

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 JANUARY 29, 1999

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 NO.)

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

Number of shares outstanding of the registrant's class of common stock, as
of the latest practicable date.

CLASS -----	OUTSTANDING AT JANUARY 29, 1999 -----
Common Stock.....	69,396,295

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PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NETWORK APPLIANCE, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS)

JANUARY 29,
1999

APRIL 30,
1998

(UNAUDITED)

ASSETS

CURRENT ASSETS:			
Cash and cash equivalents	\$ 59,886	\$ 37,315	
Short-term investments	8,150	10,800	
Accounts receivable, net	50,735	34,313	
Inventories	11,751	8,707	
Prepaid expenses and other	3,235	2,524	
Deferred taxes	9,963	5,280	
	-----	-----	
Total current assets	143,720	98,939	
PROPERTY AND EQUIPMENT, NET	17,204	12,217	
DEPOSITS	7,000	--	
OTHER ASSETS	4,724	4,580	
	-----	-----	
	\$ 172,648	\$ 115,736	
	=====	=====	

LIABILITIES AND SHAREHOLDERS' EQUITY

CURRENT LIABILITIES:			
Accounts payable	\$ 8,296	\$ 10,041	
Income taxes payable	1,384	1,782	
Accrued compensation and related benefits	11,672	8,485	
Other accrued liabilities	7,362	4,201	
Deferred revenue	8,078	4,799	
	-----	-----	
Total current liabilities	36,792	29,308	
LONG-TERM OBLIGATIONS	116	163	
	-----	-----	
	36,908	29,471	
	-----	-----	
COMMITMENTS AND CONTINGENCIES			
SHAREHOLDERS' EQUITY:			
Common stock	90,655	65,924	
Retained earnings	45,208	20,341	
Cumulative translation adjustment	(123)	--	
	-----	-----	
Total shareholders' equity	135,740	86,265	
	-----	-----	
	\$ 172,648	\$ 115,736	
	=====	=====	

See accompanying notes to condensed consolidated financial statements

NETWORK APPLIANCE, INC.

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

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	JANUARY 29, 1999	JANUARY 23, 1998	JANUARY 29, 1999	JANUARY 23, 1998
	-----	-----	-----	-----
NET SALES	\$ 75,616	\$ 43,984	\$198,616	\$115,805
COST OF SALES	30,818	17,880	80,938	47,196
	-----	-----	-----	-----
Gross Margin	44,798	26,104	117,678	68,609
	-----	-----	-----	-----

OPERATING EXPENSES:

Sales and marketing	19,831	11,187	51,830	29,352
Research and development	7,815	4,420	20,618	11,738
General and administrative	2,655	1,852	7,092	4,701
	-----	-----	-----	-----
Total operating expenses	30,301	17,459	79,540	45,791
	-----	-----	-----	-----
INCOME FROM OPERATIONS	14,497	8,645	38,138	22,818
OTHER INCOME, NET	542	243	1,658	640
	-----	-----	-----	-----
INCOME BEFORE INCOME TAXES	15,039	8,888	39,796	23,458
PROVISION FOR INCOME TAXES	5,645	3,333	14,929	8,797
	-----	-----	-----	-----
NET INCOME	\$ 9,394	\$ 5,555	\$ 24,867	\$ 14,661
	=====	=====	=====	=====
NET INCOME PER SHARE (1):				
Basic	\$ 0.14	\$ 0.08	\$ 0.37	\$ 0.23
	=====	=====	=====	=====
Diluted	\$ 0.12	\$ 0.08	\$ 0.32	\$ 0.21
	=====	=====	=====	=====
SHARES USED IN PER SHARE CALCULATIONS (1):				
Basic	68,738	65,422	67,803	64,562
	=====	=====	=====	=====
Diluted	78,932	72,500	76,679	71,448
	=====	=====	=====	=====

(1) Share and per share amounts have been adjusted to reflect the two-for-one stock split which was effective December 21, 1998.

See accompanying notes to condensed consolidated financial statements

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NETWORK APPLIANCE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)
(UNAUDITED)

	NINE MONTHS ENDED	
	JANUARY 29, 1999	JANUARY 23, 1998
	-----	-----
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 24,867	\$ 14,661
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	7,091	3,885
Provision for doubtful accounts	5,675	216
Deferred income taxes	(4,683)	(77)
Deferred rent	(47)	(29)
Changes in assets and liabilities:		
Accounts receivable	(22,199)	(12,989)
Inventories	(3,065)	875
Prepaid expenses and other assets	(1,069)	(764)
Accounts payable	(1,745)	2,489
Income taxes payable	11,812	1,657
Accrued compensation and related benefits	3,187	2,433
Other accrued liabilities	3,385	1,737
Deferred revenue	3,279	2,105
	-----	-----
Net cash provided by operating activities	26,488	16,199
	-----	-----

CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of short-term investments	(15,230)	(7,600)
Redemptions of short-term investments	17,880	9,266
Purchases of property and equipment	(11,615)	(4,886)
Payment of deposits, net	(7,000)	--
	-----	-----
Net cash used in investing activities	(15,965)	(3,220)
	-----	-----
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayments of long-term obligations	--	(12)
Proceeds from sale of common stock, net	12,048	4,815
	-----	-----
Net cash provided by financing activities	12,048	4,803
	-----	-----
NET INCREASE IN CASH AND CASH EQUIVALENTS	22,571	17,782
CASH AND CASH EQUIVALENTS:		
Beginning of period	37,315	21,520
	-----	-----
End of period	\$ 59,886	\$ 39,302
	=====	=====
NONCASH INVESTING AND FINANCING ACTIVITIES:		
Deferred stock compensation	\$ 473	\$ 714
Income tax benefit from employee stock transactions	\$ 12,210	\$ --
SUPPLEMENTAL CASH FLOW INFORMATION:		
Income taxes paid	\$ 7,031	\$ 7,138

See accompanying notes to condensed consolidated financial statements

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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. without audit and reflect all adjustments which are, in the opinion of management, necessary for a fair presentation of our financial position and results of operations 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 nine-month periods ended January 29, 1999 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, 1998 and the risk factors as set forth in our 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, 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, the effect of certain anti-takeover provisions and the Year 2000 Issue. Any party interested in reviewing these publicly available documents should contact the SEC or our Chief Financial Officer.

2. SIGNIFICANT ACCOUNTING POLICIES

Fiscal Periods - We operate on a 52-week or 53-week year ending on the last Friday in April. Fiscal 1999 is a 53-week year. Fiscal 1998 was a 52-week year. The quarter ended January 29, 1999 includes 13 weeks of operating activity,

compared to 13 weeks of activity for the corresponding period of the prior fiscal year. The nine months ended January 29, 1999 includes 40 weeks of activity, compared to 39 weeks of activity for the corresponding period of the prior fiscal year.

Foreign Currency Translation - In the first quarter of fiscal 1999, we determined that the functional currencies of certain of our foreign subsidiaries had changed from the U.S. dollar to the local currencies. Accordingly, assets and liabilities of our foreign subsidiaries are translated in U.S. dollars at the exchange rates in effect as of the balance sheet date, and results of operations for each subsidiary are translated using average rates in effect for the period presented. Translation adjustments have been included within shareholders' equity as a cumulative translation adjustment. The effect of the change in functional currencies did not have a material impact on our consolidated financial position, results of operations or cash flow.

NETWORK APPLIANCE, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

3. INVENTORIES

Inventories consist of the following:

	JANUARY 29, 1999	APRIL 30, 1998
	-----	-----
	(IN THOUSANDS)	
Purchased components	\$ 4,410	\$ 4,494
Work in process	2,825	1,889
Finished goods	4,516	2,324
	-----	-----
	\$11,751	\$ 8,707
	=====	=====

4. COMMITMENTS

In June 1998, we executed an agreement to acquire 5.9 acres of land in Sunnyvale, California and the accompanying 127,000 square foot building. Under terms of the agreement, we paid \$5.5 million of the \$33.8 million purchase price as a nonrefundable deposit. In January 1999, we assigned our rights and obligations under the agreement to a third-party entity and in exchange received back our \$5.5 million deposit. We subsequently entered into a \$44.0 million operating lease for this property. Our lease payments will vary based on the London Interbank Offered Rate (LIBOR) plus a spread. The lease is for five years and can be renewed for two five-year periods, subject to the approval of the third-party entity. At the expiration or termination of the lease, we have the option to either purchase the property for \$44.0 million, or arrange for the sale of the property to a third party for at least \$44.0 million with a contingent liability for any deficiency. If the property is not purchased or sold as described above, we will be obligated for an additional lease payment of approximately \$37.0 million. The lease also requires us to maintain specified financial covenants with which we were in compliance as of January 29, 1999.

In June 1998, we signed a 25-year operating lease requiring annual lease payments of \$3.1 million, commencing in October 1999, for a 6.2-acre plot in Sunnyvale, California and an option agreement to purchase the 6.2 acres of land. Under terms of the option agreement, we paid a \$4.5 million nonrefundable deposit. The option allows us to purchase the land, within a 90-day period, commencing in December 1999 at a purchase price of \$23.7 million. Our rights and obligations under this agreement may be assigned to third parties, which we intend to do if we can obtain satisfactory leasing terms.

In August 1998, we entered into an agreement to acquire 6.0 acres of land in Sunnyvale, California and the accompanying 79,000 square foot building. Under

terms of the agreement, we paid \$2.5 million of the \$16.8 million purchase price as a deposit, including \$0.5 million in November 1998 upon satisfaction of certain conditions under the agreement. The deposits are nonrefundable with limited exceptions. Our rights and obligations under this agreement may be assigned to third parties, which we intend to do if we can obtain satisfactory leasing terms.

Excluding the commitments related to the aforementioned properties, which we intend to assign to third parties and establish as operating leases, we currently have no significant commitments other than commitments under operating leases.

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NETWORK APPLIANCE, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

5. LINE OF CREDIT

In July 1998, we negotiated a \$5.0 million unsecured revolving credit facility with a domestic commercial bank. Under terms of the credit facility, which expires in July 1999, we must maintain various financial covenants. Any borrowings under this agreement bear interest at either LIBOR plus 1% or at the Lender's "prime" lending rate, such rate determined at our discretion. In December 1998, we drew a \$2.5 million letter of credit against this line of credit to facilitate payments associated with the August 1998 acquisition of land in Sunnyvale, California and the accompanying 79,000 square foot building.

6. COMMON STOCK AND NET INCOME PER SHARE

We have adopted the provisions of Statement of Financial Accounting Standards No. 128, "Earnings Per Share" (SFAS 128), effective in the third quarter of fiscal 1998. SFAS 128 requires the presentation of basic and diluted net income per share. Basic net income per share is computed by dividing income available to common stockholders by the weighted average number of common shares outstanding for that period. Diluted net income per share is computed giving effect to all dilutive potential shares that were outstanding during the period. Dilutive potential common shares consist of incremental common shares subject to repurchase and common shares issuable upon exercise of stock options.

On December 21, 1998, We effected a two-for-one stock split of the outstanding shares of common stock. All share and per share amounts in these consolidated financial statements have been adjusted to give effect to the stock split.

The following is a reconciliation of the numerators and denominators of the basic and diluted net income per share computations for the periods presented:

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NETWORK APPLIANCE, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	JANUARY 29, 1999	JANUARY 23, 1998	JANUARY 29, 1999	JANUARY 23, 1998
	-----	-----	-----	-----
	(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)			
NET INCOME (NUMERATOR):				
Net income, basic and diluted	\$ 9,394	\$ 5,555	\$ 24,867	\$ 14,661
	=====	=====	=====	=====
SHARES (DENOMINATOR):				
Weighted average common shares outstanding	68,812	66,704	68,144	66,234
Weighted average common shares outstanding subject to repurchase	(74)	(1,282)	(341)	(1,672)

Shares used in basic computation	68,738	65,422	67,803	64,562
Weighted average common shares outstanding subject to repurchase	74	1,282	341	1,672
Common shares issuable upon exercise of stock options	10,120	5,796	8,535	5,214
Shares used in diluted computation	78,932	72,500	76,679	71,448

Net Income Per Share:

Basic	\$ 0.14	\$ 0.08	\$ 0.37	\$ 0.23
Diluted	\$ 0.12	\$ 0.08	\$ 0.32	\$ 0.21

7. COMPREHENSIVE INCOME

We have adopted Statement of Financial Accounting Standards (SFAS) No. 130, "Reporting Comprehensive Income," as of the first quarter of fiscal 1999. SFAS No. 130 establishes new rules for the reporting and display of comprehensive income and its components; however, it has no impact on our net income or shareholders' equity.

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

	THREE MONTHS ENDED		NINE MONTHS ENDED	
	JANUARY 29, 1999	JANUARY 23, 1998	JANUARY 29, 1999	JANUARY 23, 1998
	-----	-----	-----	-----
	(IN THOUSANDS)			
Net income	\$ 9,394	\$ 5,555	\$ 24,867	\$ 14,661
Change in cumulative translation adjustment	(105)	--	(123)	--
Comprehensive income	\$ 9,289	\$ 5,555	\$ 24,744	\$ 14,661
	=====	=====	=====	=====

NETWORK APPLIANCE, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

8. NEW ACCOUNTING PRONOUNCEMENTS

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," which establishes interim and annual reporting standards for an enterprise's business segments and related disclosures about its products, services and geographic areas. We have not yet identified our reporting segments. This statement is effective for us beginning at fiscal year end 1999. Adoption of this statement is not expected to impact our consolidated financial position, results of operations or cash flows.

In the first quarter of fiscal 1999, we adopted Statement of Position (SOP) 97-2, "Software Revenue Recognition," which provides guidance on applying generally accepted accounting principles in recognizing revenue for software transactions. SOP 97-2 requires, among other things, revenue earned on software arrangements involving multiple elements to be allocated to each element based on the relative fair values of the elements. Adoption of this statement did not have a material impact on our consolidated financial position, results of operations or cash flows.

In June 1998, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 133, "Accounting for Derivative Instruments and Hedging Activities," which defines derivatives, requires that all derivatives be carried at fair value, and provides for hedging accounting when certain conditions are met. This statement is effective for all

fiscal quarters of fiscal years beginning after June 15, 1999. On a forward-looking basis, although we have not fully assessed the implications of this new statement, we do not believe adoption of this statement will have a material impact on our consolidated financial position, results of operations or cash flows.

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		NINE MONTHS ENDED	
	JANUARY 29, 1999	JANUARY 23, 1998	JANUARY 29, 1999	JANUARY 23, 1998
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	40.8%	40.7%	40.8%	40.8%
Gross margin	59.2%	59.3%	59.2%	59.2%
Operating expenses:				
Sales and marketing	26.2%	25.4%	26.1%	25.3%
Research and development	10.3%	10.0%	10.4%	10.1%
General and administrative	3.5%	4.2%	3.5%	4.1%
Total operating expenses	40.0%	39.6%	40.0%	39.5%
Income from operations	19.2%	19.7%	19.2%	19.7%
Other income, net	0.7%	0.5%	0.8%	0.6%
Income before income taxes	19.9%	20.2%	20.0%	20.3%
Provision for income taxes	7.5%	7.6%	7.5%	7.6%
Net income	12.4%	12.6%	12.5%	12.7%

Net Sales -- Net sales increased by 71.9% to \$75.6 million for the three months ended January 29, 1999, from \$44.0 million for the three months ended January 23, 1998. This increase was primarily attributable to a higher volume of units shipped, as compared to the corresponding period of the prior fiscal year. Factors impacting unit growth include: expansion of our direct sales force; increased unit shipments principally due to the successful launching of our F700 filer product family during the second quarter of fiscal 1999; the increased worldwide shipment of NetApp(R) cluster failover and NetCache(TM) solutions; increases in licensing of multi-protocol software, software subscription and service revenues due to a growing installed base; and increased sales of multi-protocol systems. Net sales growth was also positively impacted by a higher average selling price of the newly introduced F700 filer product family due primarily to the increase in storage content utilizing primarily fibre-channel connectivity. Factors which partially offset overall net sales growth include declining unit sales of our older product family and decreases in base prices of our older product line due to competitive forces.

Net sales increased by 71.5% to \$198.6 million for the nine months ended January 29, 1999, from \$115.8 million for the nine months ended January 23, 1998. This increase was primarily attributable to a higher volume of units shipped, as compared to the corresponding period of the prior fiscal year. Factors impacting unit growth include: expansion of our direct sales force; increased unit shipments principally due to the successful launching of our F700 filer product family during the second quarter of fiscal 1999, the increased worldwide shipment of NetApp cluster failover and NetCache solutions and the growth in sales of the NetApp F630; increases in licensing of multi-protocol

software, software subscription and service revenues due to a growing installed base; and increased sales of multi-protocol systems. Net sales growth was also positively impacted by a higher average selling price of the newly introduced F700 filer product family due primarily to the increase in storage content, and an increase in the average selling price of the NetApp F630 primarily facilitated by the incorporation of fibre-channel disk drives which increase system

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capacity. Factors which partially offset overall net sales growth include declining unit sales of our older product family and decreases in base prices of our older product line due to competitive forces.

International net sales (including United States exports) grew by 167.6% and 119.3%, for the three and nine-month periods ended January 29, 1999, respectively, as compared to comparable periods of the prior fiscal year. International net sales were \$31.3 million, or 41.4% of total net sales, and \$60.9 million, or 30.7% of total net sales, for the three and nine months ended January 29, 1999, respectively. The increase in international sales for the three and nine-month periods ended January 29, 1999, was primarily a result of European sales growth, due to increased headcount in the direct sales force, indirect channel sales through resellers, shipments of filers and sales of our new NetApp Cluster Failover solutions and NetCache appliances. Asia Pacific net sales growth for the three and nine-month periods ended January 29, 1999, was also driven by increased headcount in the direct sales force, increased shipments of filers and the sale of NetCache appliances, as compared to the corresponding periods of the prior fiscal year.

We cannot assure you that our 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 slightly to 59.2% for the three months ended January 29, 1999 from 59.3% for the three months ended January 23, 1998 but remained constant at 59.2% for the nine-month periods ended January 29, 1999 and January 23, 1998. Primary factors positively impacting gross margin were the increase in product volume, lower costs of key components, increased manufacturing efficiencies, increased market acceptance of our product line with the continuance of the cost-reduced designs introduced in the second quarter of fiscal 1999, the introduction of the F700 filer product family and NetApp Cluster Failover system during the second quarter of fiscal 1999 and the revenue growth in NetCache appliances. Gross margin was also favorably impacted by the licensing of multi-protocol software and support contracts, and by growth in software subscription and service revenues due to a larger installed base. Primary factors negatively impacting gross margin were the increase in the sales volume of the F700 product family maintaining incremental costs associated with greater disk drive and memory content and the effect of base system price reductions across the full range of older generations filers.

Our 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. Our gross margin may also vary based upon the configuration of systems that are sold and whether they are sold directly or through indirect channels. Highly configured systems have historically generated 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 certain promotional expenses and customer service and support costs. Sales and marketing expenses increased 77.3% to \$19.8 million for the three months ended January 29, 1999 from \$11.2 million for the three months ended January 23, 1998. For the nine months ended January 29, 1999, sales and marketing expenses of \$51.8 million reflect an increase of 76.6% over the comparable period of fiscal 1998. These expenses were 26.2% and 25.4% of net sales for the three months ended January 29, 1999 and January 23, 1998, respectively, and were 26.1% and 25.3%, respectively, of net sales for the nine months then ended. The increase in absolute dollars was primarily related to the continued expansion of our sales and marketing organization, including growth in

the domestic and international direct sales forces and increased commission expenses. We expect to continue to increase our sales and marketing expenses in an effort to expand domestic and international markets, introduce new products, establish and expand new distribution channels and increase product and company awareness. We believe that our continued growth and profitability is dependent in part on the successful expansion of our international operations, and therefore, have committed significant resources to increase international sales.

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Research and Development -- Research and development expenses consist primarily of salaries and benefits, prototype expenses, and fees paid to outside consultants. Research and development expenses increased 76.8% to \$7.8 million for the three months ended January 29, 1999 from \$4.4 million for the three months ended January 23, 1998. These expenses represented 10.3% and 10.0% of net sales, respectively for the three months ended January 29, 1999 and January 23, 1998. For the nine-month periods, research and development expenses increased 75.7% to \$20.6 million in fiscal 1999 from \$11.7 in fiscal 1998, and represented 10.4% and 10.1% of net sales, respectively, for those periods. Research and development expenses increased in absolute dollars, primarily as a result of increased headcount, ongoing support of current and future product development and enhancement efforts and prototyping expenses associated with the development of new products, including the NetApp F700 series filers and the C700 family, the second generation of our NetCache appliances. We believe that our future performance will depend in large part on our ability to maintain and enhance our current product line, develop new products that achieve market acceptance, maintain technological competitiveness and meet an expanding range of customer requirements. We intend to continuously expand our existing product offerings and to introduce new products and expect that such expenditures will continue to increase in absolute dollars. For the three and nine months ended January 29, 1999 and January 23, 1998, no software development costs were capitalized.

General and Administrative -- General and administrative expenses were \$2.7 million for the three months ended January 29, 1999, as compared to \$1.9 million for the three months ended January 23, 1998. These expenses represented 3.5% and 4.2% of net sales for the three months ended for such periods. For the nine-month periods, general and administrative expenses increased 50.9% to \$7.1 million in fiscal 1999 from \$4.7 million in fiscal 1998 and represented 3.5% and 4.1% of net sales, respectively, for those periods. Increases in absolute dollars were primarily due to increased headcount, and increases to the allowance for doubtful accounts and outside service fees. We believe that our general and administrative expenses will increase in absolute dollars as we continue to build our infrastructure.

Other Income, net -- Other income, net, was \$0.5 million and \$0.2 million for the three months ended January 29, 1999 and January 23, 1998, respectively. During the nine months ended January 29, 1999, other income was \$1.7 million, as compared to \$0.6 million in the corresponding period of the prior year. The increase was due primarily to foreign currency exchange gains recorded in the second quarter of fiscal 1999.

Provision for Income Taxes -- Our effective tax rate was 37.5% for both the three and nine-month periods ended January 29, 1999 and January 23, 1998.

Although we have experienced significant revenue growth in recent periods, this growth may not be indicative of our future operating results. As a result, we believe that period-to-period comparisons of our results of operation are not necessarily meaningful and should not be relied upon as indicators of future performance. Many of the factors that could cause our quarterly operating results to fluctuate significantly in the future are beyond our control and include the following: the level of competition in our target product markets; the size and timing and cancellation of significant orders; product configuration and mix; market acceptance of new products and product enhancements; new product announcements or introductions by us or our competitors; deferrals of customer orders in anticipation of new products or product enhancements; changes in pricing by us or our competitors; our ability to timely develop, introduce and market new products and enhancements; supply constraints; technological changes in our target product markets; the levels of expenditure on research and development and expansion of our sales and marketing programs; seasonality; and general economic trends.

In addition, sales for any future quarter may vary and accordingly be inconsistent with our plans. We generally operate with limited order backlog because our products are typically 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 difficult to forecast because the network file server market is rapidly evolving and our sales cycle varies substantially from customer to customer.

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We conduct business internationally. For the nine months ended January 29, 1999, approximately 31% of our net sales were to international customers (including United States exports). Accordingly, our future operating results could be materially adversely affected by a variety of factors some of which are beyond our control, including regulatory, political or economic conditions in a specific country or region, trade protection measures and other regulatory requirements and government spending patterns.

Our international sales are denominated in U.S. dollars and in foreign currencies. An increase in the value of the U.S. dollar relative to foreign currencies could make our products more expensive and, therefore, potentially less competitive in foreign markets. For international sales and expenditures denominated in foreign currencies, we are subject to risks associated with currency fluctuations. We do not currently engage in hedging transactions, but may do so in the future.

Additional risks inherent in our international business activities generally include, among others, longer accounts receivable payment cycles, difficulties in managing international operations and potentially adverse tax consequences. We cannot assure you that such factors will not materially adversely affect our future international sales and, consequently, our operating results.

Although operating results have not been materially and adversely affected by seasonality in the past, because of the significant seasonal effects experienced within the industry, particularly in Europe, we cannot assure you that our future operating results will not be adversely affected by seasonality.

We believe that continued growth and profitability will require successful expansion of our international operations and sales and therefore we have committed significant resources to such expansion. In order to successfully expand international sales in fiscal 1999 and subsequent periods, we must strengthen foreign operations, hire additional personnel and recruit additional international distributors and resellers. This will require significant management attention and financial resources and could materially adversely affect our operating results. To the extent that we are unable to effect these additions in a timely manner, our growth, if any, in international sales will be limited, and our operating results could be materially adversely affected. In addition, we cannot assure you that we will be able to maintain or increase international market demand for our products.

This Form 10-Q contains forward-looking statements about future results, which are subject to risks and uncertainties. Our actual results may differ significantly from the results discussed in the forward-looking statements. We are subject to a variety of other additional risk factors, more fully described in our Annual Report on Form 10-K filed with the Securities and Exchange Commission.

LIQUIDITY AND CAPITAL RESOURCES

As of January 29, 1999, as compared to the April 30, 1998 balances, our cash, cash equivalents and short-term investments increased by \$19.9 million to \$68.0 million. Working capital increased by \$37.3 million to \$106.9 million, impacted primarily by increases in cash and cash equivalents, accounts receivable, inventories and deferred taxes and a decrease in accounts payable, partially offset by increases in deferred revenue, accrued compensation and related benefits, income taxes payable and other accrued liabilities, and a decrease in short-term investments. We generated cash from operating activities totaling \$26.5 million and \$16.2 million for the nine-month periods ended January 29, 1999 and January 23, 1998, respectively. Net cash provided by operating activities for the nine-month period ended January 29, 1999 principally related to net income of \$24.9 million, increases in income taxes

payable, deferred revenue and other accrued liabilities, coupled with depreciation and amortization which are non-cash expenses, partially offset by increases in accounts receivable, inventories, prepaid expenses and other assets and deferred income taxes and decreases in accounts payable.

We used \$11.6 million and \$4.9 million of cash during the nine-month periods ended January 29, 1999 and January 23, 1998, respectively, to purchase property and equipment. We were provided with \$2.7 million and \$1.7 million during the nine-month periods ended January 29, 1999 and January 23, 1998, respectively, for net short-term investment redemptions. Financing activities provided \$12.0 million and \$4.8 million during the nine-month periods ended January 29, 1999 and January 23, 1998, respectively.

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The increase in cash provided by financing activities for the nine months ended January 29, 1999, compared to the corresponding period of the prior fiscal year, was due to an increased quantity of stock options exercised at a higher average exercise price and a greater number of employees participating in the employee stock purchase plan.

In June 1998, we executed an agreement to acquire 5.9 acres of land in Sunnyvale, California and the accompanying 127,000 square foot building. Under terms of the agreement, we paid \$5.5 million of the \$33.8 million purchase price as a nonrefundable deposit. In January 1999, we assigned our rights and obligations under the agreement to a third-party entity and in exchange received back our \$5.5 million deposit. We subsequently entered into a \$44.0 million operating lease for this property. Our lease payments will vary based on the London Interbank Offered Rate (LIBOR) plus a spread. The lease is for five years and can be renewed for two five-year periods, subject to the approval of the third-party entity. At the expiration or termination of the lease, we have the option to either purchase the property for \$44.0 million, or arrange for the sale of the property to a third party for at least \$44.0 million with a contingent liability for any deficiency. If the property is not purchased or sold as described above, we will be obligated for an additional lease payment of approximately \$37.0 million. The lease also requires us to maintain specified financial covenants with which we were in compliance as of January 29, 1999.

In June 1998, we signed a 25-year operating lease requiring annual lease payments of \$3.1 million, commencing in October 1999, for a 6.2-acre plot in Sunnyvale, California and an option agreement to purchase the 6.2 acres of land. Under terms of the option agreement, we paid a \$4.5 million nonrefundable deposit. The option allows us to purchase the land, within a 90-day period, commencing in December 1999 at a purchase price of \$23.7 million. Our rights and obligations under this agreement may be assigned to third parties, which we intend to do if we can obtain satisfactory leasing terms.

In July 1998, we negotiated a \$5.0 million unsecured revolving credit facility with a domestic commercial bank. Under terms of the credit facility, which expires in July 1999, we must maintain various financial covenants. Any borrowings under this agreement bear interest at either LIBOR plus 1% or at the Lender's "prime" lending rate, such rate determined at our discretion. In December 1998, we drew a \$2.5 million letter of credit against our line of credit to facilitate requirements associated with the acquisition of land in Sunnyvale, California and the accompanying 79,000 square foot building, described below.

In August 1998, we entered into an agreement to acquire 6.0 acres of land in Sunnyvale, California and the accompanying 79,000 square foot building. Under terms of the agreement, we paid \$2.5 million of the \$16.8 million purchase price as a deposit, including \$0.5 million in November 1988 upon satisfaction of certain conditions under the agreement. The deposits are nonrefundable with limited exceptions. Our rights and obligations under this agreement may be assigned to third parties, which we intend to do if we can obtain satisfactory leasing terms.

Excluding the commitments related to the aforementioned properties, which we intend to assign to third parties and establish as operating leases, we currently have no significant commitments other than commitments under operating leases. We believe that our existing liquidity and capital resources, including the available amounts under the \$5.0 million line of credit described in Note 5,

are sufficient to fund our operations for at least the next twelve months.

YEAR 2000

The Year 2000 (Y2K) issue refers to computer programs which use two digits rather than four to define a given year and which therefore might read a date using "00" as the year 1900 rather than the year 2000. As a result, many companies' systems and software may need to be upgraded or replaced in order to function correctly after December 31, 1999.

We are currently conducting a general software upgrade and replacement program to enhance our computer systems and applications, in particular those systems and applications related to our manufacturing, distribution and financial operations. As part of this larger program we are continuing to

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address the critical areas of our internal computer systems, products and relationships with external organizations for Year 2000 compliance. We are addressing for Year 2000 compliance both our information technology (IT) and non-IT systems, which typically included embedded technology such as microcontrollers.

As part of our larger efforts general systems upgrade we have evaluated and selected significant computer software applications which are represented by vendors as Year 2000 compliant. We expect to complete installation of such software in our domestic operations by the first quarter of fiscal year 2000, followed by installation in our international operations by mid-year 1999. Most of our existing business applications are already supported by Year 2000 compliant software. With the system changes implemented to date and other planned changes, we anticipate that our internal computer software applications will be Year 2000 compliant prior to December 31, 1999. We believe that our current products are Year 2000 compliant, and our products are being designed to be Year 2000 compliant.

We rely on numerous third party vendors for certain products and services. We are communicating with our principal service providers and suppliers to assess their Year 2000 readiness. Responses indicate that our significant service providers currently have compliant versions of their systems available or are well into the renovation and testing phases with completion scheduled prior to December 31, 1999. We are still assessing the effect Year 2000 issues will have on our suppliers, however, our principal service providers and suppliers have represented to us that they are Year 2000 compliant. However, we can give no guarantee that the systems and products of these service providers and suppliers on which we rely are, or will be, Year 2000 compliant.

Our contingency planning for Year 2000 issues relates primarily to the efforts of our third-party vendors. In the event of any Year 2000 disruptions related to third-party software, we expect to follow the individual vendor's contingency directives. With respect to suppliers, we will consider alternative sources as a contingency plan, if necessary. Contingency planning will continue throughout 1999 and our plans will be modified based upon the progress of our remediation efforts, system updates and installations and based upon our communications with selected suppliers. We have determined that our "worst case" scenario relates to Year 2000 compliance problems of our third party vendors and suppliers and other external organizations which if not remedied could materially adversely affect our operating results.

The costs we expect to incur, including both internal and third party costs, in connection with our overall general systems upgrade program, are primarily external costs for software licenses, and implementation and consulting services. These systems and applications were selected primarily for features and functionality in addition to Year 2000 compliance. Accordingly, we do not itemize costs of Year 2000 compliance separately.

Our expectations regarding the impact of Year 2000 issues are forward looking statements and actual results could vary due to the factors discussed in this section. While we believe that the estimated cost of becoming Year 2000 compliant will not be significant to our operating results, failure to complete all the work in a timely manner could materially adversely affect our operating results. While we expect all planned work to be completed, we cannot guarantee

that all systems will be in compliance by the Year 2000, the systems of suppliers and other companies and government agencies on which we rely will be converted in a timely manner, or that our contingency planning will be able to fully address all potential interruptions. Therefore, Year 2000 issues could cause delays in our ability to produce or ship our products, process transactions or otherwise conduct business in any of our markets. Year 2000 issues could lower demand for our products while increasing our costs. The occurrence of one or more of these factors could materially adversely affect our operating results.

NEW ACCOUNTING STANDARDS

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," which establishes interim and annual reporting standards for an enterprise's business segments and related disclosures about its products, services and geographic areas. We have not yet identified our reporting

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segments. This statement is effective for us beginning at fiscal year end 1999. Adoption of this statement is not expected to impact our consolidated financial position, results of operations or cash flows.

In the first quarter of fiscal 1999, we adopted Statement of Position (SOP) 97-2, "Software Revenue Recognition," which provides guidance on applying generally accepted accounting principles in recognizing revenue for software transactions. SOP 97-2 requires, among other things, revenue earned on software arrangements involving multiple elements to be allocated to each element based on the relative fair values of the elements. Adoption of this statement did not have a material impact on our consolidated financial position, results of operations or cash flows.

In June 1998, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 133, "Accounting for Derivative Instruments and Hedging Activities," which defines derivatives, requires that all derivatives be carried at fair value, and provides for hedging accounting when certain conditions are met. This statement is effective for all fiscal quarters of fiscal years beginning after June 15, 1999. On a forward-looking basis, although we have not fully assessed the implications of this new statement, we do not believe adoption of this statement will have a material impact on our consolidated financial position, results of operations or cash flows.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not Applicable

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PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

None

ITEM 2. CHANGES IN SECURITIES

None

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None

ITEM 5. OTHER INFORMATION

None

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ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS

- 3.2 Certificate of Amendment to the Restated Articles of Incorporation of the Registrant
- 10.21 Amended Purchase and Sale Agreement, dated December 9, 1998, by and between Martin/Crossman, LLC and the Registrant
- 10.22 Amended Purchase and Sale Agreement, dated December 21, 1998, by and between 495 Java Drive Associates, L.P. and the Registrant
- 10.23 Lease Agreement, dated January 20, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.24 Purchase Agreement, dated January 20, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.25 Pledge Agreement, dated January 20, 1999, by and between BNP Leasing Corporation, Banque Nationale De Paris and the Registrant
- 10.30 OEM Distribution and License Agreement, dated November 6, 1998, by and between Fujitsu Limited and the Registrant
- 27.1 Financial Data Schedule

(b) REPORTS ON FORM 8-K

None

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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

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

Date: March 15, 1999

EXHIBIT INDEX

DESCRIPTION

EXHIBIT
NUMBER

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- 27.1 Financial Data Schedule

CERTIFICATE OF AMENDMENT
OF THE RESTATED ARTICLES OF INCORPORATION OF
NETWORK APPLIANCE, INC.
A CALIFORNIA CORPORATION

The undersigned, Daniel J. Warmenhoven and Jeffry R. Allen, hereby certify that:

ONE: They are the duly elected and acting President and Secretary, respectively, of said corporation.

TWO: The Restated Articles of Incorporation of said corporation, filed on December 22, 1995, as amended on December 18, 1997, shall be amended as set forth in this Certificate of Amendment.

THREE: Section A of ARTICLE III of the Amended and Restated Articles of Incorporation, is amended to read in its entirety as follows:

"(A) CLASSES OF STOCK. This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the corporation is authorized to issue is Two Hundred Twenty-Five Million (225,000,000) shares. Two Hundred Twenty Million (220,000,000) shares shall be Common Stock and Five Million (5,000,000) shares shall be Preferred Stock.

As of December 11, 1998, each share of Common Stock outstanding is split into two (2) shares of Common Stock."

* * *

FOUR: The foregoing Certificate of Amendment has been duly approved by the Board of Directors of the Corporation.

FIVE: The foregoing Certificate of Amendment of the Restated Articles of Incorporation does not require shareholder approval pursuant to Section 902(c) of the General Corporation Law of the State of California. No shares of Preferred Stock are outstanding.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment on November 30, 1998.

/s/ DANIEL J. WARMENHOVEN

Daniel J. Warmenhoven
President

/s/ JEFFRY R. ALLEN

Jeffry R. Allen
Secretary

The undersigned certify under penalty of perjury that they have read the foregoing Certificate of Amendment and know the contents thereof, and that the statements therein are true.

Executed at Santa Clara, California, on November 30, 1998

/s/ DANIEL J. WARMENHOVEN

Daniel J. Warmenhoven

/s/ JEFFRY R. ALLEN

Jeffry R. Allen

[SEAL OF THE SECRETARY OF STATE]

FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("First Amendment") is made as of this ___ day of December, 1998, by and between MARTIN/CROSSMAN, LLC, a California limited liability company ("Seller"), and NETWORK APPLIANCE, INC., a California corporation ("Buyer").

R E C I T A L S:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

A. Seller and Buyer entered into a certain Purchase and Sale Agreement and Escrow Instructions dated July 31, 1998 (the "Agreement") (with an Effective Date of August 5, 1998) for that certain real property located in the City of Sunnyvale, County of Santa Clara, State of California, consisting of certain property commonly known as 1275 Crossman Avenue, as more particularly described therein

B. Seller and Buyer desire to amend the Agreement upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants of the parties herein contained and other valuable consideration, the parties agree as follows:

1. Defined Terms. Except as expressly provided in this First Amendment to the contrary, terms which are defined in the Agreement shall have the same meaning when used in this First Amendment.

2. Section 2.2.1. Section 2.2.1 of the Agreement is hereby deleted in its entirety and the following is inserted in place thereof:

"2.2.1 Deposit. Buyer has previously delivered to Title Company a cashier's check or wire transfer in the amount of One Million and 00/100 Dollars (\$1,000,000.00) (the "Initial Deposit"), as an earnest money deposit on account of the Purchase Price. Buyer acknowledges that the conditions precedent set forth in Sections 4.1.1 and 4.1.2 of this Agreement have been waived or satisfied and in connection therewith: (i) Buyer delivered directly to Title Company an additional deposit in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (the "Additional Deposit"), and (ii) the Initial Deposit and Additional Deposit became nonrefundable, except as otherwise provided for in this Agreement. Buyer hereby notifies Seller that it has waived any financing contingency. Upon full-execution of this First Amendment, Buyer shall deliver directly to Title Company a cashier's check or wire transfer as a third deposit in the amount of One Million and 00/100 Dollars (\$1,000,000.00) ("Third Deposit").

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As used in this Agreement, the term "Deposit" means the Initial Deposit and the Third Deposit.

"If the Termination Date (as defined in Section 4.1.3) occurs prior to the Closing Date, a portion of the Additional Deposit shall be released to Seller at Closing for payment of (a) one-half of the Income Loss (as defined in Section 4.1.3) due Seller by Buyer pursuant to Section 4.1.3 and incurred by Seller prior to the Closing Date, in the amount of Seventy One Thousand Four Hundred Twenty Three and 00/100 Dollars (\$71,423.00) per month and (b) one-half of the attorney's fees incurred by Seller

in connection with the Termination Agreement, in the amount of Three Thousand Seven Hundred Fifty and 00/100 Dollars (\$3,750.00). The remaining balance of the Additional Deposit in the amount of Four Hundred Twenty Four Thousand Eight Hundred Eighteen and 00/100 Dollars (\$424,818.00) shall be returned to Buyer at Closing. The balance of the Purchase Price due Seller pursuant to Sections 2.2.2 and 11.3.1 shall be reduced by the amount of Two Hundred Eighty Five Thousand Six Hundred Ninety Two and 00/100 Dollars (\$285,692.00) (which is the equivalent of four months of one-half of the monthly Income Loss). Such amount represents payment by Seller to Buyer of Seller's one-half of the Income Loss to be incurred by Buyer after the Closing Date through August 31, 1999.

"If the Termination Date occurs after the Closing Date, a portion of the Additional Deposit shall be released to Seller at Closing for payment of one-half of all reasonable attorney's fees incurred by Seller in connection with the Termination Agreement, in the amount of Three Thousand Seven Hundred Fifty and 00/100 Dollars (\$3,750.00). The remaining balance of the Additional Deposit in the amount of Four Hundred Ninety Six Thousand Two Hundred Fifty and 00/100 Dollars (\$496,250.00) shall be returned to Buyer at Closing. From the sale proceeds due Seller, Two Hundred Eighty Five Thousand Six Hundred Ninety Two and 00/100 Dollars (\$285,692.00) (which is the equivalent of four months of one-half of the monthly Income Loss) shall remain in escrow as a hold back of the proceeds of the sale for payment by Seller of its one-half of the Income Loss incurred by Buyer for the period from the Termination Date through August 31, 1999. On the Termination Date, the Title Company shall release (i) to Buyer, the amount equal to Seventy One Thousand Four Hundred Twenty Three and 00/100 Dollars (\$71,423.00) per month for the period from the Termination Date through August 31, 1999 and (ii) to Seller, the remaining balance of the sale proceeds which have been held back."

