EITF ABSTRACTS

Issue No. 97-10

Title: The Effect of Lessee Involvement in Asset Construction

Dates Discussed: September 18, 1997; May 21, 1998; July 23, 1998; September 23–24, 1998

References: FASB Statement No. 5, Accounting for Contingencies
FASB Statement No. 13, Accounting for Leases
FASB Statement No. 23, Inception of the Lease
FASB Statement No. 28, Accounting for Sales with Leasebacks
FASB Statement No. 66, Accounting for Sales of Real Estate
FASB Statement No. 98, Accounting for Leases: Sale-Leaseback
Transactions Involving Real Estate: Sales-Type Leases of Real Estate; Definition of the Lease Term; and Initial Direct Costs of Direct Financing Leases
FASB Statement No. 167, Amendments to FASB Interpretation No. 46(R)
FASB Interpretation No. 45, Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others
FASB Interpretation No. 46, Consolidation of Variable Interest Entities
FASB Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities
FASB Staff Position FAS13-1, “Accounting for Rental Costs Incurred during a Construction Period”
FASB Staff Position FIN46-6, “Effective Date of FASB Interpretation No. 46”
AICPA Audit and Accounting Guide, Audits of Investment Companies
AcSEC Practice Bulletin 1, Purpose and Scope of AcSEC Practice Bulletins and Procedures for Their Issuance
SEC Staff Accounting Bulletin No. 71, Views regarding Financial Statements of Properties Securing Mortgage Loans
SEC Staff Accounting Bulletin No. 71A, Addition to SAB No. 71

ISSUE

An entity (lessee) is involved on behalf of an owner-lessee with the construction of an asset that will be leased to the lessee when construction of the asset is completed. Various forms of the lessee's involvement during the construction period raise questions about whether the lessee is acting as an agent for the owner-lessee or is, in substance, the
owner of the asset during the construction period. The lessee's involvement during the
construction period may include (1) being obligated to begin making lease payments
regardless of whether the project is complete (a "date-certain" lease), (2) guaranteeing the
construction debt or providing construction financing either directly or indirectly, (3)
being primarily or secondarily obligated on construction contracts, (4) serving as an
agent for the construction, financing, or ultimate sale of the asset for the owner-lessee, (5)
acting as a developer or being the general contractor, (6) being obligated to purchase the
asset if the construction is not successfully completed by an agreed-upon date, (7) being
obligated to fund cost overruns, and so forth. Those transactions generally involve a
special-purpose entity (SPE) that is the owner-lessee of the asset. However, questions
about those transactions exist whether or not the owner-lessee is an SPE.

If the lessee is considered the owner of the asset during the construction period, then
effectively a sale and leaseback of the asset occurs when construction of the asset is
complete and the lease term begins. Sale and leaseback transactions of assets within the
scope of Statement 98 must meet the conditions set forth in Statement 98 in order for the
lessee to recognize a sale and derecognize the real estate when construction of the asset is
complete and the lease term begins. Sale and leaseback transactions of assets that are not
within the scope of Statement 98 must follow the guidance in Statement 13, as amended
by Statement 28, when accounting for the sale and leaseback of the constructed asset.
Because built-to-suit real estate projects have generated most of the questions about
lessee involvement during the construction period, this Issue is worded to specifically
address those projects. However, the Task Force concluded that this Issue should apply
to all asset construction projects with lessee involvement and is not limited to built-to-
suit real estate projects. In addition, the Task Force agreed to exclude from this
consensus any entity that is a lessee (or that has an option to become a lessee) under a
lease agreement in which the maximum obligation, including guaranteed residual values,
represents a “minor” amount (see footnote to paragraph 3(a) of Statement 28) of the asset’s fair value.

The issue is how an entity (lessee) that is involved with the construction of an asset that it will lease when construction is completed should determine whether it should be considered the owner of that asset during the construction period.

