

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(MARK ONE)

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

FOR THE QUARTERLY PERIOD ENDED OCTOBER 24, 1997

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 0-27130

NETWORK APPLIANCE, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

CALIFORNIA
(STATE OR OTHER JURISDICTION OF INCORPORATION
OR ORGANIZATION)

77-0307520
IRS EMPLOYER IDENTIFICATION

2770 SAN TOMAS EXPRESSWAY, SANTA CLARA,
CALIFORNIA
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

95051
(ZIP CODE)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: (408) 367-3000

Indicate by check mark whether the registrant (1) has filed all reports
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of
1934 during the preceding 12 months (or for such shorter period that the
registrant was required to file such reports), and (2) has been subject to such
filing requirements for the past 90 days.

Yes No

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

CLASS	OUTSTANDING AT OCTOBER 24, 1997
Common Stock	16,603,188

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

NETWORK APPLIANCE, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS)

OCTOBER 24, 1997	APRIL 30, 1997
-----	-----
(UNAUDITED)	

ASSETS

CURRENT ASSETS:

Cash and cash equivalents.....	\$ 28,520	\$ 21,520
Short-term investments.....	5,250	6,916
Accounts receivable, net.....	23,113	13,911
Inventories.....	11,718	9,920
Prepaid expenses and other.....	1,621	1,253
Deferred taxes.....	3,139	3,100
	-----	-----
Total current assets.....	73,361	56,620
	-----	-----
PROPERTY AND EQUIPMENT, NET.....	10,231	9,238
OTHER ASSETS.....	3,006	3,083
	-----	-----
	\$ 86,598	\$ 68,941
	=====	=====
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable.....	\$ 5,424	\$ 4,415
Income taxes payable.....	3,491	1,023
Accrued compensation and related benefits.....	5,164	4,666
Other accrued liabilities.....	2,924	2,280
Deferred revenue.....	3,476	2,317
	-----	-----
Total current liabilities.....	20,479	14,701
	-----	-----
LONG-TERM OBLIGATIONS.....	180	211
SHAREHOLDERS' EQUITY:		
Common stock.....	57,457	54,653
Retained earnings (Accumulated deficit).....	8,482	(624)
	-----	-----
Total shareholders' equity.....	65,939	54,029
	-----	-----
	\$ 86,598	\$ 68,941
	=====	=====

See accompanying notes to condensed consolidated financial statements.

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NETWORK APPLIANCE, INC.

CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)
(UNAUDITED)

	THREE MONTHS ENDED	
	OCTOBER 24, 1997	OCTOBER 25, 1996
	-----	-----
NET SALES.....	\$ 38,401	\$ 21,048
COST OF SALES.....	15,746	8,582
	-----	-----
Gross margin.....	22,655	12,466
	-----	-----
OPERATING EXPENSES:		
Sales and marketing.....	9,672	5,538
Research and development.....	3,903	1,980
General and administrative.....	1,493	932
	-----	-----
Total operating expenses.....	15,068	8,450
	-----	-----
INCOME FROM OPERATIONS.....	7,587	4,016
OTHER INCOME, NET.....	229	261
	-----	-----
INCOME BEFORE INCOME TAXES.....	7,816	4,277
PROVISION FOR INCOME TAXES.....	2,931	1,497
	-----	-----
NET INCOME.....	\$ 4,885	\$ 2,780
	=====	=====
NET INCOME PER SHARE.....	\$ 0.27	\$ 0.16
	=====	=====
WEIGHTED AVERAGE COMMON AND COMMON EQUIVALENT SHARES.....	18,038	17,403

	=====	=====
PRO FORMA NET INCOME PER SHARE (NOTE 7).....	\$ 0.14	\$ 0.08
	=====	=====
PRO FORMA WEIGHTED AVERAGE COMMON AND COMMON EQUIVALENT SHARES (NOTE 7).....	36,076	34,806
	=====	=====

See accompanying notes to condensed consolidated financial statements.

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NETWORK APPLIANCE, INC.

CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)
(UNAUDITED)

	SIX MONTHS ENDED	
	OCTOBER 24, 1997	OCTOBER 25, 1996
	-----	-----
NET SALES.....	\$ 71,821	\$ 39,508
COST OF SALES.....	29,316	16,176
	-----	-----
Gross margin.....	42,505	23,332
	-----	-----
OPERATING EXPENSES:		
Sales and marketing.....	18,165	10,206
Research and development.....	7,318	3,703
General and administrative.....	2,849	2,152
Litigation settlement.....	--	4,300
	-----	-----
Total operating expenses.....	28,332	20,361
	-----	-----
INCOME FROM OPERATIONS.....	14,173	2,971
OTHER INCOME, NET.....	397	552
	-----	-----
INCOME BEFORE INCOME TAXES.....	14,570	3,523
PROVISION FOR INCOME TAXES.....	5,464	1,233
	=====	=====
NET INCOME.....	\$ 9,106	\$ 2,290
	=====	=====
NET INCOME PER SHARE.....	\$ 0.51	\$ 0.13
	=====	=====
WEIGHTED AVERAGE COMMON AND COMMON EQUIVALENT SHARES.....	17,837	17,353
	=====	=====
PRO FORMA NET INCOME PER SHARE (NOTE 7).....	\$ 0.26	\$ 0.07
	=====	=====
PRO FORMA WEIGHTED AVERAGE COMMON AND COMMON EQUIVALENT SHARES (NOTE 7).....	35,674	34,706
	=====	=====

See accompanying notes to condensed consolidated financial statements.

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NETWORK APPLIANCE, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)
(UNAUDITED)

SIX MONTHS ENDED

	OCTOBER 24, 1997	OCTOBER 25, 1996
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income.....	\$ 9,106	\$ 2,290
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization.....	2,426	1,274
Provision for doubtful accounts.....	91	--
Deferred income taxes.....	(39)	--
Deferred rent.....	(21)	(36)
Changes in assets and liabilities:		
Accounts receivable.....	(9,293)	(5,536)
Inventories.....	(1,798)	(3,493)
Prepaid expenses and other.....	(433)	(398)
Accounts payable.....	1,009	2,303
Income taxes payable.....	2,468	--
Accrued compensation and related benefits.....	498	328
Other accrued liabilities.....	644	356
Deferred revenue.....	1,159	1,115
Net cash provided by (used in) operating activities.....	5,817	(1,797)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of short-term investments.....	(5,250)	(10,851)
Redemptions of short-term investments.....	6,916	4,983
Purchases of property and equipment.....	(3,262)	(2,214)
Net cash used in investing activities.....	(1,596)	(8,082)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayments of long-term obligations.....	(10)	(7)
Proceeds from sale of common stock, net.....	2,789	493
Net cash provided by financing activities.....	2,779	486
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS.....	7,000	(9,393)
CASH AND CASH EQUIVALENTS:		
Beginning of period.....	21,520	24,637
End of period.....	\$ 28,520	\$ 15,244

See accompanying notes to condensed consolidated financial statements.

NETWORK APPLIANCE, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The accompanying condensed consolidated financial statements have been prepared by Network Appliance, Inc. (the Company) without audit and reflect all adjustments which are, in the opinion of management, necessary for a fair presentation of the financial position and the results of operations of the Company for the interim periods. The statements have been prepared in accordance with the regulations of the Securities and Exchange Commission (SEC). Accordingly, they do not include all information and footnotes required by generally accepted accounting principles. The results of operations for the three and six-month periods ended October 24, 1997 are not necessarily indicative of the operating results to be expected for the full fiscal year or future operating periods. The information included in this report should be read in conjunction with the audited consolidated financial statements and notes thereto for the fiscal year ended April 30, 1997 and the risk factors as set forth in the Company's Annual Report on Form 10-K, including, without limitation, risks relating to history of operating losses, fluctuating operating results, dependence on new products, rapid technological change, dependence on growth in the network file server market, expansion of international operations, product concentration, changing product mix, competition, recent management

additions, management of expanding operations, dependence on high-quality components, dependence on proprietary technology, intellectual property rights, dependence on key personnel, volatility of stock price, shares eligible for future sale and the effect of certain anti-takeover provisions. Any party interested in reviewing these publicly available documents should contact the SEC or the Chief Financial Officer of the Company.

2. INVENTORIES

Inventories consist of the following (in thousands):

	OCTOBER 24, 1997	APRIL 30, 1997
	-----	-----
Purchased components.....	\$ 5,785	\$6,775
Work in process.....	1,747	1,524
Finished goods.....	4,186	1,621
	-----	-----
	\$ 11,718	\$9,920
	=====	=====

3. COMMON STOCK

On September 25, 1997, the Company's shareholders approved a 1,600,000 share increase in the number of shares of common stock authorized for issuance under the Network Appliance 1995 Stock Incentive Plan.

4. NET INCOME PER SHARE

Net income per share is computed using the weighted average number of common and common equivalent shares outstanding during the period. Common equivalent shares include stock options (using the treasury stock method). Common equivalent shares are excluded from the computation if their effect is anti-dilutive.

5. LITIGATION SETTLEMENT

The computer industry is characterized by frequent litigation regarding intellectual property rights. During fiscal 1995, a lawsuit of this nature was filed against the Company and two of its shareholders (the Whipsaw Litigation). During the first quarter of fiscal 1997, the Company settled the Whipsaw litigation and

NETWORK APPLIANCE, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)
(UNAUDITED)

recorded a pre-tax expense of \$4.3 million (\$3.5 million in payments to the plaintiffs and \$0.8 million in legal fees). In connection with the settlement, the Whipsaw group released the Company from all liabilities.

6. RECENTLY ISSUED ACCOUNTING STANDARDS

In February 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 128, "Earnings per Share" (SFAS 128). The Company is required to adopt SFAS 128 in the third quarter of fiscal 1998 and will restate at that time earnings per share (EPS) data for prior periods to conform with SFAS 128. Earlier application is not permitted. SFAS 128 replaces current EPS reporting requirements and requires a dual presentation of basic and diluted EPS. Basic EPS excludes dilution and is computed by dividing net income by the weighted average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock.

If SFAS 128 had been in effect during the current and prior-year fiscal periods, net income per share would have been as follows:

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	OCTOBER 24, 1997	OCTOBER 25, 1996	OCTOBER 24, 1997	OCTOBER 25, 1996
Basic.....	\$0.30	\$0.17	\$0.55	\$0.14
Diluted.....	\$0.27	\$0.16	\$0.51	\$0.13

In June 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 130, "Reporting Comprehensive Income," which is effective for fiscal years beginning after December 15, 1997. The adoption is not expected to have a material effect on the financial statements.

In June 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 131, "Disclosures About Segments of an Enterprise and Related Information" (SFAS 131). This statement requires that financial information be reported on the basis used internally for evaluating segment performance and deciding how to allocate resources to segments. SFAS 131 is effective for fiscal years beginning after December 15, 1997 and requires restatement of all previously reported information for comparative purposes.

7. SUBSEQUENT EVENT

On November 11, 1997, the Board of Directors approved a two-for-one stock split of the Company's common stock to be distributed on or about December 18, 1997 to holders of record on December 8, 1997. Pro forma share and per-share amounts have been presented within the Condensed Consolidated Statements of Income.

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ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

RESULTS OF OPERATIONS

The following table sets forth certain consolidated statements of income data as a percentage of net sales for the periods indicated:

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	OCTOBER 24, 1997	OCTOBER 25, 1996	OCTOBER 24, 1997	OCTOBER 25, 1996
Net Sales.....	100.0%	100.0%	100.0%	100.0%
Cost of Sales.....	41.0	40.8	40.8	40.9
Gross margin.....	59.0	59.2	59.2	59.1
Operating Expenses:				
Sales and marketing.....	25.2	26.3	25.3	25.8
Research and development.....	10.2	9.4	10.2	9.4
General and administrative.....	3.9	4.4	4.0	5.5
Litigation settlement.....	--	--	--	10.9
Total operating expenses....	39.3	40.1	39.5	51.6
Income from operations.....	19.7	19.1	19.7	7.5
Other income, net.....	.6	1.2	.6	1.4
Income before income taxes.....	20.3	20.3	20.3	8.9
Provision for income taxes.....	7.6	7.1	7.6	3.1
Net Income.....	12.7%	13.2%	12.7%	5.8%

Net Sales -- Net sales were \$38.4 million for the three months ended October 24, 1997 and \$71.8 million for the six months ended October 24, 1997, representing increases of 82.4% and 81.8%, respectively, over the comparable periods of the prior fiscal year. The increase in net sales for these periods was principally attributable to a higher volume of filers shipped. The increase in unit shipments resulted primarily from the Company's expansion of its direct sales force and the introduction of new products during June and July 1997, particularly the enterprise-class NetApp(TM) F630, the NetApp F520 and the NetApp F230. Net sales also grew for the three and six-month periods as a result of increased multiprotocol system shipments, the licensing of multiprotocol software to pre-existing customers and increased service and software subscription revenues due to a growing installed base. For the three and six months ended October 24, 1997 compared to the corresponding periods of the prior year, average selling prices were impacted by price reductions on 4 gigabyte drives.

International net sales (including United States exports) grew by 134.5% and 149.3% for the three and six-month periods ended October 24, 1997, respectively, compared to comparable periods of the prior fiscal year. International net sales were \$8.6 million, or 22.5% of total net sales, and \$16.1 million, or 22.4% of total net sales, for the three and six months ended October 24, 1997, respectively.

There can be no assurance that the Company's net sales will continue to increase in absolute dollars or at the rate at which they have grown in recent fiscal periods.

Gross Margin -- Gross margin decreased from 59.2% for the three months ended October 25, 1996 to 59.0% for the three months ended October 24, 1997. This decrease in gross margin was primarily attributable to price reductions on 4 gigabyte drives, partially offset by the increase in product volume, lower costs of key components, increased manufacturing efficiencies and by the sale of the Company's new product line with cost-reduced designs introduced in June and July 1997. Gross margin was also favorably impacted by the licensing of multiprotocol software and by growth in software subscription and service revenues due to a larger installed base.