"As security for the release of the Initial Deposit, the Additional Deposit and the Third Deposit in accordance with the Agreement, Buyer shall deposit with Seller, upon full-execution of the First Amendment, an irrevocable standby letter of credit ("L-C") in the amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00). The L-C shall be issued by a bank reasonably acceptable to Seller, shall be issued for a term of at least seven (7) months and shall be in a form and with such content reasonably acceptable to Seller. The L-C

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shall not be mortgaged, assigned or encumbered in any manner whatsoever by Buyer without the prior written consent of Seller. The retention or application of the L-C, or any portion thereof, by Seller shall not prevent Seller from exercising any other right or remedy provided by this Agreement. The L-C shall be payable at sight upon presentation of a signed statement by a president or vice president of the managing member of Seller certifying that the Seller is not in default under the Agreement, that the Buyer is in default under the Agreement, and that the Initial Deposit, Additional Deposit and/or the Third Deposit have not been released to Seller by the Title Company pursuant to the terms of the Agreement. Upon release of the Initial Deposit, the Additional Deposit and the Third Deposit (either (i) in the case of the Initial Deposit and the Third Deposit as a credit against the Purchase Price on the Closing Date and in the case of the Additional Deposit as payment of Buyer's portion of Income Loss if the transaction contemplated by this Agreement is consummated, or (ii) as payment of liquidated damages to Seller if Buyer defaults hereunder or as a refund to Buyer if Seller defaults hereunder), Seller shall return the L-C to Buyer. Prior to presentment of the L-C, Seller shall provide written notice to Buyer that the Initial Deposit, the Additional Deposit and/or the Third Deposit were not released to Seller by the Title Company

had not been terminated (collectively, "Income Loss"); provided, however, that the portion of such Income Loss to be borne by Buyer shall in no event exceed Five Hundred Thousand and 00/100 Dollars (\$500,000.00). The Seller and Buyer agree that the total monthly Income Loss is equal to One Hundred Forty Two Thousand Eight Hundred Forty Six and 00/100 Dollars (\$142,846.00)."

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5. Section 11.1. Section 11.1 is hereby deleted in its entirety and the following is inserted in place thereof:

"11.1 Closing. The transaction contemplated by this Agreement shall be consummated through escrow at the office of Title Company on May 3, 1999 (the "Closing Date"). For purposes of this Agreement, the term "Closing" shall mean the consummation of the sale and conveyance of the Property to Buyer as evidenced by recordation of the Deed."

6. Interpretation of Amendment. This First Amendment and the Agreement shall be construed as a whole in order to effectuate the intent of the parties to amend the Agreement in the manner specified in this First Amendment. All provisions of the Agreement affected by this First Amendment shall be deemed amended regardless of whether so specified in this First Amendment. Subject to the foregoing, if any provision of the Agreement conflicts with any provision of this First Amendment, the provision of this First Amendment shall control.

7. No Further Amendment. Except as amended by this First Amendment, the Agreement shall continue in full force and effect and in accordance with its terms.

[SIGNATURES FOLLOW ON NEXT PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

SELLER: MARTIN/CROSSMAN, LLC,
a California limited liability company
By: THE MARTIN GROUP OF COMPANIES, INC.,
a California corporation
Its: Managing Member

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

BUYER: NETWORK APPLIANCE, INC.,
a California corporation

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

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EXHIBIT F

TERMINATION OF LEASE AGREEMENT

THIS TERMINATION OF LEASE AGREEMENT ("Agreement") is made and entered into this ____ day of December, 1998, by and between MARTIN/CROSSMAN, LLC, a California limited liability company ("Landlord"), and TRW, INC., an Ohio corporation ("Tenant").

R E C I T A L S:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

A. Landlord's predecessor in interest and Tenant's predecessor in interest entered into that certain Indenture of Lease dated as of June 12, 1975, as amended by (i) the Extension of Lease dated June 16, 1980; (ii) the Extension of Lease dated March 20, 1985; (iii) the Lease Amendment dated August 1, 1989; and (iv) the Lease Amendment dated September 1, 1991, for certain premises located at 1275 Crossman Avenue, Sunnyvale, California (the "Premises"), as more particularly described therein.

B. Landlord and Tenant entered into that certain Third Amendment to Lease dated July 6, 1998 (the Indenture of Lease, as amended, is hereinafter referred to as the "Lease").

C. Landlord and Tenant desire to terminate the Lease upon the date Tenant vacates and surrenders the Premises and to release each other from their respective obligations under the Lease with respect to the Premises arising after such date, upon the terms and conditions provided herein.

NOW, THEREFORE, in good consideration of the mutual covenants set forth below and other good and valuable consideration, the parties agree as follows:

1. Termination of the Lease. The Lease is hereby terminated and canceled on and as of the Effective Date. The "Effective Date" shall be the date on which Tenant vacates and surrenders the Premises pursuant to the terms hereof, which date shall be no earlier than April 1, 1999 and no later than August 31, 1999. Tenant shall provide written notice to Landlord of the Effective Date on or before February 26, 1999. If Tenant fails to deliver such notice on February 26, 1999, Tenant may thereafter provide notice of the Effective Date at least thirty (30) days on or before such Effective Date. Tenant's failure to give any notice with respect to the Effective Date shall be conclusively deemed to mean that the Effective Date shall be August 31, 1999. The rights of Tenant to occupy the Premises, and the rights of Tenant under the Lease, shall automatically and without further action on the part of Landlord terminate at 11:59 p.m. on the Effective Date. Not later than 5:00 p.m. on the Effective Date, Tenant shall surrender possession of the Premises, and shall deliver exclusive possession and occupancy thereof and all keys thereto, to Landlord. The Premises shall be surrendered in the condition required under the Lease. Tenant shall remove the personal property to which it is entitled pursuant to the

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provisions of the Lease before the Effective Date. Upon surrender of the

Premises, as provided in this Agreement, all rent and other amounts payable by Tenant under the Lease, including, without limitation, rent and Tenant's share of taxes, utility costs and other operating expenses, shall be prorated through the Effective Date and paid by Tenant.

2. Termination Documents from Tenant. During regular business hours, but no later than 5:00 p.m. on the Effective Date, Landlord and Tenant shall conduct an inspection of the Premises. If the condition of the Premises is reasonably satisfactory to Landlord, Tenant shall deliver to Landlord, duly executed and acknowledged and in recordable form, (i) an Acknowledgment of Termination and Surrender of all of the right, title and interest of Tenant in and to the Lease and the Premises in the form attached to this Agreement as Exhibit A; and (ii) a Quitclaim Deed and Warranty to Landlord of all of the right, title and interest of Tenant in and to the Premises and the personal property remaining on the Premises, in the form attached to this Agreement as Exhibit B.

3. No Other Payment. No payment shall be made by or due from Landlord in connection with any of the matters which are the subject of this Agreement, other than reimbursement by Landlord of any rent or operating expenses paid by Tenant and applicable to any period after the Effective Date.

4. Tenant's Obligations. Tenant shall pay all rents and additional rent and all other amounts of every kind and nature whatsoever payable by Tenant under the Lease and shall comply with all of Tenant's other obligations under the Lease through the Effective Date. In addition, if Tenant has not fully complied with the terms of this Agreement and the Lease on the Effective Date, then Landlord shall have the right, in its sole discretion, either to: (i) terminate the Lease as of the Effective Date and thereafter pursue all of Landlord's rights and remedies against Tenant arising out of Tenant's default under the Lease and this Agreement, or (ii) terminate this Agreement as of the Effective Date, but not the Lease, and thereafter pursue all of Landlord's rights and remedies against Tenant arising out of Tenant's default under the Lease and this Agreement.

5. Default. A default by Tenant under this Agreement shall constitute a default under the Lease.

6. Remedies. Tenant acknowledges and agrees that Landlord has entered into an agreement to redevelop the property within which the Premises are located. In connection with the redevelopment, it is necessary for Landlord to obtain possession of the Premises no later than the Effective Date. If Landlord is not able to obtain exclusive possession of the Premises on or before the Effective Date, then Landlord shall incur substantial damages, costs and losses. Tenant understands and agrees that Tenant's failure to deliver possession of the Premises as provided in this Agreement and to perform its other obligations under this Agreement may cause Landlord to be unable to fulfill its obligations with respect to the redevelopment, which failure would cause material damage to Landlord. Tenant also understands and agrees that Landlord is relying on Tenant's performance of the terms and conditions of the Lease and this Agreement and that Tenant's failure to strictly perform in accordance with the terms and conditions of the Lease and this Agreement may cause Landlord to be unable to fulfill its obligations with respect

to the redevelopment. In accordance with the foregoing understandings, as of the Effective Date, Landlord shall have the right to prosecute any proceeding at law or equity, in the event of any default or breach of the obligations of Tenant contained in this Agreement. If Tenant does not vacate the Premises, terminate the Lease or perform Tenant's obligations under the other terms of this Agreement on the Effective Date, then in addition to all other rights and remedies of Landlord under applicable law or in equity, Landlord shall be entitled to receive from Tenant all direct and consequential damages resulting from or arising out of Tenant's failure to vacate the Premises, terminate the Lease or perform Tenant's obligations under the terms of this Agreement, including, without limitation, loss of income, damages owed to a prospective tenant, loss of prospective tenants or financing arrangements for the Premises, costs or other damages from any expiration or termination of a construction contract, lease or financing commitment related to Tenant's failure to terminate the Lease, surrender the Premises or perform Tenant's obligations under the terms of this Agreement. All rights, privileges and elections of remedies set

forth in this Paragraph 6 are cumulative and not alternative to the extent permitted by law or equity.

7. Holding Over. If Tenant remains in possession of the Premises after the Effective Date, with Landlord's consent, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. Tenant acknowledges that Landlord's cost of owning and carrying the Premises is substantially in excess of the rent payable by Tenant under this Lease. Accordingly, during such month-to-month tenancy the total rent payable pursuant to the terms of the Lease for the Premises shall be One Hundred Ninety Five Thousand Seventy Five and 00/100 Dollars (\$195,075.00) per month. Tenant shall pay such monthly rental and all other sums required to be paid under the Lease monthly on or before the first day of each month. All other provisions of the Lease, except those pertaining to the term, shall apply to the month-to-month tenancy.

8. Amendment to Lease. This Agreement is and shall constitute an amendment to the Lease and shall be effective as of the date of this Agreement. Except as modified hereby, all of the terms and conditions of the Lease shall remain in full force and effect.

9. Representations and Warranties of Tenant. As a material inducement to Landlord to enter into this Agreement, Tenant represents and warrants to Landlord that, as of the date of this Agreement:

9.1. No Defaults. The Lease is in full force and effect. There are no defaults by Landlord or Tenant under the Lease, and no circumstance has occurred which, but for the expiration of an applicable grace period, would constitute an event of default by Landlord or Tenant under the Lease. Tenant has no defenses or rights of offset under the Lease.

9.2. Authority. Tenant has full right, power and authority to enter into this Agreement, and has obtained all necessary consents and resolutions from its members required under the documents governing its affairs in order to consummate this transaction, and the persons executing this Agreement have been duly authorized to do so. The Agreement and the Lease are binding obligations of Tenant, enforceable in accordance with their terms.

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9.3. No Assignments. Tenant is the sole lawful tenant under the Lease, and Tenant has not sublet, assigned, conveyed, encumbered or otherwise transferred any of the right, title or interest of Tenant under the Lease or arising from its use or occupancy of the Premises, and no other person, partnership, corporation or other entity has any right, title or interest in the Lease or the Premises, or the right to occupy or use all or any part of the Premises.

10. Release. Tenant hereby generally releases and discharges Landlord and all of its officers, directors, shareholders, agents, representatives, employees and attorneys, both present and past, of and from any and all claims, debts, liabilities, obligations, and causes of action of any kind or nature, whether known or unknown, based on, arising out of, or connected with, either directly or indirectly, any term, provision, matter, fact, event or occurrence related to or contained in the Lease, or to any landlord/tenant relationship between Tenant and Landlord. This general release shall be governed by the laws of the State of California. It is understood by the undersigned Tenant that the facts with respect to which this general release is given may hereafter turn out to be other than or different from the facts in that connection now known to it or believed by it to be true, and Tenant therefore expressly assumes the risk of the facts turning out to be so different and agrees that the foregoing general release shall be in all respects effective and not subject to termination or rescission by any such difference in facts. This general release shall bind all persons or business entities claiming any rights under or through Tenant whether as stockholders or otherwise.

Tenant specifically waives the protections of California Civil Code Section 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of

executing the release, which if known by him must have materially affected his settlement with the debtor.

Tenant specifically acknowledges Tenant's understanding and waiver, after consultation with counsel, of the foregoing provision of California Civil Code Section 1542 and assumes the risk of the existence of any unknown or unsuspected claims.

11. Indemnity. Tenant covenants with Landlord that Landlord shall not be liable for, and Tenant shall defend, indemnify and protect Landlord from any claim, demand, judgment, award, fine, mechanics' lien or other lien, loss, damage, expense, charge or cost of any kind or character (including actual attorney fees and court costs) arising prior to the Effective Date directly or indirectly from (i) any labor dispute involving Tenant or its contractors and agents, or (ii) the construction, repair, alteration, use, occupancy or enjoyment of the premises (collectively, "Claims"), including without limitation, Claims caused by the concurrent negligent act or omission whether active or passive of Landlord or its agents; provided, however, Tenant shall have no obligation to defend or indemnify Landlord for damage or injury occasioned by the sole negligence, willful or criminal act of Landlord or its agents.

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12. Condition Precedent. The effectiveness of this Agreement is expressly conditioned on Landlord's obtaining the consent of the mortgagee or beneficiary of any mortgage or deed of trust encumbering the Premises as of the Effective Date.

13. Attorneys' Fees. If either party should bring an action to enforce the terms of this Agreement or declare rights under this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees, costs and expenses to be paid by the losing party in such action.

14. Construction. Counsel for all parties have read and approved the language of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against Tenant or Landlord.

15. Miscellaneous. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and permitted assigns. This Agreement may not be amended, changed or waived except by a writing signed by the parties hereto, and shall be construed and enforced in accordance with the laws of the State of California. This Agreement supersedes any prior oral agreements between the parties with respect to the subject matter hereof, and the parties acknowledge that there are no oral agreements between them with regard to such subject matter. This Agreement may be executed in multiple counterparts, each of which shall be deemed a duplicate original, but all of which taken together shall constitute one and the same instrument.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

LANDLORD: MARTIN/CROSSMAN, LLC,
a California limited liability company

By: THE MARTIN GROUP OF COMPANIES, INC.
a California corporation
Its: Managing Member

By: _____
Name: _____
Title: _____

TENANT:

TRW, INC.,
an Ohio corporation

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By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

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EXHIBIT A

ACKNOWLEDGMENT OF TERMINATION AND SURRENDER

The undersigned hereby acknowledges:

1. The Lease dated as of June 12, 1975, as amended by (i) the Extension of Lease dated June 16, 1980; (ii) the Extension of Lease dated March 20, 1985; (iii) the Lease Amendment dated August 1, 1989; (iv) the Lease Amendment dated September 1, 1991; (v) Third Amendment to Lease dated July 6, 1998 for certain premises located at 1275 Crossman Avenue, Sunnyvale, California (the "Premises"), is terminated as of the date set forth below and is of no further force or effect with respect to the Premises.

2. The Premises have been surrendered as of the date set forth below and exclusive occupancy thereof is hereunder being delivered to Martin/Crossman, LLC.

3. This Acknowledgment of Termination and Surrender is dated _____, 1999.

TRW, INC.,
an Ohio corporation

By: _____
Its: _____

By: _____
Its: _____

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EXHIBIT B

Recorded at the Request of:
Martin/Crossman, LLC

and When Recorded, Return to:
Mandel Buder & Verges
101 Vallejo Street
San Francisco, CA 94111
Attention: Scott c. Verges, Esq.

QUITCLAIM DEED AND WARRANTY

For One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TRW, INC., an Ohio corporation ("Grantor") hereby quitclaims, demises and releases to MARTIN/CROSSMAN, LLC, a California limited liability company ("Grantee"), all of Grantor's right, title and interest in and to or any right, title and interest claimed by, under or through Grantor to that certain improved real property or any premises therein and any personal property located thereon commonly known as 1275 Crossman Avenue, Sunnyvale, California, more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Property").

Grantor represents and warrants to Grantee, its successors and assigns, that Grantor is the lawful owner of, and has not sublet, assigned or otherwise transferred, the interest of Grantor under the lease dated June 12, 1975, as modified and amended, with respect to the Property, that the interest is free of all encumbrances, that Grantor has not made, done, committed or suffered any act or thing whereby the interest, or any part thereof, now or at any time hereafter shall or may be charged or encumbered in any manner, and that Grantor warrants and will defend title and hold Grantee harmless against the claims and demands of all persons in relation to the foregoing.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed and Warranty this ____ day of _____, 1999.

"Grantor"

TRW, INC.,
an Ohio corporation

By: _____
Its: _____

By: _____
Its: _____

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STATE OF CALIFORNIA)
)
COUNTY OF _____)

On this _____ day of _____, 1998, before me, _____, the undersigned Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/he/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY hand and official seal.

Notary Public

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FIRST AMENDMENT TO
AGREEMENT OF PURCHASE AND SALE AND WORK LETTER

THIS FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE AND WORK LETTER ("Amendment") is entered into as of this ___ day of December, 1998 (the "Effective Date") by and between 495 JAVA DRIVE ASSOCIATES, L.P., a California limited partnership ("Seller") and NETWORK APPLIANCE, INC., a California corporation ("Buyer").

THE PARTIES ENTER INTO THIS AMENDMENT upon the following facts, understandings and intentions:

A. Seller, as seller, and Buyer, as buyer, entered into that certain Agreement of Purchase and Sale, dated June 11, 1998 (the "Agreement"), whereby Seller agreed to sell, and Buyer agreed to purchase, subject to the terms and conditions therein, certain real property, comprised of approximately 5.86 acres, located at 495 Java Drive in Sunnyvale, California and more particularly described in the Agreement. Capitalized terms used herein shall have the same meanings given them in the Agreement unless otherwise defined herein.

B. Seller and Buyer also entered into a Work Letter dated June 11, 1998 (the "Work Letter") pursuant to which Seller has agreed to furnish Buyer, at no expense to Buyer other than the Purchase Price (as defined in the Agreement), an industrial shell building (the "Improvements") pursuant to certain "Seller Plans" which have been agreed upon by Seller and Buyer. Section 12 of the Work Letter also gives Buyer certain rights to enter the Property prior to the Closing Date to commence the installation of certain tenant improvement work (the "Buyer Improvements") pursuant to the terms of that Section 12.

C. Seller and Buyer also entered into an Letter Agreement dated June 15, 1998 (the "First Accommodation Agreement").

D. Seller and Buyer also entered into an Accommodation and Letter Agreement dated July ___, 1998 (the "Second Accommodation Agreement").

E. Seller and Buyer have determined that the scope of the construction costs to be covered by the First Accommodation Agreement and Second Accommodation Agreement is too broad in that it could be construed to include hard costs, as well as soft costs of constructing the Buyer Improvements and, as such have not conducted any of the activities contemplated thereby. Seller and Buyer desire to terminate the First Accommodation Agreement and Second Accommodation Agreement as provided for below.

F. Seller and Buyer now desire to amend the terms of the Agreement to provide that: (i) Buyer will increase the amount of the Deposit by Five Hundred Thousand Dollars (\$500,000) (the "Additional Deposit") (to an aggregate of Five Million Five Hundred Thousand Dollars (\$5,500,000)), (ii) the First Accommodation Agreement and Second Accommodation Agreement shall terminate, and (iii) to amend the Agreement in certain other respects.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. ADDITIONAL DEPOSIT. Within five (5) Business Days after the Effective Date, Buyer shall deposit with Escrow Agent the Additional Deposit in the sum of Five Hundred Thousand Dollars (\$500,000) in cash as a deposit on account of the Purchase Price. The Additional Deposit shall be nonrefundable, except as provided in Section 3(b) of the Agreement, and, together with the \$5,000,000 deposit previously made by Buyer pursuant to Section 2(a) of the Agreement, constitute the amount to which Seller shall be entitled to receive as liquidated damages in the circumstances described in Section 3(a) of the Agreement, and the Additional Deposit shall be considered part of the Deposit for all of the purposes of the Agreement. From and after the date hereof, all

references in the Agreement to the Deposit shall mean and refer to the total of the \$5,000,000 deposit previously made by Buyer pursuant to Section 2(a) of the Agreement and the Additional Deposit.

2. BUYER IMPROVEMENT WORK. Notwithstanding anything to the contrary in the Agreement, Seller hereby agrees, at the request of Buyer, to contract for the services of various professionals and other service providers in connection with the Buyer Improvements, and to pay costs related thereto (provided that such costs do not, in the aggregate, exceed Five Hundred Thousand Dollars (\$500,000)), and the Purchase Price shall be increased by the amount, if any, of any such costs paid by Seller for the Buyer Improvements. All costs incurred by Seller for the services of professionals and other service providers at the request of Buyer shall be deemed to be Change Orders for all purposes of the Work Letter.

3. CLOSING DATE. The Closing Date shall mean a date which is the earlier of: (i) twenty (20) Business Days following the date the Improvements are Substantially Completed in accordance with the Work Letter, or (ii) a date selected by Buyer, but not before January 4, 1999 or later than March 17, 1999, with written notice thereof to Seller at least fifteen (15) Business days in advance. Seller shall provide Buyer with at least fifteen (15) Business days written notice of the date Seller expects to Substantially Complete the Improvements and written notice of the date such Improvements are Substantially Complete.

4. TITLE INSURANCE. The following is added at the end of Section 5(a) of the Agreement:

"In the event that the Close of Escrow occurs prior to completion of the Improvements, Buyer and Seller shall each cooperate in satisfying the reasonable requirements of the Title Company so that the ALTA Title Policy insures against the possibility of mechanic's lien claims arising from work performed on the Property prior to the Close of Escrow, except for lien claims arising out of Buyer's failure to perform any duties, obligations or liabilities assumed by it pursuant to the "Devcon Assignment," the "Rodrigues Assignment" (defined below) or the "Ingram Assignment" (defined below). Buyer acknowledges and agrees that the ALTA Title Policy will not insure against the possibility of mechanic's lien claims arising from work performed on the Property after the Close of Escrow.

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5. CONDITIONS PRECEDENT. Section 5(d) of the Agreement is modified to read "Seller shall have used commercially reasonable efforts to construct the Improvements."

6. COMPLETION OF IMPROVEMENTS. Section 6(a) of the Agreement is modified to read "Seller shall be obligated to construct the Improvements in accordance with the Work Letter." Milestones (2) set forth in Section 6(b) of the Agreement (that the Improvements shall have been substantially completed, except for landscaping, on or before June 17, 1999). Additionally, Section 6(e) is deleted in its entirety.

7. ADJUSTMENT TO PURCHASE PRICE. Section 6(b)(2) of the Agreement is hereby deleted in its entirety and replaced with the following:

"(2) In the event that the Close of Escrow occurs prior to completion of the Improvements, Seller shall use reasonable, good faith efforts to assign to Buyer all of Seller's rights, and in the event of such an assignment Buyer shall assume all of Seller's post-closing duties and obligations, with respect to the construction of the Improvements under Seller's contracts with Devcon Construction, Inc. ("Devcon"), Kenneth Rodrigues and Partners ("Rodrigues") and Alex Ingram ("Ingram"), which assignment and assumption shall be made pursuant to the agreements attached hereto as EXHIBIT A (the "Devcon Assignment") and EXHIBIT B (the "Rodrigues Assignment") and EXHIBIT C (the "Ingram Assignment"), respectively. In such event the Purchase Price shall be reduced by the Savings. As used herein, the "Savings"

shall mean the total of (i) real estate taxes for the Property payable between the Closing Date and March 17, 1999 (calculated on the basis of the then most current tax bill for the Property); plus (ii) the amount of interest that Seller would have paid to Comerica Bank between the Closing Date and March 17, 1999 based upon the loan balance as of the Closing Date and Seller's best available interest rate pursuant to its loan from Comerica Bank (the "Interest Savings"); plus (iii) the amount which Devcon certifies to Buyer, in the Devcon Certificate (as defined in Section 8(b)(vii) below) to be the amount set forth on Schedule 3 of the Devcon Certificate (which includes retainage) plus the amount which Buyer will be required to pay to Devcon pursuant to the construction contract between Seller and Devcon in order to complete construction of the Improvements and the amount which Rodrigues certifies to Buyer, in the Rodrigues Certificate (as defined in Section 8(b)(vii) below) to be the amount which Buyer will be required to pay to Rodrigues pursuant to the architect's agreement between Seller and Rodrigues through completion of construction of the Improvements. Notwithstanding anything to the contrary herein, if Seller, notwithstanding Seller's reasonable good faith efforts, is unable to obtain either the Devcon Assignment, Rodrigues Assignment, Ingram Assignment, Devcon Certificate or Rodrigues Certificate on or before the Close of Escrow, then either Seller or Buyer, by making written request of Seller to do so, may immediately terminate the related contract. Buyer agrees to indemnify, defend, protect and hold Seller harmless from any claims, liabilities, costs or expenses (including reasonable attorneys' fees) relating from a claim of inappropriate or illegal termination of such contract arising directly from Seller's termination of any such contract, but only to the extent that the contract in

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question was terminated at Buyer's request. No later than five (5) days before the Closing Date, Seller shall deliver Buyer's written calculation of the Interest Savings. If the Close of Escrow occurs prior to completion of the Improvements, Seller shall have no further obligation with respect to the construction of the Improvements following Close of Escrow."

8. POSSIBLE ADDITIONAL DELIVERIES. A new Section 8(b)(vii) is added to the Agreement as follows:

"(vii) Assignment and Assumption of Construction Obligations. If the Close of Escrow occurs prior to completion of the Improvements, Seller shall use reasonable, good faith efforts to obtain (A) the Devcon Assignment fully executed by Seller and Devcon, (B) the Rodrigues Assignment fully executed by Seller and Rodrigues, (C) a certificate executed by Devcon in the form attached hereto as EXHIBIT C and incorporated herein (the "Devcon Certificate"), (D) a certificate executed by Rodrigues in the form attached hereto as EXHIBIT D and incorporated herein (the "Rodrigues Certificate") (E) the Ingram Assignment fully executed by Seller and Ingram in the form attached hereto as EXHIBIT E, and (F) a certificate executed by Ingram in the form attached hereto as EXHIBIT F."

Additionally, a new Section 8(c)(v) is added to the Agreement as follows:

"(v) Assignment and Assumption of Construction Obligations. If the Close of Escrow occurs prior to completion of the Improvements, the Devcon Assignment, the Rodrigues Assignment and Ingram Assignment, each fully executed by Buyer, to the extent those assignments are obtained by Seller."

9. SUCCESSORS AND ASSIGNS. Notwithstanding anything to the contrary in Section 13 of the Agreement, Seller and Buyer agree that if Buyer assigns its rights under the Agreement to a financing entity in connection with a synthetic lease transaction, Buyer shall be released from Buyer's obligations under the Agreement if such assignment becomes effective upon the Close of

Escrow.

10. SELLER'S EXCHANGE. A new Section 27 is added to the Agreement as follows:

"27. Tax Deferred Exchange. Buyer shall cooperate with Seller in connection with implementing the purchase and sale of the Property as a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code, provided, however, Buyer shall not be obligated to take title to any other property or incur any costs, liability, or delay in connection therewith."

11. TERMINATION OF FIRST ACCOMMODATION AGREEMENT AND SECOND ACCOMMODATION AGREEMENT. Upon Buyer's making of the Additional Deposit, the First Accommodation Agreement and Second Accommodation Agreement shall terminate and be of no force or effect whatsoever. Seller and Buyer acknowledge and agree that the parties shall thereupon owe no obligations to each other under either the First Accommodation Agreement or Second Accommodation Agreement.

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12. FULL FORCE AND EFFECT. Except as otherwise provided in this Amendment, the Agreement and Work Letter shall remain in full force and effect as written.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement to be effective as of the day and year first written above.

SELLER:

495 JAVA DRIVE ASSOCIATES, a California limited partnership

By: M-D Venture, Inc., a California corporation, its general partner

By:

Name:

Title:

BUYER:

NETWORK APPLIANCE, INC., a California corporation

By:

Name:

Title:

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EXHIBIT A

ASSIGNMENT AND ASSUMPTION OF CONSTRUCTION CONTRACT

THIS ASSIGNMENT AND ASSUMPTION OF CONSTRUCTION CONTRACT (this "Assignment") is made and entered into as of the _____ day of _____, 1999 by and between 495 JAVA DRIVE ASSOCIATES, L.P., a California limited partnership ("Assignor"), to _____, a _____ ("Assignee").

W I T N E S S E T H:

A. Concurrently herewith, pursuant to certain Agreement of Purchase and Sale dated as of June 11, 1998, as amended (the "Agreement"), Assignor is conveying and transferring to Assignee the property (the "Property") located in Sunnyvale, Santa Clara County, California described in Exhibit A attached hereto.

B. Assignor has entered into a "Standard Form of Agreement Between Owner and Contractor (AIA Form A101)" dated April 20, 1998, as amended (the "Construction Contract") with Devcon Construction, Inc., a California corporation ("Contractor") whereby the Contractor has agreed to perform certain work related to the construction of a four story building consisting of approximately One Hundred Twenty-Six Thousand Seven Hundred Sixty (126,760) square feet on the Property.

C. Assignor, as part of its conveyance and transfer as aforesaid, has agreed to assign to Assignee all of its right, title and interest in, to and under the Construction Contract, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged:

1. Assignor hereby assigns, conveys and sets over unto Assignee all of Assignor's right, title and interest in, to and under the Construction Contract (including without limitation, all guarantees and warranties therein contained), and warrants to Assignee that Seller has not previously assigned, transferred or hypothecated the Construction Contract.

2. Assignee hereby accepts the foregoing assignment and assumes and agrees to perform, subject to the terms and conditions hereof, all of the duties, obligations and liabilities of Assignor under the Construction Contract arising on or after the date of this Assignment, including without limitation the obligation to pay when due (i) Contractor's Invoice # _____ dated _____, 1999 in the amount of \$ _____, (ii) all other sums payable for work performed or labor, materials, goods or services supplied pursuant to the Construction Contract which are reflected in invoices issued by Contractor after _____, 1999, and (iii) retainage in the sum of _____ Dollars (\$ _____) withheld by Assignor prior to the date hereof pursuant to the Construction Contract.

3. Indemnity. Assignee shall indemnify, defend by counsel reasonably acceptable to Assignor and hold Assignor harmless from and against all lien claims or other

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claims for payment asserted against Assignor with respect to the obligations of Assignee under the Construction Contract arising after the date of this Assignment, and Assignor shall indemnify, defend by counsel reasonably acceptable to Assignee, and hold Assignee harmless from and against all lien claims or other claims for payment asserted against Assignee with respect to the obligations of Assignor under the Construction Contract arising prior to the date of this Assignment, except for those obligations of Assignor which are being assumed by Assignee pursuant to the provisions of Paragraph 2 above.

4. This Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

5. This Assignment may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one (1) instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

495 JAVA DRIVE ASSOCIATES, L.P., a
California limited partnership

By: M-D Venture, Inc., a California Corporation, its General Partner

By: _____
Its: _____

ASSIGNEE:

-----,
a _____

By: _____
Its: _____

CONSENT TO ASSIGNMENT AND ASSUMPTION

Devcon Construction, Inc., a California corporation ("Contractor") hereby consents to the foregoing assignment and assumption of the Construction Contract on the terms and conditions set forth above and releases Assignor from all duties, obligations or liabilities under the Construction Contract arising on or after the date of the Assignment, including without limitation the obligation to pay when due (i) Contractor's Invoice # _____ dated _____, 1999 in the amount of \$ _____, (ii) and all other sums payable for work performed or labor, materials, goods or services supplied pursuant to the Construction Contract which are reflected in invoices issued by

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Contract after _____, 1999, and (iii) retainage in the sum of _____ Dollars (\$ _____) withheld by Assignor prior to the date hereof pursuant to the Construction Contract.

IN WITNESS WHEREOF, Contractor has executed this Consent to Assignment and Assumption as of the ___ day of _____, 1999.

CONTRACTOR:

DEVCON CONSTRUCTION, INC.,
a California corporation

By: _____
Its: _____

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EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the Sunnyvale, Santa Clara County, California, more particularly described as follows:

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EXHIBIT B

ASSIGNMENT AND ASSUMPTION OF ARCHITECT'S AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF ARCHITECT'S AGREEMENT (this "Assignment") is made and entered into as of the _____ day of _____, 1999 by and between 495 JAVA DRIVE ASSOCIATES, L.P., a California limited partnership ("Assignor"), to _____, a _____ ("Assignee").

W I T N E S S E T H:

A. Concurrently herewith, pursuant to certain Agreement of Purchase and Sale dated as of June 11, 1998, as amended (the "Agreement"), Assignor is conveying and transferring to Assignee the property (the "Property") located in Sunnyvale, Santa Clara County, California described in Exhibit A attached hereto.

B. Assignor has entered into an "Agreement between 495 Java Drive Associates, L.P. and Kenneth Rodrigues and Partners for Architectural Services" dated December 1998, as amended (the "Architect's Agreement") with Kenneth Rodrigues and Partners, a California corporation ("Architect") whereby the Architect has agreed to provide certain services related to the construction of a four story building consisting of approximately One Hundred Twenty-Six Thousand Seven Hundred Sixty (126,760) square feet on the Property.

C. Assignor, as part of its conveyance and transfer as aforesaid, has agreed to assign to Assignee all of its right, title and interest in, to and under the Architect's Agreement, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged:

1. Assignor hereby assigns, conveys and sets over unto Assignee all of Assignor's right, title and interest in, to and under the Architect's Agreement (including without limitation, all guarantees and warranties therein contained), and warrants to Assignee that Seller has not previously assigned, transferred or hypothecated the Architect's Agreement.

2. Assignee hereby accepts the foregoing assignment and assumes and agrees to perform, subject to the terms and conditions hereof, all of the duties, obligations and liabilities of Assignor under the Architect's Agreement arising on or after the date of this Assignment, including without limitation the obligation to pay when due Architect's Invoice # _____ dated _____, 1999 in the amount of \$ _____, and (ii) all other sums all sums payable for work performed or labor, materials, goods or services supplied pursuant to the Architect's Agreement which are reflected in invoices issued by Architect after _____, 1999.

3. Indemnity. Assignee shall indemnify, defend by counsel reasonably acceptable to Assignor and hold Assignor harmless from and against all lien claims or other claims for payment asserted against Assignor with respect to the obligations of Assignee under the Architect's Agreement arising after the date of this Assignment, and Assignor shall indemnify,

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defend by counsel reasonably acceptable to Assignee, and hold Assignee harmless from and against all lien claims or other claims for payment asserted against Assignee with respect to the obligations of Assignor under the Architect's Agreement arising prior to or as of the date of this Assignment, except for those obligations of Assignor which are being assumed by Assignee pursuant to the provisions of Paragraph 2 above.

4. This Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

5. This Assignment may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one (1) instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

495 JAVA DRIVE ASSOCIATES, L.P., a
California limited partnership

By: M-D Venture, Inc., a California

Corporation, its General Partner

By: _____
Its: _____

ASSIGNEE:

-----,
a _____

By: _____
Its: _____

CONSENT TO ASSIGNMENT AND ASSUMPTION

Kenneth Rodrigues and Partners, a California corporation ("Architect") hereby consents to the foregoing assignment and assumption of the Architect's Agreement on the terms and conditions set forth above and releases Assignor from all duties, obligations or liabilities under the Architect's Agreement arising on or after the date of the Assignment, including without limitation the obligation to pay when due (i) Architect's Invoice # _____ dated _____, 1999 in the amount of \$_____, (ii) and all other sums payable for work performed or labor, materials, goods or services supplied pursuant to the Architect's Agreement which are reflected in invoices issued by Architect after _____, 1999.

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IN WITNESS WHEREOF, Architect has executed this Consent to Assignment and Assumption as of the ___ day of _____, 1999.

ARCHITECT:

KENNETH RODRIGUES AND PARTNERS,
a California corporation

By: _____
Its: _____

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EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the Sunnyvale, Santa Clara County, California, more particularly described as follows:

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EXHIBIT C

ASSIGNMENT AND ASSUMPTION OF CONSTRUCTION MANAGER'S AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF CONSTRUCTION MANAGER'S AGREEMENT (this "Assignment") is made and entered into as of the ___ day of _____, 1999 by and between 495 JAVA DRIVE ASSOCIATES, L.P., a California limited partnership ("Assignor"), to _____, a _____ ("Assignee").

W I T N E S S E T H:

A. Concurrently herewith, pursuant to that certain Agreement of Purchase and Sale dated as of June 11, 1998, as amended (the "Agreement"), Assignor is conveying and transferring to Assignee the property (the "Property") located in the Sunnyvale, Santa Clara County, California described in Exhibit A attached

hereto.

B Assignor has entered into an "Agreement between 495 Java Drive Associates, L.P. and Alex Ingram & Associates for Architectural Services" dated _____, as amended (the "Construction Manager's Agreement") with Alex Ingram & Associates ("Construction Manager") whereby the Construction Manager has agreed to provide certain services related to the construction of a four story building consisting of approximately One Hundred Twenty-Six Thousand Seven Hundred Sixty (126,760) square feet on the Property.

C. Assignor, as part of its conveyance and transfer as aforesaid, has agreed to assign to Assignee all of its right, title and interest in, to and under the Construction Manager's Agreement, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged:

1. Assignor hereby assigns, conveys and sets over unto Assignee all of Assignor's right, title and interest in, to and under the Construction Manager's Agreement (including without limitation, all guarantees and warranties therein contained), and warrants to Assignee that Seller has not previously assigned, transferred or hypothecated the Construction Manager's Agreement.

2. Assignee hereby accepts the foregoing assignment and assumes and agrees to perform, subject to the terms and conditions hereof, all of the duties, obligations and liabilities of Assignor under the Construction Manager's Agreement arising on or after the date of this Assignment, including without limitation the obligation to pay when due Construction Manager's Invoice # _____ dated _____, 1999 in the amount of \$ _____, and (ii) all other sums payable for work performed or labor, materials, goods or services supplied pursuant to the Construction Manager's Agreement which are reflected in invoices issued by Construction Manager after _____, 1999.

3. Assignee shall indemnify, defend by counsel reasonably acceptable to Assignor and hold Assignor harmless from and against all lien claims or other claims for payment asserted against Assignor with respect to the obligations of Assignee under the Construction Manager's

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Agreement arising after the date of this Assignment, and Assignor shall indemnify, defend by counsel reasonably acceptable to Assignee, and hold Assignee harmless from and against all lien claims or other claims for payment asserted against Assignee with respect to the obligations of Assignor under the Construction Manager's Agreement arising prior to or as of the date of this Assignment, except for those obligations of Assignor which are being assumed by Assignee pursuant to the provisions of Paragraph 2 above.

4. This Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

5. This Assignment may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one (1) instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

495 JAVA DRIVE ASSOCIATES, L.P., a
California limited partnership

By: M-D Venture, Inc., a California
Corporation, its General Partner

By: _____
Its: _____

ASSIGNEE:

-----,
a _____

By: _____
Its: _____

CONSENT TO ASSIGNMENT AND ASSUMPTION

Alex Ingram & Associates ("Construction Manager") hereby consents to the foregoing assignment and assumption of the Construction Manager's Agreement on the terms and conditions set forth above and releases Assignor from all duties, obligations or liabilities under the Construction Manager's Agreement arising on or after the date of the Assignment, including without limitation the obligation to pay when due (i) Construction Manager's Invoice # _____ dated _____, 1999 in the amount of \$ _____ (ii) and all other sums payable for work performed or labor, materials, goods or services supplied pursuant to the

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Construction Manager's Agreement which are reflected in invoices issued by Construction Manager after _____, 1999.

IN WITNESS WHEREOF, Construction Manager has executed this Consent to Assignment and Assumption as of the ____ day of _____, 1999.

CONSTRUCTION MANAGER:

ALEX INGRAM & ASSOCIATES,
a _____

By: _____
Its: _____

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EXHIBIT D

CONTRACTOR'S CERTIFICATE

DEVCON CONSTRUCTION, INC., a California corporation ("Contractor"), hereby represents, warrants and certifies to _____ ("Buyer"), as the successor to the interest of the buyer pursuant to that certain Agreement of Purchase and Sale dates as of June 11, 1998, as amended (the "Agreement") with 495 Java Drive Associates, L.P., a California limited partnership ("Seller"), as seller, and agrees as follows:

1. The copy of the " _____ " dated _____, 1998 (the "Construction Contract") between Contractor and Seller for services related to the project known as 495 Java Drive in Sunnyvale, California (the "Project"), which is attached hereto is true, accurate and complete. There have been no amendments, modifications or changes orders relating to the Construction Contract except as described in Schedule 1 attached hereto. The Construction Contract is a valid and binding agreement between the parties and remains in full force and effect.

