only to Employees, provided, however, that Employees of an Affiliate shall be not be eligible to receive Incentive Stock Options. An Employee or Consultant who has been granted an Option or Stock Purchase Right may, if he or she is otherwise eligible, be granted additional Options or Stock Purchase Rights.

(b) *Type of Option.* Each Option shall be designated in the written option agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designations, to the extent that the aggregate Fair Market Value of Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds \$100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 5(b), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares subject to an Incentive Stock Option shall be determined as of the date of the grant of such Option.

(c) *No Employment Rights.* The Plan shall not confer upon any Optionee any right with respect to continuation of employment or consulting relationship with the Company, nor shall it interfere in any way with such Optionee's right or the Company's right to terminate his or her employment or consulting relationship at any time, with or without cause.

6. *Term of Plan.* The Plan shall become effective upon the earlier to occur of its adoption by the Board of Directors or its approval by the shareholders of the Company as described in Section 20 of the Plan. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 16 of the Plan.

7. *Term of Option.* The term of each Option shall be the term stated in the Option Agreement; provided, however, that the term shall be no more than ten (10) years from the date of grant thereof or such shorter term as may be provided in the Option Agreement and provided further that, in the case of an Incentive Stock Option granted to an Optionee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Option shall be five (5) years from the date of grant thereof or such shorter term as may be provided in the written option agreement.

8. *Limitation on Grants to Employees.* Subject to adjustment as provided in this Plan, the maximum number of Shares which may be subject to Options granted to any one Employee under this Plan for any fiscal year of the Company shall be 6,000,000.

9. Option Exercise Price and Consideration.

(a) *Exercise Price.* The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be such price as is determined by the Board and set forth in the applicable agreement, but shall be subject to the following:

(i) In the case of an Incentive Stock Option that is:

(A) granted to an Employee who, at the time of the grant of such Incentive Stock Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option that is:

(A) granted to a person who, at the time of grant of such Option, is a Named Executive of the Company, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant; and

(B) granted to any person other than a Named Executive, the per Share exercise price shall be no less than 85% of the Fair Market Value per Share on the date of grant.

(b) *Permissible Consideration.* The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant) and may consist entirely of (1) cash, (2) check, (3) promissory note, (4) other Shares that (x) in the case of Shares acquired upon exercise of an Option, have been owned by the Optionee for more than six months on the date of surrender or such other period as may be required to avoid a charge to the Company's earnings, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised, (5) authorization for the Company to retain from the total number of Shares as to which the Option is exercised that number of Shares having a Fair Market Value on the date of exercise equal to the exercise price for the total number of Shares as to which the Option is exercised, (6) delivery of a properly

executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price and any applicable income or employment taxes, (7) any combination of the foregoing methods of payment, or (9) such other consideration and method of payment for the issuance of Shares to the extent permitted under Applicable Laws. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company.

10. *Exercise of Option.*

(a) *Procedure for Exercise; Rights as a Shareholder.* Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, and reflected in the written option agreement, which may include vesting requirements and/or performance criteria with respect to the Company and/or the Optionee.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and the Company has received full payment for the Shares with respect to which the Option is exercised. Full payment may, as authorized by the Board, consist of any consideration and method of payment allowable under Section 9(b) of the Plan. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly upon exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 13 of the Plan.

Exercise of an Option in any manner shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) *Termination of Employment or Consulting Relationship.* Subject to Section 10(c), in the event of termination of an Optionee's Continuous Status as an Employee or Consultant with the Company, such Optionee may, but only within three (3) months (or such other period of time not less than thirty (30) days and not more than twelve (12) months as is determined by the Administrator, with such determination in the case of an Incentive Stock Option being made at the time of grant of the Option and not exceeding three (3) months) after the date of such termination (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement), exercise his or her Option to the extent that the Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise the Option at the date of such termination, or if Optionee does not exercise such Option to the extent so entitled within the time specified herein, the Option shall terminate. No termination shall be deemed to occur and this Section 10(b) shall not apply if (i) the Optionee is a Consultant who becomes an Employee; or (ii) the Optionee is an Employee who becomes a Consultant.

(c) *Disability of Optionee.* Notwithstanding Section 10(b) above, in the event of termination of an Optionee's Continuous Status as an Employee or Consultant as a result of his or her total and permanent disability (within the meaning of Section 22(e)(3) of the Code), Optionee may, but only within twelve (12) months from the date of such termination (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement), exercise the Option to the extent otherwise entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise the Option at the date of termination, or if Optionee does not exercise such Option to the extent so entitled within the time specified herein, the Option shall terminate.

(d) *Death of Optionee.* In the event of the death of an Optionee during the period of Continuous Status as an Employee or Consultant, or within thirty (30) days following the termination of the Optionee's Continuous Status as an Employee or Consultant, the Option may be exercised, at any time within twelve (12) months following the date of death (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent the Optionee was entitled to exercise the Option at the date of death or, if earlier, the date of termination of the Continuous Status as an Employee or Consultant. To the extent that Optionee was not entitled to exercise the Option at the date of death or termination, as the case may be, or if Optionee does not exercise such Option to the extent so entitled within the time specified herein, the Option shall terminate.

(e) *Extension of Exercise Period.* Notwithstanding the limitations set forth in Sections 10(b), (c) and (d) above, the Administrator has full power and authority to extend the period of time for which any Option granted under the Plan is to remain exercisable following termination of an Optionee's Continuous Status as an Employee or Consultant from the limited period set forth in the written option agreement to such greater period of time as the Administrator shall deem appropriate; provided, however, that in no event shall such Option be exercisable after the specified expiration date of the Option term.

(f) *Rule 16b-3.* Options granted to Reporting Persons shall comply with Rule 16b-3 and shall contain such additional conditions or restrictions as may be required thereunder to qualify for the maximum exemption for Plan transactions.

(g) *Buyout Provisions.* The Administrator may at any time offer to buy out for a payment in cash or Shares, an Option previously granted, based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

11. *Stock Purchase Rights.*

(a) *Rights to Purchase.* Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid (which price shall not be less than 85% of the Fair Market Value of the Shares as of the date of the offer), and the time within which such person must accept such offer, which shall in no event exceed thirty (30) days from the date upon which the Administrator made the determination to grant the Stock Purchase Right. The offer shall be accepted by execution of a Restricted Stock purchase agreement in the form determined by the Administrator. Shares purchased pursuant to the grant of a Stock Purchase Right shall be referred to herein as "Restricted Stock."

(b) *Repurchase Option.* Unless the Administrator determines otherwise, the Restricted Stock purchase agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's employment with the Company for any reason (including death or disability). The purchase price for Shares repurchased pursuant to the Restricted Stock purchase agreement shall be the original purchase price paid the purchaser and may be paid by cancellation of any indebtedness of the Purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine.

(c) *Other Provisions.* The Restricted Stock purchase agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock purchase agreements need not be the same with respect to each purchaser.

(d) *Rights as a Shareholder.* Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a shareholder, and shall be a shareholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 13 of the Plan.

12. *Stock Withholding to Satisfy Withholding Tax Obligations.* At the discretion of the Administrator, Optionees may satisfy withholding obligations as provided in this paragraph. When an Optionee incurs tax liability in connection with an Option or Stock Purchase Right, which tax liability is subject to tax withholding under applicable tax laws, and the Optionee is obligated to pay the Company an amount required to be withheld under applicable tax laws, the Optionee may satisfy the withholding tax obligation by one or some combination of the following methods: (a) by cash payment, or (b) out of Optionee's current compensation, (c) if permitted by the Administrator, in its discretion, by surrendering to the Company Shares that (i) in the case of Shares previously acquired from the Company, have been owned by the Optionee for more than six months on the date of surrender, and (ii) have a fair market value on the date of surrender equal to or less than Optionee's marginal tax rate times the ordinary income recognized, or (d) by electing to have the Company withhold from the Shares to be issued upon exercise of the Option, or the Shares to be issued in connection with the Stock Purchase Right, if any, that number of Shares having a fair market value equal to the amount required to be withheld. For this purpose, the fair market value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined (the "Tax Date").

Any surrender by a Reporting Person of previously owned Shares to satisfy tax withholding obligations arising upon exercise of this Option must comply with the applicable provisions of Rule 16b-3.

All elections by an Optionee to have Shares withheld to satisfy tax withholding obligations shall be made in writing in a form acceptable to the Administrator and shall be subject to the following restrictions:

- (a) the election must be made on or prior to the applicable Tax Date;
- (b) once made, the election shall be irrevocable as to the particular Shares of the Option or Stock Purchase Right as to which the election is made; and
- (c) all elections shall be subject to the consent or disapproval of the Administrator.

In the event the election to have Shares withheld is made by an Optionee and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, the Optionee shall receive the full number of Shares with respect to which the Option or Stock Purchase Right is exercised but such Optionee shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

13. *Adjustments Upon Changes in Capitalization, Corporate Transactions.*

(a) *Changes in Capitalization.* Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option or Stock Purchase Right, and the number of shares of Common Stock that have been authorized for issuance under the Plan but as to which no Options or Stock Purchase Rights have yet been granted or that have been returned to the Plan upon cancellation or expiration of an Option or Stock Purchase Right, the maximum number of Shares of Common Stock for which Options may be granted to any Employee under Section 8 of the Plan and the price per share of Common Stock covered by each such outstanding Option or Stock Purchase Right, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an Option or Stock Purchase Right.

(b) *Corporate Transactions.* In the event of the proposed dissolution or liquidation of the Company, the Option will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Administrator. The Administrator may, in the exercise of its sole discretion in such instances, declare that any Option shall terminate as of a date fixed by the Administrator and give each Optionee the right to exercise his or her Option as to all or any part of the Optioned Stock, including Shares as to which the Option would not otherwise be exercisable. In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, the Option shall be assumed or an equivalent option shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation, unless the Administrator determines, in the exercise of its sole discretion and in lieu of such assumption or substitution, that the Optionee shall have the right to exercise the Option as to some or all of the Optioned Stock, including Shares as to which the Option would not otherwise be exercisable. If the Administrator makes an Option exercisable in lieu of assumption or substitution in the event of a merger or sale of assets, the Administrator shall notify the Optionee that the Option shall be exercisable for a period of thirty (30) days from the date of such notice, and the Option will terminate upon the expiration of such period.

14. *Non-transferability of Options and Stock Purchase Rights.* Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution; provided, however, that the Administrator may in its discretion grant transferable Nonstatutory Stock Options pursuant to option agreements specifying (i) the manner in which such Nonstatutory Stock Options are transferable and (ii) that any such transfer shall be subject to the Applicable Laws. Options and Stock Purchase Rights may be exercised or purchased during the lifetime of the Optionee or Stock Purchase Rights Holder only by the Optionee, Stock Purchase Rights Holder or a transferee permitted by this Section 14.

15. *Time of Granting Options and Stock Purchase Rights.* The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such other date as is determined by the Board. Notice of the determination shall be given to each Employee or Consultant to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

16. *Amendment and Termination of the Plan.*

(a) *Amendment and Termination.* The Board may amend or terminate the Plan from time to time in such respects as the Board may deem advisable; provided that, the following revisions or amendments shall require approval of the shareholders of the Company in the manner described in Section 20 of the Plan:

- (i) any increase in the number of Shares subject to the Plan, other than an adjustment under Section 14 of the Plan;

(ii) any change in the designation of the class of persons eligible to be granted Options; or

(iii) any change in the limitation on grants to employees as described in Section 8 of the Plan or other changes which would require shareholder approval to qualify options granted hereunder as performance-based compensation under Section 162(m) of the Code.

(b) *Shareholder Approval.* If any amendment requiring shareholder approval under Section 16(a) of the Plan is made subsequent to the first registration of any class of equity securities by the Company under Section 12 of the Exchange Act, such shareholder approval shall be solicited as described in Section 20 of the Plan.

(c) *Effect of Amendment or Termination.* Any such amendment or termination of the Plan shall not affect Options already granted and such Options shall remain in full force and effect as if this Plan had not been amended or terminated, unless mutually agreed otherwise between the Optionee and the Board, which agreement must be in writing and signed by the Optionee and the Company.

17. *Conditions Upon Issuance of Shares.* Shares shall not be issued pursuant to the exercise of an Option or Stock Purchase Right unless the exercise of such Option or Stock Purchase Right and the issuance and delivery of such Shares pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any Stock Exchange. As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by law.

18. *Reservation of Shares.* The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

19. *Agreements.* Options and Stock Purchase Rights shall be evidenced by written agreements in such form as the Administrator shall approve from time to time.

20. *Shareholder Approval.*

(a) Continuance of the Plan shall be subject to approval by the shareholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such shareholder approval shall be obtained in the manner and to the degree required under applicable federal and state law and the rules of any stock exchange upon which the Shares are listed.

(b) In the event that the Company registers any class of equity securities pursuant to Section 12 of the Exchange Act, any required approval of the shareholders of the Company obtained after such registration shall be solicited substantially in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

(c) If any required approval by the shareholders of the Plan itself or of any amendment thereto is solicited at any time otherwise than in the manner described in Section 20(b) hereof, then the Company shall, at or prior to the first annual meeting of shareholders held subsequent to the later of (1) the first registration of any class of equity securities of the Company under Section 12 of the Exchange Act or (2) the granting of an Option hereunder to an officer or director after such registration, do the following:

(i) furnish in writing to the holders entitled to vote for the Plan substantially the same information that would be required (if proxies to be voted with respect to approval or disapproval of the Plan or amendment were then being solicited) by the rules and regulations in effect under Section 14(a) of the Exchange Act at the time such information is furnished; and

(ii) file with, or mail for filing to, the Securities and Exchange Commission four copies of the written information referred to in subsection (i) hereof not later than the date on which such information is first sent or given to shareholders.

21. *Information to Optionees.* The Company shall provide to each Optionee, during the period for which such Optionee has one or more Options outstanding, copies of all annual reports and other information which are provided to all shareholders of the Company.

March 19, 2001

Greg Coleman

Dear Greg:

On behalf of Yahoo! Inc., I am pleased to offer you the position of Executive Vice President, North American Operations reporting to Jeff Mallett, President and COO. Your primary responsibilities, the positions which will report to you, and the committee with respect to which you will be a member are described in the attached Position Plan Summary. Your starting salary will be \$62,500 per month (\$750,000.00 annually), paid semi-monthly and subject to increase during an annual review. You will be eligible for an annual bonus of up to \$750,000.00 based upon achieving the annual revenue goals for our North American business; provided, however, you will be entitled to a minimum bonus for 2001 of \$525,000 (70% of target). Additionally, you will be eligible to participate in the regular Yahoo! health insurance benefits and other employee benefit plans established by the company generally for its employees. (In addition to our standard two weeks of vacation in year one, you are eligible to take one additional week with pay.)

You will receive a sign-on bonus in the amount of \$1,250,000.00 if you start your employment on or before April 20, 2001 and we are able to announce your decision to join on or before April 11, 2001. This will be payable in the first regular payroll period 30 days after your employment start date and is subject to applicable tax withholding. An amount equal to \$250,000 of this bonus, prorated for service completed, will become due and payable to the Company on your last day of employment if you voluntarily choose to leave the Company for any reason during the first year of employment, other than as a result of (a) a material breach of this agreement by the Company, or (b) a change in the position to which you report if, as a result of such change, you directly report to a position that does not in turn report directly to the Chief Executive Officer or if the scope of your responsibilities or your title is diminished .

As a part of the Yahoo! team, we strongly believe that ownership of the Company by our employees is an important factor to our success. Therefore, as part of your compensation, management has recommended that the Board of Directors grant you an option to purchase 300,000 shares of Yahoo! Inc.'s Common Stock under Yahoo! Inc.'s 1995 Stock Option Plan. We have every expectation that this grant will be officially approved and priced within two weeks of your start date. The exercise price for this option will be the fair market value of Yahoo! Common Stock on the date of grant as determined by the Board of Directors. Options under the Yahoo! plan vest as to 1/4 of the shares after one year of employment, and in equal monthly installments over the 36 following months.

You have indicated that you will not move your family to the Bay Area until sometime in the summer, 2002. At that time, assuming we both feel good about your performance and continued potential, we will provide the following relocation assistance:

- A. Home Sale/Home Purchase Assistance: We will pay all the required, non-recurring closing costs on the sale of your current home through our "market value sale" program. We will also pay closing costs on the purchase of a new home in the Bay Area equal to 2% of the purchase price up to a cap of \$40,000.00.
- B. Shipment of household goods (not to exceed \$30,000.00).
- C. Family travel to destination (reimbursement up to \$7,500.00).
- D. A mortgage subsidy of no less than 3/2/1 to help offset any increase in mortgage payments in the first three years following your move. (This program pays 3 percentage points of interest in year one, 2 points in year two and 1 point in the third year while providing you the ability to declare the full interest payment as a tax write-off.)

In the meantime, the Company will provide you with a two bedroom furnished Corporate Apartment in the Bay Area for up to 15 months.

If you voluntarily choose to leave the company for any reason, other than a material breach of this agreement by the Company, during the first twelve months following your relocation, a prorated portion of the monies given to you for relocation expenses will become due and payable to the Company on your last day of employment (based on 1/12th for each month your termination precedes 12 months of Yahoo! Inc. service), and by your signature below you agree that such amount shall be deducted from any compensation payable to you at that time.

As an employee of Yahoo!, it is likely that you will become knowledgeable about confidential and or proprietary information related to the operations, products and services of the company and its clients. To protect the interests of both the company and its clients, all employees are required to read and sign a PROPRIETARY INFORMATION AND ASSIGNMENT OF INVENTIONS AGREEMENT prior to beginning employment. A copy of this agreement is enclosed. Please sign it and return it along with your signed copy of this letter.

Please understand that this letter does not constitute a contract of employment for any specific period of time, but will create an "employment at will" relationship that may be terminated at any time by you or Yahoo!, with or without cause. Your signature at the end of this letter confirms that no promises or agreements that are contrary to our at-will relationship have been committed to you during any of your pre-employment discussions with Yahoo!, and that this letter and the attached Position Plan Summary contain our complete agreement regarding the terms and conditions of your employment.

You will be paid your full year bonus of \$750,000.00 in lieu of severance in the unlikely event that your employment is terminated during the first twelve months of employment so long as (a), in the event of a termination initiated by the Company, such termination is not related to serious misconduct and (b), in the event of a termination initiated by you, there is either (i) a material breach of this agreement by the Company, or (ii) a change in the position to which you report if, as a result of such change, you directly report to a position that does not in turn report directly to the Chief Executive Officer or if the scope of your responsibilities or your title is reduced.

Our signature on this letter also confirms our mutual agreement to binding arbitration, as defined under the California Arbitration Act, under the rules of the American Arbitration Association, should there be any dispute related to the termination of our employment relationship or the terms of your employment relationship with Yahoo!.

Please understand that other than the relocation benefits outlined above, the terms and conditions outlined in this letter apply to your first year of employment with Yahoo only. To accept this offer, please sign this letter in the space provided below and return it and a signed Proprietary Agreement to Kai Swavely in the envelope provided no later than March 16, 2001. A second copy of each document has been provided for you to keep for your records. In order for Yahoo! to comply with the Immigration Reform and Control Act, we ask that you bring appropriate verification of authorization to work in the United States with you on your first day of employment.

We look forward to your joining us and hope that you find your employment with Yahoo! enjoyable and professionally rewarding.

Very truly yours,

/s/ KIRK FROGGATT

Kirk Froggatt
Vice President, Human Resources

I accept this offer of employment with Yahoo! Inc. and agree to the terms and conditions outlined in this letter.

/s/ GREGORY COLEMAN

3/19/01

Signature

Date

Planned Start Date
(Contingent upon completion of a satisfactory background investigation.)

PARTICIPATION AGREEMENT

dated as of March 16, 2001

among

YAHOO! INC.

as Lessee,

LEASE PLAN NORTH AMERICA, INC.,
as Lessor and as a Participant,

ABN AMRO BANK N.V.,
as a Participant,

**THE OTHER BANKS AND FINANCIAL INSTITUTIONS
FROM TIME TO TIME PARTY HERETO,**
as Participants,

YAHOO! INC.,
as Tranche Y Participant,

and

ABN AMRO BANK N.V.,
as Agent

Sunnyvale, California Corporate Headquarters

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PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT, dated as of March 16, 2001 (this "Participation Agreement"), is entered into by and among **YAHOO! INC.**, a Delaware corporation, as Lessee (together with its permitted successors and assigns, the "Lessee"); **LEASE PLAN NORTH AMERICA, INC.**, an Illinois corporation, as Lessor (together with its permitted successors and assigns in such capacity, the "Lessor") and as a Participant; **YAHOO! INC.**, a Delaware corporation, as Tranche Y Participant (in such capacity, the "Tranche Y Participant"), ABN AMRO BANK N.V. and each of the other banks or financial institutions from time to time party hereto, as Participants (together with the Lessor in its capacity as a Participant and its permitted successors and assigns, and together with the Tranche Y Participant in its capacity as a Participant, each a "Participant" and collectively the "Participants"); and ABN AMRO BANK N.V., as Agent (in such capacity, together with its successors in such capacity, the "Agent") for the Participants.

PRELIMINARY STATEMENT

In accordance with the terms of this Participation Agreement, the Lease and the other Operative Documents,

A. the Lessor contemplates acquiring a fee simple interest in (i) the Phase I Facility on the initial Land Interest Acquisition Date, and (ii) if requested by the Lessee, the Phase II Facility on the second Land Interest Acquisition Date, in each case by acquiring such Property, as purchaser, from the Existing Owner, which Property will be used by Lessee and its Subsidiaries as a corporate headquarters facility; and

B. the Lessor wishes to obtain, and the Participants are willing to provide, financing of the funding of the costs of acquisition of the Property through the purchase of Participation Interests in the Advances, the Lease and the Rent.

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

SECTION 1

DEFINITIONS; INTERPRETATION

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

SECTION 2

CLOSING DATE

The closing date (the "Closing Date") shall occur on the date of the execution and delivery of this Agreement and the other Operative Documents referred to in Section 6.1 hereof, which shall be the earliest date on which all the conditions precedent thereto set forth in Sections 6.1 and 6.3 hereof shall have been satisfied or waived by the applicable parties as set forth therein.

ACQUISITION OF THE PROPERTY; FUNDING OF ADVANCES

Section 3.1 Lessor Commitment; Lessee Covenants.

(a) Subject to the conditions and terms hereof, the Lessor shall take the following actions at the written request of the Lessee on or after to the Closing Date or from time to time during the Commitment Period, as the case may be:

- (i) enter into the Operative Documents to be entered into by it pursuant to the terms hereof;
- (ii) make Advances (out of funds provided by the Participants) for the purpose of financing the acquisition of the Phase I Facility and, subject to the satisfaction or waiver of the conditions set forth in Sections 6.2 and 6.3 hereof, the Phase II Facility, and the payment of Transaction Expenses; and
- (iii) acquire the Phase I Facility and, if requested by the Lessee, the Phase II Facility (using funds provided by the Participants).

Upon the applicable Lease Commencement Date, subject to the terms and conditions hereof and of the other Operative Documents, the Lessor shall lease the applicable portion of the Property, as lessor, to the Lessee under the Lease.

(b) Lessee Covenants. The Lessee shall, on or prior to the Closing Date, enter into the Operative Documents to be entered into by it pursuant to the terms hereof and, upon the applicable Lease Commencement Date, subject to the terms and conditions hereof and of the other Operative Documents, the Lessee shall lease the applicable portion of the Property as Lessee from the Lessor under the Lease.

Section 3.2 Participants' Commitments. Subject to the terms and conditions hereof, each Participant other than the Lessor severally shall purchase a Participation Interest in the Advances being made by the Lessor at the request of the Lessee from time to time during the Commitment Period by making available to the Lessor on each Funding Date an amount in immediately available funds equal to such Participants' Commitment Percentage (as then in effect) of the amount of the Advance being funded on such Funding Date. Notwithstanding any other provision hereof, no Participant shall be obligated to purchase its Participation Interest in any Advance if (i) the amount of such purchase would exceed its Available Commitment, or (ii) if, after giving effect to the proposed Advance, the outstanding aggregate amount of such Participant's Participation Interest in the Advances would exceed such Participant's Commitment. Lessor shall repay the Participation Interests, together with accrued interest and yield thereon as provided herein to the extent such amounts are received under the Lease.

Section 3.3 Procedures for Acquisition of the Property. The Lessee shall give the Lessor and the Agent prior written notice not later than 12:00 noon, Chicago time, three Business Days prior to the proposed applicable Land Interest Acquisition Date (unless the initial Land Interest Acquisition Date is the Closing Date and the Advance on such date is to be an Alternate Base Rate Advance, in which case such notice may be given not later than 12:00 noon, Chicago time, on such Land Interest Acquisition Date), pursuant to an Acquisition Request substantially in the form of Exhibit A (an "Acquisition Request"), specifying: (i) the proposed Land Interest Acquisition Date, (ii) the portion of the Property to be acquired, (iii) the Existing Owner of such portion of the Property, and (iv) the date on which the Lessee will request the Lessor to fund the Property Acquisition Costs in respect of such portion of the Property. The Agent shall provide notice of each such Acquisition Request to each Participant.

Section 3.4 Procedures for Advances. With respect to each funding of an Advance, the Lessee shall give the Lessor and the Agent prior written notice not later than 12:00 noon, Chicago time, three Business Days prior to the proposed Funding Date (other than for the Advance, if any, on the Closing Date, if such Advance is to be an Alternate Base Rate Advance, in which case such notice may be given not later than 12:00 noon, Chicago time, on the same Business Day) pursuant, in each case, to a Funding Request substantially in the form of Exhibit B (a "Funding Request"), specifying (i) the proposed Funding Date, (ii) the amount and purpose of the Advance requested, (iii) the Lessee's election to cause all or a specified portion of such Advance to bear interest or yield by reference to the Eurodollar Rate or the Alternate Base Rate and including, in the case of a Eurodollar Rate Advance, the initial Interest Period therefor (all on a Tranche by Tranche basis), (iv) the payees of such Advance, (v) that the Advance will be used to fund Property Acquisition Costs in respect of the portion of the Property specified in such Funding Request, and (vi) that to the knowledge of the Lessee, no Default or Event of Default (other than a Limited Default or a Limited Event of Default, provided that if a Limited Default or a Limited Event of Default exists, the provisions of Section 6.5 shall apply) has occurred and is continuing as of the date of such Funding Request. The Agent shall promptly provide notice of such Funding Request to each Participant. Each Advance (other than an Interest Payment Advance or an amount capitalized pursuant to Section 3.7(e)) shall be in a minimum amount of \$500,000. Subject to the satisfaction or waiver of the conditions precedent to such Advance set forth in Section 6, each Participant, other than the Lessor, shall fund its pro rata share of such Advance by making available to the Lessor its proportionate share of such Advance in immediately available federal funds by wire transfer to the Agent for deposit to the Lessor's demand deposit account with the Agent not later than 12:00 noon, Chicago time, on the applicable Funding Date. Upon (i) the Lessor's receipt of the funds provided by the Participants with respect to an Advance, and (ii) satisfaction or waiver of the conditions precedent to such Advance set forth in Section 6, the Lessor shall (A) in the case of an Advance for the acquisition of a portion of the Property, pay the Property Acquisition Costs therefor to the Existing Owner thereof, and (B) in the case of an Advance for Transaction Expenses, pay the specified amount to the payees specified in the applicable Funding Request as payment of such Transaction Expenses (which may include reimbursement of such Transaction Expenses previously paid by the Lessee), in each case from the funds provided by the Participants for such Advance.

Section 3.5 Allocation of Commitments. Schedule I hereto contains an allocation for each Participant of (i) the amount of its Commitment representing its Tranche A Participation Interest ("Tranche A Participation Interest Commitment"), (ii) the amount of its Commitment representing its Tranche B Participation Interest ("Tranche B Participation Interest Commitment"), and (iii) the amount of its Commitment representing its Tranche C Equity Interest ("Tranche C Equity Interest Commitment"). The Lessee, the Lessor, the Agent and the Participants have approved all such allocations and percentages. Schedule I shall be amended as required to reflect changes in the allocations set forth thereon due to the addition of additional Participants pursuant to Section 12.1.

Section 3.6 Termination, Reduction or Extension of Participants' Commitments.

(a) The Lessor shall have the right, upon not less than five (5) Business Days' written notice to the Agent, to terminate the Participants' Commitments or, from time to time, to reduce the amount of the Participants' Commitments, provided that (i) after giving effect to such reduction, the aggregate outstanding principal amount of the Tranche A Participation Interests shall not exceed the aggregate Tranche A Participation Interest Commitments, (ii) after giving effect to such reduction, the aggregate outstanding principal amount of the Tranche B Participation Interests shall not exceed the aggregate Tranche B Participation Interest Commitments, (iii) after giving effect to such reduction, the aggregate outstanding principal balance of the Tranche C Equity Interests shall not exceed the aggregate Tranche C Equity Interest Commitments, and (iv) any such reduction shall be made pro rata among the Participants' Commitments within each Tranche. Prior to the occurrence and continuance of an Event of Default, the Lessor shall exercise such right only as directed by the Lessee and after the occurrence and during the continuance of an Event of Default the Lessor shall exercise such right only as directed by the Required Participants; provided that in the

case of the occurrence and continuance of a Limited Event of Default, such right may not be exercised on the basis of such Limited Event of Default until from and after the second Land Interest Acquisition Date.

(b) The Lessee may, by written request to the Lessor and Agent (which the Agent shall promptly forward to each Participant, together with the related Renewal Request received by the Agent pursuant to Section 21.1 of the Lease) given not later than 180 days prior to the Maturity Date then in effect, request (each, an "Extension Request") that such Maturity Date be extended to a date following the Maturity Date then in effect as specified in such Extension Request. No later than the date (the "Extension Response Date") which is 90 days after any such request has been delivered to each of the Participants, each Participant will notify the Lessor in writing (with a copy to the Agent and the Lessee) whether or not it consents to such Extension Request (which consent may be granted or denied by each Participant in its sole discretion and may be conditioned on receipt of such financial information or other documentation as may be specified by such Participant including without limitation satisfactory appraisals of the Property), provided that (i) any Participant that fails to so advise the Lessor on or prior to the applicable Extension Response Date shall be deemed to have denied such Extension Request, and (ii) notwithstanding anything contained herein to the contrary, the Tranche Y Participant shall be deemed to have consented to any such Extension Request. The extension of the then-current Maturity Date contemplated by an Extension Request shall become effective as of the Maturity Date then in effect (the "Extension Effective Date") on or after the Extension Response Date on which all of the Participants (other than the Tranche Y Participant and any Non-Consenting Participants which have been replaced by Replacement Participants in accordance with Section 3.6(c)) shall have consented to such Extension Request; provided that:

(i) on both the date of the applicable Extension Request and the applicable Extension Effective Date, (x) each of the representations and warranties made by the Lessee and the Lessor in or pursuant to the Operative Documents shall be true and correct in all material respects as if made on and as of each such date, except for representations and warranties made as of a specific date, which shall be true and correct in all material respects as of such date, (y) no Default or Event of Default shall have occurred and be continuing, and (z) on each of such dates the Agent shall have received a certificate of the Lessee and the Lessor, each as to itself, as to the matters set forth in clause (x) above and from the Lessee as to the matters set forth in clause (y) above; and

(ii) the Agent and the Required Participants shall have received satisfactory evidence that the Expiration Date shall, after giving effect to any extension thereof which has become effective on or prior to such Extension Effective Date, occur on the Maturity Date then in effect as so extended.

As promptly as practicable following any Extension Effective Date, the Agent shall deliver to the Lessee, the Lessor and each Participant a written notice (each, an "Extension Notice") setting forth the Extended Maturity Date then in effect.

(c) The Lessor (after consultation with, and at the direction of, the Lessee) shall be permitted to replace any Non-Consenting Participant with one or more replacement banks or other financial institutions acceptable to the Agent (a "Replacement Participant") at any time on or prior to the date which is 90 days after the Extension Response Date; provided that (i) such replacement does not conflict with any Requirement of Law, (ii) the Replacement Participant shall purchase, at par, all of the Participation Interest of such Non-Consenting Participant on or prior to the date of replacement, (iii) the Lessee shall be liable to such Non-Consenting Participant under Section 13.6 of this Agreement if any Advance (or any Participation Interest therein) shall be prepaid (or purchased) other than on the last day of the Interest Period or Interest Periods relating thereto, (iv) the Replacement Participant, if not already a Participant, shall be reasonably satisfactory to the Agent, (v) such replacement shall be made in accordance with the provisions of Section 12 of this Agreement (provided that the Lessee shall be obligated to pay the Transaction Expenses arising in connection therewith), and (vi) the Replacement Participant shall have agreed to be subject to all of the terms and conditions of this Agreement (including the extension of the Maturity Date contemplated by the Extension Request) and the other Operative Documents. The Agent hereby agrees to cooperate with the Lessee and the Lessor in their efforts to arrange one or more Replacement Participants as contemplated by this Section 3.6(c).

(d) On the earlier of the Land Interest Acquisition Date with respect to the Phase II Facility or the last day of the Commitment Period, the Participants' Commitments shall be reduced automatically without any notice or other action by Lessor or any Participant hereunder, to be equal to the then aggregate outstanding principal amount of the respective Participant's Participation Interests with respect to the Commitments.

Section 3.7 Interest Rates, Yield and Payment Dates.

(a) Each outstanding Advance (other than that portion of the Advance, if any, to be made on the Closing Date to finance Tranche C Equity Interests, which shall bear yield at a rate equal to the Alternate Base Rate unless and until such portion of such Advance is converted to a Eurodollar Rate Advance in accordance with this Section 3.7(a)) shall bear interest (in the case of the Tranche A Participation Interests and Tranche B Participation Interests therein) or yield (in the case of the Tranche C Equity Interest therein) for each day during each Interest Period with respect thereto (i) in respect of the Tranche A Participation Interests in any Advance, a rate per annum equal to zero percent; (ii) in respect of the Tranche B Participation Interests, a rate per annum for such Interest Period equal to zero percent plus the Applicable Margin; and (iii) in respect of the Tranche C Equity Interests in any Advance, a rate per annum (x) in the case of any Eurodollar Rate Advance, the Eurodollar Rate two (2) Business Days prior to the first day of such Interest Period, plus the Applicable Margin then in effect and (y) in the case of any Alternate Base Rate Advance, at a rate per annum equal to the Alternate Base Rate, in each case with respect to either clause (x) or (y) as elected by Lessee in its Funding Request in respect of the relevant Advance or in a notice delivered pursuant to this Section 3.7(a). The Lessee shall give irrevocable notice to the Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Appendix 1 and this Section 3.7(a), of the length of each Interest Period to be applicable to any Tranche C Equity Interests accruing yield by reference to the Eurodollar Rate, which election shall become effective three Business Days following the date of such notice. Each of the Participants, Agent, Lessor and Lessee hereby agree that Lessee shall have the right, by delivering a notice to Agent on or before 12:00 noon (Chicago, Illinois time) on a Business Day, to elect irrevocably, on not less than three nor more than five Business Days' written notice prior to the last day of any then current Interest Period in the case of a notice requesting a conversion of a Eurodollar Rate Advance into an Alternate Base Rate Advance, or the continuation of a Eurodollar Rate Advance as such, that all or any portion of the Tranche C Equity Interests in the Advances (in an aggregate minimum amount of \$5,000,000 and integral multiples of \$100,000 in excess thereof, in the case of the conversion of an Alternate Base Rate Advance into a Eurodollar Rate Advance or the continuation of a Eurodollar Rate Advance as an Advance of such type) (a) be converted into an Alternate Base Rate Advance or a Eurodollar Rate Advance, or (b) be continued as a Eurodollar Rate Advance. Any conversion into, or continuation of, a Eurodollar Rate Advance shall have Interest Periods (subject to the limitations set forth in the definition thereof) of the length set forth in such notice (in the absence of delivery of such notice at least three Business Days before the last day of any then current Interest Period with respect to any Eurodollar Rate Advance, Lessee shall be deemed to have elected to continue the applicable Advance as a Eurodollar Rate Advance and the Interest Period with respect thereto shall be one month). There shall not be more than four (4) Interest Periods outstanding at any time.

(b) If all or a portion of (i) the amount of any Advance, (ii) any interest or yield payable thereon or (iii) any other amount payable hereunder, shall not be paid by Lessee when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest or yield at a rate per annum which is equal to the Overdue Rate.

(c) Except as otherwise provided in paragraph (d) of this Section 3.7, interest and yield shall be payable in cash in arrears on each Scheduled Payment Date, provided that (i) interest and yield accruing pursuant to paragraph (b) of this Section 3.7 shall be payable from time to time on demand and (ii) each prepayment of Advances shall be accompanied by accrued interest and yield to the date of such prepayment on the amount of Advances so prepaid.

(d) On each date which is three Business Days prior to any Scheduled Payment Date occurring prior to the initial Land Interest Acquisition Date, the Lessee shall be deemed to have requested an Advance comprised of an Interest Payment Advance pursuant to Section 3.4 and the Lessor shall be deemed to have requested a purchase pursuant to Section 3.2 of Participation Interests in such Advance in an amount equal to the aggregate amount of the interest or yield due and payable on such date with respect to accrued interest and yield on the outstanding Advances. The Funding Date with respect to any such Interest Payment Advance and purchase of Participation Interests therein shall be the relevant Scheduled Payment Date (provided that such Advance and the purchase of such Participation Interests shall be subject to satisfaction of the applicable conditions precedent set forth in Section 6) and the proceeds of such payment shall be applied to pay such accrued interest and yield.

(e) Capitalization of Certain Amounts. On each date prior to the initial Land Interest Acquisition Date that any amount is payable under the Operative Documents on account of (A) accrued interest and accrued yield on outstanding Advances (to the extent provided in Section 3.7(d)), (B) fees pursuant to Section 4, (C) Transaction Expenses of the Lessor, the Agent or any Participant pursuant to Section 9, or (D) any other amounts required by any provision of the Operative Documents to be capitalized prior to the initial Land Interest Acquisition Date, such amounts shall be capitalized by automatically treating such amount as an Advance and a related purchase of Participation Interests therein made on such date.

(f) Cash Collateral Agreement. On each Funding Date the Lessee shall deposit cash collateral pursuant to the Cash Collateral Agreement against the Tranche B Participation Interests and the Tranche C Equity Interests and shall maintain the Cash Collateral from time to time pursuant to and in accordance with the terms of the Cash Collateral Agreement. The Lessee shall also pledge Cash Collateral when required by the Cash Collateral Agreement in connection with the capitalization of the interest, yield and fees and amounts capitalized under Section 3.7(e).

Section 3.8 Computation of Interest and Yield.

(a) Whenever it is calculated on the basis of the Alternate Base Rate, interest and yield shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed; otherwise, interest and yield shall be calculated on the basis of a 360-day year for the actual days elapsed. The Agent shall as soon as practicable notify the Lessor, the Lessee and the Participants of each determination of a Eurodollar Rate. Any change in the interest rate or yield rate on an Advance resulting from a change in the Alternate Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Agent shall as soon as practicable notify the Lessor, the Lessee and the Participants of the effective date and the amount of each such change in interest rate or yield rate.

(b) Each determination of an interest rate or a yield rate by the Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Lessor, the Lessee and the Participants in the absence of manifest error. The Agent shall, at the request of such parties, deliver to such parties a statement showing the quotations used by the Agent in determining any interest rate or yield rate pursuant to Section 3.8(a).

Section 3.9 Pro Rata Treatment and Payments.

(a) Each participation in the Advances by the Participants and each reduction of the Commitments of the Participants shall be made pro rata among the Tranche A Participants, Tranche B Participants and Tranche C Participants according to the respective Commitment Percentages of each such Participant then in effect. Except as otherwise provided in Sections 3.11 through 3.21, each payment (including each prepayment) by the Lessor on account of Participation Interests representing the amount of principal and interest or yield on the Advances shall be made pro rata among the applicable Tranche A Participants, Tranche B Participants and Tranche C Participants according to the respective Participation Interests of each such Participant then in effect. Any payment required to be made to the Participants in any particular Tranche shall be made pro rata among such Participants, without priority of any one such Participant over any others within such Tranche, in the proportion that such Participant's Participant Balance within such Tranche bears to the aggregate Participant Balances of all Participants within such Tranche. All payments (including prepayments) to be made by the Lessor hereunder to the Participants with respect to their Participation Interests, whether on account of principal, interest, yield or otherwise, shall be payable to the extent received by the Lessor from or on behalf of the Lessee, shall be made without setoff or counterclaim and shall be made prior to 2:00 p.m., Chicago time, on the due date thereof to the Agent, for the account of the Participants, at the Agent's office referred to in Section 15.3 of this Agreement, in Dollars and in immediately available funds. The Agent shall distribute such payments to the Participants promptly upon receipt in like funds as received; it being understood that any such payment received by the Agent on a timely basis and in accordance with the provisions of the Lease shall be distributed on the date on which such funds are so received. If any payment hereunder (other than payments of Participation Interests in the Advances) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment of Participation Interests in an Advance becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension or shortening of the due date of any payment pursuant to the preceding two sentences, interest or yield thereon shall be payable at the then applicable rate during such extension or until such shortened due date, as the case may be.

(b) Unless the Agent shall have been notified in writing by any Participant prior to funding its Participation Interest in an Advance that such Participant will not make its share of such Advance available to the Agent, the Agent may assume that such Participant is making such amount available to the Agent. If such Participant's share of such Advance is not made available to the Agent by such Participant on or prior to such Funding Date, the Lessor shall not be required to make such portion of such Advance to the Lessee.

Section 3.10 The Account. The Agent may if it so desires establish an account (the "Account") into which the Agent and the Lessor shall deposit all payments, receipts and other consideration of any kind whatsoever paid under the Lease and received by the Agent or the Lessor pursuant to this Agreement, the Lease and any other Operative Document. Each of the Agent and the Lessor hereby irrevocably instructs the Lessee, and the Lessee hereby agrees, until otherwise notified by the Agent and except as otherwise expressly provided in Section 3.22 hereof, that all payments to be made by the Lessee to or for the benefit of the Lessor or the Agent pursuant to the Lease or any of the other Operative Documents shall be made directly to the Agent. The Agent shall make distributions of such payments, receipts and other consideration (and, if an Account is used, from the Account) pursuant to the requirements of Sections 3.11 through 3.21 hereof.

Section 3.11 Basic Rent. Each payment (or portion thereof) of Basic Rent comprising interest or yield on the Advances (and any payment of interest on overdue installments of such components of Basic Rent) received by the Agent shall be distributed by the Agent (i) first, to the Tranche A Participants and Tranche B Participants pro rata, and (ii) second to the Tranche C Participants pro rata, in accordance with, and for application to, the portion of their Participation Interests in such portion of Basic Rent, as well as in any overdue interest due to such Participant (to the extent permitted by applicable law).

Section 3.12 Purchase Payments by Lessee. Any payment received by the Agent as a result of:

- (a) the purchase of the Lessor's interest in the Property in connection with the Lessee's exercise of its Purchase Option under Section 20.1 of the Lease, or
- (b) the Lessee's compliance with its obligation to purchase the Lessor's interest in the Property in accordance with Section 20.2 or 20.3 of the Lease, or
- (c) the payment of the Asset Termination Value in accordance with Sections 16.2(b) or 16.3 of the Lease,

shall, subject to the provisions of Section 3.22, be distributed by the Agent in the following order of priority:

first, to the Tranche A Participants and the Tranche B Participants, pro rata, for application to pay in full the Tranche A Participant Balance and Tranche B Participant Balance of each such Participant, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among such Participants; and

second, to the Tranche C Participants for application to pay in full the Tranche C Participant Balance of each Tranche C Participant, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among the Tranche C Participants.

Section 3.13 Residual Value Guarantee Amount Payments by Lessee. The payment by the Lessee of any Residual Value Guarantee Amount in accordance with Section 17.2(h) of the Lease or Article XXII of the Lease shall be distributed by the Agent in the following order of priority (it being acknowledged and agreed that any payment of the Residual Value Guarantee Amount payable to the Tranche Y Participant shall be paid in accordance with Section 3.22 hereof prior to any distribution hereunder):

first, to the Tranche A Participants for application to pay in full the Tranche A Participant Balance of each Tranche A Participant, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among such Participants; and

second, to the Tranche B Participants for application to pay in full Tranche B Participant Balance of each Tranche B Participant, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among such Participants; and

third, to the Tranche C Existing Participants for application to pay in full the Tranche C Participant Balance of each Tranche C Participant, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among such Participants.

Section 3.14 Sales Proceeds of Property. Any payments received by the Agent as proceeds from the sale of the Property sold following the occurrence of an Event of Default under Article XVII of the Lease (in the case of any portion of such proceeds which, pursuant to Section 3.17, is required to be distributed in accordance with this Section 3.14) or pursuant to the Lessee's exercise of the Remarketing Option pursuant to Article XXII of the Lease, together with any payment made by the Lessee as a result of an appraisal pursuant to Section 13.2 of this Agreement, shall be distributed by the Agent in the following order of priority:

first, to the Tranche B Participants for application to pay in full the Tranche B Participant Balance of each Tranche B Participant, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among the Tranche B Participants;

second, to the Tranche A Participants for application to pay in full the Tranche A Participant Balance (other than any portion thereof paid in accordance with Section 3.22) of each Tranche A Participant, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among the Tranche A Participants;

third, to the Tranche C Participants for application to pay in full the Tranche C Participant Balance of each Tranche C Participant, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then pro rata among the Tranche C Participants; and

fourth, the balance, if any, shall be promptly distributed to, or as directed by, the Lessee.