**EITF DISCUSSION**

**Consensus Guidance**

The Task Force reached a consensus that a lessee should be considered the owner of a real estate project during the construction period (and thus subject to Statement 98) if the lessee has substantially all of the construction period risks. [Note: See STATUS section.] An evaluation of whether the lessee has substantially all of the construction period risks should be based on a test that is similar to the 90 percent recovery-of-investment test described in paragraph 7(d) of Statement 13. Under this approach, a lessee's "maximum guarantee" includes any payments that the lessee is obligated to make or can be required to make in connection with the construction project. [Note: See STATUS section.] Except as indicated in the second and third paragraphs below, the maximum guarantee should include, but not be limited to, (1) lease payments that must be made regardless of when or whether the project is complete (a "date-certain" lease), (2) guarantees of the construction financing (however, such guarantees can only be made to the owner-lessee as specified in item (4) in the second paragraph below), (3) equity investments made (or an obligation to make equity investments) in the owner-lessee or any party related to the owner-lessee, (4) loans or advances made (or an obligation to make loans or advances) to the owner-lessee or any party related to the owner-lessee, (5) payments made by the lessee in the capacity of a developer, a general contractor, or a construction manager/agent that are reimbursed less frequently than is normal or
customary for the real estate construction industry in transactions in which the developer, general contractor, or construction manager/agent are not involved in the project in any other capacity, (6) primary or secondary obligations to pay project costs under construction contracts, (7) obligations that could arise from being the developer or general contractor, (8) an obligation to purchase the real estate project under any circumstances, (9) an obligation to fund construction cost overruns, (10) rent or fees of any kind, such as transaction costs, to be paid to or on behalf of the lessor by the lessee during the construction period, and (11) payments that might be made with respect to providing indemnities or guarantees to the owner-lessor.

Beginning with the earlier of the date of the inception of the lease or the date that the terms of the construction arrangement are agreed to, if the documents governing the construction project could require, under any circumstance, that the lessee pay 90 percent or more of the total project costs (excluding land acquisition costs) as of any point in time during the construction period, then the lessee/agent should be deemed to have substantially all of the construction period risks and should be considered to be the owner of the real estate project during the construction period. The assessment is made only once (unless the terms of the underlying documents are changed) but that assessment should test whether, at each point during the construction period, the sum of (1) the accreted value of any payments previously made by the lessee and (2) the present value of the maximum amount the lessee can be required to pay as of that point in time (whether or not construction is completed) is less than 90 percent of the total project costs incurred to date (excluding land acquisition costs, if any). If that test is not met, the lessee will be considered the owner of the real estate project during construction. (The lessee also would be permitted to provide guarantees in an amount not exceeding the acquisition cost of the land so long as any unused portion of those guarantees is not available to cover any shortfall in the guarantee of the total project costs.) The interest
The rate used to accrete and discount cash flows in this calculation should be the same rate used by the lessee to discount lease payments for purposes of lease classification if that rate is known. Otherwise, the construction borrowing rate should be used. The probability of the lessee's having to make the above-described payments would not be considered in performing the maximum guarantee test.

The Task Force reached a consensus that a lessee should be considered the owner of a real estate project despite the fact that the present value of the lessee's maximum guarantee is less than 90 percent of the total project costs if, in connection with the project:

1. The lessee or any party related to the lessee that is involved with construction on behalf of the owner-lessee makes or is required to make an equity investment in the owner-lessee that is considered in substance an investment in real estate (see paragraph 101 of Statement 66 for examples of equity investments that are in substance real estate). (Note that in accordance with Question 10 of Issue No. 96-21, "Implementation Issues in Accounting for Leasing Transactions involving Special-Purpose Entities," the fair value of an option to acquire real property transferred by the lessee to an SPE would be considered a soft cost incurred by the lessee prior to entering into a lease agreement.) In addition, the Task Force observed that loans made by the lessee during the construction period that in substance represent an investment in the real estate project, such as those loans discussed in Practice Bulletin 1, Exhibit I; SAB 71; SAB 71A; and Issue No. 84-4, "Acquisition, Development, and Construction Loans," would indicate that the lessee was the owner of the real estate project during the construction period and therefore would be required to apply Statement 98.