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Gross margin for the six months ended October 24, 1997 was 59.2%, compared to 59.1% for the comparable period of the prior fiscal year. This increase in gross margin was primarily attributable to the increase in product volume, lower costs of key components, increased manufacturing efficiencies and by the sale of the Company's new product line with cost-reduced designs introduced in June and July 1997. Gross margin was also favorably impacted by the licensing of multiprotocol software and by growth in software subscription and service revenues due to a larger installed base. Factors contributing to gross margin growth were partially offset by price reductions on 4 gigabyte drives.

The Company's gross margin has been and will continue to be affected by a variety of factors, including competition, product configuration, direct versus indirect sales, the mix and average selling prices of products, including software licensing, new product introductions and enhancements and the cost of components and manufacturing labor. In particular, the Company's gross margin varies based upon the configuration of systems that are sold and whether they are sold directly or through indirect channels. Highly configured systems typically generate lower overall gross margin percentages due to greater disk drive and memory content.

Sales and Marketing -- Sales and marketing expenses consist primarily of salaries, commissions, advertising and promotional expenses and customer service and support costs. Sales and marketing expenses increased 74.6% from \$5.5 million for the three months ended October 25, 1996 to \$9.7 million for the three months ended October 24, 1997. For the six months ended October 24, 1997, sales and marketing expenses of \$18.2 million reflect an increase of 78.0% over the comparable period of fiscal 1997. These expenses were 25.2% and 26.3% of net sales for the three months ended October 24, 1997 and October 25, 1996, respectively, and were 25.3% and 25.8%, respectively, of net sales for the six months then ended. The increase in absolute dollars was primarily related to the expansion of the Company's sales and marketing organization, including growth in the domestic and international direct sales forces and increased commission expenses. The Company expects to continue to increase its sales and marketing

expenses in an effort to expand domestic and international markets, introduce new products and establish and expand new distribution channels. The Company believes that its continued growth and profitability is dependent in part on the successful expansion of its international operations, and therefore, has committed significant resources to international sales.

Research and Development -- Research and development expenses consist primarily of salaries and benefits and prototype expenses. Research and development expenses increased 97.1% from \$2.0 million for the three months ended October 25, 1996 to \$3.9 million for the three months ended October 24, 1997. These expenses represented 10.2% and 9.4% of net sales for the quarters ended October 24, 1997 and October 25, 1996, respectively. For the six-month periods, research and development expenses increased 97.6% from \$3.7 million in fiscal 1997 to \$7.3 million in fiscal 1998 and represented 9.4% and 10.2% of net sales, respectively, for those periods. Expenses for the three and six-month periods increased as a result of increased headcount, prototyping expenses associated with the development of new products and ongoing support of current and future product development and enhancement efforts. The Company believes that significant investments in research and development will be required to remain competitive and expects that such expenditures will continue to increase in absolute dollars. For the three and six months ended October 24, 1997 and October 25, 1996, no software development costs were capitalized as amounts that qualified for capitalization were immaterial.

General and Administrative -- General and administrative expenses were \$1.5 million in the three months ended October 24, 1997, compared to \$0.9 million in the three months ended October 25, 1996. These expenses represented 3.9% and 4.4%, respectively, of net sales for such periods. For the six-month periods, general and administrative expenses increased 32.4% from \$2.2 million in fiscal 1997 to \$2.8 million in fiscal 1998 and represented 5.5% and 4.0% of net sales, respectively, for those periods. Increases in absolute dollars related primarily to increased headcount and growth in other expenses, partially offset by reduced legal fees over the corresponding periods of the prior year. The Company believes that its general and administrative expenses will increase as the Company continues to build its infrastructure.

Litigation Settlement -- The computer industry is characterized by frequent litigation regarding intellectual property rights. During fiscal 1995 a lawsuit of this nature was filed against the Company and two of its

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shareholders (the Whipsaw Litigation). During the first quarter of fiscal 1997, the Company settled the Whipsaw litigation and recorded a pre-tax expense of \$4.3 million (\$3.5 million in payments to the plaintiffs and \$0.8 million in legal fees). In connection with the settlement, the Whipsaw group released the Company from all liabilities.

Other Income, net -- Other income, net, was \$0.2 million and \$0.3 million for the three months ended October 24, 1997 and October 25, 1996, respectively. During the six months ended October 24, 1997, other income, net was \$0.4 million, compared to \$0.6 million in the corresponding period of the prior year. For the six months ended October 24, 1997, other income, net, decreased over the corresponding period of the prior year due primarily to foreign currency exchange losses recorded in the first quarter of fiscal 1998.

Provision for Income Taxes -- The Company's effective tax rate during the three and six months ended October 24, 1997 was 37.5% compared with 35.0% for the corresponding periods of the prior year. The higher tax rate in fiscal 1998 relates to increased earnings, which reduce the impact of research and development and other tax credits on the effective tax rate. Additionally, fiscal 1997 included a benefit for the reversal of a valuation allowance previously provided against deferred tax assets which will not occur in fiscal 1998.

The Company's quarterly operating results have in the past varied and may in the future vary significantly depending on a number of factors, including: the level of competition; the size and timing of significant orders; product configuration and mix; market acceptance of new products and product enhancements; new product announcements or introductions by the Company or its competitors; deferrals of customer orders in anticipation of new products or product enhancements; changes in pricing by the Company or its competitors; the ability of the Company to develop, introduce and market new products and product

enhancements on a timely basis; hardware component costs; supply constraints; the Company's success in expanding its sales and marketing programs; technological changes in the network file server market; the mix of sales among the Company's sales channels; levels of expenditure on research and development; changes in Company strategy; personnel changes; the Company's ability to successfully expand international operations; general economic trends and other factors.

The Company conducts business internationally. Accordingly, the Company's future operating results could be materially adversely affected by a variety of uncontrollable and changing factors including foreign currency exchange rates, regulatory, political or economic conditions in a specific country or region, trade protection measures and other regulatory requirements, and government spending patterns, among other factors. Although operating results have not been materially adversely affected by seasonality in the past, because of the significant seasonal effects experienced within the industry and the Company's international sales growth and goal to continue international expansion, there can be no assurance that the Company's future operating results will not be adversely affected by seasonality.

Sales for any future quarter are not predictable with any significant degree of certainty. The Company generally operates with limited order backlog because its products typically are shipped shortly after orders are received. As a result, product sales in any quarter are generally dependent on orders booked and shipped in that quarter. Product sales are also difficult to forecast because the network file server market is rapidly evolving and the Company's sales cycle varies substantially from customer to customer. A significant portion of the Company's revenues in any quarter may be derived from sales to a limited number of customers. Any significant deferral of these sales could have a material adverse effect on the Company's results of operations in any particular quarter; and to the extent that significant sales occur earlier than expected, operating results for subsequent quarters may be adversely affected. The Company's expense levels are based, in part, on its expectations as to future sales. As a result, if sales levels are below expectations, net income may be disproportionately affected. Although the Company has experienced significant revenue growth in recent periods, the Company does not believe such growth is indicative of future operating results. The Company believes that period-to-period comparisons of its results of operations are not necessarily meaningful and should not be relied upon as an indicator of future performance. Due to all of the foregoing factors, it is possible that in some future quarter the Company's operating results may be below the expectations of public market analysts and investors. In such event, the price of the Company's common stock would likely be materially adversely affected.

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This Form 10-Q may contain forward-looking statements about future results which are subject to risks and uncertainties. Network Appliance's actual results may differ significantly from the results discussed in the forward-looking statements. The Company is subject to a variety of other additional risk factors, more fully described in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission.

LIQUIDITY AND CAPITAL RESOURCES

For the six months ended October 24, 1997, the Company's cash, cash equivalents and short-term investments increased by \$5.3 million to \$33.8 million. The Company's working capital increased during the six months ended October 24, 1997 by \$11.0 million to \$52.9 million. For the six months ended October 24, 1997, the Company generated cash from operating activities totaling \$5.8 million, principally related to net income of \$9.1 million and to an increase in income taxes payable, partially offset by increases in accounts receivable and inventories. Net cash used in operating activities during the six months ended October 25, 1996 principally related to increases in accounts receivable and inventories, partially offset by net income and increases in accounts payable.

The Company used \$3.3 million and \$2.2 million to purchase property and equipment during the six-month periods ended October 24, 1997 and October 25, 1996, respectively. Net maturities of short-term investments provided \$1.7 million for the six months ended October 24, 1997. The Company used \$5.9 million during the six months ended October 25, 1996 for net investment purchases. Financing activities provided \$2.8 million and \$0.5 million for the six months

ended October 24, 1997 and October 25, 1996, respectively, due primarily to proceeds from the exercise of stock options in such periods.

The Company currently has no significant capital commitments other than commitments under operating leases. The Company believes that its existing liquidity and capital resources are sufficient to fund its operations for at least the next twelve months.

RECENTLY ISSUED ACCOUNTING STANDARD

In February 1997, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 128, "Earnings per Share" (SFAS 128). The Company is required to adopt SFAS 128 in the third quarter of fiscal 1998 and will restate at that time earnings per share (EPS) data for prior periods to conform with SFAS 128. Earlier application is not permitted. SFAS 128 replaces current EPS reporting requirements and requires a dual presentation of basic and diluted EPS. Basic EPS excludes dilution and is computed by dividing net income by the weighted average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock.

If SFAS 128 had been in effect during the current and prior-year fiscal periods, net income per share would have been as follows:

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	OCTOBER 24, 1997	OCTOBER 25, 1996	OCTOBER 24, 1997	OCTOBER 25, 1996
Basic.....	\$0.30	\$0.17	\$0.55	\$0.14
Diluted.....	\$0.27	\$0.16	\$0.51	\$0.13

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

None

ITEM 2. CHANGES IN SECURITIES

None

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ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITYHOLDERS

The following proposals were voted upon by the Company's shareholders at the Annual Meeting of Shareholders held on September 25, 1997 (Annual Shareholders Meeting):

- The following persons were elected as directors of the Company to serve for a term ending upon the next Annual Shareholders Meeting and until their successors are elected and qualified:

	VOTES FOR	VOTES WITHHELD
	-----	-----
Daniel J. Warmenhoven.....	14,918,757	160,082
Donald T. Valentine.....	14,968,888	109,951
Carol A. Bartz.....	14,971,457	107,382
Larry R. Carter.....	14,973,037	105,802
Michael R. Hallman.....	14,972,351	106,488

Robert T. Wall..... 14,973,537 105,302

2. A proposal to ratify the election of Deloitte & Touche LLP, as the Company's independent auditors for the fiscal year ending April 30, 1998 was approved as follows:

IN FAVOR	OPPOSED	WITHHELD	BROKER NON-VOTES
15,030,083	22,464	26,292	--

3. To approve a series of amendments to the Company's 1995 Stock Incentive Plan, including a 1,600,000 share increase in the maximum number of shares of common stock authorized for issuance under the plan:

IN FAVOR	OPPOSED	WITHHELD	BROKER NON-VOTES
8,978,284	4,643,943	142,881	1,002,834

ITEM 5. OTHER INFORMATION

None

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS

10.12 Facility lease, dated August 18, 1997, by and between McCandless-San Tomas No. 2 and the Registrant.

27.1 Financial Data Schedule

(b) REPORTS ON FORM 8-K

On November 26, 1997, the Company filed a current report on Form 8-K announcing a two-for-one stock split, to be distributed on or about December 18, 1997 to shareholders of record on December 8, 1997.

SIGNATURE

Pursuant to the requirements of the Securities and Exchange Act of 1934, as amended, the registrant duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

NETWORK APPLIANCE, INC.
(Registrant)

/s/ JEFFRY R. ALLEN

By: Jeffry R. Allen
Vice President Finance and
Operations, Chief Financial Officer
(Principal Financial Officer)

Date: December 5, 1997

Exhibit

Description

10.12	Facility lease, dated August 18, 1997, by and between McCandless-San Tomas No. 2 and the Registrant.
27.1	Financial Data Schedule

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MCCANDLESS - SAN TOMAS NO. 2
AND
NETWORK APPLIANCE, INC.
LEASE

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SUMMARY OF LEASE
MCCANDLESS - SAN TOMAS NO. 2

1. DATE OF LEASE
2. LANDLORD: McCandless
- San Tomas No. 2
3945 Freedom Circle, Suite 640
Santa Clara, California 95054
3. TENANT: Network Appliance, Inc.,
a California corporation
4. PREMISES: 2730 San Tomas
Expressway, Suite 100
Santa Clara, California
5. SQUARE FEET: 22,654 sq. ft.
6. PERMITTED USE: General office / research
and development
7. TERM: Five (5) years
(a) SCHEDULED COMMENCEMENT DATE: January 1, 1998
(b) SCHEDULED EXPIRATION DATE: December 31, 2002
8. RENT:
(a) BASIC RENT: \$33,981.00 per month (Lease months 1-12)
\$35,113.70 per month (Lease months 13-24)
\$36,246.40 per month (Lease months 25-36)
\$37,379.10 per month (Lease months 37-48)
\$38,511.80 per month (Lease months 49-60)

(b) TENANT'S ESTIMATED SHARE OF
COMMON AREA CHARGES: \$11,327.00 per month
9. SECURITY DEPOSIT: \$33,981.00
10. PARKING SPACES PROVIDED: Eighty-Five (85)

11. OTHER IMPORTANT PROVISIONS: Tenant Improvement Allowance

THIS SUMMARY OF LEASE IS INTENDED TO SUMMARIZE CERTAIN KEY PROVISIONS IN THE ATTACHED LEASE. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY THE PROVISIONS OF THIS SUMMARY AND THE LEASE, THE PROVISIONS OF THE LEASE SHALL GOVERN.

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OFFICE LEASE

THIS LEASE is made this 18th day of August of 1997, by and between McCANDLESS - SAN TOMAS NO. 2, a California general partnership ("Landlord"), and NETWORK APPLIANCE, INC., a California corporation ("Tenant").

W I T N E S S E T H:

Landlord leases to Tenant and Tenant leases from Landlord those certain premises outlined in red on Exhibit A (the "Premises") commonly known as 2730 San Tomas Expressway, Suite 100, Santa Clara, California, which Landlord and Tenant hereby agree consists of approximately twenty-two thousand six hundred fifty-four (22,654) square feet. As used herein the term "Project" shall mean and include all of the land described in Exhibit B and all the buildings, improvements, fixtures and equipment now or hereafter situated on said land.