Section 3.15 Supplemental Rent. All payments of Supplemental Rent received by the Agent (excluding any amounts payable pursuant to the preceding provisions of this Section 3) shall be distributed promptly by Agent upon receipt thereof to the Persons entitled thereto pursuant to the Operative Documents.

Section 3.16 Excepted Payments. Notwithstanding any other provision of this Agreement or the Operative Documents, any Excepted Payment received at any time by the Agent shall be distributed promptly to the Person entitled to receive such Excepted Payment pursuant to the Operative Documents.

Section 3.17 Distribution of Payments After Event of Default. All payments received and amounts realized by the Lessor or the Agent after an Event of Default exists (except under the Cash Collateral Agreement), including proceeds from the sale of any of the Property, proceeds of any amounts from any insurer or any Governmental Authority in connection with any Casualty or Condemnation, or from Lessee as payment in accordance with the Lease, including any payment received from Lessee pursuant to Article XVII of the Lease, shall, if received by Lessor, be paid to the Agent as promptly as possible and shall be distributed by the Agent in the following order of priority:

first, so much of such payment or amount as shall be required to reimburse the Lessor or the Agent for any tax, expense or other loss incurred by the Lessor or the Agent (including, to the extent not previously reimbursed, those incurred in connection with any duties of the Agent as the Agent) and any unpaid ongoing fees of the Lessor and the Agent shall be distributed to each of them for its own account;

second, so much of such payments or amounts as shall be required to reimburse the then existing or prior Participants for payments made by them to the Lessor pursuant to Section 18.1 of the Lease (to the extent not previously reimbursed or not paid in accordance with Section 3.22) and to pay such then existing or prior Participants the amounts payable to them pursuant to any expense reimbursement or indemnification provisions of the Operative Documents shall be distributed to each such Participant without priority of one over the other in accordance with the amount of such payment or payments payable to each such Person;

third, (i) in the case of a sale of the Property, in the order set forth in Section 3.14 (other than any payment of the Residual Value Guarantee Amount paid by the Lessee in connection with a sale of the Property, which payment shall be distributed in the order set forth in Section 3.13), and (ii) in all other cases, so much of such amount as shall be required to pay in full the Participant Balance of each Participant, and in the case where the amount so distributed shall be insufficient to pay in full as aforesaid, then in the order of priority set forth in Section 3.12; and in any case where the amount of any such payment in this clause (ii) shall be insufficient to pay in full as aforesaid, then pro rata within a Tranche without priority of any Participation Interest in such Tranche over any other Participation Interest within such Tranche; and

fourth, the balance, if any, of such payment or amounts remaining thereafter shall be promptly distributed to, or as directed by, the Lessee.

Section 3.18 Other Payments.

(a) Except as otherwise provided in Sections 3.11, 3.12, 3.17, 3.19 and paragraph (b) below,

(i) any payment received by the Agent for which no provision as to the application thereof is made in the Operative Documents or elsewhere in this Section 3, and

(ii) all payments received and amounts realized by the Lessor or the Agent under the Lease or otherwise with respect to the Property or the Cash Collateral to the extent received or realized at any time after indefeasible payment in full of the Participant Balances of all of the Participants and any other amounts due and owing to the Lessor, the Participants or the Agent,

shall be distributed forthwith by the Agent in the order of priority set forth in Section 3.12 (in the case of any payment described in clause (i) above) or in Section 3.17 hereof (in the case of any payment described in clause (ii) above), except that in the case of any payment described in clause (ii) above, such payment shall be distributed omitting clause third of such Section 3.17; and the balance, if any (in the case of any payment described in clause (i) or (ii) above), shall be distributed to, or as directed by, the Lessee.

(b) Except as otherwise provided in Sections 3.11 and 3.12 hereof, any payment received by the Agent for which provision as to the application thereof is made in an Operative Document but not elsewhere in this Section 3 shall be distributed forthwith by the Agent to the Person and for the purpose for which such payment was made in accordance with the terms of such Operative Document.

Section 3.19 Cash Collateral. Notwithstanding anything herein in the contrary, proceeds of the Cash Collateral shall be applied in the following order of priority:

first, among the Tranche B Participants, pro rata, to pay in full the Tranche B Participant Balances of such Tranche B Participants; and

second, among the Tranche C Participants, pro rata, to pay in full the Tranche C Participant Balances of such Tranche C Participants.

(a) In order to comply with the limitations on recourse to the Lessee contained in SFAS 13 with respect to a particular application of the Cash Collateral, the Agent and the applicable Participants may retain an amount thereof equal to the amount of the Lessee's recourse liability in respect of the Tranche B Participation Interests and Tranche C Participation Interests in the Lease Balance under the applicable provisions of the Operative Documents which, under the circumstances, may be the Asset Termination Value, as the case may be (and any of such collateral or proceeds not permitted to be so retained shall be returned to the Lessee).

Section 3.20 Casualty and Condemnation Amounts. Any amounts payable to the Lessor as a result of a Casualty or Condemnation pursuant to Section 15.1 of the Lease (but excluding any amounts payable pursuant to Section 16.2 of the Lease) shall, if no Event of Default exists, be paid over to Lessee for the rebuilding or restoration of that portion of the Property to which such Casualty or Condemnation applied, and any excess proceeds shall be paid to the Lessee. If a Event of Default exists, then during the continuance of such Event of Default, all such amounts shall be delivered to the Agent and upon exercise of the Lessor's remedies under the Operative Documents shall be distributed pursuant to Section 3.17.

Section 3.21 Order of Application. To the extent any payment made to any Participant pursuant to Sections 3.12, 3.13, 3.14 or 3.17 is insufficient to pay in full the Participant Balance of such Participant, then each such payment shall first be applied to its Participation Interest in accrued interest or yield and then to its Participation Interest in principal or the equity component of the Advances.

Section 3.22 Payments to the Tranche Y Participant. Notwithstanding anything in this Agreement or the other Operative Documents to the contrary, the parties hereto acknowledge and agree that (a) in the case of any payment required to be made in respect of the Participant Balance of the Tranche Y Participant, such amount shall be paid by offsetting against such amount the related portion of the Lease Balance owed by the Lessee to the Lessor in respect of the Tranche Y Participant's Participant Balance without the necessity of a cash payment being made by the Lessee to the Lessor or the Agent or by the Lessor to the Agent, and (b) in the context of all distributions required to be made by the Agent to the Participants or the Lessee pursuant to Sections 3.11 through 3.20 hereof, all such distributions shall be made by the Agent assuming that such offsetting payment has in fact been so made immediately prior to the making by the Agent of any such distributions.

SECTION 4

FEES

Section 4.1 Commitment Fees. The Lessor shall pay to the Agent for the account of each Participant (other than the Tranche Y Participant) a commitment fee (the "Commitment Fees") for the period from and including the Closing Date to the earlier of the last day of the Commitment Period computed in the case of each such Participant at a rate per annum equal to the Commitment Fee Rate multiplied by the Available Commitments of such Participant, in each case during the period for which payment is made, payable in arrears on each Commitment Fee Payment Date. Commitment Fees shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. Commitment Fees payable on any Commitment Fee Payment Date occurring prior to the initial Land Interest Acquisition Date shall be funded by Advances funded by the Participants and capitalized as provided in Section 3.7(e).

Section 4.2 Arrangement Fee. The Lessor shall pay to the Arranger an arrangement fee (the "Arrangement Fee") on the Closing Date as set forth in the Fee Letter. The Arrangement Fee shall be funded by an Advance funded by the Participants.

Section 4.3 Overdue Fees. If all or a portion of any fee due hereunder shall not be paid when due, such overdue amount shall bear interest, payable by the Lessee on demand, at a rate per annum equal to the Overdue Rate from the date of such nonpayment until such amount is paid in full (as well after as before judgment).

SECTION 5

CERTAIN INTENTIONS OF THE PARTIES

Section 5.1 Nature of Transaction.

(a) It is the intent of the parties hereto that: (i) the Lease constitutes an "operating lease" pursuant to Statement of Financial Accounting Standards No. 13, as amended and interpreted, for purposes of the Lessee's financial reporting, and (ii) for purposes of federal, state and local income or franchise taxes (and for any other tax imposed on or measured by income), and documentary, intangibles and transfer taxes, the transaction contemplated hereby is a financing arrangement and preserves ownership in the Property in the Lessee. The parties shall take no action inconsistent with such intention. Nevertheless, the Lessee acknowledges and agrees that neither the Agent, the Lessor nor any Participant (other than the Tranche Y Participant) has made any representations or warranties to the Lessee concerning the tax, accounting or legal characteristics of the Operative Documents and that the Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents as it deems appropriate.

(b) Specifically, without limiting the generality of subsection (a) of this Section 5.1, the parties hereto intend and agree that with respect to the nature of the transactions evidenced by the Lease in the context of the exercise of remedies under the Operative Documents, including, without limitation, in the case of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America, any State or Commonwealth thereof or any foreign country affecting the Lessee, the Lessor or any Participant or any enforcement or collection actions arising out of or relating to bankruptcy or insolvency laws, (i) the transactions evidenced by the Operative Documents shall be deemed to be loans made by the Lessor and the Participants to the Lessee secured by the Property, (ii) the obligations of the Lessee under the Lease to pay Basic Rent, Supplemental Rent, Asset Termination Value or Residual Value Guarantee Amount in connection with any purchase or sale of the Property pursuant to the Lease shall be treated as payments of interest on and principal of, respectively, loans from the Lessor and the Participants to the Lessee, and (iii) the Lease grants a security interest and mortgage or deed of trust lien, as the case may be, in the Property to the Lessor and assigned by the Lessor to the Agent for the benefit of the Participants to secure the Lessee's performance and payment of all amounts under the Lease and the other Operative Documents.

(c) If the transaction evidenced by this Agreement and the other Operative Documents can no longer be treated as an operating lease pursuant to GAAP for accounting purposes (other than by reason of the failure of the Lessor to maintain the minimum equity required by EITF Issues 96-21 and 97-1), all provisions in the Operative Documents limiting the Lessee's obligation to pay the Asset Termination Value (including the Remarketing Option) shall no longer apply. If any such change in accounting treatment shall occur, the Lessee, the Guarantor, the Lessor, the Agent and the Participants shall negotiate in good faith to enter into such amendments to the Operative Documents as may be reasonably necessary or desirable to reflect the foregoing.

(d) In the event that, after the date hereof, the UCC as enacted and in effect in any applicable jurisdiction shall be revised or amended or amendments thereto shall become effective, the Lessee, the Lessor, the Agent and the Participants shall negotiate in good faith to enter into such amendments to the Operative Documents as may be reasonably necessary or desirable to effect the intended purposes of this Agreement and the other Operative Documents in light of such revisions or amendments.

Section 5.2 Amounts Due Under Lease. Anything else herein or elsewhere to the contrary notwithstanding, it is the intention of the Lessee, the Participants and the Agent that: (i) the amount and timing of installments of Basic Rent due and payable from time to time from the Lessee under the Lease shall be equal to the aggregate payments due to the Participants in respect of their Participation Interests on each Payment Date; (ii) if the Lessee elects the Purchase Option or becomes obligated to purchase the Property under the Lease, the Participation Interests, all fees and all of the interest on overdue amounts thereon and all other obligations of the Lessee owing to the Lessor, the Participants and the Agent shall be paid in full by the Lessee; (iii) if the Lessee properly elects the Remarketing Option, the Lessee shall only be required to pay to the Lessor the proceeds of the sale of the Property, the Residual Value Guarantee Amount and any amounts due pursuant to Section 13 of this Participation Agreement and Section 22.2 of the Lease (which aggregate amounts may be less than the Asset Termination Value); and (iv) upon a Event of Default resulting in an acceleration of the Lessee's obligation to purchase the Property under the Lease, except as otherwise expressly limited in Section 17.2(h) of the Lease, the amounts then due and payable by the Lessee under the Lease shall include all amounts necessary to pay in full the Asset Termination Value, plus all other amounts then due from the Lessee to the Participants, the Agent and the Lessor under the Operative Documents.

SECTION 6

CONDITIONS PRECEDENT TO CLOSING DATE AND ADVANCES

Section 6.1 Conditions Precedent – Closing Date. The occurrence of the Closing Date and the obligation of the Lessor, the Agent and the Participants to execute and deliver the Operative Documents required to be entered into by any of them on such date are subject to satisfaction or waiver of the following conditions precedent (it being understood that the Tranche Y Participant's obligation to enter into any such Operative Documents on the Closing Date shall not be subject to the conditions precedent set forth in this Section 6.1 to the extent such conditions are actions required of the Lessee) on or prior to the Closing Date:

(a) **Operative Documents.** Each of the Operative Documents to be entered into on or prior to the Closing Date shall have been duly authorized, executed and delivered by the parties thereto, and shall be in full force and effect, including, without limitation, (i) this Participation Agreement, (ii) the Lease, (iii) the Assignment of Lease, (iv) the Consent to Assignment, (v) the Assignment of Property Purchase Agreement and (vi) the Cash Collateral Agreement. No Default or Event of Default shall exist thereunder (both before and after giving effect to the transactions contemplated by the Operative Documents), and the Lessor, the Agent and each Participant (other than the Tranche Y Participant) shall each have received a fully executed copy of each of the Operative Documents (other than the Lease, of which the Agent shall receive the original and the Lessor and the Participants shall receive specimens). On or prior to the Closing Date, the Operative Documents and/or any financing statements in connection therewith required under the Uniform Commercial Code shall have been recorded, registered and filed, if necessary, in such manner as to enable the Lessee's counsel to render its opinion referred to in clause (c) below.

(b) **Taxes.** On or prior to the Closing Date, all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Documents on such date, if any, shall have been paid or provisions for such payment shall have been made to the satisfaction of the Agent and the Lessor.

(c) **Opinion of Counsel.** On or prior to the Closing Date the Lessee shall have delivered to the Agent, each Participant (other than the Tranche Y Participant) and the Lessor the opinion of Shartsis, Friese & Ginsburg LLP, counsel to the Lessee, addressing the matters set forth in Exhibit D, which opinions shall be in form and substance reasonably satisfactory to the Agent and the Lessor.

(d) **Approvals.** All necessary (or, in the reasonable opinion of the Lessor, the Participants (other than the Tranche Y Participant) or the Agent or any of their respective counsel, advisable) Governmental Actions and consents and approvals of or by any Governmental Authority or other Person, in each case required by any Requirement of Law or the transactions contemplated by the Operative Documents shall have been obtained or made and be in full force and effect by the time required by any Requirement of Law.

(e) **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 Participation Agreement, the Lease or any other Operative Document or any transaction contemplated hereby or thereby or (ii) which is reasonably likely to have a Material Adverse Effect.

(f) Requirements of Law. In the reasonable opinion of the Lessor, the Participants (other than the Tranche Y Participant), the Agent and their respective counsel, the transactions contemplated by the Operative Documents do not and will not violate any Requirement of Law and do not and will not subject the Lessor, the Agent or any Participant to any adverse regulatory or tax prohibitions or constraints.

(g) Responsible Officer's Certificate of the Lessee. On or prior to the Closing Date, the Lessor, each Participant (other than the Tranche Y Participant) and the Agent shall each have received a Responsible Officer's Certificate, dated as of the Closing Date, of the Lessee stating that (i) each and every representation and warranty of the Lessee contained in the Operative Documents to which it is a party is true and correct in all material respects on and as of the Closing Date; (ii) no Default or Event of Default has occurred and is continuing; (iii) each Operative Document to which the Lessee is a party is in full force and effect with respect to the Lessee; and (iv) the Lessee has duly performed and complied with all covenants, agreements and conditions contained herein or in any Operative Document required to be performed or complied with by the Lessee on or prior to the Closing Date.

(h) The Lessee's Resolutions and Incumbency Certificate, etc. On or prior to the Closing Date, the Lessor, each Participant (other than the Tranche Y Participant) and the Agent shall each have received (i) a certificate of the Secretary or an Assistant Secretary of the Lessee attaching and certifying as to (A) the resolutions of the Board of Directors of the Lessee, duly authorizing the execution, delivery and performance by the Lessee of documents and agreements of the type represented by each Operative Document to which it is or will be a party, (B) its articles of incorporation and bylaws, and (C) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Documents to which it is a party, and (ii) a certificate of good standing from the appropriate officer of the Lessee's state of incorporation and of the state in which the Property is located.

(i) No Material Adverse Effect. As of the Closing Date, no event or condition shall have occurred that would result in a Material Adverse Effect.

(j) Intentionally Omitted.

(k) Intentionally Omitted.

(l) Legal Fees and Expenses. The Lessor and the Lessee shall have caused to be paid or capitalized as Advances as provided in Section 9 all reasonable fees and expenses of attorneys for the Agent, the Lessor and any Participant (other than the Tranche Y Participant) (which attorneys may be employees of such Person) paid or incurred in connection with the preparation, negotiation, execution and delivery of the Operative Documents.

(m) Appraisal. On or prior to the Closing Date, the Agent, the Lessor and the Participants shall have received an Appraisal of the Property, which Appraisal shall show as of the Closing Date and as of the Expiration Date the Fair Market Sales Value of the Property (including the respective Fair Market Sales Values of the Land Interest and the Improvements thereon), which Fair Market Sales Value shall not be less than \$270,000,000, and which Appraisal shall meet the other requirements set forth in the definition of the term "Appraisal" contained in Appendix 1.

(n) Funding Request. If an Advance is to be made on the Closing Date, the Agent and the Lessor shall have received a fully executed counterpart of a Funding Request with respect thereto appropriately completed by the Lessee and in accordance with Section 3.4.

(o) Representations and Warranties. On the Closing Date the representations and warranties of the Lessee, the Lessor and each Participant contained herein and in each of the other Operative Documents shall be true and correct as though made on and as of such date, except to the extent such representations or warranties relate solely to an earlier date, in which case such representations and warranties shall have been true and correct on and as of such earlier date.

(p) Performance of Covenants. The parties hereto shall have performed their respective agreements contained herein and in the other Operative Documents to be performed by them on or prior to the Closing Date.

(q) No Default. There shall not have occurred and be continuing any Default or Event of Default under any of the Operative Documents, and no Default or Event of Default under any of the Operative Documents will have occurred after giving effect to the occurrence of the Closing Date and/or the making of the Advance requested pursuant to the Funding Request, if any, delivered in respect of the Closing Date, as the case may be.

(r) Cash Collateral. If an Advance is to be made on the Closing Date, the Lessee shall have deposited with the Agent, in accordance with the Cash Collateral Agreement, Cash Collateral in immediately available funds in an amount equal to the aggregate amount of the Tranche B Participation Interests and Tranche C Participation Interests in such Advance to be so made on the Closing Date and otherwise as of such date shall have made all deposits of Cash Collateral then required pursuant to the Cash Collateral Agreement.

Section 6.2 Conditions Precedent – Land Interest Acquisition Dates. The occurrence of each Land Interest Acquisition Date, the obligation of the Lessor to make an Advance to finance Property Acquisition Costs or Transaction Expenses on any Funding Date following the Closing Date and to acquire any portion of the Property on any such date and the obligation of each Participant to purchase its Participation Interest in, and to make available to the Lessor its related portion of, each such Advance on any such Funding Date following the Closing Date, are subject to satisfaction or waiver of the following conditions precedent and the conditions precedent set forth in Section 6.3 (it being understood that the Tranche Y Participant's obligation to purchase its Participation Interest in any Advance on any Funding Date shall not be subject to the conditions precedent set forth in this Section 6.2 or Section 6.3 to the extent such conditions are actions required of the Lessee) on or prior to such Land Interest Acquisition Date, or such Funding Date, as the case may be:

(a) Acquisition and Funding Request. On or prior to each Land Interest Acquisition Date, the Agent and the Lessor shall have received a fully executed counterpart of the Acquisition Request with respect to the applicable portion of the Property and the related Funding Request, in each case appropriately completed by the Lessee, in accordance with Sections 3.3 and 3.4, respectively.

(b) Operative Documents and Amendments to Operative Documents. Each of the Operative Documents to be entered into on or prior to such Land Interest Acquisition Date shall have been duly authorized, executed and delivered by the parties thereto, and shall be in full force and effect, and the following documents shall have been duly authorized, executed and delivered by the parties thereto, and shall be in full force and effect: (i) amendments to any of the Operative Documents referred to in Section 6.1(a), as reasonably required by the Agent or the Participants (other than the Tranche Y Participant), (ii) the Lease Supplement with respect to the applicable portion of the Property, (iii) the Mortgage with respect to the applicable portion of the Property, (iv) the Deed with respect to the applicable portion of the Property, and (v) any other document or agreement reasonably required by Agent or the Participants (other than the Tranche Y Participant) with respect to such Land Interest Acquisition Date and/or the portion of the Property to be acquired on such date. No Default or Event of Default (other than a Limited Default or a Limited Event of Default, provided that if a Limited Default or Limited Event of Default exists, the provisions of Section 6.5 shall apply) shall exist (both before and after giving effect to the transactions contemplated by the relevant Acquisition Request and Funding Request), and the Lessor, the Agent and each Participant (other than the Tranche Y Participant) shall each have received a fully executed copy of each such Operative Document. On or prior to each such Land Interest Acquisition Date, the Operative Documents (or memoranda thereof), any supplements thereto and any financing statements in

connection therewith required under the Uniform Commercial Code shall have been recorded, registered and filed, or updates to prior filings shall have been made, if necessary, in such manner as to enable the Lessee's counsel to render its opinion referred to in clause (m) below.

(c) Environmental Certificate. On or prior to the applicable Land Interest Acquisition Date, the Agent, each Participant (other than the Tranche Y Participant) and the Lessor shall have received an Environmental Certificate substantially in the form of Exhibit C (an "Environmental Certificate") with respect to the relevant portion of the Property, accompanied by the Environmental Audit for such portion of the Property, addressed to the Agent, each Participant and the Lessor, each of which shall have been approved by the Agent, the Required Participants and the Lessor.

(d) Land Interest Acquisition Dates. The Land Interest Acquisition Date in respect of the Phase I Facility shall occur no later than April 13, 2001 and the Land Interest Acquisition Date in respect of the Phase II Facility shall occur no later than July 30, 2001.

(e) Property Purchase Agreement Conditions; Acquisition Documents. On or prior to the initial Land Interest Acquisition Date, the Lessor, the Agent and the Participants shall have received a copy of the Property Purchase Agreement with respect to the relevant portion of the Property. On or prior to each Land Interest Acquisition Date, the Property Purchase Agreement shall be in full force and effect and shall have been validly assigned to the Lessor pursuant to the Assignment of Property Purchase Agreement; and the conditions to closing under the Property Purchase Agreement with respect to the relevant portion of the Property shall have been satisfied to satisfaction of, or waived by, the Lessor, the Agent and the Participants (other than the Tranche Y Participant). On each Land Interest Acquisition Date, the Lessor shall have received a grant deed (each, a "Deed") with respect to the relevant portion of the Property in conformity with Applicable Law and appropriate for recording with the applicable Governmental Authorities, conveying fee simple title to such portion of the Property to the Lessor, subject only to Permitted Exceptions.

(f) Funding by Tranche Y Participant. No Participant shall be obligated to fund its Participation Interest in any Advance unless the Tranche Y Participant shall have funded its Participation Interest in such Advance.

(g) Lease Supplement. The Lessee and the Lessor shall have delivered to the Agent on or prior to each Land Interest Acquisition Date an original counterpart of the Lease Supplement with respect to the relevant portion of the Property executed by the Lessee and the Lessor.

(h) Survey and Title Insurance. On or prior to the Land Interest Acquisition Date, the Lessee shall have delivered (i) an ALTA/ACSM (1992) (Urban) Survey of the Property, including Table A numbers 2, 3, 4, 6, 8, 9, 10 and 11, certified to the Lessor, the Participants and the title company, (ii) an ALTA (1992) owners title insurance policy with extended coverage over the general exceptions, insuring fee title in the Lessor to the Property, subject only to the Permitted Exceptions with comprehensive (110.1), access (103.7), street address (116), survey (116.1), deletion of creditor's rights, synthetic lease, tax parcel, mechanic's lien, subdivision, CLTA Form 103.3, tie-in and CLTA Form 123.1 endorsements, and (iii) an ALTA (1992) Loan Policy with extended coverage over the general exceptions, insuring the Agent that the Lien of the Mortgage is a first and primary Lien on the Lessor's interest in the fee title to the Property, subject only to the Permitted Exceptions with comprehensive (110.1), access (103.7), street address (116), survey (116.1), variable rate, usury, doing business, deletion of creditor's rights, subdivision, CLTA 103.3, CLTA Form 123.1, environmental protection, tax parcel, mechanic's lien, pending disbursements and tie-in endorsements; such policies each in an amount not less than the Land Interest Acquisition Cost and other amounts funded on the Land Interest Acquisition Date.

(i) Evidence of Recording and Filing. On or prior to each Land Interest Acquisition Date, the Agent shall have received evidence reasonably satisfactory to it that (i) each of the Deed with respect to the relevant portion of the Property, the Lease Supplement with respect to the relevant portion of the Property, the Assignment of Lease, and the Consent to Assignment and the Mortgage have been delivered to the title company for recording or are being recorded with the appropriate Governmental Authorities in the order in which such documents are listed in this clause and (ii) that the UCC Financing Statements with respect to the Property being acquired have been delivered to the title company for filing or are being filed with the appropriate Governmental Authorities on such Land Interest Acquisition Date.

(j) Evidence of Insurance. On or prior to the initial Land Interest Acquisition Date, the Agent, the Lessor and each Participant (other than the Tranche Y Participant) shall have received certificates of insurance with respect to the Property required to be maintained pursuant to the Lease setting forth the respective coverages, limits of liability, carrier, policy number and period of coverage.

(k) Plans and Specifications. On or prior to the initial Land Interest Acquisition Date, the Lessor, the Agent and each Participant (other than the Tranche Y Participant) shall have received a copy of the Plans and Specifications with respect to the Phase I Facility and the Phase II Facility, each in a form reasonably satisfactory to each of them.

(l) Taxes. On or prior to each Land Interest Acquisition Date, all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of the Operative Documents on such date shall have been paid or provisions for such payment shall have been made to the satisfaction of the Agent and the Lessor.

(m) Opinion of Counsel. On or prior to each Land Interest Acquisition Date, the Lessee shall have delivered to the Agent, the Lessor and the Participants an opinion of Shartsis, Friese & Ginsburg LLP, counsel to the Lessee, addressing the matters set forth in Exhibit E with respect to the portion of the Property to be acquired on such date, which opinion shall be in form and substance reasonably satisfactory to the Agent and the Lessor.

(n) Approvals. All necessary (or, in the reasonable opinion of the Lessor, the Participants or the Agent or any of their respective counsel, advisable) Governmental Actions and consents and approvals of or by any Governmental Authority or other Person, in each case required by any Requirement of Law, covenant or restriction affecting the relevant portion of the Property or the transactions contemplated hereby, shall have been obtained or made and be in full force and effect by the time required by any Requirement of Law.

(o) 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 Participation Agreement, the Lease or any other Operative Document or any transaction contemplated hereby or thereby or (ii) which is reasonably likely to have a Objective Material Adverse Effect.

(p) Requirements of Law. In the reasonable opinion of the Lessor, the Participants (other than the Tranche Y Participant), the Agent and their respective counsel, the transactions contemplated by the Operative Documents in connection with the relevant portion of the Property do not and will not violate any Requirement of Law and do not and will not subject the Lessor, the Agent or any Participant (other than the Tranche Y Participant) to any adverse regulatory or tax prohibitions or constraints.

(q) Responsible Officer's Certificate of the Lessee. On or prior to each Land Interest Acquisition Date, the Lessor, Participants (other than the Tranche Y Participant) and the Agent shall each have received a Responsible Officer's Certificate, dated as of such Land Interest Acquisition Date, of the Lessee stating that (i) each and every representation and warranty of the Lessee contained in the Operative Documents to which it is a party is true and correct on and as of

such date; (ii) no Default or Event of Default has occurred and is continuing (other than a Limited Default or a Limited Event of Default, provided that if a Limited Default or a Limited Event of Default exists, the provisions of Section 6.5 shall apply); (iii) each Operative Document 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 Document required to be performed or complied with by it on or prior to such date.

(r) No Objective Material Adverse Effect; No Material Adverse Effect. As of each Land Interest Acquisition Date, no event or condition shall have occurred that would result in (i) an Objective Material Adverse Effect, or (ii) a Material Adverse Effect.

(s) Legal Fees and Expenses. The Lessee shall have caused to be paid from the proceeds of the relevant Advance all reasonable fees and expenses of attorneys for the Agent, the Lessor and any Participant (other than the Tranche Y Participant) (which attorneys may be employees of such Person) paid or incurred in connection with the preparation, negotiation, execution and delivery of the Operative Documents on the relevant Land Interest Acquisition Date.

(t) Construction Completion. The construction of the Phase I Facility or Phase II Facility, as the case may be, shall have been completed substantially in accordance with the applicable Plans and Specifications and all Requirements of Law and Insurance Requirements, and the Phase I Facility or Phase II Facility, as the case may be, shall be ready for occupancy and use as a facility of the type described in Recital A of this Agreement. This shall require, without limiting the generality of the preceding sentence, that (i) all utilities required to adequately service the Phase I Facility or Phase II Facility, as the case may be, for their intended use are available and "tapped on" and hooked up pursuant to adequate permits (including any that may be required under applicable Environmental Laws), and (ii) access to the Phase I Facility or Phase II Facility, as the case may be, for motor vehicles and, if required, pedestrians from publicly dedicated streets and public highways is available. All Fixtures, furniture, furnishings, Equipment and other property contemplated under the applicable Plans and Specifications to be incorporated into or installed such portion of the Property shall have been incorporated or installed free and clear of all Liens except for Permitted Exceptions.

(u) Architect's Certificate. The Lessee shall have furnished to the Lessor and Agent (i) a certificate of the Architect (substantially in the form of Exhibit F) dated at or about the Land Interest Acquisition Date with respect to the relevant portion of the Property and stating that (a) such portion of the Property has been completed substantially in accordance with the applicable Plans and Specifications and such portion of the Property is ready for occupancy and (b) such portion of the Property, as so completed, complies in all material respects with applicable laws and ordinances, and that attached thereto are true and complete copies of an "as built" or "record" set of the applicable Plans and Specifications and a plat of survey of the Property "as built" showing all paving, driveways, fences and exterior improvements and (ii) a certificate of occupancy for the applicable Improvements issued by the City of Sunnyvale, California.

(v) Lessee Certification. The Lessee shall have furnished the Lessor and the Agent with a certification of the Lessee (substantially in the form of Exhibit G) as follows:

(i) All amounts owing to third parties for the construction of the applicable Improvements and the acquisition of any Equipment have been, or on the relevant Land Interest Acquisition Date will be, paid in full, other than with respect to post-closing punch list items to be performed and paid for by the Existing Owner pursuant to the Property Purchase Agreement.

(ii) No changes or modifications were made to the related Plans and Specifications after the Closing Date that have resulted in, or, in the commercially reasonable judgment of the Lessor, could reasonably be expected to result in, (x) a decrease in the value of the Property by 10% or more from the value thereof as of the Closing Date, or (y) a decrease in the useful life of the Property of ten (10) years or more.

(iii) The conditions set forth in Sections 6.2(t), (u)(ii), and (w) hereof have been satisfied.

(w) Insurance. The Lessee shall have obtained and there shall be in full force and effect all insurance policies (including all endorsements thereto) required under Article XIV of the Lease in respect of the relevant portion of the Property as of the applicable Land Interest Acquisition Date and the Lessee shall have delivered to the Lessor and the Agent certificates of insurance in form and substance satisfactory to the Lessor and the Agent.

(x) Lockheed Indemnification Agreements. The Lockheed Indemnification Agreements shall be in form and substance satisfactory to the Lessor and the Agent and shall be in full force and effect, and such agreement shall have been duly assigned to the Lessor and the Lessor shall be fully entitled to all rights and benefits of the Existing Owner, in its capacity as "Buyer", thereunder with respect to the relevant portion of the Property as of the applicable Land Interest Acquisition Date.

Section 6.3 Further Conditions Precedent. The occurrence of each Land Interest Acquisition Date, the obligation of the Lessor to acquire the Phase I Facility or the Phase II Facility on the Land Interest Acquisition Date therefor or to make an Advance on any Funding Date following the Closing Date and the obligation of each applicable Participant to purchase its Participation Interest in, and to make available its related portion of, such Advance on any such Funding Date are subject to satisfaction or waiver of the following conditions precedent and to satisfaction on or before the relevant Land Interest Acquisition Date as the case may be of the following additional conditions precedent (it being understood that without limitation of the foregoing, the Tranche Y Participant's obligation to make available to the Lessor its portion of any Advance on any Funding Date following the Closing Date shall not be subject to the conditions precedent set forth in this Section 6.3 to the extent such conditions are actions required of the Lessee):

(a) Representations and Warranties. On such date the representations and warranties of the Lessee, the Lessor and each Participant contained herein and in each of the other Operative Documents shall be true and correct as though made on and as of such date, except to the extent such representations or warranties relate solely to an earlier date, in which case such representations and warranties shall have been true and correct on and as of such earlier date.

(b) Performance of Covenants. The parties hereto shall have performed their respective agreements contained herein and in the other Operative Documents to be performed by them on or prior to such date (but excluding in the case of the Lessee any agreements contained in the Operative Documents where the failure to perform such agreement would result in a Limited Default or a Limited Event of Default, provided that if such a Limited Default or Limited Event of Default exists, the provisions of Section 6.5 shall apply).

(c) Title. Title to the Property shall conform to the representations and warranties set forth in Sections 8.1(p), 8.2(c) and 8.3(b).

(d) No Default. Other than a Limited Default or a Limited Event of Default, there shall not have occurred and be continuing any Default or Event of Default under any of the Operative Documents, and no Default or Event of Default under any of the Operative Documents will have occurred after giving effect to the acquisition of the relevant portion of the Property and/or the making of the Advance requested by such Funding Request, as the case may be, provided that if a Limited Default or a Limited Event of Default exists or would have so occurred, the provisions of Section 6.5 shall apply.

(e) Cash Collateral. In the case of any Advance to be made on any Funding Date following the Closing Date, the Lessee shall have deposited with the Agent, in accordance with the Cash Collateral Agreement, Cash Collateral in immediately available funds in an amount equal to the aggregate

amount of the Tranche B Participation Interests and Tranche C Participation Interests in such Advance to be made on such Funding Date and otherwise as of such date shall have made all deposits of Cash Collateral then required pursuant to the Cash Collateral Agreement.

Section 6.4 Satisfaction of Conditions Precedent to Closing Date. The parties hereto acknowledge and agree that, with respect to the conditions precedent to the Closing Date set forth in Section 6.1 hereof, the Lessor, the Agent and the Participants (other than the Tranche Y Participant), by their execution and delivery of the Operative Documents to be entered into by them on the Closing Date, and absent fraud, gross negligence or willful misconduct on the part of the Lessee, shall be deemed to have agreed that such conditions precedent were satisfied or waived as of the Closing Date.

Section 6.5 Effect of Failure to Satisfy Conditions Precedent to Land Interest Acquisition Dates and Subsequent Funding Dates. The parties hereto acknowledge and agree that in the event the conditions precedent set forth in Section 3.4, Section 6.2 or Section 6.3 to the occurrence of each Land Interest Acquisition Date, the obligation of the Lessor to make an Advance to finance Property Acquisition Costs on any Land Interest Acquisition Date and to acquire any portion of the Property on any such date, and the obligation of each Participant to purchase its Participation Interest in, and to make available to the Lessor its related portion of, each such Advance on any such Land Interest Acquisition Date (such conditions precedent being collectively referred to as the "Acquisition/Funding Conditions"), are not met solely as a result of the failure of the Lessee to satisfy a Limited Condition Precedent by reason of (a) the occurrence of a Limited Default or a Limited Event of Default, or (b) the existence or occurrence of an event, condition or circumstance that has Material Adverse Effect but which does not also have an Objective Material Adverse Effect, then, notwithstanding the failure of such Limited Conditions Precedent to be satisfied, the Lessor shall be required to acquire the relevant portion of the Property and make the related Advance to finance Property Acquisition Costs or Transaction Expenses on the relevant Land Interest Acquisition Date, and each Participant shall be obligated to purchase its Participation Interest in, and make available to Lessor its related portion of, such Advance on such date; provided that immediately following the consummation of such purchase and the making of, and purchases of Participation Interests in, such Advance, the Lessor, the Agent and the Participants (excluding the Tranche Y Participant) shall be entitled in their sole discretion to declare that a Limited Default or Limited Event of Default has occurred and is continuing and to exercise their rights and remedies in respect of such Limited Default or Limited Event of Default, subject only to the limitations set forth in Section 17.2(h) of the Lease. The parties hereto further acknowledge and agree that in the event the Acquisition/Funding Conditions are otherwise not satisfied, the Lessor shall have no obligation to acquire the relevant portion of the Property and make the related Advance to finance Property Acquisition Costs or Transaction Expenses on the relevant Land Interest Acquisition Date, nor shall any Participant be obligated to purchase its Participation Interest in, or make available to Lessor its related portion of, such Advance on such date.

SECTION 7

REPRESENTATIONS OF THE LESSOR AND THE PARTICIPANTS

Section 7.1 Representations of the Lessor. The Lessor represents and warrants to each of the other parties hereto as follows:

- (a) Due Organization, etc. It is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois and has the corporate power and authority to enter into and perform its obligations under each of the Operative Documents to which it is or will be a party and each other agreement, instrument and document to be executed and delivered by it in connection with or as contemplated by each such Operative Document to which it is or will be a party.
- (b) Authorization; No Conflict. The execution, delivery and performance of each Operative Document 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 current United States or Illinois law, governmental rule or regulation, (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, its certificate of incorporation or by-laws, or any indenture, mortgage, deed of trust, conditional sales contract, 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 or (iv) does or will require any Governmental Action by any Governmental Authority, except such as have been obtained on the Lessee's or the Lessor's behalf.
- (c) Enforceability, etc. Each Operative Document to which the Lessor is or will be a party has been, or on or before the Closing Date (or the applicable Land Interest Acquisition Date, as the case may be) will be duly executed and delivered by the Lessor and each such Operative Document to which the Lessor is a party constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against the Lessor in accordance with the terms thereof, except as the same may be limited by insolvency, bankruptcy, reorganization or other laws relating to or affecting creditors' rights or by general equitable principles.
- (d) Litigation. There is no action or proceeding pending or, to its knowledge, threatened to which it is a party, before any Governmental Authority that, if adversely determined, would materially and adversely affect its ability to perform its obligations under the Operative Documents to which it is a party, would have a material adverse effect on the financial condition of the Lessor or would question the validity or enforceability of any of the Operative Documents to which it is or will become a party.
- (e) Assignment. It has not assigned or transferred any of its right, title or interest in or under the Lease except to the Agent and the Participants in accordance with this Agreement and the other Operative Documents.
- (f) Defaults. No default or event of default under the Operative Documents attributable to it has occurred and is continuing.
- (g) Securities Act. Neither the Lessor nor any Person authorized by the Lessor to act on its behalf has offered or sold any interest in the Lease, 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 the Agent and the Participants, and neither the Lessor nor any Person authorized by the Lessor to act on its behalf will take any action which would subject the issuance or sale of any interest in the Lease or the Property to the provisions of Section 5 of the Securities Act or require the qualification of any Operative Document under the Trust Indenture Act of 1939, as amended.
- (h) Chief Place of Business. The Lessor's chief place of business, chief executive office and office where the documents, accounts and records relating to the transactions contemplated by this Participation Agreement and each other Operative Document are kept are located at 135 South LaSalle Street, Chicago, Illinois 60603.
- (i) Federal Reserve Regulations. The Lessor 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), and no part of the proceeds of the purchase of the Participation Interests 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.

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

(k) No Plan Assets. The Lessor is not acquiring its interests in the Property with the assets of any "employee benefit plan" (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA, or "plan" (as defined in Section 4975(e)(1) of the Code).

Section 7.2 Representations of the Participants. Each Participant represents and warrants to the Lessor, each of the other Participants and, other than in the case of the Tranche Y Participant, to the Lessee, as follows:

(a) No Plan Assets. Such Participant is not and will not be funding its Participation Interest hereunder, and is not performing its obligations under the Operative Documents, with the assets of an "employee benefit plan" (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA, or "plan" (as defined in Section 4975(e)(1) of the Code). The advancing of any amount with respect to its Participation Interest on any Funding Date shall constitute an affirmation by the subject Participant of the preceding representation and warranty as of such date.

(b) Due Organization, etc. It is either (i) a duly organized and validly existing corporation in good standing under the laws of the state of its incorporation, or (ii) a national banking association duly organized and validly existing under the laws of the United States or (iii) a banking corporation duly organized and validly existing under the laws of the jurisdiction of its organization, and, in each case, has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Operative Documents to which it is a party.

(c) Authorization; No Conflict. The execution, delivery and performance of each Operative Document 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 current law, governmental rule or regulation of the United States or the state or country of its organization, (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, its certificate of incorporation or bylaws, articles of association or other organizational documents or any indenture, mortgage, deed of trust, conditional sales contract, 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 or (iv) does or will require any Governmental Action by any Governmental Authority.

(d) Enforceability, etc. Each Operative Document to which it is a party has been, or on or before the Closing Date will be, duly executed and delivered by it and each such Operative Document 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, except as the same may be limited by insolvency, bankruptcy, reorganization or other laws relating to or affecting creditors' rights or by general equitable principles.

(e) Litigation. 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 is reasonably likely to be adversely determined and, if adversely determined, would materially and adversely affect its ability to perform its obligations under the Operative Documents to which it is a party.

(f) Investment. The Participation Interest being acquired by such Participant is being acquired by such Participant for investment and not with a view to the resale or distribution of such interest or any part thereof, but without prejudice, however, to the right of such Participant at all times to sell or otherwise dispose of all or any part of such interest under a registration available under the Securities Act or under an exemption from such registration available under the Securities Act, it being understood that the disposition of the Participation Interest to be purchased by such Participant shall, at all times, remain entirely within its control subject to the provisions of Section 12 below.

(g) Offer of Securities, etc. Neither such Participant nor any Person authorized to act on its behalf has, directly or indirectly, offered to sell its Participation Interest or any other similar securities (the sale or offer of which would be integrated with the sale or offer of the Participation Interest), for sale to, or solicited any offer to acquire any of the same from, any Person.

(h) No Registration. Such Participant understands and acknowledges that the Participation Interests have not been and will not be registered under the Securities Act in reliance upon the exemption provided in Section 4(2) of the Securities Act or any other applicable exemption, that Participation Interests have not and will not be registered or qualified under the securities or "blue sky" laws of any jurisdiction, that the Participation Interests may be resold or otherwise transferred only if so registered or qualified or if an exemption from registration or qualification is available, that neither Lessee nor Lessor is required to register the Participation Interests and that any transfer must comply with the provisions of the Operative Documents relating thereto. Such Participant will comply with all applicable federal and state securities laws in connection with any subsequent resale of the Participation Interests held by it.

(i) Accredited Investor. Such Participant is a sophisticated investor and an "accredited investor" as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) of the Securities Act, and has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of its investment in the Participation Interests and is able to bear the economic risk of such investment. Such Participant has been given such information concerning the Participation Interests, the other Operative Documents, the Property, the Guarantor and the Lessee as it has requested.

SECTION 8

REPRESENTATIONS OF THE LESSEE

Section 8.1 Representations of the Lessee. The Lessee represents and warrants to each of the other parties hereto (other than the Tranche Y Participant) that:

(a) Organization; Powers; Qualification. Each of the Lessee and its Restricted Subsidiaries (a) is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization, (b) has all requisite power and authority to own, lease and operate its properties, to carry on its business, to enter into the Operative Documents to which it is a party and to carry out the transactions contemplated hereby and thereby, and (c) is qualified or licensed to do business and is in good standing in each jurisdiction in which the failure to be so qualified or licensed or in good standing has not had, and could not be reasonably expected to have, an Objective Material Adverse Effect. The Lessee's chief place of business is located in Santa Clara County, California.

(b) Authorization of Operative Documents; No Conflict. The execution, delivery and performance by the Lessee of the Operative Documents to which it is or will be a party have been or as of the relevant date of execution and delivery thereof will be duly authorized by all necessary corporate action on the part of the Lessee. The execution, delivery and performance by the Lessee of the Operative Documents to which it is or will be a party and the consummation by the Lessee of the transactions contemplated by the Operative Documents do not and will not (i) violate any material provision of any law or any governmental

rule or regulation applicable to the Lessee, any of the certificate of incorporation or bylaws of the Lessee, or any order, judgment or decree of any court or other agency of government binding on the Lessee or the Property or any portion thereof; (ii) conflict with, result in a breach or an acceleration of or entitle any other Person to accelerate (with due notice or lapse of time or both) any indenture, loan agreement, other agreement for borrowed money or other agreement or contractual arrangement of the Lessee required by Regulation S-K to be made part of the Lessee's filings with the SEC pursuant to the Exchange Act; (iii) result in or require the creation or imposition of any Lien (or the obligation to create or impose any Lien) upon any of the properties or assets of the Lessee (other than any Liens created under any of the Operative Documents and other than Permitted Liens); or (iv) require any approval of stockholders or any approval or consent of any Person under any indenture, loan agreement, other agreement for borrowed money or other agreement or contractual arrangement of the Lessee required by Regulation S-K to be made part of the Lessee's filings with the SEC pursuant to the Exchange Act, except for such approvals or consents which will be obtained on or before the Closing Date.