2. The lessee is responsible for paying directly (in contrast to paying those costs through rent payments under a lease) any cost of the project other than (a) pursuant to a contractual arrangement that includes a right of reimbursement (regardless of the frequency of reimbursement), (b) payment of an environmental cost as described below in item (3) of this paragraph, or (c) "normal tenant improvements." For this purpose, normal tenant improvements exclude costs of structural elements of the project, even though unique to the lessee's purpose, and equipment that would be a necessary improvement for any lessee (for example, the cost of elevators, air conditioning systems, or electrical wiring). A requirement that the lessee pay more of the cost of tenant improvements than originally budgeted for if construction overruns occur could, in effect, obligate the lessee to pay for 90 percent or more of the total project costs. Therefore, normal tenant improvements also exclude any amounts included in the original project budget that the owner-
The lessee agrees to pay on the date the contract terms are negotiated regardless of the nature of such costs.

3. The lessee indemnifies the owner-lessee or its lenders for preexisting environmental risks and the risk of loss is more than remote. The lessee should follow the guidance in the response to Question 1 of Issue No. 97-1, "Implementation Issues in Accounting for Lease Transactions, including Those involving Special-Purpose Entities," for any indemnification of environmental risks.

4. Except as permitted by item (3) above, the lessee provides indemnities or guarantees to any party other than the owner-lessee or agrees to indemnify the owner-lessee with respect to costs arising from third-party damage claims other than those third-party claims caused by or resulting from the lessee's own actions or failures to act while in possession or control of the construction project (as is noted in item (4) of the following paragraph, any indemnification of (or guarantee to) the owner-lessee against third-party claims relating to construction completion must be included in the maximum guarantee test). For example, a lessee may not provide indemnities or guarantees for acts outside or beyond the lessee’s control, such as indemnities or guarantees for condemnation proceedings or casualties. If the lessee is acting in the capacity of a general contractor, its own actions or failure to act would include the actions or failure to act of its subcontractors. (See Exhibit 97-10A for an analysis of the indemnity/guarantee provisions of this consensus.)

5. The lessee takes title to the real estate at any time during the construction period or provides supplies or other components used in constructing the project other than materials purchased subsequent to the inception of the lease (or the date of the applicable construction agreement, if earlier) for which the lessee is entitled to reimbursement (regardless of the frequency of reimbursement). The costs of any such lessee-provided materials would be considered "hard costs" under the response to Question 10 of Issue 96-21.

6. The lessee either owns the land and does not lease it or leases the land and does not sublease it (or provide an equivalent interest in the land, for example, a long-term easement) to the owner-lessee before construction commences. If the transaction involves the sale of the land by the lessee to the owner-lessee, that sale would have to occur before construction commences. (If the land is sold to the owner-lessee and subsequently leased back with the improvements, the sale of the land would be subject to the requirements of Statement 98 even if the lease of the improvements was not considered to be within the scope of Statement 98 pursuant to this consensus.)

With respect to item (1) above, the SEC Observer noted that the SEC staff believes that a loan by the lessee to the lessor would be considered an ADC arrangement within the scope of Practice Bulletin 1, Exhibit I, whenever the lessee is entitled to participate in the expected residual profit regardless of whether that arrangement is incorporated in the loan, lease, a remarketing arrangement, or other agreement. In addition, the staff believes
that a lessee/lender would be considered entitled to participate in the expected residual profit when the lessee holds an option to purchase the leased asset at a fixed price. Paragraph 16(a) of Practice Bulletin 1, Exhibit I, specifies that if the [lender/lessee] is expected to receive over 50 percent of the expected residual profit, the [lender/lessee’s] loan would, in substance, represent an investment in real estate. Paragraph 16(b) specifies that if the [lender/lessee] is expected to receive 50 percent or less of the expected residual profit, the classification of the loan would depend on the circumstances. That paragraph notes that at least one of the characteristics identified in paragraphs 9(b) through 9(e) of Practice Bulletin 1 or a qualifying personal guarantee should be present for the arrangement to be accounted for as a loan and not as an investment in real estate. The characteristic identified in paragraph 9(b) is that the borrower has an equity investment, substantial to the project, not funded by the lender.

The SEC Observer stated that the SEC staff will look to the guidance provided in Appendix A of Statement 66 for determining whether the borrower has a sufficient equity investment. It was observed that leases within the scope of this Issue involving special-purpose entities as lessors generally contain a fixed-price purchase option or a remarketing agreement in which the lessee is entitled to a majority of the sales proceeds in excess of the original cost of the leased asset when it is sold. Thus, the existence of either of those provisions when the lessee has made a loan to the lessor during the construction period would cause the lessee to be considered the owner of the real estate project as specified above.