2. As of the date hereof, all amounts due and owing to Contractor for services, materials and supplies furnished under the Construction Contract, in the aggregate amount of \$ _____ which have been invoiced to Seller, have been paid in full except as disclosed in Schedule 2 and Schedule 3 attached hereto. The balance due Contractor through completion of construction and payment of all amounts due under the Construction Contract (in addition to the sum set forth in Schedule 3) will not exceed \$ _____, excluding cost overruns for categories of work which are included within the Construction Contract as allowances. As of

the date hereof, (i) Contractor knows of no existing or threatened circumstances which would prevent or are likely to prevent Contractor from completing its obligations under the Construction Contract on time and for a price not in excess of \$_____ (excluding Allowance cost overruns) and (ii), except as specifically set forth to the contrary in Schedule 1 attached hereto, no change orders have been agreed to that would increase or decrease the maximum contract price under the Construction Contract.

3. There are no pending or unresolved disputes between Contractor and Seller relating to the Construction Contract or the services performed by Contractor thereunder.

4. There are no claims, nor, to Contractor's knowledge, any basis for any claim for additional compensation due Contractor.

5. Contractor has not received any written notice that it is in default of any of its obligations under the Construction Contract, and, to the best of Contractor's knowledge, no event or circumstance currently exists which, with the giving of notice would constitute a default of Contractor under the Construction Contract. Seller is not in default of any of its obligations under the Construction Contract, and, to the best of Contractor's knowledge, no events or circumstances currently exist which, with the giving of notice would constitute a default of Seller under the Construction Contract.

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6. Contractor acknowledges it is aware that at the closing under the Agreement, Seller is conveying to Buyer all of its right, title and interest in and to the Construction Contract. Contractor hereby consents and agrees to such assignment.

IN WITNESS WHEREOF, Contractor has executed this Certificate as of the ___ day of _____, 1999.

CONTRACTOR:

DEVCON CONSTRUCTION, INC.,
a California corporation

By: _____
Its: _____

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EXHIBIT E

ARCHITECT'S CERTIFICATE

Kenneth Rodrigues and Partners, a California corporation ("Architect") hereby represents, warrants and certifies to _____, as the successor to the interest of the buyer pursuant to that certain Agreement of Purchase and Sale dated as of June 11, 1998, as amended (the "Agreement") with 495 Java Drive Associates, L.P., a California limited partnership ("Seller"), as Seller, and agrees as follows:

1. The copy of the "_____" dated _____, 1998 (the "Architect's Agreement") between Architect and Seller for services related to the project known as 495 Java Drive in Sunnyvale, California (the "Project"), which is attached hereto is true, accurate and complete. There have been no amendments, modifications or change orders relating to the Architect's Agreement except as described in Schedule 1 attached hereto. There are no pending change orders except as disclosed in Schedule 2 attached hereto. The Architect's Agreement is a valid and binding agreement between the parties and remains in full force and effect.

2. As of the date hereof, all amounts due and owing to the undersigned for services, materials and supplies furnished under the Architect's Agreement,

in the aggregate amount of \$ which have been invoiced to Seller, have been paid in full except as disclosed in Schedule 3 attached hereto. The balance due Architect through completion of construction and payment of all amounts due under the Architect's Agreement will not exceed \$. As of the date hereof, the undersigned knows of no existing or threatened circumstances which would prevent or are likely to prevent the undersigned from completing its obligations under the Architect's Agreement on time and for a price not in excess of \$_____, and (ii) except as specifically set forth to the contrary in Schedule 1 attached hereto, no change orders have been agreed to that would increase or decrease the maximum contract price under the Architect's Agreement.

3. There are no pending or unresolved disputes between Seller and Architect relating to the Architect's Agreement or the services performed by Architect thereunder.

4. There are no claims, nor, to Architect's knowledge, any basis for any claim for additional compensation due Architect.

5. Architect has not received any written notice that it is in default of any of its obligations under the Architect's Agreement and, to the best of Architect's knowledge, no event or circumstance exists which, with the giving of notice or passage of time, or both, would constitute a default of Architect under the Architect's Agreement. Seller is not in default of any of its obligations under the Architect's Agreement, and, to the best of Architect's knowledge, no events or circumstances exist which, with the giving of notice or the passage of time, or both, would constitute a default of Seller under the Architect's Agreement.

6. Architect acknowledges it is aware that at closing under the Agreement , Seller is conveying to Buyer all of its right, title and interest in and to the Architect's Agreement and

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in and to any and all plans and specifications prepared by Architect relating to the Project. Architect hereby consents and agrees to such assignment.

IN WITNESS WHEREOF, Architect has executed this Certificate as of the ___ day of _____, 1999.

ARCHITECT:

KENNETH RODRIGUES AND PARTNERS, a California corporation

By: _____
Its: _____

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EXHIBIT F

CONSTRUCTION MANAGER'S CERTIFICATE

Alex Ingram & Associates, a _____ ("Construction Manager") hereby represents, warrants and certifies to _____, as the successor to the interest of the buyer pursuant to that certain Agreement of Purchase and Sale dated as of June 11, 1998, as amended (the "Agreement") with 495 Java Drive Associates, L.P., a California limited partnership ("Seller"), as seller, and agrees as follows:

1. The copy of the " _____ " dated _____, 1998 (the "Construction Manager's Agreement") between Construction Manager and Seller for services related to the project known as 495 Java Drive in Sunnyvale, California (the "Project"), which is attached hereto is true, accurate and complete. There have been no amendments, modifications or change orders relating to the Construction Manager's Agreement except as described in Schedule 1 attached hereto. There are no pending change orders except as disclosed in Schedule 2 attached hereto. The Construction Manager's Agreement is a valid and binding

agreement between the parties and remains in full force and effect.

2. As of the date hereof, all amounts due and owing to the undersigned for services, materials and supplies furnished under the Construction Manager's Agreement, in the aggregate amount of \$_____ which have been invoiced to Seller, have been paid in full except as disclosed in Schedule 3 attached hereto. The balance due Construction Manager through completion of construction and payment of all amounts due under the Construction Manager's Agreement will not exceed \$_____. As of the date hereof, the undersigned knows of no existing or threatened circumstances which would prevent or are likely to prevent the undersigned from completing its obligations under the Construction Manager's Agreement on time and for a price not in excess of \$_____, and (ii) except as specifically set forth to the contrary in Schedule 1 attached hereto, no charge orders have been agreed to that would increase or decrease the maximum contract price under the Construction Manager's Agreement.

3. There are no pending or unresolved disputes between Seller and Construction Manager relating to the Construction Manager's Agreement or the services performed by Construction Manager thereunder.

4. There are no claims, nor, to Construction Manager's knowledge, any basis for any claim for additional compensation due Construction Manager.

5. Construction Manager has not received any written notice that it is in default of any of its obligations under the Construction Manager's Agreement and, to the best of Construction Manager's knowledge, no event or circumstance exists which, with the giving of notice or passage of time, or both, would constitute a default of Construction Manager under the Construction Manager's Agreement. Seller is not in default of any of its obligations under the Construction Manager's Agreement, and, to the best of Construction Manager's knowledge, no events or circumstances exist which, with the giving of notice or the passage of time, or both, would constitute a default of Seller under the Construction Manager's Agreement.

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6. Construction Manager acknowledges it is aware that at closing under the Agreement, Seller is conveying to Buyer all of its right, title and interest in and to the Construction Manager's Agreement and in and to any and all plans and specifications prepared by Construction Manager relating to the Project. Construction Manager hereby consents and agrees to such assignment.

IN WITNESS WHEREOF, Construction Manager has executed this Certificate as of the _____ day of _____, 1999.

CONSTRUCTION MANAGER:

ALEX INGRAM AND ASSOCIATES,
a _____

By: _____
Its: _____

\$44,000,000

LEASE AGREEMENT

BETWEEN

BNP LEASING CORPORATION
("BNPLC")

AND

NETWORK APPLIANCE, INC.
("NAI")

JANUARY 20, 1999
(SUNNYVALE, CALIFORNIA)

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EXHIBITS AND SCHEDULES

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LEASE AGREEMENT

This LEASE AGREEMENT (this "LEASE"), by and between BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and NETWORK APPLIANCE, INC., a California corporation ("NAI"), is made and dated as of January 20, 1999, the Effective Date. ("EFFECTIVE DATE" and other capitalized terms used and not otherwise defined in this Lease are intended to have the meanings assigned to them in the Common Definitions and Provisions Agreement executed by BNPLC and NAI contemporaneously with this Lease. By this reference, the Common Definitions and Provisions Agreement is incorporated into and made a part of this Lease for all purposes.)

RECITALS

Pursuant to the Existing Contract, which covers the Land described in Exhibit A, BNPLC is acquiring the Land and any appurtenances thereto and all existing Improvements thereon from Seller contemporaneously with the execution of this Lease.

In anticipation of BNPLC's acquisition of the Land and the existing Improvements thereon under the Existing Contract, BNPLC and NAI have reached agreement as to the terms and conditions upon which BNPLC is willing to lease the Land, the existing Improvements and the Improvements to be constructed on the Land as hereinafter provided, and by this Lease BNPLC and NAI desire to evidence such agreement.

GRANTING CLAUSES

BNPLC does hereby LEASE, DEMISE and LET unto NAI for the term hereinafter set forth all right, title and interest of BNPLC, now owned or hereafter acquired, in and to:

- (1) the Land;
- (2) any and all Improvements;
- (3) all easements and other rights appurtenant to the Land or to the Improvements, whether now owned or hereafter acquired by BNPLC; and
- (4) (A) any land lying within the right-of-way of any street, open or proposed, adjoining the Land, (B) any sidewalks and alleys adjacent to the Land and (C) any strips and gores between the Land and any abutting land not owned or leased by BNPLC.

BNPLC's interest in all property described in clauses (1) through (4) above are hereinafter referred to collectively as the "REAL PROPERTY".

To the extent, but only to the extent, that assignable rights or interests in, to or under the following have been or will be acquired by BNPLC under the Existing Contract or acquired by BNPLC pursuant to Paragraph 7 below, BNPLC also hereby grants and assigns to NAI for the term of this Lease the right to use and enjoy (and, in the case of contract rights, to enforce) such rights or interests of BNPLC:

- (a) any goods, equipment, furnishings, furniture and other tangible personal property of whatever nature that are located on the Real Property and all renewals or replacements of or substitutions for any of the foregoing;
- (b) the benefits, if any, conferred upon the owner of the Real Property by the Permitted Encumbrances and Development Documents; and
- (c) any permits, licenses, franchises, certificates, and other rights and privileges against third parties related to the Real Property.

Such rights and interests of BNPLC, whether now existing or hereafter arising,

are hereinafter collectively called the "PERSONAL PROPERTY". The Real Property and the Personal Property are hereinafter sometimes collectively called the "PROPERTY."

However, the leasehold estate conveyed hereby and NAI's rights hereunder are expressly made subject and subordinate to the terms and conditions of this Lease, to the Permitted Encumbrances, and to any other claims or encumbrances not constituting Liens Removable by BNPLC.

GENERAL TERMS AND CONDITIONS

The Property is leased by BNPLC to NAI and is accepted and is to be used and possessed by NAI upon and subject to the following terms and conditions:

1 TERM.

(a) Scheduled Term. The term of this Lease (the "TERM") shall commence on and include the Effective Date, and end on the first Business Day of February, 2004, unless sooner terminated as expressly herein provided.

(b) Automatic Termination as of the Base Rent Commencement Date Resulting From an Election by NAI to Terminate the Purchase Option and NAI's Initial Remarketing Rights and Obligations. If NAI terminates the Purchase Option and NAI's Initial Remarketing Rights and Obligations prior to the Base Rent Commencement Date pursuant to subparagraph 4(B) of the Purchase Agreement, then this Lease shall terminate automatically on the Base Rent Commencement Date. Just as any such termination of the Purchase Option and NAI's Initial Remarketing Rights and Obligations shall be subject to the condition (set forth in subparagraph 4(B) of the Purchase Agreement) that NAI pay an Issue 97-10 Prepayment to BNPLC, so too will the termination of this Lease pursuant to this subparagraph be subject the condition that NAI make the Issue 97-10 Prepayment to BNPLC.

(c) Election by BNPLC to Terminate After an Issue 97-10 Election. By notice to NAI BNPLC shall be entitled to terminate this Lease, as BNPLC deems appropriate in its sole and absolute discretion, at any time after receiving a notice given by NAI to make any Issue 97-10 Election. Upon any termination of this Lease by BNPLC pursuant to this subparagraph, NAI shall become obligated to pay to BNPLC an Issue 97-10 Prepayment, which obligation will survive the termination of this Lease.

(d) Election by NAI to Terminate After Accelerating the Designated Sale Date. Provided NAI has not made any Issue 97-10 Election, NAI shall be entitled to accelerate the Designated Sale Date (and thus accelerate the purchase of BNPLC's interest in the Property by NAI or by an Applicable Purchaser

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pursuant to the Purchase Agreement) by sending a notice to BNPLC as provided in clause (2) of the definition of "Designated Sale Date" in the Common Definitions and Provisions Agreement. In the event, because of NAI's election to so accelerate the Designated Sale Date or for any other reason, the Designated Sale Date occurs before the end of the scheduled Term, NAI may terminate this Lease on or after the Designated Sale Date; provided, however, as a condition to any such termination by NAI, NAI must have done the following prior to the termination:

(i) purchased or caused an Applicable Purchaser to purchase the Property pursuant to the Purchase Agreement and satisfied all of NAI's other obligations under the Purchase Agreement;

(ii) paid to BNPLC all Base Rent, all Commitment Fees and all other Rent due on or before or accrued through the Designated Sale Date; and

(iii) paid any Breakage Costs caused by BNPLC's sale of the Property pursuant to the Purchase Agreement.

(e) Extension of the Term. The Term may be extended at the option of NAI for two successive periods of five years each; provided, however, that

prior to any such extension the following conditions must have been satisfied: (A) at least ninety days prior to the commencement of any such extension, BNPLC and NAI must have agreed in writing upon, and received the consent and approval of BNPLC's Parent and all other Participants to (1) a corresponding extension not only to the date for the expiration of the Term specified above in this Section, but also to the date specified in clause (1) of the definition of Designated Sale Date in the Common Definitions and Provisions Agreement, and (2) an adjustment to the Rent that NAI will be required to pay for the extension, it being expected that the Rent for the extension may be different than the Rent required for the original Term, and it being understood that the Rent for any extension must in all events be satisfactory to both BNPLC and NAI, each in its sole and absolute discretion; (B) no Event of Default shall have occurred and be continuing at the time of NAI's exercise of its option to extend; (C) prior to any such extension, NAI must have completed the Construction Project in accordance with the Construction Management Agreement and must not have made any Issue 97-10 Election; and (D) immediately prior to any such extension, this Lease must remain in effect. With respect to the condition that BNPLC and NAI must have agreed upon the Rent required for any extension of the Term, neither NAI nor BNPLC is willing to submit itself to a risk of liability or loss of rights hereunder for being judged unreasonable. Accordingly, both NAI and BNPLC hereby disclaim any obligation express or implied to be reasonable in negotiating the Rent for any such extension. Subject to the changes to the Rent payable during any extension of the Term as provided in this Paragraph, if NAI exercises its option to extend the Term as provided in this Paragraph, this Lease shall continue in full force and effect, and the leasehold estate hereby granted to NAI shall continue without interruption and without any loss of priority over other interests in or claims against the Property that may be created or arise after the date hereof and before the extension.

2 USE AND CONDITION OF THE PROPERTY.

(a) Use. Subject to the Permitted Encumbrances, the Development Documents and the terms hereof, NAI may use and occupy the Property during the Term, but only for the following purposes and other lawful purposes incidental thereto:

- (i) construction and development of the Construction Project;
- (ii) administrative and office space;

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(iii) activities related to NAI's research and development or production of products that are of substantially the same type and character as those regularly sold by NAI in the ordinary course of its business as of the Effective Date;

(iv) cafeteria, library and other support facilities that NAI may provide to its employees; and

(vi) other lawful purposes (including NAI's research and development or production of products that are not of substantially the same type and character as those regularly sold by NAI in the ordinary course of its business as of the Effective Date) approved in advance and in writing by BNPLC, which approval will not be unreasonably withheld after completion of the Construction Project (but NAI acknowledges that BNPLC's withholding of such approval shall be reasonable if BNPLC determines in good faith that (1) giving the approval may materially increase BNPLC's risk of liability for any existing or future environmental problem, or (2) giving the approval is likely to substantially increase BNPLC's administrative burden of complying with or monitoring NAI's compliance with the requirements of this Lease or other Operative Documents).

(b) Condition of the Property. NAI ACKNOWLEDGES THAT IT HAS CAREFULLY AND FULLY INSPECTED THE PROPERTY AND ACCEPTS THE PROPERTY IN ITS PRESENT STATE, AS IS, AND WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OF SUCH PROPERTY OR AS TO THE USE WHICH MAY BE MADE THEREOF. NAI ALSO ACCEPTS THE PROPERTY WITHOUT ANY COVENANT, REPRESENTATION OR

WARRANTY, EXPRESS OR IMPLIED, BY BNPLC OR ITS AFFILIATES REGARDING THE TITLE THERETO OR THE RIGHTS OF ANY PARTIES IN POSSESSION OF ANY PART THEREOF, EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 20. BNPLC SHALL NOT BE RESPONSIBLE FOR ANY LATENT OR OTHER DEFECT OR CHANGE OF CONDITION IN THE LAND, IMPROVEMENTS, FIXTURES AND PERSONAL PROPERTY FORMING A PART OF THE PROPERTY OR FOR ANY VIOLATIONS WITH RESPECT THERETO OF APPLICABLE LAWS. FURTHER, THOUGH NAI MAY OBTAIN FROM THIRD PARTIES ANY FACILITIES OR SERVICES TO WHICH NAI IS ENTITLED BY REASON OF THE ASSIGNMENT AND LEASE OF PERSONAL PROPERTY SET FORTH ON PAGE 2 OF THIS LEASE, BNPLC SHALL NOT BE REQUIRED TO FURNISH TO NAI ANY FACILITIES OR SERVICES OF ANY KIND, INCLUDING WATER, STEAM, HEAT, GAS, AIR CONDITIONING, ELECTRICITY, LIGHT OR POWER.

(c) Consideration for and Scope of Waiver. The provisions of subparagraph 2.(b) above have been negotiated by BNPLC and NAI after due consideration for the Rent payable hereunder and are intended to be a complete exclusion and negation of any representations or warranties of BNPLC or its Affiliates, express or implied, with respect to the Property that may arise pursuant to any law now or hereafter in effect or otherwise, except as expressly set forth herein.

However, such exclusion of representations and warranties by BNPLC is not intended to impair any representations or warranties made by other parties, the benefit of which may pass to NAI during the Term because of the definition of Personal Property and Property above.

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3 RENT.

(a) Base Rent Generally. On the Base Rent Commencement Date and on each Base Rent Date through the end of the Term, NAI shall pay BNPLC rent ("BASE RENT"). Each payment of Base Rent must be received by BNPLC no later than 10:00 a.m. (Pacific time) on the date it becomes due; if received after 10:00 a.m. (Pacific time) it will be considered for purposes of this Lease as received on the next following Business Day. At least five days prior to any Base Rent Commencement Date or Base Rent Date upon which an installment of Base Rent shall become due, BNPLC shall notify NAI in writing of the amount of each installment, calculated as provided below. Any failure by BNPLC to so notify NAI, however, shall not constitute a waiver of BNPLC's right to payment, but absent such notice NAI shall not be in default hereunder for any underpayment resulting therefrom if NAI, in good faith, reasonably estimates the payment required, makes a timely payment of the amount so estimated and corrects any underpayment within three Business Days after being notified by BNPLC of the underpayment.

(b) Impact of Collateral Upon Formulas. To ease the administrative burden of this Lease and the Pledge Agreement, the formulas for calculating Base Rent set out below in subparagraph 3.(c) reflect a reduction in the Base Rent equal to the interest that would accrue on any Collateral provided in accordance with the requirements of the Pledge Agreement from time to time if the Accounts (as defined in the Pledge Agreement) bore interest at the Effective Rate. BNPLC has agreed to such reduction to provide NAI with the economic equivalent of interest on such Collateral, and in return NAI has agreed to the provisions of the Pledge Agreement that excuse the actual payment of interest on the Accounts. By incorporating such reduction of Base Rent into the formulas below, and by providing for noninterest bearing Accounts in the Pledge Agreement, the parties will avoid an unnecessary and cumbersome periodic exchange of equal payments. It is not, however, the intent of BNPLC or NAI to understate Base Rent or interest for financial reporting purposes. Accordingly, for purposes of any financial reports that this Lease requires of NAI from time to time, NAI may report Base Rent as if there had been no such reduction and as if the Collateral from time to time provided in accordance with the requirements of the Pledge Agreement had been maintained in Accounts bearing interest at the Effective Rate.

(c) Calculation of and Due Dates for Base Rent. Payments of Base Rent shall be calculated and become due as follows:

(i) Amount Payable On the Base Rent Commencement Date. The Base Rent payable on the Base Rent Commencement Date shall equal the difference (if any) between (a) the total amount that would have been

added to the Outstanding Construction Allowance as Carrying Costs on such date if not for the limit set forth in subparagraph 6.(c), and (b) the Carrying Costs actually added on such date to the Outstanding Construction Allowance.

(ii) Determination of Payment Due Dates, After the Base Rent Commencement Date, Generally. For all Base Rent Periods subject to a LIBOR Period Election of one month or three months, Base Rent shall be due in one installment on the Base Rent Date upon which the Base Rent Period ends. For Base Rent Periods subject to a LIBOR Period Election of six months, Base Rent shall be payable in two installments, with the first installment becoming due on the Base Rent Date that occurs on the first Business Day of the third calendar month following the commencement of such Base Rent Period, and with the second installment becoming due on the Base Rent Date upon which the Base Rent Period ends.

(iii) Special Adjustments to Base Rent Payment Dates and Periods. Notwithstanding the foregoing:

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a) Any Base Rent Period that begins before, and does not otherwise end before, a Failed Collateral Test Date shall end upon but not include such Failed Collateral Test Date, and such Failed Collateral Test Date shall constitute a Base Rent Date, upon which NAI must pay all accrued, unpaid Base Rent for the Base Rent Period just ended.

b) Consistent with clause (3) of the definition of LIBOR Period Election in the Common Definitions and Provisions Agreement, each successive Base Rent Date after any such Failed Collateral Test Date shall be the first Business Day of the first calendar month following the calendar month which includes the preceding Base Rent Date, so long as any Mandatory Collateral Period shall continue.

c) In addition to Base Rent due on a Failed Collateral Test Date, NAI must pay the Breakage Costs, if any, resulting from any early ending of a Base Rent Period on the Failed Collateral Test Date pursuant to the preceding clause 3.(c)(iii)a).

d) If NAI or any Applicable Purchaser purchases BNPLC's interest in the Property pursuant to the Purchase Agreement, any accrued unpaid Base Rent and all outstanding Additional Rent shall be due on the date of purchase in addition to the purchase price and other sums due BNPLC under the Purchase Agreement.

(iv) Base Rent Formula for Periods During Which The Collateral Percentage is 100%. Each installment of Base Rent payable for any Base Rent Period during which the Collateral Percentage is one hundred percent (100%) shall equal:

- Stipulated Loss Value on the first day of such Base Rent Period, times
- the Secured Spread for the period from and including the preceding Base Rent Date to but not including the Base Rent Date upon which the installment is due, times
- the number of days in the period from and including the preceding Base Rent Date to but not including the Base Rent Date upon which the installment is due, divided by
- three hundred sixty.

Assume, only for the purpose of illustration: that the Collateral Percentage for a hypothetical Base Rent Period is one hundred

percent (100%); that prior to the first day of such Base Rent Period the Construction Allowance has been fully funded, but a total of \$4,000,000 of Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$40,000,000; that the Secured Spread is thirty basis points (30/100 of 1%); and that such Base Rent Period contains exactly thirty days. Under such assumptions, the Base Rent for the hypothetical Base Rent Period will equal:

$$\$40,000,000 \times .30\% \times 30/360 = \$10,000$$

(v) Base Rent Formula for Periods During Which The Collateral Percentage is Greater Than Zero and Less Than 100%. Each installment of Base Rent payable for any Base Rent Period during which the Collateral Percentage is greater than zero and less than one hundred percent (100%) shall equal:

- Stipulated Loss Value on the first day of such Base Rent Period, times

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- the sum of:
 - (A) the product of:
 - (1) the Collateral Percentage for such Base Rent Period, times
 - (2) the Secured Spread for the period from and including the preceding Base Rent Date to but not including the Base Rent Date upon which the installment is due, plus
 - (B) the product of:
 - (1) one minus the Collateral Percentage for such Base Rent Period, times
 - (2) the sum of (a) the Effective Rate with respect to such Base Rent Period, plus (b) the Unsecured Spread for the period from and including the preceding Base Rent Date to but not including the Base Rent Date upon which the installment is due, times
- the number of days in the period from and including the preceding Base Rent Date to but not including the Base Rent Date upon which the installment is due, divided by
- three hundred sixty.

Assume, only for the purpose of illustration: that the Collateral Percentage for a hypothetical Base Rent Period is forty percent (40%); that prior to the first day of such Base Rent Period the Construction Allowance has been fully funded, but a total of \$4,000,000 of Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$40,000,000; that the Effective Rate for the Base Rent Period is 6%; that the Secured Spread is thirty basis points (30/100 of 1%); that upon the commencement of such Base Rent Period the Unsecured Spread is one hundred fifty basis points (150/100 of 1%); and that such Base Rent Period contains exactly thirty days. Under such assumptions, the Base Rent for the hypothetical Base Rent Period will equal:

$$\$40,000,000 \times \{(40\% \times .30\%) + ([1 - 40\%] \times [6\% + 1.50\%])\} \times 30/360 = \$154,000$$

(vi) Base Rent Formula for Periods During Which The Collateral

Percentage is Zero. Each installment of Base Rent payable for any Base Rent Period during which the Collateral Percentage is zero shall equal:

- Stipulated Loss Value on the first day of such Base Rent Period, times

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- the sum of (a) the Effective Rate with respect to such Base Rent Period, plus (b) the Unsecured Spread for the period from and including the preceding Base Rent Date to but not including the Base Rent Date upon which the installment is due, times
- the number of days in the period from and including the preceding Base Rent Date to but not including the Base Rent Date upon which the installment is due, divided by
- three hundred sixty.

Assume, only for the purpose of illustration: that the Collateral Percentage for a hypothetical Base Rent Period is zero percent (0%); that prior to the first day of such Base Rent Period the Construction Allowance has been fully funded, but a total of \$4,000,000 of Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$40,000,000; that the Effective Rate for the Base Rent Period is 6%; that the Unsecured Spread is one hundred fifty basis points (150/100 of 1%) upon the commencement of such Base Rent Period; and that such Base Rent Period contains exactly thirty days. Under such assumptions, the Base Rent for the hypothetical Base Rent Period will equal:

$$\$40,000,000 \times (6\% + 1.50\%) \times 30/360 = \$250,000$$

(d) Additional Rent. All amounts which NAI is required to pay to or on behalf of BNPLC pursuant to this Lease, together with every charge, premium, interest and cost set forth herein which may be added for nonpayment or late payment thereof, shall constitute rent (all such amounts, other than Base Rent, are herein called "ADDITIONAL Rent", and together Base Rent and Additional Rent are herein sometimes called "RENT").

(e) Arrangement Fee. Upon execution and delivery of this Lease by BNPLC, an Arrangement Fee (the "ARRANGEMENT FEE") will be paid to BNPLC from the Initial Funding Advance (and thus be included in Stipulated Loss Value) in the amount provided in the letter dated as of December 8, 1998 from BNPLC to NAI.

(f) Commitment Fees. For each Construction Period NAI shall pay BNPLC a fee (a "COMMITMENT FEE") from Construction Advances made pursuant to the Construction Management Agreement equal to:

- the Commitment Fee Rate for such Construction Period, times an amount equal to:
 - (i) the Maximum Construction Allowance, less
 - (ii) the Funded Construction Allowance on the first day of such Construction Period; times
- the number of days in such Construction Period; divided by
- three hundred sixty.

NAI shall pay Commitment Fees in arrears on the first Business Day of April, July, October and January of each calendar year, beginning with the first Business Day of April, 1999 and continuing regularly throughout the Term so long as Commitment Fees have accrued and remain unpaid. However, if any Commitment Fees shall have accrued and remain unpaid on the Designated Sale Date, such accrued unpaid Commitment Fees shall be due on the Designated Sale Date.

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(g) Administrative Agency Fees. Upon execution and delivery of this Lease by BNPLC, an administrative agency fee (an "ADMINISTRATIVE AGENCY FEE") will be paid to BNPLC from the Initial Funding Advance (and thus be included in Stipulated Loss Value) in the amount provided in the letter dated as of December 8, 1998 from BNPLC to NAI. Also, on each anniversary of the date hereof, NAI shall pay to BNPLC an administrative agency fee (also, an "ADMINISTRATIVE AGENCY FEE") in the amount set forth in the letter agreement dated as of December 8, 1998 from BNPLC to NAI.

(h) Issue 97-10 Prepayments. Following any Issue 97-10 Election or any CMA Termination Event under (and as defined in) the Construction Management Agreement, NAI shall make an Issue 97-10 Prepayment to BNPLC within three Business Days after receipt of any demand for such a payment. BNPLC may demand an Issue 97-10 Prepayment pursuant to this subparagraph at any time and from time to time (as Project Costs increase) after any Issue 97-10 Election or CMA Termination Event.

(i) No Demand or Setoff. Except as expressly provided herein, NAI shall pay all Rent without notice or demand and without counterclaim, deduction, setoff or defense.

(j) Default Interest and Order of Application. All Rent shall bear interest, if not paid when first due, at the Default Rate in effect from time to time from the date due until paid; provided, that nothing herein contained will be construed as permitting the charging or collection of interest at a rate exceeding the maximum rate permitted under Applicable Laws. BNPLC shall be entitled to apply any amounts paid by or on behalf of NAI against any Rent then past due in the order the same became due or in such other order as BNPLC may elect.

4. NATURE OF THIS AGREEMENT.

(a "Net" Lease Generally. Subject only to the exceptions listed in subparagraph 5.(d) below, it is the intention of BNPLC and NAI that Base Rent, the Arrangement Fees, any Upfront Syndication Fees, Administrative Agency Fees, Commitment Fees and other payments herein specified shall be absolutely net to BNPLC and that NAI shall pay all costs, expenses and obligations of every kind relating to the Property or this Lease which may arise or become due, including: (i) any taxes payable by virtue of BNPLC's receipt of amounts paid to or on behalf of BNPLC in accordance with Paragraph 5; (ii) any amount for which BNPLC is or becomes liable with respect to the Permitted Encumbrances or the Development Documents; and (iii) any costs incurred by BNPLC (including Attorneys' Fees) because of BNPLC's acquisition or ownership of any interest in the Property or because of this Lease or the transactions contemplated herein.

However, neither this subparagraph 4.(a) nor the indemnity in this subparagraph 5.(c)(i) shall be construed to make NAI liable for (I) an allocation of general overhead or internal administrative expenses of BNPLC or any other Interested Party or (II) any duplicate payment of the same Loss to both BNPLC and another Interested Party. (If, for example, BNPLC were required to make a \$10 fine because of a failure of the Property to comply with Applicable Laws, and a Participant were required by the Participation Agreement to reimburse BNPLC for 20% of the \$10, NAI would not be required by this subparagraph 4.(a) or by subparagraph 5.(c)(i) to pay both \$10 to BNPLC and \$2 to the Participant on account of the fine.)

(b) No Termination. Except as expressly provided in this Lease itself, this Lease shall not terminate, nor shall NAI have any right to terminate this Lease, nor shall NAI be entitled to any abatement of the Rent, nor shall the obligations of NAI under this Lease be excused, for any reason whatsoever, including any of the following: (i) any damage to or the destruction of all or any part of the Property from whatever cause, (ii) the taking of the Property or any portion thereof by eminent domain or otherwise for any reason, (iii) the prohibition, limitation or restriction of NAI's use or development of all or any portion of the Property or any interference with

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such use by governmental action or otherwise, (iv) any eviction of NAI or of anyone claiming through or under NAI, (v) any default on the part of BNPLC under this Lease or under any other agreement to which BNPLC and NAI are parties, (vi) the inadequacy in any way whatsoever of the design, construction, assembly or installation of any improvements, fixtures or tangible personal property included in the Property (it being understood that BNPLC has not made, does not make and will not make any representation express or implied as to the adequacy thereof), (vii) any latent or other defect in the Property or any change in the condition thereof or the existence with respect to the Property of any violations of Applicable Laws or (viii) any other cause whether similar or dissimilar to the foregoing. It is the intention of the parties hereto that the obligations of NAI hereunder shall be separate and independent of the covenants and agreements of BNPLC, that Base Rent and all other sums payable by NAI hereunder shall continue to be payable in all events and that the obligations of NAI hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated or limited pursuant to an express provision of this Lease. Without limiting the foregoing, NAI waives to the extent permitted by Applicable Laws, except as otherwise expressly provided herein, all rights to which NAI may now or hereafter be entitled by law (including any such rights arising because of any implied "warranty of suitability" or other warranty under Applicable Laws) (i) to quit, terminate or surrender this Lease or the Property or any part thereof or (ii) to any abatement, suspension, deferment or reduction of the Rent.

However, nothing in this subparagraph 4.(b) shall be construed as a waiver by NAI of any right NAI may have at law or in equity to the following remedies, whether because of BNPLC's failure to remove a Lien Removable by BNPLC or because of any other default by BNPLC under this Lease that continues beyond the period for cure provided in Paragraph 19: (i) the recovery of monetary damages, (ii) injunctive relief in case of the violation, or attempted or threatened violation, by BNPLC of any of the express covenants, agreements, conditions or provisions of this Lease which are binding upon BNPLC (including the confidentiality provisions set forth in subparagraph 16.(c) below), or (iii) a decree compelling performance by BNPLC of any of the express covenants, agreements, conditions or provisions of this Lease which are binding upon BNPLC.

(c) Tax Reporting. BNPLC and NAI shall report this Lease and the Purchase Agreement for federal income tax purposes as a conditional sale unless prohibited from doing so by the Internal Revenue Service. If the Internal Revenue Service shall challenge BNPLC's characterization of this Lease and the Purchase Agreement as a conditional sale for federal income tax reporting purposes, BNPLC shall notify NAI in writing of such challenge and consider in good faith any reasonable suggestions by NAI about an appropriate response. In any event, NAI shall (subject only to the limitations set forth in this subparagraph) indemnify and hold harmless BNPLC from and against all liabilities, costs, additional taxes (other than Excluded Taxes) and other expenses that may arise or become due because of such challenge or because of any resulting recharacterization required by the Internal Revenue Service, including any additional taxes that may become due upon any sale under the Purchase Agreement to the extent (if any) that such additional taxes are not offset by tax savings resulting from additional depreciation deductions or other tax benefits to BNPLC of the recharacterization. If BNPLC receives a written notice of any challenge by the Internal Revenue Service that BNPLC believes will be covered by this Paragraph, then BNPLC shall promptly furnish a copy of such notice to NAI. The failure to so provide a copy of the notice to NAI shall not excuse NAI from its obligations under this Paragraph; provided, that if none of the officers of NAI and none of the employees of NAI responsible for tax matters are aware of the challenge described in the notice and such failure by BNPLC renders unavailable defenses that NAI might otherwise assert, or precludes actions that NAI might otherwise take, to minimize its obligations hereunder, then NAI shall be excused from its obligation to indemnify BNPLC against liabilities, costs, additional taxes and other expenses, if any, which would not have been incurred but for such failure. For example, if BNPLC fails to provide NAI with a copy of a notice of a challenge by the Internal Revenue Service covered by the indemnities set out in this Lease and NAI is not otherwise already aware of such challenge, and if as a result of such failure BNPLC becomes liable for penalties and interest covered by the indemnities in excess of the penalties and interest that would have accrued if NAI had been promptly provided with a copy of the notice, then NAI will be excused from any obligation

to BNPLC to pay the excess.

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(d Characterization of this Lease. For purposes of determining the appropriate financial accounting for this Lease and for purposes of determining their respective rights and remedies under state law, BNPLC and NAI believe and intend that (i) this Lease constitutes a true lease, not a mere financing arrangement, enforceable in accordance with its express terms, and the preceding subparagraph is not intended to affect the enforcement of any other provisions of this Lease or the Purchase Agreement, and (ii) the Purchase Agreement shall constitute a separate and independent contract, enforceable in accordance with the express terms and conditions set forth therein. In this regard, NAI acknowledges that NAI asked BNPLC to participate in the transactions evidenced by this Lease and the Purchase Agreement as a landlord and owner of the Property, not as a lender. Although other transactions might have been used to accomplish similar results, NAI expects to receive certain material accounting and other advantages through the use of a lease transaction. Accordingly, and notwithstanding the reporting for income tax purposes described in the preceding subparagraph, NAI cannot equitably deny that this Lease and the Purchase Agreement should be construed and enforced in accordance with their respective terms, rather than as a mortgage or other security device, in any action brought by BNPLC to enforce this Lease or the Purchase Agreement.

5. PAYMENT OF EXECUTORY COSTS AND LOSSES RELATED TO THE PROPERTY.

(a Impositions. Subject only to the exceptions listed in subparagraph 5.(d) below, NAI shall pay or cause to be paid prior to delinquency all ad valorem taxes assessed against the Property and other Impositions. If requested by BNPLC from time to time, NAI shall furnish BNPLC with receipts showing payment of all Impositions prior to the applicable delinquency date therefor.

Notwithstanding the foregoing, NAI may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted Imposition, and pending such contest NAI shall not be deemed in default under any of the provisions of this Lease because of the Imposition if (1) NAI diligently prosecutes such contest to completion in a manner reasonably satisfactory to BNPLC, and (2) NAI promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, promptly after such judgment becomes final; provided, however, in any event each such contest shall be concluded and the contested Impositions must be paid by NAI prior to the earlier of (i) the date that any criminal prosecution is instituted or overtly threatened against BNPLC or its directors, officers or employees because of the nonpayment thereof or (ii) the date any writ or order is issued under which any property owned or leased by BNPLC (including the Property) may be seized or sold or any other action is taken against BNPLC or against any property owned or leased by BNPLC because of the nonpayment thereof, or (iii) any Designated Sale Date upon which, for any reason, NAI or an Affiliate of NAI or any Applicable Purchaser shall not purchase BNPLC's interest in the Property pursuant to the Purchase Agreement for a price to BNPLC (when taken together with any additional payments made by NAI pursuant to Paragraph 1(A)(2) of the Purchase Agreement, in the case of a purchase by an Applicable Purchaser) equal to the Break Even Price.

(b Increased Costs; Capital Adequacy Charges. Subject only to the exceptions listed in subparagraph 5.(d) below:

(i If after the Effective Date there shall be any increase in the cost to BNPLC's Parent or any other Participant agreeing to make or making, funding or maintaining advances to BNPLC in connection with the Property because of any Banking Rules Change, then NAI shall from time to time, pay to BNPLC for the account of BNPLC's Parent or such other Participant, as the case may be, additional amounts sufficient to compensate BNPLC's Parent or the Participant for such increased cost. An increase in costs resulting from any imposition or increase of reserve requirements applicable to Collateral held from time to

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time by BNPLC's Parent or other Participants pursuant to the Pledge Agreement would be an increase covered by the preceding sentence. A certificate as to the amount of such increased cost, submitted to BNPLC and NAI by BNPLC's Parent or the other Participant, shall be conclusive and binding upon NAI, absent clear and demonstrable error.

(ii BNPLC's Parent or any other Participant may demand additional payments ("CAPITAL ADEQUACY CHARGES") if BNPLC's Parent or the other Participant determines that any Banking Rules Change affects the amount of capital to be maintained by it and that the amount of such capital is increased by or based upon the existence of advances made or to be made to BNPLC to permit BNPLC to maintain BNPLC's investment in the Property or to make Construction Advances. To the extent that BNPLC's Parent or another Participant demands Capital Adequacy Charges as compensation for the additional capital requirements reasonably allocable to such investment or advances, NAI shall pay to BNPLC for the account of BNPLC's Parent or the other Participant, as the case may be, the amount so demanded. Without limiting the foregoing, BNPLC and NAI hereby acknowledge and agree that the provisions for calculating Base Rent set forth herein reflect the assumption that the Pledge Agreement will cause a zero percent (0%) risk weight to be assigned to a percentage (equal to the Collateral Percentage) of the collective investment of BNPLC and the Participants in the Property pursuant to 12 Code of Federal Regulations, part 225, as from time to time supplemented or amended, or pursuant to any other similar or successor statute or regulation applicable to BNPLC and the Participants. If and so long as such risk weight is increased the assumed amount of zero percent (0%) because of a Banking Rules Change, Capital Adequacy Charges may be collected to yield the same rate of return to BNPLC, BNPLC's Parent and any other Participants (net of their costs of maintaining required capital) that they would have enjoyed from this Lease absent such increase.