(c) Governmental Consents. The execution, delivery and performance by the Lessee of the Operative Documents to which it is or will be a party and the consummation by the Lessee of the transactions contemplated by the Operative Documents do not and will not require any Governmental Action by any Governmental Authority except for filings and recordings of the Operative Documents (as listed in Section 8.2(f) hereof with respect to each portion of the Property) the appropriate Governmental Authorities, all of which will have been completed on or prior to the applicable Land Interest Acquisition Date.

(d) Binding Obligation. Each Operative Document to which the Lessee is or will be a party has been or will be duly executed and delivered by the Lessee and (assuming due authorization by the other parties thereto, other than the Lessee) is or will be the legally valid and binding obligation of the Lessee, enforceable against the Lessee in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to the enforcement of, or limiting, creditors' rights generally or by general equitable principles.

(e) Historical Financial Statements. The Historical Financial Statements comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except as may be indicated in the notes thereto) and fairly present the consolidated financial position of the Lessee and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (except in the case of interim period financial information for normal year-end adjustments). Neither Lessee nor any of its Subsidiaries has any contingent liability, any liability for taxes, or any other outstanding obligation that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Lessee and its Subsidiaries taken as a whole.

(f) No Material Adverse Effect. Since December 31, 1999, no event or change has occurred that has caused, either in any case or in the aggregate, a Material Adverse Effect.

(g) Litigation; Adverse Proceedings. There are no Adverse Proceedings pending individually or in the aggregate, (i) that seek to enjoin, either directly or indirectly, the execution, delivery or performance by the Lessee of the Operative Documents or the transactions contemplated hereby or thereby, or question the validity of the Operative Documents or the rights or remedies of the Lessor, the Agent or the Participants with respect to the Lessee or the Property under the Operative Documents or (ii) could reasonably be expected to have an Objective Material Adverse Effect. Neither the Lessee nor any of its Restricted Subsidiaries is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have an Objective Material Adverse Effect.

(h) Payment of Taxes. All federal and all material state, local and foreign tax returns and reports of the Lessee and its Restricted Subsidiaries required to be filed by any of them have been filed where the failure to file would have an Objective Material Adverse Effect, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon the Lessee and its Restricted Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable, other than those contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been made and subject, in the case of the Property, to the terms of the Lease. The Lessee knows of no material proposed tax adjustment against the Lessee or any of its Subsidiaries which is not being actively contested by the Lessee or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor, and provided further that, in the case of the Property, any such contest shall be subject to the terms of the Lease.

(i) No Defaults. Neither the Lessee nor any of its Restricted Subsidiaries is in violation of or in default with respect to (i) any provision of any Applicable Law, other than violations or defaults which could not reasonably be expected to have an Objective Material Adverse Effect, or (ii) the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any indenture, mortgage, deed of trust, conditional sale contract, credit agreement or other material agreement or instrument to which it is a party or by which it or its properties may be bound or affected, other than violations or defaults which could not reasonably be expected to have an Objective Material Adverse Effect.

(j) Governmental Regulation. The Lessee is not subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, or, any state public utilities code or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or to grant Liens on any of its property or assets, or which may otherwise render all or any portion of the obligations of the Lessee to the Lessor, the Agent or the Participants under the Operative Documents unenforceable. As of the date hereof the Lessee is subject to regulation under the Investment Company Act of 1940, as amended, provided that the SEC has issued an exemption order in favor of the Lessee with respect to such Act, and provided further that neither such status of the Lessee with respect to such Act, nor the terms of such exemption order, limits the Lessee's ability to incur Indebtedness or otherwise renders all or any portion of the obligations of the Lessee to the Lessor, the Agent or the Participants under the Operative Documents unenforceable.

(k) Employee Benefit Plans.

(i) Neither the Lessee nor any ERISA Affiliate maintains or contributes to, or has ever maintained a Pension Plan. Neither the Lessee nor any ERISA Affiliate has any liability with respect to any post-retirement benefit under any Employee Benefit Plan which is a welfare plan (as defined in Section 3(1) of ERISA), other than liability for health plan continuation coverage described in Part 6 of Title I(B) of ERISA, which liability for health plan coverage is not reasonably likely to have an Objective Material Adverse Effect.

(ii) Each Employee Benefit Plan complies, in both form and operation, in all material respects, with its terms, ERISA and the Code, and no condition exists or event has occurred with respect to any such plan which would result in the incurrence by either the Lessee or any ERISA Affiliate of any material liability, fine or penalty. Each Employee Benefit Plan, related trust agreement, arrangement and commitment of the Lessee or any ERISA Affiliate is legally valid and binding and in full force and effect in all material respects. No Employee Benefit Plan is being audited or investigated by any governmental authority or is subject to any pending or, to the best knowledge of Lessee, threatened, claim or suit. Neither the Lessee nor any ERISA Affiliate nor any fiduciary of any Employee Benefit Plan has engaged in a prohibited transaction under Section

(iii) Neither the Lessee nor any ERISA Affiliate contributes to or has ever contributed to any Multiemployer Plan.

(iv) If the Lessee or any ERISA Affiliate on or after the date of this Participation Agreement: (1) maintains or contributes to a Pension Plan; (2) contributes or has any material contingent obligations to any Multiemployer Plan; or (3) incurs a liability with respect to any post-retirement benefit under any Employee Benefit Plan which is a welfare plan (as defined in Section 3(1) of ERISA), other than liability for health plan continuation coverage described in Part 6 of Title I(B) of ERISA, which liability for health plan coverage is not reasonably likely to have an Objective Material Adverse Effect, then the Lessee shall promptly provide a written notice thereof and a statement affirming that no Objective Material Adverse Effect could reasonably be expected to occur as a result thereof.

(l) Licenses, Permits, etc. The Lessee and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, copyrights, service marks, trademarks and trade names or rights thereto, and to their knowledge possess all patents, that individually or in the aggregate, are material to the conduct of its business and, in the case of patents, excluding those the failure of which to own or possess would not reasonably be expected to result in an Objective Material Adverse Effect. To the best knowledge of the Lessee, no such license, permit, franchise, authorization, patent, copyright, service mark, trademark or trade name, and no product of the Lessee or any of its Restricted Subsidiaries infringes in any material respect on any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person, except for such infringement as would not reasonably be expected to result in an Objective Material Adverse Effect. To the best knowledge of the Lessee, there is no material violation by any Person of any right of the Lessee or any of its Subsidiaries with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by the Lessee or any of its Subsidiaries other than violations which would not reasonably be expected to have an Objective Material Adverse Effect.

(m) Subsidiaries. Schedule III identifies each Subsidiary of the Lessee as of the date hereof, the jurisdiction of its incorporation or formation, the percentage of issued and outstanding shares of each class of its capital stock or other equity interests owned by the Lessee and its Subsidiaries and, if such percentage is not 100% (excluding directors' qualifying shares as required by law), a description of each class of its authorized capital stock and the number of shares of each class issued and outstanding.

(n) Offer of Securities, et c. Neither the Lessee nor any Person authorized to act on its behalf has, directly or indirectly, offered or will offer any interest in the Property or any portion thereof or the Lease or any other interest similar thereto (the sale or offer of which would be integrated with the sale or offer of such interest in the Property or the Lease), for sale to, or solicited or will solicit any offer to acquire any of the same from, any Person other than the Agent or Participants, the Lessor and other "accredited investors" (as defined in Regulation D of the Securities and Exchange Commission).

(o) Disclosure. The representations and warranties of the Lessee contained in any Operative Document and in any other document, certificate or written statement furnished to the Lessor, the Agent and/or the Participants by or on behalf of the Lessee pursuant to the Operative Documents for use in connection with the transactions contemplated hereby, when taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact (known to the Lessee, in the case of any document not furnished by the Lessee) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. There are no facts known to the Lessee that, individually or in the aggregate, could reasonably be expected to result in either an Objective Material Adverse Effect or a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to the Lessor, the Agent and/or the Participants for use in connection with the transactions contemplated hereby.

(p) Intentionally Omitted.

(q) Environmental Matters. Except as disclosed in the Environmental Audit delivered as of the Closing Date:

(i) The Property does not contain, any Materials of Environmental Concern in amounts or concentrations which (A) constitute a violation of, or (B) could reasonably be expected to give rise to liability under, any Environmental Law.

(ii) The Property complies in all material respects with all applicable Environmental Laws, and there is no contamination at or under (or, to the knowledge of the Lessee, about) the Property.

(iii) The Lessee has not received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to the Property, nor does the Lessee have knowledge or reason to believe that any such notice will be received.

(iv) Materials of Environmental Concern are not being transported or disposed of from the Property by Lessee or any of its Affiliates in violation of, or in a manner or to a location which could reasonably be expected to give rise to material liability under, any Environmental Law, nor are any Materials of Environmental Concern being generated, treated, stored or disposed of at, on or under any of the Property in violation of, or in a manner that could reasonably be expected to give rise to material liability under, any applicable Environmental Law.

(v) There are no judicial proceedings or governmental or administrative actions pending under any Environmental Law in which the Lessee or any of its Subsidiaries is named as a party with respect to the Property nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or any administrative or judicial requirements outstanding under any Environmental Law with respect to the Property.

(vi) There has been no release of Materials of Environmental Concern at or from the Property, or arising from or related to the operations of the Lessee or in connection with the Property in violation of or in amounts or in a manner that could reasonably give rise to material liability under Environmental Laws.

(r) Solvency. The Lessee is solvent and has assets having a value both at fair value and at present fair saleable value at least equal to the amount of its liabilities.

Section 8.2 Representations of the Lessee with Respect to the Property. The Lessee hereby represents and warrants to each of the other parties hereto (other than the Tranche Y Participant), on the Closing Date and on each other date on which representations and warranties of the Lessee are made or deemed made pursuant to the Operative Documents, as follows:

(a) **Representations.** The representations and warranties of the Lessee set forth in the Operative Documents to which it is a party are true and correct on and as of such date, except to the extent such representations or warranties relate solely to an earlier date, in which case such representations and warranties shall have been true and correct on and as of such earlier date. The Lessee is in compliance with its obligations under the Operative Documents to which it is a party and there exists no Default or Event of Default.

(b) **Property.** The Property consists of the Phase I Land Interest on which the Phase I Improvements (which are of the type described in Recital A to this Agreement) will have been constructed as of the initial Land Interest Acquisition Date and, from and after the Land Interest Acquisition Date in respect thereof, the Phase II Land Interest on which the Phase II Improvements (which will be of the type described in Recital A to this Agreement) will have been constructed as of such Land Interest Acquisition Date. The Property is located in Sunnyvale, California. The Property does, and as improved in accordance with the applicable Plans and Specifications will as of the applicable Land Interest Acquisition Date, and the use thereof by the Lessee, its Subsidiaries and their respective agents, assignees, employees, invitees, lessees, licensees, contractors and tenants does and will comply in all material respects with all Requirements of Law (including, without limitation, Title III of the Americans with Disabilities Act, all zoning and land use laws, all Environmental Laws and all building, planning, zoning and fire codes), except for such Requirements of Law as the Lessee shall be contesting in good faith by appropriate proceedings and in accordance with the applicable provisions of the Lease, and complies with all Insurance Requirements. The applicable Plans and Specifications have been prepared in all material respects in accordance with applicable Requirements of Law (including, without limitation, Title III of the Americans with Disabilities Act, all zoning and land use laws, all Environmental Laws and all building, planning, zoning and fire codes) and neither the Phase I Improvements nor, upon completion thereof in accordance with the applicable Plans and Specifications, the Phase II Improvements, encroach in any manner onto any adjoining land (except as permitted by express written easements or as insured by appropriate title insurance). Each of the Phase I Improvements, and upon completion thereof in accordance with the related Plans and Specifications, the Phase II Improvements (including in each case, without limitation, structural members, the plumbing, heating, air conditioning and electrical systems of any such Improvements), and all water, sewer, electric, gas, telephone and drainage facilities, have been or will be completed in a workmanlike manner and in accordance with the applicable Plans and Specifications and will be fit for use as first class facilities of the type described in Recital A to this Agreement, and all other utilities required to adequately service any such Improvements for their intended use are or will be available and "tapped on" and hooked up 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 Environmental Law) pending or, to the best of the Lessee's knowledge, threatened with respect to the Lessee, its Affiliates or the Property which materially adversely affects the title to, or the use, operation or value of, the Property or any portion thereof. Except as may be disclosed to the Lessor and the Agent in writing in accordance with Section 15.1(c) of the Lease, no fire or other casualty with respect to the Property or any portion thereof has occurred. The Property has available (or will have available by the applicable Land Interest Acquisition Date) all material services of public facilities and other utilities necessary for use and operation of such facilities and the other Improvements for their primary intended purposes, including, without limitation, adequate water, gas and electrical supply, storm and sanitary sewerage facilities, telephone, other required public utilities and means of access to such facilities from publicly dedicated streets and public highways for pedestrians and motor vehicles. All utilities serving the Property, or proposed to serve the Property in accordance with the applicable Plans and Specifications, are (or will be) located in, and vehicular access to each of the Phase I Improvements and the Phase II Improvements on the Property is (or will be) provided by, either public rights-of-way abutting such portion of the Property or Appurtenant Rights. All material licenses, approvals, authorizations, consents, permits (including, without limitation, building, and environmental permits, licenses, approvals, authorizations and consents), easements and rights-of-way, including proof and dedication, required for the use and operation of any of the Improvements in accordance with the applicable Plans and Specifications have either been obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, or will be obtained from the appropriate Governmental Authorities having jurisdiction or from private parties, as the case may be, prior to commencing any such use and operation, and will in each case be maintained by the Lessee during the periods for which they are required by Applicable Law or such Governmental Authorities.

(c) **Title.** Each Deed providing for the acquisition of a portion of the Property is sufficient to convey title to such portion of the Property in fee simple, subject only to Permitted Exceptions. Upon conveyance of the relevant Deed on the relevant Land Interest Acquisition Date, the Lessor will own fee simple title to the relevant portion of the Property and the applicable Improvements thereon, subject to Permitted Exceptions, and will have the right to grant a Mortgage on such portion of the Property.

(d) **Insurance.** The Lessee has obtained insurance coverage covering the Property which meets the requirements of Article XIV of the Lease, and such coverage is in full force and effect.

(e) **Lease.** (i) Upon the execution and delivery of each Lease Supplement, the Lessee will have unconditionally accepted the portion of the Property covered thereby and will be bound by the terms of such Lease Supplement and, upon the applicable Lease Commencement Date will have a valid leasehold interest in the related portion of the Property, subject only to the Permitted Exceptions; (ii) from and after the applicable Lease Commencement Date, the Lessee's obligation to pay Rent will be an independent covenant and no right of deduction or offset will exist with respect to any Rent or other sums payable under the Lease; and (iii) from and after the applicable Lease Commencement Date, no Rent under the Lease will have been prepaid and the Lessee will have no right to prepay the Rent, except as specifically set forth therein.

(f) **Protection of Interests.** (i) On each Land Interest Acquisition Date, the applicable Lease Supplement, the Assignment of Lease, the Consent to Assignment and the applicable Mortgage are each in a form sufficient, and have been or will be recorded with the Office of the Recorder of Santa Clara County, California, which is the only recording office necessary to grant perfected first priority liens on the applicable portion of the Property covered thereby to the Agent or the Lessor, as the case may be, (ii) the Agent Financing Statements are each in a form sufficient, and have been delivered to the title company for filing or will be filed with the Secretary of State of the State of California and the Office of the Recorder of Santa Clara County, California, which are all filing offices necessary to create a valid and perfected first priority security interest in the Lessor's interest in the relevant Improvements; and (iii) the Lessor Financing Statements are each in a form sufficient, and have been delivered to the title company for filing or will be filed with the Secretary of State of the State of California and the Office of the Recorder of Santa Clara County, California, which are all filing offices necessary to perfect the Lessor's interest under the Lease to the extent the Lease is a security agreement.

(g) **Flood Hazard Areas.** 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 any 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, then flood insurance has been obtained for the Property or such portion thereof in accordance with Section 14.3 of the Lease and in accordance with the National Flood Insurance Act of 1968, as amended.

(h) **Conditions Precedent.** All conditions precedent (other than the Limited Conditions Precedent, provided that if a Limited Condition Precedent has not been satisfied, the provisions of Section 6.5 shall apply) contained in this Agreement and in the other Operative Documents relating to the acquisition and, upon the applicable Lease Commencement Date, leasing of the applicable portion of the Property by the Lessor have been satisfied in full.

Section 8.3 Representations of the Lessee With Respect to Each Advance. The Lessee hereby represents and warrants as of each Funding Date on which an Advance is made as follows:

(a) **Representations.** The representations and warranties of the Lessee set forth in the Operative Documents to which it is a party (including the representations and warranties set forth in Sections 8.1 and 8.2) are true and correct on and as of such Funding Date, except to the extent such representations or warranties relate solely to an earlier date, in which case such representations and warranties shall have been true and correct on and as of such earlier date. The Lessee is in compliance with its obligations under the Operative Documents and there exists no Default or Event of Default (other than a Limited Default or a Limited Event of Default, provided that if a Limited Default or a Limited Event of Default exists, the provisions of Section 6.5 shall apply). No Default or Event of Default (other than a Limited Default or a Limited Event of Default, provided that if a Limited Default or a Limited Event of Default exists, the provisions of Section 6.5 shall apply) will occur as a result of, or after giving effect to, the Advance requested by the Acquisition Request or the Funding Request on such date.

(b) **No Liens.** There are no Liens against the Property other than Permitted Exceptions. The Participation Interests funding such Advance are secured by the Lien of the Mortgage.

(c) **Advance.** The amount of the Advance requested represents amounts owing in respect of the acquisition price of the applicable portion of the Property and related Transaction Expenses or amounts paid by the Lessee to third parties in respect of Transaction Expenses for which the Lessee has not previously been reimbursed by an Advance. The conditions precedent on the part of the Lessee to such Advance and the related remittances by the Participants with respect thereto set forth in Section 6 have been satisfied (other than the Limited Conditions Precedent, provided that if a Limited Condition Precedent has not been satisfied, the provisions of Section 6.5 shall apply).

(d) **Insurance.** The Lessee has obtained insurance coverage covering the Property which meets the requirements of Article XIV of the Lease, and such coverage is in full force and effect.

SECTION 9

PAYMENT OF CERTAIN EXPENSES

The Lessee agrees, for the benefit of the Lessor, the Agent and the Participants, that:

Section 9.1 Transaction Expenses. At all times from and after the Closing Date, the Lessee shall pay from time to time all Transaction Expenses unless requested to be capitalized and funded by related fundings of Participation Interests (and permitted to be so capitalized by the Participants).

Section 9.2 Brokers' Fees and Stamp Taxes. The Lessee shall pay or cause to be paid any 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 Participation Agreement and the other Operative Documents.

Section 9.3 Obligations. At all times from and after the Closing Date, the Lessee shall pay, on or before the due date thereof, all costs, expenses and other amounts required to be paid by any Mortgage and the Assignment of Lease (other than the principal amount or equity component of, or interest or yield on, the Advances).

SECTION 10

OTHER COVENANTS AND AGREEMENTS

Section 10.1 Covenants of the Lessee.

(a) **Affirmative Covenants.** The Lessee hereby agrees that, so long as this Agreement is in effect or any amount is owing to any Participant, the Lessor or the Agent hereunder or under any other Operative Document, the Lessee shall and (except in the case of delivery of financial information, reports, and notices) shall cause each of its Restricted Subsidiaries to perform each of the following covenants:

(i) **General Business Operations.** Each of the Lessee and its Restricted Subsidiaries shall (i) preserve and maintain its corporate existence and all of its rights, privileges and franchises reasonably necessary to the conduct of its business, and (ii) conduct its business activities in compliance with all applicable laws and governmental rules and regulations, and all indentures, loan agreements or other agreements for borrowed money or other material agreements or contractual arrangements applicable to such entity or its property or assets, the violation of which is reasonably likely to have a Material Adverse Effect; provided, however, that the Lessee and its Subsidiaries may dissolve, liquidate or dispose of any of its Subsidiaries if such dissolution, liquidation or disposition is not reasonably likely to have a Material Adverse Effect. The Lessee shall maintain its chief executive office and principal place of business in the United States and shall not relocate its chief executive office of principal place of business outside of the State of California except upon not less than thirty (30) days prior written notice to the Agent.

(ii) **Maintenance of Properties.** Subject, in the case of the Property, to the provisions of the Lease, the Lessee will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in all material respects in good repair, working order and condition, ordinary wear and tear excepted, all property useful and necessary in the business of the Lessee and its Subsidiaries.

(iii) **Payment of Taxes and Claims.** Subject, in the case of the Property, to the provisions of the Lease, the Lessee will, and will cause each of its Restricted Subsidiaries to, pay all taxes, assessments and other governmental charges imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such charge or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and for which appropriate reserves as required by GAAP are maintained. The Lessee will not file or consent to the filing of any consolidated income tax return with any Person (other than its Subsidiaries).

(iv) **Books and Records; Financial Statements and Other Reports.** The Lessee and its Restricted Subsidiaries shall at all times keep proper books of record and account in which full, true and correct entries will be made of their transactions in accordance with GAAP. The Lessee will deliver or cause to be delivered to the Agent (with sufficient copies for each of the Participants, other than the Tranche Y Participant) and to the Lessor:

(A) as soon as available and in any event within ninety (90) days after the end of each Fiscal Year of the Lessee, an audited 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 accompanied by the unqualified opinion of PriceWaterhouseCoopers LLP or other independent public accountants of nationally recognized standing stating that such consolidated financial statements present fairly the financial position of the Lessee and its consolidated Subsidiaries for the periods indicated, in conformity with GAAP, and applied on a basis consistent with prior years; together with a Responsible Officer's Certificate containing a computation of, and showing compliance with, each of the financial ratios and restrictions contained in Section 10.2 and stating that the Responsible Officer executing such certificate is not aware of any Event of Default or Default that has occurred and is continuing, or if such officer is aware of any such Event of Default or Default, describing it and the steps, if any, being taken to cure it;

(B) as soon as available and in any event within forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Lessee, a consolidated statement of financial position of the Lessee as of the end of such Fiscal Quarter and the related consolidated statements of income, shareholder's equity and cash flows for such Fiscal Quarter and for the portion of the Lessee's Fiscal Year ended at the end of such Fiscal Quarter, together with a Responsible Officer's Certificate containing a computation of, and showing compliance with, each of the financial ratios and restrictions contained in Section 10.2 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;

(C) if, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of the Lessee and its Subsidiaries delivered pursuant to Sections 10.1(a)(iv)(A) or 10.1(a)(iv)(B) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such Sections had no such change in accounting principles and policies been made, then together with the first delivery of such financial statements after such change a statement of reconciliation for all such prior financial statements in form and substance satisfactory to the Required Participants;

(D) promptly upon their becoming available, copies of (i) all financial statements sent or made available generally by the Lessee to its Security holders acting in such capacity or by any Subsidiary of the Lessee to its Security holders other than the Lessee or another Subsidiary of the Lessee and (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by the Lessee or any of its Subsidiaries with any securities exchange or with the SEC;

(E) promptly upon any Responsible Officer of the Lessee obtaining knowledge (or in the case of clause (iii) below, promptly following the filing of such 8-K report with the SEC) (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to the Lessee by the Lessor, the Agent or any Participant with respect thereto; (ii) that any Person has given any notice to the Lessee or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 17.1(e) of the Lease; (iii) of any condition or event of a type required to be disclosed in a current report on Form 8-K of the SEC (excluding Item 3 as in effect on the date hereof) which condition or event could reasonably be expected to have a Material Adverse Effect; or (iv) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, an Objective Material Adverse Effect or a Material Adverse Effect, a certificate of a Responsible Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action the Lessee has taken, is taking and proposes to take with respect thereto;

(F) promptly upon any Responsible Officer of the Lessee obtaining knowledge of the institution of any Adverse Proceeding not previously disclosed in writing by the Lessee to the Lessor, the Agent and the Participants which either (i) if adversely determined, could reasonably be expected to result in monetary damages payable by Lessee or its Subsidiaries of \$10,000,000 or more (alone or in the aggregate), or (ii) seeks to enjoin or otherwise prevent the consummation or performance of, or to recover any damages or obtain relief as a result of, the transactions contemplated by the Operative Documents, written notice thereof together with such other information as may be reasonably available to the Lessee to enable the Lessor, the Agent and the Participants and their counsel to evaluate such matters including information from time to time of any material development in any such Adverse Proceeding;

(G) (i) promptly upon becoming aware of the occurrence of any ERISA Event, a written notice specifying the nature thereof, what action the Lessee, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) upon request of the Agent and with reasonable promptness, copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as the Agent shall reasonably request;

(H) promptly, written notice of any change in either Moody's or S&P's rating for the Lessee's long term Indebtedness, if applicable; and

(I) with reasonable promptness, such other instruments, agreements, certificates, opinions, statements, documents and other information and data with respect to the operations or condition (financial or otherwise) of the Lessee or any of its Subsidiaries and compliance by the Lessee with the terms of this Agreement and the other Operative Documents as from time to time may be reasonably requested by the Lessor, the Agent or any Participant; and

(J) Notwithstanding the foregoing, the requirement for delivery of financial statements under this Section 10.1(a)(iv) may be satisfied by delivery of a copy of Forms 10-K or 10-Q as the case may be as filed by the Lessee with the SEC for the most recent Fiscal Year or Fiscal Quarter then ended. The Lessee may remit its financial statements and its filings and reports required to be delivered pursuant to Section 10.1(a)(iv)(D) via electronic format through delivery by e-mail or otherwise.

(v) Inspection Rights . Subject, in the case of the Property, to the requirements of the Lease, the Lessee will, and will cause each of its Restricted Subsidiaries to, permit any authorized representatives designated by the Lessor, the Agent or any Participant (other than the Tranche Y Participant) to visit and inspect its and their financial and accounting records (to the extent reasonably requested by the Lessor, the Agent or any Participant other than the Tranche Y Participant), and to discuss its and their affairs, finances and accounts with its and their Responsible Officers (provided, the Lessee may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice to the chief financial officer, treasurer or the vice president of finance of the Lessee, at such reasonable times during normal business hours and as often as may reasonably be requested (but not more than once per Fiscal Year absent the occurrence and continuance of an Event of Default); provided, the Participants (other than the Tranche Y Participant) shall use their reasonable efforts to coordinate with the Lessor and the Agent in order to minimize the number of such inspections and discussions. The Lessee will, upon the request of the Lessor, the Agent or the Required Participants, participate in a meeting of the Lessor, the Agent and the Participants once during each Fiscal Year to be held at the Lessee's corporate offices (or at such other location as may be agreed to by the Lessee and the Agent) at such time as may be agreed to by the Lessee and the Agent.

(vi) Environmental.

(A) Environmental Disclosure . The Lessee will deliver to the Lessor and the Agent:

(1) as soon as practicable following the Lessee's or any of its Restricted Subsidiaries' receipt thereof, copies of all environmental audits, investigations, analyses and reports with respect to any material environmental matter at any facility or property of the Lessee or any of its Restricted Subsidiaries or with respect to any Environmental Claim arising after the Closing Date at any such facility or property which (other than in the case of the Property) could reasonably be expected to have an Objective Material Adverse Effect;

(2) promptly upon the Lessee or any of its Restricted Subsidiaries becoming aware of the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, which Release could reasonably be expected to have an Objective Material Adverse Effect, and (2) any remedial action taken by the Lessee or any other Person in response to (x) any Hazardous Activities the existence of which could be reasonably be expected to result in one or more Environmental Claims that (other than in the case of the Property) could reasonably be expected to have, individually or in the aggregate, an Objective Material Adverse Effect, or (y) any Environmental Claims that (other than in the case of the Property), individually or in the aggregate, have a reasonable possibility of resulting in an Objective Material Adverse Effect;

(3) as soon as practicable following the sending or receipt thereof by the Lessee or any of its Restricted Subsidiaries, a copy of any and all material written communications with any third party with respect to (1) any Environmental Claims that (other than in the case of the Property), individually or in the aggregate, have a reasonable possibility of giving rise to an Objective Material Adverse Effect, (2) any Release required to be reported to any federal, state or local governmental or regulatory agency, which Release could reasonably be expected to have an Objective Material Adverse Effect, and (3) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether the Lessee or any of its Restricted Subsidiaries may be potentially responsible for any Hazardous Activity, the liability for which could reasonably be expected to have an Objective Material Adverse Effect;

(4) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by the Lessee or any of its Restricted Subsidiaries that could reasonably be expected to (A) expose the Lessee or any of its Restricted Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, an Objective Material Adverse Effect or (B) affect the ability of the Lessee or any of its Restricted Subsidiaries to maintain in full force and effect all material Governmental Actions required under any Environmental Laws for their respective operations, which failure to maintain could reasonably be expected to have an Objective Material Adverse Effect, and (2) any proposed action to be taken by the Lessee or any of its Restricted Subsidiaries to modify current operations in a manner that could reasonably be expected to subject the Lessee or any of its Restricted Subsidiaries to any additional material obligations or requirements under any Environmental Laws, which obligations or requirements could reasonably be expected to have an Objective Material Adverse Effect; and

(5) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Lessor or the Agent in relation to any matters disclosed pursuant to this Section 10.1(a)(vi).

(B) Hazardous Materials Activities, Etc. The Lessee shall promptly take, and shall cause each of its Restricted Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by the Lessee or such Restricted Subsidiaries that (other than in the case of the Property) could reasonably be expected to have, individually or in the aggregate, an Objective Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against the Lessee or such Restricted Subsidiaries and discharge any obligations it may have to any Person thereunder where (other than in the case of the Property) failure to do so could reasonably be expected to have, individually or in the aggregate, an Objective Material Adverse Effect.

(vii) Compliance with Laws. The Lessee will comply, and shall cause each of its Restricted Subsidiaries to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), noncompliance with which could (other than in the case of the Property) reasonably be expected to have, individually or in the aggregate, an Objective Material Adverse Effect.

(b) Negative Covenants . The Lessee hereby agrees that, so long as this Agreement remains in effect or any amount is owing to any Participant, the Lessor or the Agent hereunder or under any other Operative Document, the Lessee shall, and shall cause each of its Subsidiaries to, comply with each of the following covenants:

(i) Indebtedness s. The Lessee shall not nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(A) Indebtedness of the Lessee and its Subsidiaries arising from the endorsement of instruments for collection in the ordinary course of the Lessee's or a Subsidiary's business;

(B) Indebtedness of the Lessee and its Subsidiaries for accounts payable, provided that (i) such accounts arise in the ordinary course of business and (ii) no material account is more than ninety (90) days past due (unless subject to a bona fide dispute and for which adequate reserves as required by GAAP have been established);

(C) Indebtedness owed to any Person providing worker's compensation, health, disability or other employee benefits or property, casualty or liability insurance to the Lessee or any Subsidiary thereof, or which may be deemed to exist pursuant to reimbursement or indemnification obligations to such Person;

(D) Indebtedness of the Lessee and its Subsidiaries with respect to performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(E) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with Deposit Accounts;

(F) Guaranties by the Lessee of Indebtedness of its Subsidiaries or guaranties by a Subsidiary of the Lessee of Indebtedness of the Lessee or another Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 10.1(b)(i);

(G) Indebtedness described in Schedule 10.1(b)(i), but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement and (ii) refinancings and extensions of any such Indebtedness if the terms thereof are no less favorable to the obligor thereon or to the Participants (other than the Tranche Y Participant), but giving effect to then-current market conditions, than the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under clause (i) or clause (ii) above shall not be (1) Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (2) in a principal amount which exceeds the Indebtedness being renewed, extended or refinanced or (3) incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(H) Indebtedness with respect to Capital Leases in an aggregate amount not to exceed five percent (5.0%) of Consolidated Assets in any Fiscal Year with respect to the Lessee and all of its Subsidiaries in the aggregate;

(I) Purchase Money Indebtedness in an aggregate amount not to exceed at any time five percent (5.0%) of Consolidated Assets with respect to the Lessee and all of its Subsidiaries in the aggregate; provided, (i) any such Indebtedness shall be recourse only to the asset acquired in connection with the incurrence of such Indebtedness, (ii) any such Indebtedness is incurred by such Person at the time of, or not later than thirty (30) days after, the acquisition by such Person of the property so financed, (iii) any such Indebtedness does not exceed the purchase price of the relevant property so financed, and (iv) no Default or Event of Default has occurred and is continuing at the time any such Indebtedness is incurred or will occur after giving effect to any such Indebtedness;

(J) The obligations of the Lessee to the Lessor, the Agent and the Participants under the Operative Documents, to the extent they are deemed to constitute Indebtedness;

(K) Intercompany Indebtedness among the Lessee and its Subsidiaries; and

(L) Other Indebtedness of the Lessee and its Subsidiaries, provided that the aggregate principal amount of all such other Indebtedness does not exceed twenty percent (20.0%) of Consolidated Assets at any time.

(ii) Liens. The Lessee shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of the Lessee or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any state or under any similar recording or notice statute, except: (A) Permitted Exceptions, in the case of the Property, and (B) Permitted Liens, in all other cases.

(iii) Dividends, Redemptions, Etc. Neither the Lessee nor any of its Subsidiaries shall pay any dividends or make any distributions on its Equity Securities; purchase, redeem, retire, defease or otherwise acquire for value any of its Equity Securities; return any capital to any holder of its Equity Securities as such; make any distributions of assets, Equity Securities, obligations or securities to any holder of its Equity Securities as such; or set apart any sum for any such purpose; except as follows:

(A) either the Lessee or any of its Subsidiaries may pay dividends on its capital stock payable solely in such Person's own capital stock or rights or other instruments providing a right to acquire shares of such Person's Capital Stock;

(B) any Subsidiary of the Lessee may pay dividends to the Lessee or to such Subsidiary's direct parent (or, in the case of foreign subsidiaries, to such foreign subsidiary's direct parent or other direct owners) or Lessee or any Subsidiary may enter into any transaction not otherwise prohibited under the Operative Documents, which does not call for a dividend to be payable by any such entity, but the consideration payable pursuant to such transaction is accorded dividend treatment under any Applicable Law;

(C) the Lessee may purchase or otherwise acquire for value shares of its capital stock for its employee stock option plans or otherwise, provided that no Default or Event of Default has occurred and is continuing at the time of any such purchase or will occur after giving effect to any such purchase.

(D) the Lessee or any Subsidiary may engage in any transaction or issuance pursuant to the Lessee's Stockholder Rights Plan, adopted on March 1, 2001, by Lessee's Board of Directors.

(E) the Lessee or any Subsidiary may issue or redeem or repurchase any Equity Security or securities convertible into any Equity Security of Lessee or any Subsidiary provided that any such action would not cause an Event of Default or no Event of Default exists at the time any such action is consummated.

(iv) Investments. Neither the Lessee nor any of its Subsidiaries shall directly or indirectly make any Investment except for Investments in the following:

(A) Investments of Lessee and its Subsidiaries in Cash Equivalents;

(B) Any transaction permitted by Section 10.1(b)(i);

(C) Money market mutual funds registered with the SEC, meeting the requirements of Rule 2a-7 promulgated under the Investment Company Act of 1940;

(D) Investments listed on Schedule 10.1(b)(iv)(D), existing on the date of this Agreement; and

(E) Other Investments, in, or mergers or consolidations by the Lessee or any Subsidiary with, or acquisitions of capital stock or other securities or assets of, Persons principally involved in activities permitted under Section 10.1(b)(vii), provided, that both

before and after giving effect to any such transaction, (1) the Lessee is in compliance with the covenants set forth in Section 10.2 and (2) there exists no Default or Event of Default.

(v) Fundamental Changes; Disposition of Assets. The Lessee shall not, and shall not permit any of its Subsidiaries to, alter the corporate, capital or legal structure of the Lessee or any of its Subsidiaries if any such alteration could reasonably be expected to have an Objective Material Adverse Effect or a Material Adverse Effect, or enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, property or assets, whether now owned or hereafter acquired, or acquire by purchase or otherwise all or substantially all the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business of any Person, except:

(A) Any Domestic Subsidiary of the Lessee may be merged with or into Lessee or any Wholly-Owned Domestic Subsidiary or any other Person that as part of such transaction becomes a Subsidiary of the Lessee, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Lessee or any Wholly-Owned Domestic Subsidiary; provided, in the case of such a merger, the Lessee or, in a transaction not involving the Lessee, such Wholly-Owned Domestic Subsidiary or a newly formed or acquired Domestic Subsidiary of the Lessee, shall be the continuing or surviving Person;

(B) Any Foreign Subsidiary of the Lessee may be merged with or into the Lessee or any Foreign Subsidiary or Domestic Subsidiary or any other Person that as part of such transaction becomes a Subsidiary of the Lessee, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to the Lessee or any Foreign Subsidiary or Domestic Subsidiary; provided, in the case of such a merger, the Lessee or, in a transaction not involving the Lessee, such Foreign Subsidiary or Domestic Subsidiary (or a newly formed or acquired Foreign Subsidiary or Domestic Subsidiary of the Lessee), shall be the continuing or surviving corporation;

(C) Sales or other dispositions of Investments permitted by subparts (A) and (C) of Section 10.1(b)(iv) for not less than fair value;

(D) Sales of surplus, damaged, worn or obsolete equipment or inventory for not less than fair market value;

(E) Sales or assignments of defaulted receivables to a collection agency in the ordinary course of business;

(F) Licenses to other Persons of intellectual property by the Lessee or any Subsidiary thereof in the ordinary course of business provided that, in each case, the terms of the transaction are terms which then would prevail in the market for similar transactions between unaffiliated parties dealing at arm's length;

(G) Sales or other dispositions of assets and property by the Lessee to any of the Lessee's Subsidiaries or by any of the Lessee's Subsidiaries to the Lessee or any of its other Subsidiaries, provided that the terms of any such sales or other dispositions by or to the Lessee are terms which are no less favorable to the Lessee than would prevail in the market for similar transactions between unaffiliated parties dealing at arm's length;

(H) Transactions permitted under Section 10.1(b)(iv);

(I) Sales of accounts receivable of the Lessee and its Subsidiaries, provided that (A) each such sale is (1) for not less than fair market value and (2) for cash, and (B) the aggregate book value of all such accounts receivable so sold in any consecutive four Fiscal Quarter period does not exceed ten percent (10%) of the consolidated total accounts receivable of the Lessee and its Subsidiaries on the last day immediately preceding such four Fiscal Quarter period;

(J) Other sales, leases, transfers and disposal of assets and property for not less than fair market value, provided that the aggregate book value of all such assets and property so sold, leased, transferred or otherwise disposed of in any consecutive four Fiscal Quarter period does not exceed ten percent (10%) of the Consolidated Assets of the Lessee and its Subsidiaries on the last day immediately preceding such four Fiscal Quarter period; and

(K) subleases by the Lessee or any of its Subsidiaries of excess leased space;

provided, however, that the foregoing exceptions shall not be construed to permit any sales, leases, subleases, transfers or disposals of any of the Property, except as expressly permitted by the Operative Documents.

(vi) Accounting Changes. Neither the Lessee nor any of its Subsidiaries shall change (i) its Fiscal Year (currently January 1 through December 31) or (ii) its accounting practices except as permitted by GAAP.

(vii) Change in Business. Neither the Lessee nor any of its Subsidiaries shall engage, either directly or indirectly through Affiliates thereof, in any material line of business other than the business conducted by such Persons as of the Closing Date, logical extensions of any such existing lines of business, new lines of business which are of a type now or hereafter required by customers or pursued by competitors of the Lessee or any of its Subsidiaries in the existing lines of business, and other businesses incidental or reasonably related to any of the foregoing.

(viii) ERISA. Neither the Lessee nor any ERISA Affiliate shall (i) adopt or institute any Employee Benefit Plan that is an employee pension benefit plan within the meaning of Section 3(2) of ERISA, (ii) take any action which will result in the partial or complete withdrawal, within the meanings of Section 4203 and 4205 of ERISA, from a Multiemployer Plan, (iii) engage or permit any Person to engage in any transaction prohibited by Section 406 of ERISA or Section 4975 of the Code involving any Employee Benefit Plan or Multiemployer Plan which would subject either the Lessee or any ERISA Affiliate to any tax, penalty or other liability including a liability to indemnify, (iv) incur or allow to exist any accumulated funding deficiency (within the meaning of Section 412 of the Code or Section 302 of ERISA), (v) fail to make full payment when due of all amounts due as contributions to any Employee Benefit Plan or Multiemployer Plan, (vi) fail to comply with the requirements of Section 4980B of the Code or Part 6 of Title I(B) of ERISA, or (vii) adopt any amendment to any Employee Benefit Plan which would require the posting of security pursuant to Section 401(a)(29) of the Code, which, in the case of clauses (i) through (vii) above, singly or cumulatively, could reasonably be expected to have an Objective Material Adverse Effect.

Section 10.2 The Lessee's Financial Covenants. So long as this Agreement remains in effect or any amount is owing to any Participant, the Lessor or the Agent hereunder or under any other Operative Document, the Lessee will comply and will cause compliance, on a consolidated basis with the following financial covenants (for illustration purposes, a calculation of such financial covenants as of December 31, 2000, is set forth on Exhibit 10.2 ("Financial Covenant Worksheet") and the parties hereto agree that such covenants shall be calculated in accordance with the methodology demonstrated on the Financial Covenant Worksheet):

(a) Maximum Leverage Ratio. The Lessee shall not permit the Leverage Ratio to be greater than 1.25 to 1.00 as of the last day of any Fiscal Quarter for the four Fiscal Quarter period then ended.

(b) Quick Ratio. The Lessee shall not permit its Quick Ratio for any Fiscal Quarter to be less than 2.00 to 1.00.

(c) Fixed Charge Coverage Ratio. The Lessee shall not permit its Fixed Charge Coverage Ratio to be less than 2.50 to 1.00 as of the last day of any Fiscal Quarter for the four Fiscal Quarter period then ended.

(d) Consolidated Net Worth. The Lessee shall not permit the sum of (x) its Consolidated Net Worth on the last day of any Fiscal Quarter (such date to be referred to herein as a "determination date"), plus (y) with respect to each Fiscal Quarter after the base date and through the determination date in which Lessee had a quarterly loss, all charges taken for the purchase of in-process research and development and amortization expense, in each case to the extent deducted in determining the Lessee's consolidated quarterly net income for each such Fiscal Quarter, plus (z) the value of Lessee's treasury stock, calculated at the fair market value of such stock as of the date such stock was repurchased by the Lessee, to be less than the sum on such determination date of the following:

(i) eighty-five percent (85%) of the Consolidated Net Worth of the Lessee and its Subsidiaries as of December 31, 1999 (the "base date");

plus

(ii) fifty percent (50%) of the sum of the Lessee's consolidated quarterly net income (but with no deduction of any quarterly losses unless such negative quarterly consolidated net income was caused solely by charges taken for the purchase of in-process research and development and amortization expense, in which case such charges shall be excluded in the determination of such quarterly consolidated net income) by the Lessee and its Subsidiaries for each Fiscal Quarter after the base date through and including the Fiscal Quarter ending on the determination date;

plus

(iii) one hundred percent (100%) of the net proceeds (including the fair market value of property other than cash, as determined in good faith by the Lessee's board of directors) 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, including any Equity Securities issued upon the conversion or exchange of any Indebtedness of the Lessee after the latest Fiscal Quarter end (the net proceeds of which for purposes of this clause (iii) shall be deemed to equal the aggregate market value of the Equity Securities so issued upon such conversion or exchange), but excluding any such net proceeds of any Equity Securities (x) issued and sold to Lessee or any of its Subsidiaries, or (y) which are required to be redeemed, or which are redeemable at the option of the holder thereof, if certain events or conditions exist or otherwise.

Section 10.3 Cooperation with the Lessee. The Lessor, the Participants and the Agent shall, to the extent reasonably requested by the Lessee (but without assuming additional liabilities, duties or other obligations on account thereof), at the Lessee's expense, cooperate with the Lessee in connection with its covenants contained herein including, without limitation, at any time and from time to time, upon the request of the Lessee, to promptly and duly execute and deliver 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.

Section 10.4 Covenants of the Lessor. The Lessor hereby agrees that so long as this Participation Agreement is in effect:

(a) Discharge of Lien s. The Lessor will not create or permit to exist at any time, and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens on the Property attributable to it; provided, however, that the Lessor shall not be required to so discharge any such Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any material danger of impairment of the Liens of the Lease or 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; provided, further, that in the event the Lessee purchases the Property the Lessor shall discharge all such Lessor Liens on or prior to the date on which the purchase is effective under the Lease.

(b) Change of Chief Place of Business. The Lessor shall give prompt notice to the Lessee and the Agent if the Lessor's chief 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 135 South LaSalle Street, Chicago, Illinois 60603, or if it shall change its name, identity or corporate structure.