Tenant covenants, as a material part of the consideration of this lease, to perform and observe each and all of the terms, covenants and conditions set forth below, and this lease is made upon the condition of such performance and observance.

1. USE

Subject to the restrictions contained in paragraph 6, Tenant shall use the Premises for general office use, light manufacturing and research and development and shall not use or permit the Premises to be used for any other purpose.

2. TERM

The term shall be for five (5) years (unless sooner terminated as hereinafter provided) and, subject to paragraph 3, shall commence on January 1, 1998 and end on December 31, 2002.

3. POSSESSION

(a) If Landlord for any reason cannot deliver possession of the Premises to Tenant by the scheduled commencement date set forth in paragraph 2, this lease shall not be void or voidable, Landlord shall not be liable to Tenant for any loss or damage on account thereof and Tenant shall not be liable for rent until Landlord delivers possession of the Premises to Tenant. If the term

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commences on a date other than the date specified in paragraph 2 above, then the parties shall immediately execute an amendment to this lease stating (or a letter acknowledging) the actual date of commencement and the revised expiration date. The expiration date of the term shall be extended by the same number of days that Tenant's possession of the Premises was delayed from that set forth in paragraph 2.

(b) Tenant's inability or failure to take possession of the Premises when delivery is tendered by Landlord shall not delay the commencement of the term of this lease or Tenant's obligation to pay rent. Tenant acknowledges that Landlord shall incur significant expenses upon the execution of this lease, even if Tenant never takes possession of the Premises, including without limitation brokerage commissions and fees, legal fees and

other professional fees. Tenant acknowledges that all of said expenses shall be included in measuring Landlord's damages should Tenant breach the terms of this lease.

4. MONTHLY RENT

(a) Basic Rent. Tenant shall pay to Landlord as basic rent for the Premises, in advance and subject to adjustment as provided in paragraph 5, the sum of Thirty-Three Thousand Nine Hundred Eighty-one Dollars (\$33,981.00) on or before the first day of the first full calendar month of the term and on or before the first day of each and every successive calendar month. Basic rent for any partial month shall be payable in advance and shall be prorated based on the actual number of days during the lease term occurring in such month divided by the total number of days in such month.

(b) Direct Expenses. In addition to the above basic rent and as additional rent, Tenant shall pay to Landlord, subject to adjustment and reconciliation as provided in paragraph 5(b) of this lease, the sum of Eleven Thousand Three Hundred Twenty-Seven Dollars (\$11,327.00) on or before the first day of the first full calendar month of the term and on the first day of each and every successive calendar month, said sum representing Tenant's estimated payment of its percentage share of direct expenses as provided for in paragraph 5(b) of this lease. Payment for direct expenses for any partial month shall be payable in advance and shall be prorated based on the actual number of days during the lease term occurring in such month divided by the total number of days in such month.

(c) Manner and Place of Payment. All payments of basic rent and direct expenses shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America, at the office of Landlord at 3945 Freedom Circle, Suite 640, Santa Clara, California 95054, or to such other person or place as Landlord may from time to time designate in writing.

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(d) First Month's Rent. On or before December 1, 1997, Tenant shall deposit with Landlord the sum of Forty-Five Thousand Three Hundred Eight Dollars (\$45,308.00) to be applied against the basic rent and direct expenses for the first lease month of the term.

(e) Security Deposit. Concurrently with Tenant's execution of this lease, Tenant shall deposit with Landlord the sum of Thirty-Three Thousand Nine Hundred Eighty-One Dollars (\$33,981.00), which sum shall be held by Landlord as a security deposit for the faithful performance by Tenant of all of the terms, covenants and conditions of this lease to be kept and performed by Tenant. If Tenant defaults with respect to any provision of this lease, including but not limited to the provisions relating to the payment of basic rent and direct expenses, Landlord may (but shall not be required to) use, apply or retain all or any part of this security deposit for the payment of any amount which Landlord may spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in the amount sufficient to restore the security deposit to its original amount; Tenant's failure to do so shall be a material breach of this lease. Landlord shall not be required to keep this security deposit separate from its general funds and Tenant shall not be entitled to interest on such deposit. If Tenant is not in default at the expiration or termination of this lease, the security deposit or any balance thereof shall be returned to Tenant within thirty (30) days after Tenant has vacated the Premises. In the event of termination of Landlord's interest in this lease, Landlord shall transfer said deposit to Landlord's successor in interest, and Tenant agrees that Landlord shall thereupon be released from liability for the return of such deposit or any accounting therefor.

5. ADJUSTMENT OF BASIC RENT AND DIRECT EXPENSES

(a) Adjustments to Basic Rent. The basic rent provided

for in paragraph 4(a) shall be adjusted periodically and the monthly basic rent for each period shall be as set forth below:

Lease Months 1 - 12 \$33,981.00 per month
Lease Months 13 - 24 \$35,113.70 per month
Lease Months 25 - 36 \$36,246.40 per month
Lease Months 37 - 48 \$37,379.10 per month
Lease Months 49 - 60 \$38,511.80 per month

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(b) Adjustments to Direct Expenses. Tenant's percentage share of the direct expenses of the Project shall be nine and fifty-three one-hundredths percent (9.53%) and Tenant's percentage share of the direct expenses of the building in which the Premises are located shall be forty-eight and sixty-seven one-hundredths percent (48.67%).

Tenant shall be required to pay to Landlord, as additional rent in accordance with paragraph 4(b) of this lease, Tenant's percentage share of direct expenses for each calendar year (or portion thereof) during the term of this lease. Tenant's estimated share of the monthly direct expenses payable by Tenant during the calendar year in which the term commences is set forth in paragraph 4(b) of this lease. A written estimate of Tenant's monthly share of direct expenses for each succeeding calendar year shall be delivered to Tenant prior to the commencement of each such succeeding calendar year (or as soon as practicable thereafter). Tenant shall pay to Landlord in accordance with paragraph 4(b) of this lease its monthly share of direct expenses as estimated by Landlord. Landlord reserves the right to revise such written estimate during a calendar year if Landlord's actual or projected direct expenses shows an increase or decrease in excess of ten percent (10%) from that of an earlier written estimate delivered to Tenant, and if Landlord elects to revise the earlier estimate, Landlord shall deliver the revised estimate to Tenant, together with an explanation of the reasons therefor, and Tenant shall revise its payments accordingly. Statements of the actual direct expenses for the calendar year in which the term commences and for each succeeding calendar year (herein called "statement of actual direct expenses") shall be delivered to Tenant within one hundred twenty (120) days following the expiration of each such calendar year (or as soon as practicable thereafter). If the statement of actual direct expenses for any such calendar year shows that Tenant's percentage share of actual direct expenses for the year is in excess of the aggregate amount Tenant has paid as direct expenses for that calendar year, Tenant shall pay such excess to Landlord within thirty (30) days after receipt of the statement of actual direct expenses. In the event that any statement of actual direct expenses shall show that Tenant has paid Landlord an aggregate amount in excess of the actual direct expenses for the preceding calendar year and Tenant is not in default in the performance or observance of any of the terms, covenants or conditions of this lease at the time such statement of actual direct expenses is delivered, Landlord shall, at its option, promptly either refund such excess to Tenant or credit the amount thereof to the monthly direct expenses next becoming due from Tenant. The respective obligations of Landlord and Tenant under this paragraph shall survive the expiration or other termination of this lease.

As used in this lease, "direct expenses" shall include, but not be limited to, (i) real property taxes, assessments, and other costs identified as direct expenses in paragraph 13, (ii) insurance premiums and other costs identified as direct expenses in

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paragraph 11, (iii) the cost of all utilities and services including water, gas and sewer charges, electricity, heat, air conditioning, refuse collection, and janitorial services identified as direct expenses in paragraph 12, (iv) the costs of operating and maintaining the Common Area identified as direct expenses in paragraph 15, including, but not limited to, the landscaping, elevators, parking lots, paving, sidewalks, showers, and security and exterminator services, (v) the costs and expenses of maintaining and repairing the Project identified as direct expenses in paragraph 9, (vi) the cost of certain alterations identified as direct expenses in paragraph 8, (vii) amortization of such capital improvements having a useful life greater than one year as Landlord may have installed for the purpose of reducing operating costs and/or to comply with all laws, rules and regulations of federal, state, county, municipal and other governmental authorities now or hereafter in effect (Tenant's share of such capital improvement shall equal Tenant's percentage share of the fraction of the cost of such capital improvement equal to the remaining term of the lease over the useful life of such capital improvement), (viii) wages, salaries, employee benefits (including union benefits) and related expenses of all on-site and off-site personnel engaged in the operation and maintenance of the Project (or the building in which the Premises are located) and payroll taxes applicable thereto and all costs incurred to maintain a management office in or near the Project (including, without limitation, rental payments therefor or the reasonable rental value of the space so occupied), (ix) supplies, materials, equipment and tools used or required in connection with the operation and maintenance of the Project, (x) licenses, permits and inspection fees, (xi) all other operating costs incurred by Landlord in maintaining and operating the Project, and (xii) an amount equal to five percent (5%) of the actual expenditures for the aggregate of all other direct expenses as compensation for Landlord's accounting and processing services. The following shall not constitute "direct expenses" for the purposes of this lease, and nothing contained herein shall be deemed to require Tenant to pay any of the following: (i) legal fees, brokerage commissions, advertising costs and other related expenses incurred in connection with the leasing of the Project; (ii) damage and repairs covered under any warranty or insurance policy carried by Landlord in connection with the Building or Project for which Landlord does not incur any cost, or such cost is reimbursed to Landlord; (iii) damage and repairs necessitated by the negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents; (iv) executive salaries of Landlord (i.e. persons above the level of Property Manager); (v) payments of principal or interest on any mortgage or other encumbrance including ground lease payments and points, commissions and legal fees associated with financing the Project; (vi) initial costs of construction of the Project; (vii) legal fees, accountants, fees and other expenses incurred in connection with disputes with other tenants or occupants of the Project or associated with the enforcement of any leases or defense of Landlord's title to or interest in the Building or any part

thereof; (viii) costs (including permit, license and inspection fees) incurred in renovating or otherwise improving, decorating, painting or altering space for other tenants in the Project; (ix) costs incurred due to violation by Landlord or any other tenant in the Project of the terms and conditions of any lease; (x) the cost of any service provided to Tenant or other occupants of the Project for which Landlord is otherwise reimbursed; (xi) charitable or political contributions; (xii) any cost or expense related to the testing for, removal, transportation or storage of Hazardous Materials from the Project; (xiii) interest, penalties or other costs arising out of Landlord's failure to make timely payments of its obligations (except if disputed by Landlord in good faith); (xiv) costs incurred in advertising and promotional activities for the Project; and (xv) costs to repair the structural elements of the building, including, without limitation, the exterior walls and the roof structure (not the roof membrane).

6. RESTRICTION ON USE

Tenant shall not do or permit to be done in or about the Premises or the Project, nor bring or keep or permit to be brought or kept in or about the Premises or Project, anything which is prohibited by or will in

any way increase the existing rate of, or otherwise affect, fire or any other insurance covering the Project or any part thereof, or any of its contents, or will cause a cancellation of any insurance covering the Project or any part thereof, or any of its contents. Tenant shall not do or permit to be done anything in or about the Premises or the Project which will constitute waste or which will in any way obstruct or interfere with the rights of other tenants or occupants of the Project or injure or annoy them, or use or allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in or about the Premises or the Project. No loudspeaker or other device, system or apparatus which can be heard outside the Premises shall be used in or at the Premises without the prior written consent of Landlord. Tenant shall not use the Premises for sleeping, washing clothes, cooking or in any manner that will cause or emit any objectionable odor, noise or light into the adjoining premises or Common Area. Tenant, shall not do anything on the Premises that will cause damage to the Project and Tenant shall not overload the floor capacity of the Premises or the Project. No machinery, apparatus or other appliance shall be used or operated in or on the Premises that will in any manner injure, vibrate or shake the Premises. Landlord shall be the sole judge of whether such odor, noise, light or vibration is such as to violate the provisions of this paragraph 6. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises or the Project by Tenant, Tenant's agents, contractors, employees and invitees, except in trash containers placed inside exterior enclosures designated for that purpose by Landlord, or where otherwise designated by Landlord; and no toxic or hazardous materials shall be disposed of through the plumbing or sewage system by Tenant, Tenant's agents, contractors, employees and invitees.

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No materials, supplies, equipment, finished products or semi-finished products, raw materials or articles of any nature shall be stored or permitted to remain outside of the building proper. No retail sales shall be made on the Premises.

7. COMPLIANCE WITH LAWS

Tenant shall, in connection with its use and occupation of the Premises, at its sole cost and expense, promptly observe and comply with (i) all laws, statutes, ordinances and governmental rules, regulations and requirements of federal, state, county, municipal and other governmental authorities, now or hereafter in effect, which shall impose any duty on Landlord or Tenant with respect to the use, occupancy or alteration of the Premises, (ii) with the requirements of any board of fire underwriters or other similar body now or hereafter constituted and (iii) with any direction or occupancy certificate issued pursuant to law by any public authority; provided, however, that no such failure shall be deemed a breach of these provisions if Tenant, immediately upon notification, commences to remedy or rectify said failure. Notwithstanding the foregoing, Tenant's obligation regarding alterations to the Premises and/or Project required by law shall be as specified in paragraph 8 below. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant (whether or not Landlord is a party thereto), that Tenant has violated any such law, statute, ordinance or governmental rule, regulation, requirement, direction or provision, shall be conclusive of that fact as between Landlord and Tenant. This lease shall remain in full force and effect notwithstanding any loss of use or other effect on Tenant's enjoyment of the Premises by reason of any governmental laws, statutes, ordinances, rules, regulations and requirements now or hereafter in effect. Tenant shall comply with any covenant, condition or restriction ("C.C.& R.'s") affecting the Premises.