(iii Any amount required to be paid by NAI under this subparagraph 5.(b) shall be due ten days after a demand for such payment is received by NAI.

(c NAI's Payment of Other Losses; General Indemnification.
Subject only to the exceptions listed in subparagraph 5.(d) below:

(i All Losses (including Environmental Losses) asserted against or incurred or suffered by BNPLC or other Interested Parties at any time and from time to time by reason of, in connection with or arising out of (A) their ownership or alleged ownership of any interest in the Property or the Rents, (B) the use and operation of the Property, (C) the negotiation, administration or enforcement of the Operative Documents, (D) the making of Funding Advances, (E) the Construction Project, (F) the breach by NAI of this Lease or any other document executed by NAI in connection herewith, (G) any failure of the Property or NAI itself to comply with Applicable Laws, (H) Permitted Encumbrances, (I) Hazardous Substance Activities, including those occurring prior to Effective Date, (J) any obligations under the Existing Contract that survive the closing thereunder, or (K) any bodily or personal injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever, shall be paid by NAI, and NAI shall indemnify and defend BNPLC and other Interested Parties from and against all such Losses.

(ii THE INDEMNITIES AND RELEASES PROVIDED HEREIN FOR THE BENEFIT OF BNPLC AND OTHER INTERESTED PARTIES, INCLUDING THE INDEMNITY SET FORTH IN THE PRECEDING SUBPARAGRAPH 5.(C) (I), SHALL APPLY EVEN IF AND WHEN THE SUBJECT MATTERS OF THE INDEMNITIES AND RELEASES ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OR STRICT LIABILITY OF BNPLC OR

ANOTHER INTERESTED PARTY. FURTHER, SUCH INDEMNITIES AND RELEASES WILL APPLY EVEN IF INSURANCE OBTAINED BY NAI OR REQUIRED OF NAI BY THIS LEASE OR OTHER OPERATIVE DOCUMENTS IS NOT ADEQUATE TO COVER LOSSES AGAINST OR FOR WHICH THE INDEMNITIES AND RELEASES ARE PROVIDED. NAI'S LIABILITY, HOWEVER, FOR ANY FAILURE TO OBTAIN INSURANCE REQUIRED BY THIS LEASE OR OTHER OPERATIVE DOCUMENTS WILL NOT BE LIMITED TO LOSSES AGAINST WHICH INDEMNITIES ARE PROVIDED HEREIN, IT BEING UNDERSTOOD THAT SUCH INSURANCE IS INTENDED TO DO MORE THAN PROVIDE A SOURCE OF PAYMENT FOR LOSSES AGAINST WHICH BNPLC AND OTHER INTERESTED PARTIES ARE ENTITLED TO INDEMNIFICATION BY THIS LEASE.

(iii Costs and expenses for which NAI shall be responsible pursuant to this subparagraph 5.(c) will include appraisal fees, filing and recording fees, inspection fees, survey fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, Uniform Commercial Code search fees, escrow fees and Attorneys' Fees incurred by BNPLC with respect to the Property, whether such costs and expenses are incurred at the time of execution of this Lease or at any time during the Term. Such costs and expenses will also include Attorneys' Fees or other costs incurred to evaluate lien releases and other information submitted by NAI with requests for Construction Advances.

(iv NAI's obligations under this subparagraph 5.(c) shall survive the termination or expiration of this Lease. Any amount to be paid by NAI under this subparagraph 5.(c) shall be due ten days after a demand for such payment is received by NAI.

(v If an Interested Party notifies NAI of any claim or proceeding included in, or any investigation or allegation concerning, Losses for which NAI is responsible pursuant to this subparagraph 5.(c), NAI shall assume on behalf of the Interested Party and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by NAI, but satisfactory to the Interested Party; provided, that the Interested Party shall have the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such claim, proceeding, investigation or allegation involves both NAI and the Interested Party and the Interested Party shall have reasonably concluded that there are legal defenses available to it which are inconsistent with or in addition to those available to NAI, then the Interested Party shall have the right to select separate counsel to participate in the investigation and defense of and response to such claim, proceeding, investigation or allegation on its own behalf, and NAI shall pay or reimburse the Interested Party for all Attorney's Fees incurred by the Interested Party because of the selection of such separate counsel. If NAI fails to assume promptly (and in any event within fifteen days after being notified of the applicable claim, proceeding, investigation or allegation) the defense of the Interested Party, then the Interested Party may contest (or settle, with the prior consent of NAI, which consent will not be unreasonably withheld) the claim, proceeding, investigation or allegation at NAI's expense using counsel selected by the Interested Party. Moreover, if any such failure by NAI continues for forty-five days or more after NAI is notified of any such claim, proceeding, investigation or allegation, the Interested Party may elect not to contest or continue contesting the same and instead, in accordance with the written advice of counsel, settle (or pay in full) all claims related thereto without NAI's consent and without releasing NAI from any obligations to the Interested Party under this subparagraph 5.(c).

(d Exceptions and Qualifications to Indemnities.

(i BNPLC acknowledges and agrees that nothing in subparagraph 4.(a) or the preceding subparagraphs of this Paragraph 5 shall be construed to require NAI to pay or reimburse an Interested Party for (w) any costs or expenses incurred by BNPLC or any transferee to accomplish

any Permitted Transfers described in clauses (2), (3), (4), (6) or (7) of the definition thereof in the Common Definitions and Provisions Agreement, (x) Excluded Taxes, (y) Losses incurred or suffered by such Interested Party that are proximately caused by (and attributed by any applicable principles of comparative fault to) the Established Misconduct of that Interested Party, or (z) Losses incurred or suffered by Participants in connection with their negotiation or execution of the Participation Agreement or Pledge Agreement (or supplements making them parties thereto) or in connection with any due diligence they may undertake before entering into the Participation Agreement or Pledge Agreement. Further, without limiting BNPLC's rights (as provided in other provisions of this Lease and other Operative Documents) to include the following in the calculation of the Outstanding Construction Allowance, Stipulated Loss Value, the Break Even Price and the Maximum Permitted Prepayment (as applicable) or to collect Base Rent, Issue 97-10 Prepayments, a Supplemental Payment and other amounts, the calculation of which depends upon the Outstanding Construction Allowance, Stipulated Loss Value, the Break Even Price and the Maximum Permitted Prepayment, BNPLC acknowledges and agrees that nothing in subparagraph 4.(a) or the preceding subparagraphs of this Paragraph 5 shall be construed to require NAI to pay or reimburse an Interested Party for:

a) costs paid by BNPLC with the proceeds of the Initial Funding Advance as part of the Transaction Expenses; or

b) Construction Advances, including costs and expenditures incurred or paid by or on behalf of BNPLC after any Landlord's Election to Continue Construction, to the extent that such costs and expenditures are considered to be Construction Advances pursuant to subparagraph 6.(e).

Further, if an Interested Party receives a written notice of Losses that such Interested Party believes are covered by the indemnity in subparagraph 5.(c)(i), then such Interested Party will be expected to promptly furnish a copy of such notice to NAI. The failure to so provide a copy of the notice to NAI shall not excuse NAI from its obligations under subparagraph 5.(c)(i); provided, that if NAI is unaware of the matters described in the notice and such failure renders unavailable defenses that NAI might otherwise assert, or precludes actions that NAI might otherwise take, to minimize its obligations, then NAI shall be excused from its obligation to indemnify such Interested Party (and any Affiliate of such Interested Party) against the Losses, if any, which would not have been incurred or suffered but for such failure. For example, if BNPLC fails to provide NAI with a copy of a notice of an obligation covered by the indemnity set out in subparagraph 5.(c)(i) and NAI is not otherwise already aware of such obligation, and if as a result of such failure BNPLC becomes liable for penalties and interest covered by the indemnity in excess of the penalties and interest that would have accrued if NAI had been promptly provided with a copy of the notice, then NAI will be excused from any obligation to BNPLC (or any Affiliate of BNPLC) to pay the excess.

(ii) Notwithstanding anything to the contrary in subparagraph 4.(a) or the preceding subparagraphs of this Paragraph 5, NAI's liability for payments required by the preceding subparagraphs of this Paragraph 5, and not excused by the preceding subparagraph 5.(d)(i), prior to substantial completion of the Construction Project ("CONSTRUCTION-PERIOD INDEMNITY PAYMENTS") shall be subject to the following provisions:

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a) NAI may decline to pay any Construction-Period Indemnity Payments other than the following (it being understood that NAI's payment of the following Construction-Period Indemnity Payments shall not be subject to any abatement or deferral by anything contained in this subparagraph 5.(d)(ii)):

(1 Construction-Period Indemnity Payments eligible for reimbursement to NAI under the terms and conditions of the

Construction Management Agreement; and

(2 Construction-Period Indemnity Payments that constitute Absolute NAI Construction Obligations.

b) Any Construction-Period Indemnity Payment NAI is excused from paying by this subparagraph 5.(d)(ii), together with interest thereon at the Default Rate, will be included in the calculation of the Break Even Price under (and as defined in) the Purchase Agreement.

6. CONSTRUCTION.

(a Construction Advances; Outstanding Construction Allowance. The Construction Management Agreement entitles NAI to receive from BNPLC - subject to the terms and conditions set forth in the Construction Management Agreement - Construction Advances on Advance Dates from time to time to pay or reimburse NAI for the costs of the Construction Project and certain other costs described in the Construction Management Agreement. In addition, BNPLC may from time to time make expenditures or incur costs constituting Construction Advances after a Landlord's Election to Continue Construction as described in subparagraph 6.(e). As used herein, references to the "OUTSTANDING CONSTRUCTION ALLOWANCE" mean the difference on the date in question (but not less than zero) of (A) the total Construction Advances made by or on behalf of BNPLC on or prior to the date in question, plus (B) all Carrying Costs added on or prior to the date in question, less (C) any funds received and applied as Qualified Prepayments on or prior to the date in question. Charges ("CARRYING COSTS") shall accrue as described below for each Construction Period and will be added to (and thereafter be included in) the Outstanding Construction Allowance on the last day of such Construction Period (i.e., generally on the Advance Date upon which such Construction Period ends). However, if for any reason Stipulated Loss Value (and thus the Outstanding Construction Allowance included as a component thereof) must be determined as of any date between Advance Dates, the Outstanding Construction Allowance determined on such date shall include not only Carrying Costs added on or before the immediately preceding Advance Date computed as described below, but also Carrying Costs accruing on and after such preceding Advance Date to but not including the date in question.

(b Calculation of Carrying Costs. Carrying Costs accruing for any Construction Period shall equal:

- Stipulated Loss Value on the first day of such Construction Period, times
- the sum of (a) the Effective Rate with respect to such Construction Period, plus (b) the Unsecured Spread for such Construction Period, times
- the number of days in the period from and including the preceding Advance Date to but not including the Advance Date upon which the period ends, divided by
- three hundred sixty.

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Assume, only for the purpose of illustration: that the Collateral Percentage for a hypothetical Construction Period is zero percent (0%); that on the first day of such Construction Period Stipulated Loss Value is \$40,000,000; that the Effective Rate for the Construction Period is 6%; that the Unsecured Spread for such Construction Period is one hundred fifty basis points (150/100 of 1%); and that such Construction Period contains exactly thirty days. Under such assumptions, the Carrying Costs for the hypothetical Construction Period will equal:

$$\$40,000,000 \times (6\% + 1.50\%) \times 30/360 = \$250,000$$

(c Limits on the Amount of Carrying Costs. Notwithstanding the

foregoing, because the Construction Allowance available to NAI under the Construction Management Agreement is limited in amount to the Maximum Construction Allowance, and because Carrying Costs are to be charged against the Construction Allowance, Carrying Costs added to the Outstanding Construction Allowance on the Base Rent Commencement Date shall not exceed the amount that can be added without causing the Funded Construction Allowance to exceed the Maximum Construction Allowance. If, because of an extension of the Base Rent Commencement Date by BNPLC (as described in the definition thereof in the Common Definitions and Provisions Agreement) or because of any Landlord's Election to Continue Construction, the Funded Construction Allowance already exceeds the Maximum Construction Allowance, then no Carrying Costs will be added to the Outstanding Construction Allowance on the Base Rent Commencement Date.

(d NAI's Right to Control the Construction Project. Subject to BNPLC's rights under subparagraph 6.(e) of this Lease, the Construction Management Agreement grants to NAI the sole right and responsibility for designing and constructing the Construction Project, it being understood that although title to all Improvements will pass directly to BNPLC (as more particularly provided in Paragraph 7), BNPLC's obligation with respect to the Construction Project shall be limited to the making of advances under and subject to the conditions set forth in the Construction Management Agreement. No contractor or other third party shall be entitled to require BNPLC to make advances as a third party beneficiary of this Lease or of the Construction Management Agreement or otherwise.

(e Landlord's Election to Continue Construction. Without limiting BNPLC's other rights and remedies under this Lease, and without terminating this Lease or NAI's obligations hereunder or under any of the other documents referenced herein, in the event of any termination of the Construction Management Agreement as provided in subparagraph 5(D) or subparagraph 5(E) thereof, BNPLC shall be entitled (but not obligated) to take whatever action it deems necessary or appropriate by the use of legal proceedings or otherwise to continue or complete the Construction Project in a manner substantially consistent (to the extent practicable under Applicable Laws) with the general description of the Construction Project set forth in Exhibit B to the Construction Management Agreement and with the permitted use of the Property set forth in subparagraph 2.(a). (As used herein, "LANDLORD'S ELECTION TO CONTINUE CONSTRUCTION" means any election by BNPLC to continue or complete the Construction Project pursuant to the preceding sentence.) After any Landlord's Election to Continue Construction, BNPLC may do any one or more of the following pursuant to this subparagraph without further notice and regardless of whether any Event of Default is then continuing:

(i Take Control of the Property. BNPLC may cause NAI and any contractors or other parties on the Property to vacate the Property until the Construction Project is complete or BNPLC elects not to continue work on the Construction Project.

(ii Continuation of Construction. BNPLC may perform or cause to be performed any work to complete or continue the construction of the Construction Project. In this regard, so long as work ordered or undertaken by BNPLC is substantially consistent (to the extent practicable under Applicable Laws) with

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the general description of the Construction Project set forth in Exhibit B to the Construction Management Agreement and the permitted use of the Property set forth in subparagraph 2.(a), BNPLC shall have complete discretion to:

a) proceed with construction according to such plans and specifications as BNPLC may from time to time approve;

b) establish and extend construction deadlines as BNPLC from time to time deems appropriate, without obligation to adhere to the deadlines for Construction Milestones set forth in the Construction Management Agreement;

c) hire, fire and replace architects, engineers,

contractors, construction managers and other consultants as BNPLC from time to time deems appropriate, without obligation to use, consider or compensate architects, engineers, contractors, construction managers or other consultants previously selected or engaged by NAI;

d) determine the compensation that any architect, engineer, contractor, construction manager or other consultant engaged by BNPLC will be paid, and the terms and conditions that will govern the payment of such compensation (including whether payment will be due in advance, over the course of construction or on some other basis and including whether contracts will be let on a fixed price basis, a cost plus a fee basis or some other basis), as BNPLC from time to time deems appropriate;

e) pay, settle or compromise existing or future bills and claims which are or may be liens against the Property or as BNPLC considers necessary or desirable for the completion of the Construction Project or the removal of any clouds on title to the Property;

f) prosecute and defend all actions or proceedings in connection with the construction of the Construction Project;

g) select and change interior and exterior finishes for the Improvements and landscaping as BNPLC from time to time deems appropriate; and

h) generally do anything that NAI itself might have done if NAI had satisfied or obtained BNPLC's waiver of the conditions specified therein.

(iii Arrange for Turnkey Construction. Without limiting the generality of the foregoing, BNPLC may engage any contractor or real estate developer BNPLC believes to be reputable to take over and complete construction of the Construction Project on a "turnkey" basis.

(iv Suspension or Termination of Construction. Notwithstanding any Landlord's Election to Continue Construction, BNPLC may subsequently elect at any time to suspend or terminate further construction without obligation to NAI.

For purposes of this Lease and other Operative Documents (including the determination of the Outstanding Construction Allowance, Stipulated Loss Value, the Break Even Price and the Maximum Permitted Prepayment), after any Landlord's Election to Continue Construction, all costs and expenditures incurred or paid by or on behalf of BNPLC to complete or continue construction as provided in this subparagraph shall be considered Construction Advances and Project Costs, regardless of whether they cause the Funded Construction Allowance to exceed the

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Maximum Construction Allowance. Further, as used in the preceding sentence, "costs incurred" by BNPLC will include costs that BNPLC has become obligated to pay to any third party that is not an Affiliate of BNPLC (including any contractor), even if the payments for which BNPLC has become so obligated will constitute prepayments for work or services to be rendered after payment and notwithstanding that BNPLC's obligations for the payments may be conditioned upon matters beyond BNPLC's control. For example, even if a construction contract between BNPLC and a contractor excused BNPLC from making further progress payments to the contractor upon NAI's failure to make any required Issue 97-10 Prepayment hereunder, the obligation to make a progress payment would nonetheless be "incurred" by BNPLC, for purposes of determining whether BNPLC has incurred costs considered to be Project Costs and Construction Advances, when BNPLC's obligation to pay it became subject only to NAI's payment of an Issue 97-10 Prepayment or other conditions beyond BNPLC's control. If and to the extent, however, BNPLC does incur costs considered as Construction Advances under this subparagraph, but (1) BNPLC does not actually pay the costs and after incurring them BNPLC is fully and finally excused from the obligation to pay them for any reason other than a breach by NAI of this Lease or other

Operative Documents, or (2) BNPLC receives a refund of such costs, then the costs BNPLC is excused from paying or refunded to BNPLC shall be considered Qualified Prepayments.

(f Powers Coupled With an Interest. BNPLC's rights under subparagraph 6.(e) are intended to constitute powers coupled with an interest which cannot be revoked.

(g Completion Notice. After any Landlord's Election to Continue Construction, BNPLC may provide a notice (a "COMPLETION NOTICE") to NAI, advising NAI that construction of the Construction Project is substantially complete or that BNPLC no longer intends to continue such construction at that time.

7. STATUS OF PROPERTY ACQUIRED WITH FUNDS PROVIDED BY BNPLC. All Improvements constructed during the term of this Lease shall be owned by BNPLC and shall constitute "Property" covered by this Lease. Further, to the extent heretofore or hereafter acquired (in whole or in part) with any portion of the Initial Funding Advance or with any Construction Advances or with other funds for which NAI has received or hereafter receives reimbursement from the Initial Funding Advance or Construction Advances, all furnishings, furniture, chattels, permits, licenses, franchises, certificates and other personal property of whatever nature shall have been acquired on behalf of BNPLC by NAI, shall be owned by BNPLC and shall constitute "Property" covered by this Lease, as shall all renewals or replacements of or substitutions for any such Property. NAI shall not authorize or permit the transfer of title to the Improvements or to any other such Property to pass through NAI or NAI's Affiliates before it is transferred to BNPLC from contractors, suppliers, vendors or other third Persons. Nothing herein shall constitute authorization of NAI by BNPLC to bind BNPLC to any construction contract or other agreement with a third Person, but any construction contract or other agreement executed by NAI for the acquisition or construction of Improvements or other components of the Property may provide for the transfer of title as required by the preceding sentence. Upon request of BNPLC, but not more often than once in any period of twelve consecutive months, NAI shall deliver to BNPLC an inventory describing all significant items of Personal Property (and, in the case of tangible personal property, showing the make, model, serial number and location thereof) other than Improvements, with a certification by NAI that such inventory is true and complete and that all items specified in the inventory are covered by this Lease free and clear of any Lien other than the Permitted Encumbrances or Liens Removable by BNPLC.

8. ENVIRONMENTAL.

(a Environmental Covenants by NAI. NAI covenants that:

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(i NAI shall not conduct or permit others to conduct Hazardous Substance Activities, except Permitted Hazardous Substance Use and Remedial Work.

(ii NAI shall not discharge or permit the discharge of anything on or from the Property that would require any permit under applicable Environmental Laws, other than (1) storm water runoff, (2) waste water discharges through a publicly owned treatment works, (3) discharges that are a necessary part of any Remedial Work, and (4) other similar discharges consistent with the definition herein of Permitted Hazardous Substance Use, in each case in strict compliance with Environmental Laws.

(iii Following any discovery that Remedial Work is required by Environmental Laws or otherwise believed by BNPLC to be reasonably required, and to the extent not inconsistent with the other provisions of this Lease, NAI shall promptly perform and diligently and continuously pursue such Remedial Work, in each case in strict compliance with Environmental Laws.

(iv If requested by BNPLC in connection with any Remedial Work required by this subparagraph, NAI shall retain independent

environmental consultants acceptable to BNPLC to evaluate any significant new information generated during NAI's implementation of the Remedial Work and to discuss with NAI whether such new information indicates the need for any additional measures that NAI should take to protect the health and safety of persons (including employees, contractors and subcontractors and their employees) or to protect the environment. NAI shall implement any such additional measures to the extent required with respect to the Property by Environmental Laws or otherwise believed by BNPLC to be reasonably required and to the extent not inconsistent with the other provisions of this Lease.

(b Right of BNPLC to do Remedial Work Not Performed by NAI. If NAI's failure to cure any breach of the covenants set forth in subparagraph 8. (a) continues beyond the Environmental Cure Period (as defined below), BNPLC may, in addition to any other remedies available to it, conduct all or any part of the Remedial Work. To the extent that Remedial Work is done by BNPLC pursuant to the preceding sentence (including any removal of Hazardous Substances), the cost thereof shall be a demand obligation owing by NAI to BNPLC. As used in this subparagraph, "ENVIRONMENTAL CURE PERIOD" means the period ending on the earlier of: (1) one hundred eighty days after NAI is notified of the breach which must be cured within such period, (2) the date that any writ or order is issued for the levy or sale of any property owned by BNPLC (including the Property) because of such breach, (3) the date that any criminal action is instituted or overtly threatened against BNPLC or any of its directors, officers or employees because of such breach, or (4) any Designated Sale Date upon which, for any reason, NAI or an Affiliate of NAI or any Applicable Purchaser shall not purchase BNPLC's interest in the Property pursuant to the Purchase Agreement for a net price to BNPLC (when taken together with any Supplemental Payment made by NAI pursuant to Paragraph 1(A)(2) of the Purchase Agreement, in the case of a purchase by an Applicable Purchaser) equal to Stipulated Loss Value.

(c Environmental Inspections and Reviews. BNPLC reserves the right to retain environmental consultants to review any report prepared by NAI or to conduct BNPLC's own investigation to confirm whether NAI is complying with the requirements of this Paragraph 8. NAI grants to BNPLC and to BNPLC's agents, employees, consultants and contractors the right to enter upon the Property at any time to inspect the Property and to perform such tests as BNPLC deems necessary or appropriate to review or investigate Hazardous Substances in, on, under or about the Property or any discharge or suspected discharge of Hazardous Substances into groundwater or surface water from the Property. NAI shall promptly reimburse BNPLC for the fees of its environmental consultants and the costs of any such inspections and tests.

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(d) Communications Regarding Environmental Matters.

(i) NAI shall immediately advise BNPLC of (1) any discovery of any event or circumstance which would render any of the representations of NAI herein or in the Closing Certificate concerning environmental matters materially inaccurate or misleading if made at the time of such discovery and assuming that NAI was aware of all relevant facts, (2) any Remedial Work (or change in Remedial Work) required or undertaken by NAI or its Affiliates in response to any (A) discovery of any Hazardous Substances on, under or about the Property other than Permitted Hazardous Substances or (B) any claim for damages resulting from Hazardous Substance Activities, (3) NAI's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property which could cause the Property or any part thereof to be subject to any ownership, occupancy, transferability or use restrictions under Environmental Laws, or (4) any investigation or inquiry of any failure or alleged failure by NAI to comply with Environmental Laws affecting the Property by any governmental authority responsible for enforcing Environmental Laws. In such event, NAI shall deliver to BNPLC within thirty days after BNPLC's request, a preliminary written environmental plan setting forth a general description of the action that NAI proposes to take with respect thereto, if any, to bring the Property into compliance with Environmental Laws or to correct any breach by NAI of this Paragraph 8, including any proposed Remedial Work,

the estimated cost and time of completion, the name of the contractor and a copy of the construction contract, if any, and such additional data, instruments, documents, agreements or other materials or information as BNPLC may request.

(ii) NAI shall provide BNPLC with copies of all material written communications with federal, state and local governments, or agencies relating to the matters listed in the preceding clause (i). NAI shall also provide BNPLC with copies of any correspondence from third Persons which threaten litigation over any significant failure or alleged significant failure of NAI to maintain or operate the Property in accordance with Environmental Laws.

(iii) Prior to NAI's submission of a Material Environmental Communication to any governmental or regulatory agency or third party, NAI shall, to the extent practicable, deliver to BNPLC a draft of the proposed submission (together with the proposed date of submission), and in good faith assess and consider any comments of BNPLC regarding the same. Promptly after BNPLC's request, NAI shall meet with BNPLC to discuss the submission, shall provide any additional information requested by BNPLC and shall provide a written explanation to BNPLC addressing the issues raised by comments (if any) of BNPLC regarding the submission, including a reasoned analysis supporting any decision by NAI not to modify the submission in accordance with comments of BNPLC.

9. INSURANCE REQUIRED AND CONDEMNATION.

(a) Liability Insurance. Throughout the Term NAI shall maintain commercial general liability insurance against claims for bodily and personal injury, death and property damage occurring in or upon or resulting from any occurrence in or upon the Property under one or more insurance policies that satisfy the requirements set forth in Exhibit B. NAI shall deliver and maintain with BNPLC for each liability insurance policy required by this Lease written confirmation of the policy and the scope of the coverage provided thereby issued by the applicable insurer or its authorized agent, which confirmation must also satisfy the requirements set forth in Exhibit B.

(b) Property Insurance. Throughout the Term NAI will keep all Improvements (including all alterations, additions and changes made to the Improvements) insured against fire and other casualty under one or

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more property insurance policies that satisfy the requirements set forth in Exhibit B. NAI shall deliver and maintain with BNPLC for each property insurance policy required by this Lease written confirmation of the policy and the scope of the coverage provided thereby issued by the applicable insurer or its authorized agent, which confirmation must also satisfy the requirements set forth in Exhibit B. If any of the Property is destroyed or damaged by fire, explosion, windstorm, hail or by any other casualty against which insurance shall have been required hereunder, (i) BNPLC may, but shall not be obligated to, make proof of loss if not made promptly by NAI after notice from BNPLC, (ii) each insurance company concerned is hereby authorized and directed to make payment for such loss directly to BNPLC for application as required by Paragraph 10, and (iii) BNPLC may settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance (provided, that if any such claim is for less than \$500,000, if no CMA Termination Event shall have occurred and no Event of Default shall have occurred and be continuing, NAI shall have the right to settle, adjust or compromise the claim as NAI deems appropriate; and, provided further, that so long as no CMA Termination Event shall have occurred and no Event of Default shall have occurred and be continuing, BNPLC must provide NAI with at least forty-five days notice of BNPLC's intention to settle any such claim before settling it unless NAI shall already have approved of the settlement by BNPLC). If any casualty shall result in damage to or loss or destruction of the Property, NAI shall give immediate notice thereof to BNPLC and Paragraph 10 shall apply.

(c) Failure to Obtain Insurance. If NAI fails to obtain any insurance or to provide confirmation of any such insurance as required by this

Lease, BNPLC shall be entitled (but not required) to obtain the insurance that NAI has failed to obtain or for which NAI has not provided the required confirmation and, without limiting BNPLC's other remedies under the circumstances, BNPLC may require NAI to reimburse BNPLC for the cost of such insurance and to pay interest thereon computed at the Default Rate from the date such cost was paid by BNPLC until the date of reimbursement by NAI (provided, however, that any such insurance cost paid by BNPLC prior to the Base Rent Commencement Date will be charged against the Construction Allowance under the Construction Management Agreement as if it had been paid by NAI).

(d) Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other similar governmental or quasi-governmental proceedings arising out of injury or damage to the Property or any portion thereof, each party shall notify the other (provided, however, BNPLC shall have no liability for its failure to provide such notice) of the pendency of such proceedings. NAI shall, at its expense, diligently prosecute any such proceedings and shall consult with BNPLC, its attorneys and experts and cooperate with them as requested in the carrying on or defense of any such proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be paid to BNPLC as Escrowed Proceeds, and all such proceeds will be applied as provided in Paragraph 10. BNPLC is hereby authorized, in the name of NAI, at any time after a CMA Termination Event or when an Event of Default shall have occurred and be continuing, or otherwise with NAI's prior consent, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award concerning condemnation of any of the Property. BNPLC shall not be in any event or circumstances liable or responsible for failure to collect, or to exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

(e) Waiver of Subrogation. NAI, for itself and for any Person claiming through it (including any insurance company claiming by way of subrogation), waives any and every claim which arises or may arise in its favor against BNPLC or any other Interested Party and the officers, directors, and employees of the Interested Parties for any and all Losses, to the extent that NAI is compensated by insurance or would be compensated by the insurance policies contemplated in this Lease, but for any deductible or self-insured retention maintained under such insurance or but for a failure of NAI to maintain the insurance as required by this Lease. NAI agrees to have

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such insurance policies properly endorsed so as to make them valid notwithstanding this waiver, if such endorsement is required to prevent a loss of insurance.

10. APPLICATION OF INSURANCE AND CONDEMNATION PROCEEDS.

(a) Collection and Application of Insurance and Condemnation Proceeds Generally. This Paragraph 10 shall govern the application of proceeds received by BNPLC or NAI during the Term from any third party (1) under any property insurance policy as a result of damage to the Property (including proceeds payable under any insurance policy covering the Property which is maintained by NAI), (2) as compensation for any restriction placed upon the use or development of the Property or for the condemnation of the Property or any portion thereof, or (3) because of any judgment, decree or award for injury or damage to the Property; excluding, however, any funds paid to BNPLC by BNPLC's Parent, by an Affiliate of BNPLC or by any Participant that is made to compensate BNPLC for any Losses BNPLC may suffer or incur in connection with this Lease or the Property. NAI will promptly pay over to BNPLC any insurance, condemnation or other proceeds covered by this Paragraph 10 which NAI may receive from any insurer, condemning authority or other third party. All proceeds covered by this Paragraph 10, including those received by BNPLC from NAI or third parties, shall be applied as follows:

(i) First, proceeds covered by this Paragraph 10 will be used to reimburse BNPLC for any costs and expenses, including Attorneys' Fees, that BNPLC incurred to collect the proceeds.

(ii) Second, the proceeds remaining after such reimbursement to BNPLC (hereinafter, the "REMAINING PROCEEDS") will be applied, as hereinafter more particularly provided, either as a Qualified Prepayment or to reimburse NAI or BNPLC for the actual out-of-pocket costs of repairing or restoring the Property. Until, however, any Remaining Proceeds received by BNPLC are applied by BNPLC as a Qualified Prepayment or applied by BNPLC to reimburse costs of repairs to or restoration of the Property pursuant to this Paragraph 10, BNPLC shall hold and maintain such Remaining Proceeds as Escrowed Proceeds in an interest bearing account, and all interest earned on such account shall be added to and made a part of such Escrowed Proceeds.

(b) Advances of Escrowed Proceeds to NAI. Except as otherwise provided below in this Paragraph 10, BNPLC shall advance all Remaining Proceeds held by it as Escrowed Proceeds to reimburse NAI for the actual out-of-pocket cost to NAI of repairing or restoring the Property in accordance with the requirements of this Lease and the other Operative Documents as the applicable repair or restoration progresses and upon compliance by NAI with such terms, conditions and requirements as may be reasonably imposed by BNPLC. In no event, however, shall BNPLC be required to pay Escrowed Proceeds to NAI in excess of the actual out-of-pocket cost to NAI of the applicable repair or restoration, as evidenced by invoices or other documentation satisfactory to BNPLC, it being understood that BNPLC may retain and apply any such excess as a Qualified Prepayment.

(c) Application of Escrowed Proceeds as a Qualified Prepayment. Provided NAI has completed the Construction Project pursuant to the Construction Management Agreement and no Event of Default shall have occurred and be continuing, BNPLC shall apply any Remaining Proceeds paid to it (or other amounts available for application as a Qualified Prepayment) as a Qualified Prepayment on any date that BNPLC is directed to do so by a notice from NAI; however, if such a notice from NAI specifies an effective date for a Qualified Prepayment that is less than five Business Days after BNPLC's actual receipt of the notice, BNPLC may postpone the date of the Qualified Prepayment to any date not later than five Business Days after BNPLC's receipt of the notice. In any event, except when BNPLC is required by the preceding sentence to apply Remaining Proceeds or other amounts as a Qualified Prepayment on an Advance Date or Base Rent Date, BNPLC may deduct Breakage

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Costs incurred in connection with any Qualified Prepayment from the Remaining Proceeds or other amounts available for application as the Qualified Prepayment, and NAI will reimburse BNPLC upon request for any such Breakage Costs that BNPLC incurs but does not deduct.

(d) Special Provisions Applicable After a CMA Termination Event or Event of Default. Notwithstanding the foregoing, after any CMA Termination Event, and when any Event of Default shall have occurred and be continuing, BNPLC shall be entitled to receive and collect all insurance, condemnation or other proceeds governed by this Paragraph 10 and to apply all Remaining Proceeds, when and to the extent deemed appropriate by BNPLC in its sole discretion, either (A) to the reimbursement of NAI or BNPLC for the out-of-pocket cost of repairing or restoring the Property, or (B) as Qualified Prepayments.

(e) NAI's Obligation to Restore. Regardless of the adequacy of any Remaining Proceeds available to NAI hereunder, and notwithstanding other provisions of this Lease to the contrary:

(1) If, prior to the Base Rent Commencement Date, the Property is damaged by fire or other casualty or any part of the Property is taken by condemnation, NAI shall to the maximum extent possible, as part of the Work contemplated in the Construction Management Agreement, restore the Property or the remainder thereof and continue construction of the Construction Project on and subject to the terms and conditions set forth in the Construction Management Agreement. However, any additional costs required to complete the Construction Project resulting

from such a casualty or taking prior to the Base Rent Commencement Date shall, to the extent not covered by Remaining Proceeds paid to NAI as provided in this Lease, be subject to reimbursement by BNPLC under the Construction Management Agreement on the same terms and conditions that apply to reimbursements of other costs of the Work thereunder.

(2) If, on or after the Base Rent Commencement Date, the Property is damaged by fire or other casualty or less than all or substantially all of the Property is taken by condemnation, NAI must:

A) increase the value of the Property or the remainder thereof by restoring or improving the same (in a manner consistent with the requirements and limitations imposed by this Lease and the other Operative Documents or otherwise acceptable to BNPLC), or decrease Stipulated Loss Value by tendering a payment to BNPLC for application as a Qualified Prepayment, as necessary to cause Current AS IS Market Value to be not less than sixty percent (60%) of Stipulated Loss Value; and

B) restore the Property or the remainder thereof to a reasonably safe and sightly condition.

(f) Takings of All or Substantially All of the Property on or after the Base Rent Commencement Date. In the event of any taking of all or substantially all of the Property on or after the Base Rent Commencement Date, BNPLC shall be entitled to apply all Remaining Proceeds as a Qualified Prepayment. In addition, if Stipulated Loss Value immediately prior to any such taking exceeds the sum of the Remaining Proceeds resulting from such condemnation, then BNPLC shall be entitled to recover the excess from NAI upon demand as an additional Qualified Prepayment, whereupon this Lease shall terminate. Any taking of so much of the Real Property as, in BNPLC's reasonable good faith judgment, makes it impracticable to restore or improve the remainder thereof as required by part (2) of the preceding subparagraph shall be considered a taking of substantially all the Property for purposes of this Paragraph 10.

11. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF NAI CONCERNING THE PROPERTY. NAI represents, warrants and covenants as follows:

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(a) Compliance with Covenants and Laws. The use of the Property permitted by this Lease complies, or will comply after NAI obtains available permits as the tenant under this Lease, in all material respects with all Applicable Laws. NAI has obtained or will promptly obtain all utility, building, health and operating permits as may be required by any governmental authority or municipality having jurisdiction over the Property for the construction contemplated herein and the use of the Property permitted by this Lease.

(b) Operation of the Property. During the Term, NAI shall operate the Property in a good and workmanlike manner and substantially in compliance with all Applicable Laws and will pay or cause to be paid all fees or charges of any kind in connection therewith. (If NAI does not promptly correct any failure of the Property to comply with Applicable Laws that is the subject of a written notice given to NAI or BNPLC by any governmental authority, then for purposes of the preceding sentence, NAI shall be considered not to have maintained the Property "substantially in accordance with Applicable Laws" whether or not the noncompliance would be substantial in the absence of the notice.) During the Term, NAI shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any Applicable Law or which constitutes a public or private nuisance or which makes void, voidable or cancelable any insurance then in force with respect thereto. During the Term, to the extent that any of the following would, individually or in the aggregate, increase the likelihood of a CMA Termination Event under the Construction Management Agreement or materially and adversely affect the value of the Property or NAI's use, occupancy or operations on the Property, NAI shall not, without BNPLC's prior consent: (i) initiate or permit any zoning reclassification of the Property; (ii) seek any variance under existing zoning ordinances applicable to

the Property; (iii) use or permit the use of the Property in a manner that would result in such use becoming a nonconforming use under applicable zoning ordinances or similar laws, rules or regulations; (iv) execute or file any subdivision plat affecting the Property; or (v) consent to the annexation of the Property to any municipality. If (A) a change in the zoning or other Applicable Laws affecting the permitted use or development of the Property shall occur after the Base Rent Commencement Date that reduces the value of the Property, or (B) conditions or circumstances on or about the Property are discovered after the Base Rent Commencement Date (such as the presence of an endangered species) which substantially impede development and thereby reduce the value of the Property, and if after any such reduction under clause (A) or (B) preceding the Current AS IS Market Value of the Property is less than sixty percent (60%) of Stipulated Loss Value, then NAI shall pay BNPLC upon request the amount by which Current AS IS Market Value is less than sixty percent (60%) of Stipulated Loss Value, for application as a Qualified Prepayment. During the Term, NAI shall not cause or permit any drilling or exploration for, or extraction, removal or production of, minerals from the surface or subsurface of the Property, and NAI shall not do any act whereby the market value of the Property may reasonably be expected to be materially lessened. During the Term, if NAI receives a written notice or claim from any federal, state or other governmental entity that the Property is not in compliance in any material respect with any Applicable Law, or that any action may be taken against the owner of the Property because the Property does not comply with Applicable Law, NAI shall promptly furnish a copy of such notice or claim to BNPLC.

Notwithstanding the foregoing, NAI may in good faith, by appropriate proceedings, contest the validity and applicability of any Applicable Law with respect to the Property, and pending such contest NAI shall not be deemed in default hereunder because of the violation of such Applicable Law, if NAI diligently prosecutes such contest to completion in a manner reasonably satisfactory to BNPLC, and if NAI promptly causes the Property to comply with any such Applicable Law upon a final determination by a court of competent jurisdiction that the same is valid and applicable to the Property; provided, however, in any event such contest shall be concluded and the violation of such Applicable Law must be corrected by NAI and any claims asserted against BNPLC or the Property because of such violation must be paid by NAI, all prior to the earlier of (i) the date that any criminal prosecution is instituted or overtly threatened against BNPLC or any of its directors, officers or employees because of such violation, (ii) the date that any action is taken by any governmental authority against BNPLC or any

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property owned by BNPLC (including the Property) because of such violation, or (iii) a Designated Sale Date upon which, for any reason, NAI or an Affiliate of NAI or any Applicable Purchaser shall not purchase BNPLC's interest in the Property pursuant to the Purchase Agreement for a price to BNPLC (when taken together with any additional payments made by NAI pursuant to Paragraph 1(A) (2) of the Purchase Agreement, in the case of a purchase by an Applicable Purchaser) equal to the Break Even Price.

(c) Debts for Construction, Maintenance, Operation or Development. NAI shall cause all debts and liabilities incurred in the construction, maintenance, operation or development of the Property, including all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Property, to be promptly paid; provided, that nothing in this subparagraph will be construed to require NAI to remove Liens Removable by BNPLC.