(c) Use of Proceeds. The proceeds of the purchase of the Participation Interests shall be applied by the Lessor solely in accordance with the provisions of the Operative Documents.

SECTION 11

AMENDMENTS, RELATIONSHIP OF LESSOR AND PARTICIPANTS

Section 11.1 Amendments. Subject to the other provisions of this Section 11, no Operative Document nor any of the terms thereof may be terminated, amended, supplemented, waived or modified with respect to the Lessee, the Lessor, the Agent or any Participant, except (a) in the case of a termination, amendment, supplement, waiver or modification to be binding on the Lessee, the Lessor or the Agent, with the written agreement or consent of such party, (b) prior to the occurrence and continuation of an Event of Default, the Lessee's consent shall be required to amend or modify any Operative Document to which it is not a party, and (c) in the case of a termination, amendment, supplement, waiver or modification to be binding on the Participants, with the written agreement or consent of the Required Participants; provided, however, that

(a) no such termination, amendment, supplement, waiver or modification shall without written agreement or consent of each Participant (other than the Tranche Y Participant except with respect to clause (vi) below):

(i) modify any of the provisions of this Section 11, change the definition of "Required Participants" or modify or waive any provision of an Operative Document requiring action by the foregoing;

(ii) amend, modify, waive or supplement any of the provisions of Sections 3.6, 3.7 or 3.10 through 3.20 of this Participation Agreement or the representations of such Participant in Section 7 or the covenants in Section 10 of this Participation Agreement;

(iii) reduce, modify, amend or waive any fees or indemnities in favor of any Participant, including without limitation amounts payable pursuant to Section 13 (except that any Person may consent to any reduction, modification, amendment or waiver of any indemnity payable to it);

(iv) modify, postpone, reduce or forgive, in whole or in part, any payment of Rent (other than pursuant to the terms of any Operative Document), any payment in respect of its Participation Interest, or any payment of Asset Termination Value, Commitment Fee, Residual Value Guarantee Amount, amounts due pursuant to Section 22.2 of the Lease, or interest or yield or, subject to clause (iii) above, any other amount payable under the Lease or this Participation Agreement, or modify the definition or method of calculation of Rent (other than pursuant to the terms of any Operative Document), Participation Interest, Asset Termination Value, Lease Balance, Commitment Fee, Shortfall Amount, Residual Value Guarantee Amount, Participant Balance, Tranche A Participant Balance, Tranche B Participant Balance, Tranche C Participant Balance or any other definition which would affect the amounts to be advanced or which are payable under the Operative Documents;

(v) consent to any assignment of the Lease (other than pursuant to the terms thereof), releasing the Lessee from its obligations in respect of the payments of Rent and any Asset Termination Value or changing the absolute and unconditional character of such obligation;

(vi) except as authorized by the Operative Documents, release the Lessor's interest in all or a substantial part of the Property; or

(vii) increase the amount of the Commitment of such Participant; and

(b) no other termination, amendment, supplement, waiver or modification shall, without the written agreement or consent of the Lessor and the Required Participants, be made to the Lease or Section 6 of this Participation Agreement or the definition of "Event of Default".

Section 11.2 Actions by Participants. Notwithstanding the foregoing, Defaulting Participants shall have no voting or consent rights under this Section 11.2 until they cease to be Defaulting Participants. During any period that any Defaulting Participants have no voting rights under this Section 11.2, only the Commitment Percentages of the other Participants that still have voting rights will be considered for purposes of determining the Required Participants. Furthermore, in no event shall any Participant instigate any suit or other action directly against the Lessee with respect to the Operative Documents or the Property, even if such Participant would, but for this agreement, be entitled to do so as a third party beneficiary or otherwise under the Operative Documents.

Section 11.3 Required Repayments. Each Participant shall repay to the Lessor, upon written request or demand by the Lessor (i) any sums paid by the Lessor to such Participant or to the Agent on behalf of such Participant under this Agreement from, or that were computed by reference to, any Rent or other amounts which the Lessor shall be required to return or pay over to another party, whether pursuant to any bankruptcy or insolvency law or proceeding or otherwise and (ii) any interest or other amount that the Lessor is also required to pay to another party with respect to such sums. Such repayment by any Participant shall not constitute a release of such Participant's right to receive such Participant's Commitment Percentage (as then in effect) times the amount of any such Rent or any such other amount (or any interest thereon) that the Lessor may later recover in respect of such Participant's Participation Interest.

Section 11.4 Indemnification. Each Participant agrees to indemnify and defend the Lessor (to the extent not reimbursed by the Lessee within ten (10) days after demand) from and against such Participant's Commitment Percentage (as then in effect) of any and all liabilities, obligations, claims, expenses or disbursements (including reasonable fees of attorneys, accountants, experts and advisors) of any kind or nature whatsoever (in this Section 11.4 collectively called "Covered Liabilities") which to any extent (in whole or in part) may be imposed on, incurred by or asserted against the Lessor growing out of, resulting from or in any other way associated with the Property or the Operative Documents (including the enforcement thereof, whether exercised upon the Lessor's own initiative or upon the direction of the Required Participants) and the transactions and events at any time associated therewith or contemplated therein. The foregoing indemnification shall apply whether or not such Covered Liabilities are in any way or to any extent caused, in whole or in part, by any negligent act or omission of any kind by the Lessor; provided, that no Participant shall be obligated under this Section 11.4 to indemnify the Lessor (i) for Covered Liabilities incurred in connection with any transfer or assignment by the Lessor of its right to receive Rent or its rights and interests in and to the Property, the Operative Documents or this Agreement to its affiliates, or (ii) for that portion or percentage, if any, of any of the Covered Liabilities which is proximately caused by: (A) the Lessor's own gross negligence or willful misconduct; (B) any representation made by the Lessor in the Operative Documents that is false in any material respect and that the Lessor knew was false at the time of the Lessor's execution of the Operative Documents; or (C) Lessor Liens not claimed by, through or under any of the Participants. After each Participant has paid its Commitment Percentage (as then in effect) of any Covered Liabilities, each Participant shall be entitled to payment from the Lessor of an amount equal to the Adjusted Percentage (as defined below) of any payments subsequently received by the Lessor as Excess Reimbursement (as defined below) for such Covered Liabilities. As used in this Section "Adjusted Percentage" as of any date of determination shall equal (i) such Participant's Commitment Percentage then in effect, divided by (ii) the sum of the Commitment Percentages of all Participants who have paid the Lessor their respective shares of the Covered Liabilities at issue. As used in this Section, the term "Excess Reimbursement" shall mean, for the Covered Liabilities at issue, amounts reimbursed or paid by the Lessee to or on behalf of the Lessor on account of such Covered Liabilities in excess of an amount equal to the product of (i) such Covered Liabilities, multiplied by (ii) the Commitment Percentages of any Participants that have not paid the Lessor their respective Percentages of such Covered Liabilities.

Section 11.5 Agent to Exercise Lessor's Rights. The Lessor has assigned its interest in the Lease to the Agent, for the benefit of the Participants, pursuant to the Assignment of Lease. To the extent provided therein, the rights, remedies, duties and responsibilities of the Lessor contained in this Section 11 and in the other Operative Documents with respect thereto shall be exercisable by, binding upon and inure to the benefit of the Agent, for the benefit of the Participants.

SECTION 12

TRANSFERS OF PARTICIPANTS' INTERESTS

Section 12.1 Restrictions on and Effect of Transfer by Participants. No Participant may (without the prior written consent of the Agent, not to be unreasonably withheld) assign, convey or otherwise transfer (including pursuant to a participation) all or any portion of its right, title or interest in, to or under its Participation Interest or any of the Operative Documents or the Property, provided that (w) any Participant (other than the Tranche Y Participant) may pledge its interest without the consent of the Agent or the Lessee to any Federal Reserve Bank, (x) without the prior written consent of the Agent, any Participant (other than the Tranche Y Participant) may transfer all or any portion of its interest to any affiliate of such Participant or to any other existing Participant, (y) the Tranche Y Participant may not assign, convey or otherwise transfer any portion of its right, title or interest in, to or under its Participation Interest or any of the Operative Documents or the Property without the prior written consent of the Agent, and (z) no Tranche C Participant may assign, convey or otherwise transfer any portion

of its right, title or interest in, to or under its Tranche C Equity Interest without the prior written consent of the Agent and unless the proposed transferee delivers to the Agent and the Lessee the certificate required by Section 12.1(d); provided, further, that in the case of any transfer (other than a transfer to an affiliate of the relevant Participant pursuant to clause (x) above) each of the following conditions and any other applicable conditions of the other Operative Documents are satisfied:

(a) Required Notice and Effective Date. Any Participant desiring to effect a transfer of its interest shall give written notice of each such proposed transfer to the Lessee and the Agent at least five (5) Business Days prior to such proposed transfer, setting forth the name of such proposed transferee, the percentage or interest to be retained by such Participant, if any, and the date on which such transfer is proposed to become effective. All reasonable out-of-pocket costs (including, without limitation, legal expenses) incurred by the Lessor, the Lessee, the Agent or any Participant in connection with any such disposition by a Participant under this Section 12.1 shall be borne by such transferring Participant. In the event of a transfer under this Section 12.1, any expenses incurred by the transferee in connection with its review of the Operative Documents and its investigation of the transactions contemplated thereby shall be borne by such transferee or the relevant Participant, as they may determine, but shall not be considered costs and expenses which the Lessee is obligated to pay or reimburse under Section 9. Any such proposed transfer shall become effective upon the later of (i) the date proposed in the transfer notice referred to above and (ii) the date on which all conditions to such transfer set forth in this Section 12.1 shall have been satisfied.

(b) Assumption of Obligations. Any transferee pursuant to this Section 12.1 shall execute and deliver to the Agent and the Lessee an Assignment and Acceptance in substantially the form attached as Exhibit K ("Assignment and Acceptance"), duly executed by such transferee and the transferring Participant, and a letter in substantially the form of the Participant's Letter attached hereto as Exhibit L ("Participant's Letter"), and thereupon the obligations of the transferring Participant under the Operative Documents shall be proportionately released and reduced to the extent of such transfer. Upon any such transfer as above provided, the transferee shall be deemed to be bound by all obligations (whether or not yet accrued) under, and to have become a party to, all Operative Documents to which its transferor was a party, shall be deemed the pertinent "Participant" for all purposes of the Operative Documents and shall be deemed to have made that portion of the payments pursuant to this Participation Agreement previously made or deemed to have been made by the transferor represented by the interest being conveyed; and each reference herein and in the other Operative Documents to the pertinent "Participant" shall thereafter be deemed a reference to the transferee, to the extent of such transfer, for all purposes. Upon any such transfer, the Agent shall deliver to each Participant, the Lessor and the Lessee a new Schedule I and a new Schedule II to this Agreement, each revised to reflect the relevant information for such new Participant and the Commitment of such new Participant (and the revised Commitment of the transferor Participant if it shall not have transferred its entire interest).

(c) Employee Benefit Plans. No Participant may make any such assignment, conveyance or transfer to or in connection with any arrangement or understanding in any way involving any employee benefit plan (or its related trust), as defined in Section 3(3) of ERISA, or with the assets of any such plan (or its related trust), as defined in Section 4975(e)(1) of the Code.

(d) Representations. Notwithstanding anything to the contrary set forth above, no Participant may assign, convey or transfer its interest to any Person, unless such Person shall have delivered to the Agent and the Lessee a certificate (which certification may be contained within the Assignment and Acceptance executed and delivered by such Person) (i) confirming the accuracy of the representations and warranties set forth in Section 7 with respect to such Person (other than as such representation or warranty relates to the execution and delivery of Operative Documents), (ii) representing that such Person has, independently and without reliance upon the Agent, any other Participant or, except to the extent of the Lessee's representations made under the Operative Documents when made, the Lessee, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into this transaction, the Property and the Lessee and made its own decision to enter into this transaction, and (iii) in the case of a transferee of a Tranche C Equity Interest only, representing that no portion of the Tranche C Equity Interest to be funded or acquired by such Person has been or will thereafter be borrowed by such Person such that recourse in respect of such indebtedness is limited to such Person's interest in the Lessor (if applicable) or to collateral with an aggregate value less than the amount of such indebtedness, and that such Person has not obtained and will not obtain residual value insurance, or a comparable guarantee, with respect to its Tranche C Equity Interest.

(e) Amounts; Agent's Fee. Any transfer of Participation Interests shall be in a principal amount which is equal to or greater than \$5,000,000; provided, that no such minimum transfer limitation shall be imposed on a transfer of a Tranche B Participation Interest or a Tranche C Equity Interest. Each transferring Participant shall pay to the Agent a transfer fee of \$2,500.

(f) Applicable Law. Such transfer shall comply with Applicable Law and shall not require registration under any securities law applicable thereto.

(g) Effect. From and after any transfer of its Participation Interest the transferring Participant shall be released, to the extent assumed by the transferee, from its liability and obligations hereunder and under the other Operative Documents to which such transferor is a party in respect of obligations to be performed on or after the date of such transfer. Upon any transfer by a Participant as above provided, any such transferee shall be deemed a "Participant" for all purposes of such documents and each reference herein to a Participant shall thereafter be deemed a reference to such transferee for all purposes to the extent of such transfer, except as the context may otherwise require. Notwithstanding any transfer as provided in this Section 12.1, the transferor shall be entitled to all benefits accrued and all rights vested prior to such transfer, including, without limitation, rights to indemnification under this Participation Agreement or any other Operative Document.

Section 12.2 Covenants and Agreements of Participants.

(a) Participations. Each Participant covenants and agrees that it will not grant participations in its Participation Interest to any Person (a "Sub-Participant") unless such participation complies with Applicable Law and does not require registration under any securities law applicable thereto and such Sub-Participant (i) is a bank or other financial institution and (ii) represents and warrants, in writing, to such Participant for the benefit of the Participants, the Lessor and the Lessee that (A) no part of the funds used by it to acquire an interest in any Participation Interest constitutes assets of any "employee benefit plan" (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA, or "plan" (as defined in Section 4975(e)(1) of the Code) and (B) such Sub-Participant is acquiring its interest for investment purposes without a view to the distribution thereof; provided that notwithstanding the foregoing the Tranche Y Participant shall not grant any participation in its Participation Interest to any Sub-Participant without the prior written consent of the Agent. Any such Person shall require any transferee of its interest in its Participation Interest to make the representations and warranties set forth in the preceding sentence, in writing, to such Person for its benefit and the benefit of the Participants, the Lessor and Lessee. In the event of any such sale by a Participant of a participating interest in its Participation Interest to a Sub-Participant, such Participant's obligations under this Participation Agreement and under the other Operative Documents shall remain unchanged, such Participant shall remain solely responsible for the performance thereof, such Participant shall remain the holder of its Participation Interest for all purposes under this Participation Agreement and under the other Operative Documents, and the Lessor, the Agent and, except as set forth in Section 12.2(b), the Lessee shall continue to deal solely and directly with such Participant in connection with such Participant's rights and obligations under this Participation Agreement and under the other Operative Documents.

(b) Transferee Indemnities. Each Sub-Participant shall be entitled to the benefits of Sections 13.5, 13.6, 13.7 and 13.10 with respect to its participation in the Participation Interests outstanding from time to time; provided that no Sub-Participant shall be entitled to receive any greater amount pursuant

to such Sections than the transferor Participant would have been entitled to receive in respect of the amount of the participation transferred by such transferor Participant to such Sub-Participant had no such transfer or participation occurred.

Section 12.3 Future Participants. Each Participant shall be deemed to be bound by and, upon compliance with the requirements of this Section 12, will be entitled to all of the benefits of the provisions of, this Participation Agreement.

SECTION 13

INDEMNIFICATION

Section 13.1 General Indemnification. The Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and to indemnify, protect, defend, save and keep harmless each Indemnitee, on an After Tax Basis, from and against, any and all Claims that may be imposed on, incurred by or asserted against such Indemnitee (whether because of action or omission by such Indemnitee or otherwise), whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person and whether or not such Claim arises or accrues prior to the Closing Date or after the Expiration Date, in any way relating to or arising out of:

- (a) any of the Operative Documents or any of the transactions contemplated thereby or any violation thereof, or any investigation, litigation or proceeding in connection therewith and any amendment, modification or waiver in respect thereof;
- (b) the Property, the Lease, any permitted sublease or any part thereof or interest therein;
- (c) the purchase, design, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, ownership, management, possession, operation, rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition or substitution, storage, transfer of title, redelivery, use, financing, refinancing, disposition, operation, condition, sale (including, without limitation, any sale pursuant to Sections 16.2, 16.3, 17.2(c), 17.2(e), 17.2(h) or 17.4 of the Lease or any sale pursuant to Articles XX or XXII of the Lease, except for any amounts payable pursuant to Section 13.2 hereof), return or other disposition of all or any part or any interest in the Property or any portion thereof or the imposition of any Lien (or incurring of any liability to refund or pay over any amount as a result of any Lien) thereon, including, without limitation: (1) Claims or penalties arising from any violation of foreign, federal, state or local law, rule, regulation or order or in tort (strict liability or otherwise) arising in connection with the Property, the Operative Documents or the transactions contemplated thereunder, including Claims made by invitees of Lessee or any assignee or any sublessee of Lessee or any assignee, or by any other Person entering on or in the Property, (2) latent or other defects in, to or affecting the Property, whether or not discoverable, (3) any Claim based upon a violation or alleged violation of the terms of any restriction, easement, condition or covenant or other matter affecting title to the Property, (4) the making of any Modifications in violation of the Lease or any standards imposed by any insurance policies required to be maintained by Lessee pursuant to the Lease which are in effect at any time with respect to the Property or any part thereof, (5) any Claim for patent, trademark or copyright infringement, (6) Claims arising from any public improvements with respect to the Property resulting in any charge or special assessments being levied against the Property or any plans to widen, modify or realign any street or highway adjacent to the Property, (7) Claims based on violations or failure of title arising in connection with the zoning ordinances, rules, regulations or laws applicable to the Property, and (8) any Claim resulting from or related to the leasing or subleasing of the Property or the construction of any of the Improvements, and any amendment, modification or waiver in respect thereof;
- (d) the offer, issuance or sale of the Participation Interests or any interest therein in accordance with the terms of the Operative Documents;
- (e) the breach by the Lessee of any covenant, representation or warranty made by it or deemed made by it in any Operative Document or any certificate required to be delivered by any Operative Document;
- (f) the retaining or employment of any broker, finder or financial advisor by the Lessee or any Affiliate to act on its behalf in connection with this Participation Agreement, or the incurring of any fees or commissions to which the Lessor might be subjected by virtue of entering into the transactions contemplated by this Participation Agreement;
- (g) the existence of any Lien on or with respect to the Property, any of the Improvements, the Equipment, the Lease, the Cash Collateral, 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 Existing Owner, the Lessor or any of their contractors or agents or by reason of the financing of the Property or any personalty or equipment purchased or leased by the Lessee or any Improvements or Modifications constructed by the Lessee or any sublessee, except Lessor Liens and Liens in favor of the Agent or the Lessor;
- (h) the transactions contemplated hereby, by the Lease or by any other Operative Document, in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA and any prohibited transaction described in Section 4975(c) of the Code (other than any Claim resulting from a breach of representation or warranty of the Lessor or any Participant other than the Tranche Y Participant); or
- (i) the purchase of the Property or any portion thereof by the Lessor, or any matters arising therefrom or related thereto;

provided, however, the Lessee shall not be required to indemnify any Indemnitee under this Section 13.1 for any of the following: (1) any Claim to the extent resulting from the willful misconduct or gross negligence of such Indemnitee (it being understood that the Lessee shall be required to indemnify an Indemnitee even if the ordinary (but not gross) negligence of such Indemnitee caused or contributed to such Claim), (2) any Claim resulting from Lessor Liens which the Lessor is responsible for discharging under the Operative Documents, (3) any Imposition or other claims for Taxes of the type(s) described in Section 13.5, (4) any Claims of the type(s) described in Sections 13.2, 13.3, 13.6, 13.7, 13.8 and 13.10 or (5) with respect to any Indemnitee, any Claims arising from the breach by such Indemnitee of its express obligations under any Operative Document, other than any such breach caused by or attributable to the Lessee's actions or failure to act. It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under the Lease or any other Operative Document.

Section 13.2 End of Term Indemnity.

- (a) If the Lessee elects the Remarketing Option and it is determined, in accordance with the provisions of Section 22.1(j) of the Lease, that there would, after giving effect to the proposed remarketing transaction, be a Shortfall Amount, then as a condition to the Lessee's right to complete the remarketing of the Property pursuant to Section 22.1 of the Lease, the Lessee shall cause to be delivered to the Lessor at least 30 days prior to the Expiration Date, at the Lessee's sole cost and expense, a report from an appraiser selected by the Lessor and reasonably satisfactory to the Agent, the Required Participants and the Lessee and in form and substance reasonably satisfactory to the Lessor, the Agent and the Required Participants (the "End of the Term Report") which shall state the appraiser's conclusions as to the reason for any decline in the Fair Market Sales Value of the Property from that anticipated for such date in the Appraisal delivered on the Closing Date.

(b) On the Expiration Date, the Lessee shall pay to the Lessor an amount (not to exceed the Shortfall Amount) equal to the portion of the Shortfall Amount that the End of the Term Report demonstrates was the result of a decline in the Fair Market Sales Value of the Property due to:

- (i) extraordinary wear and tear, excessive usage, failure to maintain, to repair, to restore, to rebuild or to replace, failure to comply with the Lease and all applicable laws, failure to use, workmanship, method of installation or removal or maintenance, repair, rebuilding or replacement (excepting in each case ordinary wear and tear); or
- (ii) any Modification made to, or any rebuilding of, the Property or any part thereof by the Lessee or any sublessee; or
- (iii) the existence of any Hazardous Activity, Hazardous Substance or Environmental Violations (but excluding any decline in the Fair Market Sales Value of the Property resulting from or attributable to any failure of Lockheed to pay or perform its express obligations under the Lockheed Indemnification Agreements); or
- (iv) any restoration or rebuilding carried out by the Lessee or any sublessee; or
- (v) any condemnation of any portion of the Property pursuant to Article XV of the Lease; or
- (vi) any use of the Property or any part thereof by the Lessee or any sublessee other than as facilities of the type described in Recital A to this Agreement; or
- (vii) any grant, release, dedication, transfer, annexation or amendment made pursuant to Section 12.2 of the Lease; or
- (viii) the failure of the Lessor to have a good and marketable fee estate in the Property or any portion thereof, as required by the Operative Documents, free and clear of all Liens (including Permitted Liens) and exceptions to title, except (A) such Liens or exceptions to title that existed on the relevant Land Interest Acquisition Date and were disclosed in the relevant title report delivered in respect of such portion of the Property and approved by the Agent; (B) Liens that would be released as a result of consummation of the Remarketing Option or other required sale of the Property; (C) Lessor Liens and (D) easements, rights-of-way, agreements and other rights permitted by Section 12.2 of the Lease.

Section 13.3 Environmental Indemnity. Without limitation of the other provisions of this Section 13, the Lessee hereby agrees to indemnify, hold harmless and defend each Indemnitee, on an After Tax Basis, from and against any and all claims (including without limitation third party claims for personal injury or real or personal property damage), losses (including but not limited to any loss of value of the Property), damages, liabilities, fines, penalties, charges, administrative and judicial proceedings (including informal proceedings) and orders, judgments, remedial action, requirements, enforcement actions of any kind, and all reasonable and documented costs and expenses incurred in connection therewith (including but not limited to reasonable and documented attorneys' and/or paralegals' fees and expenses), including, but not limited to, all costs incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work by any foreign, federal, state or local government agency, which such Indemnitee becomes subject to because of its involvement with the Property, the transactions contemplated by the Operative Documents or any other matter referred to in paragraphs (a) through (i) of Section 13.1 arising in whole or in part, out of:

- (a) the presence on or under the Property of any Hazardous Substances, or any Releases or discharges of any Hazardous Substances on, under, from or onto the Property;
- (b) any activity, including, without limitation, construction, carried on or undertaken on or off the Property, and whether by the Lessee, the Lessor, the Existing Owner, any predecessor in title or any sublessee or any employees, agents, contractors or subcontractors of the Lessee, the Lessor, the Existing Owner or any predecessor in title, or any other Persons (including such Indemnitee), in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Substances that at any time are located or present on or under or that at any time migrate, flow, percolate, diffuse or in any way move onto or under the Property;
- (c) loss of or damage to any property or the environment (including, without limitation, cleanup costs, response costs, remediation and removal costs, cost of corrective action, costs of financial assurance, fines and penalties and natural resource damages), or death or injury to any Person, and all expenses associated with the protection of wildlife, aquatic species, vegetation, flora and fauna, and any mitigative action required by or under Environmental Laws;
- (d) any claim concerning lack of compliance with Environmental Laws, or any act or omission causing an environmental condition that requires remediation or would allow any Governmental Authority to record a Lien on the land records;
- (e) any residual contamination on or under the Property, or affecting any natural resources, or any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Substances, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable Environmental Laws; or
- (f) any material inaccuracies, misrepresentations, misstatements, and omissions and any conflicting information contained in or omitted from the Environmental Audit;

provided, however, the Lessee shall not be required to indemnify any Indemnitee under this Section 13.3 for (1) any Claim to the extent resulting from the willful misconduct or gross negligence of such Indemnitee (it being understood that the Lessee shall be required to indemnify an Indemnitee even if the ordinary (but not gross) negligence of such Indemnitee caused or contributed to such Claim), (2) any Imposition or other claims for Taxes of the type(s) described in Section 13.5, (3) any Claims of the type(s) described in Sections 13.2, 13.6, 13.7, 13.8 and 13.10 or (4) any Claim in respect of the Pre-Existing Environmental Conditions, provided that clause (4) shall not be deemed or construed so as to limit Lessor's rights and remedies under the Lockheed Indemnification Agreements. It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under the Lease or any other Operative Document.

Section 13.4 Proceedings in Respect of Claims. With respect to any amount that the Lessee is requested by an Indemnitee to pay by reason of Section 13.1 or 13.3, such Indemnitee shall, if so requested by the Lessee and prior to any payment, submit such additional information to the Lessee as the Lessee may reasonably request and which is in the possession of such Indemnitee to substantiate properly the requested payment.

In case any action, suit or proceeding shall be brought against any Indemnitee, such Indemnitee shall notify the Lessee of the commencement thereof, and the Lessee shall be entitled, at its expense, to participate in, and, to the extent that the Lessee desires to, assume and control the defense thereof; provided, however, that the Lessee shall have acknowledged in writing its obligation to fully indemnify such Indemnitee in respect of such action, suit or proceeding, and the Lessee

shall keep such Indemnitee fully apprised of the status of such action, suit or proceeding and shall provide such Indemnitee with all information with respect to such action, suit or proceeding as such Indemnitee shall reasonably request, and provided further, that the Lessee shall not be entitled to assume and control the defense of any such action, suit or proceeding if and to the extent that, (A) in the reasonable opinion of such Indemnitee, (x) such action, suit or proceeding involves any possibility of imposition of criminal liability or any risk of material civil liability on such Indemnitee or will involve a material risk of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Exception) on, the Property or any part thereof unless, in the case of civil liability or Lien, the Lessee shall have posted a bond or other security satisfactory to the relevant Indemnitee in respect to such risk or (y) the control of such action, suit or proceeding would involve an actual or potential conflict of interest, (B) such proceeding involves Claims not fully indemnified by the Lessee which the Lessee and the Indemnitee have been unable to sever from the indemnified claim(s), or (C) an Event of Default under the Lease has occurred and is continuing. The Indemnitee may participate in a reasonable manner at its own expense and with its own counsel in any proceeding conducted by the Lessee in accordance with the foregoing. The Lessee shall not enter into any settlement or other compromise with respect to any Claim which is entitled to be indemnified under Section 13.1 or 13.3 without the prior written consent of the Indemnitee which consent shall not be unreasonably withheld in the case of a money settlement not involving an admission of liability of such Indemnitee.

Each Indemnitee shall at the expense of the Lessee cooperate with and supply the Lessee with such information and documents reasonably requested by the Lessee as are necessary or advisable for the Lessee to participate in any action, suit or proceeding to the extent permitted by Section 13.1 or 13.3. Unless an Event of Default shall have occurred and be continuing, no Indemnitee shall enter into any settlement or other compromise with respect to any Claim which is entitled to be indemnified under Section 13.1 or 13.3 without the prior written consent of the Lessee, which consent shall not be unreasonably withheld, unless such Indemnitee waives its right to be indemnified under Section 13.1 or 13.3 with respect to such Claim.

Upon payment in full of any Claim by the Lessee pursuant to Section 13.1 or 13.3 to or on behalf of an Indemnitee, the Lessee, without any further action, shall be subrogated to any and all claims that such Indemnitee may have relating thereto (other than claims in respect of insurance policies maintained by such Indemnitee at its own expense), and such Indemnitee shall execute such instruments of assignment and conveyance, evidence of claims and payment and such other documents, instruments and agreements as may be necessary to preserve any such claims and otherwise cooperate with the Lessee and give such further assurances as are necessary or advisable to enable the Lessee vigorously to pursue such claims.

Any amount payable to an Indemnitee pursuant to Section 13.1 or 13.3 shall be paid to such Indemnitee promptly upon receipt of a written demand therefor from such Indemnitee, accompanied by a written statement describing in reasonable detail the basis for such indemnity and the computation of the amount so payable.

Section 13.5 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 Indemnitees, and hold them harmless against, all Impositions on an After Tax Basis.

(b) Payments.

(i) Subject to the terms of Section 13.5(f), the Lessee shall pay or cause to be paid all Impositions directly to the taxing authorities where feasible and otherwise to the Indemnitee, as appropriate, and the Lessee shall at its own expense, upon such Indemnitee's reasonable request, furnish to such Indemnitee 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 13.5(f) and which the Lessee pays directly to the taxing authorities, the Lessee shall pay such Impositions 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 Indemnitee, the Lessee shall do so within twenty (20) days after receipt by the Lessee of demand by such Indemnitee 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 13.5(f), the Lessee shall pay such Impositions or reimburse such Indemnitee for such Impositions, to the extent not previously paid or reimbursed pursuant to Section 13.5(a), prior to the latest time permitted by the relevant taxing authority for timely payment after conclusion of all contests under Section 13.5(f).

(iii) Impositions imposed with respect to the Property for a billing period during which the Lease expires or terminates (unless the Lessee has exercised the Renewal Option or the 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.

(c) 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 Section 13.5(a) and of which the Lessee has knowledge or should have knowledge, the Lessee, at its sole cost and expense, shall notify the relevant Indemnitee of such requirement and (except if such Indemnitee notifies the Lessee that such Indemnitee 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 Indemnitee, advise such Indemnitee of such fact and prepare such return, statement or report for filing by such Indemnitee 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 Section 13.5(a), provide such Indemnitee 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 Section 13.5(a). Such Indemnitee shall, upon the Lessee's request and at the Lessee's expense, provide any data maintained by such Indemnitee (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 Indemnitee agrees to use its best efforts to send to the Lessee a copy of any written request or other notice that the Indemnitee receives with respect to any reports or returns required to be filed with respect to the Property or the transactions contemplated by the Operative Documents, it being understood that no Indemnitee shall have any liability for failure to provide such copies.

(d) Income Inclusions. If as a result of the payment or reimbursement by the Lessee of any expenses of the Lessor or the payment of any Transaction Expenses incurred in connection with the transactions contemplated by the Operative Documents, the Lessor or any Indemnitee or affiliate shall suffer a net increase in any federal, state, local or foreign income tax liability, the Lessee shall indemnify such Persons (without duplication of any indemnification required by Section 13.5(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, or any Indemnitee or such affiliate, in respect thereof.

(e) Withholding Taxes. As between the Lessee on one hand, and the Lessor or the Agent or any Participant on the other hand, the Lessee shall be responsible for, and, subject to the provisions of Sections 13.5(g) and (h), the Lessee shall indemnify and hold harmless the Lessor, the Agent and the Participants (without duplication of any indemnification required by Section 13.5(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 Participation Interests or with respect to Rent payments under the Lease or payments of the Asset Termination Value, Lease Balance or Purchase Option Price (and, if the Lessor, the Agent or any Participant receives a demand for such payment from any taxing authority, the Lessee shall discharge such demand on behalf of the Lessor, the Agent or such Participant).

(f) Contests of Impositions.

(i) If a written claim is made against any Indemnitee or if any proceeding shall be commenced against such Indemnitee (including a written notice of such proceeding), for any Impositions, such Indemnitee 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 thirty (30)-day period, such Indemnitee 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 (2) days before the end of such shorter period; provided, further, that the failure of such Indemnitee to give the notices referred to 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 of such notice from the Indemnitee (or such shorter period as the Indemnitee has notified the Lessee is required by law or regulation for the Indemnitee to commence such contest), the Lessee shall request in writing that such Indemnitee contest such Imposition, the Indemnitee 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 Indemnitee, the Indemnitee, at the Lessee's request, shall allow the Lessee to conduct and control such contest and (B) in the case of any contest, the Indemnitee 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, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (4) taking such other action as is reasonably requested by the Lessee from time to time.

(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 Indemnitee may at any time decline to take further action with respect to the contest of any Imposition and may settle such contest if such Indemnitee shall waive its rights to any indemnity from the Lessee that otherwise would be payable in respect of such claim (and any future claim by any taxing authority, the contest of which is precluded by reason of such resolution of such claim) and shall pay to the Lessee any amount previously paid or advanced by the Lessee pursuant to this Section 13.5 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 13.5, an Indemnitee 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 Indemnitee unless (A) the Lessee shall have agreed to pay and shall pay to such Indemnitee on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Indemnitee actually incurs in connection with contesting such Impositions, including, without limitation, all reasonable legal, accounting and investigatory fees and disbursements, (B) in the case of a claim that must be pursued in the name of an Indemnitee (or an affiliate thereof), the amount of the potential indemnity (taking into account all similar or logically related claims that have been or could be raised in any audit involving such Indemnitee for which the Lessee may be liable to pay an indemnity under this Section 13.5) exceeds \$100,000, (C) the Indemnitee 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 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 Indemnitee an interest-free advance in an amount equal to the Imposition that the Indemnitee is required to pay (with no additional net after-tax cost to such Indemnitee), (E) in the case of a claim that must be pursued in the name of an Indemnitee (or an affiliate thereof), the Lessee shall have provided to such Indemnitee an opinion of independent tax counsel selected by the Indemnitee and reasonably satisfactory to the Lessee 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 there is substantial authority for the position asserted in such appeal) and (F) no Event of Default hereunder shall have occurred and be continuing. In no event shall an Indemnitee be required to appeal an adverse judicial determination to the United States Supreme Court. In addition, an Indemnitee 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 13.5, unless there shall have been a change in law (or interpretation thereof) and the Indemnitee shall have received, at the Lessee's expense, an opinion of independent tax counsel selected by the Indemnitee 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 Indemnitee will prevail in such contest.

(g) Documentation of Withholding Status. Each Participant (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 Document, deliver to the Lessor and 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 two valid, duly completed, original copies of Internal Revenue Service Form W-8BEN or Form W-8ECI or successor applicable form, properly and duly executed, certifying in each case that such party is entitled to receive payments pursuant to the Operative Documents without deduction or withholding of United States Federal income taxes and is a foreign person thereby entitled to an exemption from the United States backup withholding taxes; and

(ii) on 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 Lessor and the Lessee, deliver to the Lessor and the Lessee two further valid, duly completed, original copies of any such form or certification, properly and duly executed.

(h) Limitation on Tax Indemnification. Subject to Section 13.10, the Lessee shall not be required to indemnify any Indemnitee, or to pay any increased amounts to any Indemnitee or tax authority with respect to any Impositions pursuant to this Section 13.5 to the extent that (i) any obligation to withhold, deduct, or pay amounts with respect to Tax existed on the date such Indemnitee became a party to any Operative Document (and, in such case, the Lessee may deduct and withhold such Tax from payments pursuant to the Operative Documents), or (ii) such Indemnitee fails to comply with the provisions of Section 13.5(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 Documents). With respect to any transferee of any Participant (including a transfer resulting from any change in the designation of the lending office of a Participant), the transferee shall not be entitled to any greater payment or indemnification under this Section 13.5 than the transferor would have been entitled to.

Section 13.6 Funding Losses. If any payment of any Advance or any portion of any Participation Interest is made on any day other than the last day of an Interest Period applicable thereto, or if the Lessee fails to utilize the proceeds of any purchase of Participation Interests after notice has been given to the Lessor or any Participant in accordance with Section 3 or 4, the Lessee shall reimburse the Lessor and each Participant on an After Tax Basis within fifteen (15) days after demand for any resulting loss or expense incurred by it, including (without limitation) any loss incurred in obtaining, liquidating or employing deposits from third parties, provided that the Lessor or such Participant, as the case may be, shall have delivered to the Lessee a certificate as to the amount of such loss or expense, which certificate shall be conclusive in the absence of manifest error. The Lessor or such Participant, as applicable, will, at the request of the Lessee, furnish such additional information concerning the determination of such loss as the Lessee may reasonably request.

Section 13.7 Regulation D Compensation. For so long as the Lessor or any Participant is required to increase its existing reserve percentage against "Eurocurrency Liabilities" (or any other category of liabilities which include deposits by reference to which the interest rate on its Participation Interest in any Advance is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of the Lessor or such Participant, as applicable, to United States residents), and, as a result, the cost to the Lessor or such Participant (or such Participant's Funding Office) of purchasing or maintaining its Participation Interest in any Advance is increased, then the Lessor or such Participant may require the Lessee to pay, on an After Tax Basis, contemporaneously with each payment of interest on the Advances an additional amount on the Participation Interest of such Participant in the Advances at a rate per annum up to but not exceeding the excess of (i) (A) the applicable Eurodollar Rate divided by (B) one minus the Eurocurrency Reserve Requirements over (ii) the applicable Eurodollar Rate.

Section 13.8 Basis for Determining Interest Rate Inadequate or Unfair. If on or prior to the first day of any Interest Period:

(a) deposits in Dollars (in the applicable amounts) are not being offered to the Agent in the relevant market for such Interest Period or any Participant shall advise the Agent that the Eurodollar Rate as determined by the Agent will not adequately and fairly reflect the cost to such Participant of funding its Participation Interest in any Advance for such Interest Period; or

(b) any Participant determines that, by reason of the adoption, on or after the date of this Participation Agreement, of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Participant (or its Funding Office) with any request or directive (whether or not having the force of law) of any such authority, central bank or governmental agency, it is restricted, directly or indirectly, in the amount it may hold of (i) a category of liabilities that includes deposits by reference to which, or on the basis of which, the interest rate applicable to Advances based on the Eurodollar Rate is directly or indirectly determined, or (ii) the category of assets which includes Advances based on the Eurodollar Rate;

the Agent shall forthwith give notice thereof to the Lessee and the Participants, whereupon the obligation of the Participants to provide funding at rates based upon the Eurodollar Rate shall be suspended and, until the Agent notifies the Lessee that the circumstances giving rise to such suspension no longer exist, each outstanding Advance shall begin to bear interest at the Alternate Base Rate on the last day of the then current Interest Period applicable thereto.

Section 13.9 Illegality. If, on or after the date of this Participation Agreement, the adoption of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Participant (or its Funding Office) with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency, shall make it unlawful or impossible for any Participant (or its Funding Office) to purchase, maintain or fund its Participation Interest in any Advance and such Participant shall so notify the Agent, the Agent shall forthwith give notice thereof to the other Participants and the Lessee, whereupon until such Participant notifies the Lessee and the Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Participant to purchase its Participation Interest in any Advance shall be suspended. Before giving any notice to the Agent pursuant to this Section, such Participant shall, if practicable, with the consent of the Lessee (which consent shall not unreasonably be withheld), designate a different Funding Office if such designation will avoid the need for giving such notice and will not, in the judgment of such Participant, be otherwise disadvantageous to such Participant. If such notice is given (i) the Lessee shall be entitled upon its request to a reasonable explanation of the factors underlying such notice and (ii) each outstanding Participation Interest in any Advance of such Participant then outstanding shall begin to bear interest at the Alternate Base Rate either (a) on the last day of the then current Interest Period applicable to such Advance if such Participant may lawfully continue to maintain and fund such Participation Interest to such day or (b) immediately if such Participant shall determine that it may not lawfully continue to maintain and fund such Participation Interest to such day.

Section 13.10 Increased Cost and Reduced Return.

(a) In the event that the adoption of any applicable law, rule or regulation, or any change therein or in the interpretation or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof or compliance by the Lessor or any Participant with any request or directive after the date hereof (whether or not having the force of law) of any such authority, central bank or comparable agency:

(i) does or shall subject the Lessor or such Participant to any additional tax of any kind whatsoever with respect to the Operative Documents or any Advance made by such Person or any purchase of a Participation Interest in any Advance, or change the basis or the applicable rate of taxation of payments to the Lessor or such Participant of its Participation Interest or any other amount payable hereunder (except for the imposition of or change in any tax on or measured by the overall net income of the Lessor or such Participant (other than any such tax imposed by means of withholding));

(ii) does or shall impose, modify or hold applicable any reserve, special deposit, insurance assessment, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of the Lessor or such Participant which are not otherwise included in determination of the rate of interest on Advances hereunder; or

(iii) does or shall impose on the Lessor or such Participant any other condition;

and the result of any of the foregoing is to increase the cost to the Lessor or such Participant of making or maintaining its Advances or purchasing or maintaining its Participation Interest in any Advance or to reduce any amount receivable hereunder with respect thereto, then, in any such case the Lessee shall promptly pay the Lessor or such Participant, as the case may be, upon its demand, on an After Tax Basis any additional amounts necessary to compensate the Lessor or such Participant for such increased cost or reduced amount receivable which the Lessor or such Participant deems to be material as determined by the Lessor or such Participant.

(b) If the Lessor or any Participant shall have determined that, after the date hereof, the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency has or would have the effect of reducing the rate of return on capital of the Lessor or such Participant, as the case may be (or any entity directly or indirectly controlling the Lessor or such Participant), as a consequence of the Lessor's or such Participant's obligations under the Operative Documents to a level below that which the Lessor or such Participant (or any entity directly or indirectly controlling the Lessor or such Participant), as applicable, could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy) by an amount deemed by the Lessor or such Participant to be material, then from time to time, within 15 days after demand by the Lessor or such Participant (with a copy to the Agent), the Lessee shall pay to the Lessor or such Participant, as the case may be, on an After Tax Basis, such additional amount or amounts as will compensate such Participant (or its parent) or the Lessor for such reduction.

(c) The Lessor and each Participant will promptly notify the Lessee and the Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle the Lessor or such Participant, as the case may be, to compensation pursuant to this Section and will, if practicable, with the consent of the Lessee (which consent shall not unreasonably be withheld), designate a different Funding Office or take any other reasonable action if such designation or action will avoid the need for, or reduce the amount of, such compensation and will not, in the judgment of the Lessor or such Participant, as applicable, be otherwise disadvantageous to the Lessor or such Participant. A certificate of the Lessor or any Participant claiming compensation under this Section and setting forth in reasonable detail its computation of the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, the Lessor or such Participant, as the case may be, may use any reasonable averaging and attribution methods. This Section shall survive the termination of this Participation Agreement and payment of the outstanding Advances and Participation Interests.

Section 13.11 Substitution of Participant. If (i) the obligation of any Participant to purchase or maintain its Participation Interest has been suspended pursuant to this Section 13, or (ii) any Participant has demanded compensation or given notice of its intention to demand compensation under Section 13.10, the Lessee shall have the right, with the assistance of the Agent, to seek one or more mutually satisfactory substitute banks or financial institutions (which may be one or more of the Participants) to replace such Participant under the Operative Documents.

Section 13.12 Indemnity Payments in Addition to Residual Value Guarantee Amount. The Lessee acknowledges and agrees that its obligations to make indemnity payments under this Section 13 are separate from, in addition to, and do not reduce, its obligation to pay, the Residual Value Guarantee Amount under the Lease; provided, that in the event the Lessee elects the Remarketing Option, the Lessee shall only be required to pay any Shortfall Amount to the extent set forth in Section 13.2 hereof.

SECTION 14

THE AGENT

Section 14.1 Appointment. Each Participant hereby irrevocably designates and appoints the Agent as the agent of such Participant under this Agreement and the other Operative Documents, and each Participant irrevocably authorizes the Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Operative Documents and to exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Agreement and the other Operative Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Participant or any other party to the Operative Documents, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Operative Document or otherwise exist against the Agent.

Section 14.2 Delegation of Duties. The Agent may execute any of its duties under this Agreement and the other Operative Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

Section 14.3 Exculpatory Provisions. Neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Operative Document (except for its or such Person's own gross negligence or willful misconduct or negligence with respect to the handling of funds) or (b) responsible in any manner to any of the Participants or any other party to the Operative Documents for any recitals, statements, representations or warranties made by the Lessor, or the Lessee or any officer thereof contained in this Agreement or any other Operative Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Operative Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Operative Document or for any failure of the Lessor or the Lessee to perform its obligations hereunder or thereunder. The Agent shall not be under any obligation to any Participant or any other party to the Operative Documents to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Operative Document, or to inspect the properties, books or records of the Lessor or the Lessee.