The Task Force made the following observations regarding the application of the maximum guarantee test.

1. If, in connection with the project, the lessee or any party related to the lessee makes or is required to make an investment in the lessor, or any party related to the lessor, other than investments considered to be in substance real estate as discussed in item (1) of the previous paragraph, the cost of that investment is to be included in the maximum guarantee test. Likewise, if, in connection with the project, the lessee or
any party related to the lessee makes or is required to make loans or advances (including making time deposits) to the lessor or any party related to the lessor, other than loans that in substance represent an investment in the real estate project, those loans or advances are to be included in the maximum guarantee test.

2. If the lessee, in the capacity of a developer, a general contractor, or a construction manager/agent pays or can be required to pay costs relating to the project that are reimbursed less frequently than is normal or customary, those payments are to be included in the maximum guarantee test. Thus, if the lessee can be required to make payments at a time when the owner-lessee of the project does not have the funds or a committed line of credit available to make the required reimbursements, the maximum payment amount that the lessee could be required to make is included in the maximum guarantee test. For this purpose, a line of credit would not be considered "committed" if there is a possibility that the reimbursement would not occur because the lender, as a result of a provision in the loan agreement, agency agreement, or other documents pertaining to the transaction, can withhold funds for any reason other than misappropriation of funds or willful misconduct of the owner-lessee or its agent.

3. Any guarantee or commitment made to the owner-lessee by a party related to the lessee should be included in the maximum guarantee test as if that guarantee were made by the lessee unless the owner-lessee, guarantor, and lessee all are under common control, in which case the guarantee or commitment may be excluded from the maximum guarantee test. The Task Force adopted that position primarily to exclude situations in which a private company (lessee) is controlled by a shareholder that also controls the lessor.

4. Any indemnification or guarantee of the owner-lessee against third-party claims relating to construction completion must be included, at its maximum amount, in the maximum guarantee test without regard to the probability of its occurrence.

5. Total project costs include the amount capitalized in the project by the owner-lessee in accordance with generally accepted accounting principles (GAAP) plus other costs related to the project paid to third parties other than lenders or owners. For example, cancellation fees that would be payable to subcontractors if the project were to be canceled prior to completion would be included in total project costs. Transaction costs that would not be capitalized by the lessor as construction costs in accordance with GAAP, such as a facility fee (a fee paid to establish a master lease facility), are specifically excluded from the definition of total project costs. Consequently, if the lessee were to pay any transaction costs to or on behalf of the lessor at the time the construction arrangement is entered into, the lessee would be considered the owner of the construction project because that payment by definition would exceed the total project costs incurred to date at that time. Likewise, imputed yield on equity in the project is specifically excluded from the definition of total project costs.

6. Land acquisition costs should be excluded from project costs for purposes of applying the maximum guarantee test regardless of the land value relative to the overall project value. Land carrying costs, such as interest or ground rentals incurred during the construction period, are considered to be part of total project costs. [Note: See STATUS section.]
7. A lessee's unlimited obligation to cover costs over a certain amount (for example, an obligation arising from the lessee-general contractor's entering into a fixed-price contract) would result in the lessee's maximum guarantee being in excess of 90 percent of the total project costs. Therefore, the lessee would be considered the owner of the project during the construction period.

8. Any payments that the lessee could be required to make as a result of cost overruns or change orders should be considered carefully. As indicated above, payments by the lessee for project costs that are not reimbursed by the owner-lessor will cause the lessee to be considered the owner of the project during the construction period. However, lease payments made during the construction period do not automatically cause the lessee to be considered the owner of the project (although those payments would need to be considered in both the maximum guarantee test and the lease classification test). Similarly, payments made by the lessee during the construction period for tenant improvements need to be carefully considered. Payments for normal tenant improvements, as described in item (2) of the previous paragraph, would not impact either the maximum guarantee or the lease classification tests. Payments for any other tenant improvements (for example, those originally included in amounts to be paid by the lessor) should be treated the same as other cost overruns.