Notwithstanding the foregoing, NAI may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted mechanic's or materialmen's lien and pending such contest NAI shall not be deemed in default under this subparagraph because of the contested lien if (1) within sixty days after being asked to do so by BNPLC, NAI bonds over to BNPLC's reasonable satisfaction all such contested liens against the Property alleged to secure an amount in excess of \$500,000 (individually or in the aggregate), (2) NAI diligently prosecutes such contest to completion in a manner reasonably satisfactory to BNPLC, and (3) NAI promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs and

interest thereon, promptly after such judgment becomes final; provided, however, that in any event each such contest shall be concluded and the lien, interest and costs must be paid by NAI prior to the earlier of (i) the date that any criminal prosecution is instituted or overtly threatened against BNPLC or its directors, officers or employees because of the nonpayment thereof, (ii) the date that any writ or order is issued under which the Property or any other property in which BNPLC has an interest may be seized or sold or any other action is taken against BNPLC or any property in which BNPLC has an interest because of the nonpayment thereof, or (iii) a Designated Sale Date upon which, for any reason, NAI or an Affiliate of NAI or any Applicable Purchaser shall not purchase BNPLC's interest in the Property pursuant to the Purchase Agreement for a price to BNPLC (when taken together with any additional payments made by NAI pursuant to Paragraph 1(A)(2) of the Purchase Agreement, in the case of a purchase by an Applicable Purchaser) equal to the Break Even Price..

(d) Repair, Maintenance, Alterations and Additions. NAI shall keep the Property in good order, operating condition and appearance and shall cause all necessary repairs, renewals and replacements to be promptly made. NAI will not allow any of the Property to be materially misused, abused or wasted, and NAI shall promptly replace any worn-out fixtures and Personal Property with fixtures and Personal Property comparable to the replaced items when new. NAI shall not, without the prior consent of BNPLC, (i) remove from the Property any fixture or Personal Property having significant value except such as are replaced by NAI by fixtures or Personal Property of equal suitability and value, free and clear of any lien or security interest (and for purposes of this clause "significant value" will mean any fixture or Personal Property that has a value of more than \$100,000 or that, when considered together with all other fixtures and Personal Property removed and not replaced by NAI by items of equal suitability and value, has an aggregate value of \$500,000 or more) or (ii) make material new Improvements or alter Improvements in any material respect, except as part of the Work performed in accordance with the Construction Management Agreement. Without limiting the foregoing, NAI will notify BNPLC before making any significant alterations to the Improvements after the completion of the Construction Project. Nothing in this subparagraph, however, is intended to limit NAI's rights and obligations under other express provisions of this Lease and the Construction Management Agreement with respect to the Construction Project.

(e) Permitted Encumbrances and Development Documents. NAI shall during the Term comply with and will cause to be performed all of the covenants, agreements and obligations imposed upon the

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owner of any interest in the Property by the Permitted Encumbrances or the Development Documents. Without limiting the foregoing, NAI shall cause all amounts to be paid when due, the payment of which is secured by any Lien against the Property created by the Permitted Encumbrances. Without the prior consent of BNPLC, NAI shall not enter into, initiate, approve or consent to any modification of any Permitted Encumbrance or Development Document that would create or expand or purport to create or expand obligations or restrictions which would encumber BNPLC's interest in the Property. (Whether BNPLC must give any such consent requested by NAI during the Term of the Lease shall be governed by subparagraph 3(A) of the Closing Certificate and Agreement.)

(f) Books and Records Concerning the Property. NAI shall keep books and records that are accurate and complete in all material respects for the Property and, subject to Paragraph 16.(c), will permit all such books and records (including all contracts, statements, invoices, bills and claims for labor, materials and services supplied for the construction and operation of any Improvements) to be inspected and copied by BNPLC. This subparagraph shall not be construed as requiring NAI to regularly maintain separate books and records relating exclusively to the Property; provided, however, that upon request, NAI shall construct or abstract from its regularly maintained books and records information required by this subparagraph relating to the Property.

12. FINANCIAL COVENANTS AND OTHER COVENANTS INCORPORATED BY REFERENCE TO SCHEDULE 1. Throughout the Term of this Lease, NAI shall comply with the requirements of Schedule 1 attached hereto.

13. FINANCIAL STATEMENTS AND OTHER REPORTS.

(a) Financial Statements; Required Notices; Certificates.
Throughout the Term of the Lease, NAI shall deliver to BNPLC and to each Participant:

(i) as soon as available and in any event within one hundred twenty days after the end of each fiscal year of NAI, a consolidated balance sheet of NAI and its Consolidated Subsidiaries as of the end of such fiscal year and a consolidated income statement and statement of cash flows of NAI and its Consolidated Subsidiaries for such fiscal year, all in reasonable detail and all prepared in accordance with GAAP and accompanied by a report and opinion of accountants of national standing selected by NAI, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any qualifications or exceptions as to the scope of the audit nor to any qualification or exception which BNPLC determines, in BNPLC's reasonable discretion, is unacceptable;

(ii) as soon as available and in any event within sixty days after the end of each of the first three quarters of each fiscal year of NAI, the consolidated balance sheet of NAI and its Consolidated Subsidiaries as of the end of such quarter and the consolidated income statement and the consolidated statement of cash flows of NAI and its Consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, all in reasonable detail and all prepared in accordance with GAAP and certified by the chief financial officer or controller of NAI (subject to year-end adjustments);

(iii) together with the financial statements furnished in accordance with subparagraph 13.(a)(i) and 13.(a)(ii), a certificate of the chief financial officer or controller of NAI: (i) certifying that to the knowledge of NAI no Default or Event of Default under the Lease has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, a brief statement as to the nature thereof and the action which is proposed to be taken with respect thereto, (ii) certifying that the representations of NAI set forth in the Operative Documents are true and correct in all material respects as of the date thereof as

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though made on and as of the date thereof or, if not then true and correct, a brief statement as to why such representations are no longer true and correct, and (iii) with computations demonstrating compliance with the financial covenants contained in Schedule 1;

(iv) within five days after the end of each calendar month, a certificate of the chief financial officer or controller of NAI certifying that at the end of the preceding calendar month, NAI had sufficient cash and other assets described in Paragraph 1 of Part II of Schedule 1 to comply with the requirements of that paragraph;

(v) promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports which NAI sends to NAI's stockholders, and copies of all regular, periodic and special reports, and all registration statements (other than registration statements on Form S-8 or any form substituted therefor) which NAI files with the Securities and Exchange Commission or any governmental authority which may be substituted therefor, or with any national securities exchange;

(vi) upon request by BNPLC, a statement in writing certifying that the Operative Documents are unmodified and in full effect (or, if there have been modifications, that the Operative Documents are in full effect as modified, and setting forth such modifications) and the dates to which the Base Rent has been paid and either stating that to the

knowledge of NAI no Default or Event of Default under the Lease has occurred and is continuing or, if a Default or Event of Default under the Lease has occurred and is continuing, a brief statement as to the nature thereof; it being intended that any such statement by NAI may be relied upon by any prospective purchaser or mortgagee of the Property and by the Participants

(vii) as soon as possible after, and in any event within ten days after NAI becomes aware that, any of the following has occurred, with respect to which the potential aggregate liability to NAI relating thereto is \$500,000 or more, a notice signed by a senior financial officer of NAI setting forth details of the following and the response, if any, which NAI or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC by NAI or an ERISA Affiliate with respect to any of the following or the events or conditions leading up to the following): (A) the assertion, to secure any Unfunded Benefit Liabilities, of any Lien against the assets of NAI, against the assets of any Plan or Multiemployer Plan or against any interest of BNPLC or NAI in the Property, or (B) the taking of any action by the PBGC or any other governmental authority against NAI to terminate any Plan of NAI or any ERISA Affiliate of NAI or to cause the appointment of a trustee or receiver to administer any such Plan ; and

(viii) such other information respecting the condition or operations, financial or otherwise, of NAI, of any of its Subsidiaries or of the Property as BNPLC or any Participant through BNPLC may from time to time reasonably request.

BNPLC is hereby authorized to deliver a copy of any information or certificate delivered to it pursuant to this subparagraph 13.(a) to BNPLC's Parent, to the Participants and to any regulatory body having jurisdiction over BNPLC or BNPLC's Parent or any Participant that requires or requests it.

14. ASSIGNMENT AND SUBLETTING BY NAI.

(a) BNPLC's Consent Required. Without the prior consent of BNPLC, NAI shall not assign, transfer, mortgage, pledge or hypothecate this Lease or any interest of NAI hereunder and shall not sublet all or any part of the Property, by operation of law or otherwise; provided, that subject to subparagraph 14.(c) below, if (and

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after) NAI completes the Construction Project pursuant to the Construction Management Agreement and so long as no Event of Default has occurred and is continuing: (1) NAI shall be entitled to sublet no more than forty-nine percent (49%) (computed on the basis of square footage) of the useable space in then existing and completed building Improvements, if any, so long as (i) any sublease by NAI is made expressly subject and subordinate to the terms hereof, and (ii) such sublease has a term equal to or less than the remainder of the then effective Term of this Lease; and (2) NAI shall be entitled to assign or transfer this Lease or any interest of NAI hereunder to an Affiliate of NAI if both NAI and its Affiliate confirm their joint and several liability hereunder by written notice given to BNPLC.

(b) Standard for BNPLC's Consent to Assignments and Certain Other Matters. Consents and approvals of BNPLC which are required by this Paragraph 14 will not be unreasonably withheld or delayed, but NAI acknowledges that BNPLC's withholding of such consent or approval shall be reasonable if BNPLC determines in good faith that (1) giving the approval may materially increase BNPLC's risk of liability for any existing or future environmental problem, or (2) giving the approval is likely to increase BNPLC's administrative burden of complying with or monitoring NAI's compliance with the requirements of this Lease.

(c) Consent Not a Waiver. No consent by BNPLC to a sale, assignment, transfer, mortgage, pledge or hypothecation of this Lease or NAI's interest hereunder, and no assignment or subletting of the Property or any part thereof in accordance with this Lease or otherwise with BNPLC's consent, shall

release NAI from liability hereunder; and any such consent shall apply only to the specific transaction thereby authorized and shall not relieve NAI from any requirement of obtaining the prior consent of BNPLC to any further sale, assignment, transfer, mortgage, pledge or hypothecation of this Lease or any interest of NAI hereunder.

15. ASSIGNMENT BY BNPLC.

(a) Restrictions on Transfers. Except by a Permitted Transfer, BNPLC shall not assign, transfer, mortgage, pledge, encumber or hypothecate this Lease or the other Operative Documents or any interest of BNPLC in and to the Property during the Term without the prior consent of NAI, which consent NAI may withhold in its sole discretion. Further, notwithstanding anything to the contrary herein contained, if withholding taxes are imposed on the rents and other amounts payable to BNPLC hereunder because of BNPLC's assignment of this Lease to any citizen of, or any corporation or other entity formed under the laws of, a country other than the United States, NAI shall not be required to compensate BNPLC or any such assignee for the withholding tax. If, in breach of this subparagraph, BNPLC transfer the Property or any part thereof by a conveyance or that does not constitute a Permitted Transfer, with the result that additional transfer taxes or other Impositions are assessed against the Property or the owner thereof, BNPLC shall be required to pay such additional transfer taxes or other Impositions.

(b) Effect of Permitted Transfer or other Assignment by BNPLC. If, without breaching subparagraph 15.(a), BNPLC sells or otherwise transfers the Property and assigns all of its rights under this Lease and the other Operative Documents, then BNPLC shall thereby be released from any obligations arising after such assumption under this Lease or the other Operative Documents (other than any liability for a breach of any continuing obligation to provide Construction Advances under the Construction Management Agreement), and NAI shall look solely to each successor in interest of BNPLC for performance of such obligations.

16. BNPLC'S RIGHT OF ACCESS.

(a) During the Term, BNPLC and BNPLC's representatives may (subject to subparagraph 16.(c)) enter the Property at any reasonable time after five Business Days advance written notice to

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NAI for the purpose of making inspections or performing any work BNPLC is authorized to undertake by the next subparagraph or for the purpose confirming whether NAI has complied with the requirements of this Lease or the other Operative Documents.

(b) If NAI fails to perform any act or to take any action required of it by this Lease or the Closing Certificate, or to pay any money which NAI is required by this Lease or the Closing Certificate to pay, and if such failure or action constitutes an Event of Default or renders BNPLC or any director, officer, employee or Affiliate of BNPLC at risk of criminal prosecution or renders BNPLC's interest in the Property or any part thereof at risk of forfeiture by forced sale or otherwise, then in addition to any other remedies specified herein or otherwise available, BNPLC may, perform or cause to be performed such act or take such action or pay such money. Any expenses so incurred by BNPLC, and any money so paid by BNPLC, shall be a demand obligation owing by NAI to BNPLC. Further, BNPLC, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. But nothing herein shall imply any duty upon the part of BNPLC to do any work which under any provision of this Lease NAI may be required to perform, and the performance thereof by BNPLC shall not constitute a waiver of NAI's default. BNPLC may during the progress of any such work permitted by BNPLC hereunder on or in the Property keep and store upon the Property all necessary materials, tools, and equipment. BNPLC shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage to NAI or the subtenants or invitees of NAI by reason of making such repairs or the performance of any such work on or in the Property, or on account of bringing materials, supplies and equipment into or through the Property during the course of such work (except for any liability in excess of the

liability insurance limits established in Exhibit B resulting from death or injury or damage to the property of third parties caused by the Established Misconduct of BNPLC or its officers, employees, or agents in connection therewith), and the obligations of NAI under this Lease shall not thereby be excused in any manner.

(c) NAI shall have no obligation to provide proprietary information (as defined in the next sentence) to BNPLC, except and to the extent that (1) BNPLC reasonably determines that BNPLC cannot accomplish the purposes of BNPLC's inspection of the Property or exercise of other rights granted pursuant to the various express provisions of this Lease and the other Operative Documents without evaluating such information. For purposes of this Lease "PROPRIETARY INFORMATION" includes NAI's intellectual property, trade secrets and other confidential information of value to NAI about, among other things, NAI's manufacturing processes, products, marketing and corporate strategies, but in no event will "proprietary information" include any disclosure of substances and materials (and their chemical composition) which are or previously have been present in, on or under the Property at the time of any inspections by BNPLC, nor will "proprietary information" include any additional disclosures reasonably required to permit BNPLC to determine whether the presence of such substances and materials has constituted a violation of Environmental Laws. In addition, under no circumstances shall NAI have any obligation to disclose to BNPLC or any other party any proprietary information of NAI (including, without limitation, any pending applications for patents or trademarks, any research and design and any trade secrets) except if and to the limited extent reasonably necessary to comply with the express provisions of this Lease or the other Operative Documents.

17. EVENTS OF DEFAULT. Each of the following events shall be an "EVENT OF DEFAULT" by NAI under this Lease:

(a) NAI shall fail to pay when due any installment of Rent due hereunder and such failure shall continue for three (3) Business Days after NAI is notified in writing thereof.

(b) NAI shall fail to cause any representation or warranty of NAI contained herein or in the Construction Management Agreement or the Closing Certificate that was false or misleading in any material respect when made to be made true and not misleading (other than as described in the other clauses of this

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Paragraph 17), or NAI shall fail to comply with any term, provision or covenant of this Lease or of the Construction Management Agreement or the Closing Certificate (other than as described in the other clauses of this Paragraph 17), and in either case shall not cure such failure prior to the earlier of (A) thirty days after written notice thereof is sent to NAI or (B) the date any writ or order is issued for the levy or sale of any property owned by BNPLC (including the Property) or any criminal prosecution is instituted or overtly threatened against BNPLC or any of its directors, officers or employees because of such failure; provided, however, that so long as no such writ or order is issued and no such criminal prosecution is instituted or overtly threatened, the period within which such failure may be cured by NAI shall be extended for a further period (not to exceed an additional sixty days) as shall be necessary for the curing thereof with diligence, if (but only if) (x) such failure is susceptible of cure but cannot with reasonable diligence be cured within such thirty day period, (y) NAI shall promptly have commenced to cure such failure and shall thereafter continuously prosecute the curing thereof with reasonable diligence and (z) the extension of the period for cure will not, in any event, cause the period for cure to extend beyond five days prior to the expiration of this Lease.

(c) NAI shall abandon the Property.

(d) NAI or any Subsidiary shall fail to make any payment or payments of principal, premium or interest, of Debt of NAI described in the next sentence when due (taking into consideration the time NAI may have to cure such failure, if any, under the documents governing such Debt). As used in this clause

14(a)(v), "DEBT" shall include only Debt (as defined in the Common Definitions and Provisions Agreement) of NAI or any of its Subsidiaries now existing or arising in the future (a) payable to BNPLC or any Affiliate of BNPLC, or (B) payable to any other Person and with respect to which \$3,000,000 or more is actually due and payable because of acceleration or otherwise.

(e) NAI: (a) shall generally not, or be unable to, or shall admit in writing its inability to, pay its debts as such debts become due; or (b) shall make an assignment for the benefit of creditors, petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (c) shall file any petition or application to commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (d) shall have had any such petition or application filed against it; or (e) by any act or omission shall indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or trustee for all or any substantial part of its property; or (f) shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of sixty days or more.

(f) One or more final judgments, decrees or orders for the payment of money in excess of \$3,000,000 in the aggregate shall be rendered against NAI and such judgments, decrees or orders shall continue unsatisfied and in effect for a period of thirty consecutive days without NAI's having obtained an agreement (or after the expiration or termination of an agreement) of the Persons entitled to enforce such judgment, decrees or orders not to enforce the same pending negotiations with NAI concerning the satisfaction or other discharge of the same.

(g) NAI shall breach the requirements of Paragraph 12, which by reference to Schedule 1 establishes certain financial covenants and other requirements.

(h) as of the effective date of this Lease, any of the representations or warranties of NAI contained in subparagraphs 2(A) - (J) of the Closing Certificate shall be false or misleading in any material respect.

(i) NAI shall fail to pay the full amount of any Supplemental Payment required by the Purchase

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Agreement on the Designated Sale Date or shall fail to provide Collateral as and when due pursuant to the Pledge Agreement Documents.

(j) NAI shall fail to comply with any term, provision or condition of the Pledge Agreements after the expiration of any applicable notice and cure period set forth in the Pledge Agreement.

18. REMEDIES.

(a) Basic Remedies. At any time after an Event of Default and after BNPLC has given any notice required by subparagraph 18.(b), BNPLC shall be entitled at BNPLC's option (and without limiting BNPLC in the exercise of any other right or remedy BNPLC may have, and without any further demand or notice except as expressly described in this subparagraph 18.(a)), to exercise any one or more of the following remedies:

(i) By notice to NAI, BNPLC may terminate NAI's right to possession of the Property. A notice given in connection with unlawful detainer proceedings specifying a time within which to cure a default shall terminate NAI's right to possession if NAI fails to cure the default within the time specified in the notice.

(ii) Upon termination of NAI's right to possession and without further demand or notice, BNPLC may re-enter the Property in any manner not prohibited by Applicable Law and take possession of all improvements, additions, alterations, equipment and fixtures thereon and

remove any persons in possession thereof. Any property on the Land or in the Improvements may be removed and stored in a warehouse or elsewhere at the expense and risk of and for the account of NAI.

(iii) Upon termination of NAI's right to possession, this Lease shall terminate and BNPLC may recover from NAI:

a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;

b) 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 NAI proves could have been reasonably avoided;

c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the scheduled Term after the time of award exceeds the amount of such rental loss that NAI proves could be reasonably avoided; and

d) Any other amount necessary to compensate BNPLC for all the detriment proximately caused by NAI's failure to perform NAI's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including the costs and expenses (including Attorneys' Fees, advertising costs and brokers' commissions) of recovering possession of the Property, removing persons or property therefrom, placing the Property in good order, condition, and repair, preparing and altering the Property for reletting, all other costs and expenses of reletting, and any loss incurred by BNPLC as a result of NAI's failure to perform NAI's obligations under the other Operative Documents.

The "WORTH AT THE TIME OF AWARD" of the amounts referred to in subparagraph 18.(a)(iii)a) and

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subparagraph 18.(a)(iii)b) shall be computed by allowing interest at the Default Rate. The "WORTH AT THE TIME OF AWARD" of the amount referred to in subparagraph 18.(a)(iii)c) 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%).

e) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

(iv) BNPLC shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in force even after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Accordingly, even if NAI has breached this Lease and abandoned the Property, this Lease shall continue in effect for so long as BNPLC does not terminate NAI's right to possession, and BNPLC may enforce all of BNPLC's rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease. NAI's right to possession shall not be deemed to have been terminated by BNPLC except pursuant to subparagraph 18.(a)(i) hereof. The following shall not constitute a termination of NAI's right to possession:

a) Acts of maintenance or preservation or efforts to relet the Property;

b) The appointment of a receiver upon the initiative of BNPLC to protect BNPLC's interest under this Lease; or

c) Reasonable withholding of consent to an assignment or

subletting, or terminating a subletting or assignment by NAI.

(b) Notice Required So Long As the Purchase Option and NAI's Initial Remarketing Rights and Obligations Continue Under the Purchase Agreement. So long as NAI remains in possession of the Property and there has been no termination of the Purchase Option and NAI's Initial Remarketing Rights and Obligations as provided Paragraph 4 of the Purchase Agreement, BNPLC's right to exercise remedies provided in subparagraph 18.(a) will be subject to the condition precedent that BNPLC shall have notified NAI, at a time when an Event of Default shall have occurred and be continuing, of BNPLC's intent to exercise remedies provided in subparagraph 18.(a) at least sixty days prior to exercising the remedies. The condition precedent is intended to provide NAI with an opportunity to exercise the Purchase Option or NAI's Initial Remarketing Rights and Obligations before losing possession of the Property pursuant to subparagraph 18.(a). The condition precedent is not, however, intended to extend any period for curing an Event of Default. Accordingly, if an Event of Default has occurred, and regardless of whether any Event of Default is then continuing, BNPLC may proceed immediately to exercise remedies provided in subparagraph 18.(a) at any time after the earlier of (i) sixty days after BNPLC has given such a notice to NAI, (ii) any date upon which NAI relinquishes possession of the Property, or (iii) any termination of the Purchase Option and NAI's Initial Remarketing Rights and Obligations.

(c) Enforceability. This Paragraph 18 shall be enforceable to the maximum extent not prohibited by Applicable Law, and the unenforceability of any provision in this Paragraph shall not render any other provision unenforceable.

(d) Remedies Cumulative. No right or remedy herein conferred upon or reserved to BNPLC is intended to be exclusive of any other right or remedy, and each and every such right and remedy shall be cumulative and in addition to any other right or remedy given to BNPLC hereunder or now or hereafter existing in

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favor of BNPLC under Applicable Law or in equity. In addition to other remedies provided in this Lease, BNPLC shall be entitled, to the extent permitted by Applicable Law or in equity, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this Lease to be performed by NAI, or to any other remedy allowed to BNPLC at law or in equity. Nothing contained in this Lease shall limit or prejudice the right of BNPLC to prove for and obtain in proceedings for bankruptcy or insolvency of NAI by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above. Without limiting the generality of the foregoing, nothing contained herein shall modify, limit or impair any of the rights and remedies of BNPLC under the Purchase Documents, and BNPLC shall not be required to give the sixty day notice described in subparagraph 18.(b) as a condition precedent to any acceleration of the Designated Sale Date or to taking any action to enforce the Purchase Documents.

19. DEFAULT BY BNPLC. If BNPLC should default in the performance of any of its obligations under this Lease, BNPLC shall have the time reasonably required, but in no event less than thirty days, to cure such default after receipt of notice from NAI specifying such default and specifying what action NAI believes is necessary to cure the default. If NAI prevails in any litigation brought against BNPLC because of BNPLC's failure to cure a default within the time required by the preceding sentence, then NAI shall be entitled to an award against BNPLC for the monetary damages proximately caused to NAI by such default.

Notwithstanding the foregoing, BNPLC's right to cure as provided in this Paragraph 19 will not in any event extend the time within which BNPLC must remove Liens Removable by BNPLC as required by Paragraph 20 beyond the Designated Sale Date.

20. QUIET ENJOYMENT. Provided NAI pays the Base Rent and all Additional Rent payable hereunder as and when due and payable and keeps and fulfills all of the terms, covenants, agreements and conditions to be performed by NAI hereunder, BNPLC shall not during the Term disturb NAI's peaceable and quiet enjoyment of the Property; however, such enjoyment shall be subject to the terms, provisions, covenants, agreements and conditions of this Lease, to Permitted Encumbrances, to Development Documents and to any other claims not constituting Liens Removable by BNPLC. If any Lien Removable by BNPLC is claimed against the Property, BNPLC will remove the Lien Removable by BNPLC promptly. Any breach by BNPLC of this Paragraph shall render BNPLC liable to NAI for any monetary damages proximately caused thereby, but as more specifically provided in subparagraph 4.(b) above, no such breach shall entitle NAI to terminate this Lease or excuse NAI from its obligation to pay Rent.

21. SURRENDER UPON TERMINATION. Unless NAI or an Applicable Purchaser purchases BNPLC's entire interest in the Property pursuant to the terms of the Purchase Agreement, NAI shall, upon the termination of NAI's right to occupancy, surrender to BNPLC the Property, including Improvements constructed by NAI and fixtures and furnishings included in the Property, free of all Hazardous Substances (including Permitted Hazardous Substances) and tenancies and with all Improvements in substantially the same condition as of the date the same were initially completed, excepting only (i) ordinary wear and tear that occurs between the maintenance, repairs and replacements required by other provisions of this Lease, and (ii) demolition, alterations and additions which are expressly permitted by the terms of this Lease and which have been completed by NAI in a good and workmanlike manner in accordance with all Applicable Laws. Any movable furniture or movable personal property belonging to NAI or any party claiming under NAI, if not removed at the time of such termination and if BNPLC shall so elect, shall be deemed abandoned and become the property of BNPLC without any payment or offset therefor. If BNPLC shall not so elect, BNPLC may remove such property from the Property and store it at NAI's risk and expense.

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22. HOLDING OVER BY NAI. Should NAI not purchase BNPLC's right, title and interest in the Property as provided in the Purchase Agreement, but nonetheless continue to hold the Property after the termination of this Lease without BNPLC's consent, whether such termination occurs by lapse of time or otherwise, such holding over shall constitute and be construed as a tenancy from day to day only, at a daily Base Rent equal to: (i) Stipulated Loss Value on the day in question, times (ii) the Default Rate for such day; divided by (iii) three hundred and sixty; subject, however, to all of the terms, provisions, covenants and agreements on the part of NAI hereunder. No payments of money by NAI to BNPLC after the termination of this Lease shall reinstate, continue or extend the Term of this Lease and no extension of this Lease after the termination thereof shall be valid unless and until the same shall be reduced to writing and signed by both BNPLC and NAI.

23. INDEPENDENT OBLIGATIONS EVIDENCED BY THE OTHER OPERATIVE DOCUMENTS. NAI acknowledges and agrees that nothing contained in this Lease shall limit, modify or otherwise affect any of NAI's obligations under the other Operative Documents, which obligations are intended to be separate, independent and in addition to, and not in lieu of, the obligations set forth herein. In the event of any inconsistency between the express terms and provisions of the Purchase Documents and the express terms and provisions of this Lease, the express terms and provisions of the Purchase Documents shall control. In the event of any inconsistency between the express terms and provisions of the Construction Management Agreement or the Closing Certificate and the express terms and provisions of this Lease, the express terms and provisions of this Lease shall control; provided, nothing herein will limit or impair NAI's obligations under the Closing Certificate following any expiration of termination of this Lease.

[The signature pages follow.]

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Lease Agreement to be executed as of January 20, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By:

Name: _____
Title: _____

[Continuation of signature pages to Lease Agreement dated to be effective January 20, 1999]

"BNPLC"

BNP LEASING CORPORATION

By:

Lloyd G. Cox, Vice President

Exhibit A

LEGAL DESCRIPTION

All that certain real property situate in the City of Sunnyvale, State of California, described as follows:

PARCEL ONE:

PARCEL "A", as shown upon that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, page 2, in the Office of the Recorder of the County of Santa Clara.

EXCEPTING THEREFROM those portions thereof described in the Deed to Santa Clara Valley Transit District, recorded October 24, 1997, Document No. 13912193; Official Records.

ALSO EXCEPTING THEREFROM that portion of said PARCEL "A" described in the deed from 495 Java Drive Associates, L.P. to 475 Java Drive Associates, L.P. recorded September 16, 1998, Document No. 14395998; Official Records, as follows:

Beginning at the Northwest corner of Parcel A as shown upon said Parcel Map filed for record in Book 216 at Page 2; thence along the Westerly line of said Parcel A, South 14 degrees 51 minutes 33 seconds West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52 minutes 02 seconds East 134.85 feet; thence North 51 degrees 07 minutes 58 seconds West 49.68; thence North 38 degrees 52 minutes 02 seconds East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07 minutes 58 seconds West 44.97 feet to the point of beginning.

TOGETHER WITH that portion of PARCEL "A", as shown upon that certain Parcel Map filed for record on November 10, 1971 in Book 292 of Maps, page 41, in the Office of the Recorder of the County of Santa Clara, described in the deed from 475 Java Drive Associates, L.P. to 495 Java Drive Associates, L.P., recorded September 16, 1998, Document No. 14395997, Official Records, as follows:

Beginning at the Northwest corner of PARCEL "A" as shown upon that certain Parcel Map recorded in Book 216 of Maps at page 2; thence along the Westerly line of said PARCEL "A", South 14 degrees 51 minutes 33 seconds West 223.09 feet to a point hereinafter referred to as Point "X"; thence continuing along the Westerly line of last said Parcel A, South 14 degrees 51 minutes 33 seconds West 186.10 feet to a point on the Northeasterly line of that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records, said point being on a non-tangent curve concave Southwesterly and having a radius of 1002.05 feet, a radial line through said point bears North 45 degrees 01 minutes 56 seconds East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20 minutes 28 seconds an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52 minutes 02 seconds East 164.71 feet to the said Point of Beginning.

PARCEL TWO:

Non-exclusive easements for storm drain purposes as granted to The Prudential Insurance Company of America by Deed recorded June 17, 1975 in Book B467, page 173, Official Records, particularly described in said deed.

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PARCEL THREE:

A non-exclusive easement for ingress to and egress from motor vehicle parking spaces as granted to The Prudential Insurance Company of America by Deed recorded June 17, 1975 in Book B467, page 178.

PARCEL FOUR:

Non-exclusive easements for ingress and egress granted by 475 Java Drive Associates, L.P. to 495 Java Drive Associates, L.P., described in the Reciprocal Easement Agreement recorded September 16, 1998, Document No. 14396001, Official Records, as follows:

ONE:

Commencing at the Northeasterly corner of that parcel of land described in the Deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records, said point lying on the Easterly line of said PARCEL "A", as shown upon that certain Parcel Map filed for record in Book 292, page 41; thence Northwesterly along the Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District along a curve to the left with a radius of 1002.05 feet, from which a radial line bears North 45 degrees 01 minutes 56 seconds East, through a central angle of 4 degrees 20 minutes 28 seconds for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52 minutes 02 seconds East 82.92 feet to a point hereafter referred to as Point A; thence North 51 degrees 07 minutes 58 seconds West 12.96 feet; thence South 38 degrees 52 minutes 02 seconds West 64.41 feet; thence Westerly along a tangent curve to the right with a radius of 20.00 feet, through a central angle of 64 degrees 20 minutes 39 seconds for an arc length of 22.46 feet to a point on said Northeasterly line of said parcel of land described in the Deed to Santa Clara Valley Transit District; thence Southeasterly along said Northeasterly line along a non-tangent curve to the right with a radius of 1002.05 feet, from which a radial line bears North 39 degrees 18 minutes 05 seconds East, through a central angle of 1 degrees 23 minutes 23 seconds for an arc length of 24.30 feet to the true point of beginning.

TWO:

Commencing at said Point A; thence North 38 degrees 52 minutes 02 seconds East 216.65 feet to the true point of beginning; thence North 51 degrees 07 minutes 58 seconds West 49.68 feet; thence North 38 degrees 52 minutes 02 seconds East 87.23 feet to the Northeasterly line of said PARCEL "A", as shown upon that certain Parcel Map filed for record in Book 216 at page 2; thence North 75 degrees 07 minutes 58 seconds West 13.91 feet along said Northeasterly line; thence South 38 degrees 52 minutes 02 seconds West 94.26 feet; thence South 51 degrees 07 minutes 58 seconds East 62.39 feet; thence North 38 degrees 52 minutes 02 seconds East 12.70 feet to the true point of beginning.

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Exhibit B

INSURANCE REQUIREMENTS

I. LIABILITY INSURANCE:

A. NAI must maintain commercial general liability ("CGL") insurance on an occurrence basis, affording immediate protection to the limit of not less than \$20,000,000 combined single limit for bodily and personal injury, death and property damage in respect of any one occurrence. The CGL insurance must be primary to, and shall receive no contribution from, any insurance policies or self-insurance programs otherwise afforded to or available to the Interested Parties, collectively or individually. Further, the CGL insurance must include blanket contractual liability coverage which insures contractual liability under the indemnifications set forth in this Lease (though such coverage or the amount thereof shall in no way limit such indemnifications).

B. Any deductible or self-insured retention applicable to the CGL insurance shall not exceed \$1,000 at any time when NAI shall continue to have the right to exercise any Issue 97-10 Election, or shall have previously exercised an Issue 97-10 Election. After the expiration of NAI's right to exercise any Issue 97-10 Election, and provided no Issue 97-10 Election has been exercised by NAI, NAI may increase any deductible or self-insured retention applicable to such insurance, but not to an amount in excess of \$500,000.

C. The forms of insurance policies (including endorsements) used to provide the CGL insurance required by this Lease, and the insurance company or companies providing the CGL insurance, must be acceptable to BNPLC. BNPLC shall have the right from time to time and at any time to review and approve such policy forms (including endorsements) and the insurance company or companies providing the insurance. Without limiting the generality of the foregoing, BNPLC may reasonably require (and unless and until NAI is otherwise notified by BNPLC, BNPLC does require) that such insurance be provided under forms and by companies consistent with the following:

- (1) Forms: CGL Insurance must be provided on Insurance Services Office ("ISO") forms CG 0001 1093 or CG 0001 0196 or equivalent substitute forms providing the same or greater coverage.
- (2) Rating Requirements: Insurance must be provided through insurance or reinsurance companies rated by the A.M. Best Company of Oldwick, New Jersey as having a policyholder's rating of A or better and a reported financial information rating of X or better.
- (3) Required Endorsements: CGL Insurance must be endorsed to provide or include:
 - (a) in any policy containing a general aggregate limit, ISO form amendment "Aggregate Limits of Insurance Per Location" CG 2504 1185 or equivalent substitute form;
 - (c) a waiver of subrogation, using ISO form CG 2404 1093 or equivalent substitute form (and under the commercial umbrella, if any), in favor of "BNP Leasing Corporation and other Interested Parties (as defined in the Common Definitions and Provisions Agreement between Network Appliance, Inc. and BNP Leasing Corporation dated January 20, 1999)";
 - (c) ISO additional insured form CG 2026 1185 or equivalent substitute form, without modification (and under the commercial umbrella, if any), designating as additional insureds "BNPLC and other Interested Parties, as defined in the Common Definitions and Provisions Agreement between Network Appliance, Inc. and BNP Leasing Corporation dated

January 20, 1999)"; and

(d) provisions entitling BNPLC to 30 days' notice from the insurer prior to any cancellation, nonrenewal or material modification to the CGL coverage.

- (4) Other Insurance: Each policy to contain standard CGL "other insurance" wording, unmodified in any way that would make it excess over or contributory with the additional insured's own commercial general liability coverage.

II. PROPERTY INSURANCE:

A. NAI must maintain property insurance in "special form" (including theft) or against "all risks," providing the broadest available coverage for all Improvements (as defined in the Common Provisions and Definitions Agreement) and equipment included in the Property, on a blanket basis if multiple buildings are involved, with no exclusions for vandalism, malicious mischief, or sprinkler leakage, and including coverage against earthquake and all coverage perils normally included within the definitions of extended coverage, vandalism, malicious mischief and, if the Property is in a flood zone, flood. In addition, boiler and machinery coverage must be maintained at all times by endorsement to the property insurance policy or by separate policy. Also, during any period of significant construction on any Improvements, the property insurance must include builder's completed value risk insurance for such Improvements, with no protective safeguard endorsement, and (without limiting the other requirements of this Exhibit) builder's completed value risk insurance must provide the following coverages:

- (1) materials and supplies at other locations awaiting installation;
- (2) materials and supplies in transit to the worksite for installation;
- (3) loss of use or consequential loss;
- (4) pollutant cleanup and removal;
- (5) freezing;
- (6) collapse during construction, resulting from fault, defect, error or omission in design, plan, specification or workmanship;
- (7) construction ordinance or law;
- (8) mechanical or electrical breakdown;
- (9) debris removal additional limit;
- (10) preservation of property;
- (11) fire department service charge;
- (12) additional interest on construction loan due to delays in the completion of construction;

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- (13) loss of rental income;
- (14) legal/professional fees (in the amount of no less than \$1,500,000) and other soft costs as reasonably determined by NAI, subject to BNPLC's approval.

B. The property insurance required hereby must provide coverage in the amount no less than replacement value (exclusive of land, foundation, footings, excavations and grading) with endorsements for contingent liability from

operation of building laws, increased cost of construction and demolition costs which may be necessary to comply with building laws. Subject to the approval of BNPLC, NAI will be responsible for determining the amount of property insurance to be maintained from time to time, but NAI must maintain such coverage on an agreed value basis to eliminate the effects of coinsurance.

C. Any deductible or self-insured retention applicable to the property insurance shall not exceed \$50,000 at any time when NAI shall continue to have the right to exercise any Issue 97-10 Election, or shall have previously exercised an Issue 97-10 Election; provided, that with respect to earthquake coverage the deductible may be as high as five percent of the value of the Improvements. After the expiration of NAI's right to exercise any Issue 97-10 Election, and provided no Issue 97-10 Election has been exercised by NAI, NAI may increase any deductible or self-insured retention applicable to such insurance, provided the increased amount shall not exceed (1) \$500,000 for all coverages other than earthquake coverage, and (2) for earthquake coverage only, five percent of the aggregate amount of the property insurance required to satisfy this lease, calculated as described in the preceding paragraph.

D. The property insurance shall cover not only the value of NAI's interest in the Improvements, but also the interest of BNPLC, with BNPLC shown as an insured as its interests may appear.

E. The forms of insurance policies (including endorsements) used to provide the property insurance required by this Lease, and the insurance company or companies providing the property insurance, must be acceptable to BNPLC. BNPLC shall have the right from time to time and at any time to review and approve such policy forms (including endorsements) and the insurance company or companies providing such insurance. Without limiting the generality of the foregoing, BNPLC may reasonably require (and unless and until NAI is otherwise notified by BNPLC, BNPLC does require) that such insurance be provided under forms and by companies consistent with the following:

(1) Rating Requirements: Insurance to be provided through insurance or reinsurance companies rated by the A.M. Best Company of Oldwick, New Jersey as having (a) a policyholder's rating of A or better, (b) a reported financial information rating of no less than X, and (c) in the case of each insurance or reinsurance company, a reported financial information rating which indicates an adjusted policyholders' surplus equal to or greater than the underwriting exposure that such company has under the insurance or reinsurance it is providing for the Property.

(2) Required Endorsements: NAI's property insurance must be endorsed to provide or include:

- (a) a waiver of subrogation in favor of "BNPLC and other Interested Parties, as defined in the Common Definitions and Provisions Agreement between Network Appliance, Inc. and BNP Leasing Corporation dated January 20, 1999)";
- (b) that NAI's insurance is primary, with any policies of BNPLC or other Interested Parties being excess, secondary and noncontributing;

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- (c) that the protection afforded to BNPLC by such insurance shall not be reduced or impaired by acts or omissions of NAI or any other beneficiary or insured; and
- (d) that BNPLC must be notified at least thirty days prior to any cancellation, nonrenewal or reduction of insurance coverage.

III. OTHER INSURANCE RELATED REQUIREMENTS:

A. BNPLC must be notified in writing immediately by NAI of claims against NAI that might cause a reduction below seventy-five percent (75%) of any aggregate limit of any policy.

B. NAI's property insurance must be evidenced by ACORD form 27 "Evidence of Property Insurance" completed and interlineated in a manner satisfactory to BNPLC to show compliance with the requirements of this Exhibit. Copies of endorsements to the property insurance must be attached to such form.

C. NAI's CGL insurance must be evidenced by ACORD form 25 "Certificate of Insurance" completed and interlineated in a manner satisfactory to BNPLC to show compliance with the requirements of this Exhibit. Copies of endorsements to the CGL insurance must be attached to such form.

D. Such evidence of required insurance must be delivered upon execution of this Lease and new certificate or evidence of insurance must be delivered no later than 30 days prior to expiration of existing policy.