8. ALTERATIONS

Tenant shall not make or suffer to be made any alteration, addition or improvement to or of the Premises or any part thereof (collectively referred to herein as "alterations") without (i) the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, (ii) a valid building permit issued by the appropriate governmental authority and (iii) otherwise complying with all applicable laws, regulations and requirements of governmental agencies having jurisdiction and with the rules, regulations and requirements of any board of fire underwriters or similar body. Notwithstanding the foregoing, Tenant shall have the right to make

non-structural alterations to the Premises which do not affect the Building systems and which cost less than Ten Thousand Dollars (\$10,000) each (and not more than Twenty-Five Thousand Dollars (\$25,000) in the aggregate in any period of twelve (12) consecutive months) without the prior written consent of Landlord, provided that (a) Tenant gives Landlord prior

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written notice of the nature and scope of the alterations, the cost of the alterations and the contractors engaged to perform the work, and (b) such alterations shall otherwise be made in accordance with the terms of this lease (including compliance with clauses (ii) and (iii) of the preceding sentence.) Landlord's consent to any requested alteration shall not create on the part of Landlord or cause Landlord to incur any responsibility or liability for such alteration's compliance with all laws, rules and regulations of federal, state, county, municipal and other governmental authorities. Any alteration made by Tenant (excluding moveable furniture and trade fixtures not attached to the Premises) shall at once become a part of the Premises and belong to Landlord. Without limiting the foregoing, all heating, lighting, electrical (including all wiring, conduit, outlets, drops, buss ducts, main and subpanels), air conditioning, partitioning, drapery, window covering and carpet installations made by Tenant, regardless of how attached to the Premises, together with all other alterations that have become an integral part of the Project in which the Premises are a part, shall be and become part of the Premises and belong to Landlord upon installation and shall not be deemed trade fixtures and, subject to Landlord's right to require removal and restoration as specified herein, shall remain upon and be surrendered with the Premises at the termination of the lease.

If Landlord consents to the making of any alteration by Tenant, the same shall be made by Tenant at its sole risk, cost and expense and only after Landlord's written approval of any contractor or person selected by Tenant for that purpose, and the same shall be made at such time and in such manner as Landlord may from time to time designate, provided that Tenant shall not be required to incur overtime charges in connection therewith. Tenant shall, if required by Landlord, secure at Tenant's cost a completion and lien indemnity bond for such work. Upon the expiration or sooner termination of the term, Landlord may, at its sole option, require Tenant, at Tenant's sole cost and expense, to promptly remove any such alteration made by Tenant and designated by Landlord to be removed, repair any damage to the Premises caused by such removal and restore the Premises to their condition prior to Tenant's alteration, unless Landlord agrees, otherwise in writing. Any moveable furniture and equipment or trade fixtures remaining on the Premises at the expiration-or other termination of the term shall become the property of the Landlord; provided, however, in addition to all other remedies available to Landlord at law or in equity, Landlord may (i) require Tenant to remove same or (ii) remove same at Tenant's cost, and Tenant shall be liable to Landlord for all damages incurred by Landlord related thereto.

If during the term any alteration, addition or change of the Premises, the Common Area, the Project or the building in which the Premises are located is required by law, regulation, ordinance or order of any public authority due to Tenant's specific use of the Premises (as opposed to office or research and development uses generally) or alterations or improvements voluntarily made to the

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Premises by Tenant, Tenant, at its sole cost and expense, shall promptly make the same. If during the term any alterations, additions or changes to the Premises or to the Common Area or to the Project or building in which the Premises are located is required by law, regulation, ordinance or order of any public or quasi-public authority, for which Tenant is not responsible as

specified in the preceding sentence, Landlord shall make such alterations, additions or changes and the cost thereof shall be a direct expense charge and, subject to paragraph 56 below, Tenant shall pay its percentage share of said costs to Landlord as Provided in paragraphs 4 and 5. Notwithstanding the above, direct expenses shall not include and Tenant shall not be responsible for the cost of any alterations, additions or changes which are required by law to be made to the Premises 1 the Common Area or the Project prior to the commencement date of this Lease.

Notwithstanding any provision to the contrary in this lease, Landlord has approved the alterations shown on the floor plans attached hereto as Exhibit C, subject to the terms and conditions specified therein and the consent letter attached hereto as Exhibit D.

9. REPAIR AND MAINTENANCE

Landlord represents and warrants to Tenant that, as of the commencement date of this Lease, all of the Building systems, including but not limited to the mechanical, electrical, plumbing and sewage systems, shall be in good working condition and repair. Subject to paragraph 16, Landlord shall maintain and keep in good repair the Common Area and the mechanical electrical, plumbing and sewage systems, windows, window frames, plate glass, glazing, elevator;, gutters and downspouts, the roof, exterior walls, structural elements and the heating, ventilating and air conditioning systems (excepting special air conditioning of Tenant's computer room(s) as set forth below) of the Premises and the Project; provided, however, that Landlord shall not be required to perform repairs made necessary by the negligence or abuse of such improvements or property by Tenant or its employees, agents, subtenants or permittees to the extent the cost thereof is not covered by insurance maintained by Landlord. The cost of all maintenance and repairs made by Landlord pursuant to this paragraph 9, including without limitation maintenance contracts and supplies, materials, equipment and tools used in such repairs and maintenance, shall be direct expenses and Tenant shall pay its percentage share of such costs to Landlord as provided in paragraphs 4 and 5.

By entry hereunder, subject to Landlord's representations in the preceding paragraph, Tenant accepts the Premises as being in good and sanitary order, condition and repair. Subject to paragraphs 16 and 21, and excepting repairs and maintenance required by this paragraph 9 to be made by Landlord, Tenant at its cost shall keep the interior, non-structural parts of the Premises

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and every part thereof in good and sanitary order, condition and repair and Tenant shall be solely responsible for the cost and maintenance of, and electricity supplied to, any special air conditioning for Tenant's computer facilities. Further, Tenant shall repair (or, at the option of Landlord, reimburse Landlord if Landlord elects to repair) damage to improvements or other property located on or about the Project where such repairs are made necessary by the negligence of or abuse of such improvement or other property by Tenant or its employees, agents, subtenants or permittees. However, in no event shall Tenant's obligation to repair under this paragraph extend to (i) damage and repairs to the extent the cost thereof is covered under any insurance policy carried by Landlord as provided in paragraph 11 below; (ii) damage caused in whole or in part by the negligence or willful misconduct of Landlord or Landlord's agents, contractors or employees; (iii) conditions covered under any warranties of Landlord's contractors Tenant waives all rights and benefits under California Civil Code Sections 1932(1), 1941, and 1942 and under any similar law, statute or ordinance now or hereafter in effect or (iv) repairs included in direct expenses as specified above in this paragraph 9 (provided, however, Tenant shall pay its percentage share of such direct expenses).

10. LIENS

Tenant shall keep the Premises and the Project free any liens arising out of any work performed, materials furnished or obligations incurred by Tenant, its agents, employees or contractors. Upon Tenant's receipt of a

preliminary twenty (20) day notice filed by a claimant pursuant to California Civil Code Section 3097, Tenant shall immediately provide Landlord with a copy of such notice. Should any lien be recorded against the Project, Tenant shall give immediate notice of such lien to Landlord. In the event that Tenant shall not, within ten (10) business days following the imposition of such lien, cause the same to be released of record, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but no obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All sums paid by Landlord for such, and all expenses (including reasonable attorneys, fees) incurred by it in connection therewith, shall be payable to Landlord by Tenant on demand with interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper for the protection of Landlord, the Premises and the Project and any other party having an interest therein, from mechanics' and materialmen's liens and like liens. Tenant shall give Landlord at least ten (10) days, prior notice of the date of commencement of any construction on the Premises in order to permit the posting of such notices. In the event Tenant is required to post an improvement bond with a public agency in connection with any work

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performed by Tenant on or to the Premises, Tenant shall include Landlord as an additional obligee.

11. INSURANCE

Tenant, at its sole cost and expense, shall keep in force during the term (i) commercial general liability and property damage insurance with a combined single limit of at least \$2,000,000 per occurrence insuring against personal or bodily injury to or death of persons occurring in, on or about the Premises or Project and any and all liability of the insureds with respect to the Premises or arising out of Tenant's maintenance, use or occupancy of the Premises and all areas appurtenant thereto, (ii) direct physical loss-special insurance covering the leasehold improvements in the Premises and all of Tenant's equipment, trade fixtures, appliances, furniture, furnishings, and personal property from time to time located in, on or about the Premises, with coverage in the amount of the full replacement cost thereof, and (iii) Worker's Compensation Insurance as required by law, together with employer's liability coverage with a limit of not less than \$1,000,000 for bodily injury for each accident and for bodily injury by disease for each employee. Tenant's commercial general liability and property damage insurance and Tenant's Workers Compensation Insurance shall be endorsed to provide that said insurance shall not be cancelled or reduced except upon at least thirty (30) days prior written notice to Landlord. Further, Tenant's commercial general liability and property damage insurance shall be primary and shall be endorsed to provide that Landlord and McCandless Management Corporation, and their respective partners, officers, directors and employees and such other persons or entities as directed from time to time by Landlord shall be named as additional insureds for all liability using ISO Bureau Form CG20111185 (or a successor form) or such other endorsement form reasonably acceptable to Landlord; shall contain a severability of interest clause and a cross-liability endorsement; shall be endorsed to provide that the limits and aggregates apply per location using ISO Bureau Form CG25041185 (or a successor form) or such other endorsement form reasonably acceptable to Landlord; and shall be issued by an insurance company admitted to transact business in the State of California and rated A+VIII or better in Best's Insurance Reports (or successor report). The deductibles for all insurance required to be maintained by Tenant hereunder shall be reasonably satisfactory to Landlord. The commercial general liability insurance carried by Tenant shall specifically insure the performance by Tenant of the indemnification provisions set forth in paragraph 17 of this lease provided, however, nothing contained in this paragraph 11 shall be construed to limit the liability of Tenant under the indemnification provisions set forth in said paragraph 17. If Landlord or any of the additional insureds named on any of Tenant's insurance, have other insurance which is applicable to the covered loss on a contributing, excess or contingent basis, the amount of the Tenant's insurance company's liability under the policy of insurance

maintained by Tenant shall

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not be reduced by the existence of such other insurance. Any insurance carried by Landlord or any of the additional insureds named on Tenant's insurance policies shall be excess and non-contributing with the insurance so provided by Tenant.

Tenant shall, prior to the commencement of the term and at least thirty (30) days prior to any renewal date of any insurance policies required to be maintained by Tenant pursuant to this paragraph, provide Landlord with a completed Certificate of Insurance, using a form acceptable in Landlord's reasonable judgement, attaching thereto copies of all endorsements required to be provided by Tenant under this lease. Tenant agrees to increase the coverage or otherwise comply with changes in connection with said commercial general liability, property damage, direct physical loss and Worker's Compensation Insurance as Landlord or Landlord's lender may from time to time reasonably require exercising reasonable business judgment, but in no event more than once in any two (2) year period.

Landlord shall obtain and keep in force a policy or policies of insurance covering loss or damage to the Premises and Project, in the amount of the full replacement value thereof, providing protection against those perils included within the classification of "all risk" insurance, with increased cost of reconstruction and contingent liability (including demolition), plus a policy of rental income insurance in the amount of one hundred percent (100%) of twelve (12) months' rent (including sums paid as additional rent) and such other insurance as Landlord or Landlord's lender may from time to time require. Landlord may, but shall not be obligated to, obtain flood and/or earthquake insurance. Landlord shall have no liability to Tenant if Landlord elects not to obtain flood and/or earthquake insurance. The cost of all such insurance purchased by Landlord, plus any charges for deferred payment of premiums and the amount of any deductible incurred upon any covered loss within the Project, shall be direct expenses and Tenant shall pay to Landlord its percentage share of such costs as provided in paragraphs 4(b) and 5(b). Notwithstanding any provision to the contrary herein, in the event that Tenant's percentage share of the deductible for earthquake insurance exceeds Seventy-Five Thousand Dollars (\$75,000), the amount of such excess shall be amortized in equal monthly installments over the ten (10) year period from the date of the casualty (including interest at the rate of ten percent (10%) per year and Tenant shall pay each such monthly installment which arises during the term of this lease (and any extended term) at the same time and in the same manner as payments of basic rent are due hereunder and Tenant shall not be obligated for the unamortized portion of the deductible remaining at the end of the lease term. If the cost of insurance is increased due to Tenant's use of the Premises, then Tenant shall pay to Landlord upon demand the full cost of such increase.

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Landlord and Tenant hereby mutually waive any and all rights of recovery against one another for real or personal property loss or damage occurring to the Premises or the Project, or any part thereof, or to any personal property therein, from perils insured against under fire and extended insurance and any other property insurance policies existing for the benefit of the respective parties. The property insurance coverage obtained by each party pursuant to this lease shall include, without limitation, a waiver or subrogation by the carrier which conforms to the provisions of this paragraph.

If Tenant does not take out and maintain insurance as required pursuant to this paragraph 11, Landlord may, but shall not be obligated to, take out the necessary insurance and pay the premium therefor, and Tenant shall repay to Landlord promptly on demand, as additional rent, the amount so

paid. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as additional rent, any and all reasonable expenses (including attorney fees) and damages which Landlord may sustain by reason of the failure of Tenant to obtain and maintain such insurance, it being expressly declared that the expenses and damages of Landlord shall not be limited to the amount of the premiums thereon.

12. UTILITIES AND SERVICE

Landlord shall furnish to the Premises and to the Project, during reasonable business hours of generally recognized business days (i.e., Mondays through Fridays from 7 a.m. to 7 p.m. and Saturdays 9 a.m. through 4 p.m., excluding locally and nationally recognized holidays), to be determined by Landlord in Landlord's reasonable discretion, and subject to the rules and regulations of the Project, reasonable quantities of water, gas and electricity suitable for the intended use of the Premises and the Project, heat and air conditioning required in Landlord's judgment for the comfortable use and occupation of the Premises and the Project, refuse collection and janitorial services. Tenant agrees that at all times it will cooperate fully with Landlord and abide by all regulations and requirements that Landlord may prescribe for the proper functioning and protection of the heating, ventilating and air conditioning systems. The cost of all utilities and services furnished by Landlord to the Premises and to the Project shall be direct expenses and Tenant shall pay its percentage share of such costs to Landlord as provided in paragraphs 4 and 5. In addition, Tenant shall pay to Landlord the reasonable cost of providing HVAC during non-business hours. The current hourly charge for such additional HVAC is \$25.00 per hour, subject to change in Landlord's reasonable discretion.