Section 14.4 Reliance by Agent. The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, teletype, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Lessor or the Lessee), independent accountants and other experts selected by the Agent. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Operative Document unless it shall first receive such advice or concurrence of the Required Participants as it deems appropriate or it shall first be indemnified to its satisfaction by the Participants against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Operative Documents in accordance with a request of the Required Participants, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Participants.

Section 14.5 Notice of Default. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Agent has received notice from a Participant, the Lessor or the Lessee describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Agent receives such a notice, the Agent shall give notice thereof to the other parties hereto. The Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Participants; provided that unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Participants.

Section 14.6 Non-Reliance on Agent and Other Participants. Each Participant expressly acknowledges that neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representations or warranties to it and that no act by the Agent hereinafter taken, including any review of the affairs of the Lessor or the Lessee, shall be deemed to constitute any representation or warranty by the Agent to any Participant. Each

Participant represents to the Agent that it has, independently and without reliance upon the Agent or any other Participant, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Lessor, the Lessee and the Property and made its own decision to purchase its Participation Interest hereunder and enter into this Agreement. Each Participant also represents that it will, independently and without reliance upon the Agent, the Lessor or any other Participant, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Operative Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Lessor and the Lessee. Except for notices, reports and other documents expressly required to be furnished to the Participants by the Agent hereunder, the Agent shall not have any duty or responsibility to provide any Participant with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Lessor or the Lessee which may come into the possession of the Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

Section 14.7 Indemnification. The Participants agree to indemnify the Agent in its capacity as such (to the extent not reimbursed by the Lessee and without limiting the obligation of the Lessee to do so), ratably according to their respective Commitment Percentages in effect on the date on which indemnification is sought under this Section 14.7 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Participation Interests shall have been paid in full, ratably in accordance with their Commitment Percentages in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Participation Interests) be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of, the Commitments, this Agreement, the Property, any of the other Operative Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by any of them under or in connection with any of the foregoing; provided that no Participant shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from the gross negligence or willful misconduct of the Agent. The agreements in this Section 14.7 shall survive the payment of the Participation Interests and all other amounts payable hereunder.

Section 14.8 Agent in its Individual Capacity. The Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Lessor or the Lessee as though the Agent were not the Agent hereunder and under the other Operative Documents. With respect to its Participation Interest purchased by it, the Agent shall have the same rights and powers under this Agreement and the other Operative Documents as any Participant and may exercise the same as though it were not the Agent, and the terms "Participant" and "Participants" shall include the Agent in its individual capacity.

Section 14.9 Successor Agent. The Agent may resign as Agent upon thirty (30) days' notice to the Participants, the Lessor and the Lessee. If the Agent shall resign as Agent under this Agreement and the other Operative Documents, then the Required Participants shall appoint a successor Agent for the Participants. Any such successor Agent shall be a commercial bank organized under the laws of the United States of America or any State thereof or under the laws of another country which is doing business in the United States of America and having a combined capital, surplus and undivided profits of at least \$100,000,000 (provided that so long as no Default or Event of Default exists, the successor Agent shall be approved by the Lessee (which approval shall not be unreasonably withheld)). Upon such appointment (a) such successor Agent shall succeed to the rights, powers and duties of the Agent, and the term "Agent" shall mean such successor Agent effective upon such appointment, and (b) the former Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Agent or any of the parties to this Agreement. If no successor Agent has accepted appointment as Agent by the date which is thirty (30) days following a resigning Agent's notice of resignation, the resigning Agent's resignation shall nevertheless thereupon become effective and the Participants shall perform all of the duties of the Agent hereunder until such time, if any, as the Required Participants appoint a successor Agent as provided above. After any retiring Agent's resignation as Agent, all of the provisions of this Section 14 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement and the other Operative Documents.

SECTION 15

MISCELLANEOUS

Section 15.1 Survival of Agreements. The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Documents, and the parties' obligations under any and all thereof, shall survive the execution and delivery of this Participation Agreement, the transfer of the Property to the Lessor, any disposition of any interest of the Lessor in the Property or any portion thereof, payment of the Advances and the Participation Interests and any disposition thereof and shall be and continue in effect notwithstanding any investigation made by any party or the fact that any party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Documents. Except as otherwise expressly set forth herein or in other Operative Documents, the indemnities of the parties provided for in the Operative Documents shall survive the expiration or termination of any thereof.

Section 15.2 No Broker, etc. Each of the parties hereto represents to the others that it has not retained or employed any broker, finder or financial adviser to act on its behalf in connection with this Participation Agreement or the transactions contemplated herein, nor has it authorized any broker, finder or financial adviser retained or employed by any other Person so to act. Any party who is in breach of this representation shall indemnify and hold the other parties harmless on an After Tax Basis from and against any liability arising out of such breach of this representation.

Section 15.3 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 and delivered (i) personally, (ii) by a nationally recognized overnight courier service, (iii) by mail (by registered or certified mail, return receipt requested, postage prepaid) or (iv) by facsimile, in each case directed to the address of such Person as indicated on Schedule II. Any such notice shall be effective upon receipt or refusal. From time to time any party may designate a new address for purposes of notice hereunder by written notice to each of the other parties hereto in accordance with this Section.

Section 15.4 Counterparts. This Participation 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.

Section 15.5 Headings, etc. The Table of Contents and headings of the various Sections of this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

Section 15.6 Parties in Interest. Except as expressly provided herein, none of the provisions of this Participation Agreement are intended for the benefit of any Person except the parties hereto. Subject to the provisions of Section 25.1 of the Lease, the Lessee shall not assign or transfer any of its rights or obligations under the Operative Documents without the prior written consent of the Lessor, the Agent and the Participants.

Section 15.7 GOVERNING LAW. THIS PARTICIPATION AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY THE LAW OF THE STATE OF CALIFORNIA (EXCLUDING ANY CONFLICT-OF-LAW OR CHOICE-OF-LAW RULES WHICH MIGHT LEAD TO THE APPLICATION OF THE INTERNAL LAWS OF ANY OTHER JURISDICTION) AS TO ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

Section 15.8 Severability. Any provision of this Participation Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 15.9 Liability Limited.

(a) The Lessee, the Agent, and the Participants each acknowledge and agree that the Lessor shall not be liable or accountable under any circumstances whatsoever in its individual capacity for or on account of any statements, representations, warranties, covenants or obligations stated to be those of the Lessor, except for its own gross negligence or willful misconduct or negligence in the handling of funds and as otherwise expressly provided herein or in the other Operative Documents, and it is understood and agreed that all obligations of the Lessor to the Lessee, the Agent and any Participant under the Operative Documents are solely nonrecourse obligations (except as otherwise expressly provided therein) enforceable only against the Lessor's interest in the Property.

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

Section 15.10 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 Documents, and the transactions contemplated hereby and thereby (including, without limitation, the preparation, execution and filing of any and all Uniform Commercial Code financing statements 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 any action specified in the preceding sentence), or (if the Lessor shall so request) as so requested, in order to maintain and protect all security interests provided for hereunder or under any other Operative Document.

Section 15.11 Submission to Jurisdiction. The Lessee hereby submits to the nonexclusive jurisdiction of the United States District Court for the Northern District of California and of any California court sitting in Santa Clara County for purposes of all legal proceedings arising out of or relating to the Operative Documents or the transactions contemplated hereby. The Lessee irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

Section 15.12 Confidentiality. The Lessor, the Agent and each Participant (other than the Tranche Y Participant) represent that they will maintain the confidentiality of the transactions contemplated by, and of any written or oral information provided under, the Operative Documents by or on behalf of the Lessee, and of any information obtained pursuant to exercise of inspection rights provided under the Operative Documents (hereinafter collectively called "Confidential Information"), subject to the Lessor's, the Agent's and each such Participant's (a) obligation to disclose any such Confidential Information pursuant to a request or order under applicable laws and regulations or pursuant to a subpoena or other legal process, (b) right to disclose any such Confidential Information to its bank examiners, affiliates, auditors, counsel and other professional advisors and to other Participants, (c) right to disclose any such Confidential Information in connection with any litigation or dispute involving the Participants and the Lessee or any of its Subsidiaries and Affiliates and (d) right to provide such information to Sub-Participants, prospective Sub-Participants to which sales of participating interests are permitted pursuant to this Participation Agreement and prospective assignees to which assignments of interests are permitted pursuant to this Participation Agreement, but only if (i) such Sub-Participant, prospective Sub-Participant or prospective assignee agrees in writing to maintain the confidentiality of such information on terms substantially similar to those of this Section as if it were a "Participant" party hereto and (ii) the Lessee receives copies of such written agreement prior to the release of such information. Notwithstanding the foregoing, any such information supplied to a Participant, Sub-Participant, prospective Sub-Participant or prospective assignee under this Participation Agreement shall cease to be Confidential Information if it is or becomes known to such Person by other than unauthorized disclosure, or if it becomes a matter of public knowledge.

Section 15.13 WAIVER OF JURY TRIAL. EACH OF THE LESSEE, THE AGENT, THE LESSOR, AND EACH PARTICIPANT HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE OPERATIVE DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[signature page follows]

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

YAHOO! INC., as Lessee

By: /s/ Susan L. Decker

Name: Susan L. Decker

Title: Senior Vice President, Finance and Administration and Chief Financial Officer

LEASE PLAN NORTH AMERICA, INC.,
as Lessor and as a Participant

By: /s/ David M. Shipley

Name: David M. Shipley

Title: Vice President

ABN AMRO BANK N.V., as Agent

By: /s/ David M. Shipley

Name: David M. Shipley

Title: Vice President

By: /s/ Elizabeth M. Walker

Name: Elizabeth M. Walker

Title: Vice President

ABN AMRO BANK N.V., as a Participant

By: /s/ David M. Shipley

Name: David M. Shipley

Title: Vice President

By: /s/ Elizabeth M. Walker

Name: Elizabeth M. Walker

Title: Vice President

YAHOO! INC., as Tranche Y Participant

By: /s/ Susan L. Decker

Name: Susan L. Decker

Title: Senior Vice President, Finance and Administration and Chief Financial Officer

APPENDIX 1
to
Participation Agreement,
Master Lease and Mortgage
each dated as of March 16, 2001
(Sunnyvale, California Corporate Headquarters)

DEFINITIONS AND INTERPRETATION

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

- (i) the singular number includes the plural number and vice versa;
- (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Operative Documents, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (iii) reference to any gender includes each other gender;
- (iv) reference to any agreement (including any Operative Document), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Operative Documents and reference to any promissory note includes any promissory note which is an extension or renewal thereof or a substitute or replacement thereof;
- (v) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

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

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

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

(ix) "or" is not exclusive; and

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

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

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

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

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

"Account" is defined in Section 3.10 of the Participation Agreement.

"Accountants" means PriceWaterhouseCoopers LLP, or such other firm of independent certified public accountants of recognized national standing selected by the Lessee.

"Acquisition Request" is defined in Section 3.3 of the Participation Agreement.

"Acquisition/Funding Condition" is defined in Section 6.5 of the Participation Agreement.

"Adjusted Percentage" is defined in Section 11.4 of the Participation Agreement.

"Advance" means an advance of funds by the Lessor pursuant to Section 3.2 of the Participation Agreement which will be used to pay Property Costs.

"Adverse Proceeding" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of the Lessee or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority (including any Environmental Claims), pending against the Lessee or any of its Subsidiaries or any property of the Lessee or any of its Subsidiaries.

"Affiliate" shall mean, with respect to any Person, each Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person; provided, however, that in no case shall the Lessor, the Agent or any Participant (other than the Tranche Y Participant) be deemed to be an Affiliate of the Lessee or any of its Subsidiaries for purposes of the Operative Documents. For the purpose of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

"After Tax Basis" means, with respect to any payment to be received, the amount of such payment increased so that, after deduction of the amount of all taxes (assuming for this purpose that the recipient of such payment is subject to taxes at the then maximum marginal rates generally applicable to Persons of the same type as the recipient) required to be paid by the recipient (less any tax savings realized as a result of the payment of the indemnified amount) with respect to the receipt by the recipient of such amounts, such increased payment (as so reduced) is equal to the payment otherwise required to be made.

"Agent" means ABN AMRO Bank N.V., as Agent for the Participants pursuant to the Participation Agreement, or any successor or additional Agent appointed in accordance with the terms of the Participation Agreement.

"Agent Financing Statements" means UCC financing statements appropriately completed and executed for filing in the applicable jurisdiction in order to perfect a security interest in favor of the Agent for the ratable benefit of the Participants in any Improvements on the Property.

"Aggregate Commitments" means the aggregate Commitments of all Participants collectively.

"Alternate Base Rate" means, for any period an interest rate per annum equal to the higher of (a) the rate of interest most recently announced by the Agent in the United States from time to time as its prime rate for calculating interest on certain loans, which need not be the lowest interest rate charged by the Agent and (b) the Federal Funds Effective Rate most recently determined by the Agent plus .50%. If either of the aforesaid rates or equivalent changes from time to time after the date of the Participation Agreement, the Alternate Base Rate shall be automatically increased or decreased, if appropriate and as the case may be, without notice to the Lessee or the Lessor, as of the effective time of each change.

"Alternate Base Rate Advance" means as of any date of determination all Advances or portions thereof (and related purchases of Tranche C Equity Interests therein) which then bear interest or accrue yield by reference to the Alternate Base Rate.

"Applicable Law" means all existing and future domestic and foreign applicable laws, rules, regulations (including Environmental Laws), statutes, treaties, codes, ordinances, permits, certificates, covenants, restrictions, requirements, orders and licenses of and interpretations by, any Governmental Authorities, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety or the environment (including, without limitation, wetlands) and those pertaining to the construction, use or occupancy of the Property) and any restrictive covenant or deed restriction or easement affecting all or any portion of the Property.

"Applicable Margin" shall mean the following per annum percentages expressed in basis points as set forth below:

Applicable Margin Table

Tranche A	Tranche B	Tranche C
0 bps	30.0 bps	180.0 bps

"Appraisal" means, with respect to the Property, an appraisal, prepared by a reputable appraiser approved by the Lessor and the Agent, which in the judgment of counsel to the Lessor and the Agent, complies with all of the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto, and all other applicable Requirements of Law, which appraisal will (i) appraise the Fair Market Sales Value of the Property as built in accordance with the Plans and Specifications for the Phase I Facility and the Phase II Facility as of the Closing Date and as of the Expiration Date; and (ii) contain an estimate of the useful life of each of the Phase I Improvements and the Phase II Improvements as of each such date, all in a form satisfactory to the Lessor and the Agent.

"Appurtenant Rights" means (i) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to any Land Interest or any Improvements, including, without limitation, the use of any streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, vaults or strips of land adjoining, abutting, adjacent or contiguous to any Land Interest or any Improvements (now existing or to be designed and constructed by the Existing Owner pursuant to the Property Purchase Agreement) and (ii) all permits, licenses and rights, whether or not of record, appurtenant to any Land Interest.

"Architect" means a duly licensed architect and/or an architectural firm providing architectural design services in respect of the Improvements, which architect or firm shall be reasonably acceptable to the Lessor and the Lessee.

"Arrangement Fee" is defined in Section 4.2 of the Participation Agreement.

"Arranger" means ABN AMRO Bank N.V.

"Asset Termination Value" means, as of any date of determination, an amount equal to the sum of the aggregate outstanding principal amount of the Advances, all accrued and unpaid interest and yield thereon, and all other amounts owing by the Lessee under the Operative Documents.

"Assignment and Acceptance" is defined in Section 12.1(b) of the Participation Agreement.

"Assignment of Lease" means the Assignment of Lease, dated as of the Closing Date, from the Lessor to the Agent for the benefit of the Participants, and consented to by the Lessee pursuant to that certain Lessee's Consent, dated as of the Closing Date (the "Consent to Assignment") by the Lessee, as obligor, in favor of the Agent for the benefit of the Participants, in each case in the respective forms set forth in Exhibit H to the Participation Agreement.

"Assignment of Property Purchase Agreement" means the Assignment of Purchase Agreement, dated as of the Closing Date, between Yahoo! Inc. and Lessor with respect to the Property Purchase Agreement.

"Available Commitments" means as to any Participant at any time, an amount equal to the excess, if any, of (a) the amount of such Participant's Commitment over (b) the aggregate amount of its Participation Interest in all Advances made by the Lessor then outstanding.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect.

"Basic Rent" means the sum of the interest and yield on Advances due on any Payment Date as set forth in Section 3.7 of the Participation Agreement.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

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

"Capital Asset" shall mean with respect to any Person, any tangible fixed or capital asset owned or leased (in the case of a Capital Lease) by such Person, or any expense incurred by such Person that is required by GAAP to be reported as a non-current asset on such Person's balance sheet.

"Capital Expenditures" shall mean with respect to the Lessee and its Subsidiaries and any period, all expenses accrued by the Lessee and its Subsidiaries during such period for the acquisition of Capital Assets (including all indebtedness incurred or assumed in connection with Capital Leases).

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

"Cash" means money, currency or a credit balance in any demand or Deposit Account.

"Cash Collateral" is defined in Section 2.1 of the Cash Collateral Agreement.

"Cash Collateral Agreement" means the Cash Collateral Agreement dated as of the Closing Date among the Lessee, the Lessor, the Agent and ABN AMRO Bank N.V. as Depository Bank in the form of Exhibit I to the Participation Agreement.

"Cash Equivalents" means, as at any date of determination:

(a) Direct obligations of, or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America or obligations of any agency of the United States of America to the extent such obligations are backed by the full faith and credit of the United States of America, in each case maturing within one year from the date of acquisition thereof,

(b) Certificates of deposit maturing within one year from the date of acquisition thereof issued by a commercial bank or trust company organized under the laws of the United States of America or a state thereof or that is a Participant, provided that (A) such deposits are denominated in Dollars, (B) such bank or trust company has capital, surplus and undivided profits of not less than \$1,000,000,000 and (C) such bank or trust company has certificates of deposit or other debt obligations rated at least A-1 (or its equivalent) by S&P or P-1 (or its equivalent) by Moody's;

(c) Open market commercial paper maturing within one year from the date of acquisition thereof issued by a corporation organized under the laws of the United States of America or a state thereof, provided such commercial paper is rated at least A-1 (or its equivalent) by S&P or P-1 (or its equivalent) by Moody's; and

(d) Any repurchase agreement entered into with a commercial bank or trust company organized under the laws of the United States of America or a state thereof or that is a Participant, provided that (A) such bank or trust company has capital, surplus and undivided profits of not less than \$1,000,000,000, (B) such bank or trust company has certificates of deposit or other debt obligations rated at least A-1 (or its equivalent) by S&P or P-1 (or its equivalent) by Moody's, (C) the repurchase obligations of such bank or trust company under such repurchase agreement are fully secured by a perfected security interest in a security or instrument of the type described in clause (a), (b) or (c) above and (D) such security or instrument so securing the repurchase obligations has fair market value at the time such repurchase agreement is entered into of not less than 100% of such repurchase obligations.

"Casualty." means any damage to or destruction of all or any portion of the Property as a result of fire, flood, earthquake, or other natural cause; the actions or inactions of any Person or Person(s) (whether willful or unintentional and whether or not constituting negligence); or any other cause.

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

"Certifying Party." is defined in Section 26.1 of the Lease.

"Change of Control" shall mean, with respect to the Lessee, (a) the acquisition after the date hereof by any person or group of persons (within the meaning of Section 13 or 14 of the Exchange Act) of (i) beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC the Exchange Act) of thirty-three percent (33%) or more of the outstanding Equity Securities of the Lessee entitled to vote for members of the board of directors of the Lessee, or (ii) all or substantially all of the assets of the Lessee and its Subsidiaries taken as a whole or (b) during any period of twelve (12) consecutive calendar months, individuals who are directors of the Lessee on the first day of such period ("Initial Directors") and any directors of the Lessee who are specifically approved by two-thirds of the Initial Directors and previously-approved Directors shall cease to constitute a majority of the Board of Directors of the Lessee before the end of such period.

"Claims" means any and all obligations, liabilities, losses, actions, suits, judgments, penalties, fines, claims, demands, settlements, costs and expenses (including, without limitation, reasonable legal fees and expenses) of any nature whatsoever, including, as they relate to issues involving any Environmental Law or Environmental Violation, those for which indemnification is provided pursuant to Section 13.3 of the Participation Agreement.

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

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

"Commitment" means (i) as to any Participant, the obligation of such Participant to purchase a Participation Interest in Advances to be made by the Lessor under the Participation Agreement, in an aggregate amount at any one time outstanding not to exceed the amount set forth opposite such Participant's name on Schedule I to the Participation Agreement, as such amount may be adjusted from time to time in accordance with the provisions of the Participation Agreement, and (ii) as to the Lessor, the obligation of the Lessor to make Advances from amounts received from the Participants pursuant to the purchase of Participation Interests under the Participation Agreement.

"Commitment Fee" is defined in Section 4.1 of the Participation Agreement.

"Commitment Fee Payment Date" means March 15th, June 15th, September 15th and December 15th of each year and the last day of the Commitment Period or such earlier date as the Commitments shall terminate as provided in the Operative Documents.

"Commitment Fee Rate" means a per annum rate equal to 25 basis points.

"Commitment Percentage" means, with respect to each Participant, the percentage which such Participant's Commitment then constitutes of the aggregate Commitments of the Participants to purchase a Participation Interest in Advances, as set forth on Schedule I to the Participation Agreement (or at any time after the Commitments of the Participants to purchase Participation Interests in Advances shall have expired or terminated, the percentage which the aggregate amount of such Participant's Advances (or related purchases of Participation Interests therein) then outstanding constitutes of the aggregate amount of the Advances (or related purchases of Participation Interests therein) then outstanding).

"Commitment Period" means the period from and including the Closing Date to but not including the earlier of (a) the Land Interest Acquisition Date with respect to the Phase II Facility, (b) July 31, 2001, or (c) such earlier date on which the Commitments shall terminate as provided in the Operative Documents.

"Condemnation" means any condemnation, requisition, confiscation, seizure or other taking or sale of the use, access, occupancy, easement rights or title to the Property or any portion thereof, wholly or partially (temporarily or permanently), by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain, but not including an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, the Property or any portion thereof or alter the pedestrian or vehicular traffic flow to the Property or any portion thereof so as to result in change in access to the Property or such portion so long as adequate ingress and egress remains with respect to the Property or such portion, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action. A "Condemnation" shall be deemed to have occurred on the earliest of the dates that use, occupancy or title is taken.

"Confidential Information" is defined in Section 15.12 of the Participation Agreement.

"Consent to Assignment" is defined in the definition of the term "Assignment of Lease".

"Consolidated Assets" means, at any date of determination, the total assets of the Lessee and its Subsidiaries on a consolidated basis in conformity with GAAP.

"Consolidated Liabilities" means, at any date of determination, the total consolidated liabilities of the Lessee and its Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated Net Worth" shall mean, with respect to the Lessee at any time, the net worth of the Lessee and its Subsidiaries, determined as Consolidated Assets minus Consolidated Liabilities as determined in accordance with GAAP.

"Contingent Obligation" shall mean, with respect to any Person, (a) any Guaranty Obligation of that Person; and (b) any direct or indirect obligation or liability, contingent or otherwise, of that Person (i) in respect to any Surety Instrument issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings or payments, (ii) as a partner or joint venturer in any partnership or joint venture, (iii) to purchase any materials, supplies or other property from, or to obtain the services of, another Person if the relevant contract or other related document or obligation requires that payment for such materials, supplies or other property, or for such services, shall be made regardless of whether delivery of such materials, supplies or other property is ever made or tendered, or such services are ever performed or tendered, or (iv) in respect to any Rate Contract that is not entered into in connection with a bona fide hedging operation that provides offsetting benefits to such Person. The amount of any Contingent Obligation shall (subject, in the case of Guaranty Obligations, to the last sentence of the definition of "Guaranty Obligation") be deemed equal to the maximum amount in respect thereof required to be booked as a liability in accordance with GAAP, and shall with respect to item (b)(iv) of this definition be marked to market on a current basis.

"Contractual Obligation" of any Person shall mean any indenture, note, lease, loan agreement, security, deed of trust, mortgage, security agreement, guaranty, instrument, contract, agreement or other form of contractual obligation or undertaking to which such Person is a party or by which such Person or any of its property is bound.

"Covered Liabilities" is defined in Section 11.4 of the Participation Agreement.

"Deed" with respect to the Phase I Facility or the Phase II Facility is defined in Section 6.2(e) of the Participation Agreement.

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

"Defaulting Participant" means, at any time, any of the Participants which at such time has (i) failed to make a payment when due to the Lessor equal to its Commitment Percentage of an Advance, (ii) has been notified of such failure by the Lessor, and (iii) has not cured such failure by making such payment, together with interest at the Late Payment Rate.

"Deposit Account" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"Designated Payment Date" means the Expiration Date, the Termination Date or other date of termination of the Lease.

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

"Domestic Subsidiary," means any Subsidiary organized under the laws of the United States of America, any state thereof or the District of Columbia.

"EBITDA" shall mean, with respect to the Lessee for any period, the sum, determined on a consolidated basis in accordance with GAAP, of the following:

(a) The net income or net loss of the Lessee and its Subsidiaries for such period;

plus

(b) The sum (to the extent deducted in calculating net income or loss in clause (a) above) of (i) all Interest Expenses of the Lessee and its Subsidiaries accruing during such period net of all interest income of the Lessee and its Subsidiaries during such period, (ii) all depreciation and amortization expenses of the Lessee and its Subsidiaries accruing during such period, (iii) all rental expenses (including operating and capital lease expenses recognized in accordance with GAAP) of the Lessee and its Subsidiaries accruing during such period, (iv) all income tax expense of the Lessee and its Subsidiaries in respect of such period, and (v) all non-cash expenses recognized in accordance with GAAP in the Lessee's consolidated financial statements that resulted from acquisitions, investment impairments or restructurings (such items will include but not be limited to in-process research and development, goodwill, goodwill impairments, acquired intangible assets, acquired intangible asset impairments and deferred compensation) by the Lessee or its Subsidiaries after the Closing Date.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was maintained or contributed to by the Lessee, any of its Subsidiaries or any of their respective ERISA Affiliates.

"End of the Term Report" is defined in Section 13.2 of the Participation Agreement.

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

"Environmental Certificate" is defined in Section 6.2(c) of the Participation Agreement.

"Environmental Claim" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Substance or any actual or alleged Hazardous Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

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

(a) relating to pollution (or the cleanup, removal, remediation or encapsulation thereof, or any other response thereto), or the regulation or protection of human health, safety or the environment, including air, water, vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life, or

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

in each case as amended and as now or hereafter in effect, and any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries (whether personal or property) or damages due to or threatened as a result of the presence of, exposure to, or ingestion of, any Hazardous Substance, whether such common law or equitable doctrine is now or hereafter recognized or developed. Applicable laws include, but are not limited to, CERCLA; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321; the Refuse Act, 33 U.S.C. §§ 401 et seq.; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; and the Occupational Safety and Health Act of 1970, each as amended and as now or hereafter in effect, and their state and local counterparts or equivalents, including any regulations promulgated thereunder.

"Environmental Violation" means any activity, occurrence or condition or omission that violates or results in non-compliance with, or could reasonably be expected to give rise to liability under, any Environmental Law.

"Equipment" means equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever purchased, leased or otherwise acquired by the Lessor using the proceeds of the Participation Interests in the Advances now or subsequently attached to, contained in or used or usable in any way in connection with any operation or letting of the Property, including but without limiting the generality of the foregoing, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, storm doors and windows, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilation, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, cleaning systems (including window cleaning apparatus), telephone wiring, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, pipes, pumps, tanks, conduits, fittings and fixtures of every kind and description.

"Equity Securities" of any Person shall mean (a) all common stock, preferred stock, participations, shares, partnership interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (b) all warrants, options and other rights to acquire any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time or any successor Federal statute.

"ERISA Affiliate" means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of the Lessee or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of the Lessee or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of the Lessee or such Subsidiary and with respect to liabilities arising after such period for which the Lessee or such Subsidiary could be liable under the Code or ERISA.

"ERISA Event" means (i) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan or the assets thereof, or against the Lessee, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; or (ii) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Code.

"Eurocurrency Reserve Requirements" means, for any day as applied to an Advance, the aggregate (without duplication) of the rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto) dealing with reserve requirements prescribed for Eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

"Eurodollar Rate" means, with respect to each day during each Interest Period, the rate per annum determined by the Agent to be the offered rate per annum at which deposits in Dollars appear with respect to such Interest Period on the Telerate Page 3750 (or any successor page), or if such offered rate is not available, then the rate per annum at which deposits in Dollars appear with respect to such Interest Period on the Reuters Screen LIBOR Page (or any successor page) in each case as of 11:00 a.m. (London time), two Business Days prior to the beginning of such Interest Period or in the event that the foregoing offered rates are not available, then the average (rounded upward to the nearest whole multiple of one sixteenth of one percent per annum, if such average is not such a multiple) of the respective rates notified to the Agent by each of the Participants (other than the Tranche Y Participant) as the rates at which such Participant's Funding Office is offered Dollar deposits at or about 11:00 a.m. (London time), two Business Days prior to the beginning of such Interest Period in the interbank Eurodollar market for delivery on the first day of such Interest Period for the number of days comprised therein in an amount comparable to the amount of its Participation Interest to be outstanding during such Interest Period.

"Eurodollar Rate Advance" means as of any date of determination all Advances or portions thereof (and related purchases of Tranche C Equity Interests therein) which then bear interest or accrue yield by reference to a Eurodollar Rate.

"Event of Default" is defined in Section 17.1 of the Lease.

"Excepted Payments" means:

(a) all indemnity payments (including indemnity payments made pursuant to Section 13 of the Participation Agreement) to which the Lessor, or any of its Affiliates, agents, officers, directors or employees is entitled;

(b) any amounts (other than Basic Rent or amounts payable by Lessee pursuant to Section 16.2, Section 16.3 or Articles XVII, XX or XXII of the Lease) payable under any Operative Document to reimburse the Lessor or any of its respective Affiliates (including the reasonable expenses of the Lessor incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any

Operative Document, except to the extent that one or more Participants have indemnified the Lessor with respect thereto pursuant to the Participation Agreement;

(c) any amount payable to the Lessor by any Participant or transferee permitted under the Operative Documents of the interest of the Lessor as the purchase price of such purchasing Participant's Participation Interest;

(d) any insurance proceeds (or payments with respect to risks self-insured or policy deductibles) to which the Lessor is entitled under liability policies other than such proceeds or payments payable to the Agent;

(e) any insurance proceeds under policies maintained by the Lessor;

(f) Transaction Expenses or other amounts or expenses paid or payable to or for the benefit of the Lessor; and

(g) any payments in respect of interest to the extent attributable to payments referred to in clauses (a) through (f) above.

"Excess Proceeds" means the excess, if any, of the aggregate of all awards, compensation or insurance proceeds payable in connection with a Casualty or Condemnation over the sum of (a) the aggregate Asset Termination Value paid by the Lessee pursuant to Articles XIV and XV of the Lease with respect to such Casualty or Condemnation, plus (b) any unindemnifiable losses, costs, liabilities or expenses incurred by any Lessor Party.

"Excess Reimbursement" is defined in Section 11.4 of the Participation Agreement.

"Exchange Act" means the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Existing Owner" means Sunnyvale Mathilda Land, L.L.C., a Delaware limited liability company.

"Expiration Date" means, as of any date of determination, the later of the Initial Expiration Date or, if a Renewal Term has been granted, the Extended Expiration Date then in effect.

"Expiration Date Purchase Obligation" means the Lessee's obligation, pursuant to Section 20.2 of the Lease, to purchase all (but not less than all) of the Property on the Expiration Date.

"Extended Expiration Date" means a date following the Initial Expiration Date, in the event a Renewal Term, as applicable, has been granted pursuant to Section 21.1 of the Lease, which date shall be as set forth in the most recent Extension Notice delivered by the Agent pursuant to Section 3.6(b) of the Participation Agreement.

"Extended Maturity Date" means a date following the Initial Maturity Date, in the event the Initial Maturity Date has been extended pursuant to Section 3.6(b) of the Participation Agreement, which date shall be as set forth in the most recent Extension Notice delivered by the Agent pursuant to Section 3.6(b) of the Participation Agreement.

"Extension Effective Date" is defined in Section 3.6(b) of the Participation Agreement and Section 21.1 of the Lease.

"Extension Notice" is defined in Section 3.6(b) of the Participation Agreement.

"Extension Request" is defined in Section 3.6(b) of the Participation Agreement.

"Extension Response Date" is defined in Section 3.6(b) of the Participation Agreement.

"Fair Market Sales Value" means, with respect to the Property, the amount, which in any event shall not be less than zero, that would be paid in cash in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, for the ownership of the Property. The Fair Market Sales Value of the Property shall be determined based on the assumption that, except for purposes of Article XVII of the Lease and Section 13.2 of the Participation Agreement, the Property is in the condition and state of repair required under Section 10.1 of the Lease and the Lessee is in compliance with the other requirements of the Operative Documents.

"Federal Funds Effective Rate" means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of quotations for such day on such transaction received by the Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means that certain commitment and fee letter dated [November __, 2000] between the Agent and the Lessee.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of the Lessee and its Subsidiaries ending on December 31 of each calendar year.

"Fixed Charges" shall mean, for any period, the sum, without duplication, determined on a consolidated basis of (a) Interest Expense of the Lessee and its Subsidiaries for the four Fiscal Quarters ended as of the last day of such period, plus (b) twenty percent (20%) of the outstanding principal balance of all Funded Indebtedness of the Lessee and its Subsidiaries as of the last day of such period, plus (c) all taxes paid or payable in cash by the Lessee and its Subsidiaries to any Governmental Authority during the four Fiscal Quarters ended as of the last day of such period plus (d) the principal component of all obligations in respect of Capital Leases paid or payable by the Lessee and its Subsidiaries during the four Fiscal Quarters ended as of the last day of such period.

"Fixed Charge Coverage Ratio" shall mean, with respect to the Lessee as of any day, the ratio, determined on a consolidated basis, of (a) EBITDA for the period of four consecutive Fiscal Quarters of the Lessee ending on, or most recently preceding, such day, to (b) Fixed Charges for such period.

"Fixtures" means all fixtures relating to the Improvements, including all components thereof, located in or on the Improvements, together with all replacements, modifications, alterations and additions thereto.

"Foreclosure Sale" is defined in Section 17.4 of the Lease.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"Funded Indebtedness" of any Person shall mean, without duplication the following, provided that in no event shall the obligations of the Tranche Y Participant to purchase its Participation Interest in the Advances or of the Lessee with respect to payment of the Participation Interest of the Tranche Y Participant be construed as "Funded Indebtedness" of the Tranche Y Participant:

- (a) All obligations of such Person evidenced by notes, bonds, debentures or other similar instruments and all other obligations of such Person for borrowed money (including obligations to repurchase receivables and other assets sold with recourse);
- (b) All obligations of such Person for the deferred purchase price of property or services (including obligations under letters of credit and other credit facilities which secure or finance such purchase price and obligations under "synthetic" leases), other than trade payables incurred by such Person in the ordinary course of its business on ordinary terms and overdue.
- (c) All obligations of such Person under conditional sale or other title retention agreements with respect to property acquired by such Person (to the extent of the value of such property if the rights and remedies of the seller or lender under such agreement in the event of default are limited solely to repossession or sale of such property); and
- (d) All obligations of such Person as lessee under or with respect to Capital Leases.

"Funding Date" means any Business Day on which Advances are funded or deemed funded pursuant to the Participation Agreement.

"Funding Office" means the office of each Participant identified on Schedule II to the Participation Agreement as its Funding Office.

"Funding Request" is defined in Section 3.4 of the Participation Agreement.

"GAAP" means United States generally accepted accounting principles (including principles of consolidation), in effect from time to time, consistently applied.

"Governmental Action" means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Applicable Law, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operation of the Property.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guaranty Obligation" shall mean, with respect to any Person, any direct or indirect liability of that Person with respect to any indebtedness, lease, dividend, letter of credit or other obligation (the "primary obligations") of another Person (the "primary obligor"), including any obligation of that Person, whether or not contingent, (a) to purchase, repurchase or otherwise acquire such primary obligation or any property constituting direct or indirect security therefor, or (b) to advance or provide funds (i) for the payment or discharge of any such primary obligation, or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, or (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof. The amount of any Guaranty Obligation shall be deemed equal to the stated or determinable amount of the primary obligation in respect of which such Guaranty Obligation is made or, if not stated or if indeterminable, the maximum reasonably anticipated liability in respect thereof.

"Hazardous Activity" means any activity, process, procedure or undertaking that directly or indirectly (i) produces, generates or creates any Hazardous Substance; (ii) causes or results in (or threatens to cause or result in) the Release of any Hazardous Substance into the environment (including air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life); (iii) involves the containment or storage of any Hazardous Substance; or (iv) would be regulated as hazardous waste treatment, storage or disposal within the meaning of any Environmental Law.

"Hazardous Condition" means any condition that violates or threatens to violate, or that results in or threatens noncompliance with, any Environmental Law.

"Hazardous Substance" means any of the following: (i) any petroleum or petroleum product, explosives, radioactive materials, asbestos, formaldehyde, polychlorinated biphenyls, lead and radon gas; (ii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant, in each case whether naturally occurring, man-made or the by-product of any process, that is toxic, harmful or hazardous to the environment or human health or safety; or (iii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

"Historical Financial Statements" means as of the Closing Date, (i) the audited financial statements of the Lessee and its Subsidiaries as filed with the SEC, for the immediately preceding three Fiscal Years, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Years, (ii) the unaudited financial statements of the Lessee and its Subsidiaries as filed with the SEC as at the most recently ended Fiscal Quarter, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for the three-, six- or nine-month period, as applicable, ending on such date.

"Impositions" means, except to the extent described in the following sentence, any and all liabilities, losses, expenses, costs, charges and Liens of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or withholdings ("Taxes") including (i) real and personal property taxes, including personal property taxes on any property covered by the Lease that is classified by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) any excise taxes; (iv) real estate transfer taxes, mortgage taxes, conveyance taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added, gross receipts, privilege and doing business taxes, license and registration fees; (vi) assessments on the Property, including all assessments for public improvements or benefits, whether or not such improvements are commenced or completed within the Term; and (vii) any tax, Lien, assessment or charge asserted, imposed or assessed by the PBGC or any Governmental Authority succeeding to or performing functions similar to, the PBGC, and in each case all interest, additions to tax and penalties thereon, which at any time prior to, during or with respect to the Term or in respect of any period for which the Lessee shall be obligated to pay Supplemental Rent, may be levied, assessed or imposed by any Governmental Authority upon or with respect to (a) the Property or any portion thereof or interest therein; (b) the leasing, financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy,

servicing, maintenance, repair, ownership, possession, activity conducted on or in, delivery, insuring, use, operation, improvement, transfer of title, return or other disposition of the Property or any portion thereof or interest therein; (c) the Participation Interests with respect to the Property or any portion thereof or interest therein; (d) the rentals, receipts or earnings arising from the Property or any portion thereof or interest therein; (e) the Operative Documents, the performance thereof, or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to the Property or any portion thereof or interest therein upon the sale or disposition thereof; (g) any contract (including the Property Purchase Agreement) relating to the construction, acquisition or delivery of any of the Improvements or any portion thereof or interest therein; or (h) otherwise in connection with the transactions contemplated by the Operative Documents.

The term "Imposition" shall not mean or include:

(i) Taxes and impositions (other than Taxes that are, or are in the nature of, sales, use, transfer or property taxes) that are imposed on an Indemnitee by the United States federal government or any foreign government that are based on or measured by the net income (including taxes based on capital gains and minimum taxes) of such Person; provided, that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made, and provided further that this clause (i) shall not limit or expand the Lessee's obligations under Section 13.5(e), (g) or (b) or Section 13.10 of the Participation Agreement.

(ii) Taxes and impositions (other than Taxes that are, or are in the nature of, sales, use, transfer or property taxes) that are imposed by any state or local jurisdiction or taxing authority within any state or local jurisdiction and that are franchise taxes or are based upon or measured by the net income or net receipts except that this clause (ii) shall not apply to (and thus shall not exclude) any such Taxes and impositions imposed on an Indemnitee with respect to the transactions contemplated by the Operative Documents by a state (or any local taxing authority thereof or therein) by reason of the transactions contemplated by the Operative Documents being characterized by such state or local authority as something other than a loan; provided that this clause (ii) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;

(iii) any Tax or imposition to the extent, but only to such extent, it relates to any act, event or omission that occurs after the termination of the Lease and redelivery or sale of the Property in accordance with the terms of the Lease (but not any Tax or imposition that relates to any period prior to such termination and redelivery);

(iv) any Tax or imposition for so long as, but only for so long as, it is being contested in accordance with the provisions of Section 13.5 of the Participation Agreement; or

(v) any Taxes which are imposed on an Indemnitee as a result of the gross negligence or willful misconduct of such Indemnitee itself, but not Taxes imposed as a result of ordinary negligence of such Indemnitee.

Any Tax excluded from the defined term "Imposition" in any one of the foregoing clauses (i) through (v), shall not be construed as constituting an Imposition by any provision of any other of the aforementioned clauses.

"Improvements" means all buildings, structures, Fixtures, Equipment, and other improvements of every kind existing and/or at any time and from time to time and purchased with amounts advanced by the Participants pursuant to the Participation Agreement (or those becoming the property of the Lessor pursuant to Article XI of the Lease) on or under any Land Interest, Improvements, including the Phase I Improvements and the Phase II Improvements, together with any and all appurtenances to such buildings, structures, or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways, and including all Modifications and other additions to or changes in the Improvements at any time.

"Indebtedness" of any Person shall mean, without duplication the following, provided that in no event shall the obligations of the Tranche Y Participant to purchase its Participation Interest in the Advances or of the Lessee with respect to payment of the Participation Interest of the Tranche Y Participant be construed as "Indebtedness" of the Tranche Y Participant:

(a) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments and all other obligations of such Person for borrowed money (including obligations to repurchase receivables and other assets sold with recourse);

(b) all obligations of such Person for the deferred purchase price of property or services (including obligations under letters of credit and other credit facilities which secure or finance such purchase price and obligations under "synthetic" leases);

(c) all obligations of such Person under conditional sale or other title retention agreements with respect to property acquired by such Person (to the extent of the value of such property if the rights and remedies of the seller or lender under such agreement in the event of default are limited solely to repossession or sale of such property);

(d) all obligations of such Person as lessee under or with respect to Capital Leases;

(e) all non-contingent payment or reimbursement obligations of such Person under or with respect to Surety Instruments;

(f) all net obligations of such Person, contingent or otherwise, under or with respect to Rate Contracts;

(g) all Guaranty Obligations of such Person with respect to the obligations of other Persons of the types described in clauses (a)-(f) above and all other Contingent Obligations of such Person; and

(h) all obligations of other Persons of the types described in clauses (a)-(f) above to the extent secured by (or for which any holder of such obligations has an existing right, contingent or otherwise, to be secured by) any Lien in any property (including accounts and contract rights) of such Person, even though such Person has not assumed or become liable for the payment of such obligations.

"Indemnitee" means the Lessor, the Agent, the Participants, their respective Affiliates and their respective successors, assigns, directors, shareholders, partners, officers, employees and agents, provided that in no event shall the Lessee or the Tranche Y Participant be or be deemed to be an Indemnitee under the Operative Documents.

"Initial Expiration Date" means the fifth anniversary of the Closing Date.

"Initial Maturity Date" means the fifth anniversary of the Closing Date.

"Insurance Requirements" means all terms and conditions of any insurance policy required by the Lease to be maintained by the Lessee, and all requirements of the issuer of any such policy.

"Interest Expense" means, with respect to any Person for any period, the sum determined on a consolidated basis in accordance with GAAP, of (a) all interest accruing on the Indebtedness of such Person during such period (including, without limitation, interest attributable to Capital Leases) plus (b) all fees in respect of outstanding letters of credit payable by such Person and accruing during such period.

"Interest Payment Advance" means any Advance made to fund the payment of interest or yield accruing on the Advances prior to the initial Land Interest Acquisition Date.

"Interest Period" means

(i) with respect to the Tranche C Equity Interests in any Advance:

(a) initially, (1) in the case of any Alternate Base Rate which the Lessee has elected to convert to a Eurodollar Rate Advance, the period commencing three Business Days after the date on which the Lessee gives irrevocable written notice pursuant to Section 3.7(a) of the Participation Agreement of the Lessee's election to convert such Alternate Base Rate Advance to a Eurodollar Rate Advance, or (2) in the case of any Advance which the Lessee has elected be made as a Eurodollar Rate Advance in the relevant Funding Request delivered at least three (3) Business Days prior to the Funding Date for such Advance, the period commencing on such Funding Date, and ending, in the case of either clause (1) or clause (2), one, two, three or six months thereafter, as selected by the Lessee in such irrevocable written notice or Funding Request, as the case may be, given with respect thereto; and

(b) thereafter, so long as the Lessee has elected to continue such Advance as a Eurodollar Rate Advance, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Rate Advance and ending one, two, three or six months thereafter, as selected by the Lessee by irrevocable notice to the Lessor and the Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; and

(ii) with respect to the Tranche A Participation Interests and Tranche B Participation Interests in any Advance:

(a) initially, the period commencing on the Funding Date of such Advance or portion thereof and ending on the date which is one year thereafter; and

(b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Advance or portion thereof and ending one year thereafter;

provided that, the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Expiration Date shall end on the Expiration Date;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month;

(iv) the Lessee shall select Interest Periods so as not to require a payment or prepayment of any Eurodollar Rate Advance during an Interest Period for such Eurodollar Rate Advance; and

(v) if the Lessee shall fail to specify the length of any Interest Period for any Eurodollar Rate Advance, such Eurodollar Rate Advance shall have an Interest Period of one month until such time as the Lessee shall specify an Interest Period therefor.