E. NAI shall not cancel, fail to renew, or make or permit any material reduction in any of the policies or certificates described in this Exhibit without the prior written consent of BNPLC. The certificates (ACORD forms 27 and 25) described in this Exhibit must contain the following express provision:

"This is to certify that the policies of insurance described herein have been issued to the insured Network Appliance, Inc. for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, at least sixty days prior notice shall be given to the certificate holder."

F. The limits of liability under the liability insurance required by this Lease may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than those required by this Exhibit.

G. NAI shall provide copies, certified as complete and correct by an authorized agent of the applicable insurer, of all insurance policies required by this Exhibit within ten days after receipt of a request for such copies from BNPLC.

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Exhibit C

NOTICE OF LIBOR PERIOD ELECTION

BNP Leasing Corporation
12201 Merit Drive
Suite 860
Dallas, Texas 75251
Attention: Lloyd G. Cox

Re: Lease Agreement dated as of January 20, 1999, between Network Appliance, Inc., as tenant, and BNP Leasing Corporation, as landlord

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Lease referenced above. This letter constitutes notice to you that the LIBOR Period Election under the Lease shall be:

_____ month(s),

beginning with the first Base Rent Period that commences on or after:

_____, ____.

NOTE: YOU SHALL BE ENTITLED TO DISREGARD THIS NOTICE IF THE NUMBER OF MONTHS SPECIFIED ABOVE IS NOT A PERMITTED NUMBER UNDER THE DEFINITION OF "LIBOR PERIOD ELECTION" IN THE COMMON DEFINITIONS AND PROVISIONS AGREEMENT ATTACHED TO THE LEASE, OR IF THE DATE SPECIFIED ABOVE CONCERNING THE COMMENCEMENT OF THE LIBOR PERIOD ELECTION IS LESS THAN TEN BUSINESS DAYS AFTER YOUR RECEIPT OF THIS NOTICE. HOWEVER, WE ASK THAT YOU NOTIFY US IMMEDIATELY IF FOR ANY REASON YOU BELIEVE THIS NOTICE IS DEFECTIVE.

Executed this _____ day of _____, 19____.

Network Appliance, Inc.

Name: _____

Title: _____

[cc all Participants]

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Schedule 1

FINANCIAL COVENANTS

This Schedule 1 is attached to and made a part of (a) the Lease Agreement (the "LEASE") dated to be effective as of January 20, 1999 (the "EFFECTIVE DATE"), between BNP Leasing Corporation, a Delaware corporation ("BNPLC") and Network Appliance, Inc., a California corporation ("NAI") and (b) the Pledge Agreement (the "PLEDGE AGREEMENT") dated to be effective as of the Effective Date, among BNPLC, NAI, and Banque Nationale de Paris, as a Participant and as agent for any financial institutions that become Participants thereunder from time to time.

PART I - DEFINED TERMS

In this Schedule 1, capitalized terms used but not defined herein shall have the meaning assigned to them in the Lease or the Common Definitions and Provisions Agreement referenced in the Lease; and the following capitalized terms shall have the following meanings:

"ADJUSTED NET INCOME" means, for any fiscal period of NAI, the aggregate net income earned (or net losses incurred) during such period by NAI and its Subsidiaries (determined on a consolidated basis), plus any Permitted Non-Cash Charges deducted in determining such net income (or net loss).

"ADJUSTED EBIT" means, for any accounting period, net income (or net loss) of NAI and its Subsidiaries (determined on a consolidated basis), plus the amounts (if any) which, in the determination of net income (or net loss) for such period, have been deducted for (a) interest expense, (b) income tax expense (c) rent expense under leases of property, and (d) Permitted Non-Cash Charges.

"COLLATERAL TEST DATES" mean the Base Rent Commencement Date and the earlier of the following dates after each fiscal quarter of NAI that ends after the Base Rent Commencement Date : (1) the seventh Business Day after the release by NAI of its financial statements for the fiscal quarter; or (2) the first Business Day of the third calendar month following the end of the fiscal quarter.

"CONSOLIDATED TANGIBLE NET WORTH" means the excess of (1) the total assets, other than Intangible Assets, of NAI and its Subsidiaries (determined on a consolidated basis) over (2) the total liabilities of NAI and its Subsidiaries (determined on a consolidated basis).

"DEBT" as used in this Exhibit shall have the meaning assigned to it in the Common Definitions and Provisions Agreement, where "Debt" of any Person is defined to mean (without duplication of any item): (a) indebtedness of such Person for borrowed money; (b) indebtedness of such Person for the deferred purchase price of property or services (except trade payables and accrued expenses constituting current liabilities in the ordinary course of business); (c) the face amount of any outstanding letters of credit issued

for the account of such Person; (d) obligations of such Person arising under acceptance facilities; (e) guaranties, endorsements (other than for collection in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to provide funds to invest in any Person, or otherwise to assure a creditor against loss; (f) obligations of others secured by any Lien on property of such Person; (g) obligations of such Person as lessee under Capital Leases; and (h) the obligations of such Person, contingent or otherwise, under any lease of property or related documents (including a separate purchase agreement) which provide that such Person or any of its Affiliates must purchase or cause another Person to purchase any interest in the leased property and thereby guarantee a minimum residual value of the leased property to the lessor. For purposes of this definition, the amount of the obligations described in clause (h) of the preceding sentence with respect to

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any lease classified according to GAAP as an "operating lease," shall equal the sum of (1) the present value of rentals and other minimum lease payments required in connection with such lease [calculated in accordance with SFAS 13 and other GAAP relevant to the determination of the whether such lease must be accounted for as an operating lease or capital lease], plus (2) the fair value of the property covered by the lease; provided, however, that such amount shall not exceed the price, as of the date a determination of Debt is required hereunder, for which the lessee can purchase the leased property pursuant to any valid ongoing purchase option if, upon such a purchase, the lessee shall be excused from paying rentals or other minimum lease payments that would otherwise accrue after the purchase.

"FIXED CHARGES" means, for any accounting period, the sum (without duplication of any item) of the following charges or costs incurred or paid by NAI and its Subsidiaries (determined on a consolidated basis): (a) gross interest expense, plus (b) amortization of principal or debt discount in respect of all Debt during such period, plus (c) rent payable under all leases of property during such period, plus (d) taxes payable during such period.

"INTANGIBLE ASSETS" means assets of NAI and its Subsidiaries (determined on a consolidated basis) that are properly classified as "INTANGIBLE ASSETS" in accordance with GAAP and, in any event, shall include goodwill, patents, trade names, trademarks, copyrights, franchises, experimental expense, organization expense, unamortized debt discount and expense, and deferred charges (other than prepaid insurance, prepaid taxes and current deferred taxes to the extent any such prepaid or deferred items are classified on the balance sheet of NAI and its consolidated Subsidiaries as current assets in accordance with GAAP and with the concurrence of NAI's independent public accountants).

"MANDATORY COLLATERAL PERIOD" means any period during which, notwithstanding any contrary designation of a Collateral Percentage by NAI under the Pledge Agreement, the Collateral Percentage for purposes of the Pledge Agreement shall be one hundred percent (100%), determined as set forth in Part III of this Schedule 1.

"PERMITTED NON-CASH CHARGES" means the amounts (if any) which, in the determination of net income (or net loss) for any relevant fiscal period, have been deducted by NAI or its Subsidiaries for non-cash charges made to write down goodwill or research and development costs in connection with acquisitions permitted by this Schedule 1; provided, however, that if any such charges for any fiscal period ending after the Effective Date, when added to all such charges for prior fiscal periods (if any) ending after the Effective Date, shall exceed \$15,000,000, then neither the excess nor any such charges for subsequent fiscal periods will constitute "Permitted Non-Cash Charges" for purposes of this Exhibit.

"QUICK RATIO" means the ratio of:

(A) the sum (without duplication of any item) of the following assets of NAI and its Subsidiaries (determined on a consolidated basis): unencumbered cash; plus unencumbered short term cash investments; plus other unencumbered marketable securities which are classified as short term investments in accordance with GAAP; plus unencumbered accounts receivable, computed net of reserves for

uncollectible amounts as determined in accordance with GAAP, to

(B) the sum (without duplication of any item) of (1) all liabilities of NAI and its Subsidiaries (determined on a consolidated basis) treated as current liabilities in accordance with GAAP, plus (2) other obligations included in Total Funded Debt, the payment of which is due on demand or will become due within one year after the date on which the applicable determination of Quick Ratio is required hereunder.

"ROLLING FOUR QUARTER PERIOD" means a period of four consecutive fiscal quarters of NAI, the last of which

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quarters ends after December 31, 1999.

"TOTAL FUNDED DEBT" means the sum (without duplication of any item) of (A) all liabilities of NAI and its Subsidiaries (determined on a consolidated basis) for borrowed money or other Debt, to the extent that GAAP requires the reporting of such liabilities on the consolidated balance sheet of NAI and its Subsidiaries, excluding, however, any short term payables incurred in the ordinary course of business that are reported on the consolidated balance sheet of NAI and its Subsidiaries, and (B) other obligations of NAI and its Subsidiaries (determined on a consolidated basis), contingent or otherwise, under any lease of property or related documents (including a separate purchase agreement) which provide that NAI or any of its Subsidiaries must purchase or cause another Person to purchase any interest in the leased property and thereby guarantee a minimum residual value of the leased property to the lessor. For purposes of this definition, the amount of the obligations described in clause (B) of the preceding sentence with respect to any lease classified according to GAAP as an "operating lease," shall equal the sum of (1) the present value of rentals and other minimum lease payments required in connection with such lease [calculated in accordance with SFAS 13 and other GAAP relevant to the determination of the whether such lease must be accounted for as an operating lease or capital lease], plus (2) the fair value of the property covered by the lease; provided, however, that such amount shall not exceed the price, as of the date of the applicable determination of Total Funded Debt, for which the lessee can purchase the leased property pursuant to any valid ongoing purchase option if, upon such a purchase, the lessee shall be excused from paying rentals or other minimum lease payments that would otherwise accrue after the purchase.

PART II - FINANCIAL COVENANTS FOR LEASE AGREEMENT

NAI covenants that it shall not at any time suffer or permit:

1. Minimum Unencumbered Cash and Cash Equivalents. The sum (without duplication of any item) of the unrestricted cash, Collateral delivered and pledged under the Pledge Agreement in accordance with the requirements thereof (if any), unencumbered short term cash investments and unencumbered marketable securities classified as short term investments according to GAAP of NAI and its Subsidiaries (determined on a consolidated basis) to be less than Total Funded Debt.
2. Minimum Tangible Net Worth. Consolidated Tangible Net Worth to be less than the sum of: (a) ninety percent of the Consolidated Tangible Net Worth as of October 30, 1998; plus (b) seventy-five percent of NAI's net income (computed without deduction for net losses in any fiscal quarter) earned in each fiscal quarter since October 30, 1998; plus (c) one-hundred percent of the net proceeds of sales of stock in NAI or its Subsidiaries (other than sales to NAI or its Subsidiaries) after October 30, 1998; less (d) Permitted Non-Cash Charges for any period after October 30, 1998.
3. Minimum Quick Ratio. The Quick Ratio to be less than 1.25 to 1.00.

4. Minimum Fixed Charge Coverage. The ratio of (a) Adjusted EBIT for any Rolling Four Quarter Period to (b) Fixed Charges for the same Rolling Four Quarter Period, to be less than 1.50 to 1.00.
5. Minimum Profitability. Adjusted Net Income to be less than \$1.00 in more than one fiscal quarter of any Rolling Four Quarter Period.
6. Maximum Leverage Ratio. the ratio of (a) Total Funded Debt at the end of any Rolling Four Quarter Period to (b) the Adjusted EBIT for the same Four Quarter Rolling Period, to exceed 3.00 to 1.00.

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PART III - TESTS FOR MANDATORY COLLATERAL PERIODS

The period commencing on any Collateral Test Date, and ending on the next Collateral Test Date, shall constitute a Mandatory Collateral Period if, at the end of the latest fiscal quarter of NAI ending before such period, NAI shall have both:

(A) failed to maintain a ratio of (1) the sum (without duplication of any item) of unencumbered cash, unencumbered short term cash investments and unencumbered marketable securities classified as short term investments according to GAAP of NAI and its Subsidiaries (determined on a consolidated basis) to (2) all Debt of NAI and its Subsidiaries (determined on a consolidated basis), of at least 1.50 to 1.00; and.

(B) failed to maintain a ratio of (i) all Debt of NAI and its Subsidiaries (determined on a consolidated basis) to (ii) Consolidated Tangible Net Worth of NAI, of no more than 0.45 to 1.00.

PART III - TESTS FOR MANDATORY COLLATERAL PERIODS

The period commencing on any Collateral Test Date, and ending on the next Collateral Test Date, shall constitute a Mandatory Collateral Period if, at the end of the latest fiscal quarter of NAI ending before such period, NAI shall have both:

(A) failed to maintain a ratio of (1) the sum (without duplication of any item) of unencumbered cash, unencumbered short term cash investments and unencumbered marketable securities classified as short term investments according to GAAP of NAI and its Subsidiaries (determined on a consolidated basis) to (2) Debt of NAI and its Subsidiaries (determined on a consolidated basis), of at least 1.50 to 1.00; and.

(B) failed to maintain a ratio of (i) Debt of NAI and its Subsidiaries (determined on a consolidated basis) to (ii) Consolidated Tangible Net Worth of NAI, of no more than 0.45 to 1.00.

PART IV - OTHER COVENANTS

Without limiting NAI's obligations under the other provisions of the Operative Documents, during the Term, NAI shall not, without the prior written consent of BNPLC in each case:

A. Liens. Create, incur, assume or suffer to exist, or permit any of its Consolidated Subsidiaries to create, incur, assume or suffer to exist, any Lien, upon or with respect to any of its properties, now owned or hereafter acquired, provided that the following shall be permitted except to the extent that they would encumber any interest in the Property in violation of other provisions of the Operative Documents:

1. Liens for taxes or assessments or other government charges or levies if not yet due and payable or if they are being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained;

2. Liens imposed by law, such as mechanic's, materialmen's, landlord's, warehousemen's and carrier's Liens, and other similar Liens, securing obligations incurred in the ordinary course of business which

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are not past due for more than thirty (30) days, or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established;

3. Liens under workmen's compensation, unemployment insurance, social security or similar laws (other than ERISA);

4. Liens, deposits or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases, public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds, or other similar obligations arising in the ordinary course of business;

5. judgment and other similar Liens against assets other than the Property or any part thereof in an aggregate amount not in excess of \$3,000,000 arising in connection with court proceedings; provided that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith by appropriate proceedings;

6. easements, rights-of-way, restrictions and other similar encumbrances which, in the aggregate, do not materially interfere with the occupation, use and enjoyment by NAI or any such Consolidated Subsidiary of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto;

7. Liens securing obligations of such a Consolidated Subsidiary to NAI or to another such Consolidated Subsidiary;

8. Liens not otherwise permitted by this subparagraph A (and not encumbering the Property or any Collateral) incurred in connection with the incurrence of additional Debt or asserted to secure Unfunded Benefit Liabilities, provided that (a) the sum of the aggregate principal amount of all outstanding obligations secured by Liens incurred pursuant to this clause shall not at any time exceed five percent (5%) of Consolidated Tangible Net Worth at such time; and (b) such Liens do not constitute Liens against NAI's interest in any material Subsidiary or blanket Liens against all or substantially all of the inventory, receivables, general intangibles or equipment of NAI or of any material Subsidiary of NAI (for purposes of this clause, a "material Subsidiary" means any subsidiary whose assets represent a substantial part of the total assets of NAI and its Subsidiaries, determined on a consolidated basis in accordance with GAAP); and

9. Liens incurred in connection with any renewals, extensions or refundings of any Debt secured by Liens described in the preceding clauses of this subparagraph A, provided that there is no increase in the aggregate principal amount of Debt secured thereby from that which was outstanding as of the date of such renewal, extension or refunding and no additional property is encumbered.

B. Transactions with Affiliates. Enter into or permit any Subsidiary of NAI to enter into any material transactions (including, without limitation, the purchase, sale or exchange of property or the rendering of any service) with any Affiliates of NAI except on terms (1) that would not cause or result in a Default by NAI under the financial covenants set forth in Part II of this Schedule, and (2) that are no less favorable to NAI or the relevant Subsidiary than those that would have been obtained in a comparable transaction on an arm's length basis from an unrelated Person.

C. Compliance. Fail to preserve and maintain all licenses, permits, governmental approvals, rights, privileges and franchises necessary for the conduct of its business; or fail to comply with the provisions of all documents pursuant to which NAI is organized and/or which govern NAI's continued existence

and with the requirements of all laws, rules, regulations and orders of a governmental agency applicable to NAI and/or its

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business.

D. Insurance. Fail to maintain and keep in force insurance of the types and in amounts customarily carried in lines of business similar to that of NAI, including but not limited to fire, extended coverage, public liability, flood, property damage and workers' compensation, with all such insurance carried with companies and in amounts satisfactory to BNPLC, or fail to deliver to BNPLC from time to time at BNPLC's request schedules setting forth all insurance then in effect.

E. Facilities. fail to keep all properties useful or necessary to NAI's business in good repair and condition, or to from time to time make necessary repairs, renewals and replacements thereto so that such properties shall be fully and efficiently preserved and maintained.

F. Taxes and Other Liabilities. Fail to pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real or personal, including without limitation federal and state income taxes and state and local property taxes and assessments, except (a) such as NAI may in good faith contest or as to which a bona fide dispute may arise, and (b) for which NAI has made provisions, to BNPLC's satisfaction, for eventual payment thereof in the event that NAI is obligated to make such payment.

G. Capital Expenditures. Make any additional investment in fixed assets in any fiscal year in excess of an aggregate of \$20,000,000.00.

H. Merger, Consolidation, Transfer of Assets. Merge into or consolidate with any other entity (unless NAI is the surviving entity and remains in compliance of all provisions of the Operative Documents); or make any substantial change in the nature of NAI's business as conducted as of the date hereof; or sell, lease, transfer or otherwise dispose of all or a substantial or material portion of NAI's assets except in the ordinary course of its business.

I. Loans, Advances, Investments. Make any loans or advances to or investments in any person or entity, except (a) any of the foregoing existing as of, and disclosed to BNPLC prior to, the date hereof, (b) loans to employees for travel advances, relocation loans and other loans in the ordinary course of business, (c) investments in accordance with NAI's investment policy, as in effect from time to time, (d) existing investments in subsidiaries and joint ventures which have been disclosed to BNPLC in writing prior to the date hereof, and new investments in subsidiaries and joint ventures in amounts up to an aggregated of \$10,000,000.00, (e) loans to employees, officers, directors to finance or refinance the purchase of equity securities of NAI.

J. Dividends, Distributions. Declare or pay any dividend or distribution either in cash, stock or any other property on NAI's stock now or hereafter outstanding, nor redeem, retire, repurchase or otherwise acquire any shares of any class of NAI's stock now or hereafter outstanding.

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COMMON DEFINITIONS AND PROVISIONS AGREEMENT

BETWEEN

BNP LEASING CORPORATION

AND

NETWORK APPLIANCE, INC.

DATED AS OF JANUARY 20, 1999

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COMMON DEFINITIONS AND PROVISIONS AGREEMENT

This Common Definitions and Provisions Agreement, by and between BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and NETWORK APPLIANCE, INC., a California corporation ("NAI"), is dated as of January 20, 1999, the Effective Date.

RECITALS

Contemporaneously with the execution of this Common Definitions and Provisions Agreement, NAI is executing the Closing Certificate (as defined below) in favor of BNPLC, and BNPLC and NAI are executing the Lease (as defined below), the Construction Management Agreement (as defined below), and the Purchase Agreement (as defined below), all of which concern the Property (as defined below). Each of the Closing Certificate, the Lease, the Construction Management Agreement and the Purchase Agreement (together with this Common Definitions and Provisions Agreement and the Pledge Agreement [as defined below], the "OPERATIVE DOCUMENTS") are intended to create separate and independent obligations upon the parties thereto. However, NAI and BNPLC intend that all of the Operative Documents share certain consistent definitions and other miscellaneous provisions. To that end, the parties are executing this Common Definitions and Provisions Agreement and incorporating it by reference into each of the other Operative Documents.

AGREEMENTS

ARTICLE I - LIST OF DEFINED TERMS

UNLESS A CLEAR CONTRARY INTENTION APPEARS, THE FOLLOWING TERMS SHALL HAVE THE RESPECTIVE INDICATED MEANINGS AS USED HEREIN AND IN THE OTHER OPERATIVE DOCUMENTS:

"ABSOLUTE NAI CONSTRUCTION OBLIGATIONS" means the following:

(1) Construction-Period Indemnity Payments required because of or in connection with or arising out of Environmental Losses incurred or suffered by any Interested Party;

(2) Construction-Period Indemnity Payments required because of or in connection with or arising out of Losses incurred or suffered by BNPLC that BNPLC would not have incurred or suffered but for any act or any omission of NAI or of any NAI's contractors or subcontractors during the period that the Construction Management Agreement remains in force or during any other period that NAI remains in possession or control of the Construction Project (excluding, however, as described below certain Losses consisting of claims related to any failure by NAI to complete the Construction Project);

(3) Construction-Period Indemnity Payments required because of or in connection with or arising out of Losses incurred or suffered by BNPLC that would not have been incurred but for any fraud, misapplication of funds (including Construction Advances), illegal acts, or willful misconduct on the part of the NAI or its employees or agents or any other party for whom NAI is responsible; and

(4) Construction-Period Indemnity Payments required because of or in connection with or arising out of Losses incurred or suffered by BNPLC that would not have been incurred but for any bankruptcy proceeding involving NAI.

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For purposes of clause (2) of this definition, "acts and omissions of NAI" shall include (i) any decision by NAI to make a Scope Change without the prior approval of BNPLC, (ii) any failure of NAI to maintain insurance required by the Lease or the Construction Management Agreement, (iii) any decision not to continue or complete Work under the Construction Management Agreement because of a change in NAI's facility needs or in NAI's plans to meet its facility needs (such as, for example, a decision by NAI to lease or acquire another less expensive facility as an alternative to the Improvements), (iv) any failure by NAI to reserve termination rights in Third Party Contracts as required by subparagraph 1(A) (2) (b) of the Construction Management Agreement, and (v) any other breach by NAI of the Construction Management Agreement.

Thus, for example, if a third party asserts a claim for damages against BNPLC because of injuries the third party sustained while on the Land as a result of NAI's breach of its obligation under the Construction Management Agreement to keep the Land and the Improvements thereon in a reasonably safe condition as Work progresses under NAI's direction and control, then any Construction-Period Indemnity Payment required because of such third party claim will constitute an Absolute NAI Construction Obligation under clause (2) of this definition. Similarly, if a claim against BNPLC by a third party injured on the Land during the progress of the Work is uninsured or under-insured only because of NAI's failure to obtain liability insurance in accordance with the requirements of the Lease (the premiums for which insurance are reimbursable from Construction Advances as provided in the Construction Management Agreement), then Construction-Period Indemnity Payments to BNPLC for the uninsured or under-insured Losses arising out of the third party claim will constitute Absolute NAI Construction Obligations under clause (2) of this definition.

It is understood, however, that a failure of NAI to complete construction of the Construction Project will not necessarily constitute a breach of the Construction Management Agreement, given that NAI may elect to terminate the Construction Management Agreement as provided in subparagraph 5(D) thereof. In the event the Construction Management Agreement is terminated by NAI pursuant to subparagraph 5(D) thereof or by BNPLC pursuant to subparagraph 5(E) thereof, clause (2) of this definition will not be construed to include Construction-Period Indemnity Payments, the sole reason for which are Losses suffered by BNPLC consisting of claims related to NAI's failure to complete the Construction Project.

"ACTIVE NEGLIGENCE" of any Person (including BNPLC) means, and is limited to, the negligent conduct on the Property (and not mere omissions) by such Person or by others acting and authorized to act on such Person's behalf in a manner that proximately causes actual bodily injury or property damage for

which NAI does not carry (and is not obligated by the Lease to carry) insurance. "ACTIVE NEGLIGENCE" shall not include (1) any negligent failure of BNPLC to act when the duty to act would not have been imposed but for BNPLC's status as owner of the Property or as a party to the transactions described in the Lease, (2) any negligent failure of any other Interested Party to act when the duty to act would not have been imposed but for such party's contractual or other relationship to BNPLC or participation or facilitation in any manner, directly or indirectly, of the transactions described in the Lease or other Operative Documents, or (3) the exercise in a lawful manner by BNPLC (or any party lawfully claiming through or under BNPLC) of any right or remedy provided in or under the Lease or the other Operative Documents.

"ADDITIONAL RENT" shall have the meaning assigned to it in subparagraph 3. (d) of the Lease.

"ADMINISTRATIVE AGENCY FEE" shall have the meaning assigned to it in subparagraph 9 of the Lease.

"ADJUSTED EBIT" shall have the meaning assigned to it in Part I of Schedule 1 attached to the Lease and to

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the Pledge Agreement.

"ADVANCE DATE" means, regardless of whether any Construction Advance shall actually be made thereon, the first Business Day of every calendar month, beginning with January 2, 1999 and continuing regularly thereafter to and including the Base Rent Commencement Date.

"AFFILIATE" of any Person means any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, the term "control" when used with respect to any Person means the power to direct the management of policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"APPLICABLE LAWS" means any or all of the following, to the extent applicable to NAI or the Property or the Lease or the other Operative Documents: restrictive covenants; zoning ordinances and building codes; flood disaster laws; health, safety and environmental laws and regulations; the Americans with Disabilities Act and other laws pertaining to disabled persons; and other laws, statutes, ordinances, rules, permits, regulations, orders, determinations and court decisions.

"APPLICABLE PURCHASER" means any third party designated by NAI to purchase BNPLC's interest in the Property and in any Escrowed Proceeds as provided in the Purchase Agreement.

"ARRANGEMENT FEE" shall have the meaning assigned to it in subparagraph 3. (e) of the Lease.

"ATTORNEYS' FEES" means the expenses and reasonable fees of counsel to the parties incurring the same, excluding costs or expenses of in-house counsel (whether or not accounted for as general overhead or administrative expenses), but otherwise including printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. Such terms shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any manner of proceeding is brought with respect to the matter for which such fees and expenses were incurred.

"BALANCE OF UNPAID CONSTRUCTION-PERIOD INDEMNITY PAYMENTS" shall have the meaning assigned to it in subparagraph 1(A) (1) of the Purchase Agreement.

"BANKING RULES CHANGE" means either: (1) the introduction of or any change in any law or regulation applicable to BNPLC, BNPLC's Parent or any other

Participant, or in the generally accepted interpretation by the institutional lending community of any such law or regulation, or in the interpretation of any such law or regulation asserted by any regulator, court or other governmental authority (other than any change by way of imposition or increase of reserve requirements included in the Eurodollar Rate Reserve Percentage) or (2) the compliance by BNPLC, BNPLC's Parent or any other Participant with any new guideline or new request from any central bank or other governmental authority (whether or not having the force of law).

"BASE RATE" for any Construction Period or Base Rent Period means a rate equal to the higher of (1) the Prime Rate in effect on the first day of such period, or (2) the rate which is fifty basis points (50/100 of 1%) above the Fed Funds Rate for that period.

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"BASE RENT" means the rent payable by NAI pursuant to subparagraph 3.(a) of the Lease.

"BASE RENT COMMENCEMENT DATE" means the earlier of (1) the first Business Day of January, 2000, (2) the first Business Day of the first calendar month to follow by twenty days or more the day upon which any Completion Notice is given, or (3) the first Business Day of the first calendar month upon which the Funded Construction Allowance shall equal or exceed the Maximum Construction Allowance. For example, if on the first Business Day of November, 1999 construction of the Construction Project is continuing, the Funded Construction Allowance is \$23,990,000 (before adding any Carrying Costs for the preceding month) and the Maximum Construction Allowance is \$24,000,000 (assuming the Initial Funding Advance is \$20,000,000), and if Carrying Costs of \$17,500 would be added to the Funded Construction Allowance on such day if the Construction Allowance were not limited to the Maximum Construction Allowance, then (absent an extension by BNPLC as described below) such day shall be the Base Rent Commencement Date and on such day \$10,000 will be added to the Funded Construction Allowance as Carrying Cost and \$7,500 will be payable as Base Rent pursuant to subparagraph 3.(c)(i) of the Lease. Notwithstanding the forgoing, if for any reason (including a termination of the Construction Management Agreement) NAI has not completed the Construction Project thirty days in advance of the scheduled Base Rent Commencement Date determined pursuant to the first sentence of this definition, BNPLC shall be entitled (but not obligated) to extend the Base Rent Commencement Date one or more times and at any time before the Construction Project actually is complete and ready for occupancy. To so extend the Base Rent Commencement Date, BNPLC shall notify NAI thereof and of the date to which the Base Rent Commencement Date is extended, which may be the first Business Day of any calendar month designated by BNPLC in the notice of extension, provided that BNPLC will not so designate any date more than sixty days after the date upon which the Construction Project is expected by BNPLC (at the time of the designation) to be complete.

"BASE RENT DATE" means a date upon which Base Rent must be paid under the Lease, all of which dates shall be the first Business Day of a calendar month. The first Base Rent Date shall be determined as follows:

a) If a LIBOR Period Election of one month is in effect on the Base Rent Commencement Date, then the first Business Day of the first calendar month following the Base Rent Commencement Date shall be the first Base Rent Date.

b) If the LIBOR Period Election in effect on the Base Rent Commencement Date is three months or six months, then the first Business Day of the third calendar month following the Base Rent Commencement Date shall be the first Base Rent Date.

Each successive Base Rent Date after the first Base Rent Date shall be the first Business Day of the first or third calendar month following the calendar month which includes the preceding Base Rent Date, determined as follows:

(1) If a LIBOR Period Election of one month is in effect on a Base Rent Date, then the first Business Day of the first calendar month following such Base Rent Date shall be the next following Base Rent Date.

(2) If a LIBOR Period Election of three months or six months is in effect on a Base Rent Date, then the first Business Day of the third calendar month following such Base Rent Date shall be the next following Base Rent Date.

Thus, for example, if the Base Rent Commencement Date falls on the first Business Day of September, 1999 and a

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LIBOR Period Election of two months commences on the Base Rent Commencement Date, then the first Base Rent Date shall be the first Business Day of November, 1999.

"BASE RENT PERIOD" means a period for which Base Rent must be paid under the Lease, each of which periods shall correspond to the LIBOR Period Election for such period. The first Base Rent Period shall begin on and include the Base Rent Commencement Date, and each successive Base Rent Period shall begin on and include the Base Rent Date upon which the preceding Base Rent Period ends. Each Base Rent Period, including the first Base Rent Period, shall end on but not include the first or second Base Rent Date after the Base Rent Date upon which such period began, determined as follows:

(1) If the LIBOR Period Election for a Base Rent Period is one month or three months, then such Base Rent Period shall end on the first Base Rent Date after the Base Rent Date upon which such period began.

(2) If the LIBOR Period Election for a Base Rent Period is six months, then such Base Rent Period shall end on the second Base Rent Date after the Base Rent Date upon which such period began.

The determination of Base Rent Periods can be illustrated by two examples:

1) If NAI makes a LIBOR Period Election of three months for a hypothetical Base Rent Period beginning on the first Business Day in January, 2001, then such Base Rent Period will end on but not include the first Base Rent Date after it begins; that is, such Base Rent Period will end on the first Business Day in April, 2001, the third calendar month after January, 2001.

2) If, however, NAI makes a LIBOR Period Election of six months for the hypothetical Base Rent Period beginning the first Business Day in January, 2001, then such Base Rent Period will end on but not include the second Base Rent Date after it begins; that is, the first Business Day in July, 2001.

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

"BNPLC'S PARENT" means BNPLC's Affiliate, Banque Nationale de Paris, a bank organized and existing under the laws of France and any successors of such bank.

"BREAKAGE COSTS" means any and all costs, losses or expenses incurred or sustained by BNPLC's Parent (as a Participant or otherwise) or any other Participant, for which BNPLC's Parent or the Participant shall request reimbursement from BNPLC, because of the resulting liquidation or redeployment of deposits or other funds:

(1) used to make or maintain Funding Advances upon application of a Qualified Prepayment or upon any sale of the Property pursuant to the Purchase Agreement, if such application or sale occurs on any day other than the last day of a Construction Period or Base Rent Period; or

(2) reserved to provide a Construction Advance that NAI requests, but thereafter declines to take for any reason, or that NAI requests but is not permitted to take because of its failure to satisfy any of the conditions specified in the Construction Management

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(3) used to make or maintain Funding Advances upon the acceleration of the end of any Base Rent Period pursuant subparagraph 3.(c)(iii) of the Lease.

Breakage Costs will include, for example, losses attributable to any decline in LIBOR as of the effective date of any application described in the clause (1) preceding, as compared to LIBOR used to determine the Effective Rate then in effect. Each determination by BNPLC's Parent or the applicable Participant of Breakage Costs shall, in the absence of clear and demonstrable error, be conclusive and binding upon NAI.

"BREAK EVEN PRICE" shall have the meaning assigned to it in subparagraph 1(B)(1) of the Purchase Agreement.

"BUSINESS DAY" means any day that is (1) not a Saturday, Sunday or day on which commercial banks are generally closed or required to be closed in New York City, New York or San Francisco, California, and (2) a day on which dealings in deposits of dollars are transacted in the London interbank market; provided that if such dealings are suspended indefinitely for any reason, "Business Day" shall mean any day described in clause (1).

"CAPITAL ADEQUACY CHARGES" means any additional amounts BNPLC's Parent or any other Participant requests BNPLC to pay as compensation for an increase in required capital as provided in subparagraph 5.(b)(ii) of the Lease.

"CAPITAL LEASE" means any lease which has been or should be capitalized on the books of the lessee in accordance with GAAP or for federal income tax purposes.

"CARRYING COSTS" means the charges added to and made a part of the Outstanding Construction Allowance (and thus also added to and made a part of the Funded Construction Allowance) from time to time on and before the Base Rent Commencement Date pursuant to and as more particularly described in subparagraph 6.(a) of the Lease.

"CLOSING CERTIFICATE" means the Closing Certificate and Agreement dated as of January 20, 1999 executed by NAI in favor of BNPLC, as such Closing Certificate may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"CMA SUSPENSION EVENT" shall have the meaning assigned to it in subparagraph 5(A) of the Construction Management Agreement.

"CMA SUSPENSION NOTICE" shall have the meaning assigned to it in subparagraph 5(B)(1) of the Construction Management Agreement.

"CMA SUSPENSION PERIOD" shall have the meaning assigned to it in subparagraph 5(C) of the Construction Management Agreement.

"CMA TERMINATION EVENT" shall have the meaning assigned to it in subparagraph 5(B)(3) of the Construction Management Agreement.

"CODE" means the Internal Revenue Code of 1986, as amended.

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"COLLATERAL" shall have the meaning assigned to it in the Pledge Agreement.

"COLLATERAL PERCENTAGE" for each Base Rent Period means the Collateral Percentage for such period determined under (and as defined in) the Pledge

Agreement; provided, however, for purposes of the Lease, the Collateral Percentage for any Base Rent Period shall not exceed a fraction; the numerator of which fraction shall equal the value (determined as provided in the Pledge Agreement) of all Collateral (a) that is, on the first day of such period, held by the Deposit Takers under (and as defined in) the Pledge Agreement subject to a Qualifying Security Interest (as defined below), (b) that is free from claims or security interests held or asserted by any third party, and (c) that is not in excess of Stipulated Loss Value; and the denominator of which fraction shall equal the Stipulated Loss Value on the first day of such period. "QUALIFYING SECURITY INTEREST" means a first priority perfected security interest under the Pledge Agreement.

"COMMITMENT FEE RATE" means, for each Construction Period, the amount established as described below in this definition on the date (in this definition, the "CFR TEST DATE") that is two Business Days prior to such Construction Period by reference to the ratio calculated by dividing (1) Adjusted EBIT for the then latest Rolling Four Quarters Period that ended prior to (and for which NAI has reported earnings as necessary to compute Adjusted EBIT) into (2) the total Debt of NAI and its Subsidiaries (determined on a consolidated basis) as of the end of such Rolling Four Quarters Period. The Commitment Fee Rate shall be established at the Level in the pricing grid below which corresponds to such ratio; provided, that:

(a) for any Construction Period commencing on or prior to the first Business Day of June, 1999, the Commitment Fee Rate will be the amount indicated for Level II in the pricing grid below;

(b) promptly after earnings are reported by NAI for the latest quarter in any Rolling Four Quarters Period, NAI must notify BNPLC of any resulting change in the Commitment Fee Rate under this definition, and no reduction in the Commitment Fee Rate from one period to the next will be effective for purposes of the Operative Documents unless, prior to the CFR Test Date for the next period, NAI shall have provided BNPLC with a written notice setting forth and certifying the calculation under this definition that justifies the reduction; and

(c) notwithstanding anything to the contrary in this definition, on any date when an Event of Default has occurred and is continuing, the Commitment Fee Rate shall equal the amount indicated for Level IV in the pricing grid below.

LEVELS	RATIO OF TOTAL DEBT TO ADJUSTED EBIT	COMMITMENT FEE RATE
Level I	less than 1.0	20.0 basis points
Level II	greater than or equal to 1.0, but less than 1.5	25.0 basis points
Level III	greater than or equal to 1.5, but less than 2.0	37.5 basis points
Level IV	greater than or equal to 2.0	50.0 basis points

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All determinations of the Commitment Fee Rate by BNPLC shall, in the absence of clear and demonstrable error, be binding and conclusive for purposes of the Lease. Further BNPLC may, but shall not be required, to rely on the determination of the Commitment Fee Rate set forth in any notice delivered by NAI as described above in clause (b) of this definition.

"COMMON DEFINITIONS AND PROVISIONS AGREEMENT" means this Agreement, which is incorporated by reference into each of the other Operative Documents.

"COMPLETION NOTICE" means (1) a notice required by subparagraph 1(B) of the Construction Management Agreement from NAI to BNPLC, advising BNPLC when construction of the Construction Project is substantially complete, or (2) a notice permitted by subparagraph 6.(g) of the Lease from BNPLC to NAI, advising NAI after any Landlord's Election to Complete Construction when construction of the Construction Project is substantially complete or that BNPLC no longer intends to continue such construction.

"CONSTRUCTION ADVANCES" means (1) actual advances of funds made by or on behalf of BNPLC to or on behalf of NAI pursuant to Paragraph 2 of the Construction Management Agreement, and (2) amounts considered as Construction Advances pursuant to subparagraph 6.(e) of the Lease.

"CONSTRUCTION ADVANCE REQUEST" shall have the meaning assigned to it in subparagraph 2(C) (1) of the Construction Management Agreement.

"CONSTRUCTION ALLOWANCE" means the allowance, consisting of Construction Advances and Carrying Costs, which is to be provided for the Construction Project as more particularly described in the Construction Management Agreement and Paragraph 6 of the Lease.

"CONSTRUCTION MANAGEMENT AGREEMENT" means the Construction Management Agreement dated as of January 20, 1999 between BNPLC and NAI, as such Management Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"CONSTRUCTION MILESTONE" shall have the meaning assigned to it in subparagraph 5(B) (2) of the Construction Management Agreement.

"CONSTRUCTION PERIOD" means each successive period of approximately one month, with the first Construction Period beginning on and including the Effective Date and ending on but not including the first Advance Date. Each successive Construction Period after the first Construction Period shall begin on and include the day on which the preceding Construction Period ends and shall end on but not include the next following Advance Date, until the last Construction Period, which shall end on but not include the earlier of the Base Rent Commencement Date or any Designated Sale Date upon which NAI or any Applicable Purchaser shall purchase BNPLC's interest in the Property pursuant to the Purchase Agreement.

"CONSTRUCTION-PERIOD INDEMNITY PAYMENTS" shall have the meaning assigned to it in subparagraph 5.(d) (ii) of the Lease.

"CONSTRUCTION PROJECT" means the new buildings or other substantial Improvements to be constructed, or the alteration of existing Improvements, as described generally in Exhibit B attached to the Construction Management Agreement.

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"CURRENT AS IS MARKET VALUE" means an amount equal to the fair market value of BNPLC's interest in the Property (or any applicable portion thereof), AS IS, WHERE IS AND WITH ALL FAULTS on the date in question. Whenever a determination of Current AS IS Market Value is required by the express terms of any Operative Document, it will be determined accordance with the following procedure unless BNPLC and NAI have otherwise agreed in writing upon a Current AS IS Market Value at that time:

- (A) BNPLC and NAI shall each, within ten days after written notice from either to the other, select an appraiser. If either BNPLC or NAI fails to select an appraiser within the required period, then the appraiser who has been timely selected shall conclusively determine the fair market value of the Property (or applicable portion thereof) in accordance with this definition within forty-five days after his or her selection.
- (B) Upon the selection of the two appraisers as provided above, such appraisers shall proceed to determine the fair market value of BNPLC's interest in the Property (or applicable portion thereof) in accordance with this clause (v). Such appraisals shall be submitted in writing no later than forty-five days after

selection of the second appraiser. If the fair market value as determined by such appraisers is identical, such sum shall be Current AS IS Market Value. If the fair market value indicated by the lower appraisal differs from the fair market value indicated by the higher appraisal by less than five percent (5%) of the fair market value indicated by the higher appraisal, then Current AS IS Market Value shall be the sum of the two appraisal figures divided by two (2). If either appraiser fails to timely submit his or her appraisal, the timely submitted appraisal shall be determinative of Current AS IS Market Value.