Landlord shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of rent by reason of, Landlord's failure to furnish any of the foregoing services when such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any

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character, governmental moratoriums, regulations or other governmental actions, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord. In addition, Tenant shall not be relieved from the performance of any covenant or agreement in this lease because of any such failure, and no eviction of Tenant shall result from such failure.

Tenant will not, without the written consent of Landlord, use any apparatus or device in the Premises (including, without limitation, electronic data processing machines, punch card machines or machines using current in excess of 110 volts) which will in any way increase the amount of electricity, water or air conditioning usually furnished or supplied to premises in the Project being used as general office space, or connect with electric current (except through existing electrical outlets in the Premises) or with water pipes any apparatus or device for the purpose of using electric current or water. If Tenant shall require water or electric current in excess of that usually furnished or supplied to premises in the Project being used as general office space, then Tenant shall first obtain the written consent of Landlord, which consent shall not be unreasonably withheld, and Tenant shall pay to Landlord promptly on demand, as additional rent, the full cost of such excess use. Landlord may cause an electric current or water meter to be installed in the Premises in order to measure the amount of electric current or water consumed for any such excess use. The cost of any such meter and of the installation, maintenance and repair thereof, and all charges for such excess water and electric current consumed (as shown by meters and at the rates then charged by the furnishing public utility) plus any additional expense incurred by Landlord in keeping account of electric current or water so consumed, shall be paid by Tenant, and Tenant agrees to pay Landlord therefor promptly upon demand by Landlord. Whenever heat generating machines or equipment are used in the Premises by Tenant which affect the temperature otherwise maintained by the air conditioning system, Landlord shall have the right to install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation and the cost of operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord as additional rent.

Tenant shall install, at Tenant's cost, a by-pass timer (to be approved by Landlord) to monitor and measure Tenant's usage of HVAC system after normal business hours to permit billing for excess usage as provided above.

13. TAXES AND OTHER CHMGES

All real estate taxes and assessments and other taxes, fees and charges of every kind or nature, foreseen or unforeseen, which are levied, assessed or imposed upon Landlord and/ or against the Premises, building, Common Area or Project or any part thereof by any federal, state, county, regional, municipal or other

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governmental or quasi-governmental or special district authority, together with any increases therein whether resulting from increased rate and/or valuation, shall be a direct expense and Tenant shall pay its percentage share of such costs to Landlord as provided in paragraphs 4 and 5. By way of illustration and not limitation, "other taxes, fees and charges" as used herein include any and all taxes payable by Landlord (other than state and federal personal or corporate income taxes measured by the net income of Landlord from all sources, premium taxes and Landlord's franchise, estate, inheritance and gift taxes), whether or not now customary or within the contemplation of the parties hereto, (i) upon, allocable to, or measured by the rent payable hereunder, including, without limitation, any gross income or excise tax levied by the local, state or federal government with respect to the receipt of such rent, (ii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any part thereof, (iii) upon or measured by the value of Tenant's personal property or leasehold improvements located in the Premises, (iv) upon this transaction or any document to which Tenant is a party creating or transferring an interest or estate in the Premises, (v) upon or with respect to vehicles, parking or the number of persons employed on or about the Project, and (vi) any tax, license, franchise fee or other imposition upon Landlord which is otherwise measured by or based in whole or in part upon the Project or any portion thereof. The following shall not constitute real property taxes for the purposes of this lease, and nothing contained herein shall be deemed to require Tenant to pay any of the following: (i) any state, local, federal, personal or corporate income tax measured by the net income of Landlord (as opposed to rents or receipts); (ii) any estate or inheritance taxes; (iii) any franchise, succession or transfer taxes; (iv) interest on taxes or penalties resulting from Landlord's failure to pay taxes; or (v) any increases in taxes attributable to additional improvements to the Project to the extent such improvements are above building standard and constructed for one tenant's sole benefit. If Landlord contests any such tax, fee or charge, the cost and expense incurred by Landlord thereby (including, but not limited to, reasonable costs of attorneys and experts) shall also be direct expenses and Tenant shall pay its percentage share of such costs to Landlord as provided in paragraphs 4 and 5. In the event the Premises and any improvements installed therein by Tenant or Landlord are valued by the assessor disproportionately higher than those of other tenants in the building or Project or in the event alterations or improvements are made to the Premises, Tenant's percentage share of such taxes, assessments, fees and/or charges shall be readjusted upward accordingly and Tenant agrees to pay such readjusted share. Such determination shall be made by Landlord from the respective valuations assigned in the assessor's work sheet or such other information as may be reasonably available and Landlord's determination thereof shall be conclusive.

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Tenant agrees to pay, before delinquency, any and all taxes levied or assessed during the term hereof upon Tenant's equipment, furniture,

fixtures and other personal property located in the Premises, including carpeting and other property installed by Tenant notwithstanding that such carpeting or other property has become a part of the Premises. If any of Tenant's personal property shall be assessed with the Project, Tenant shall pay to Landlord, as additional rent, the amounts attributable to Tenant's personal property within ten (10) business days after receipt of a written statement from Landlord setting forth the amount of such taxes, assessments and public charges attributable to Tenant's personal property.

14. ENTRY BY LANDLORD

Landlord reserves, and shall at all reasonable times have, the right to enter the Premises (i) to inspect the Premises, (ii) to supply services to be provided by Landlord hereunder, (iii) to show the Premises to prospective purchasers, lenders or tenants and during the last six (6) months of the term only to put 'I for sale' or 'for lease' signs thereon, (iv) to post notices required or allowed by this lease or by law, (v) to alter, improve or repair the Premises and any portion of the Project, and (vi) to erect scaffolding and other necessary structures in or through the Premises or the Project where reasonably required by the character of the work to be performed. Any such entry onto the Premises by Landlord shall be preceded by notice thereof to Tenant at least twenty-four (24) hours in advance (except in the case of emergency, in which event no such notice shall be necessary) and conducted in a reasonable manner, with due consideration to minimizing interference to Tenant and Tenant's use of the Premises. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising from Landlord's entry and acts pursuant to this paragraph 14 and Tenant shall not be entitled to an abatement or reduction of rent if Landlord exercises any rights reserved in this paragraph 14. For each of the foregoing purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, on and about the Premises (excluding Tenant's vaults, safes and similar areas designated in writing by Tenant in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises. Any entry by Landlord to the Premises pursuant to this paragraph 14 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

15. COMMON AREA; PARKING

Subject to the terms and conditions of this lease and such rules and regulations as Landlord may from time to time prescribe, Tenant and Tenant's employees and invitees shall, in

common with other occupants of the Project, and their respective employees and invitees and others entitled to the use thereof, have the nonexclusive right to use those areas of the Common Area designated by Landlord for the general use and convenience of the occupants of the Project (which areas and facilities shall include, but not be limited to, common lobbies, corridors, restrooms and showers; telephone, electrical, janitorial and mechanical rooms; elevators, stairwells, vertical duct shafts; sidewalks; parking, refuse, landscape and plaza areas; roofs; building exteriors; electrical, mechanical, plumbing and HVAC systems; and storage areas), which areas and facilities are referred to herein as "Common Area". This right shall terminate upon the termination of this lease.

Landlord reserves the right from time to time to make changes in the shape, size, location, amount and extent of the Common Area. Landlord shall also have the right at any time to change the name, number or designation by which the Project is commonly known. Landlord further reserves the right to promulgate such rules and regulations relating to the use of the Common Area, and any part thereof, as Landlord may deem appropriate for the best interests of the occupants of the Project. The rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant and Tenant shall abide by them and cooperate in their observance. Such rules and regulations may be

amended by Landlord from time to time, with or without advance notice.

Tenant shall have the nonexclusive use of eighty-five (85) parking spaces in the Common Area as designated from time to time by Landlord. Landlord reserves the right at its sole option to assign and label parking spaces, but it is specifically agreed that Landlord is not responsible for policing any such parking spaces. Tenant shall not at any time park or permit the parking of Tenant's trucks or other vehicles, or the trucks or other vehicles of others, adjacent to loading areas so as to interfere in any way with the use of such areas; nor shall Tenant at any time park or permit the parking of Tenant's vehicles or trucks, or the vehicles or trucks of Tenant's suppliers or others, in any portion of the Common Area not designated by Landlord for such use by Tenant. Tenant shall not park or permit any inoperative vehicle or equipment to be parked on any portion of the Common Area.

Landlord shall operate, manage and maintain the Common Area. The manner in which the Common Area shall be operated, managed and maintained and the expenditures for such operation, management and maintenance shall be at the sole discretion of Landlord. Subject to the express limitations of paragraph 5(b) hereof, the cost of such maintenance, operation and management of the Common Area, together with the costs of security and exterminator services and salaries and employee benefits (including union benefits) of on-site and accounting personnel engaged in such maintenance and operations management, shall be a direct expense

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and Tenant shall pay to Landlord its percentage share of such costs as provided in paragraphs 4 and 5.

16. DAMAGE BY FIRE; CASUALTY

In the event the Premises are damaged by any casualty which is covered under an insurance policy required to be maintained by Landlord pursuant to paragraph 11, Landlord shall be entitled to the use of all insurance proceeds and shall repair such damage as soon as reasonably possible and this lease shall continue in full force and effect.

In the event the Premises are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to paragraph 11, Landlord may, at Landlord's option, either (i) repair such damage, at Landlord's expense, as soon as reasonably possible, in which event this lease shall continue in full force and effect, or (ii) give written notice to Tenant within thirty (30) days after the date of the occurrence of such damages of Landlord's intention to cancel and terminate this lease as of the date of the occurrence of the damages; provided, however, that if such damage is caused by an act or omission of Tenant or its agent, servants or employees and the cost thereof is not covered by insurance maintained by Landlord, then Tenant shall repair such damage promptly at its sole cost and expense. In the event Landlord elects to terminate this lease pursuant hereto, Tenant shall have the right within ten (10) days after receipt of the required notice to notify Landlord in writing of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within the ten (10) day period, this lease shall be cancelled and terminated as of the date of the occurrence of such damage. Under no circumstances shall Landlord be required to repair any injury or damage to (by fire or other cause), or to make any restoration or replacement of, any of Tenant's personal property, trade fixtures or property leased from third parties, whether or not the same is attached to the Premises.

Notwithstanding any provision to the contrary above, if thirty percent (30%) or more of the Premises are damaged or destroyed during the term from any cause (including any destruction required by any authorized public authority), whether or not covered by the insurance required under paragraph 11, if in Landlord's reasonable business judgment the Premises cannot reasonably and lawfully be repaired or restored within nine (9) months of the date of

destruction to substantially the condition existing prior to such damage or destruction, then either Landlord or Tenant may elect within thirty (30) days after the date of such determination to terminate this lease effective as of the date of such damage or destruction. If the Premises are totally destroyed during the last twelve (12) months of the term, either Landlord or

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Tenant may at its option cancel and terminate this lease as of the date of occurrence of such damage by giving written notice to the other of its election to do so within thirty (30) days after the occurrence of such damage.

If the Premises are partially or totally destroyed or damaged and Landlord or Tenant repair them pursuant to this lease, the rent payable hereunder for the period during which such damage and repair continues shall be abated only to the extent that Landlord received proceeds from any policy of rental income insurance. Tenant shall have no claim against Landlord for any damage, loss or expense suffered by reason of any such damage, destruction, repair or restoration. The parties waive the provisions of California Civil Code Sections 1932(2) and 1933(4) (which provisions permit the termination of a lease upon destruction of the leased premises), and hereby agree that the provisions of this paragraph 16 shall govern in the event of such destruction.

17. INDEMNIFICATION

Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury to or death of any person or damage to or destruction of property in or about the Premises or the Project by or from any cause whatsoever except (i) the failure of Landlord to perform its obligations under this lease where such failure has persisted for an unreasonable period of time after notice of such failure or (ii) the negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors. Without limiting the foregoing, Landlord shall not be liable to Tenant for any injury to or death of any person or damages to or destruction of property by reason of, or arising from, any latent defect in the Premises or Project or the act or negligence of any other tenant of the Project. Tenant shall immediately notify Landlord of any defect in the Premises or Project actually known by Tenant.

Except as to injury to persons or damage to property the principal cause of which is (i) the failure by Landlord to observe any of the terms and conditions of this lease or (ii) the negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors, Tenant shall hold Landlord harmless from and indemnify and defend Landlord against any claim, liability, loss, damage or expense (including attorney fees) arising out of any injury to or death of any person or damage to or destruction of property occurring in, on or about the Premises from any cause whatsoever or on account of the use, condition, occupational safety or occupancy of the Premises. Tenant shall further hold Landlord harmless from and indemnify and defend Landlord against any claim, liability, loss, damage or expense (including attorney fees) arising (i) from Tenant's use of the Premises or from the conduct of its business or from any activity or work done, permitted or suffered by Tenant or its agents or employees in or about the

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Premises or Project, (ii) out of the failure of Tenant to observe or comply with Tenant's obligation to observe and comply with laws or other requirements as set forth in paragraph 7, (iii) by reason of Tenant's use, handling, storage, or disposal of toxic or hazardous materials or waste, (iv) by reason of any labor or service performed for, or materials used by or furnished to, Tenant or any contractor engaged by Tenant with respect to the Premises, or (v)

from any other act, neglect, or fault of Tenant or its agents, contractors or employees.

The provisions of this paragraph 17 shall survive the expiration or earlier termination of this lease.

18. ASSIGNMENT AND SUBLETTING

Tenant shall not voluntarily assign, encumber or otherwise transfer its interest in this lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining Landlord's written consent, which consent shall not be unreasonably withheld or delayed, and otherwise complying with the requirements of this paragraph 18. Any assignment, encumbrance or sublease without Landlord's consent, shall constitute a default.