9. If the lessee is (a) obligated to make a payment under the lease regardless of whether the construction project is completed (as would be the case in a "date-certain" lease) or (b) required to prepay rent, those payments should be included in both the maximum guarantee test and the lease classification computation. With respect to the lease classification computation, any lease payments made during the construction period should be accounted for in accordance with the response to Question 4 in Issue 96-21.

10. Contingent obligations assumed by the lessee relating to (a) permitted environmental indemnities as discussed in item (3) of the previous paragraph, (b) indemnifying the owner-lessor for permitted third-party damage claims as discussed in item (4) of the previous paragraph, other than claims arising directly or indirectly out of the lessee's failure to complete construction or to cause construction to be completed by a specified date (for example, claims brought by lenders to accelerate payment of construction financing), (c) claims brought by the owner-lessor relating to fraud, misapplication of funds, illegal acts, or willful misconduct on the part of the lessee, and (d) a bankruptcy of the lessee are the only contingent obligations that are to be excluded from the maximum guarantee test. All other contingent obligations, including contingent obligations resulting directly or indirectly from the lessee's failure to complete construction (for example, default obligations under the related lease agreement if failure to complete construction is an event of default under the lease), must be included in the maximum guarantee test at their maximum amount without regard to the probability of their occurrence. Lessee obligations that result from the lessee's bankruptcy are to be excluded from the maximum guarantee test only if it is reasonable to assume, based on the facts and circumstances that exist on the date the construction agreements are entered into, that a bankruptcy will not occur during the expected period of construction. (See Exhibit 97-10A.)
11. In performing the maximum guarantee test, the lessee must consider each alternative course of action available to the owner-lessee in the event of a lessee default under any applicable construction period agreement. For example, if the owner-lessee can cause the uncompleted project to be sold and trigger the lessee's maximum guarantee payment, or alternatively, activate the lease and enforce its rights thereunder, the lessee must perform the maximum guarantee test assuming that the lessor will select the alternative with the highest cost (as a percentage of total project costs) to the lessee.

The Task Force also reached a consensus that any profit realized by the lessee during the construction period (for example, rental income paid to the lessee during the construction period under a ground lease or fees paid for construction or development services) in those transactions should be deferred and amortized to income in a manner similar to what is prescribed in Issue No. 86-17, "Deferred Profit on Sale-Leaseback Transaction with Lessee Guarantee of Residual Value." Consistent with the provisions of Statement 13, the lessee should not reduce the maximum guarantee amount (that is, the numerator in the maximum guarantee test) for any deferred gain.

The guidance in the consensuses above also is applicable for determining whether an entity that has an option to become, or that may be compelled to become, the lessee after construction of the asset is completed should be considered the owner of the asset during the construction period. In addition, an entity that may become the lessee as a result of the exercise of an option following construction completion should defer any profit realized during the construction period in accordance with the guidance in the previous paragraph.

**Transition**

This consensus applies to construction projects committed to after May 21, 1998 and also to those projects that were committed to on May 21, 1998 if construction does not commence by December 31, 1999.
Application of this consensus is not required for construction projects committed to prior to May 21, 1998 provided that construction has commenced on that project by December 31, 1999. A construction project is considered *committed to* if all construction-related contracts have been executed including (1) debt and equity financing agreements, (2) construction agency agreements, and (3) other related lease agreements, such that the owner-lessee and other entities providing financing have a binding commitment to the project and the lessee has agreed to its involvement (as developer, general contractor, or construction manager/agent or in other capacities) in the project during the construction period. Application of the last paragraph under “Consensus Guidance” is not required for construction projects committed to prior to September 24, 1998 provided that (a) the option to become the lessee is a fair value option, with such fair value to be determined as of the date the option is exercised, (b) the construction agent cannot be compelled by the owner-lessee to exercise the option, and (c) the construction agent has another contractual means of participating in the operations of the property following construction completion (such as a long-term contract to manage the property on behalf of the owner or lessee-operator of the property).