"Investment" of any Person shall mean any loan or advance of funds by such Person to any other Person (other than advances to employees of such Person for moving and travel expenses, drawing accounts and similar expenditures in the ordinary course of business), any purchase or other acquisition of any Equity Securities or Indebtedness of any other Person, any capital contribution by such Person to or any other investment by such Person in any other Person (including any Guaranty Obligations of such Person and any indebtedness of such Person of the type described in clause (h) of the definition of "Indebtedness" on behalf of any other Person); provided, however, that Investments shall not include (a) accounts receivable or other indebtedness owned by customers of such Person which are current assets and arose from sales of inventory in the ordinary course of such Person's business or (b) prepaid expenses of such Person incurred and prepaid in the ordinary course of business.

"Investment Company Act" means the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.

"Joint Venture" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"Land Interest" means the Phase I Land Interest or the Phase II Land Interest or both, collectively, as the context may require.

"Land Interest Acquisition Date" means, with respect to the Phase I Facility or the Phase II Facility, each date on which the Lessor acquires such portion of the Property, which date shall be specified in the relevant Acquisition Request.

"Late Payment Rate" means (a) for each day (other than as set forth in clause (b) of this definition) the Federal Funds Effective Rate or (b) for the purpose of computing interest on past due payments for each day following the fifth day after such payments first became due, a rate of two percent (2%) per annum in excess of the Alternate Base Rate then in effect; provided, the Late Payment Rate shall not, notwithstanding anything to the contrary herein contained, exceed the maximum rate of interest permitted by applicable law.

"Lease" means the Master Lease, dated as of the Closing Date, between the Lessor and the Lessee, together with the Lease Supplements thereto.

"Lease Balance" means, as of any date of determination, an amount equal to the aggregate sum of the outstanding amount of the Advances, plus (without duplication) all accrued and unpaid Basic Rent and all Supplemental Rent owing by the Lessee under the Operative Documents.

"Lease Commencement Date" means with respect to the Phase I Facility or the Phase II Facility, the Land Interest Acquisition Date therefor.

"Lease Supplement" means a Lease Supplement in the form attached as Exhibit A to the Lease, dated as of a Land Interest Acquisition Date, between the Lessor and the Lessee, together with all attachments and schedules thereto, as any such Lease Supplement may be supplemented, amended, modified or restated from time to time.

"Lessee" means Yahoo! Inc., a Delaware corporation, as lessee under the Lease, and its successors and assigns expressly permitted under the Operative Documents.

"Lessor" means Lease Plan North America, Inc., as Lessor under the Lease.

"Lessor Financing Statements" means UCC financing statements appropriately completed and executed for filing in the applicable jurisdiction in order to protect the Lessor's interest under the Lease to the extent the Lease is a security agreement.

"Lessor Lien" means any Lien, true lease or sublease or disposition of title arising as a result of (a) any claim against the Lessor not resulting from the transactions contemplated by the Operative Documents, (b) any act or omission of the Lessor which is not required by the Operative Documents or is in violation of any of the terms of the Operative Documents, (c) any claim against the Lessor with respect to Taxes or Transaction Expenses against which Lessee is not required to indemnify the Lessor, pursuant to Sections 9 or 13.5 of the Participation Agreement, (d) any claim against the Lessor arising out of any transfer by the Lessor of all or any portion of the interest of the Lessor in the Property or the Operative Documents other than the transfer of title to or possession of the Property by the Lessor pursuant to and in accordance with the Lease or the Participation Agreement or pursuant to the exercise of the remedies set forth in Article XVII of the Lease, or (e) the gross negligence, willful misconduct or fraud of the Lessor or any of its employees or any agent (other than the Agent) or representative of the Lessor duly authorized by the Lessor to act on its behalf.

"Lessor Party" means the Lessor, the Agent and the Participants (excluding the Tranche Y Participant).

"Lessor's Sale" is defined in Section 17.4 of the Lease.

"Leverage Ratio" shall mean, with respect to the Lessee for any period, the ratio, determined on a consolidated basis in accordance with GAAP, of:

(a) Funded Indebtedness of the Lessee or its Subsidiaries for such period;

to

(b) EBITDA for such period.

"Lien" means any mortgage, deed of trust, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including, without limitation, any irrevocable license, conditional sale or other title retention agreement, any lease in the nature thereof, or any other right of or arrangement with any creditor to have its claim satisfied out of any specified property or asset with the proceeds therefrom prior to the satisfaction of the claims of the general creditors of the owner thereof, whether or not filed or recorded, or the filing of, or agreement to execute as "debtor", any financing or continuation statement under the Uniform Commercial Code of any jurisdiction or any foreign or federal, state or local lien imposed pursuant to any Environmental Law.

"Limited Condition Precedent" means any of the conditions precedent set forth in clause (vi) of Section 3.4 of the Participation Agreement, the second sentence of Section 6.2(b) of the Participation Agreement, Section 6.2(q)(ii) of the Participation Agreement, Section 6.2(r)(ii) of the Participation Agreement, Section 6.3(b) of the Participation Agreement and Section 6.3(d) of the Participation Agreement.

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

"Limited Event of Default" means (a) an Event of Default arising under Section 17.1(d) of the Lease, if such Event of Default arose solely due to a Material Adverse Effect which does not constitute an Objective Material Adverse Effect (including an Event of Default which arose as a result of the failure of the Lessee under Section 10.1(a)(iv) of the Participation Agreement to disclose that a Material Adverse Effect had occurred or which arose based on a breach of the representations set forth in Section 8.2(a) or 8.3(a) of the Participation Agreement solely due to a Material Adverse Effect which does not constitute an Objective Material Adverse Effect); or (b) an Event of Default arising solely under Section 17.1(e)(ii) if the holder or beneficiary of the relevant Indebtedness has not accelerated such Indebtedness; or (c) an Event of Default arising solely under Section 17.1(o) of the Lease, but excluding, for purposes of any of clause (a), clause (b) and clause (c) of this definition, (x) any Event of Default arising under any other provision of Section 17.1 of the Lease, notwithstanding that the event, condition or circumstance giving rise to such Event of Default under such other provision may also constitute an Event of Default described in clause (a), clause (b) or clause (c) of this definition, and (y) any Event of Default which arose as a result of the fraud, misapplication of funds, illegal acts or willful misconduct of the Lessee.

"Lockheed" means Lockheed Martin Corporation, a Maryland corporation.

"Lockheed Indemnification Agreements" means collectively that certain Seller's Indemnity Agreement dated as of August 5, 1999 between Lockheed, as seller, and the Existing Owner, as buyer, and that certain Seller's Indemnity Agreement dated as of January 14, 2000, between Lockheed, as seller, and Existing Owner, as buyer, which agreements have been assigned by the Existing Owner to the Lessor with respect to the relevant portion of the Property as of the applicable Land Interest Acquisition Date.

"Marketing Period" means the period commencing on the date one hundred eighty (180) days prior to the Expiration Date and ending on the Expiration Date.

"Material Adverse Effect" means (a) an adverse change in, or an adverse effect upon, the operations, business, properties, condition (financial or otherwise) or prospects of the Lessee and its Subsidiaries taken as a whole, which could reasonably be expected to result in a breach of any of the covenants set forth in Section 10.2 of the Participation Agreement; (b) an adverse effect upon the legality, validity, binding effect or enforceability of any Operative Document or any Lessor Party's security interests, Liens or other rights in the Property or the perfection or priority of such security interests, Liens or rights; or (c) an adverse effect which reduces the value of the Property by ten percent (10%) or more in the aggregate (other than as a result of ordinary wear and tear, depreciation or changes in the market for such Property).

"Material Environmental Amount" means an amount payable by the Lessee and/or its Subsidiaries in excess of 30% of the original Property Cost for remedial costs, non-routine compliance costs, compensatory damages, punitive damages, fines, penalties or any combination thereof.

"Materials of Environmental Concern" means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

"Maturity Date" means, as of any date of determination, the later of the Initial Maturity Date or, if an extension of the Initial Maturity Date has been granted pursuant to Section 3.6(b) of the Participation Agreement, the Extended Maturity Date then in effect.

"Modifications" is defined in Section 11.1(a) of the Lease.

"Moody's" means Moody's Investor Services, Inc.

"Mortgage" means, with respect to the Phase I Facility or the Phase II Facility, the Deed of Trust, Security Agreement and Financing Statement substantially in the form attached as Exhibit J to the Participation Agreement, made by the Lessor in favor of the Trustee for the benefit of the Agent for the benefit of the Participants and satisfactory in form and substance to the Agent and the Required Participants in order to create a first priority mortgage lien on the Lessor's fee interest in the applicable Land Interest and the Improvements thereon.

"Multiemployer Plan" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"Net Proceeds" means all amounts paid in connection with any Casualty or Condemnation, and all interest earned thereon, less the expense of claiming and collecting such amounts, including all costs and expenses in connection therewith for which the Agent or the Lessor is entitled to be reimbursed pursuant to the Lease.

"Net Sales Proceeds" means the gross proceeds actually received by the Lessor upon any sale by the Lessor of any part of the Property pursuant to Articles XVII or XXII of the Lease, including, without limitation, (i) any such payments made to the Lessor by the Lessee or any purchaser, (ii) any Shortfall Amount paid to the Lessor by the Lessee pursuant to Section 13.2 of the Participation Agreement, and (iii) any interest or yield paid by the Lessee to the Lessor on past due amounts under the Lease; but excluding any payments applied by the Lessor to pay, or received by the Lessor as reimbursement for, bona fide costs of the sale (including any funding losses payable pursuant to Section 13.6 of the Participation Agreement) and further excluding any excess net sales proceeds received from a purchaser that the Lessor is required to pay over to the Lessee. In the event that for any reason whatsoever, including a default by the Lessee, the Lessor does not sell the Property pursuant to the Lease on the Designated Payment Date, "Net Sales Proceeds" shall nonetheless include any Shortfall Amount required to be paid pursuant to Section 13.2 of the Participation Agreement and actually received by the Lessor. Further, if the Lessor does not sell the Property pursuant to the Lease, then "Net Sales Proceeds" shall also include the excess, if any, of:

- (a) all rents and all sales, condemnation and insurance proceeds actually received by the Lessor from any sale or lease after the Designated Payment Date of any interest in, or because of any subsequent taking or damage to, the Property; over
- (b) the sum of (i) all costs of collecting the rents and proceeds described in the preceding clause (a) plus (ii) all ad valorem taxes, insurance premiums and other costs of every kind incurred by the Lessor with respect to the ownership, operation or maintenance of the Property.

"Non-Consenting Participant" means any Participant which has denied, or is deemed to have denied, an Extension Request pursuant to Section 3.6 of the Participation Agreement.

"Objective Material Adverse Effect" shall mean (i) one or more actions, suits or proceedings (including the assessment of fines or penalties) at law or in equity brought by any Person or any Governmental Authority against the Lessee or the Property (or any portion thereof or interest therein) which (A) if adversely determined could reasonably be expected to result in monetary claims or damages (including the assessment of fines or penalties) in an amount in excess of twenty percent (20%) of the Lessee's Consolidated Net Worth, individually or in the aggregate (net of insurance coverage with respect to which the relevant insurer has acknowledged coverage), or (B) is seeking injunctive relief which could reasonably be expected to prevent the Lessee from performing a material obligation under the Operative Documents, (ii) any actual or threatened action, suit or proceeding at law or in equity brought by any Governmental Authority or other Person exercising the powers of eminent domain or condemnation in which such Governmental Authority or other Person is seeking to exercise (or is threatening to seek to exercise) such powers with respect to the Property (or any portion thereof or interest therein), (iii) any action, suit or proceeding at law or in equity brought by any Person or any Governmental Authority which, if adversely determined, could reasonably be expected (A) to invalidate any Operative Document or any material provision thereof, or (B) to prevent the Lessee from performing its obligations, or satisfying any conditions, under the Operative Documents (whether with respect to the individual event or action, suit or proceeding, or in the aggregate with respect to all such actions, suits and proceedings), (iv) any action, suit or proceeding at law or in equity brought by any Person or any Governmental Authority in which such Person or Governmental Authority is seeking to invalidate any Operative Document or any material provision thereof or is otherwise seeking any remedy, in each case, which would prevent the Lessee from performing its obligations or would prevent the Agent, the Lessor or the Participants from exercising its or their rights and remedies under the Operative Documents, or which would reduce the amounts payable thereunder by any amount, (v) any action, suit or proceeding at law or in equity brought by any Person or Governmental Authority, which could reasonably be expected to prevent the Lessor or the Agent or the Participants from enforcing the Liens created under the Lease or any Security Document; or (vi) any event which results in a decrease in the Lessee's Consolidated Net Worth as set forth on Lessee's most recent financial statements delivered pursuant to the Participation Agreement by an amount of twenty-five percent (25.0%) or more; provided, however, that for purposes of this entire definition, (x) Persons shall not include any of Agent, Lessor or the Participants, or any Affiliates thereof (other than the Tranche Y Participant) and (y) in determining whether a breach (or any Event of Default resulting therefrom) has occurred in respect of the specific provisions to which this definition is applied, the determination shall be made in a commercially reasonable manner.

"Original Executed Counterpart" is defined in Section 31.8 of the Lease.

"Operative Documents" means the following:

- (a) the Participation Agreement;
- (b) the Lease and each Lease Supplement;
- (c) the Cash Collateral Agreement;
- (d) the Property Purchase Agreement, the Assignment of Property Purchase Agreement and the Deeds;

- (e) the Assignment of Lease;
- (f) the Consent to Assignment; and
- (g) the Mortgages.

"Overdue Rate" means, with respect to the Advances, fees or any other payment due under the Operative Documents, the interest or yield rate then applicable to the Advances plus 2% per annum.

"Participant Balance" means for each Participant the sum of its Tranche A Participant Balance, its Tranche B Participant Balance and its Tranche C Participant Balance.

"Participant's Letter" is defined in Section 12.1(b) of the Participation Agreement.

"Participants" means the Lessor, ABN AMRO Bank N.V., and each Person executing the Participation Agreement or a Participant's Letter as a Participant and purchasing a Participation Interest in the transactions contemplated by the Participation Agreement and the other Operative Documents.

"Participation Agreement" means the Participation Agreement, dated as of the Closing Date, among the Lessee, the Lessor, the Participants and the Agent.

"Participation Interest" means, as to the Tranche Y Participant, each other Tranche A Participant (if any) and each Tranche B Participant, a participation interest or, as to each Tranche C Participant, an equity interest, in the Advances and the Lease and the right to receive that percentage of the following payments actually received by the Lessor from or on behalf of the Lessee as is set forth on Schedule I to the Participation Agreement under the column heading "Commitments", subject to the provisions of Sections 3.10 through 3.23 and Section 11 of the Participation Agreement: (i) Basic Rent, (ii) Supplemental Rent, (iii) Asset Termination Value, (iv) Purchase Option Price, (v) Net Sales Proceeds, (vi) Residual Value Guarantee Amount, (vii) any Shortfall Amount required to be paid pursuant to Section 13.2 of the Participation Agreement, and (viii) any other payments in respect of indemnities (to the extent such Participant is an Indemnitee) or the exercise of remedies under the Operative Documents, excluding, however, (x) any Excepted Payments and (y) as to a particular Participant, any payments on account of any Advances and interest or yield thereon for which the Lessor has not received payment from such Participant of such Participant's Commitment Percentage thereof.

"Payment Date" means (a) any Scheduled Payment Date and (b) any date on which interest is payable pursuant to Section 3.7(b) of the Participation Agreement in connection with any prepayment of the Advances.

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Code or Section 302 of ERISA.

"Permitted Exceptions" means (i) Liens of the type described in clause (b) of the definition of Permitted Liens set forth below, (ii) the respective rights and interests of the parties to the Operative Documents as provided in the Operative Documents, including any Lien securing obligations under the Operative Documents, (iii) statutory Liens of mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business for amounts not yet overdue, (iv) Liens and exceptions to title described on the title insurance policies in respect of the Property delivered, and accepted by the Agent and the Lessor, on the applicable Land Interest Acquisition Date pursuant to Section 6.2(h) of the Participation Agreement, and (v) all non-monetary encumbrances, exceptions, restrictions, easements, rights of way, servitudes, encroachments and irregularities in title, other than any such encumbrances, exceptions, restrictions, easements, rights of way, servitudes, encroachments and irregularities in title which, in the reasonable assessment of the Lessor, materially impair the value of the Property or the use of the Property for its intended purpose.

"Permitted Liens" means the following Liens, subject however, in the case of the Property, to the terms of the Lease:

- (a) Liens in favor of the Lessor, the Agent or any Participant under the Operative Documents;
- (b) Liens for taxes, assessments or governmental charges or claims not yet due or (i) other than in the case of the Property, with respect to which the Lessee or its Subsidiaries are taking each of the actions required pursuant to Section 10.1(a)(iii) of the Participation Agreement, and (ii) in the case of the Property, which are being properly contested in accordance with Section 13.1 of the Lease, but only for so long as the requirements of Section 13.1 of the Lease continue to be satisfied;
- (c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;
- (d) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), so long as no foreclosure, sale or similar proceedings have been commenced with respect thereto or on account thereof;
- (e) easements, rights-of-way, zoning restrictions, encroachments, imperfections and other minor defects or irregularities in title, which, individually or in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Lessee or any of its Subsidiaries;
- (f) Liens on property or assets of any corporation which becomes a Subsidiary of the Lessee or on any property or assets acquired by the Lessee or any of its Subsidiaries after the Closing Date, provided that (A) such Liens exist at the time the stock of said corporation or assets or property is or are acquired by the Lessee and (B) such Liens were not created in contemplation of such acquisition by the Lessee or Subsidiary;
- (g) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property;
- (h) licenses of patents, trademarks and other intellectual property rights granted by the Lessee or any of its Subsidiaries in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of the Lessee or such Subsidiary;

- (i) judgment liens not constituting an Event of Default pursuant to Section 17.1(h) of the Lease;
- (j) Liens described in Schedule 10.1(b)(ii) to the Participation Agreement and existing on the Closing Date;
- (k) Liens securing Indebtedness permitted pursuant to Section 10.1(b)(i)(H), 10.1(b)(i)(I) and 10.1(b)(i)(K) of the Participation Agreement; provided, in the case of Indebtedness permitted by Section 10.1(b)(i)(H) or Section 10.1(b)(i)(I) of the Participation Agreement, any Lien permitted hereby shall encumber only the asset acquired with the proceeds of such Indebtedness and such Liens do not secure any other Indebtedness; and
- (l) any extension or replacement of any of the foregoing in accordance with the terms thereof;

provided, (i) any Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Code or by ERISA, and (ii) any Lien relating to or imposed in connection with any Environmental Claim, in each case is expressly prohibited hereunder.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other entity.

"Phase I Facility" means the Phase I Land Interest and the Phase I Improvements.

"Phase I Improvements" means the corporate headquarters facility described in the applicable Plans and Specifications and located on the Phase I Land Interest, together with all other Improvements existing on or with respect to the Phase I Land Interest on the Land Interest Acquisition Date therefor.

"Phase I Land Interest" means fee title to the parcel of real property described on Schedule 1 of Lease Supplement delivered on the Land Interest Acquisition Date in respect of the Phase I Facility, and all Appurtenant Rights attached thereto.

"Phase II Facility" means the Phase II Land Interest and the Phase II Improvements.

"Phase II Improvements" means the corporate headquarters facility described in the applicable Plans and Specifications and located on the Phase II Land Interest, together with all other Improvements existing on or with respect to the Phase II Land Interest on the Land Interest Acquisition Date therefor.

"Phase II Land Interest" means fee title to the parcel of real property described on Schedule 1 of Lease Supplement delivered on the Land Interest Acquisition Date in respect of the Phase II Facility, and all Appurtenant Rights attached thereto.

"Plans and Specifications" means, with respect to the Phase I Improvements or the Phase II Improvements, as the case may be, the plans and specifications for such Improvements on the applicable Land Interest delivered by the Lessee to the Lessor pursuant to Section 6.2(k) of the Participation Agreement. "Project Costs" means "project costs" within the meaning of such term under GAAP in effect on the date of the Participation Agreement.

"Pre-Existing Environmental Conditions" means those Hazardous Conditions that are the subject of California Regional Water Quality Control Board, San Francisco Bay Region Order No. 00-124, adopted November 29, 2000.

"Property" means (i) the Land Interests and (ii) all of the Improvements, Equipment and Fixtures at any time located on or under any such Land Interest other than Equipment and Fixtures not financed by an Advance and not becoming property of the Lessor under Article XI of the Lease.

"Property Acquisition Cost" means, with respect to any portion of the Property, the amount funded by the Lessor under the Participation Agreement to pay the Existing Owner for the purchase price of such portion of the Property as set forth in the Acquisition Request therefor.

"Property Cost" means with respect to the Property, the aggregate amount of the Property Acquisition Costs plus any Transaction Expenses to the extent paid or reimbursed with the proceeds of an Advance, as set forth in the Acquisition Request and Funding Requests therefor.

"Property Purchase Agreement" means the Development and Purchase and Sale Agreement dated as of December 22, 1999, as amended as of January 5, 2001 between the Existing Owner, as seller, and Yahoo! Inc., as buyer, together in each case with all exhibits and schedules thereto, which agreement has been further assigned by Yahoo! Inc. to the Lessor pursuant to the Assignments of Property Purchase Agreement.

"Purchase Money Indebtedness" means Indebtedness that is secured by (i) a purchase money security interest pursuant to the UCC or (ii) another lien under Applicable Law, which Indebtedness secured by such other lien has the characteristics of the Indebtedness secured by the security interest described in clause (i) of this definition.

"Purchase Notice" is defined in Section 20.1 of the Lease.

"Purchase Option" is defined in Section 20.1 of the Lease.

"Purchase Option Price" is defined in Section 20.1 of the Lease.

"Quick Ratio" shall mean, with respect to the Lessee at any time, the ratio, determined on a consolidated basis in accordance with GAAP, of:

- (a) The sum (without duplication) of all unencumbered cash, Cash Equivalents, long-term debt securities and net accounts receivable of the Lessee and its Subsidiaries at such time;

to

- (b) the current liabilities of the Lessee and its Subsidiaries at such time (including current liabilities of the Lessee and its Subsidiaries in connection with synthetic leases and other off-balance sheet Funded Indebtedness).

(In calculating the Quick Ratio, Cash Equivalents shall be marked to market quarterly).

"Rate Contracts" shall mean swap agreements (as that term is defined in Section 101 of the Federal Bankruptcy Reform Act of 1978, as amended) and any other agreements or arrangements designed to provide protection against fluctuations in interest or currency exchange rates.

"Release" means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

"Remarketing Option" is defined in Section 22.1 of the Lease.

"Renewal Effective Date" is defined in Section 21.1(a) of the Lease.

"Renewal Option" is defined in Section 21.1(a) of the Lease.

"Renewal Request" is defined in Section 21.1(a) of the Lease.

"Renewal Response Date" is defined in Section 21.1(a) of the Lease.

"Renewal Term" means a renewal term immediately following the Initial Expiration Date or the Extended Expiration Date, as the case may be, in the event the Lessee has exercised a Renewal Option pursuant to Section 21.1 of the Lease and such Renewal Request has been granted in accordance with the terms of the Lease.

"Rent" means, collectively, the Basic Rent and the Supplemental Rent, in each case payable under the Lease.

"Replacement Participant" is defined in Section 3.6(c) of the Participation Agreement.

"Requesting Party" is defined in Section 26.1 of the Lease.

"Required Modification" is defined in Section 11.1(a) of the Lease.

"Required Participants" means, at any time, Participants (excluding the Tranche Y Participant) the Commitment Percentages of which aggregate at least 66-2/3% of the Total Commitments (excluding the Commitments held by the Tranche Y Participant).

"Requirement of Law" means all Federal, foreign, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Property, any of the Improvements or the demolition, construction, use or alteration thereof, whether now or hereafter enacted and in force, including any that require repairs, modifications or alterations in or to the Property or any portion thereof or in any way limit the use and enjoyment thereof (including all building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. § 1201 *et. seq.* and any other similar Federal, foreign, state or local laws or ordinances and the regulations promulgated thereunder) and any that may relate to environmental requirements (including all Environmental Laws), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments which are either of record or known to the Lessee affecting the Property or any portion thereof, the Appurtenant Rights and any easements, licenses or other agreements entered into pursuant to Section 12.2 of the Lease.

"Residual Value Guarantee Amount" means an amount equal to the Tranche A Proportionate Share of the Lease Balance.

"Response Actions" means remove, removal, remedy, and remedial action as those terms are defined in CERCLA, 42 U.S.C. § 9601.

"Responsible Officer" means, with respect to the Lessee, the chief executive officer, the president, any executive vice president, the chief financial officer, the treasurer, the vice president of finance and, with respect to legal matters, the general counsel..

"Responsible Officer's Certificate" means a certificate of the Lessee signed by any Responsible Officer of the Lessee, which certificate shall certify as true and correct the subject matter being certified to in such certificate.

"Restricted Subsidiary" means as of any date of determination each Subsidiary of Lessee, the assets of which as of such date (as determined in accordance with GAAP) comprise ten percent (10.0%) or more of the Lessee's Consolidated Assets as of such date.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation.

"Scheduled Payment Date" means (a) as to any Eurodollar Rate Advance having an Interest Period of one, two or three months, the last day of such Interest Period, (b) as to any Eurodollar Rate Advance having an Interest Period longer than three months, the last day of the first three month period in such Interest Period and the last day of such Interest Period, and (c) as to any Alternate Base Rate Advance, the last Business Day of each quarter.

"SEC" means the Securities and Exchange Commission and any successor thereto.

"Securities Act" means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Security Documents" means the collective reference to the Mortgages, the Assignment of Lease, the Cash Collateral Agreement and all other security documents hereafter delivered to the Agent granting a Lien on any asset or assets of any Person to secure the obligations and liabilities of the Lessor to the Agent and the Participants under the Participation Agreement or of the Lessee to the Lessor under the Lease.

"Shortfall Amount" means, as of the Expiration Date, the amount that the aggregate Asset Termination Value will exceed the aggregate of the Net Sales Proceeds and the Residual Value Guarantee Amount upon the completion of a sale of the Property pursuant to Article XXII of the Lease.

"Significant Casualty" means (i) a Casualty that results in an insurance settlement on the basis of a total loss, or a constructive or compromised total loss, or (ii) a Casualty that in the reasonable, good faith judgment of the Lessee (as evidenced by a Responsible Officer's Certificate delivered by the Lessee to the Lessor pursuant to Section 16.1 of the Lease) either (a) renders the Property unsuitable for continued use as a commercial property of the type of such property immediately prior to such Casualty or (b) is so substantial in nature that restoration of the Property to substantially its condition as existed immediately prior to such Casualty would be impracticable or impossible.

"Significant Condemnation" means (i) a Condemnation that involves a taking of the Lessor's entire title to a Land Interest, (ii) a Condemnation that results in loss of possession of the Property by the Lessee for a period in excess of one hundred eighty (180) consecutive days, or (iii) a Condemnation that in the reasonable, good faith judgment of the Lessee (as evidenced by a Responsible Officer's Certificate delivered by the Lessee to the Lessor pursuant to Section 16.1 of the Lease) either (a) renders the Property unsuitable for continued use as commercial property of the type of such property immediately prior to such

Condemnation or (b) is such that restoration of the Property to substantially its condition as existed immediately prior to such Condemnation would be impracticable or impossible.

"Significant Event" means, as the case may be, (i) a Significant Casualty, (ii) a Significant Condemnation, (iii) an event where the restoration of the Property subject to a Casualty or Condemnation shall not be completed prior to the earlier of (A) the 180th day prior to the Expiration Date or (B) twelve (12) months following the occurrence of such Casualty or Condemnation or (iv) the occurrence of an Environmental Violation where the costs to clean up or remediate the same are reasonably estimated by the Lessee to exceed 30% of Asset Termination Value.

"Sub-Participant" is defined in Section 12.2(a) of the Participation Agreement.

"Subsidiary" of any Person shall mean (a) any corporation of which more than 50% of the issued and outstanding Equity Securities having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries, (b) any partnership, joint venture, or other Person of which more than 50% of the equity interest having the power to vote, direct or control the management of such partnership, joint venture, business trust or other person is at the time owned and controlled by such Person, by such Person and one or more of the other Subsidiaries or by one or more of such Person's other Subsidiaries or (c) any other Person included in the financial statements of such Person on a consolidated basis. The term "Subsidiary" as used in the Operative Documents shall refer to a Subsidiary of the Lessee unless otherwise expressly required, but shall in all events exclude Yahoo! Japan in the event such entity would ever otherwise constitute a Subsidiary under the Operative Documents.

"Supplemental Rent" means all amounts, liabilities and obligations (other than Basic Rent) which the Lessee assumes or agrees to pay to the Lessor or any other Person under the Lease or any of the other Operative Documents, including, without limitation, and without duplication, payments of the Residual Value Guarantee Amount, any Shortfall Amount payable pursuant to Section 13.2 of the Participation Agreement and payments pursuant to Sections 16.2, 16.3, or 17.6 of the Lease and Articles XX and XXII of the Lease.

"Surety Instruments" shall mean all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

"Taxes" is defined in the definition of Impositions.

"Term" is defined in Section 2.3 of the Lease.

"Termination Date" is defined in Section 15.1(d), 16.2(a) and 17.2(e) of the Lease.

"Termination Notice" is defined in Section 16.1 of the Lease.

"Total Commitment" means the amount set forth as such in Schedule I to the Participation Agreement or, if such amount is reduced pursuant to Section 3.6(a) of the Participation Agreement, the amount to which so reduced.

"Tranche A Participants" means the Tranche Y Participant and any assignee thereof consented to in writing by the Agent.

"Tranche A Participation Interest" means, as to each Tranche A Participant as of any date of determination, such Participant's Tranche A Participation Interest Commitment Percentage then in effect, multiplied by the outstanding amount of all Advances as to which such Participant has funded its Tranche A Participation Interest Commitment Percentage under Section 3.4 of the Participation Agreement.

"Tranche A Participation Interest Commitment" is defined in Section 3.5 of the Participation Agreement.

"Tranche A Participation Interest Commitment Percentage" means (i) with respect to the Tranche Y Participant, 86.0% of the Aggregate Commitments.

"Tranche A Proportionate Share" means with respect to the Residual Value Guarantee Amount 86.0% of the Aggregate Commitments.

"Tranche B Participant Balance" means for each Tranche B Participant as of any date of determination an amount equal to the sum of such Participant's Tranche B Participation Interest as of such date in all outstanding Advances together with all accrued and unpaid interest thereon and all other amounts owed to such Tranche B Participant under the Operative Documents.

"Tranche B Participants" means those Participants maintaining a Tranche B Participation Interest Commitment and purchasing a Tranche B Participation Interest in the Advances.

"Tranche B Participation Interest" means, as to each Tranche B Participant as of any date of determination, such Tranche B Participant's Tranche B Participation Interest Commitment Percentage then in effect multiplied by the outstanding amount of all Advances as to which such Participant has funded its Tranche B Participation Interest Commitment Percentage under Section 3.4 of the Participation Agreement.

"Tranche B Participation Interest Commitment" is defined in Section 3.5 of the Participation Agreement.

"Tranche B Participation Interest Commitment Percentage" means (i) with respect to all Tranche B Participants in the aggregate, 10.45% of the Aggregate Commitments, and (ii) with respect to each Tranche B Participant, the percentage of the Aggregate Commitments set forth after such Participant's Tranche B Participation Interest Commitment in Schedule I to the Participation Agreement (as amended from time to time).

"Tranche C Equity Interest" means, as to each Tranche C Participant as of any date of determination, such Tranche C Participant's Tranche C Equity Interest Commitment Percentage then in effect multiplied by the outstanding amount of all Advances as to which such Participant has funded its Tranche C Equity Interest Commitment Percentage under Section 3.4 of the Participation Agreement.

"Tranche C Equity Interest Commitment" is defined in Section 3.5 of the Participation Agreement.

"Tranche C Equity Interest Commitment Percentage" means (i) with respect to all Tranche C Participants in the aggregate at any time, 3.55% (and in no event less than 3%) of the Aggregate Commitments, and (ii) with respect to each Tranche C Participant, the percentage of the Aggregate Commitments set forth after such Participant's Tranche C Equity Interest Commitment in Schedule I to the Participation Agreement (as amended from time to time).

"Tranche C Participant Balance" means for each Tranche C Participant as of any date of determination an amount equal to the sum of such Participant's Tranche C Equity Interest as of such date in all outstanding Advance, together with all accrued and unpaid yield thereon and all other amounts owed to such Tranche C Participant under the Operative Documents.

"Tranche C Participants" means those Participants maintaining a Tranche C Equity Interest Commitment and purchasing a Tranche C Equity Interest in the Advances.

"Tranche Y Participant" means Yahoo! Inc., in its capacity as a Participant maintaining a Tranche A Participation Interest Commitment and purchasing a Tranche A Participation Interest in the Advances.

"Transaction Expenses" means all costs and expenses incurred in connection with the preparation, execution and delivery of the Operative Documents and the transactions contemplated by the Operative Documents including without limitation:

(a) the reasonable fees, out-of-pocket expenses and disbursements of counsel for the Lessor and the Agent, in negotiating the terms of the Operative Documents and the other transaction documents, preparing for the closing under, and rendering opinions in connection with, such transactions (including each Property acquisition closing on a Land Interest Acquisition Date) and in rendering other services customary for counsel representing parties to transactions of the types involved in the transactions contemplated by the Operative Documents;

(b) the reasonable fees, out-of-pocket expenses and disbursements of counsel, and (without duplication) the reasonable allocated cost of internal legal services and all disbursements of internal counsel of each of the Lessor, the Participants (other than the Tranche Y Participant) and the Agent in connection with (1) any amendment, supplement, waiver or consent with respect to any Operative Documents, and (2) any enforcement of any rights or remedies against the Lessee in respect of the Operative Documents;

(c) any other reasonable fees, out-of-pocket expenses, disbursements or cost of the Lessor or the Agent incurred in connection with the transactions contemplated by the Operative Documents including any amounts paid to insurance consultants;

(d) any and all Taxes and fees incurred in recording, registering or filing any Operative Document or any other transaction document, any deed, declaration, mortgage, security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Documents;

(e) any title fees, premiums and escrow costs and other expenses relating to title insurance and the closings contemplated by the Operative Documents;

(f) all expenses relating to all Environmental Audits;

(g) the Arrangement Fee;

(h) any and all Appraisal fees.

"Trustee" is defined in Section 7.1(f) of the Lease.

"UCC Financing Statements" means collectively the Agent Financing Statements and the Lessor Financing Statements.

"Uniform Commercial Code" and "UCC" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

"Wholly-Owned Domestic Subsidiary" means a Domestic Subsidiary of the Lessee that is a Wholly-Owned Subsidiary.

"Wholly-Owned Foreign Subsidiary" means a Foreign Subsidiary of the Lessee that is a Wholly-Owned Subsidiary.

"Wholly-Owned Subsidiary" means a Subsidiary of the Lessee, at least 99% of the capital stock of which (other than directors' qualifying shares) is owned by the Lessee or another Wholly-Owned Subsidiary.

Prepared by and upon recording return to: W. Kirk Grimm, Esq., McGuireWoods LLP, 77 West Wacker Drive, Chicago, Illinois 60601 (312) 849-3697

MASTER LEASE

dated as of March 16, 2001

between

LEASE PLAN NORTH AMERICA, INC.,
as the Lessor

and

YAHOO! INC.,
as the Lessee

Sunnyvale, California Corporate Headquarters Facility

This Lease is superior to a deed of trust in favor of ABN AMRO Bank N.V., as Agent (the "Agent") under the Participation Agreement dated as of March 16, 2001, among the Lessee, the Lessor, the Participants and the Agent for the benefit of the Participants. This Lease has been executed in counterparts. To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no lien on this Lease may be created through the transfer of possession of any counterpart other than the original counterpart containing the receipt therefor executed by the Agent on the signature page hereof.

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THIS MASTER LEASE (as amended, supplemented or otherwise modified from time to time, this "Lease"), dated as of March 16, 2001, is by and between LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, having its principal office at 135 S. LaSalle Street Chicago, Illinois 60603, as the lessor (together with its permitted successors and assigns, the "Lessor") and YAHOO! INC., a Delaware corporation, having its principal office at 3420 Central Expressway, Santa Clara, California 95051, as the lessee (the "Lessee").

WITNESSETH:

A. WHEREAS, the Lessor will purchase the Phase I Facility on the Land Interest Acquisition Date therefor and will purchase the Phase II Facility on the Land Interest Acquisition Date therefor, and each of the Phase I Facility and the Phase II Facility will be leased to the Lessee subject to the terms of this Lease from and after the relevant Land Interest Acquisition Date; and

B. WHEREAS, on the applicable Lease Term Commencement Date, the Lessor desires to lease to the Lessee and the Lessee desires to lease from the Lessor, the relevant portion of the Property pursuant to this Lease.

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.

1.1 Definitions; Interpretation. Capitalized terms used but not otherwise defined in this Lease have the respective meanings specified in Appendix 1 to this Lease; and the rules of interpretation set forth in Appendix 1 to this Lease shall apply to this Lease.

ARTICLE II.

2.1 Acceptance and Lease of Property. Effective as of the Closing Date, the Lessor, subject to the satisfaction or waiver of the applicable conditions set forth in Section 6 of the Participation Agreement, hereby agrees to acquire the Phase I Facility on the initial Land Interest Acquisition Date pursuant to the terms of the Participation Agreement, and to lease to the Lessee hereunder for the Term (as defined in Section 2.3), the Lessor's interest in such Phase I Facility and, subject to satisfaction or waiver of the applicable conditions set forth in Section 6 of the Participation Agreement, effective as of the Land Interest Acquisition Date in respect of the Phase II Facility, the Phase II Facility, and the Lessee hereby agrees, expressly for the direct benefit of the Lessor, to lease commencing on the applicable Lease Commencement Date from the Lessor for the Term, the Lessor's interest in each such portion of the Property to be delivered on the applicable Land Interest Acquisition Date and any Improvements thereon pursuant to this Lease or the Participation Agreement.

2.2 Acceptance Procedure; Appointment as Agent. The Lessor hereby authorizes one or more employees of the Lessee, to be designated by the Lessee, as the authorized representative or representatives of the Lessor to accept delivery on behalf of the Lessor of the relevant portion of the Property identified on the applicable Acquisition Request. The Lessee hereby agrees that such acceptance of delivery by such authorized representative or representatives and the execution and delivery by the Lessee on each Land Interest Acquisition Date of a Lease Supplement in the form of Exhibit A hereto with respect to the applicable portion of the Property (appropriately completed) shall, without further act, constitute the irrevocable acceptance by the Lessee of the portion of the Property which is the subject thereof for all purposes of this Lease and the other Operative Documents on the terms set forth therein and herein. In addition, the Lessor hereby irrevocably designates and appoints the Lessee as its agent for the purpose of supervising and monitoring the performance of the Existing Owner in the completion, following each applicable Land Interest Acquisition Date, of all outstanding punch list items in respect of the relevant Improvements and all other obligations of the Existing Owner in respect of the Property following each Land Interest Acquisition Date. The Lessee hereby unconditionally agrees to act as said agent on behalf of the Lessor.

2.3 Lease Term. The term of this Lease (the "Term") shall begin (1) with respect to the Phase I Facility, on the Land Interest Acquisition Date applicable thereto; and (2) with respect to the Phase II Facility, on the Land Interest Acquisition Date applicable thereto and, in each case, shall end on the fifth anniversary of the Closing Date, unless the Term is renewed or earlier terminated in accordance with the provisions of this Lease.

2.4 Title. The Property is leased to the Lessee without any representation or warranty of title, condition of any of the Improvements or permitted uses, express or implied, by the Lessor and subject to the rights of parties in possession, the existing state of title (including, without limitation, the Permitted Exceptions) and all applicable Requirements of Law. The Lessee shall in no event have any recourse against the Lessor for any defect in or exception to title to the Property, other than for any such defect or exception constituting a Lessor Lien.

ARTICLE III.

3.1 Rent.

(a) During the Term, the Lessee shall pay Basic Rent on each Payment Date, on the date required under Section 22.1(i) in connection with the Lessee's exercise of the Remarketing Option and on any date on which this Lease shall terminate.

(b) Neither the Lessee's inability or failure to take possession of all or any portion of the Property when delivered by the Lessor, nor the Lessor's inability or failure to deliver all or any portion of the Property to the Lessee on or before the contemplated Lease Commencement Date therefor, whether or not attributable to any act or omission of the Lessee or any act or omission of the Lessor, or for any other reason whatsoever (including any act or omission of the Existing Owner), shall delay or otherwise affect the Lessee's obligation to pay Rent for the Property from and after commencement of the Term.

3.2 Payment of Basic Rent. Basic Rent shall be paid absolutely net to the Lessor, so that this Lease shall yield to the Lessor the full amount thereof, without setoff, deduction or reduction, whether or not the Lessee's quiet possession of the Property is disturbed.

3.3 Supplemental Rent. The Lessee shall pay to the Lessor or the Person entitled thereto any and all Supplemental Rent promptly as the same shall become due and payable, and if the Lessee fails to pay any Supplemental Rent, the Lessor shall have all rights, powers and remedies provided herein or by law or equity or otherwise in the case of nonpayment of Basic Rent. The Lessee shall pay to the Lessor, as Supplemental Rent, among other things, on demand, to the extent permitted by Applicable 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 the 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 the Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this Lease, in the event of any failure on the part of the Lessee to pay and discharge any Supplemental Rent as and when due, the Lessee shall also promptly pay and discharge any fine, penalty, interest or cost

which may be assessed or added under any agreement with a third party for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent.

3.4 Method of Payment. Each payment of Rent shall be made by the Lessee to the Lessor by 12:00 noon, Chicago time, at the place of payment designated by Agent in funds consisting of lawful currency of the United States of America which shall be immediately available on the scheduled date when such payment shall be due, unless such scheduled date shall not be a Business Day, in which case such payment shall be made on the next succeeding Business Day or as otherwise required by the definition of the term "Interest Period" set forth in Appendix 1 hereto. Payments initiated after 12:00 noon, Chicago time shall be deemed received on the next succeeding Business Day for purposes of the second sentence of Section 3.3 hereof, but shall be deemed received on the same day for purposes of Section 17.1 hereof.

ARTICLE IV.

4.1 Utility Charges. Subject to the Lessee's rights under the terms of Article XIII relating to permitted contests, the Lessee shall pay or cause to be paid all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents and utilities used in or on the Property during the Term. The Lessee shall be entitled to seek and receive any credit or refund with respect to any utility charge paid by the Lessee and the amount of any credit or refund received by the Lessor on account of any utility charges paid by the Lessee, net of the costs and expenses reasonably incurred by the Lessor in obtaining such credit or refund, shall be promptly paid over to the Lessee. All charges for 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 the Lessor and the Lessee, and each party shall pay or reimburse the other for each party's pro rata share thereof, except that if the Lessee retains possession of the Property after termination or expiration of this Lease, no such adjustment and proration shall be made.

ARTICLE V.

5.1 Quiet Enjoyment. Subject to the rights of the Lessor contained in Section 17.2 and the other terms of this Lease and so long as no Event of Default shall have occurred and be continuing, the Lessee shall peaceably and quietly have, hold and enjoy the Property for the Term, free of any claim or other action by the Lessor or anyone rightfully claiming by, through or under the Lessor (other than the Lessee) with respect to any matters arising from and after (i) the Land Interest Acquisition Date therefor, in the case of the Phase I Facility, and (ii) the Land Interest Acquisition Date therefor, in the case of the Phase II Facility.

ARTICLE VI.