If Tenant desires to sublet or assign all or any portion of the Premises, Tenant shall give Landlord written notice thereof, specifying the projected commencement date of the proposed sublet or assignment (which date shall be not less than thirty (30) days or more than one hundred eighty (180) days after the date of Landlord's receipt of such notice), the portions of the Premises proposed to be sublet or assigned, the terms and conditions of the proposed assignment or sublease (including the rent to be paid by the proposed assignee or subtenant) and the name, address and telephone number of the proposed assignee or subtenant. Tenant shall further provide Landlord with such other information concerning the proposed assignee or subtenant as requested by Landlord. Except for an assignment or sublet to a Tenant Affiliate (as defined below) or an assignment or sublet that terminates on or before May 31, 2000, for a period of thirty (30) days after Landlord's receipt of Tenant's written notice, Landlord shall have the option, exercisable by delivering written notice to Tenant, to terminate this lease as of the date specified in Landlord's written notice to Tenant, which date shall not be less than thirty (30) days nor more than ninety (90) days after the date of Landlord's written notice to Tenant. If Landlord exercises its option to terminate this lease as provided in the foregoing sentence, Landlord may, if it so elects, enter into a new lease for the Premises or any portion thereof with the proposed assignee or subtenant or any other third party on such terms as Landlord and such proposed assignee or subtenant or other third party may agree; in such event, Tenant shall not be entitled to any portion of the

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profit, if any, which Landlord may realize on account of such termination and reletting.

If Landlord does not elect to terminate this lease as provided hereinabove in this paragraph 18 and if Landlord consents in writing to the proposed assignment or sublet, Tenant shall be free to assign or sublet all or a portion of the Premises subject to the following conditions: (i) any sublease shall be on the same terms set forth in the notice given to Landlord; (ii) no sublease shall be valid and no subtenant shall take possession of the sublet premises until an executed counterpart of such sublease has been delivered to Landlord; (iii) no subtenant shall have a further right to sublet; (iv) any sums or other economic consideration received by Tenant as a result of such assignment or sublet (except rental or other payments received which are attributable to the amortization over the term of this lease of the cost of leasehold improvements constructed for such assignees or subtenant, and brokerage fees) whether denominated rentals or otherwise, which exceed, in the aggregate, the total sums which Tenant is obligated to pay Landlord under this lease (prorated to reflect obligations allocable to that portion of the Premises subject to such sublease), shall be payable to Landlord as additional rent under this lease without affecting or reducing any other obligation of Tenant hereunder; (v) no sublet or assignment shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder; and (vi) any assignee or subtenant must expressly agree to assume and perform all of the covenants and conditions of Tenant under this lease. Tenant shall pay to Landlord promptly upon demand as additional rent, Landlord's reasonable attorneys, fees and other costs incurred for reviewing, processing or

documenting any requested assignment or sublease, whether or not Landlord's consent is granted. Tenant shall not be entitled to assign this lease or sublease all or any part of the Premises (and any attempt to do so shall be voidable by Landlord) during any period in which Tenant is in default under this lease.

If Tenant is a partnership, a withdrawal or change, voluntary or involuntary or by operation of law, of any general partner or the dissolution of the partnership shall be deemed an assignment of this lease subject to all the conditions of this paragraph 18. If Tenant is a corporation any dissolution, merger, consolidation or other reorganization of Tenant or the sale or other transfer of a controlling percentage of the capital stock of Tenant or the sale of more than fifty percent (50%) of the value of Tenant's assets shall be an assignment of this lease subject to all the conditions of this paragraph 18. The term "controlling percentage" means the ownership of, and the right to vote, stock possessing more than 50% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote. This paragraph shall not apply if Tenant is a corporation the stock of which is traded through an exchange.

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The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or sublet shall not be deemed consent to any subsequent assignment or sublet. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee or successor. Landlord may consent to subsequent assignments or sublets of this lease or amendments or modifications to this lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this lease.

No interest of Tenant in this lease shall be assignable by operation of law (including, without limitation, the transfer of this lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment: (i) if Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors or institutes a proceeding under the Bankruptcy Act in which Tenant is the bankrupt; or, if Tenant is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; (ii) if a writ of attachment or execution is levied on this lease; or (iii) if, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall constitute a default by Tenant and Landlord shall have the right to elect to terminate this lease, in which case this lease shall not be treated as an asset of Tenant.

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this lease, all rent from any subletting of all or a part of the Premises as permitted by this lease, and Landlord, as assignee of Tenant, or a receiver of Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this lease; except that, until the occurrence of an act or default by Tenant, Tenant shall have the right to collect such rent, subject to promptly forwarding to Landlord any portion thereof to which Landlord is entitled pursuant to this paragraph 18.

Notwithstanding the above, Tenant may assign this Lease or sublet any portion of the Premises without Landlord's consent to any of the following (i) any corporation which controls, is controlled by or under common control with Tenant; (ii) any corporation resulting from the merger or consolidation of Tenant and (iii) any person or entity which acquires all of the assets of Tenant as a going concern of the business that is being conducted on the Premises, including this lease (collectively, "Tenant Affiliate"), provided that (a) such Tenant Affiliate assumes in full the obligations of Tenant under this lease; (b) the Tenant

Affiliate's financial condition is adequate in Landlord's reasonable discretion to support the lease obligations of the Tenant Affiliate under the assignment or sublease, and, in the case of a merger, consolidation or acquisition, the Tenant Affiliate, or in all other cases, the Tenant and the Tenant Affiliate together, shall have a net worth, computed in accordance with generally accepted accounting principles, which is equal to or greater than the net worth of Tenant herein named immediately prior to such transfer, (c) proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction, (d) Tenant shall give written notice to Landlord of such assignment and otherwise comply with the terms of this paragraph 18 (excluding only the requirement to obtain Landlord's prior written consent), and (e) Tenant (if a separate entity) shall continue to be jointly and severally liable under this lease.

19. DEFAULT

The occurrence of any of the following shall constitute a default by Tenant: (i) failure of Tenant to pay any rent or other sum payable hereunder within five (5) days after the date that such payment becomes due; (ii) abandonment of the Premises (Tenant's failure to occupy and conduct business in the Premises for fourteen (14) consecutive days shall be deemed an abandonment); (iii) failure of Tenant to deliver to Landlord any instrument, assurance, financial statement, subordination agreement or certificate of estoppel required under this Lease within the time period specified for such performance if the failure continues for five (5) business days after written notice of the failure from Landlord to Tenant; or (iv) failure of Tenant to perform any other obligation under this lease if the failure to perform is not cured within thirty (30) days after written notice thereof has been given to Tenant (provided that if such default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default if Tenant commences to cure such failure to perform within the thirty (30) day period and diligently and in good faith continues to cure the failure to perform), except in the case of an emergency or dangerous condition, in which case Tenant's time to perform shall be that time period which is reasonable under the circumstances. The notice referred to in clauses (iii) and (iv) above shall specify the failure to perform and the applicable lease provision and shall demand that Tenant perform the provisions of this lease within the applicable period of time. No notice shall be deemed a forfeiture or termination of this lease unless Landlord so elects in the notice. No notice shall be required in the event of abandonment or vacation of the Premises.

In addition to the above, the occurrence of any of the following events shall also constitute a default by Tenant: (i) Tenant fails to pay its debts as they become due or admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors; (ii) Tenant fails to

furnish to Landlord a schedule of Tenant's aged accounts payable within ten (10) days after Landlord's written request; or (iii) any financial statements given to Landlord by Tenant, any assignee of Tenant, subtenant of Tenant, any guarantor of Tenant, or successor in interest of Tenant (including, without limitation, any schedule of Tenant's aged accounts payable) are materially false. At any time during the term of this lease Landlord, at Landlord's option, shall have the right to receive from Tenant, upon Landlord's request, a current annual balance sheet for Landlord's review. If the balance sheet shows a negative net worth, Landlord may terminate this lease by giving Tenant sixty (60) days prior written notice.

In the event of a default by Tenant, then Landlord, in addition to any other rights and remedies of Landlord at law or in equity, shall have the right either to terminate Tenant's right to possession of the Premises (and thereby terminate this lease) or, from time to time and without termination of this lease to relet the Premises or any part thereof for such term and on such terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises and such reletting shall not be deemed a termination of this lease.

Should Landlord elect to keep this lease in full force and effect, Landlord shall have the right to enforce all of Landlord's rights and remedies under this lease, including but not limited to the right to recover and to relet the Premises and such other rights and remedies as Landlord may have under California Civil Code Section 1951.4 (or successor Code section) or any other California statute. If Landlord relets the Premises, then Tenant shall pay to Landlord, as soon as ascertained, the costs and expenses incurred by Landlord in such reletting and in making alterations and repairs. Rentals received by Landlord from such reletting shall be applied (i) to the payment of any indebtedness due hereunder, other than basic rent and direct expenses, from Tenant to Landlord, (ii) to the payment of the cost of any repairs necessary to return the Premises to good condition normal wear and tear excepted, including the cost of alterations and the cost of storing any of Tenant's property left on the Premises at the time of reletting, and (iii) to the payment of basic rent or direct expenses due and unpaid hereunder. The residue, if any, shall be held by Landlord and applied in payment of future rent or damages in the event of termination as the same may become due and payable hereunder and the balance, if any at the end of the term of this lease, shall be paid to Tenant. Should the basic rent and direct expenses received from time to time from such reletting during any month be less than that agreed to be paid during that month by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such reletting of the Premises by Landlord shall be construed as election on its part to terminate this lease unless a notice of such intention is given to Tenant or unless the termination hereof

is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this lease for such previous breach, provided it has not been cured.

Should Landlord at any time terminate this lease for any breach, in addition to any other remedy it may have, it shall have the immediate right of entry and may remove all persons and property from the Premises and shall have all the rights and remedies of a landlord provided by California Civil Code Section 1951.2 or any successor code section. Upon such termination, in addition to all its other rights and remedies, Landlord shall be entitled to recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises and including (i) the worth at the time of award of the unpaid rent which had been earned at the time of termination, (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided, (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this lease or which in the ordinary course of events would be likely to result therefrom. The "worth at the time of award" of the amounts referred to in (i) and (ii) above is computed by allowing interest at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law. The "worth at the time of award" of the amount referred to in (iii) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Tenant waives the provisions of Section 1179 of the California Code of Civil Procedure (which Section allows Tenant to petition a court of competent jurisdiction for relief against forfeiture of this lease). Property removed from the Premises

may be stored in a public or private warehouse or elsewhere at the sole cost and expense of Tenant. In the event that Tenant shall not immediately pay the cost of storage of such property after the same has been stored for a period of thirty (30) days or more, Landlord may sell any or all thereof at a public or private sale in such manner and at such times and places that Landlord, in its sole discretion, may deem proper, without notice to or demand upon Tenant.

20. LANDLORD'S RIGHT TO CURE TENANT'S DEFAULT

Landlord, at any time after Tenant commits a default (as specified in paragraph 19 above), may, but shall not be obligated to, cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be

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due immediately from Tenant to Landlord and shall bear interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. Amounts due Landlord hereunder shall be additional rent.

21. EMINENT DOMAIN

If all or any part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this lease shall terminate as to any portion of the Premises so taken or conveyed on the date when title vests in the condemnor, and Landlord shall be entitled to any and all payments, income, rent, award or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance. Tenant shall have no claim against Landlord or otherwise for the value of any unexpired term of this lease. Notwithstanding the foregoing, Tenant shall be entitled to any compensation for depreciation to and cost of removal of Tenant's equipment and fixtures and any compensation for its relocation expenses necessitated by such taking, but in each case only to the extent the condemning authority makes a separate award therefor or specifically identifies a portion of the award as being therefor. Each party waives the provisions of Section 1265.130 of the California Code of Civil Procedure (which section allows either party to petition the Superior Court to terminate this lease in the event of a partial taking of the Premises).

If any action or proceeding is commenced for such taking of the Premises or any portion thereof or of any other space in the Project, or if Landlord is advised in writing by any entity or body having the right or power of condemnation of its intention to condemn the premises or any portion thereof or of any other space in the Project, and Landlord shall decide to discontinue the use and operation of the Project or decide to demolish, alter or rebuild the Project, then Landlord shall have the right to terminate this lease by giving Tenant written notice thereof within sixty (60) days of the earlier of the date of Landlord's receipt of such notice of intention to condemn or the commencement of said action or proceeding. Such termination shall be effective as of the last day of the calendar month next following the month in which such notice is given or the date on which title shall vest in the condemnor, whichever occurs first.

In the event of a partial taking, or conveyance in lieu thereof, of the Premises and fifty percent (50%) or more of the number of square feet in the Premises are taken then Tenant may terminate this lease. Any election by Tenant to so terminate shall be by written notice given to Landlord within sixty (60) days from the date of such taking or conveyance and shall be effective on the last day of the calendar month next following the month in which such notice is given or the date on which title shall vest in the condemnor, whichever occurs first.

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If a portion of the Premises is taken by power of eminent domain or conveyance in lieu thereof and neither Landlord nor Tenant terminates this lease as provided above, then this lease shall continue in full force and effect as to the part of the Premises not so taken or conveyed and all payments of rent shall be apportioned as of the date of such taking or conveyance so that thereafter the amounts to be paid by Tenant shall be in the ratio that the area of the portion of the Premises not so taken bears to the total area of the Premises prior to such taking.

22. NOTICE AND COVENANT TO SURRENDER

On the last day of the term or on the effective date of any earlier termination, Tenant shall surrender to Landlord the Premises in its condition existing as of the commencement of the term, normal wear and tear and damage due to casualty or the failure of Landlord to fulfill Landlord's obligations to maintain and repair the Premises as provided for herein excepted, and, except as otherwise provided by Landlord pursuant to the terms of paragraph 8 of this lease, all of the improvements and alterations made to the Premises in their condition existing as of the date of completion of construction and/or installation (normal wear and tear excepted), interior vinyl covered walls cleaned and repaired or replaced if marked or damaged, to the reasonable satisfaction of Landlord. On or prior to the last day of the term or the effective date of any earlier termination, Tenant shall remove all of Tenant's personal property and trade fixtures, together with improvements or alterations that Tenant is obligated to remove pursuant to the provisions of paragraph 8 of this lease, from the Premises, and all such property not removed shall be deemed abandoned. In addition, on or prior to the expiration or earlier termination of this lease, Tenant shall remove, at Tenant's sole cost and expense, all telephone, other communication, computer and any other cabling and wiring or any sort installed in the space above the suspended ceiling of the Premises or anywhere else in the Premises and shall promptly repair any damage to the suspended ceiling, lights, light fixtures, walls and any other part of the Premises resulting from such removal.