**STATUS**

Interpretation 45, which was issued in November 2002, requires a guarantor to recognize, at inception of the guarantee, a liability for the obligation undertaken in issuing the guarantee. The Interpretation also elaborates on the disclosures to be made by a guarantor. If the lessee is not deemed to be the owner of the asset during the construction period, it may have to recognize a liability if it provides a guarantee that meets any of the characteristics found in paragraph 3 of that Interpretation. In addition, the guarantee would be subject to that Interpretation’s disclosure requirements. Interpretation 45 does not impact any of the consensuses reached in this Issue.
Interpretation 46(R), as amended by Statement 167, addresses consolidation by business enterprises of variable interest entities, which include many of the entities used in leasing arrangements of the type discussed in this Issue. That Interpretation requires a variable interest entity to be consolidated by an enterprise if that enterprise has a variable interest (or a combination of variable interests) that provides the enterprise with a controlling financial interest. Paragraphs 14–14G of Interpretation 46(R), as amended by Statement 167, provide guidance on determining whether an enterprise has a controlling financial interest in a variable interest entity.

Interpretation 46 was issued in January 2003. The consolidation requirements of Interpretation 46 apply immediately to variable interest entities created after January 31, 2003. The consolidation requirements apply to older entities in the first fiscal year or interim period beginning after June 15, 2003. Certain of the disclosure requirements apply in all financial statements issued after January 31, 2003, regardless of when the variable interest entity was established.

FSP FIN46-6 deferred the effective date for applying the provisions of Interpretation 46 for:

1. Interests held by a public entity in variable interest entities created before February 1, 2003, if the public entity has not issued financial statements reporting that interest in accordance with Interpretation 46. The application of Interpretation 46 to those interests is deferred until the end of the first period ending after December 15, 2003.
2. Nonregistered investment companies accounting for their investments in accordance with the specialized accounting guidance in the investment company Guide.

Interpretation 46(R) was issued on December 24, 2003, and replaced Interpretation 46. An enterprise with an interest in an entity to which the provisions of Interpretation 46 were not applied as of December 24, 2003, must apply the effective date and transitions provisions in Interpretation 46(R) to that entity. Application by public companies of
Interpretation 46 or Interpretation 46(R) to entities commonly referred to as special-purpose entities is required no later than as of the end of the first reporting period that ends after December 15, 2003. Public enterprises must apply Interpretation 46(R) to all entities no later than the end of the first reporting period that ends after March 15, 2004 (public enterprises other than small business issuers) or December 15, 2004 (small business issuers). Nonpublic enterprises must apply Interpretation 46(R) to entities created after December 31, 2003, immediately and to all other entities by the beginning of the first annual period beginning after December 15, 2004. An enterprise that has applied Interpretation 46 to an entity prior to the effective date of Interpretation 46(R) shall either continue to apply Interpretation 46 until the effective date of Interpretation 46(R) or apply Interpretation 46(R) at an earlier date.

Statement 167 was issued in June 2009 and amends Interpretation 46(R). Statement 167 shall be effective as of the beginning of each reporting entity’s first annual reporting period that begins after November 15, 2009, for interim periods within that first annual reporting period, and for interim and annual reporting periods thereafter. Earlier application is prohibited.

FSP FAS13-1, which was posted on October 6, 2005, amended Item 6 in the listing of the Task Force observations regarding the application of the maximum guarantee test.

No further EITF discussion is planned.
### Exhibit 97-10A

#### Analysis of Indemnification/Guarantee Provisions

<table>
<thead>
<tr>
<th>Indemnities/Guarantees to owner-lessee</th>
<th>Include in Maximum Guarantee Test</th>
<th>Automatic Indication of Substantive Ownership</th>
<th>No Impact on the Financial Reporting</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Preexisting environmental risk</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>a. When risk of loss is remote</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. When risk of loss is more than remote</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Damage claims caused by or resulting from lessee's own actions or failures to act (including third-party claims caused by or resulting from the lessee's own actions or failure to act)</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Related to construction completion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Not related to construction completion—for example, &quot;slip and fall&quot; claims that occur on the construction site</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>3. Damage claims unrelated to lessee's own actions or failures to act (including third-party claims unrelated to the lessee's own actions or failure to act)</td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Indemnities/Guarantees to anyone other than owner-lessee

| 1. Preexisting environmental risk      |                                   |                                               | X                                  |
| a. When risk of loss is remote         |                                   |                                               |                                    |
| b. When risk of loss is more than remote|                                   |                                               |                                    |
| 2. Any risk other than preexisting environmental risk |                                   |                                               | X                                  |