6.1 Net Lease. This Lease shall constitute a net lease. It is the further express intent of the Lessor and the Lessee that the obligations of the Lessor and the Lessee hereunder shall be separate and independent covenants and agreements and that the Basic Rent and Supplemental Rent, and all other charges and sums payable by the Lessee hereunder, shall commence at the times provided herein and shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to an express provision in this Lease. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall the Lessee be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense (other than the defense of payment) with respect to the Rent, nor shall the obligations of the Lessee hereunder be affected (except as expressly herein permitted and by performance of the obligations in connection therewith) by reason of: (i) any defect in the condition, merchantability, design, construction, quality or fitness for use of the Property or any portion thereof, or the failure of the Property to comply with all Requirements of Law and Insurance Requirements, including any inability to occupy or use the Property or any portion thereof by reason of such non-compliance; (ii) any damage to, removal, abandonment, salvage, loss, contamination of or Release from, scrapping or destruction of, or any requisition or taking of the Property or any portion thereof; (iii) any restriction, prevention or curtailment of or interference with any use of the Property or any portion thereof; (iv) any defect in title to or rights to the Property or any portion thereof or any Lien on such title or rights or on the Property (other than Lessor Liens); (v) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by the Lessor, the Agent or any Participant (other than the breach by the Lessor of its covenant of quiet enjoyment set forth in Section 5.1); (vi) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to the Lessee, the Lessor, the Agent, any Participant or any other Person, or any action taken with respect to this Lease by any trustee or receiver of the Lessee, the Lessor, the Agent, any Participant or any other Person, or by any court, in any such proceeding; (vii) any claim that the Lessee has or might have against any Person, including without limitation the Lessor, the Existing Owner, any vendor, manufacturer, contractor of or for the Property, the Agent or any Participant; (viii) any failure on the part of the Lessor to perform or comply with any of the terms of this Lease, any other Operative Document or any other agreement (other than the breach by the Lessor of its covenant of quiet enjoyment set forth in Section 5.1); (ix) any invalidity or unenforceability or illegality or disaffirmance of this Lease, against or by the Lessee or any provision hereof or any of the other Operative Documents or any provision of any thereof; (x) the impossibility or illegality of performance by the Lessee, the Lessor or both; (xi) any action by any court, administrative agency or other Governmental Authority; (xii) any restriction, prevention or curtailment of or interference with the construction on or any use of the Property or any portion thereof; or (xiii) any other cause or circumstances whether similar or dissimilar to the foregoing and whether or not the Lessee shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of the Lessee hereunder shall be covenants and agreements that are separate and independent from any obligations of the Lessor hereunder or under any other Operative Document and the obligations of the Lessee shall continue unaffected unless such obligations shall have been modified or terminated in accordance with an express provision of this Lease.

6.2 No Termination or Abatement. The Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate (except as provided herein), rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution, or other proceeding affecting the Lessor, the Agent, any Participant or the Lessee or any action with respect to this Lease or any Operative Document which may be taken by any trustee, receiver or liquidator of the Lessor, the Agent, any Participant or the Lessee or by any court with respect to the Lessor, the Agent or any Participant. The Lessee hereby waives, to the extent permitted by Applicable Law, all right (i) to terminate or surrender this Lease (except as provided herein) or (ii) to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense (other than the defense of payment) with respect to any Rent. The Lessee shall remain obligated under this Lease in accordance with its terms and the Lessee hereby waives, to the extent permitted by Applicable Law, 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, the Lessee shall be bound by all of the terms and conditions contained in this Lease.

ARTICLE VII.

7.1 Nature of Transaction; Intent of the Parties.

(a) It is the intent of the parties hereto that: (i) this Lease constitutes an "operating lease" pursuant to Statement of Financial Accounting Standards No. 13, as amended and interpreted, for purposes of the Lessee's financial reporting, and (ii) for purposes of federal, state, and local income or franchise taxes (and for any other tax imposed on or measured by income) and documentary, intangibles and transfer taxes, the transaction contemplated hereby is a financing arrangement and preserves ownership in the Property in the Lessee. The parties shall take no action inconsistent with such intention. Nevertheless, the Lessee acknowledges and agrees that neither the Agent, the Lessor nor any Participant (other than the Tranche Y Participant) has made any representations or

warranties to the Lessee concerning the tax, accounting or legal characteristics of the Operative Documents and that the Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Documents as it deems appropriate.

(b) Anything to the contrary in the Operative Documents notwithstanding, the Lessor and the Lessee intend and agree that with respect to the nature of the transactions evidenced by this Lease in the context of the exercise of remedies under the Operative Documents, including, without limitation, in the case of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State or Commonwealth thereof or any foreign country affecting the Lessee, the Lessor, or any Participant or any enforcement or collection actions arising out of or relating to bankruptcy or insolvency laws, (i) the transactions evidenced by this Lease shall be deemed to be loans made by the Lessor and the Participants to the Lessee secured by the Property, (ii) the obligations of the Lessee under this Lease to pay Basic Rent, Supplemental Rent, Asset Termination Value or Residual Value Guarantee Amount in connection with a purchase of the Property pursuant to this Lease shall be treated as payments of interest on (with respect to Basic Rent), and principal of, respectively, loans from the Lessor and the Participants to the Lessee, and (iii) this Lease grants a security interest and mortgage or deed of trust lien, as the case may be, in the Property to the Lessor and the Lease has been assigned by the Lessor to the Agent for the benefit of the Participants to secure the Lessee's performance under and payment of all amounts under this Lease and the other Operative Documents.

(c) Specifically, without limiting the generality of subsection (b) of this Section 7.1, the Lessor and the Lessee further intend and agree that, for the purpose of securing the Lessee's obligations for the repayment of the above-described loans from the Lessor and the Participants to the Lessee (the aggregate commitment from the Participants as of the date hereof is Two Hundred Seventy Million Dollars (\$270,000,000) and the maturity date of such loans as of the date hereof is March 16, 2006.), (i) this Lease shall also be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code and a real property mortgage of the Property; (ii) the conveyance provided for in Article II shall be deemed to be a grant by the Lessee to the Lessor, assigned by the Lessor to the Agent for the benefit of the Participants, of a mortgage lien and security interest in all of the Lessee's right, title and interest in and to the Property, except to the extent all or a portion of the Property is released from this Lease in accordance with the Operative Documents, and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property, whether in the form of cash, investments, securities or other property (it being understood that the Lessee hereby mortgages and warrants and grants a security interest in the Property to Lessor to secure such loans); (iii) the possession by the Lessor or any of its agents of any of the Collateral (as defined below) which constitutes notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-305 of the Uniform Commercial Code; and (iv) notifications to Persons holding such property, and acknowledgments, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of the Lessee shall be deemed to have been given for the purpose of perfecting such security interest under Applicable Law; provided that the foregoing provisions of this subsection 7.1(c) shall not be deemed or construed so as to constitute the transactions evidenced under this Lease as loans other than for the purposes described in subsection 7.1(a)(ii) and/or under the circumstances described in subsection 7.1(b). The Lessor and the Lessee shall, to the extent consistent with this Lease, take such actions and execute, deliver, file and record such other documents, financing statements, mortgages and deeds of trust as may be necessary to ensure that, if this Lease were deemed to create a security interest in the Property in accordance with this Section, such security interest would be deemed to be a perfected security interest of first priority (subject to Permitted Exceptions) under Applicable Law and will be maintained as such throughout the Term.

(d) If the transactions evidenced by this Lease and the other Operative Documents can no longer be treated as an operating lease pursuant to GAAP for accounting purposes (other than by reason of the failure of the Lessor to maintain the minimum equity required by EITF Issues 96-21 and 97-1), all provisions in the Operative Documents limiting the Lessee's obligation to pay the Asset Termination Value (including the Remarketing Option) on the Expiration Date or otherwise shall no longer apply. If any such change in accounting treatment shall occur, the Lessee, the Lessor, the Agent and the Participants shall negotiate in good faith to enter into such amendments to the Operative Documents as may be reasonably necessary or desirable to reflect the foregoing.

(e) In the event that, after the date hereof, the UCC as enacted and in effect in any applicable jurisdiction shall be revised or amended or amendments thereto shall become effective, the Lessee, the Lessor, the Agent and the Participants shall negotiate in good faith to enter into such amendments to the Operative Documents as may be reasonably necessary or desirable to effect the intended purposes of this Lease and the other Operative Documents in light of such revisions or amendments.

(f) Specifically, without limiting the generality of subsection (b) of Section 7.1, in order to secure the Lessee's obligation to pay Basic Rent, Supplemental Rent, Asset Termination Value, the Residual Value Guarantee Amount, the Purchase Option Price and all other obligations owing by the Lessee under the Operative Documents (the "Obligations"), the Lessee hereby grants, remises, releases, aliens, conveys, transfers, mortgages, assigns and warrants to First American Title Insurance Company, as trustee (as "Trustee") for the benefit of Lessor WITH POWER OF SALE and right of entry and possession, all of the Lessee's right, title and interest in and to the following (collectively, the "Collateral"):

(i) all right, title and interest of the Lessee in and to the Property or any part thereof and the reversions, remainders, rents, issues and profits thereof;

(ii) all right, title and interest of the Lessee in and to all Fixtures and Improvements and all substitutes and replacements of, and all additions and improvements to, the Improvements and the Fixtures, subsequently acquired by the Lessee or constructed, assembled or placed by Lessee on any of the Land Interest, immediately upon such acquisition, release, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Property or offsite, and, in each such case, without any further mortgage, deed of trust, conveyance, assignment or other act by the Lessee;

(iii) all right, title and interest of the Lessee in, to and under all books and records relating to or used in connection with the operation of the Property or the Fixtures or any part thereof and the Equipment;

(iv) all right, title and interest of the Lessee in and to all insurance policies (including title insurance policies) required to be maintained by the Lessee pursuant to the Operative Documents, including the right to collect and receive such proceeds; and all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the owner of the Property for the taking by eminent domain, condemnation or otherwise, of all or any part of the Property or any easement or other right therein;

(v) all right, title and interest of the Lessee in and to (i) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any portion thereof, provided that any such consent, license, permit, certificate or approval that by its terms or by operation of law would become void, voidable, terminable or revocable or would result in a breach or default thereunder or under any applicable law if subjected to the lien granted pursuant to this clause (v) is expressly excepted and excluded from this clause (v) to the extent necessary to avoid such result, and (ii) all plans and specifications relating to the Property or any portion thereof, in each case to the extent assignable;

(vi) all Rent and all other rents, payments, purchase prices, receipts, revenues, issues and profits payable under this Lease or pursuant to any other lease with respect to the Property;

(vii) all proceeds, both cash and noncash, of the foregoing and any items acquired in substitution of, or replacement for, any of the foregoing; and

(viii) all right, title and interest of the Lessee in and to all of the Operative Documents, including, without limitation, each Lease Supplement, regardless of whether the interest of the Lessee therein is that of lessee, sublessee, sublessor or borrower.

(g) For the purposes of the security agreement and financing statement provided herein the following information applies:

- (i) Name and Address of Debtor: Yahoo! Inc.
3420 Central Expressway
Santa Clara, California 95051
- (ii) Name and Address of Secured Party: Lease Plan North America, Inc.
135 South LaSalle Street, Suite 740
Chicago, Illinois 60603
- (iii) Description of the types (or items) by property covered by this Financing Statement: Those items described as Improvements, Fixtures and other personal property in Section 7.1(f)
- (iv) Description of real estate to which collateral is attached or upon which it is located: See Exhibit B hereto

ARTICLE VIII.

8.1 Condition of the Property. THE LESSEE ACKNOWLEDGES AND AGREES THAT ALTHOUGH THE LESSOR WILL HOLD FEE TITLE TO THE PROPERTY, THE LESSEE IS SOLELY RESPONSIBLE FOR THE IMPROVEMENTS AND ANY ALTERATIONS OR MODIFICATIONS. THE LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT IT IS LEASING THE PROPERTY "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY THE LESSOR, THE AGENT OR ANY PARTICIPANT AND IN EACH CASE SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW, AND (D) VIOLATIONS OF REQUIREMENTS OF LAW WHICH MAY EXIST ON THE DATE HEREOF. NEITHER THE LESSOR, THE AGENT NOR ANY PARTICIPANT HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE (EXCEPT FOR THE LESSOR'S COVENANT OF QUIET ENJOYMENT SET FORTH IN SECTION 5.1), VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, OR FITNESS FOR USE OF THE PROPERTY (OR ANY PORTION THEREOF, INCLUDING ANY IMPROVEMENTS EXISTING THEREON), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OR ANY PORTION THEREOF, INCLUDING ANY IMPROVEMENTS EXISTING THEREON) AND NEITHER THE LESSOR, THE AGENT 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 REQUIREMENT OF LAW.

8.2 Possession and Use of the Property. The Property shall be used in a manner consistent with properties of a similar nature in the businesses in which the Lessee is engaged or as permitted in any sublease or assignment allowed by Section 25.1 hereof and in compliance in all respects with any covenants, conditions and restrictions of record and any ordinance or law affecting the use and occupancy of the Property; and provided that such other uses do not increase the liability, directly or indirectly, of the Lessor or adversely affect the value, utility or remaining useful life of the Property. At all times during the applicable Term, the Property shall not be abandoned by the Lessee or a permitted assignee or sublessee. The Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Property as contemplated by this Lease. The Lessee shall not commit or permit any waste of the Property or any portion thereof.

ARTICLE IX.

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

ARTICLE X.

10.1 Maintenance and Repair; Return.

(a) The Lessee, at its sole cost and expense, shall maintain the Property in good working order, mechanical condition and repair, subject to reasonable wear and tear, 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 in compliance with all applicable Requirements of Law and in compliance with all Insurance Requirements and on a basis consistent with the operation and maintenance of commercial properties comparable in type and location to the Property and in compliance with prudent industry practice.

(b) The Lessor shall under no circumstances 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. The Lessor shall not be required to maintain, repair or rebuild all or any part of the Property, and the Lessee waives any right to (i) require the Lessor to maintain, repair, or rebuild all or any part of the Property, or (ii) make repairs at the expense of the Lessor pursuant to any Requirement of Law, Insurance Requirement, contract, agreement, or covenant, condition or restriction in effect at any time during the Term.

(c) The Lessee shall, upon the expiration or earlier termination of this Lease (unless the Property is conveyed to the Lessee as provided herein), vacate and surrender the Property to the Lessor in its then-current, "AS IS" condition, subject to the Lessee's obligations under Sections 9.1, 10.1(a), 11.1, 12.1, 15.1(e), 15.2, 17.2(h), 22.1 and 23.1.

ARTICLE XI.

11.1 Modifications, Substitutions and Replacements.

(a) The 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 portion thereof and substitutions and replacements therefor (collectively, "Modifications"); provided that: (i) no Modification shall impair the value, utility or remaining useful life of the Property or any part thereof from that which existed immediately prior to such Modification; (ii) the Modification shall be done expeditiously and in a good and workmanlike manner; (iii) the Lessee shall comply with all Requirements of Law 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) subject to the terms of Article XIII relating to permitted contests, the Lessee shall pay all costs and expenses and shall discharge (or cause to be insured or bonded over) within sixty (60) days after the same shall be filed (or otherwise become effective) any Liens arising with respect to the Modification; and (v) such Modifications shall comply with Sections 8.2 and 10.1. All Modifications (other than those that both are not Modifications required to be made pursuant to a Requirement of Law or an Insurance Requirement ("Required Modification") and are readily removable without impairing the value, utility or remaining useful life of the Property) shall remain part of the realty and shall be subject to this Lease, and title thereto shall immediately vest in the Lessor. So long as no Event of Default has occurred and is continuing, the Lessee may place upon the Property any trade fixtures, machinery, equipment or other property belonging to the Lessee or third parties and may remove the same at any time during the Term, subject, however, to the terms of Section 10.1(a); provided that such trade fixtures, machinery, equipment or other property do not impair the value, utility or remaining useful life of the Property; provided, further, that the Lessee shall keep and maintain at the Property and shall not remove from the Property any Equipment financed or otherwise paid for (directly or indirectly) by the Lessor or any Participant pursuant to the Participation Agreement.

(b) The Lessee shall deliver to the Lessor and the Agent and each Participant a brief written narrative description of the work to be done in connection with any Modification to the Property the cost of which is anticipated to exceed \$1,000,000 in the aggregate.

ARTICLE XII.

12.1 Warranty of Title,

(a) The Lessee agrees that except as otherwise provided herein and subject to the terms of Article XIII relating to permitted contests, the Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, attachment, levy, title retention agreement or claim upon the Property (or the Lessor's interest therein) or any Modifications or any Lien, attachment, levy or claim with respect to the Rent, the Cash Collateral or with respect to any amounts held by the Agent or any other Person pursuant to the Participation Agreement or the other Operative Documents, other than, with respect to the Property only, Permitted Exceptions and Lessor Liens.

(b) Nothing contained in this Lease shall be construed as constituting the consent or request of the 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 THE LESSOR, ANY PARTICIPANT NOR THE AGENT IS OR SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE LESSEE, OR TO ANYONE HOLDING THE PROPERTY OR ANY PART THEREOF THROUGH OR UNDER THE LESSEE AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF THE LESSOR IN AND TO THE PROPERTY.

12.2 Grants and Releases of Easements and Other Agreements. Provided that no Event of Default shall have occurred and be continuing and subject to the provisions of Articles VIII, IX, X and XI, the Lessor hereby consents in each instance to the following actions by the Lessee, in the name and stead of the Lessor, but at the Lessee's sole cost and expense: (a) the granting of easements, licenses, rights-of-way and other rights and privileges in the nature of easements reasonably necessary or desirable for the use, repair, operation or maintenance of the Property as herein provided; (b) the release of easements, licenses, rights-of-way and other rights and privileges in the nature of easements which are for the benefit of the Property; (c) the execution of petitions to have the Property annexed to any municipal corporation or utility district; and (d) the execution of amendments to any covenants, restrictions, easements, licenses, rights-of-way, and other rights and privileges in the nature of easements affecting the Property; provided, however, in each case the Lessee shall have delivered to the Lessor a Responsible Officer's Certificate stating that (i) such grant, release, contract or agreement does not materially impair the value, utility and remaining useful life of the Property, (ii) such grant, release, contract or agreement is reasonably necessary for the use, operation, maintenance, alteration or improvement of the Property, (iii) the Lessee shall remain obligated under this Lease and under any instrument executed by the Lessee consenting to the assignment of the Lessor's interest in this Lease as security for indebtedness, in each such case in accordance with their terms, as though such grant, release, contract, agreement or transfer had not been effected, and (iv) the Lessee shall pay and perform any obligations of the Lessor under such grant, release, contract or agreement. Without limiting the effectiveness of the foregoing, provided that no Event of Default shall have occurred and be continuing, the Lessor shall, upon the request of the Lessee, and at the Lessee's sole cost and expense, execute and deliver, any instruments necessary or appropriate to confirm any such grant, agreement or release to any Person permitted under this Section 12.2.

ARTICLE XIII.

13.1 Permitted Contests Other Than in Respect of Indemnities. Except to the extent otherwise provided for in Section 13 of the Participation Agreement, the Lessee, on its own or on the Lessor's behalf but at the 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 Requirement of Law, or utility charges payable pursuant to Section 4.1 or any Lien, attachment, levy, encumbrance or encroachment, and the Lessor agrees not to pay, settle or otherwise compromise any such item, provided that (a) the commencement and continuation of such proceedings shall suspend the collection thereof from, and suspend the enforcement thereof against, the Property, the Cash Collateral, the Lessor, the Agent and the Participants or the Lessee shall have bonded or otherwise secured such amount in a manner satisfactory to the Lessor and the Agent; (b) there shall be no risk of the imposition of a Lien as a result of such contest (other than, as to the Property, Permitted Exceptions) on the Property or the Cash Collateral, and no part of the Property or the Cash Collateral, nor any Rent would be in any danger of being sold,

forfeited, lost or deferred as a result of such contest; (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability or material civil liability on the Lessor, the Agent or any Participant for failure to comply therewith (unless, in the case of civil liability, the Lessee shall have bonded or otherwise secured such amount in a manner satisfactory to the Lessor and the Agent); and (d) in the event that, at any time, there shall be a material risk of extending the application of such item beyond the end of the Term, then the Lessee shall deliver to the Lessor a Responsible Officer's Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1. The Lessor, at the Lessee's sole cost and expense, shall cooperate in good faith with the Lessee with respect to any permitted contests conducted by the Lessee pursuant to this Section 13.1 and shall, at the Lessee's sole cost and expense, execute and deliver to the Lessee such authorizations and other documents as may reasonably be required in connection with any such contest and, if reasonably requested by the Lessee, shall join as a party therein at the Lessee's sole cost and expense.

ARTICLE XIV.

14.1 General Liability and Workers' Compensation Insurance. The Lessee shall procure and carry commercial general liability insurance, including contractual liability, for claims for injuries or death sustained by persons or damage to property while on the Property and such other general liability coverages as are ordinarily procured by Persons who own or operate similar properties and consistent with prudent business practice, which policies shall include contractual liability endorsements covering the Lessee's indemnification obligations in Section 13.1 of the Participation Agreement. Such insurance shall be on terms and in amounts (which shall be acceptable to the Lessor and in the event of liability insurance shall be maintained at a level set forth on Schedule 14.2) that are no less favorable than insurance maintained by the Lessee and its Subsidiaries with respect to similar properties that it owns and that are in accordance with prudent business practice and may be provided under blanket policies maintained by or on behalf of the Lessee and its Subsidiaries. The policy shall be endorsed to name the Lessor, the Agent and each Participant 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 Lessor, the Agent or the Participants may have in force. The Lessee shall, in the operation of the Property (including in connection with any Modifications thereof) comply with the applicable workers' compensation laws and protect the Lessor, the Agent and the Participants against any liability under such laws.

14.2 Hazard and Other Insurance. The Lessee shall keep, or cause to be kept, the Property insured against loss or damage by fire, flood and other risks (excluding earthquake, which insurance may be obtained by the Lessee if it so elects but which shall not be required hereunder) in an amount not less than the greater of the amount set forth on Schedule 14.2 and the then current replacement costs of the buildings and improvements on the Property and on terms that are no less favorable than insurance covering other similar properties owned or leased by the Lessee and that are in accordance with prudent business practice. The Lessee may provide such coverage under blanket policies maintained by or on behalf of the Lessee; provided, that if the Lessee does not elect to terminate the Lease pursuant to Article XVI hereof following the occurrence of an event covered by any such blanket policy, the proceeds of any such blanket policy shall be applied first, to the exclusion of other facilities covered by such policy other than the Property, to the repair, rebuilding and restoration of any damage to the Property. Insurance coverage required under this Section 14.2 shall be subject to deductibles reasonably satisfactory to the Lessor. During the construction of any Modifications the Lessee shall also maintain builders' risk insurance. Each policy of insurance maintained by the Lessee pursuant to this Section 14.2 shall provide that all insurance proceeds in respect of any loss or occurrence shall be paid to and adjusted solely by (and such proceeds shall be paid to) the Lessee, except from and after the date on which the insurer receives written notice from the Lessor or the Agent that a Event of Default exists (and unless and until such insurer receives written notice from the Lessor or the Agent that all Events of Default have been cured), all losses shall be adjusted solely by, and all insurance proceeds shall be paid solely to, the Agent (or the Lessor if the Participation Interests have been fully paid) for application pursuant to Article XV. The costs and expenses of all insurance required under this Section 14.2 shall be at the sole cost and expense of the Lessee.

14.3 Coverage.

(a) The Lessee shall furnish the Lessor and the Agent with certificates of insurance and certified copies of the insurance policies on each Land Interest Acquisition Date showing the insurance then required under Sections 14.1 and 14.2 to be in effect and naming the Lessor, the Agent and each Participant as additional insureds and, with respect to the insurance required under Section 14.2 (and with respect to any earthquake insurance covering the Property which Lessee may elect to purchase and maintain), naming the Agent, for the benefit of the Participants, as loss payees, and showing the mortgagee endorsement required by Section 14.3(c). All such insurance shall be at the cost and expense of the Lessee. Such policies and certificates in respect thereof shall include a provision for thirty (30) days' advance written notice by the insurer to the Lessor and the Agent in the event of cancellation of or any significant reduction in the coverage provided by such insurance.

(b) The Lessee agrees that the insurance policy or policies required by Sections 14.1 and 14.2 shall include (i) an appropriate clause pursuant to which such policy shall provide that it will not be invalidated should the Lessee waive, in writing, prior to a loss, any or all rights of recovery against any party for losses covered by such policy, and that the insurance in favor of the Lessor, the Agent and the Participants, and their respective rights under and interests in said policies shall not be invalidated or reduced by any act or omission or negligence of the Lessee or any other Person having any interest in the Property, and (ii) a so-called "Waiver of Subrogation Clause". The Lessee hereby waives any and all such rights against the Lessor, the Agent and the Participants to the extent of payments made under such policies.

(c) All such insurance shall be written by reputable insurance companies that are financially sound and solvent and otherwise reasonably appropriate considering the amount and type of insurance being provided by such companies. Any insurance company selected by the Lessee which is rated in Best's Key Rating Guide or any successor thereto (or if there be none, an organization having a similar national reputation) shall have a general policyholder rating of "A-" and a financial rating of at least IX in Best's Key Rating Guide or be otherwise acceptable to the Lessor and the Agent. All insurance policies required by Section 14.2 shall include a standard form mortgagee endorsement in favor of the Agent.

(d) The Lessor shall not carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Article XIV except that the Lessor may carry separate liability insurance (at its sole cost) so long as (i) the Lessee's insurance is designated as primary and in no event excess or contributory to any insurance the Lessor may have in force which would apply to a loss covered under the Lessee's policy and (ii) each such insurance policy will not cause the Lessee's insurance required under this Article XIV to be subject to a coinsurance exception of any kind.

(e) The Lessee shall pay as they become due all premiums for the insurance required by Section 14.1 and, when required under Section 14.2, for the insurance required under Section 14.2, and shall renew or replace each policy prior to the expiration date thereof. At the time each of the Lessee's insurance policies is renewed (but in no event less frequently than once each year), the Lessee shall deliver to the Lessor and the Agent certificates of insurance with respect to the insurance policies required by this Article XIV to be maintained by the Lessee with respect to the Property.

(f) The Lessee hereby waives, releases and discharges the Lessor, the Agent and each Participant and their agents and employees from all claims whatsoever arising out of loss, claim, expense or damage to or destruction covered or coverable by insurance required under this Article XIV notwithstanding that such loss, claim, expense or damage may have been caused by the Lessor, the Agent or any Participant or any of their agents or employees, and the Lessee agrees to look to the insurance coverage only in the event of such loss.

15.1 Casualty and Condemnation.

(a) Subject to the provisions of Article XIV, this Article XV and (in the event the Lessee delivers, or is obligated to deliver, a Termination Notice) Article XVI, and prior to the occurrence and continuation of a Event of Default, the Lessee shall be entitled to receive (and the Lessor shall pay over to the Lessee, if received by the Lessor, and hereby irrevocably assigns to the Lessee all of the Lessor's right, title and interest in) any award, compensation or insurance proceeds to which the Lessee or the 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, subject to Article XIV, if a Event of Default shall have occurred and be continuing, such award, compensation or insurance proceeds shall be paid directly to the Agent or, if received by the Lessee, shall be held in trust for the Agent, and shall be paid over by the Lessee to the Agent (or, if the Participation Interests have been fully paid, to the Lessor) and held in accordance with the terms of this paragraph (a). If, contrary to such provision, any such award, compensation or insurance proceeds are paid to the Lessor or the Lessee rather than to the Agent, the Lessor and the Lessee, as the case may be, hereby agree to transfer any such payment to the Agent. All amounts held by the Lessor or the Agent under the preceding sentences on account of any award, compensation or insurance proceeds either paid directly to the Lessor or the Agent or turned over to the Lessor or the Agent shall either be (i) paid to the Lessee for the repair of damage caused by such Casualty or Condemnation in accordance with paragraph (e) of this Section 15.1, or (ii) applied to the purchase price of the Property on a Termination Date resulting from a Casualty or Condemnation in accordance with paragraph (d) of this Section 15.1 or paragraph (a) of Section 16.2, with any Excess Proceeds being payable to the Lessee.

(b) In any proceeding or action under the control of the Lessor or the Agent pursuant to the terms of Section 14.2, the Lessee may participate and shall pay all expenses of such proceeding and its participation. At the Lessee's reasonable request, and at the Lessee's sole cost and expense, the Lessor and the Agent shall participate in any such proceeding, action, negotiation, prosecution or adjustment under the control of the Lessee. The Lessor and the Lessee agree that this Lease shall control the rights of the Lessor and the Lessee in and to any such award, compensation or insurance payment.

(c) If the Lessor or the Lessee shall receive notice of a Casualty or of an actual, pending or threatened Condemnation of the Property or any interest therein, the Lessor or the 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 the Lessee or the Lessor of a Condemnation, the Lessee may deliver to the Lessor and the Agent a Termination Notice with respect to the Property pursuant to Section 16.1. If the Lessee does not deliver a Termination Notice within thirty (30) days after such occurrence, then this Lease shall (subject to the terms and conditions thereof) remain in full force and effect, and the Lessee shall, at the Lessee's sole cost and expense, promptly and diligently restore the Property pursuant to paragraph (e) of this Section 15.1 and otherwise in accordance with this Lease. If the Lessee delivers a Termination Notice within thirty (30) days after such occurrence, a Significant Event shall irrevocably be deemed to have occurred with respect to the Property, and, in such event, this Lease shall terminate and the Lessee shall purchase the Property on the next Payment Date (but in no event to exceed sixty (60) days after such occurrence) (a "Termination Date") pursuant to Article XVI hereof.

(e) If pursuant to this Section 15.1 this Lease shall continue in full force and effect following a Casualty or Condemnation, the Lessee shall, at its sole cost and expense (and, without limitation, if any award, compensation or insurance payment is not sufficient to restore the Property in accordance with this paragraph, the Lessee shall pay the shortfall), 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 applicable as-built Plans and Specifications for the Property (as modified to give effect to any subsequent Modifications, any Condemnation affecting the Property and in compliance with all applicable Requirements of Law and all Insurance Requirements) so as to restore the Property to at least the same condition, operation, function and value as existed immediately prior to such Casualty or Condemnation. In the event of such restoration, title to the Property shall remain with the Lessor; provided, that (i) title to any such substituted equipment shall vest in the Lessor and such equipment shall constitute Equipment thereafter for all purposes of this Lease, and (ii) the Lessor shall assign all of its right, title and interest to the Lessee in any such replaced equipment without representation or warranty of any kind other than that such equipment is free of Lessor Liens and Liens created pursuant to the Operative Documents. Upon completion of such restoration, the Lessee shall furnish the Lessor an architect's certificate of substantial completion and a Responsible Officer's Certificate confirming that such restoration has been completed pursuant to this Lease.

(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 the Lessee's obligations to pay Rent pursuant to Section 3.1 or to perform its obligations and pay any amounts due on the Expiration Date or pursuant to Articles XIX and XX.

(g) Any Excess Proceeds received by the Lessor or the Agent in respect of a Casualty or Condemnation shall be turned over to the Lessee.

15.2 Environmental Matters. Promptly upon the Lessee's actual knowledge of the presence of Hazardous Substances in any portion of the Property in concentrations and conditions that constitute or could reasonably be expected to constitute an Environmental Violation (excluding any such Environmental Violation that is a Pre-Existing Environmental Condition), the Lessee shall notify the Lessor in writing of such condition. In the event of such Environmental Violation, the Lessee shall, not later than thirty (30) days after the Lessee has actual knowledge of such Environmental Violation, either, if such Environmental Violation is a Significant Event, deliver to the Lessor and the Agent a Responsible Officer's Certificate and a Termination Notice with respect to the Property pursuant to Section 16.1, or, if such Environmental Violation is not a Significant Event, at the Lessee's sole cost and expense, promptly and diligently commence any Response Actions necessary to investigate, remove, clean up or remediate such Environmental Violation in accordance with the terms of Section 9.1. If the Lessee does not deliver a Termination Notice with respect to the Property pursuant to Section 16.1, the Lessee shall, upon completion of Response Actions by the Lessee, cause to be prepared by an environmental consultant reasonably acceptable to the Lessor a report describing the Environmental Violation (excluding any such Environmental Violation that is a Pre-Existing Environmental Condition) and the Response Actions taken by the Lessee (or its agents or contractors) for such Environmental Violation, and a statement by the consultant that such Environmental Violation (excluding any such Environmental Violation that is a Pre-Existing Environmental Condition) has been remedied in compliance in all material respects with applicable Environmental Law. Each such Environmental Violation shall be remedied prior to the Expiration Date. Nothing in this Article XV shall reduce or limit the Lessee's obligations under Sections 13.1, 13.2 or 13.3 of the Participation Agreement.

15.3 Notice of Environmental Matters. Promptly, but in any event within thirty (30) Business Days from the date the Lessee has actual knowledge thereof, the Lessee shall provide to the Lessor 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 (other than with respect to any Pre-Existing Environmental Condition). All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and the Lessee's proposed response thereto. In addition, the Lessee shall provide to the Lessor, within thirty (30) Business Days of receipt, copies of all material written communications with any Governmental Authority relating to any Environmental Law in connection with the Property. The Lessee shall also promptly provide such detailed reports of any such material environmental claims (other than with respect to any Pre-Existing Environmental Condition) as may reasonably be requested by the Lessor and the Agent.

ARTICLE XVI.

16.1 Termination by the Lessee upon Certain Events. If either: (i) the Lessee or the Lessor shall have received notice of a Condemnation, and the Lessee shall have delivered to the Lessor a Responsible Officer's Certificate that such Condemnation is a Significant Condemnation; or (ii) a Casualty occurs, and the Lessee shall have delivered to the Lessor a Responsible Officer's Certificate that such Casualty is a Significant Casualty; or (iii) an Environmental Violation occurs or is discovered and the Lessee shall have delivered to the Lessor a Responsible Officer's Certificate stating that, in the reasonable, good-faith judgment of the Lessee, the cost to remediate the same will cause the same to be a Significant Event, or (iv) if the Lessee shall not have delivered a Termination Notice with respect to such Environmental Violation described in clause (iii) but the requirements of Section 16.3 are met with respect to such Environmental Violation; then, (A) the Lessee shall, simultaneously with the delivery of the Responsible Officer's Certificate pursuant to the preceding clause (i), (ii) or (iii) deliver a written notice in the form described in Section 16.2(a) (a "Termination Notice"), or (B) if clause (iv) is applicable, the Lessor may deliver a Termination Notice pursuant to Section 16.3.

16.2 Procedures.

(a) A Termination Notice shall contain: (i) notice of termination of this Lease with respect to the Property or the affected portion thereof on a date that is no later than sixty (60) days after the occurrence of the applicable event described in clause (i), (ii) or (iii) of Section 16.1 (the "Termination Date"), such termination to be effective upon the Lessee's payment of the Asset Termination Value (or portion thereof representing the Property Cost of the affected portion of the Property); and (ii) a binding and irrevocable agreement of the Lessee to pay the Asset Termination Value and purchase the Property on the Termination Date.

(b) On the Termination Date, the Lessee shall pay to the Lessor the Asset Termination Value (or such portion thereof, as applicable), plus all other amounts owing in respect of Rent for the Property (including Supplemental Rent) theretofore accruing, and the Lessor shall convey the Lessor's interest in the Property or such portion thereof to the Lessee (or the Lessee's designee) all in accordance with Section 19.1 and, to the extent applicable, Section 19.2, as well as any Net Proceeds with respect to the Casualty or Condemnation giving rise to the termination of this Lease with respect to the Property theretofore received by the Lessor.

16.3 Purchase of Property. Upon receipt of any notice pursuant to Section 15.2 or 15.3, the Lessor or the Required Participants, at the Lessee's expense, shall have the right to select an independent environmental consultant acceptable to the Lessee, which acceptance shall not be unreasonably withheld or delayed, to determine the estimated cost of conducting any clean-up or remediation required as a result of the Environmental Violation disclosed in such notice. If such independent environmental consultant determines that the cost of any such clean-up or remediation would exceed thirty percent (30%) of the original Property Cost, the Lessor shall, at the direction of the Required Participants, by written notice require the Lessee to purchase, or arrange for an Affiliate of Lessee or other third party to purchase, the Property on the Termination Date by delivering a Termination Notice following the requirements of Section 16.2 hereof.

ARTICLE XVII.

17.1 < u>Events of Default. The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "Event of Default":

(a) the Lessee shall fail to make payment of (i) any Basic Rent (other than a payment of Basic Rent due on the Expiration Date or Termination Date) within five (5) Business Days after the same has become due and payable or (ii) Basic Rent, Purchase Option Price, Asset Termination Value, Residual Value Guarantee Amount or other amounts due on the Expiration Date or the Termination Date, including, without limitation, amounts due pursuant to Sections 16.2, 16.3, 20.2, 20.3 or 22.1, after the same has become due and payable;

(b) the Lessee shall fail to make payment of any Supplemental Rent (other than Supplemental Rent referred to in clause (a) of this Section) due and payable within five (5) Business Days after the same has become due and payable;

(c) the Lessee shall fail to maintain insurance as required by Article XIV of this Lease;

(d) the Lessee shall fail to observe or perform any term, covenant or condition of the Lessee under this Lease, the Participation Agreement or any other Operative Document to which it is a party (other than those described in Section 17.1(a), (b), (c), (n) or (o) hereof), or any representation or warranty set forth in this Lease or in any other Operative Document or in any document entered into in connection herewith or therewith or in any document, certificate or financial or other statement delivered in connection herewith or therewith shall be false or inaccurate in any material way, and, if such failure to perform or misrepresentation or breach of warranty is other than with respect to a covenant, agreement, representation or warranty contained in Section 10.1(b) and Section 10.2 of the Participation Agreement (with respect to which there shall be no cure period), such failure or misrepresentation or breach of warranty shall remain uncured for a period of thirty (30) days after the earlier of (x) the date upon which an executive officer of the Lessee has actual knowledge thereof and (y) the date upon which the Agent or the Lessor gives notice to the Lessee thereof;

(e) (i) failure to make any payment when due (whether by scheduled maturity, upon acceleration or otherwise) on account of any Indebtedness of the Lessee or any Subsidiary of the amount of such Indebtedness exceeds \$10,000,000 or more, or (ii) default shall otherwise occur under one or more indentures, agreements or other instruments under which any Indebtedness of the Lessee or any Subsidiary in an aggregate principal amount of \$10,000,000 or more may be issued or created and such default shall continue beyond any grace period provided with respect thereto by such indenture, agreement or other instrument, if the effect of such default is to cause, or to permit the holder or beneficiary of such Indebtedness or a trustee therefor to cause, such Indebtedness to become due (by acceleration, mandatory redemption or otherwise) prior to its stated maturity (and/or to be secured by cash collateral);

(f) (i) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Lessee or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against the Lessee or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Lessee or any of its Subsidiaries or over all or a substantial part of any such Person's property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of the Lessee or any of its Subsidiaries for all or a substantial part of any such Person's property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of the Lessee or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for ninety (90) days unless dismissed, bonded or discharged;

(g) the Lessee or any of its Subsidiaries shall (i) commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or the Lessee or any of its Subsidiaries shall make any assignment for the benefit of creditors; (ii) be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; (iii) be dissolved or liquidated in full or in part; (iv) become insolvent (as such term may be defined or interpreted under any applicable statute); or (v) the Board of Directors of the Lessee or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 17.1(f);

(h) one or more judgments, orders, decrees or arbitration awards requiring Lessee or any of its Subsidiaries to pay an aggregate amount of \$10,000,000 or more shall be rendered against Lessee or any of its Subsidiaries and the same shall not be satisfied, vacated or stayed within thirty (30) days after the date so rendered;

(i) any Operative Document or any material term thereof shall cease to be, or be asserted by the Lessee not to be, a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms;

(j) any ERISA Event which constitutes grounds for the termination of any Employee Benefit Plan by the PBGC or for the appointment of a trustee by the PBGC to administer any Employee Benefit Plan shall occur, or any Employee Benefit Plan shall be terminated within the meaning of Title IV of ERISA or a trustee shall be appointed by the PBGC to administer any Employee Benefit Plan;

(k) a Change of Control shall occur;

(l) the Lessee shall have abandoned or constructively abandoned all or any material portion of the Property for a period of 30 consecutive days which results in the Property not being properly maintained in accordance with the terms of this Lease;

(m) the Lessee shall have elected to or be required to purchase the Property pursuant to Sections 16.2 or 16.3 hereof and such purchase shall not have been consummated on the Termination Date pursuant to either such Section;

(n) in the event the Lessee is not purchasing the Property upon the Expiration Date or earlier termination of this Lease, failure to comply with the return conditions set forth in Sections 19.1(b), and 22.3 hereof; or

(o) any event(s) or condition(s) which have a Material Adverse Effect shall occur and be continuing or exist.

17.2 Lease Remedies. Upon the occurrence of any Event of Default and at any time thereafter, the Lessor may, so long as such Event of Default is continuing, do one or more of the following as the Lessor in its sole discretion shall determine, without limiting any other right or remedy the Lessor may have on account of such Event of Default (including, without limitation, the obligation of the Lessee to purchase the Property as set forth in Section 20.3):

(a) The Lessor may, by notice to the Lessee, terminate the Commitments and rescind or terminate this Lease as to all or any portion of the Property as of the date specified in such notice; however, (i) no reletting, reentry or taking of possession of the Property (or any portion thereof) by the Lessor will be construed as an election on the Lessor's part to terminate this Lease unless a written notice of such intention is given to the Lessee, (ii) notwithstanding any reletting, reentry or taking of possession, the Lessor may at any time thereafter elect to terminate this Lease for a continuing Event of Default, and (iii) no act or thing done by the Lessor or any of its agents, representatives or employees and no agreement accepting a surrender of the Property shall be valid unless the same be made in writing and executed by the Lessor;

(b) The Lessor may (i) demand that the Lessee, and the Lessee shall upon the written demand of the Lessor, return the Property promptly to the Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Articles VIII, IX and X hereof as if the Property were being returned at the end of the Term, and the Lessor shall not be liable for the reimbursement of the Lessee for any costs and expenses incurred by the Lessee in connection therewith and (ii) without prejudice to any other remedy which the Lessor may have for possession of the Property, and to the extent and in the manner permitted by Applicable Law, enter upon the Property and take immediate possession of (to the exclusion of the Lessee) the Property or any part thereof and expel or remove the Lessee and any other Person who may be occupying the Property, by summary proceedings or otherwise, all without liability to the Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise and, in addition to the Lessor's other damages, the Lessee shall be responsible for all costs and expenses incurred by the Lessor or the Participants in connection with any reletting, including, without limitation, brokers' fees and all costs of any alterations or repairs made by the Lessor;

(c) The Lessor may (i) sell all or any part of the Property at public or private sale, as the Lessor may determine, pursuant to such notices and procedures as may be required by Applicable Law, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or any proceeds with respect thereto (except to the extent required by clause (ii) below if the Lessor shall elect to exercise its rights thereunder) in which event the Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated or proportionately reduced, as the case may be; and (ii) if the Lessor shall so elect, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (the parties agreeing that the Lessor's actual damages would be difficult to predict, but the aforementioned liquidated damages represent a reasonable approximation of such amount) (in lieu of Basic Rent due for periods commencing on or after the Payment Date coinciding with such date of sale (or, if the sale date is not a Payment Date, the Payment Date next preceding the date of such sale)), an amount equal to (A) the excess, if any, of (1) the Asset Termination Value calculated as of such Payment Date (including all Rent due and unpaid to and including such Payment Date) less the aggregate amount of the Cash Collateral, if any, retained by the Lessor, the Agent or the Participants, over (2) the net proceeds of such sale, if any (that is, after deducting all costs and expenses incurred by the Lessor, the Agent and the Participants incident to such conveyance, including, without limitation, repossession costs, brokerage commissions, prorations, transfer taxes, fees and expenses for counsel, title insurance fees, survey costs, recording fees, and any repair or alteration costs); plus (B) interest at the Overdue Rate on the foregoing amount from such Payment Date until the date of payment; provided, that the Lessor shall deliver all proceeds from the sale of the Property and other amounts received hereunder, including any Cash Collateral, to the Agent for application as provided in Sections 3.14, 3.17 and 3.18 of the Participation Agreement.