If the Premises are not surrendered as required in this paragraph 22, Tenant shall indemnify Landlord against all loss, liability and expense (including, but not limited to, reasonable attorney fees) resulting from the failure by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding tenants. It is agreed between Landlord and Tenant that the provisions of this paragraph 22 shall survive termination of this lease.

23. TENANT'S QUITCLAIM

At the expiration or earlier termination of this lease, tenant shall execute, acknowledge and deliver to Landlord, within ten (10) days after written demand from Landlord to Tenant, any

quitclaim deed or other document required to remove the cloud or encumbrance created by this lease from the real property of which the Premises are a part. This obligation shall survive said expiration or termination.

24. HOLDING OVER

Any holding over after the expiration or termination of this lease with the written consent of Landlord shall be construed to be a tenancy from month-to-month at the monthly rent then agreed upon by Landlord and Tenant, but in no event less than the monthly rent payable under this lease for the last lease month before the date of such expiration or termination. All provisions of this lease, except (i) as modified by the preceding sentence and (ii) those provisions pertaining to the term, expansion rights and any option to extend, shall apply to the month-to-month tenancy.

If Tenant shall retain possession of the Premises or any part thereof without Landlord's written consent following the expiration or sooner termination of this lease for any reason, then Tenant shall pay to Landlord for

each day of such retention during the first thirty (30) days of this holdover period one hundred fifty percent (150%) of the amount of the daily rental in effect during the last lease month prior to the date of such expiration or termination, and for each day of such retention after the first thirty (30) days of such holdover two hundred percent (200%) of the amount of the daily rental in effect during the last lease month prior to the date of such expiration or termination. The term "daily rental" as used in the preceding sentence shall mean the monthly rental divided by thirty. Acceptance of rent by Landlord following expiration or termination shall not constitute a renewal of this lease, and nothing contained in this paragraph shall waive Landlord's right of re-entry or any other right. Tenant shall be only a Tenant at sufferance, whether or not Landlord accepts any rent from tenant, while Tenant is holding over without Landlord's written consent.

The provisions of this paragraph 24 are in addition to, and do not affect, Landlord's right of re-entry or other rights hereunder or provided by law. Nothing in this paragraph 24 shall be construed as implied consent by Landlord to any holding over by Tenant. Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease on expiration or other termination of this Lease. The provisions of this paragraph 24 shall not be considered to limit or constitute a waiver of any other rights or remedies of Landlord provided in this Lease or at law. The provisions of this paragraph 25 shall survive the expiration or early termination of this lease.

25. SUBORDINATION

In the event Landlord's title or leasehold interest is now or hereafter encumbered in order to secure a loan to Landlord,

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Tenant shall, at the request of Landlord or the lender, execute in writing an agreement subordinating its rights under this lease to the lien of such encumbrance, or, if so requested, agreeing that the lien of lender's encumbrance shall be or remain subject and subordinate to the rights of Tenant under this lease. Notwithstanding any such subordination, Tenant's possession under this lease shall not be disturbed if Tenant is not in default and so long as Tenant shall pay all amounts due hereunder and otherwise observe and perform all provisions of this lease. In addition, if in connection with any such loan the lender shall request reasonable modifications in this lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereof, provided that such modifications do not increase the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

26. CERTIFICATE OF ESTOPPEL

Each party shall, within ten (10) calendar days after request therefor, execute and deliver to the other party, in recordable form, a certificate stating that the lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications. The certificate shall also state the amount of the monthly rent, the date to which monthly rent has been paid in advance, the amount of the security deposit and/or prepaid monthly rent, and, if the request is made by Landlord, shall include such other items as Landlord or Landlord's lender may reasonably request. Failure to deliver such certificate within such time shall constitute a conclusive acknowledgment by the party failing to deliver the certificate that the lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate. Any such certificate requested by Landlord may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or Project. Further, within ten (10) calendar days following written request made from time to time by Landlord, Tenant shall furnish to Landlord current financial statements of Tenant.

27. SALE BY LANDLORD

In the event the original Landlord hereunder, or any successor

owner of the Project or Premises, shall sell or convey the Project or Premises, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this lease accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner and to look solely to such new owner for performance of any and all such liabilities and obligations.

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28. ATTORNMENT TO LENDER OR THIRD PARTY

In the event the interest of Landlord in the land and buildings in which the Premises are located (whether such interest of Landlord is a fee title interest or a leasehold interest) is encumbered by deed of trust, and such interest is acquired by a lender or any other third party through judicial foreclosure or by exercise of a power of sale at private trustee's foreclosure sale, Tenant hereby agrees to release Landlord of any obligation arising on or after any such foreclosure sale and to attorn to the purchaser at any such foreclosure sale and to recognize such purchaser as the Landlord under this lease.

29. DEFAULT BY LANDLORD

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event earlier than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

If Landlord is in default of this lease, Tenant's sole remedy shall be to institute suit against Landlord in a court of competent jurisdiction, and Tenant shall have no right to offset any sums expended by Tenant as a result of Landlord's default against future rent and other sums due and payable pursuant to this lease. If Landlord is in default of this lease, and as a consequence Tenant recovers a money judgment against Landlord, the judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the right, title and interest of Landlord in the Project of which the Premises are a part, and out of insurance proceeds applicable to the Project or rent or other income from such real property receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Project of which the Premises are a part. Neither Landlord nor any of the partners comprising the partnership designated as Landlord shall be personally liable for any deficiency.

30. CONSTRUCTION CHANGES

It is understood that the description of the Premises and the location of ductwork, plumbing and other facilities therein are subject to such changes as Landlord or Landlord's architect determines to be desirable in the course of construction of the Premises and/or the improvements constructed or being constructed

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therein, and no such changes or any changes in plans for any other portions of the Project, shall affect this lease or entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant.

31. MEASUREMENT OF PREMISES

Tenant understands and agrees that any reference to square footage of the Premises is approximate only and includes all interior partitions and columns, one-half of exterior walls, and one-half of the partitions separating the Premises from the rest of the Project. Tenant waives any claim against Landlord regarding the accuracy of any such measurement and agrees that there shall not be any adjustment in basic rent or direct expenses or other amounts payable hereunder by reason of inaccuracies in such measurement.

32. ATTORNEY FEES

If either party commences an action against the other party arising out of or in connection with this lease, the prevailing party shall be entitled to have and recover from the losing party all expenses of litigation, including, without limitation, travel expenses, attorney fees, expert witness fees, trial and appellate court costs, and deposition and transcript expenses. If either party becomes a party to any litigation concerning this lease or concerning the Premises or the Project by reason of any act or omission of the other party or its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to the other party for all expenses of litigation, including, without limitation, travel expenses, attorney fees, expert witness fees, trial and appellate court costs, and deposition and transcript expenses.

33. SURRENDER

The voluntary or other surrender of this lease or the Premises by Tenant, or a mutual cancellation of this lease, shall not work a merger, and at the option of Landlord shall either terminate all or any existing subleases or subtenancies or operate as an assignment to Landlord of all or any such subleases or subtenancies.

34. WAIVER

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent or other payments shall not constitute a waiver of any other default and acceptance of partial

payments shall not be construed as a waiver of the balance of such payment due. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this lease.

35. EASEMENTS; AIRSPACE RIGHTS

Landlord reserves the right to alter the boundaries of the Project and grant easements and dedicate for public use portions of the Project without Tenant's consent, provided that no such grant or dedication shall interfere with Tenant's use of the Premises or otherwise cause Tenant to incur cost or expense. From time to time, and upon Landlord's demand, Tenant shall execute, acknowledge and deliver to Landlord, in accordance with Landlord's instructions, any and all documents, instruments, maps or plats necessary to effectuate Tenant's covenants hereunder.

This lease confers no rights either with regard to the subsurface of or airspace above the land on which the Project is located or with regard to airspace above the building of which the Premises are a part.

Tenant agrees that no diminution or shutting of f of light or view by a structure which is or may be erected (whether or not by Landlord) on property adjacent to the building of which the Premises are a part or to property adjacent thereto, shall in any way affect this lease, or entitle Tenant to any reduction of rent, or result in any liability of Landlord to Tenant.

36. RULES AND REGULATIONS

Landlord shall have the right from time to time to promulgate rules and regulations for the safety, care and cleanliness of the Premises, the Project and the Common Area, or for the preservation of good order. On delivery of a copy of such rules and regulations to Tenant ' Tenant shall comply with the rules and regulations, and a violation of any of them shall constitute a default by Tenant under this lease. If there is a conflict between the rules and regulations and any of the provisions of this lease, the provisions of this lease shall prevail. Such rules and regulations may be amended by Landlord from time to time with or without advance notice.

37. NOTICES

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Except for legal process which may also be served as provided by law or as provided herein, all notices, demands, requests, consents and other communications ("Notices") which may be given or are required to be given by either party to the other shall be in writing and shall be deemed given to and received by the party intended to receive such Notice (i) when hand delivered, (ii) three (3) days after such Notice shall have been deposited, postage prepaid, to the United States Mail, certified return receipt requested, properly addressed to the address specified herein, or (iii) date of delivery if sent to the address specified herein by reputable overnight courier (e.g. Federal Express or other comparable service), as evidenced by such courier's records.

All such Notices from Landlord to Tenant shall be served or addressed to Tenant at 2770 San Tomas Expressway, Santa Clara, California 95051.

All such Notices by Tenant to Landlord shall be sent to Landlord at its offices at 3945 Freedom Circle, Suite 640, Santa Clara, California 95054.

Either party may change its address by notifying the other of such change.

38. NAME

Tenant shall not use the name of the Project for any purpose other than as the address of the business conducted by Tenant in the Premises without the prior written consent of Landlord.

39. GOVERNING LAW; SEVERABILITY

This lease shall in all respects be governed by and construed in accordance with the laws of the State of California. If any provision of this lease shall be held or rendered invalid, unenforceable or ineffective for any reason whatsoever, all other provisions hereof shall be and remain in full force and effect.

40. DEFINITIONS

As used in this lease, the following words and phrases shall have the following meanings:

Authorized Representative: any officer, agent, employee or independent contractor retained or employed by either party, acting within authority given him by that party.

Encumbrance: any deed of trust, mortgage or other written security device or agreement affecting the Premises or the Project that

constitutes security for the payment of a debt or performance of an obligation, and the note or obligation secured by

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such deed of trust, mortgage or other written security device or agreement.

Lease month: the period of time determined by reference to the day of the month in which the term commences and continuing to one day short of the same numbered day in the next succeeding month; e.g., the tenth day of one month to and including the ninth day in the next succeeding month.

Leader: the beneficiary, mortgagee or other holder of an encumbrance, as defined above.

Lien: a charge imposed on the Premises by someone other than Landlord, by which the Premises are made security for the performance of an act. Most of the liens referred to in this lease are mechanic's liens.

Maintenance: repairs, replacement, repainting and cleaning.

Monthly Rent: the sum of the monthly payments of basic rent and direct expenses.

Person: one or more human beings, or legal entities or other artificial persons, including, without limitation, partnerships, corporations, trusts, estates, associations and any combination of human being and legal entities.

Provision: any term, agreement, covenant, condition, clause, qualification, restriction, reservation or other stipulation in the lease that defines or otherwise controls, establishes or limits the performance required or permitted by either party.

Rent: basic rent, direct expenses, additional rent and all other amounts payable by Tenant to Landlord required by this lease or arising by subsequent actions of the parties made pursuant to this lease.

Words used in any gender include other genders. If there be more than one Tenant, the obligations of Tenant hereunder are joint and several. All provisions whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions. The paragraph headings are for convenience of reference only and shall have no effect upon the construction or interpretation of any provision hereof.

41. TIME

Time is of the essence of this lease and of each and all of its provisions.

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42. INTEREST ON PAST DUE OBLIGATIONS; LATE CHARGE

Any amount due from Tenant to Landlord hereunder which is not paid when due shall bear interest at the rate of ten percent (10%) per annum from when due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this lease. In addition, Tenant acknowledges that late payment by Tenant to Landlord of basic rent or direct expenses or of any other amount due Landlord from Tenant, will cause Landlord to incur costs not contemplated by this lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord, e.g., by

the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any such payment due from Tenant is not received by Landlord within three (3) business days of when due, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue payment as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord. No notice to Tenant of failure to pay shall be required prior to the imposition of such interest and/or late charge, and any notice period provided for in paragraph 19 shall not affect the imposition of such interest and/or late charge. Any interest and late charge imposed pursuant to this paragraph shall be and constitute additional rent payable by Tenant to Landlord.

43. ENTIRE AGREEMENT

This lease, including any exhibits and attachments, constitutes the entire agreement between Landlord and Tenant relative to the Premises and this lease and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves or their agents or representatives relative to the leasing of the Premises are merged in or revoked by this lease.

44. CORPORATE AUTHORITY

Each individual executing this lease on behalf of the corporation represents and warrants that he is duly authorized to execute and deliver this lease on behalf of the corporation and that this lease is binding upon said corporation in accordance with its terms.

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45. RECORDING

Neither Landlord nor Tenant shall record this lease or a short form memorandum hereof without the consent of the other.

46. EXHIBITS AND ATTACHMENTS

All exhibits and attachments to this lease are a part hereof.

47. REAL ESTATE BROKERS

Each party represents and warrants to the other party that it has not had dealings in any manner with any real estate broker, finder or other person with respect to the Premises and the negotiation and execution of this lease except McCandless Management Corporation and Cornish & Carey. Except for the commissions and fees to be paid to McCandless Management Corporation and Cornish & Carey as provided in this paragraph, each party shall indemnify and hold harmless the other party from all damage, loss, liability and expense (including attorneys' fees and related costs) arising out of or resulting from any claims for commissions or fees that have been or may be asserted against the other party by any broker, finder or other person with whom Tenant or Landlord, respectively, has dealt, or purportedly has dealt, in connection with the Premises and the negotiation and execution of this lease; provided, however, Tenant shall have no obligation to indemnify Landlord for any claims made by McCandless Management Corporation. Landlord shall pay broker leasing commissions to McCandless Management Corporation and Cornish & Carey in connection with the Premises and the negotiation and execution of this lease, to the extent agreed to between Landlord and McCandless Management Corporation and Cornish & Carey. Landlord and Tenant agree that Landlord shall not be obligated to pay any broker leasing commissions, consulting fees, finder fees or any other fees or commissions arising out of or relating to any extended term of this lease or to any expansion or relocation of the Premises at any time.