- (C) If the fair market value indicated by the lower appraisal differs from the fair market value indicated by the higher appraisal by more than five percent (5%) of the fair market value indicated by the higher appraisal, then the two appraisers previously selected shall select a third appraiser. The name of such appraiser shall be submitted at the same time the written appraisals are due. Such third appraiser shall then review the previously submitted appraisals and select the one that, in his professional opinion, more closely reflects the fair market value of BNPLC's interest in the Property (or applicable portion thereof), such selection to be submitted in writing no later than ten days after selection of the third appraiser. Such selection shall be determinative of Current AS IS Market Value.
- (D) In making any such determination of fair market value, the appraisers shall assume that any improvements then located on the Property (or applicable portion thereof) or under construction thereon constitute the highest and best use, and that neither the Lease nor the Purchase Agreement add any value to the Property. Each appraiser selected hereunder shall be an independent MAI-designated appraiser with not less than ten years' experience in commercial real estate appraisal in Sunnyvale, California and surrounding areas.

"DEBT" of any Person means (without duplication of any item): (a) indebtedness of such Person for borrowed money; (b) indebtedness of such Person for the deferred purchase price of property or services (except trade payables and accrued expenses constituting current liabilities in the ordinary course of business); (c) the face amount of any outstanding letters of credit issued for the account of such Person; (d) obligations of such Person arising under acceptance facilities; (e) guaranties, endorsements (other than for collection in the ordinary course of

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business) and other contingent obligations of such Person to purchase, to provide funds for payment, to provide funds to invest in any Person, or otherwise to assure a creditor against loss; (f) obligations of others secured by any Lien on property of such Person; (g) obligations of such Person as lessee under Capital Leases; and (h) the obligations of such Person, contingent or otherwise, under any lease of property or related documents (including a separate purchase agreement) which provide that such Person or any of its Affiliates must purchase or cause another Person to purchase any interest in the leased property and thereby guarantee a minimum residual value of the leased property to the lessor. For purposes of this definition, the amount of the obligations described in clause (h) of the preceding sentence with respect to any lease classified according to GAAP as an "operating lease," shall equal the sum of (1) the present value of rentals and other minimum lease payments required in connection with such lease [calculated in accordance with SFAS 13 and other GAAP relevant to the determination of the whether such lease must be accounted for as an operating lease or capital lease], plus (2) the fair value of the property covered by the lease; provided, however, that such amount shall not exceed the price, as of the date a determination of Debt is required hereunder, for which the lessee can purchase the leased property pursuant to any valid ongoing purchase option if, upon such a purchase, the lessee shall be excused from paying rentals or other minimum lease payments that would otherwise accrue after the purchase.

"DEFAULT" means any event which, with the passage of time or the giving of notice or both, would (if not cured within any applicable cure period) constitute an Event of Default.

"DEFAULT RATE" means, for any period prior to the Designated Sale Date, a floating per annum rate equal to two percent (2%) above the Prime Rate, and for any period commencing on or after the Designated Sale Date, Default Rate shall mean a floating per annum rate equal to five percent (5%) above the Prime Rate. However, in no event will the "Default Rate" at any time exceed the maximum interest rate permitted by law.

"DEFAULTING PARTICIPANT" shall have the meaning assigned to it in Section 1 of the Participation Agreement.

"DEFECTIVE WORK" shall have the meaning assigned to it in subparagraph 1(A)(2)(f) of the Construction Management Agreement.

"DEPOSIT TAKER" shall have the meaning assigned to it in the Pledge Agreement.

"DEPOSIT TAKER LOSSES" shall have the meaning assigned to it in the Pledge Agreement.

"DESIGNATED SALE DATE" means the earlier of:

(1) the first Business Day of February, 2004; or

(2) any Business Day designated as such in an irrevocable, unconditional notice given by NAI to BNPLC before NAI has made an Issue 97-10 Election; provided, that to be effective for purposes of this definition, any such notice from NAI to BNPLC must designate a Business Day that is more than thirty days after the date of such notice; and provided, further, to be effective for purposes of this definition, the notice must include an express, unconditional, unequivocal and irrevocable (A) waiver by NAI of any remaining right NAI may have under any of the Operative Documents to make any Issue 97-10 Election, and (B) acknowledgment by NAI that because of NAI's election to accelerate the Designated Sale Date, the Maximum Remarketing Obligation will equal the Break Even Price under the Purchase Agreement; or

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(3) any Business Day designated as such in a notice given by BNPLC to NAI after the effective date of any termination of the Construction Management Agreement as provided in subparagraphs 5(D) or 5(E) thereof; provided, that to be effective for purposes of this definition, any such notice from BNPLC to NAI must designate a Business Day that is more than thirty days after the date of such notice; or

(4) the first Business Date after any termination by NAI of the Purchase Option and NAI's Initial Remarketing Rights and Obligations as provided in subparagraph 4(B) of the Purchase Agreement; or

(5) any Business Day designated as such in a notice given by BNPLC to NAI when any Event of Default has occurred and is continuing; provided, that to be effective for purposes of this definition, any such notice from BNPLC to NAI must designate a Business Day that is more than thirty days after the date of such notice.

"DEVELOPMENT DOCUMENTS" means the contracts, ordinances and other documents described in Exhibit C attached to the Closing Certificate, as the same may be modified from time to time in accordance with the Lease and the Closing Certificate, and any applications, permits or certificates concerning or affecting the use or development of the Property that may be submitted, issued or executed from time to time as contemplated in such contracts, ordinances and other documents or that BNPLC may hereafter execute, approve or consent to at the request of NAI.

"DIRECT PAYMENTS TO PARTICIPANTS" means the amounts paid or required to

be paid directly to Participants on the Designated Sale Date as provided in Section 6.2 of the Pledge Agreement at the direction of and for NAI by the collateral agent appointed pursuant to the Pledge Agreement from all or any part of the Collateral described therein.

"EFFECTIVE DATE" means January 20, 1999.

"EFFECTIVE RATE" means for each Construction Period and for each Base Rent Period, the per annum rate determined by dividing (A) LIBOR for such Construction Period or Base Rent Period, as the case may be, by (B) one hundred percent (100%) minus the Eurodollar Rate Reserve Percentage for such Construction Period or Base Rent Period. If LIBOR or the Eurodollar Rate Reserve Percentage changes from Construction Period to Construction Period or from Base Rent Period to Base Rent Period, then the Effective Rate shall be automatically increased or decreased as of the date of such change, as the case may be, without prior notice to NAI. If for any reason BNPLC determines that it is impossible or unreasonably difficult to determine the Effective Rate with respect to a given Construction Period or Base Rent Period in accordance with the foregoing, then the "EFFECTIVE RATE" for that Construction Period or Base Rent Period shall equal any published index or per annum interest rate determined in good faith by BNPLC's Parent to be comparable to LIBOR at the beginning of the first day of that period. A comparable interest rate might be, for example, the then existing yield on short term United States Treasury obligations (as compiled by and published in the then most recently published United States Federal Reserve Statistical Release H.15(519) or its successor publication), plus or minus a fixed adjustment based on BNPLC's Parent's comparison of past eurodollar market rates to past yields on such Treasury obligations. Any determination by BNPLC of the Effective Rate under this definition shall, in the absence of clear and demonstrable error, be conclusive and binding upon NAI.

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"ENVIRONMENTAL LAWS" means any and all existing and future Applicable Laws pertaining to safety, health or the environment, or to Hazardous Substances or Hazardous Substance Activities, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended, "CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984 (as amended, "RCRA").

"ENVIRONMENTAL CUTOFF DATE" means the later of the dates upon which (i) this Lease terminates, or (ii) NAI surrenders possession and control of the Property and ceases to have interest in the Land or Improvements or rights with respect thereto under any of the Operative Documents.

"ENVIRONMENTAL LOSSES" means Losses suffered or incurred by BNPLC or any other Interested Party, directly or indirectly, relating to or arising out of, based on or as a result of any of the following: (i) any Hazardous Substance Activity on or prior to the Environmental Cutoff Date; (ii) any violation on or prior to the Environmental Cutoff Date of any applicable Environmental Laws relating to the Property or to the ownership, use, occupancy or operation thereof; (iii) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental or quasi-governmental agency or authority in connection with any Hazardous Substance Activity that occurs or is alleged to have occurred on or prior to the Environmental Cutoff Date; or (iv) any claim, demand, cause of action or investigation, or any action or other proceeding, whether meritorious or not, brought or asserted against any Interested Party which directly or indirectly relates to, arises from, is based on, or results from any of the matters described in clauses (i), (ii), or (iii) of this definition or any allegation of any such matters. For purposes of determining whether Losses constitute "Environmental Losses," as the term is used in this Lease, any actual or alleged Hazardous Substance Activity or violation of Environmental Laws relating to the Property will be presumed to have occurred prior to the Environmental Cutoff Date unless NAI establishes by clear and convincing evidence to the contrary that the relevant Hazardous Substance Activity or violation of Environmental Laws did not occur or commence prior to the Environmental Cutoff Date.

"ENVIRONMENTAL REPORTS" means collectively the following reports (whether one or more), which were provided by NAI to BNPLC prior to the Effective Date: Phase I and Screening Level Phase II Environmental Assessment of TRW SL01 Office Building Located at 495 Java Drive, Sunnyvale California, dated October 1, 1997, prepared by McLaren Hart Environmental Engineering Corporation.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, together with all rules and regulations promulgated with respect thereto.

"ERISA AFFILIATE" means any Person who for purposes of Title IV of ERISA is a member of NAI's controlled group, or under common control with NAI, within the meaning of Section 414 of the Internal Revenue Code, and the regulations promulgated and rulings issued thereunder.

"ESCROWED PROCEEDS" means, subject to the exclusions specified in the next sentence, any money that is received by BNPLC from time to time during the Term (and any interest earned thereon) from any party (1) under any property insurance policy as a result of damage to the Property, (2) as compensation for any restriction imposed by any governmental authority upon the use or development of the Property or for the condemnation of the Property or any portion thereof, (3) because of any judgment, decree or award for physical damage to the Property or (4) as compensation under any title insurance policy or otherwise as a result of any title defect or claimed title defect with respect to the Property; provided, however, in determining the amount of "Escrowed Proceeds" there shall be deducted all expenses and costs of every type, kind and nature (including Attorneys' Fees) incurred by

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BNPLC to collect such proceeds. Notwithstanding the foregoing, "Escrowed Proceeds" will not include (A) any payment to BNPLC by a Participant or an Affiliate of BNPLC that is made to compensate BNPLC for the Participant's or Affiliate's share of any Losses BNPLC may incur as a result of any of the events described in the preceding clauses (1) through (4), (B) any money or proceeds that have been applied as a Qualified Prepayment or to pay any Breakage Costs or other costs incurred in connection with a Qualified Prepayment, (C) any money or proceeds that, after no less than ten days notice to NAI, BNPLC returns or pays to a third party because of BNPLC's good faith belief that such return or payment is required by law, (D) any money or proceeds paid by BNPLC to NAI or offset against any amount owed by NAI, or (E) any money or proceeds used by BNPLC in accordance with the Lease for repairs or the restoration of the Property or to obtain development rights or the release of restrictions that will inure to the benefit of future owners or occupants of the Property. Until Escrowed Proceeds are paid to NAI pursuant to Paragraph 10 of the Lease, transferred to a purchaser under the Purchase Agreement as therein provided or applied as a Qualified Prepayment or as otherwise described in the preceding sentence, BNPLC shall keep the same deposited in one or more interest bearing accounts, and all interest earned on such account shall be added to and made a part of Escrowed Proceeds.

"ESTABLISHED MISCONDUCT" of a Person means, and is limited to: (1) if the Person is bound by the Operative Documents or the Participation Agreement, a breach by such Person of the express provisions of the Operative Documents or the Participation Agreement, as applicable, that continues beyond any period for cure provided therein, and (2) conduct of such Person or its Affiliates that has been determined to constitute wilful misconduct or Active Negligence in or as a necessary element of a final judgment rendered against such Person by a court with jurisdiction to make such determination. Established Misconduct of one Interested Party shall not be attributed to a second Interested Party unless the second Interested Party is an Affiliate of the first. Negligence which does not constitute Active Negligence shall not in any event constitute Established Misconduct. For purposes of this definition, "conduct of a Person" will include (1) the conduct of an employee of that Person, but only to the extent that the employee is acting within the scope of his employment by that Person, as determined in or as a necessary element of a final judgment rendered against such Person by a court with jurisdiction to make such determination, and (2) the conduct of an agent of that Person (such as an independent environmental

consultant engaged by that Person), but only to the extent that the agent is, as determined in or as a necessary element of a final judgment rendered against such Person by a court with jurisdiction to make such determination, (x) acting within the scope of the authority granted to him by such Person, (y) not acting with the consent or approval of or under the direction of NAI or NAI's Affiliates, employees or agents, and (z) not acting in good faith to mitigate Losses that such Person may suffer because of a breach or repudiation by NAI of the Lease or the Purchase Documents.

"EUROCURRENCY LIABILITIES" shall have the meaning assigned to it in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"EURODOLLAR RATE RESERVE PERCENTAGE" means, for purposes of determining the Effective Rate for any Construction Period or Base Rent Period, the reserve percentage applicable two Business Days before the first day of such period under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) for BNPLC's Parent with respect to liabilities or deposits consisting of or including Eurocurrency Liabilities (or with respect to any other category or liabilities by reference to which LIBOR is determined) having a term comparable to such period.

"EVENT OF DEFAULT" shall have the meaning assigned to it in subparagraph 17 of the Lease.

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"EXCLUDED TAXES" means (1) all federal, state and local income taxes upon Base Rent, Administrative Agency Fees, any interest paid to BNPLC or any Participant pursuant to subparagraph 3.(j) of the Lease, and any additional compensation claimed by BNPLC pursuant to subparagraph 5.(b)(ii) of the Lease; (2) any transfer or change of ownership taxes assessed because of BNPLC's transfer or conveyance to any third party of any rights or interest in this Lease, the Purchase Agreement or the Property (other than any such taxes assessed because of any Permitted Transfer under clauses (1), (3), (4), (5), (6) or (7) of the definition of Permitted Transfer in this Agreement), (3) all federal, state and local income taxes upon any amounts paid as reimbursement for or to satisfy Losses incurred by BNPLC or any Participant to the extent such taxes are offset by a corresponding reduction of BNPLC's or the applicable Participant's income taxes because of BNPLC's or such Participant's deduction of the reimbursed Losses from its taxable income or because of any tax credits attributable thereto. If, however, a change in Applicable Laws after the Effective Date results in an increase in such taxes for any reason other than an increase in the applicable tax rates (e.g., a disallowance of deductions that would otherwise be available against payments described in clause (A) of this definition), then for purposes of the Operative Documents, the term "Excluded Taxes" will not include the increase in such taxes attributable to the change.

"EXISTING CONTRACT" means the Agreement of Purchase and Sale dated June 11, 1998 (as amended by a First Amendment of Agreement of Purchase and Sale and work letter dated December 22, 1998), between Seller and NAI covering the Land described in Exhibit A attached to the Lease, the interests of NAI therein having being assigned to BNPLC pursuant to the assignment dated as of January 20, 1999 between NAI and BNPLC, with the consent and approval of Seller.

"FAILED COLLATERAL TEST DATE" means any date upon which commences a Mandatory Collateral Period as described in Part III of Schedule 1 attached to the Lease.

"FED FUNDS RATE" means, for any period, a fluctuating interest rate (expressed as a per annum rate and rounded upwards, if necessary, to the next 1/16 of 1%) equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rates are not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by BNPLC's Parent from three Federal funds brokers of

recognized standing selected by BNPLC's Parent. All determinations of the Fed Funds Rate by BNPLC's Parent shall, in the absence of clear and demonstrable error, be binding and conclusive upon NAI.

"FOCB NOTICE" shall have the meaning assigned to it in subparagraph 5(B) (1) of the Construction Management Agreement.

"FUNDED CONSTRUCTION ALLOWANCE" means on any day the Outstanding Construction Allowance on that day, including all Construction Advances and Carrying Costs added to the Outstanding Construction Allowance on or prior to that day, plus the amount of any Qualified Prepayments deducted on or prior to that day in the calculation of such Outstanding Construction Allowance, less any Voluntary NAI Construction Contributions added on or prior to that day in the calculation of such Qualified Prepayments.

"FUNDING ADVANCES" means (1) the Initial Funding Advance and (2) all future advances made by BNPLC's Parent or any other Participant to or on behalf of BNPLC to allow BNPLC to provide the Construction Allowance.

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"FUTURE WORK" shall have the meaning assigned to it in subparagraph 2(C) (2) (b) of the Construction Management Agreement.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time, applied on a basis consistent with those used in the preparation of the financial statements referred to in subparagraph 13. (a) of the Lease (except for changes with which NAI's independent public accountants concur).

"HAZARDOUS SUBSTANCE" means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, regulated under, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste or substance," "infectious waste," "toxic substance," "toxic pollutant," or any other formulation intended to define, list or classify substances by reason of deleterious properties, including ignitability, corrosiveness, reactivity, carcinogenicity, toxicity or reproductive toxicity; (ii) petroleum, any fraction of petroleum, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iii) asbestos and any asbestos containing material; and (v) any other material that, because of its quantity, concentration or physical or chemical characteristics, poses a significant present or potential hazard to human health or safety or to the environment if released into the workplace or the environment.

"HAZARDOUS SUBSTANCE ACTIVITY" means any actual, proposed or threatened use, storage, holding, release (including any spilling, leaking, leaching, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water, groundwater or any body of water), discharge, deposit, placement, generation, processing, construction, treatment, abatement, removal, disposal, disposition, handling or transportation of any Hazardous Substance from, under, in, into or on the Property, including the movement or migration of any Hazardous Substance from surrounding property, surface water, groundwater or any body of water under, in, into or onto the Property and any resulting residual Hazardous Substance contamination in, on or under the Property. "HAZARDOUS SUBSTANCE ACTIVITY" also means any existence of Hazardous Substances on the Property that would cause the Property or the owner or operator thereof to be in violation of, or that would subject the Property to any remedial obligations under, any Environmental Laws, including CERCLA and RCRA, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances pertaining to the Property.

"IMPOSITIONS" means all sales, excise, ad valorem, gross receipts, business, transfer, stamp, occupancy, rental and other taxes, levies, fees,

charges, surcharges, assessments or penalties which arise out of or are attributable to the Lease or which are imposed upon BNPLC or the Property because of the ownership, leasing, occupancy, sale or operation of the Property, or any part thereof or interest therein, or relating to or required to be paid by any of the Permitted Encumbrances or the Development Documents, excluding only Excluded Taxes. "IMPOSITIONS" shall include real estate taxes imposed because of a change of use or ownership of the Property on or prior to the date of any sale by BNPLC pursuant to the Purchase Agreement.

"IMPROVEMENTS" means any and all (1) buildings and other real property improvements now or hereafter erected on the Land, and (2) equipment (e.g., HVAC systems, elevators and plumbing fixtures) attached to the buildings or other real property improvements, the removal of which would cause structural or other material damage to the buildings or other real property improvements or would materially and adversely affect the value or

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use of the buildings or other real property improvements.

"INITIAL FUNDING ADVANCE" means the advance made by BNPLC's Parent (directly or through one or more of its Affiliates) to or on behalf of BNPLC on or prior to the Effective Date to cover the cost of BNPLC's acquisition of the Property and certain Transaction Expenses and other amounts described in this definition. The amount of the Initial Funding Advance may be confirmed by a separate closing certificate executed by NAI as of the Effective Date. To the extent that BNPLC does not itself use the entire Initial Funding Advance to pay Transaction Expenses incurred by BNPLC, the remainder thereof will be advanced to NAI, with the understanding that NAI shall use any such amount advanced for one or more of the following purposes: (1) the payment or reimbursement of Transaction Expenses incurred by NAI; (2) the payment or reimbursement of expenses incurred by NAI in connection with the Construction Project, including the planning, design, engineering, construction and permitting of thereof; (3) the maintenance of the Property; or (4) the payment of Rents next due.

"INTERESTED PARTY" means each of (1) BNPLC, its Affiliates and its successors and assigns as to the Property or any part thereof or any interest therein, (2) BNPLC's Parent, and (3) any other Participants and their permitted successors and assigns under the Participation Agreement; provided, however, none of the following shall constitute an Interested Party: (a) any Person to whom BNPLC may transfer an interest in the Property by a conveyance that is not a Permitted Transfer and others that cannot lawfully claim an interest in the Property except through or under such a transfer by BNPLC, (b) NAI or any Person that cannot lawfully claim an interest in the Property except through or under a conveyance from NAI, or (c) any Applicable Purchaser under the Purchase Agreement and any Person that cannot lawfully claim an interest in the Property except through or under a conveyance from such Applicable Purchaser.

"ISSUE 97-1 NON-PERFORMANCE-RELATED SUBJECTIVE EVENT OF DEFAULT" means an Event of Default that is unrelated to the Property or the use or maintenance thereof and that results solely from (A) a breach by NAI of a provision in any Operative Document, the occurrence of which breach cannot be objectively determined, or (B) any other event described in subparagraph 17.(e) of the Lease, the occurrence of which event cannot be objectively determined. For example, an Event of Default under subparagraph 17.(e) of the Lease resulting solely from a failure of NAI to "generally" pay its debts as such debts become due (in contrast to a failure of NAI to pay Rent to BNPLC as it becomes due under the Lease) would constitute an Issue 97-1 Non-performance-related Subjective Event of Default. In no event, however, will the term "Issue 97-1 Non-performance-related Subjective Event of Default" include an Event of Default resulting from (1) a failure of NAI to make any payment required to BNPLC under the Operative Documents, (2) a breach by NAI of the provisions set forth in Schedule 1 attached to the Lease (which set forth financial covenants), (3) any failure of NAI to use, maintain and insure the Property in accordance with the requirements of the Lease, or (4) any failure of NAI to pay the full amount of any Supplemental Payment on the Designated Sale Date as required by the Purchase Agreement. Except as provided in subparagraph 1(A)(2)(c)(i) of the Purchase Agreement, the characterization of any Event of Default as an Issue 97-1 Non-performance-related Subjective Event of Default will not affect the rights

or remedies available to BNPLC because of the Event of Default.

"ISSUE 97-10 ELECTION" means any of the following elections by NAI: (1) an election to terminate the Construction Management Agreement as provided in subparagraph 5(D) thereof; and (2) an election to terminate NAI's Initial Remarketing Rights and Obligations as provided in subparagraph 4(B) of the Purchase Agreement.

"ISSUE 97-10 PREPAYMENT" means a payment to BNPLC, required by subparagraph 3.(h) of the Lease or by subparagraphs 4(B) or 4(C) of the Purchase Agreement, equal in each case to (A) the Maximum Permitted

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Prepayment, computed as of the date on which the payment becomes due, less (B) the accreted value of any prior payments actually received by BNPLC from NAI constituting Issue 97-10 Prepayments or Voluntary NAI Construction Contributions. For purposes of the preceding sentence, "accreted value" of a payment shall mean the amount of the payment plus an amount equal to the interest that would have accrued on the payment if it bore interest at the Effective Rate.

"LAND" means the land covered by the land described in Exhibit A attached to the Closing Certificate, the Lease and the Purchase Agreement.

"LANDLORD'S ELECTION TO CONTINUE CONSTRUCTION" shall have the meaning assigned to it in subparagraph 6.(e) of the Lease.

"LEASE" means the Lease Agreement dated as of January 20, 1999 between BNPLC, as landlord, and NAI, as tenant, pursuant to which NAI has agreed to lease BNPLC's interest in the Property, as such Lease Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"LIBOR" means, for purposes of determining the Effective Rate for each Construction Period or Base Rent Period, the rate determined by BNPLC's Parent to be the average rate of interest per annum (rounded upwards, if necessary, to the next 1/16 of 1%) of the rates at which deposits of dollars are offered or available to BNPLC's Parent in the London interbank market at approximately 11:00 a.m. (London time) on the second Business Day preceding the first day of such period. BNPLC shall instruct BNPLC's Parent to consider deposits, for purposes of making the determination described in the preceding sentence, that are offered: (i) for delivery on the first day of such Construction Period or Base Rent Period, as the case may be, (ii) in an amount equal or comparable to the total (projected on the applicable date of determination by BNPLC's Parent) Stipulated Loss Value on the first day of such period, and (iii) for a time equal or comparable to the length of such period. If BNPLC's Parent so chooses, it may determine LIBOR for any period by reference to the rate reported by the British Banker's Association on Page 3750 of the Telerate Service at approximately 11:00 a.m. (London time) on the second Business Day preceding the first day of such period. If for any reason BNPLC's Parent determines that it is impossible or unreasonably difficult to determine LIBOR with respect to a given Construction Period or Base Rent Period in accordance with the foregoing, or if BNPLC's Parent shall determine that it is unlawful (or any central bank or governmental authority shall assert that it is unlawful) for BNPLC, BNPLC's Parent or any Participant to provide or maintain Funding Advances during any Construction Period or Base Rent Period for which Carrying Costs or Base Rent is computed by reference to LIBOR, then "LIBOR" for that period shall equal the Base Rate for that period. All determinations of LIBOR by BNPLC's Parent shall, in the absence of clear and demonstrable error, be binding and conclusive upon NAI.

"LIBOR PERIOD ELECTION" for any Base Rent Period means a period of one month, three months or six months as designated by NAI at least five Business Days prior to the commencement of such Base Rent Period by a notice given to BNPLC in the form of Exhibit C attached to the Lease. (For purposes of the Lease a LIBOR Period Election for any Base Rent Period shall also be considered the LIBOR Period Election in effect on the Base Rent Commencement Date or Base Rent Date upon which such Base Rent Period begins.) Any Libor Period Election so

designated by NAI shall remain in effect for the entire Base Rent Period specified in NAI's notice to BNPLC (provided such Base Rent Period commences at least ten Business Days after BNPLC's receipt of the notice) and for all subsequent Base Rent Periods until a new designation becomes effective in accordance with the provisions set forth in this definition. Notwithstanding the foregoing, however: (1) NAI shall not be entitled to

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designate a LIBOR Period Election that would cause a Base Rent Period to extend beyond the end of the scheduled Term; (2) changes in the LIBOR Period Election shall become effective only upon the commencement of a new Base Rent Period; (3) for each Base Rent Period that occurs within any Mandatory Collateral Period, the LIBOR Period Election shall be one month; and (4) if NAI fails to make a LIBOR Period Election consistent with the foregoing requirements for any Base Rent Period, or if an Event of Default shall have occurred and be continuing on the third Business Day preceding the commencement of any Base Rent Period, the LIBOR Period Election for such Base Rent Period shall be deemed to be one month.

"LIEN" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature thereof, any agreement to sell receivables with recourse, and the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction). In addition, for purposes of subparagraph A.8 of the Lease, "Lien" includes any Liens under ERISA relating to Unfunded Benefit Liabilities of which NAI is required to notify BNPLC under subparagraph 13.(a)(vii) of the Lease (irrespective of whether NAI actually notifies BNPLC as required thereunder).

"LIENS REMOVABLE BY BNPLC" means, and is limited to, Liens encumbering the Property that are asserted (1) other than as contemplated in the Operative Documents, by BNPLC itself, (2) by third parties lawfully claiming through or under BNPLC (which for purposes of the Lease shall include any judgment liens established against the Property because of a judgment rendered against BNPLC and shall also include any liens established against the Property to secure past due Excluded Taxes), or (3) by third parties lawfully claiming under a deed or other instrument duly executed by BNPLC; provided, however, Liens Removable by BNPLC shall not include (A) any Permitted Encumbrances or Development Documents (regardless of whether claimed through or under BNPLC), (B) the Operative Documents or any other document executed by BNPLC with the knowledge of (and without objection by) NAI's counsel contemporaneously with the execution and delivery of the Operative Documents, (C) Liens which are neither lawfully claimed through or under BNPLC (as described above) nor claimed under a deed or other instrument duly executed by BNPLC, (D) Liens claimed by NAI or claimed through or under a conveyance made by NAI, (E) Liens arising because of BNPLC's compliance with Applicable Law, the Operative Documents, Permitted Encumbrances, the Development Documents or any written request made by NAI, (F) Liens securing the payment of property taxes or other amounts assessed against the Property by any governmental authority, other than to secure the payment of past due Excluded Taxes or to secure damages caused by (and attributed by any applicable principles of comparative fault to) BNPLC's own Established Misconduct, (G) Liens resulting from or arising in connection with any breach by NAI of the Operative Documents; or (H) Liens resulting from or arising in connection with any Permitted Transfer that occurs more than thirty days after any Designated Sale Date upon which, for any reason, NAI or an Affiliate of NAI or any Applicable Purchaser shall not purchase BNPLC's interest in the Property pursuant to the Purchase Agreement for a cash price to BNPLC (when taken together with any Supplemental Payment made by NAI pursuant to Paragraph 1(A)(2) of the Purchase Agreement, in the case of a purchase by an Applicable Purchaser) equal to the Break Even Price.

"LOSSES" means the following: any and all losses, liabilities, damages (whether actual, consequential, punitive or otherwise denominated), demands, claims, administrative or legal proceedings, actions, judgments, causes of action, assessments, fines, penalties, costs and expenses (including Attorneys' Fees and the fees of outside accountants and environmental consultants), of any and every kind or character, foreseeable and unforeseeable, liquidated and contingent, proximate and remote.

"MANDATORY COLLATERAL PERIOD" shall have the meaning assigned to it in Part I of Schedule 1 attached to

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the Lease and to the Pledge Agreement.

"MATERIAL ENVIRONMENTAL COMMUNICATION" means a communication between NAI or its agents and a regulatory agency or third party, which causes, or potentially could cause (whether by implementation of or response to said communication), a material change in the scope, duration, or nature of any Remedial Work.

"MAXIMUM CONSTRUCTION ALLOWANCE" means an amount equal to \$44,000,000, less the Initial Funding Advance.

"MAXIMUM PERMITTED TERMINATION FEES" shall have the meaning indicated in subparagraph 1(A) (2) (b) of the Construction Management Agreement.

"MAXIMUM PERMITTED PREPAYMENT" as of any date means the amount equal to the lesser of the following:

- (1) the sum of:
 - (A) eighty-nine and nine-tenths of one percent (89.9%) of the aggregate of (i) all Project Costs paid or incurred on or prior to such date, plus (ii) ninety-seven percent (97%) of (a) Carrying Costs added to the Outstanding Construction Allowance on or prior to such date, and (b) Commitment Fees reimbursed pursuant to the Construction Management Agreement on or prior to such date, plus (iii) any Upfront Syndication Fees paid to Participants pursuant to the Closing Certificate and Agreement and reimbursed pursuant to the Construction Management Agreement on or prior to such date; plus
 - (B) any amount by which the value of BNPLC's interest in the Land and its appurtenances are less than the price paid by BNPLC for the same as determined reasonably and in good faith by BNPLC after consulting with an independent appraiser; or
- (2) eighty-nine and nine-tenths of one percent (89.9%) of Stipulated Loss Value on such date.

"MAXIMUM REMARKETING OBLIGATION" shall have the meaning indicated in subparagraph 1(A) (2) (c) of the Purchase Agreement.

"MINIMUM EXTENDED REMARKETING PRICE" shall have the meaning assigned to it in subparagraph 2(B) of the Purchase Agreement.

"MULTIEMPLOYER PLAN" means a multiemployer plan as defined in Section 3(37) of ERISA to which contributions have been made by NAI or any ERISA Affiliate during the preceding six years and which is covered by Title IV of ERISA.

"NAI" means Network Appliance, Inc., a California corporation.

"NAI'S EXTENDED REMARKETING PERIOD" shall have the meaning assigned to it in subparagraph 2(A) of the

Purchase Agreement.

"NAI'S EXTENDED REMARKETING RIGHT" shall have the meaning assigned to it in subparagraph 2(A) of the Purchase Agreement.

"NAI'S INITIAL REMARKETING RIGHTS AND OBLIGATIONS" shall have the meaning assigned to it in subparagraph 1(A)(2) of the Purchase Agreement.

"NORMAL TENANT IMPROVEMENTS" shall have the meaning assigned to it in subparagraph 3(A) of the Construction Management Agreement.

"NOTICE OF NAI'S INTENT TO TERMINATE" shall have the meaning assigned to it in subparagraph 5(D) of the Construction Management Agreement.

"OPERATIVE DOCUMENTS" means the Closing Certificate, the Lease, the Construction Management Agreement, the Purchase Agreement, the Pledge Agreement and this Common Definitions and Provisions Agreement.

"OUTSTANDING CONSTRUCTION ALLOWANCE" shall have the meaning assigned to it in subparagraph 6.(a) of the Lease.

"PARTICIPANT" means BNPLC's Parent and any other Person that, upon becoming a party to the Participation Agreement and the Pledge Agreement by executing supplements as contemplated therein, agrees from time to time to participate in all or some of the risks and rewards to BNPLC of the Lease and the Purchase Documents. As of the Effective Date, the only Participant is BNPLC's Parent, but BNPLC may agree after the Effective Date to share in risks and rewards of the Lease and the Purchase Documents with other Participants. However, no Person other than BNPLC's Parent and its Affiliates shall qualify as a Participant for purposes of the Operative Documents or other agreements concerning the Property to which NAI is a party unless such Person, during the continuance of an Event of Default or otherwise with NAI's prior written approval (which approval will not be unreasonably withheld), became a party to the Pledge Agreement and to the Participation Agreement by executing supplements to those agreements as contemplated therein.

"PARTICIPATION AGREEMENT" means the Participation Agreement between BNPLC and BNPLC's Parent dated as of the Effective Date, pursuant to which BNPLC's Parent has agreed to participate in the risks and rewards to BNPLC of the Lease and the other Operative Documents, as such Participation Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms. It is understood, however, that because the Participation Agreement expressly makes NAI a third party beneficiary of the Participant's obligations thereunder to make advances to BNPLC in connection with Construction Advances under the Construction Management Agreement, NAI's consent will be required to any amendment of the Participation Agreement that purports to limit or excuse such obligations.

"PBGC" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"PERIOD" means a Construction Period or a Base Rent Period, as the context requires.

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"PERMITTED ENCUMBRANCES" means (i) the encumbrances and other matters affecting the Property that are set forth in Exhibit B attached to the Closing Certificate, (ii) any easement agreement or other document affecting title to the Property executed by BNPLC at the request of or with the consent of NAI, (iii) any Liens securing the payment of Impositions which are not delinquent or claimed to be delinquent or which are being contested in accordance with subparagraph 5.(a) of the Lease, and (iv) mechanics' and materialmen's liens for amounts not past due or claimed to be past due or which are being contested in

accordance with subparagraph 11.(c) of the Lease.

"PERMITTED HAZARDOUS SUBSTANCE USE" means the use, generation, storage and offsite disposal of Permitted Hazardous Substances in strict accordance with applicable Environmental Laws and with due care given the nature of the Hazardous Substances involved; provided, the scope and nature of such use, generation, storage and disposal shall not:

(1) exceed that reasonably required for the construction of the Construction Project in accordance with the Lease and the Construction Management Agreement or for the operation of the Property for the purposes expressly permitted under subparagraph 2.(a) of the Lease; or

(2) include any disposal, discharge or other release of Hazardous Substances from the Property in any manner that might allow such substances to reach surface water or groundwater, except (i) through a lawful and properly authorized discharge (A) to a publicly owned treatment works or (B) with rainwater or storm water runoff in accordance with Applicable Laws and any permits obtained by NAI that govern such runoff; or (ii) any such disposal, discharge or other release of Hazardous Substances for which no permits are required and which are not otherwise regulated under applicable Environmental Laws.

Further, notwithstanding anything to the contrary herein contained, Permitted Hazardous Substance Use shall not include any use of the Property in a manner that requires a RCRA treatment, storage or disposal permit, including a landfill, incinerator or other waste disposal facility.

"PERMITTED HAZARDOUS SUBSTANCES" means Hazardous Substances used and reasonably required for the construction of the Construction Project or for the use of the Property by NAI and its permitted subtenants and assigns for the purposes expressly permitted by subparagraph 2.(a) of the Lease, in either case in strict compliance with all Environmental Laws and with due care given the nature of the Hazardous Substances involved. Without limiting the generality of the foregoing, Permitted Hazardous Substances shall include usual and customary office, laboratory and janitorial products.

"PERMITTED TRANSFER" means any one or more of the following: (1) the creation or conveyance by BNPLC of rights and interests in favor of any Participant pursuant to the Participation Agreement; (2) the creation or conveyance of rights and interests in favor of or to Banque Nationale de Paris (through its San Francisco Branch or otherwise), as BNPLC's Parent, or any other Qualified Affiliate of BNPLC, provided that NAI must be notified before any such conveyance to Banque Nationale de Paris or another Qualified Affiliate of (A) any interest in the Property or any portion thereof by an assignment or other document which will be recorded in the real property records of San Mateo County, California or (B) BNPLC's entire interest in the Property; (3) any assignment or conveyance by BNPLC or its permitted successors or assigns to any present or future Participant of any lien or security interest against the Property (in contrast to a conveyance of BNPLC's fee estate in the Land and Improvements) or of any interest in Rent, payments required by or under the Purchase Documents or payments to be generated from the Property after the Term, provided that such assignment or conveyance is made expressly subject to the rights of NAI under the Operative Documents; (4) any agreement to exercise or refrain from

exercising rights or remedies under the Operative Documents made by BNPLC with any present or future Participant; (5) any assignment or conveyance by BNPLC requested by NAI or required by any Permitted Encumbrance, by the Purchase Agreement, by the Existing Contract, by any other Development Contract or by Applicable Laws; or (6) any assignment or conveyance after a Designated Sale Date on which NAI shall not have purchased or caused an Applicable Purchaser to purchase BNPLC's interest in the Property and, if applicable, after the expiration of the thirty day cure period specified in Paragraph 4(D) of the Purchase Agreement.

"PERSON" means an individual, a corporation, a partnership, an

unincorporated organization, an association, a joint stock company, a joint venture, a trust, an estate, a government or agency or political subdivision thereof or other entity, whether acting in an individual, fiduciary or other capacity.

"PERSONAL PROPERTY" shall have the meaning assigned to it on page 2 of the Lease.

"PLAN" means any employee benefit or other plan established or maintained, or to which contributions have been made, by NAI or any ERISA Affiliate of NAI during the preceding six years and which is covered by Title IV of ERISA, other than a Multiemployer Plan.

"PLEDGE AGREEMENT" means the Pledge Agreement dated as of the date hereof between BNPLC and NAI, pursuant to which NAI may pledge certificates of deposit as security for NAI's obligations under the Purchase Agreement (and for the corresponding obligations of BNPLC to the Participants under the Participation Agreement), as such Pledge Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"PRE-COMMENCEMENT CASUALTY" shall have the meaning assigned to it in subparagraph 1(A) (2) (a) of the Construction Management Agreement.

"PREEMPTIVE NOTICE" shall have the meaning assigned to it in subparagraph 5(B) (2) of the Construction Management Agreement.

"PRIME RATE" means the prime interest rate or equivalent charged by BNPLC's Parent in the United States of America as announced or published by BNPLC's Parent from time to time, which need not be the lowest interest rate charged by BNPLC's Parent. If for any reason BNPLC's Parent does not announce or publish a prime rate or equivalent, the prime rate or equivalent announced or published by either CitiBank, N.A. or any New York branch or office of Credit Commercial de France as selected by BNPLC shall be used to compute the rate describe in the preceding sentence. The prime rate or equivalent announced or published by such bank need not be the lowest rate charged by it. The Prime Rate may change from time to time after the Effective Date without notice to NAI as of the effective time of each change in rates described in this definition.

"PRIOR WORK" shall have the meaning assigned to it in subparagraph 2(C) (2) (b) of the Construction Management Agreement.