(d) Reserved;

(e) Unless the Property has been sold in its entirety, the Lessor may, subject to Section 17.2(h), whether or not the Lessor shall have exercised or shall thereafter at any time exercise any of its rights under paragraph (b), (c) or (i) of this Section 17.2 with respect to the Property or portions thereof, demand, by written notice to the Lessee specifying a date (a "Termination Date") not earlier than 10 days after the date of such notice, that the Lessee purchase, on such Termination Date, the Property (or the remaining portion thereof) in accordance with the provisions of Article XIX and Section 20.3;

(f) The Lessor may exercise any other right or remedy that may be available to it under the Operative Documents or otherwise under Applicable Law, or proceed by appropriate court action (legal or equitable) to enforce the terms hereof or to recover damages for the breach hereof. Separate suits may be brought to collect any such damages for any period(s), and such suits shall not in any manner prejudice the Lessor's right to collect any such damages for any subsequent period(s), or the Lessor may defer any such suit until after the expiration of the Term, in which event such suit shall be deemed not to have accrued until the expiration of the Term;

(g) The Lessor may retain and apply against the Lessor's damages all sums which the Lessor would, absent such Event of Default, be required to pay to, or turn over to, the Lessee pursuant to the terms of this Lease;

(h) Notwithstanding anything contained in this Lease or any other Operative Document to the contrary, in the event that the Event of Default resulting in the exercise of remedies by the Lessor hereunder is solely a Limited Event of Default, then the following provisions of this Section 17.2(h) shall apply (but without limitation of the right and remedies set forth in Section 17.2(a)). The Lessee shall have the option or, if the Lessor terminates this Lease, the Lessee shall be required to elect to (i) remarket the Property for 180 days after the occurrence of such Limited Event of Default in accordance with Article XXII hereof (which period shall constitute the Marketing Period), with the purchase of the Property to be consummated no later than the date that is 180 days following the occurrence of such Limited Event of Default (which date shall constitute the Expiration Date if such option is exercised or required to be exercised), or (ii) exercise its Purchase Option under Section 20.1 hereof, with the purchase of the Property by the Lessee to be consummated, and the other payments required thereunder to be made to the Lessor, on the next Payment Date following the occurrence of such Limited Event of Default (which date shall constitute the Expiration Date if such option is exercised). Notwithstanding the provisions of clause (i) above, if the Lessor elects to terminate the Lease solely due to the occurrence of a Limited Event of Default and (x) the Lessor delivers to the Lessee an appraisal of the Property prepared by an appraiser selected by the Lessor and reasonably satisfactory to the Agent, the Required Participants and the Lessee setting forth the Fair Market Sales Value of the of the Property as of the date of the occurrence of such Limited Event of Default, and (y) the sum of the Fair Market Sales Value of the Property set forth in such report plus the maximum Residual Value Guarantee Amount then payable by the Lessee in connection with the exercise of the Remarketing Option is less than the Asset Termination Value as of such date, then and in such event the Lessee shall not be entitled to elect to exercise the Remarketing Option and the Lessor may in lieu thereof require the Lessee to elect to either (A) return the Property promptly to the Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Articles VIII, IX and X hereof as if the Property were being returned at the end of the Term, or (B) exercise its Purchase Option under Section 20.1 hereof, with the purchase of the Property by the Lessee to be consummated, and the other payments required thereunder to be made to the Lessor, on the next Payment Date following the occurrence of such Limited Event of Default (which date shall constitute the Expiration Date if such option is exercised). The Lessee shall notify the Lessor within ten (10) days after the occurrence of such Limited Event of Default which option it is exercising. If the Lessee elects to remarket the Property pursuant to clause (i) above or elects to return the Property pursuant to clause (A) above, the Lessee shall pay to the Lessor (i) the maximum Residual Value Guarantee Amount on the date the Lessee furnishes such notice of exercise of the Remarketing Option or such notice of its election to return the Property in accordance with clause (A) above (or, if the Lessor elects, on the date that is ten (10) days after the Lessor furnishes the Lessee notice that it will require the Lessee to remarket or purchase the Property or return or purchase the Property, as the case may be), (ii) Basic Rent when due for the duration of the 180 day Marketing Period, in the case of an exercise of the Remarketing Option, or all accrued and unpaid Basic Rent as of the date of the return of the Property in accordance with clause (A) above, in the case of a return of the Property, and (iii) in the case of an exercise of the Remarketing Option, the other payments required under Section 22.1 when required thereunder and no later than the Expiration Date.

(i) In addition to the other rights and remedies set forth herein, the 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 the Lessee and exercise all of the Lessor's rights and remedies under this Lease, including, without limitation, the right to recover Basic Rent and Supplemental Rent from the Lessee as it becomes due under this Lease, even though the Lessee shall have breached this Lease and abandoned the Property. Acts of maintenance or preservation, or efforts by the Lessor or on the Lessor's behalf to relet the Property, or the appointment of a receiver upon the initiative of the Lessor to protect the Lessor's interest under this Lease shall not constitute a termination of the 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 the Lessor may take without terminating the Lessee's right to possession. In furtherance of the rights hereby granted to the Lessor, and to the extent permitted by law, the Lessee hereby appoints the 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 a 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 the Lessee) and to alter the Property in such manner as the 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 and 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 the Lessor in its sole discretion may deem advisable, and with the right to make alterations and repairs to the Property; and the Lessee agrees to pay to the Lessor on demand all expenses incurred by the 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 expenses or commissions. The Lessor shall be the Lessee's agent and representative on the Property in respect of all matters arising under or in connection with any such sublease made for the Lessee by the Lessor. Under each such sublease, the 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. The Lessee further agrees to pay to the Lessor, following the date of such subletting, to and including the date provided in this Lease for the expiration of the Term, the sums of money which would have been payable by the Lessee as Basic Rent and Supplemental Rent, deducting only the net amount of rent, if any, which the Lessor shall actually receive (after deducting from the gross receipts the expenses, costs and payments of the Lessor which in accordance with the terms of this Lease would have been borne by the Lessee) in the meantime from and by any such subletting of the Property, and the Lessee hereby agrees to remain liable for all sums otherwise payable by the Lessee under this Lease, including, but not limited to, the expenses of the Lessor aforesaid, as well as for any deficiency aforesaid. The Lessor shall have the right from time to time to begin and maintain successive actions or other legal proceedings against the 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 the 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 the 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, the Lessor shall retain the right to and may at any time thereafter elect to terminate this Lease or the Lessee's right to possession of the Property for any previous breach which remains uncured or for any subsequent breach by giving the Lessee written notice thereof as herein provided, and in such event the Lessee shall forfeit any rights or interest under any such sublease and thereafter the obligations of any such sublessee shall run directly to the Lessor for its own account. Upon application by the Lessor, a receiver may be appointed to take possession of the Property, exercise all rights granted to the Lessor as agent and attorney-in-fact for the Lessee set forth in this Section 17.2(i) and apply any rentals collected from the Property as hereinabove provided. No taking of possession of the Property or other act by the Lessor as the agent and attorney-in-fact for the Lessee pursuant to the foregoing provisions, nor any subletting by the Lessor for the Lessee pursuant to the foregoing provisions, nor any such appointment of a receiver shall constitute or be construed as an election by the Lessor to terminate this Lease or the Lessee's right to possession of the Property unless a written notice of such intention be given to the Lessee.

(j) If this Lease is being terminated on the basis of the occurrence of an Event of Default (excluding a Limited Event of Default) arising out

of the failure to perform an obligation or covenant listed on Schedule 17.2(j), or the breach of a representation or warranty listed on Schedule 17.2(j), or the performance of which covenant or obligation or the truth of which representation or warranty, or otherwise the existence of such Event of Default (excluding a Limited Event of Default), is qualified by the words "material," or "Objective Material Adverse Effect" (but not "Material Adverse Effect") or "in all material respects" or another similar qualifier set forth on Schedule 17.2(j) hereto, Lessor shall, to the extent required by Schedule 17.2(j) hereto, apply commercially reasonable standards in determining that such Event of Default (excluding a Limited Event of Default) occurred.

(k) In the event a Limited Event of Default occurs prior to the Land Interest Acquisition Date in respect of the Phase II Facility and the Lessor is exercising its rights and remedies under Section 17.2(h) with respect thereto, Lessor shall, in addition to such rights and remedies, be entitled to take such steps as it may deem necessary or appropriate to, and may require the Lessee to use its best efforts to, identify a Person willing to accept an assignment of the Property Purchase Agreement in respect of the Phase II Facility and to consummate the purchase of the Phase II Facility. In the event such a Person is identified, the Lessee shall (i) cooperate with the Lessor and such Person as necessary or as requested in order to transfer to such Person the rights and benefits of the Lessee and/or the Lessor under the Property Purchase Agreement and the Lockheed Indemnification Agreements in respect of the Phase II Facility, and (ii) pay for any modifications requested by such Person to the relevant Plans and Specifications and for any fees, costs or expenses required to be paid or reimbursed to such Person in connection with such Person's agreement to so acquire the Phase II Facility provided the Lessee's liability with respect thereto shall not exceed 89.9% of the purchase price in respect of the Phase II Facility payable pursuant to the Property Purchase Agreement.

17.3 Waiver of Certain Rights. If this Lease shall be terminated pursuant to Section 17.2, the Lessee waives, to the fullest extent permitted by law, (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or repossession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt or limiting the Lessor with respect to the election of remedies; and (d) any other rights which might otherwise limit or modify any of the Lessor's rights or remedies under this Article XVII.

17.4 Loan Remedies. If the transaction evidenced by this Agreement and the other Operative Documents is treated as a loan, upon the occurrence or existence of any Event of Default and at any time thereafter unless such Event of Default is waived, the Lessor and the Trustee may with the consent of the Required Participants, or shall, upon instructions from the Required Participants, exercise any one or more of the following rights and remedies in addition to those rights and remedies set forth in Section 17.2:

(a) **Acceleration of Obligations.** The Lessor may, by written notice to the Lessee, terminate this Lease and declare all unpaid Obligations due and payable. On such termination date (which shall then be the Expiration Date), the Lessee shall pay the Asset Termination Value (subject to Section 17.2(h)), all unpaid Basic Rent accrued through such date, all Supplemental Rent due and payable on or prior to such date and all other amounts payable by the Lessee on the Expiration Date pursuant to this Lease and the other Operative Documents.

(b) **Uniform Commercial Code Remedies.** The Lessor may exercise any or all of the remedies granted to a secured party under the California Uniform Commercial Code.

(c) **Judicial Foreclosure.** The Lessor may bring an action in any court of competent jurisdiction to foreclose the security interest in the Property granted to the Lessor by this Lease or any of the other Operative Documents; provided that if the Event of Default resulting in an exercise of such remedy is solely a Limited Event of Default, the Lessor's right to recover any deficiency amount from the Lessee following any such foreclosure shall be limited as set forth in Section 17.2(h). Further, Lessor and/or the Trustee may bring an action or actions in a court of competent jurisdiction to foreclose this instrument as a mortgage and to obtain specific enforcement of the covenants of the Lessee hereunder, and the Lessee agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought hereunder the Lessee waives the defense of laches and any applicable statute of limitations.

(d) **Power of Sale.** The Lessor may cause some or all of the Property including any Collateral constituting personal property, including the Cash Collateral ("Personal Property Collateral"), to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

(i) **Sales of Personal Property.** The Lessor may dispose of any Personal Property Collateral separately from the sale of the Collateral constituting real property ("Real Property Collateral"), in any manner permitted by Division 9 of the California Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable Governmental Rule. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Obligation for purposes of Section 2924c of the California Civil Code. In connection with any such sale or other disposition, the Lessee agrees that the following procedures constitute a commercially reasonable sale:

(A) The Lessor shall mail written notice of the sale to the Lessee not later than thirty (30) days prior to such sale.

(B) Once per week during the three (3) weeks immediately preceding such sale, the Lessor will publish notice of the sale in a local daily newspaper of general circulation.

(C) Upon receipt of any written request, the Lessor will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours.

(D) Notwithstanding, the Lessor shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale.

(E) If the Lessor so requests, the Lessee shall assemble all of the Personal Property Collateral and make it available to the Lessor at the site of the Land Interest. Regardless of any provision of this Agreement or any other Operative Document, the Lessor shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any Obligation, unless the Lessor has given express written notice of its election of that remedy in accordance with California Uniform Commercial Code Section 9505.

The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(ii) **Lessor's Sales of Real Property or Mixed Collateral.** The Lessor may choose to dispose of some or all of the Property which consists solely of Real Property Collateral in any manner then permitted by Applicable Law, including without limitation a nonjudicial trustee's sale pursuant to California Civil Code §§2924 et seq. In its discretion, the Lessor may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both Real Property Collateral and Personal Property Collateral, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Section 9501(4) of the California Uniform Commercial Code. The Lessee agrees that such a sale of Personal Property Collateral together with Real Property Collateral constitutes a commercially reasonable sale

of the Personal Property Collateral. (For purposes of this Power of Sale, either a sale of Real Property Collateral alone, or a sale of both Real Property Collateral and Personal Property Collateral together in accordance with California Uniform Commercial Code Section 9501(4), will sometimes be referred to as a "Lessor's Sale").

(A) Before any Lessor's Sale, the Lessor shall give such notice of default and election to sell as may then be required by Applicable Law.

(B) When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, the Lessor shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale.

(C) Neither the Lessor nor the Agent shall have any obligation to make demand on the Lessee before any Lessor's Sale.

(D) From time to time in accordance with then Applicable Law, the Lessor may postpone any Lessor's Sale by public announcement at the time and place noticed for that sale.

(E) At any Lessor's Sale, the Lessor shall sell to the highest bidder at public auction for cash in lawful money of the United States.

(F) The Lessor shall execute and deliver to the purchaser(s) a deed or deeds conveying the Property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Lessor's Sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all Persons as to the facts recited in it.

(e) Foreclosure Sales.

(i) Single or Multiple. If the Property consists of more than one lot, parcel or item of property, Lessor may:

(A) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(B) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted in Section 17.4(d), or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner the Lessor may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale," any two or more, "Foreclosure Sales").

If the Lessor chooses to have more than one Foreclosure Sale, the Lessor at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the security interests granted to the Lessor in the Property by this Lease or any part of the Property which has not been sold, until all of the Obligations have been paid in full.

(ii) Credit Bids. At any Foreclosure Sale, any Person, including the Lessor or any Participant, may bid for and acquire the Property or any part of it to the extent permitted by Applicable Law. Instead of paying cash for the Property, the Lessor may settle for the purchase price by crediting the sales price of the Property against the Obligations in any order and proportions as the Lessor in its sole discretion may choose.

(f) Additional Rights and Remedies.

(i) In addition to and without limitation of the rights and remedies otherwise provided in this Section 17.4, Lessor or its employees, acting by themselves or through a court-appointed receiver, may enter upon, possess, manage, operate, dispose of and contract to dispose of the Property or any part thereof; negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures; contract for goods and services, hire agents, employees and counsel, make repairs, alterations and improvements to the Property necessary, in Lessor's judgment, to protect or enhance the security hereof; to incur the risks and obligations ordinarily incurred by owners of property (without any personal obligation on the part of the receiver); and/or to take any and all other actions which may be necessary or desirable to comply with Lessee's obligations hereunder and under the Operative Documents. All sums realized by the Lessor under this Section 17.4(f)(i), less all costs and expenses incurred by it under this Section 17.4(f)(i), including attorneys' fees, and less such sums as the Lessor deems appropriate as a reserve to meet future expenses under this Section 17.4(f)(i), shall be applied to any Obligations secured hereby in such order as the Lessor shall determine. Neither application of said sums to said indebtedness nor any other action taken by the Lessor under this Section 17.4(f)(i) shall cure or waive any Event of Default or notice of default hereunder or nullify the effect of any such notice of default. The Lessor, or any employee or agent of the Lessor, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to (i) the adequacy of the security for the indebtedness secured hereunder, (ii) the existence of a declaration that the indebtedness secured hereby has been declared immediately due and payable, or (iii) the filing of a notice of default;

(ii) Lessor shall have the power and authority to execute a written notice of such Event of Default and, at its election, cause the Property to be sold to satisfy the Obligations secured hereby. The Lessor shall give and record such notice as the law then requires as a condition precedent to a nonjudicial foreclosure sale. When the minimum period of time required by law after such notice has elapsed, the Lessor, without notice to or demand upon Lessee except as otherwise required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale and in such order as it or the Lessor may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale (the Obligations hereby secured being the equivalent of cash for purposes of said sale). If the Property consists of several lots, parcels, or items of property, the Lessor may: (i) designate the order in which such lots, parcels, or items of property shall be offered for sale or sold, or (ii) elect to sell such lots, parcels or items through a single sale, through two or more successive sales, or in any other manner the Lessor deems in its best interest. The Lessee shall have no right to direct the order in which the Property is sold. The Lessor may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at such time fixed by the preceding postponement. The Lessor shall deliver to the purchaser at such sale a deed or other appropriate transfer instrument conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The

recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including the Lessor or the Lessee may purchase at such sale.

In connection with any sale or sales hereunder, the Lessor may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the real property covered hereby or any improvements thereon without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of real property. Any sale of any personal property or fixtures hereunder shall be conducted in any manner permitted by the California Uniform Commercial Code.

After deducting all costs, fees and expenses of the Lessor and of this trust, including all costs of evidence of title and attorneys' fees in connection with sale, the 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;

(iii) Lessor shall have the power and authority to resort to and realize upon the Property and any other security now or hereafter held by the Lessor in such order and manner as the Lessor and the Trustee may, in their sole discretion, determine; and resort to any or all such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both.

17.5 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, including, without limitation, any mortgage foreclosure remedies.

17.6 The Lessee's Right to Cure. Notwithstanding any provision contained in the Lease or any other Operative Document, if a Event of Default has occurred and is continuing, the Lessee shall have the right to cure such Event of Default by (a) exercising its Purchase Option at any time prior to the earlier of (i) the termination of the Lessee's possessory interest in the Property, (ii) the thirty day period following the occurrence of a Lease Event of Default and (iii) the entering into by the Lessor of a binding contract to sell the Property, and (b) purchasing the Property in accordance with Section 20.1 at any time prior to such time as a foreclosure upon or sale of the Property has been completed.

ARTICLE XVIII.

18.1 The Lessor's Right to Cure the Lessee's Defaults. The Lessor, without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) remedy any Default or Event of Default (other than a Limited Default or a Limited Event of Default) for the account and at the sole cost and expense of the Lessee, including the failure by the Lessee to maintain the insurance required by Article XIV (subject to the limitations set forth in Section 24.1), and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of the 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 the Lessee. All out-of-pocket costs and expenses so incurred (including fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by the Lessor, shall be paid by the Lessee to the Lessor on demand (subject to the limitations set forth in Section 24.1), as Supplemental Rent.

ARTICLE XIX.

19.1 Provisions Relating to the Lessee's Termination of this Lease or Exercise of Purchase Option or Obligation and Conveyance Upon Remarketing and Conveyance Upon Certain Other Events.

(a) In connection with any termination of this Lease pursuant to the terms of Section 16.2 or 16.3 (if the Lessee is obligated to purchase the Property), or in connection with the Lessee's exercise of its Purchase Option or Expiration Date Purchase Obligation, upon the date on which this Lease is to terminate or upon the Expiration Date, and upon tender by the Lessee of the amounts set forth in Sections 16.2(b), 20.1, 20.2 or 20.3, as applicable, the Lessor shall execute and deliver to the Lessee (or to the Lessee's designee) at the Lessee's cost and expense an assignment or transfer without recourse of the Lessor's right, title and interest in the Property (which shall include a release, quitclaim and assignment of all of the Lessor's right, title and interest in and to any Net Proceeds with respect to the Property or such portion thereof not previously received by the Lessor), subject to Permitted Exceptions (other than Lessor Liens and, so long as all amounts required to be paid upon such termination or exercise have been paid and discharged in full, free of all Liens created by the Operative Documents) and any encumbrance caused by the fault, neglect or intention of the Lessee, in recordable form and otherwise in conformity with local custom and free and clear of any Lessor Liens. The Improvements and the Equipment shall be conveyed to the Lessee "AS IS" and in their then present condition of title and physical condition free of any Lessor Liens and, so long as all amounts required to be paid upon such termination or exercise have been paid and discharged in full, free of all Liens created by the Operative Documents.

(b) If the Lessee properly exercises the Remarketing Option or is required to remarket the Property or return the Property to the Lessor pursuant to Section 17.2(h), then the Lessee shall, on the Expiration Date, transfer possession of the Property (or remaining portion thereof) to the Lessor or the independent purchaser thereof, as the case may be, by surrendering the same into the possession of the Lessor or such purchaser, as the case may be, free and clear of all Liens other than Lessor Liens, in good condition (as modified by Modifications permitted by this Lease), ordinary wear and tear excepted, in compliance with Applicable Law, and in "broom-swept clean" condition. The Lessee shall cooperate reasonably with the Lessor and the independent purchaser of the Property (or remaining portion thereof) in order to facilitate the purchase by such purchaser of the Property (or remaining portion thereof) which cooperation shall include the following, all of which the Lessee shall do on or before the Expiration Date: providing all books and records regarding the maintenance and ownership of the Property (or remaining portion thereof) and all know-how, data and technical information relating thereto, providing a current copy of all of the "as built" Plans and Specifications for the Property, granting or assigning (to the extent assignable) all existing licenses necessary for the operation and maintenance of the Property and cooperating reasonably in seeking and obtaining all necessary Governmental Action and complying with the provisions of Section 22.3 hereof. The obligations of the Lessee under this paragraph shall survive the expiration or termination of this Lease. The reasonable, customary and documented costs and expenses of the Lessee in complying with this Section 19.1(b) shall at the request of the Lessee be paid or reimbursed from the gross proceeds of a sale of the Property.

ARTICLE XX.

20.1 Purchase Option. Without limitation of the Lessee's purchase obligation pursuant to Sections 20.2 or 20.3, unless the Lessee shall have given notice of its intention to exercise the Remarketing Option and the Lessor shall have entered into a binding contract to sell the Property, the Lessee shall have the option (exercisable by giving the Lessor irrevocable written notice (each, a "Purchase Notice") of the Lessee's election to exercise such option) to purchase, or to designate a third party to purchase, all of the Property (the "Purchase Option"), on the date specified in such Purchase Notice, which date shall be a Payment Date. The purchase price in respect of the Property (the "Purchase Option Price") shall be equal to the Asset Termination Value plus in each case all other amounts owing in respect of Rent (including Supplemental Rent) theretofore accruing (offsetting against such amount the aggregate amount of the Cash Collateral, if any). The

Lessee shall deliver the Purchase Notice to the Lessor not less than thirty (30) days prior to the purchase date. If the Lessee exercises its Purchase Option pursuant to this Section 20.1 (the "Purchase Option"), the Lessor shall transfer to the Lessee all of the Lessor's right, title and interest in and to all of the Property, as of the date specified in the Purchase Notice upon receipt of the Purchase Option Price and (without duplication) all Rent and all other amounts then due and payable under this Lease and any other Operative Document, in accordance with Section 19.1(a).

20.2 Expiration Date Purchase Obligation. Unless (a) the Lessee shall have properly exercised the Purchase Option pursuant to Section 20.1 and purchased the Property pursuant thereto, (b) the Lessee shall have properly exercised the Remarketing Option and shall have fulfilled all of the conditions of clauses (a) through (j) and (m) of Section 22.1 hereof, or (c) the Lessee shall have properly exercised the Renewal Option pursuant to Section 21.1 and the terms and conditions of a Renewal Term shall have been agreed upon pursuant to such Section, then, subject to the terms, conditions and provisions set forth in this Section 20.2, and in accordance with the terms of Section 19.1(a), the Lessee shall purchase from the Lessor, and the Lessor shall assign and convey to the Lessee without recourse, on the Expiration Date of the Term (as such Term may be renewed pursuant to Section 21.1) all of the Lessor's right, title and interest in the Property for an amount equal to the Asset Termination Value (the "Expiration Date Purchase Obligation"), offsetting against such amount the aggregate amount of the Cash Collateral, if any. The Lessee may designate, in a notice given to the Lessor not less than ten (10) Business Days prior to the closing of such purchase (time being of the essence), the transferee or transferees to whom the conveyance shall be made (if other than to the Lessee), in which case such conveyance shall (subject to the terms and conditions set forth herein) be made to such designee; provided, however, that such designation of a transferee or transferees shall not cause the Lessee to be released, fully or partially, from any of its obligations under this Lease, including, without limitation, the obligation to pay the Lessor an amount equal to the Asset Termination Value that was not fully and finally paid by such designee on such Expiration Date.

20.3 Acceleration of Purchase Obligation.

(a) The Lessee shall be obligated to purchase for an amount equal to the Asset Termination Value the Lessor's interest in the Property (notwithstanding any prior election to exercise its Purchase Option pursuant to Section 20.1) (i) automatically and without notice upon the occurrence and during the continuance of any Event of Default specified in clause (f) or (g) of Section 17.1, and (ii) as provided for at Section 17.2(e) immediately upon written demand of the Lessor upon the occurrence of any other Event of Default (except as provided in Section 17.2(h)).

(b) The Lessee shall be obligated to purchase for an amount equal to the Asset Termination Value (plus all other amounts (without duplication) owing in respect of Rent (including Supplemental Rent) theretofore accruing) (offsetting against such amount the aggregate amount of the Cash Collateral, if any) immediately upon written demand of the Lessor the Lessor's interest in the Property at any time during the Term when the Lessor ceases to have title as contemplated by Section 12.1.

ARTICLE XXI.

21.1 Renewal.

(a) Subject to the conditions set forth herein, the Lessee shall have the option (the "Renewal Option") by written request (the "Renewal Request") to the Lessor and the Agent (which request the Agent shall promptly forward to each Participant) and each Participant given not later than 180 days prior to the Expiration Date then in effect, to renew the Term for an additional period as specified in such Renewal Request, commencing on the date following the Expiration Date then in effect. No later than the date (the "Renewal Response Date") which is ninety (90) days after such request has been delivered to each of the Lessor and the Agent, the Lessor will notify the Lessee in writing (with a copy to Agent) whether or not it consents to such Renewal Request (which consent may be granted or denied in its sole discretion and may be conditioned on receipt of such financial information or other documentation as may reasonably be specified by the Lessor including without limitation a satisfactory appraisal of the Property), provided that if the Lessor shall fail to notify the Lessee on or prior to the Renewal Response Date, it shall be deemed to have denied such Renewal Request. If the Lessor shall have consented to the Renewal Request, the Renewal Term contemplated by such request shall become effective as of the Expiration Date then in effect after the Lessor has consented to such Renewal Request (each an "Extension Effective Date"); provided that such renewal shall be subject to and conditioned upon the following:

(A) on both the Extension Effective Date and the date of the Renewal Request, (i) no Default or Event of Default shall have occurred and be continuing, and (ii) the Lessor and the Agent shall have received a Responsible Officer's Certificate of the Lessee as to the matters set forth in clause (i) above,

(B) the Lessee shall not have exercised the Remarketing Option, and

(C) the Participants shall have agreed to extend the Maturity Date contemporaneously therewith pursuant to Section 3.6 of the Participation Agreement such that the Renewal Term will expire on the same date as the extended Maturity Date.

(b) As of any date of determination following the Initial Expiration Date (in the event a Renewal Term is granted hereunder), the Expiration Date shall be the date set forth in the then most recent Extension Notice delivered by the Agent pursuant to Section 3.6 of the Participation Agreement.

ARTICLE XXII.

22.1 Option to Remarket. Subject to the fulfillment of each of the conditions set forth in this Section 22.1, the Lessee shall have the option (the "Remarketing Option") to market for the Lessor and complete the sale of all, but not less than all, of the Lessor's interest in the Property on the Expiration Date for the Lessor.

The Lessee's effective exercise and consummation of the Remarketing Option shall be subject to the due and timely fulfillment of each of the following provisions as of the dates set forth below.

(a) Not later than one hundred eighty (180) days prior to the Expiration Date, the Lessee shall give to the Lessor written notice of the Lessee's exercise of the Remarketing Option, which exercise shall be irrevocable (except by delivery of a Purchase Notice and consummation of the exercise of the Purchase Option prior to the earlier of (i) the Expiration Date or (ii) the date on which the Lessor enters into a binding contract to sell the Property pursuant to the exercise of the Remarketing Option).

(b) The Lessee shall deliver to the Lessor an Environmental Audit of the Property together with its notice of exercise of the Remarketing Option. Such Environmental Audit shall be prepared by an environmental consultant selected by the Lessor in the Lessor's reasonable discretion and shall contain conclusions reasonably satisfactory to the Lessor as to the environmental status of the Property. If such Environmental Audit indicates any material exceptions reasonably requiring remedy or further investigation, the Lessee shall have also delivered a Phase Two environmental assessment by such environmental consultant prior to the Expiration Date showing the completion of the remedying of such exceptions in compliance with Environmental Laws. The reasonable, customary and

documented costs and expenses of the Lessee in complying with this Section 22.1(b), shall at the request of the Lessee be paid or reimbursed from the gross proceeds of a sale of the Property.

(c) On the date of the Lessee's notice to the Lessor of the Lessee's exercise of the Remarketing Option, other than a notice given pursuant to Section 17.2(h), no Event of Default or Default shall exist, and thereafter, no uncured Event of Default or Default shall exist.

(d) The Lessee shall have completed in all material respects all Modifications, restoration and rebuilding of the Property pursuant to Sections 11.1 and 15.1(e) (as the case may be) and shall have fulfilled in all material respects all of the conditions and requirements in connection therewith pursuant to said Sections, in each case by the date on which the Lessor receives the Lessee's notice of the Lessee's exercise of the Remarketing Option (time being of the essence), regardless of whether the same shall be within the Lessee's control. The Lessee shall have also paid the cost of all Modifications commenced prior to the Expiration Date. The Lessee shall not have been excused pursuant to Section 13.1 from complying with any Applicable Law that involved the extension of the ultimate imposition of such Applicable Law beyond the last day of the Term. Any Permitted Exceptions on the Property that were contested by the Lessee shall have been removed.

(e) During the Marketing Period, the Lessee shall, as nonexclusive agent for the Lessor, use commercially reasonable efforts to sell the Lessor's interest in the Property on or prior to the Expiration Date (without diminishing the Lessee's obligation to consummate the sale on the Expiration Date) and will attempt to obtain the highest purchase price therefor and for not less than the Fair Market Sales Value. The Lessee will be responsible for hiring and compensating brokers and making the Property available for inspection by prospective purchasers. The Lessee shall promptly upon request permit inspection of the Property and any maintenance records relating to the Property by the Lessor, any Participant and any potential purchasers, and shall otherwise do all things necessary to sell and deliver possession of the Property to any purchaser. The reasonable, customary and documented costs and expenses of the Lessee in complying with this Section 22.1(e) shall at the request of the Lessee be paid or reimbursed from the gross proceeds of a sale of the Property. The Lessee shall allow the Lessor and any potential qualified purchaser reasonable access to the Property for the purpose of inspecting the same.

(f) The Lessee shall submit all bids to the Lessor and the Agent, and the Lessor will have the right to review the same and the right to submit any one or more bids. Any bid shall be on an all-cash basis unless the Lessor, the Agent and the Participants shall otherwise agree in their sole discretion. The Lessee shall use its best efforts to procure bids from one or more bona fide prospective purchasers and shall deliver any such bids to the Lessor and the Agent not less than ninety (90) days prior to the Expiration Date a binding written unconditional (except as set forth below), irrevocable offer by such purchaser or purchasers offering the highest bid to purchase the Property. No such purchaser shall be the Lessee, or any Subsidiary or Affiliate of the Lessee. The written offer must specify the Expiration Date as the closing date unless the Lessor, the Agent and the Participants shall otherwise agree in their sole discretion.

(g) In connection with any such sale of the Property, the Lessee will provide to the purchaser all customary "seller's" indemnities, representations and warranties regarding title, absence of Liens (except Lessor Liens) and the condition of the Property, as well as such other terms and conditions as may be negotiated between the Lessee and the purchaser. The Lessee shall have obtained all required governmental and regulatory consents and approvals and shall have made all filings as required by Applicable Law in order to carry out and complete the transfer of the Property. The reasonable, customary and documented costs and expenses of the Lessee in complying with this Section 22.1(g) shall at the request of the Lessee be paid or reimbursed from the gross proceeds of a sale of the Property. As to the Lessor, any such sale shall be made on an "as is, with all faults" basis without representation or warranty by the Lessor other than the absence of Lessor Liens and Liens created by the Operative Documents. Any agreement as to such sale shall be made subject to the Lessor's rights hereunder.

(h) All prorrations, credits, costs and expenses of the sale of the Property, whether incurred by the Lessor, the Participants or the Lessee, including without limitation, the cost of all title insurance, surveys, environmental reports, appraisals, transfer taxes, the Lessor's, the Participants' and the Agent's reasonable attorneys' fees, the Lessee's attorneys' fees, commissions, escrow fees, recording fees, and all applicable documentary and other transfer taxes, shall be paid from the gross sale proceeds. Notwithstanding the foregoing, any such amounts to be paid to the Lessee shall be so paid only to the extent such amounts are reasonable, customary and documented and only to the extent requested by the Lessee.

(i) The Lessee shall pay to the Agent on the Expiration Date (or to such other Person as the Lessor shall notify the Lessee in writing, or in the case of Supplemental Rent, to the Person entitled thereto) an amount equal to the Residual Value Guarantee Amount (which shall be paid in accordance with Section 3.22 of the Participation Agreement) plus (without duplication) all Rent and all other amounts hereunder which have accrued or will accrue prior to or as of the Expiration Date, in the type of funds specified in Section 3.4 hereof.

(j) If, within ninety (90) days prior to the Expiration Date, it is determined (based upon the highest bid by a purchaser to purchase the Property pursuant to paragraph (f) of this Section 22.1) that there would, after giving effect to the proposed sale of the Property, be a Shortfall Amount, the Lessee (i) shall cause to be delivered to the Lessor and the Agent the End of Term Report required by Section 13.2 of the Participation Agreement and (ii) shall on the Expiration Date pay to the Agent (or to such other person as the Lessor shall notify the Lessee in writing), the amounts (not to exceed the Shortfall Amount) required to be paid pursuant to Section 13.2 of the Participation Agreement.

(k) The purchase of the Property shall be consummated on the Expiration Date following the payment by the Lessee pursuant to paragraphs (i) and (j) above and contemporaneously with the Lessee's surrender of the Property pursuant to Section 19.1(b) and the Net Sales Proceeds of the sale of the Property shall be paid directly to the Agent; provided, however, that if the sum of the Net Sales Proceeds from such sale of the Property plus the Residual Value Guarantee Amount paid by Lessee pursuant to paragraph (i) above exceeds the Asset Termination Value as of such date, then the excess shall be paid to the Lessee on the Expiration Date.

(l) The Lessee shall not be entitled to exercise or consummate the Remarketing Option if a circumstance that would permit the Lessor to require the Lessee to repurchase the Property under Section 16.3 exists and is continuing.

(m) No subleases affecting the Property shall be in effect on the Expiration Date.

If one or more of the foregoing provisions shall not be fulfilled as of the relevant date set forth above, then the Lessor shall declare by written notice to the Lessee the Remarketing Option to be null and void (whether or not it has been theretofore exercised by the Lessee) as to the Property, in which event all of the Lessee's rights under this Section 22.1 shall immediately terminate and the Lessee shall be obligated to vacate the Property on the Expiration Date and comply with the obligations set forth in Section 22.3. Except as expressly set forth herein, the Lessee shall have no right, power or authority to bind the Lessor in connection with any proposed sale of the Property.

If the Lessee has paid the Residual Value Guarantee Amount as required herein and in Section 3.22 of the Participation Agreement, proceeds from a sale of the Property pursuant to the Remarketing Option or, if not sold as provided in this Section 22.1 from a sale of the Property occurring thereafter shall be distributed

as provided in Section 3.14 of the Participation Agreement.

22.2 Certain Obligations Continue. During the Marketing Period, the obligation of the Lessee to pay Rent (including the installment of Basic Rent due on the fifth anniversary of the Closing Date or at the end of any Renewal Term, as the case may be) shall continue undiminished until payment in full to the Lessor, for deposit into an account with the Agent (or as otherwise required pursuant to Section 3.22 of the Participation Agreement), of the Net Sales Proceeds, the Residual Value Guarantee Amount, and (without duplication) all other amounts due to the Lessor with respect to the Property under the Operative Documents. The Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XXII.

22.3 Support Obligations. In the event that (A) the Lessee does not elect to purchase the Property on the Expiration Date, (B) this Lease is terminated without a purchase of the Property by the Lessee as expressly permitted herein, or (C) pursuant to the Lessor's exercise of remedies under Article XVII, this Lease is terminated, the Lessee shall, upon the request of the Lessor, exercise all commercially reasonable efforts to provide the Lessor or other purchaser of the Property, effective on the Expiration Date or earlier termination of this Lease, with (i) all permits, certificates of occupancy, governmental licenses and authorizations necessary to use and operate the Property for its intended purposes (to the extent such items are transferable), (ii) such easements, licenses, rights-of-way and other rights and privileges in the nature of an easement (as are reasonably necessary or desirable in connection with the use, repair, access to or maintenance of the Property), and (iii) any service agreements, contracts or subcontracts in existence at such time relating to the use and operation of the Property, in each case to the extent assignable. All assignments, licenses, easements, agreements and other deliveries required by clauses (i), (ii) and (iii) of this Section 22.3 shall be in form satisfactory to the Lessor and shall, to the extent permissible pursuant to the underlying assigned interest or Applicable Law, be fully assignable (including both primary assignments and assignments given in the nature of security) without payment of any fee, cost or other charge.

ARTICLE XXIII.

23.1 Holding Over. If the 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 the Lessee), such possession shall be as a tenancy at sufferance during which time the Lessee shall continue to pay Supplemental Rent that would be payable by the Lessee hereunder were the Lease then in full force and effect and the Lessee shall continue to pay Basic Rent at an annual rate equal to 110% of the average rate of Basic Rent payable hereunder during the Term. Such Basic Rent shall be payable from time to time upon demand by the Lessor. During any period of tenancy at sufferance, the 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 XXIII shall constitute the consent, express or implied, of the Lessor to the holding over of the Lessee after the expiration or earlier termination of this Lease (unless the Property is conveyed to the Lessee), and nothing contained herein shall be read or construed to relieve the Lessee of its obligations to purchase or remarket the Property on the Expiration Date pursuant to Article XX or Article XXII or as preventing the Lessor from maintaining a suit for possession of the Property or exercising any other remedy available to the Lessor at law or in equity or hereunder.

ARTICLE XXIV.

24.1 Risk of Loss. The Lessee assumes all risks of loss arising from any Casualty or Condemnation which arises or occurs prior to the Expiration Date or while the Lessee is in possession of the Property and all liability for all personal injuries and deaths and damages to property suffered by any Person or property on or in connection with the Property which arises or occurs prior to the Expiration Date or while the Lessee is in possession of the Property, except in each case to the extent any such loss or liability is primarily caused by the gross negligence or willful misconduct of a Lessor Party.

ARTICLE XXV.

25.1 Subletting and Assignment. THE LESSEE MAY NOT ASSIGN THIS LEASE OR ANY OF ITS RIGHTS OR OBLIGATIONS WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. The Lessee may, without the consent of the Lessor, sublease the Property or portion thereof to any Person, provided, that no such sublease shall, in the opinion of the Lessor, materially adversely affect any of the Lessor's interests, rights or remedies under the Lease or the Lessor's title to the Property. No assignment, sublease or other relinquishment of possession of the Property shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder and the Lessee shall remain directly and primarily liable under this Lease as to the Property, or portion thereof, so assigned or sublet. Any sublease of the Property shall be made subject to and subordinated to this Lease and to the rights of the Lessor hereunder, and shall expressly provide for the surrender of the Property (or portion thereof) after an Event of Default hereunder. All such subleases shall expressly provide for termination at or prior to the earlier of the applicable Expiration Date or other date of termination of this Lease unless the Lessee shall have purchased the Property pursuant to Article XX. No assignee or sublessee shall use the Property in a manner which is substantially different from the manner in which the Property is used or intended for use by the Lessee or in any manner not otherwise permitted under Section 8.2, without the prior written consent of the Lessor.

ARTICLE XXVI.

26.1 Estoppel Certificates. At any time and from time to time upon not less than twenty (20) days' prior request by the Lessor or the Lessee (the "Requesting Party"), the other party (whichever party shall have received such request, the "Certifying Party") shall furnish to the Requesting Party (but not more than four times per year unless required to satisfy the requirements of any sublessees and only to the extent that the required information has been provided to the Certifying Party by the other party) a certificate signed by an individual having the office of vice president or higher in the Certifying Party certifying that this Lease is in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications); the dates to which the Basic Rent and Supplemental Rent have been paid; to the best knowledge of the signer of such certificate, whether or not the Requesting Party is in default under any of its obligations hereunder (and, if so, the nature of such alleged default); and such other matters under this Lease as the Requesting Party may reasonably request. Any such certificate furnished pursuant to this Article XXVI may be relied upon by the Requesting Party, and any existing or prospective mortgagee, purchaser or lender, and any accountant or auditor, of, from or to the Requesting Party (or any Affiliate thereof).

ARTICLE XXVII.

27.1 Right to Inspect. During the Term, the Lessee shall upon reasonable notice from the Lessor (except that no notice shall be required if a Event of Default has occurred and is continuing), permit the Lessor, the Agent and their respective authorized representatives to inspect the Property during normal business hours, provided that such inspections shall not unreasonably interfere with the Lessee's business operations at the Property, and provided further that the Lessee may, if it so chooses, be present during such inspections.

27.2 No Waiver. No failure by the Lessor or the Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. To the fullest extent permitted by law, no waiver of any default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

ARTICLE XXVIII.

28.1 Acceptance of Surrender. No surrender to the Lessor of this Lease or of all or any portion of the Property or of any part thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by the Lessor and, prior to the payment or performance of all obligations under the Participation Agreement and termination of the Commitments, the Agent, and no act by the Lessor or the Agent or any representative or agent of the Lessor or the Agent, other than a written acceptance, shall constitute an acceptance of any such surrender.

ARTICLE XXIX.

29.1 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, or (b) any estate of others in the Property created by any sublease permitted under this Lease, except as may expressly be stated in a written instrument duly executed and delivered by the appropriate Person.

ARTICLE XXX.

30.1 Notices. All notices, demands, requests, consents, approvals and other communications hereunder shall be in writing and delivered (i) personally, (ii) by a nationally recognized overnight courier service, (iii) by mail (by registered or certified mail, return receipt requested, postage prepaid) or (iv) by facsimile, addressed to the respective parties, as follows:

If to the Lessee:	Yahoo! Inc. 3420 Central Expressway Santa Clara, California 95051 Attention: Chief Financial Officer Telephone: (408) 731-3300 Facsimile: (408) 731-3485
With a copy to:	Yahoo! Inc. 3420 Central Expressway Santa Clara, California 95051 Attention: General Counsel Telephone: (408) 731-3300 Facsimile: (408) 830-6208
If to the Lessor:	Lease Plan North America, Inc. 135 South LaSalle Street, Suite 740 Chicago, Illinois 60603 Attention: Elizabeth M. Walker Telephone: (312) 904-2809 Facsimile: (312) 904-6217
If to the Agent:	ABN AMRO Bank N.V. 208 South LaSalle Street, Suite 1500 Chicago, Illinois 60604 Attention: Gregory R. Miller Telephone: (312) 992-5170 Facsimile: (312) 992-5111
with a copy to:	ABN AMRO Bank N.V. 101 California Street, Suite 4550 San Francisco, California 94111-5812 Attention: Jamie Dillon Telephone: (415) 984-3750 Facsimile: (415) 362-3524

or such additional parties and/or other address as such party may hereafter specify in writing in accordance with this Lease, and shall be effective upon receipt or refusal thereof.

ARTICLE XXXI.

31.1 Miscellaneous. Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of the Lessee or the 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 the Lessee provided in this Lease, including any right or option described in Articles XV, XVI, XX, XXI or XXII, would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one (21) years after the date of death of the last survivor of the descendants of Franklin D. Roosevelt, the former president of the United States, Henry Ford, the deceased automobile manufacturer, and John D. Rockefeller, the founder of the Standard Oil Company, known to be alive on the date of the execution, acknowledgment and delivery of this Lease.

31.2 Amendments and Modifications. Subject to the requirements, restrictions and conditions set forth in the Participation Agreement, neither this Lease, any Lease Supplement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing in recordable form signed by the Lessor and the Lessee.

31.3 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.

31.4 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.

31.5 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.

31.6 GOVERNING LAW. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY THE LAW OF THE STATE OF CALIFORNIA (EXCLUDING ANY CONFLICT OF LAW OR CHOICE OF LAW RULES WHICH MIGHT LEAD TO THE APPLICATION OF THE INTERNAL LAWS OF ANY OTHER JURISDICTION) AS TO ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

31.7 Limitations on Recourse. The parties hereto agree that the Lessor shall have no personal liability whatsoever to the Lessee or its respective successors and assigns for any claim based on or in respect of this Lease or any of the other Operative Documents or arising in any way from the transactions contemplated hereby or thereby; provided, however, that the Lessor shall be liable in its individual capacity (a) for its own willful misconduct or gross negligence (or negligence in the handling of funds), (b) for liabilities that may result from the incorrectness of any representation or warranty expressly made by it in Section 7.1 of the Participation Agreement or from the failure of the Lessor to perform its covenants and agreements set forth in Section 10.3 of the Participation Agreement, and (c) for any Taxes based on or measured by any fees, commission or compensation received by it for acting as the Lessor as contemplated by the Operative Documents. It is understood and agreed that, except as provided in the preceding proviso: (i) the Lessor shall have no personal liability under any of the Operative Documents as a result of acting pursuant to and consistent with any of the Operative Documents; (ii) all obligations of the Lessor to the Lessee are solely nonrecourse obligations except to the extent that it has received payment from others and are enforceable solely against the Lessor's interest in the Property; and (iii) all such personal liability of the Lessor is expressly waived and released as a condition of, and as consideration for, the execution and delivery of the Operative Documents by the Lessor.

31.8 Original Lease. The single executed original of this Lease marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt of the Agent therefor on or following the signature page thereof shall be the Original Executed Counterpart of this Lease (the "Original Executed Counterpart"). To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

[signature page follows]

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed and delivered as of the date first above written.

LEASE PLAN NORTH AMERICA, INC.,
an Illinois corporation, as Lessor

By: /s/ David M. Shipley

Name: David M. Shipley

Title: Vice President

YAHOO! INC.,
a Delaware corporation

By: /s/ Susan L. Decker

Name: Susan L. Decker

Title: Senior Vice President, Financial and Administration and Chief Financial Officer

THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART.

Receipt of this original counterpart of the foregoing Lease is hereby acknowledged as of March 16, 2001.

ABN AMRO BANK N.V., as Agent

By: /s/ David M. Shipley

Name: David M. Shipley

Title: Vice President

By: /s/ Elizabeth M. Walker

Name: Elizabeth M. Walker

Title: Vice President

Recording requested by, and when

Recorded, please return to: McGuireWoods LLP 77
West Wacker Drive Chicago, Illinois 60601 Attn: W.
Kirk Grimm, Esq.