48. ENVIRONMENTAL MATTERS

A. Tenant's Covenants Regarding Hazardous Materials.

(1) Hazardous Materials Handling. Tenant, its agents, invitees, employees, contractors, sublessees, assigns and/or successors shall not use, store, dispose, release or otherwise cause to be present or permit the use, storage, disposal, release or presence of Hazardous Materials (as defined below) on or about the Premises or Project, except for customary amounts of office and janitorial supplies used in compliance with applicable laws. As used herein "Hazardous Materials" shall mean any petroleum or petroleum by-products, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste and any

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"hazardous substance", "hazardous waste", "hazardous materials", "toxic substance" or "toxic waste" as those terms are defined under the provisions of the California Health and Safety Code and/or the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9601 et seq.), or any other hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or any agency thereof, or the United States Government or any agency thereof.

(2) Notices. Upon gaining actual knowledge thereof, Tenant shall immediately notify Landlord in writing of: (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any law, regulation or ordinance relating to the industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials (collectively "Hazardous Materials Laws"); (ii) any claim made or threatened by any person against Tenant, the Premises, Project or buildings within the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in, on or removed from the Premises, Project or buildings within the Project, including any complaints, notices, warnings, reports or asserted violations in connection therewith. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises, Project or buildings within the Project or Tenant's use thereof. Tenant shall promptly deliver to Landlord copies of hazardous waste manifests in Tenant's possession and such documents or other evidence as reasonably necessary to show the legal and proper disposal of all Hazardous Materials removed from the Premises in accordance with applicable law.

B. Indemnification of Landlord. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect, and hold Landlord, and each of Landlord's partners, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses (including reasonable attorneys' fees) for death of or injury to any person or damage to any property whatsoever (including water tables and atmosphere), arising from or caused in whole or in part, directly or indirectly, by (i) Tenant's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Premises, Project or buildings within the Project, or (ii) Tenant's failure to comply with any Hazardous Materials Laws whether knowingly, unknowingly, intentionally or

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unintentionally. Tenant's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, Project or buildings within the Project, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. In addition, Tenant shall reimburse Landlord for (i) losses in or reductions to rental income resulting from Tenant's use, storage or disposal of Hazardous Materials, (ii) all costs of refitting or other alterations to the Premises, Project or buildings within the Project required as a result of Tenant's use, storage, or disposal of Hazardous Materials including, without limitation, alterations required to accommodate an alternate use of the Premises, Project or buildings within the Project, and (iii) any diminution in the fair market value of the Premises, Project or buildings within the Project caused by Tenant's use, storage, or disposal of Hazardous Materials. For purposes of this paragraph 48, any acts or omissions of Tenant, or by employees, agents, assignees, contractors or subcontractors of Tenant or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Tenant.

C. Survival. The provisions of this paragraph 48 shall survive the expiration or earlier termination of the term of this lease.

49. SIGNAGE

Tenant shall not, without obtaining the prior written consent of Landlord, install or attach any sign or advertising material on any part of the outside of the Premises, or on any part of the inside of the Premises which is visible from the outside of the Premises, or in the halls, lobbies, windows or elevators of the building in which the Premises are located or on or about any other portion of the Common Area or Project. If Landlord consents to the installation of any sign or other advertising material, the location, size, design, color and other physical aspects thereof shall be subject to Landlord's prior written approval and shall be in accordance with any sign program applicable to the Project. In addition to any other requirements of this paragraph 49, the installation of any sign or other advertising material by or for Tenant must comply with all applicable laws, statutes, requirements, rules, ordinances and any C.C. & R.'s or other similar requirements. With respect to any permitted sign installed by or for Tenant, Tenant shall maintain such sign or other advertising material in good condition and repair and shall remove such sign or other advertising material on the expiration or earlier termination of the term of this lease. The cost of any permitted sign or advertising material and all costs associated with the installation, maintenance and removal thereof shall be paid for solely by Tenant. If Tenant fails to properly maintain or remove any permitted sign or other advertising material, Landlord

may do so at Tenant's expense. Any cost incurred by Landlord in connection with such maintenance or removal shall be deemed additional rent and shall be paid by Tenant to Landlord within ten (10) days following notice from Landlord. Landlord may remove any unpermitted sign or advertising material without notice to Tenant and the cost of such removal shall be additional rent and shall be paid by Tenant within ten (10) days following notice from Landlord. Landlord shall not be liable to Tenant for any damage, loss or expense resulting from Landlord's removal of any sign or advertising material in accordance with this paragraph 49. The provisions of this paragraph 49 shall survive the expiration or earlier termination of this lease.

50. SUBMISSION OF LEASE

The submission of this lease to Tenant for examination or signature by Tenant is not an offer to lease the Premises to Tenant nor an agreement by Landlord to reserve the Premises for Tenant. Landlord will not be bound to Tenant until this lease has been duly executed and delivered by both Landlord and Tenant.

51. PREMISES TAKEN "AS IS"

Except as otherwise provided in paragraph 9 hereof, Tenant is leasing the Premises from Landlord "as is" in their condition existing as of the date hereof. Landlord shall have no obligation to alter or improve the Premises.

52. ADDITIONAL RENT

All costs, charges, fees, penalties, interest and any other payments (including Tenant's reimbursement to Landlord of costs incurred by Landlord) which Tenant is required to make to Landlord pursuant to the terms and conditions of this lease and any amendments to this lease shall be and constitute additional rent payable by Tenant to Landlord when due as specified in this lease and any amendments to this lease.

53. [INTENTIONALLY OMITTED]

54. TENANT IMPROVEMENT ALLOWANCE

Landlord hereby grants to Tenant a tenant improvement allowance of up to Ninety Thousand Six Hundred Sixteen Dollars (\$90,616) ("Allowance") to reimburse Tenant for the cost of tenant improvements ("Tenant Improvements") to be installed in the Premises by Tenant during the first one hundred eighty (180) days of the term of this lease, subject to the following terms and conditions:

(a) The Tenant Improvements shall be deemed alterations to the Premises subject to Landlord's prior written consent and shall be subject to all the terms and conditions of paragraph 8 of

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this lease, except that Tenant shall not be required to remove the Tenant Improvements at the end of the lease term if so specified on Exhibit C hereto. Tenant shall use contractors designated by Landlord for all mechanical and electrical work in connection with construction of the Tenant Improvements.

(b) The Tenant Improvements for which Tenant may seek reimbursement shall be completed within one hundred eighty (180) days after the lease commencement date.

(c) All outstanding claims for labor, materials and fixtures relating to the Tenant Improvements shall have been paid in full by Tenant (with evidence of payment to be provided to Landlord) and Tenant shall have obtained lien releases from all contractors and materialmen (copies of lien releases to be provided to Landlord), satisfactory to Landlord.

(d) The Tenant Improvements shall have been constructed in accordance with all applicable local, state and federal laws, statutes, codes, rules and regulations.

(e) Tenant shall not be in default under this lease and no event shall have occurred which with the passage of time or the giving of notice or both would constitute a default.

(f) Subject to the terms of paragraph 14 hereof, Landlord shall have the right to enter the Premises at all times during construction of the Tenant Improvements to inspect and monitor such construction, but shall have no obligation to do so and assumes no liability or responsibility for such construction and/or compliance with laws applicable thereto, which is and shall be Tenant's sole responsibility.

(g) Tenant shall not be entitled to any portion of the Allowance which exceeds the actual cost incurred and paid by Tenant for construction of the Tenant Improvements and Tenant shall not be entitled to any credit against rent or any other payment due Landlord under the Lease for any unused portion of the Allowance. Tenant shall not be entitled to any reimbursement hereunder and no disbursement of any part of the Allowance shall be required until all of the conditions specified in this paragraph 54 have been

fully satisfied.

55. EARLY ACCESS

Subject to the following provisions, upon surrender of the Premises by the current tenant and termination of the current tenant's lease (which is scheduled to expire on October 9, 1997), Landlord shall provide Tenant with limited access to the Premises for purposes of commencing installation of Tenant's trade fixtures, equipment, personal property and telecommunications equipment and wiring. Tenant's access to the Premises pursuant to this paragraph shall be subject to all the terms and conditions of this lease,

including the insurance obligations specified in paragraph 11, and as a condition precedent to Tenant's right to such access to the Premises, Tenant shall provide Landlord with proof that Tenant has satisfied said insurance requirements. Such limited access to the Premises shall not accelerate the commencement or termination dates of this lease specified in paragraph 2 hereof and Tenant shall not be obligated to pay basic rent or direct expenses until the commencement of the term; provided, however, if Tenant or any of Tenant's operating personnel commences operation of business in the Premises, such operations shall accelerate the lease commencement date and the lease term shall commence on the date that such business operations are commenced.

56. CAPITAL IMPROVEMENTS

Notwithstanding any provision to the contrary in paragraph 8 of this lease, if (i) the cost of a particular capital improvement is includable in direct expenses under paragraph 8 of this lease, (ii) the capital improvement has a useful life of more than one (1) year, and (iii) the cost of such capital improvement exceeds Fifty Thousand Dollars (\$50,000), then the cost of such capital improvement shall be amortized over its useful life (including interest at a rate of two percent (2%) over the then current Prime Rate as published by the Wall Street Journal on the date nearest to the date that such cost is incurred) and the monthly amortized cost thereof so determined shall be included within direct expenses and Tenant shall pay its percentage share thereof as provided in paragraph 5(b) of this lease throughout the remaining term of this lease and any extensions thereof. Any determination of what constitutes a capital improvement and the useful life of such capital improvement, shall be made by Landlord in accordance with generally accepted accounting principles.

[Signatures on Next Page]

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this lease on the date first above written.

Landlord:
- - - - -

Tenant:
- - - - -

SAM TOMAS NO. 2, a California
general partnership

NETWORK APPLIANCE, INC.,
a California corporation

By: Connecticut General Life
Insurance Company, a
Connecticut corporation,
General Partner

By: /s/ DANIEL J. WARMENHOVEN
- - - - -

By: Cigna Investments,

Name: Daniel J. Warmenhoven

Inc., a Delaware
corporation, its
Authorized Agent

Title: President

By: /s/ JAMES H. ROGERS

Date: 8/18/97

Name: James H. Rogers

By: /s/ JEFFREY R. ALLEN

Its: Managing Inspector

Name: Jeffrey R. Allen

Date: 9/5/97

Title: Secretary

Date: 8/18/97

By: McCandless Group ST 2,
a California limited
partnership, a General
Partner

By: /s/ BIRK S. MCCANDLESS

Birk S. McCandless, as
Trustee under the Birk
S. McCandless and Mary
McCandless Inter Vivos
Trust Agreement dated
February 17, 1982, a
General Partner

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EXHIBIT A

Drawing of Leased Premises

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EXHIBIT B

Drawing of McCandless Project

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"EXHIBIT D"

CONSENT TO ALTERATIONS

McCandless-San Tomas, No. 2, herein referred to as "Landlord" hereby consents to the alterations to 2730 San Tomas Expressway, Suite 100, Santa Clara, California, as shown on the attached "Exhibit C" ("the alterations"), as follows:

1. The work shall be performed and completed in a good and workman like manner and in accordance with the attached plans and specifications. No work shall be done which is not described in such plans and specifications without the prior written consent of Landlord. Prior to commencing any work, or receiving any materials in connection therewith, Network Appliance, Inc., herein after referred to as "Tenant", shall give Landlord not less than ten (10) days notice to enable Landlord to post a notice of nonresponsibility.
2. The scope of work is to remodel the space per "Exhibit C". The work shall be performed by McCandless Construction Corporation, or such

contractors as may be approved in writing by Landlord.

3. All work shall be done pursuant to appropriate building permits and in accordance with applicable governmental laws and regulations, and Tenant shall be solely responsible for obtaining and satisfying such permits, laws and regulations.
4. All costs and expenses incurred in connection with the work shall be at the sole expense of Tenant.
5. Tenant shall indemnify and hold harmless Landlord and their respective lenders, partners, agents, officers and directors, from all costs, expenses, claims, damages, and liability (including but not limited to reasonable attorneys' fees) arising from (i) the act of or omissions of tenant or its Contractors or subcontractors in performing the work, (ii) the failure of the Tenant to abide by one or more of the conditions of the consent, (iii) the design specifications, or material utilized in the work, or (iv) any damages to the premises or to the building in which the premises are located (including roof) arising from the work. The obligation of Tenant hereunder shall survive the completion of the work. Landlord, and their respective lenders, partners, agents, officers and directors, shall be named as an additional Insured on Tenant's Certificate of Liability and certificate of Workman's Compensation Insurance.

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Network Appliance, Inc.
August 6, 1997
Page Two

6. Any roof penetration must be permanently sealed. Permanently sealed means either hot mopping with hot asphalt (roof tar) and patching with the same roofing system as the original roof, or some other commonly accepted roofing process approved by the National Roofing Contractors Association. Where applicable.

Cold process and roof mastic shall not be considered a permanent sealing. All roof penetrations sealing shall be inspected by McCandless Management Corporation personnel upon completion, and final acceptance of the alteration will not be made until McCandless Property Management is satisfied with the work.
7. McCandless Management will not require restoration to be done to this scope of work on "Exhibit C" only.
8. This Consent shall not be deemed or considered as a waiver of the right of Landlord to require consent to any subsequent work, or to any change to the plans or specifications referred to above, nor shall this consent be deemed or considered as a waiver of any provision of the Lease Agreement covering the premises.

The review by Landlord of the above plans and specification has been for the purpose of giving consent only, and does not constitute an endorsement or approval of such plans and specifications for any purpose.

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