"PROJECT COSTS" means the following:

(a) the difference computed by subtracting \$9,200,000 (the value of the Land, if unimproved, determined by an appraisal performed for BNPLC prior to the Effective Date) from the purchase price paid by BNPLC to Seller at the closing under the Existing Contract, it being agreed that such difference represents the portion of the purchase price that is properly allocable to cost of the existing Improvements

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under construction at the time of such purchase (to be distinguished from the portion of the purchase price allocable to the Land);

(b) costs incurred for the Work (as defined in the Construction Management Agreement), including not only hard costs incurred for the new Improvements described in Exhibit C attached to the Construction Management Agreement, but also the following costs to the extent reasonably incurred in connection with the Construction Project:

- soft costs, such as architectural fees, engineering fees and fees and costs paid in connection with obtaining project permits and approvals required by governmental authorities or the Development Documents,
- site preparation costs, and

- costs of offsite and other public improvements required as conditions of governmental approvals for the Construction Project;

(c) costs incurred to maintain insurance required by (and consistent with the requirements of) the Lease prior to the Base Rent Commencement Date, and costs of repairing any damage to the Improvements by fire or other casualty prior to the Base Rent Commencement Date, to the extent such cost is not covered by insurance proceeds made available to NAI as provided in the Lease;

(d) a fraction of the cost of any title insurance policy or binder provided to BNPLC in connection with its acquisition of the Land and Improvements, the numerator of which fraction is the difference computed by subtracting the price paid by BNPLC for the Land from the maximum dollar amount of coverage provided by the title insurance, and the denominator of which fraction is equal to such maximum dollar amount of coverage;

(e) Impositions that have accrued or become due under the Lease prior to the Base Rent Commencement Date; and

(f) cancellation or termination fees or other compensation payable by NAI or BNPLC pursuant to any contract concerning the Construction Project made by NAI or BNPLC with any general contractor, architect, engineer or other third party because of any election by NAI or BNPLC to cancel or terminate such contract.

Project Costs will include costs incurred by BNPLC to continue or complete the Construction Project after any Landlord's Election to Continue Construction as provided in subparagraph 6.(e) of the Lease.

"PROJECTED COST OVERRUNS" shall have the meaning assigned to it in subparagraph 4(A) of the Construction Management Agreement.

"PROPERTY" means the Personal Property and the Real Property, collectively.

"PURCHASE AGREEMENT" means the Purchase Agreement dated as of January 20, 1999 between BNPLC and NAI, as such Purchase Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

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"PURCHASE DOCUMENTS" means collectively (1) the Purchase Agreement, (2) the Memorandum of Purchase Agreement executed by BNPLC and NAI as of the Effective Date and recorded to provide notice of the Purchase Agreement; and (3) the Pledge Agreement and all financing statements, notices, acknowledgments and certificates of deposit executed or delivered from time to time by NAI, BNPLC or the other parties to the Pledge Agreement pursuant to and as expressly provided therein.

"PURCHASE OPTION" shall have the meaning assigned to it in subparagraph 1(A) (1) of the Purchase Agreement.

"QUALIFIED AFFILIATE" means any Person that is one hundred percent (100%) owned, directly or indirectly, by Banque Nationale de Paris or any successor of such bank; provided, that such Person can make (and has in writing made) the same representations to NAI that BNPLC has made in Paragraphs 3(D) and 3(E) of the Closing Certificate; and, provided, further, that such Person is not insolvent.

"QUALIFIED PREPAYMENTS" means (A) any Issue 97-10 Prepayments received by BNPLC, (B) any Voluntary NAI Construction Contributions received by BNPLC pursuant to subparagraph 4(C) of the Construction Management Agreement, and (C) any payments received by BNPLC from time to time during the Term (1) under any property insurance policy as a result of damage to the Property, (2) as

compensation for any restriction placed upon the use or development of the Property or for the condemnation of the Property or any portion thereof, (3) because of any judgment, decree or award for injury or damage to the Property or (4) under any title insurance policy or otherwise as a result of any title defect or claimed title defect with respect to the Property; provided, however, that (x) in determining the amount of "Qualified Prepayments", there shall be deducted all expenses and costs of every kind, type and nature (including taxes, Breakage Costs and Attorneys' Fees) incurred by BNPLC with respect to the collection or application of such payments, (y) "Qualified Prepayments" shall not include any payment to BNPLC by a Participant or an Affiliate of BNPLC that is made to compensate BNPLC for the Participant's or Affiliate's share of any Losses BNPLC may incur as a result of any of the events described in the preceding clauses (1) through (4) and (z) "Qualified Prepayments" shall not include any payments received by BNPLC that BNPLC has paid or is obligated to pay to NAI for the restoration or repair of the Property or that BNPLC is holding as Escrowed Proceeds pursuant to Paragraph 10 of the Lease or any other provision of the Lease. For purposes of computing the total Qualified Prepayments (and other amounts dependent upon Qualified Prepayments, such as Stipulated Loss Value and the Outstanding Construction Allowance) paid to or received by BNPLC as of any date, payments described in the preceding clauses (1) through (4) will be considered as Escrowed Proceeds, not Qualified Prepayments, until they are actually applied as Qualified Prepayments by BNPLC as provided in the Paragraph 10 of the Lease.

"REAL PROPERTY" shall have the meaning assigned to it on page 1 of the Lease.

"REIMBURSABLE CONSTRUCTION-PERIOD COSTS" shall have the meaning assigned to it in Paragraph 2 of the Construction Management Agreement.

"REMEDIAL WORK" means any investigation, monitoring, clean-up, containment, remediation, removal, payment of response costs, or restoration work and the preparation and implementation of any closure or other required remedial plans that any governmental agency or political subdivision requires or approves (or could reasonably be expected to require if it was aware of all relevant circumstances concerning the Property), whether by judicial order or otherwise, because of the presence of or suspected presence of Hazardous Substances in, on,

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under or about the Property or because of any prior Hazardous Substance Activity. Without limiting the generality of the foregoing, Remedial Work also means any obligations imposed upon or undertaken by NAI pursuant to Development Documents or any recommendations or proposals made therein.

"RENT" means the Base Rent and all Additional Rent.

"RESIDUAL RISK PERCENTAGE" means sixteen percent (16%).

"RESPONSIBLE FINANCIAL OFFICER" means the chief financial officer, the controller, the treasurer or the assistant treasurer of NAI.

"SALE CLOSING DOCUMENTS" shall have the meaning assigned to it in subparagraph 1(C) of the Purchase Agreement.

"SCOPE CHANGE" shall have the meaning assigned to it in subparagraph 1(A) (1) (b) of the Construction Management Agreement.

"SECURED SPREAD" means thirty basis points (30/100 of 1%); provided, however, that for purposes of calculating the Base Rent for any Mandatory Collateral Period, the Secured Spread shall equal one-half of the Unsecured Spread for the same period.

"SELLER" means 495 Java Drive Associates, L.P., a California limited partnership.

"STIPULATED LOSS VALUE" as of any date means the amount equal to the sum of the Initial Funding Advance, plus the sum of all Construction Advances and Carrying Costs added to the Outstanding Construction Allowance on or prior to

such date, minus all funds actually received by BNPLC and applied as Qualified Prepayments on or prior to such date. Under no circumstances will any payment of Base Rent, the Arrangement Fee, any Upfront Syndication Fees, Administrative Agency Fees or Commitment Fees reduce Stipulated Loss Value.

"SUBSIDIARY" means, with respect to any Person, any Affiliate of which at least a majority of the securities or other ownership interests having ordinary voting power then exercisable for the election of directors or other persons performing similar functions are at the time owned directly or indirectly by such Person.

"SUPPLEMENTAL PAYMENT" shall have the meaning assigned to it in subparagraph 1(A)(2)(c) of the Purchase Agreement.

"TERM" shall have the meaning assigned to it in subparagraph 1.(a) of the Lease.

"THIRD PARTY CONTRACT" shall have the meaning assigned to it in subparagraph 1(A)(2)(b) of the Construction Management Agreement.

"THIRD PARTY PRICE" shall have the meaning assigned to it in subparagraph 1(A)(2) of the Purchase Agreement.

"THIRD PARTY SALE NOTICE" shall have the meaning assigned to it in subparagraph 2(C) of the Purchase Agreement.

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"THIRD PARTY SALE PROPOSAL" shall have the meaning assigned to it in subparagraph 2(C) of the Purchase Agreement.

"THIRD PARTY TARGET PRICE" shall have the meaning assigned to it in subparagraph 2(C) of the Purchase Agreement.

"TRANSACTION EXPENSES" means costs incurred in connection with the preparation and negotiation of the Operative Documents and related documents and the consummation of the transactions contemplated therein.

"UNFUNDED BENEFIT LIABILITIES" means, with respect to any Plan or Multiemployer Plan, the amount (if any) by which the present value of all benefit liabilities (within the meaning of Section 4001(a)(16) of ERISA) under the Plan or Multiemployer Plan exceeds the market value of all Plan or Multiemployer assets allocable to such benefit liabilities, as determined on the most recent valuation date of the Plan or Multiemployer Plan and in accordance with the provisions of ERISA for calculating the potential liability of NAI or any ERISA Affiliate of NAI under Title IV of ERISA.

"UPFRONT SYNDICATION FEES" shall have the meaning assigned to it in subparagraph 2(M) of the Closing Certificate and Agreement.

"UNSECURED SPREAD" means, for each Construction Period or any period beginning on and including the Base Rent Commencement Date or a Base Rent Date and ending on but not including the next Base Rent Date, the amount established as described below in this definition on the date (in this definition, the "SPREAD TEST DATE") that is two Business Days prior to such period by reference to the ratio calculated by dividing (1) Adjusted EBIT for the then latest Rolling Four Quarters Period that ended prior to (and for which NAI has reported earnings as necessary to compute Adjusted EBIT) into (2) the total Debt of NAI and its Subsidiaries (determined on a consolidated basis) as of the end of such Rolling Four Quarters Period. The Unsecured Spread shall be established at the Level in the pricing grid below which corresponds to such ratio; provided, that:

(a) for any Construction Period commencing on or prior to the first Business Day of June, 1999, the Unsecured Spread will be the amount indicated for Level II in the pricing grid below;

(b) promptly after earnings are reported by NAI for the latest quarter in any Rolling Four Quarters Period, NAI must notify BNPLC of any resulting change in the Unsecured Spread under this definition, and

no reduction in the Unsecured Spread from one period to the next will be effective for purposes of the Operative Documents unless, prior to the Spread Test Date for the next period, NAI shall have provided BNPLC with a written notice setting forth and certifying the calculation under this definition that justifies the reduction; and

(c) notwithstanding anything to the contrary in this definition, on any date when an Event of Default has occurred and is continuing, the Unsecured Spread shall equal the Default Rate less the Effective Rate.

LEVELS -----	RATIO OF TOTAL DEBT TO ADJUSTED EBIT -----	UNSECURED SPREAD -----
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LEVELS -----	RATIO OF TOTAL DEBT TO ADJUSTED EBIT -----	UNSECURED SPREAD -----
Level I	less than 1.0	137.5 basis points
Level II	greater than or equal to 1.0, but less than 1.5	150.0 basis points
Level III	greater than or equal to 1.5, but less than 2.0	162.5 basis points
Level IV	greater than or equal to 2.0	187.5 basis points

All determinations of the Unsecured Spread by BNPLC shall, in the absence of clear and demonstrable error, be binding and conclusive for purposes of the Lease. Further BNPLC may, but shall not be required, to rely on the determination of the Unsecured Spread set forth in any notice delivered by NAI as described above in clause (b) of this definition.

"VOLUNTARY NAI CONSTRUCTION CONTRIBUTIONS" shall have the meaning assigned to it in subparagraph 4(C) of the Construction Management Agreement.

"VOLUNTARY RETENTION OF THE PROPERTY" means an affirmative election made by BNPLC to keep the Property pursuant to, and under the circumstances described in, the second sentence of subparagraph 1(A) (2) (a) of the Purchase Agreement.

"WORK" shall have the meaning assigned to it in subparagraph 1(A) (2) (a) of the Construction Management Agreement.

ARTICLE II - RULES OF INTERPRETATION

THE FOLLOWING PROVISIONS WILL APPLY TO AND GOVERN THE INTERPRETATION OF EACH OF THE OPERATIVE DOCUMENTS:

1 NOTICES. The provision of any Operative Document, or of any Applicable Laws with reference to the sending, mailing or delivery of any notice or demand under any Operative Document or with reference to the making of any payment required under any Operative Document, shall be deemed to be complied with when

and if the following steps are taken:

(i) All Rent and other amounts required to be paid by NAI to BNPLC shall be paid to BNPLC in immediately available funds by wire transfer to:

Federal Reserve Bank of New York
ABA 026007689 Banque Nationale de Paris
/BNP/ BNP San Francisco
/AC/ 14334000176

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/Ref/ NAI Sunnyvale Synthetic Lease

or at such other place and in such other manner as BNPLC may designate in a notice to NAI.

(ii) All Collateral required to be paid by NAI to the Agent shall be paid in immediately available funds by wire transfer to:

Federal Reserve Bank of New York
ABA 026007689 Banque Nationale de Paris
/BNP/ BNP San Francisco
/AC/ 14334000176
/Ref/ NAI Collateral Payment

or at such other place and in such other manner as Agent may designate in a notice to NAI.

(iii) All advances paid to NAI by BNPLC under the Construction Management Agreement or in connection therewith shall be paid to NAI in immediately available funds at such place and in such manner as NAI may reasonably designate from time to time by notice to BNPLC signed by a Responsible Financial Officer of NAI.

(iv) All notices, demands, approvals, consents and other communications to be made under any Operative Document to or by the parties thereto must, to be effective for purpose of such Operative Document, be in writing. Notices, demands and other communications required or permitted under any Operative Document are to be sent to the addresses set forth below (or in the case of communications to Participants, at the addresses set forth in Schedule 1 to the Participation Agreement) and shall be given by any of the following means: (A) personal service, with proof of delivery or attempted delivery retained; (B) electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by United States first class mail, return receipt requested); or (C) registered or certified first class mail, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice or other communication sent pursuant to clause (A) or (B) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, and, if sent pursuant to clause (C) shall be deemed received five days following deposit in the mail.

Address of BNPLC:

BNP Leasing Corporation
12201 Merit Drive
Suite 860
Dallas, Texas 75251
Attention: Lloyd G. Cox
Telecopy: (972) 788-9191

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With a copy to:

Banque Nationale de Paris, San Francisco
180 Montgomery Street
San Francisco, California 94104
Attention: Gavin Holles
Telecopy: (415) 296-8954

And for draw requests and funding notices, with
a copy to:

Banque Nationale de Paris, San Francisco
180 Montgomery Street
San Francisco, California 94104
Attention: George Fung
Telecopy: (415) 296-8954

Address of NAI:

Network Appliance, Inc.
Attn: Leslie Paulides
2770 San Thomas Expressway
Santa Clara, CA 95051
Telecopy: (408) 367-3452

2 SEVERABILITY. If any term or provision of any Operative Document or the application thereof shall to any extent be held by a court of competent jurisdiction to be invalid and unenforceable, the remainder of such document, or the application of such term or provision other than to the extent to which it is invalid or unenforceable, shall not be affected thereby.

3 NO MERGER. There shall be no merger of the Lease or of the leasehold estate created by the Lease with any other interest in the Property by reason of the fact that the same person may acquire or hold, directly or indirectly, the Lease or the leasehold estate created hereby and any other interest in the Property, unless all Persons with an interest in the Property that would be adversely affected by any such merger specifically agree in writing that such a merger shall occur. There shall be no merger of the Purchase Agreement or of the purchase options or obligations created by the Purchase Agreement with any other interest in the Property by reason of the fact that the same person may acquire or hold, directly or indirectly, the Lease or the leasehold estate created hereby and any other interest in the Property, unless all Persons with an interest in the Property that would be adversely affected by any such merger specifically agree in writing that such a merger shall occur.

4 NO IMPLIED WAIVER. The failure of BNPLC or NAI to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in any Operative Document shall not be construed as a waiver or a relinquishment thereof for the future. The failure of Agent to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in the Pledge Agreement shall not be construed as a waiver or a relinquishment thereof for the future. The waiver of or redress for any breach of any Operative Document by any party thereto

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shall not prevent a similar subsequent act from constituting a violation. Any express waiver of any provision of any Operative Document shall affect only the term or condition specified in such waiver and only for the time and in the manner specifically stated therein. No waiver by any party to any Operative Document of any provision therein shall be deemed to have been made unless expressed in writing and signed by the party to be bound by the waiver. A receipt by BNPLC of any Rent with knowledge of the breach by NAI of any covenant or agreement contained in the Lease or any other Operative Document shall not be

deemed a waiver of such breach. A receipt by Agent of any Collateral or other payment under the Pledge Agreement with knowledge of the breach by NAI of any covenant or agreement contained in the Pledge Agreement shall not be deemed a waiver of such breach.

5 ENTIRE AND ONLY AGREEMENTS. The Operative Documents supersede any prior negotiations and agreements between BNPLC, Agent and NAI concerning the Property or the Collateral, and no amendment or modification of any Operative Document shall be binding or valid unless expressed in a writing executed by all parties to such Operative Document.

6 BINDING EFFECT. Except to the extent, if any, expressly provided to the contrary in any Operative Document with respect to assignments thereof, all of the covenants, agreements, terms and conditions to be observed and performed by the parties to the Operative Documents shall be applicable to and binding upon their respective successors and, to the extent assignment is permitted thereunder, their respective assigns.

7 TIME IS OF THE ESSENCE. Time is of the essence as to all obligations of NAI and BNPLC and all notices required of NAI and BNPLC under the Operative Documents.

8 GOVERNING LAW. Each Operative Document shall be governed by and construed in accordance with the laws of the State of California without regard to conflict or choice of laws (subject, however, in the case of the Pledge Agreement to any contrary provisions of the "UCC," as defined in the Pledge Agreement).

9 PARAGRAPH HEADINGS. The paragraph and section headings contained in the Operative Documents are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several provisions thereof.

10 NEGOTIATED DOCUMENTS. All the parties to each Operative Document and their counsel have reviewed and revised or requested revisions to such Operative Document, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of any Operative Documents or any amendments thereof.

11 TERMS NOT EXPRESSLY DEFINED IN AN OPERATIVE DOCUMENT. As used in any Operative Document, a capitalized term that is not defined therein or in this Common Definitions and Provisions Agreement, but is defined in another Operative Document, shall have the meaning ascribed to it in the other Operative Document.

12 OTHER TERMS AND REFERENCES. Words of any gender used in each Operative Document shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context otherwise requires. References in any Operative Document to Paragraphs, subparagraphs, Sections, subsections or other subdivisions shall refer to the corresponding Paragraphs, subparagraphs, Sections, subsections or subdivisions of that Operative Document, unless specific reference is made to another document or instrument. References in any Operative Document to any Schedule or

Exhibit shall refer to the corresponding Schedule or Exhibit attached to that Operative Document, which shall be made a part thereof by such reference. All capitalized terms used in each Operative Document which refer to other documents shall be deemed to refer to such other documents as they may be renewed, extended, supplemented, amended or otherwise modified from time to time, provided such documents are not renewed, extended or modified in breach of any provision contained in the Operative Documents or, in the case of any other document to which BNPLC is a party or of which BNPLC is an intended beneficiary, without the consent of BNPLC. All accounting terms used but not specifically defined in any Operative Document shall be construed in accordance with GAAP. The words "this Lease", "herein", "hereof", "hereby", "hereunder" and words of

similar import when used in each Operative Document refer to that Operative Document as a whole and not to any particular subdivision unless expressly so limited. The phrases "this Paragraph", "this subparagraph", "this Section", "this subsection" and similar phrases used in any operative document refer only to the Paragraph, subparagraph, Section, subsection or other subdivision described in which the phrase occurs. As used in the Operative Documents the word "or" is not exclusive. As used in the Operative Documents, the words "include", "including" and similar terms shall be construed as if followed by "without limitation to".

13 EXECUTION IN COUNTERPARTS. To facilitate execution, each Operative Document may be executed in as many identical counterparts as may be required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts, taken together, shall collectively constitute a single instrument. It shall not be necessary in making proof of any Operative Document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

14 NOT A PARTNERSHIP, ETC. NOTHING IN ANY OPERATIVE DOCUMENT IS INTENDED TO CREATE ANY PARTNERSHIP, JOINT VENTURE, OR OTHER JOINT ENTERPRISE BETWEEN BNPLC AND NAI. NEITHER THE EXECUTION OF ANY OPERATIVE DOCUMENT NOR THE ADMINISTRATION THEREOF OR OTHER DOCUMENTS REFERENCED HEREIN BY BNPLC, NOR ANY OTHER RIGHT, DUTY OR OBLIGATION OF BNPLC UNDER OR PURSUANT TO ANY OPERATIVE DOCUMENT IS INTENDED TO BE OR TO CREATE ANY FIDUCIARY OBLIGATIONS OF BNPLC TO NAI.

[The signature pages follows.]

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Common Definitions and Provisions Agreement to be executed as of January 20, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: _____

Name: _____

Title: _____

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[Continuation of signature pages to Common Definitions and Provisions Agreement dated to be effective January 20, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: _____

Lloyd G. Cox, Vice President

\$44,000,000

PURCHASE AGREEMENT

BETWEEN

BNP LEASING CORPORATION

("BNPLC")

AND

NETWORK APPLIANCE, INC.

("NAI")

JANUARY 20, 1999

(SUNNYVALE, CALIFORNIA)

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PURCHASE AGREEMENT

This PURCHASE AGREEMENT (this "AGREEMENT"), by and between BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and NETWORK APPLIANCE, INC., a California corporation ("NAI"), is made and dated as of January 20, 1999, the Effective Date. ("EFFECTIVE DATE" and other capitalized terms used and not otherwise defined in this Agreement are intended to have the meanings assigned to them in the Common Definitions and Provisions Agreement executed by BNPLC and NAI contemporaneously with this Agreement. By this reference, the Common Definitions and Provisions Agreement is incorporated into and made a part of this Agreement for all purposes.)

RECITALS

Pursuant to the Existing Contract, which covers the Land described in Exhibit A, BNPLC is acquiring the Land and any appurtenances thereto and the existing Improvements thereon from Seller contemporaneously with the execution of this Agreement. Pursuant to the Lease, BNPLC is leasing the Land and existing Improvements to NAI and agreeing to provide funding for the construction and completion of Improvements, all of which will be owned by BNPLC. (All of BNPLC's interests, including those created by the documents delivered at the closing under the Existing Contract, in the Land and in the Improvements and in all other real and personal property from time to time covered by the Lease and included within the "Property" as defined therein are hereinafter collectively referred to as the "PROPERTY".)

NAI and BNPLC have reached agreement upon the terms and conditions upon which NAI will purchase or arrange for the purchase of the Property, and by this Agreement they desire to evidence such agreement.

AGREEMENTS

(A) Right to Purchase; Right and Obligation to Remarket. Whether or not an Event of Default shall have occurred and be continuing or the Lease shall have been terminated, but subject to Paragraph 4 below:

(1) NAI shall have the right (the "PURCHASE OPTION") to purchase or cause an Affiliate of NAI to purchase the Property and BNPLC's interest in Escrowed Proceeds, if any, on the Designated Sale Date for a cash price equal to the Break Even Price (as defined below).

(2) If neither NAI nor an Affiliate of NAI purchases the Property and BNPLC's interest in any Escrowed Proceeds on the Designated Sale Date as provided in the preceding subparagraph 1(A)(1), then NAI shall have the following rights and obligations (collectively, "NAI'S INITIAL REMARKETING RIGHTS AND OBLIGATIONS"):

(a) First, NAI shall have the right (but not the obligation) to cause an Applicable Purchaser who is not an Affiliate of NAI to purchase the Property and BNPLC's interest in any Escrowed Proceeds on the Designated Sale Date for a cash purchase price (the "THIRD PARTY PRICE") determined as provided below. If, however, the Break Even Price exceeds the sum of any Third Party Price tendered or to be tendered to BNPLC by an Applicable Purchaser and any Supplemental Payment paid by NAI as described below, then BNPLC may affirmatively elect to decline such tender from the Applicable Purchaser and to keep the Property and any Escrowed

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Proceeds rather than sell to the Applicable Purchaser pursuant to this subparagraph (a "VOLUNTARY RETENTION OF THE PROPERTY").

(b) Second, if the Third Party Price actually paid by an Applicable Purchaser to BNPLC on the Designated Sale Date exceeds the Break Even Price, NAI shall be entitled to such excess, subject, however, to BNPLC's right to offset against such excess any and all sums that are then due from NAI to BNPLC under the other Operative Documents.

(c) Third, if for any reason whatsoever (including a Voluntary Retention of the Property or a decision by NAI not to exercise its right to purchase or cause an Applicable Purchaser to purchase from BNPLC as described above) neither NAI nor an Applicable Purchaser pays a net cash price to BNPLC on the Designated Sale Date equal to or in excess of the Break Even Price in connection with a sale of the Property and BNPLC's interest in any Escrowed Proceeds pursuant to this Agreement, then NAI shall have the obligation to pay to BNPLC on the Designated Sale Date a supplemental payment (the "SUPPLEMENTAL PAYMENT") equal to the lesser of (1) the amount by which the Break Even Price exceeds such net cash price (if any) actually received by BNPLC on the Designated Sale Date (such excess being hereinafter called a "DEFICIENCY") or (2) the Maximum Remarketing Obligation. As used herein, the "MAXIMUM REMARKETING OBLIGATION" means a dollar amount determined in accordance with the following provisions:

1) The "MAXIMUM REMARKETING OBLIGATION" will equal the product of (i) Stipulated Loss Value on the Designated Sale Date, times (ii) 100% minus the Residual Risk Percentage, provided that both of the following conditions are satisfied:

(x) NAI shall not have elected to accelerate the Designated Sale Date as provided in clause (2) of the definition of Designated Sale Date in the Common Definitions and Provisions Agreement.

(y) No Event of Default, other than an Issue 97-1 Non-performance-related Subjective Event of Default, shall occur on or be continuing on the Designated Sale Date.

2) If either of the conditions listed in

subparagraph 1) preceding are not satisfied, the "MAXIMUM REMARKETING OBLIGATION" will equal the Break Even Price.

If any Supplemental Payment or other amount payable to BNPLC pursuant to this subparagraph 1(A) is not actually paid to BNPLC on the Designated Sale Date, NAI shall pay interest on the past due amount computed at the Default Rate from the Designated Sale Date.

(B) Determinations Concerning Price.

(1) Determination of the Break Even Price. As used herein, "BREAK EVEN PRICE" means an amount equal, on the Designated Sale Date, to Stipulated Loss Value, plus all out-of-pocket costs and expenses (including appraisal costs, withholding taxes (if any) not constituting Excluded Taxes, and Attorneys' Fees) incurred by BNPLC in connection with any sale of BNPLC's interests in the Property under this Agreement or in connection with collecting payments due hereunder, and plus an amount equal to the Balance of Unpaid Construction-Period Indemnity Payments, but less the aggregate amounts (if any) of Direct Payments to Participants and Deposit Taker Losses (other than Excluded Deposit Taker Losses). As used herein, the "BALANCE OF UNPAID CONSTRUCTION-PERIOD INDEMNITY PAYMENTS" means an amount

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equal to the sum of Construction-Period Indemnity Payments, if any, that NAI declined to pay pursuant to subparagraph 5(d)(ii) of the Lease, plus interest accruing at the Default Rate, compounded annually, on each such payment from the date such payment would have become due but for NAI's right to decline to pay it as described in subparagraph 5(d)(ii) of the Lease. If, however, Losses for which NAI has so declined to pay any Construction-Period Indemnity Payment consist of claims against BNPLC or another Interested Party that have not been liquidated prior to the Designated Sale Date (and, thus, such Losses have yet to be fixed in amount as of the Designated Sale Date), then NAI may elect to exclude any Construction-Period Indemnity Payment attributable to such Losses by providing to BNPLC, for the benefit of BNPLC and other Interested Parties, a written agreement to indemnify and defend BNPLC and other Interested Parties against such Losses. To be effective hereunder for purposes of reducing the Balance of Unpaid Construction-Period Indemnity Payments (and, thus, the Break Even Price), any such written indemnity must be fully executed and delivered by NAI on or prior to the Designated Sale Date, must include provisions comparable to subparagraphs 5(c)(ii), (iii), (iv) and (v) of the Lease and otherwise must be in form and substance satisfactory to BNPLC.

(2) Determination of Third Party Price. The Third Party Price required of any Applicable Purchaser purchasing from BNPLC under subparagraph 1(A)(2)(a) will be determined as follows:

(a) NAI may give a notice (a "REMARKETING NOTICE") to BNPLC and to each of the Participants no earlier than one hundred twenty days before the Designated Sale Date and no later than ninety days before the Designated Sale Date, specifying an amount as the Third Party Price that NAI believes in good faith to constitute reasonably equivalent value for the Property and any Escrowed Proceeds. Once given, a Remarketing Notice shall not be rescinded or modified without BNPLC's written consent.

(b) If BNPLC believes in good faith that the Third Party Price specified by NAI in a Remarketing Notice does not constitute reasonably equivalent value for the Property and any Escrowed Proceeds, BNPLC may at any time before sixty days prior to the Designated Sale Date respond to the Remarketing Notice with a notice back to NAI, objecting to the Third Party Price so specified by NAI. If BNPLC receives a Remarketing Notice, yet does not respond with an objection as provided in the preceding sentence, the Third Party Price suggested by NAI in the Remarketing Notice will be the Third Party Price for purposes of this Agreement. If, however, BNPLC does respond with an objection as provided in this subparagraph, and if NAI and BNPLC do not otherwise agree in writing upon a Third Party Price, then the Third Party Price will be the lesser of (I) fair market value of the Property, plus the amount of any Escrowed

Proceeds, as determined by a professional independent appraiser satisfactory to BNPLC, or (II) the Break Even Price.

(c) If for any reason, including an acceleration of the Designated Sale Date as provided in the definition thereof in the Common Definitions and Provisions Agreement, NAI does not deliver a Remarketing Notice to BNPLC within the time period specified above, then the Third Party Price will be an amount determined in good faith by BNPLC as constituting reasonably equivalent value for the Property and any Escrowed Proceeds, but in no event more than the Break Even Price.

If any payment to BNPLC by an Applicable Purchaser hereunder is held to constitute a preference or a voidable transfer under Applicable Law, or must for any other reason be refunded by BNPLC to the Applicable Purchaser or to another Person, and if such payment to BNPLC reduced or had the effect of reducing a Supplemental Payment or increased or had the effect of increasing any excess sale proceeds

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paid to NAI pursuant to subparagraph 1(A)(2)(b) or pursuant to subparagraph 2(D), then NAI shall pay to BNPLC upon demand an amount equal to the reduction of the Supplemental Payment or to the increase of the excess sale proceeds paid to NAI, as applicable, and this Purchase Agreement shall continue to be effective or shall be reinstated as necessary to permit BNPLC to enforce its right to collect such amount from NAI.

(C) Designation of the Purchaser. To give BNPLC the opportunity before the Designated Sale Date to prepare the deed and other documents that BNPLC must tender pursuant to Paragraph 3 (collectively, the "SALE CLOSING DOCUMENTS"), NAI must, by a notice to BNPLC given at least seven days prior to the Designated Sale Date, specify irrevocably, unequivocally and with particularity the party who will purchase the Property in order to satisfy the obligations of NAI set forth in subparagraph 1(A). If for any reason NAI fails to so specify a party who will in accordance with the terms and conditions set forth herein purchase the Property (be it NAI itself, an Affiliate of NAI or another Applicable Purchaser), BNPLC shall be entitled to postpone the tender of the Sale Closing Documents until a date after the Designated Sale Date and not more than twenty days after NAI finally does so specify a party, but such postponement will not relieve or postpone the obligation of NAI to make a Supplemental Payment on the Designated Sale Date as provided in Paragraph 1(A)(2)(c).

(D) Effect of the Purchase Option and NAI's Initial Remarketing Rights and Obligations on Subsequent Title Encumbrances. Any conveyance of the Property to NAI or any Applicable Purchaser pursuant to this Paragraph 1(A) shall cut off and terminate any interest in the Land, Improvements or other Property claimed by, through or under BNPLC, including any interest claimed by the Participants and including any Liens Removable by BNPLC (such as, but not limited to, any judgment liens established against the Property because of a judgment rendered against BNPLC and any leasehold or other interests conveyed by BNPLC in the ordinary course of BNPLC's business), but not including personal obligations of NAI to BNPLC under the Lease or other Operative Documents (including obligations arising under the indemnities therein). Anyone accepting or taking any interest in the Property by or through BNPLC after the date of this Agreement shall acquire such interest subject to the Purchase Option and NAI's Initial Remarketing Rights and Obligations. Further, NAI and any Applicable Purchaser shall be entitled to pay any payment required by this Agreement for the purchase of the Property directly to BNPLC notwithstanding any prior conveyance or assignment by BNPLC, voluntary or otherwise, of any right or interest in this Agreement or the Property, and neither NAI nor any Applicable Purchaser shall be responsible for the proper distribution or application of any such payments by BNPLC; and any such payment to BNPLC shall discharge the obligation of NAI to cause such payment to all Persons claiming an interest in such payment. Contemporaneously with the execution of this Agreement, the parties shall record a memorandum of this Agreement for purposes of effecting constructive notice to all Persons of NAI's rights under this Agreement, including its rights under this subparagraph.

(E) Security for the Purchase Option and NAI's Initial Remarketing Rights and Obligations. To secure BNPLC's obligation to sell the Property

pursuant to this Paragraph 1(A) and to pay any damages to NAI caused by a breach of such obligations, including any such breach caused by a rejection or termination of this Agreement in any bankruptcy or insolvency proceeding instituted by or against BNPLC, as debtor, BNPLC does hereby grant to NAI a lien and security interest against all rights, title and interests of BNPLC from time to time in and to the Land, Improvements and other Property. NAI may enforce such lien and security interest judicially after any such breach by BNPLC, but not otherwise. Contemporaneously with the execution of this Agreement, NAI and BNPLC will execute a memorandum of this Agreement which is in recordable form and which specifically references the lien granted in this subparagraph, and NAI shall be entitled to record such memorandum at any time prior to the Designated Sale Date.

(F) Delivery of Books and Records If BNPLC Retains the Property. Unless NAI or its Affiliate or another Applicable Purchaser purchases the Property pursuant to Paragraph 1(A), promptly after the Designated Sale Date NAI shall deliver to BNPLC copies of all plans and specifications for the Property prepared

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in connection with the construction contemplated by the Construction Management Agreement and the Lease, together with all other books and records of NAI which will be necessary or useful to any future owner's or occupant's use of the Property in the manner permitted by the Lease.

2 NAI'S RIGHTS AND OPTIONS AFTER THE DESIGNATED SALE DATE.

(A) NAI's Extended Right to Remarket. During the two years following the Designated Sale Date ("NAI'S EXTENDED REMARKETING PERIOD"), NAI shall have the right ("NAI'S EXTENDED REMARKETING RIGHT") to cause an Applicable Purchaser who is not an Affiliate of NAI to purchase the Property for a cash purchase price not below the lesser of (I) the Minimum Extended Remarketing Price (as defined below), or (II) if applicable, the Third Party Target Price (as defined below) specified in any Third Party Sale Notice (as defined below) given by BNPLC pursuant to subparagraph 2(C)(2) within the ninety days prior to the date (the "FINAL SALE DATE") upon which BNPLC receives such purchase price from the Applicable Purchaser. NAI's Extended Remarketing Right shall, however, be subject to all of the following conditions:

(1) The Property and BNPLC's interest in Escrowed Proceeds, if any, shall not have been sold on the Designated Sale Date as provided in Paragraph 1.

(2) No Voluntary Retention of the Property shall have occurred as described in subparagraph 1(A)(2)(a).

(3) NAI's Extended Remarketing Right shall not have been terminated pursuant to subparagraph 4(D) below because of NAI's failure to make any Supplemental Payment required on the Designated Sale Date.

(4) NAI's Extended Remarketing Right shall not have been terminated by BNPLC pursuant to subparagraph 4(E) below to facilitate BNPLC's sale of the Property to a third party in accordance with subparagraph 2(C).

(5) At least thirty days prior to the Final Sale Date, NAI shall have notified BNPLC of (x) the date proposed by NAI as the Final Sale Date (which must be a Business Day), (y) the full legal name of the Applicable Purchaser and such other information as will be required to prepare the Sale Closing Documents, and (z) the amount of the purchase price that the Applicable Purchaser will pay (consistent with the minimum required pursuant to the other provisions of this subparagraph 2(A)) for the Property.

(B) Definition of Minimum Extended Remarketing Price. As used herein, "MINIMUM EXTENDED REMARKETING PRICE" means an amount equal to the sum of the following:

(1) the amount by which the Break Even Price computed on the Designated Sale Date exceeds any Supplemental Payment actually paid to BNPLC on the Designated Sale Date, together with interest on such excess computed at the Default Rate from the period commencing on the Designated

Sale Date and ending on the Final Sale Date, plus

(2) all out-of-pocket costs and expenses (including withholding taxes [if any], other than Excluded Taxes, and Attorneys' Fees) incurred by BNPLC in connection with the sale to the Applicable Purchaser, to the extent not already included in the computation of Break Even Price, and plus

(3) the sum of all Impositions, insurance premiums and other Losses of every kind suffered or incurred by BNPLC or any other Interested Party with respect to the ownership, operation or

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maintenance of the Property on or after the Designated Sale Date (except to the extent already reimbursed by any lessee of the Property after the Designated Sale Date), together with interest on such Impositions, insurance premiums and other Losses computed at the Default Rate from the date paid or incurred to the Final Sale Date.

If, however, Losses described in the preceding clause (3) consist of claims against BNPLC or another Interested Party that have not been liquidated prior to the Final Sale Date (and, thus, such Losses have yet to be fixed in amount as of the Final Sale Date), then NAI may elect to exclude any such Losses from the computation of the Minimum Extended Remarketing Price by providing to BNPLC, for the benefit of BNPLC and other Interested Parties, a written agreement to indemnify and defend BNPLC and other Interested Parties against such Losses. To be effective hereunder for purposes of reducing the Minimum Extended Remarketing Price (and, thus, the Break Even Price), any such written indemnity must be fully executed and delivered by NAI on or prior to the Final Sale Date, must include provisions comparable to subparagraphs 5(c)(ii), (iii), (iv) and (v) of the Lease and otherwise must be in form and substance satisfactory to BNPLC.

(C) BNPLC's Right to Sell. After the Designated Sale Date, if the Property has not already been sold by BNPLC pursuant to Paragraph 1 or this Paragraph 2, BNPLC shall have the right to sell the Property or offer the Property for sale to any third party on any terms believed to be appropriate by BNPLC in its sole good faith business judgment; provided, however, that so long as the conditions to NAI's Extended Remarketing Rights specified in subparagraph 2(A) continue to be satisfied:

(1) BNPLC shall not sell the Property to an Affiliate of BNPLC on terms less favorable than those which BNPLC would require from a prospective purchaser not an Affiliate of BNPLC;

(2) If BNPLC receives or desires to make a written proposal (whether in the form of a "letter of intent" or other nonbinding expression of interest or in the form of a more definitive purchase and sale agreement) for a sale of the Property to a prospective purchaser (a "THIRD PARTY SALE PROPOSAL"), and if on the basis of such Third Party Sale Proposal BNPLC expects to enter into or to pursue negotiations for a definitive purchase and sale agreement with the prospective purchaser, then prior to executing any such definitive agreement, BNPLC shall submit the Third Party Sale Proposal to NAI with a notice (the "THIRD PARTY SALE NOTICE") explaining that (A) BNPLC is then prepared to accept a price not below an amount specified in such Third Party Sale Notice (the "THIRD PARTY TARGET PRICE") if BNPLC and the prospective purchaser reach agreement on other terms and conditions to be incorporated into a definitive purchase and sale agreement, and (B) NAI's Extended Remarketing Right may be terminated pursuant to subparagraph 4(E) of this Agreement unless NAI causes an Applicable Purchaser to consummate a purchase of the Property pursuant to this Paragraph 2 within ninety days after the date of such Third Party Sale Notice.

(D) NAI's Right to Excess Sales Proceeds. If the cash price actually paid by any third party purchasing the Property from BNPLC during NAI's Extended Remarketing Period, including any price paid by an Applicable Purchaser purchasing from BNPLC pursuant to this Paragraph 2, exceeds the Minimum Extended Remarketing Price, then NAI shall be entitled to the excess; provided, that BNPLC may offset and retain from the excess any and all sums that are then due and unpaid from NAI to BNPLC under any of the Operative Documents.

(E) Permitted Transfers During NAI's Extended Remarketing Period.

Any "Permitted Transfer" described in clause (6) of the definition thereof in the Common Definitions and Provisions Agreement to an Affiliate of BNPLC or that covers BNPLC's entire interest in the Land and Improvements will be subject to NAI's Extended Remarketing Right if, at the time of the Permitted Transfer, NAI's Extended Remarketing Right has not expired or been terminated as provided herein. Any other Permitted Transfer described in clause (6) of the

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definition thereof, however, will not be subject to NAI's Extended Remarketing Right. Thus, for example, BNPLC's conveyance of a utility easement or space lease more than thirty days after the Designated Sale Date to a Person not an Affiliate of BNPLC shall not be subject to NAI's Extended Remarketing Right, though following the conveyance of the lesser estate, NAI's Extended Remarketing Right may continue to apply to BNPLC's remaining interest in the Land, Improvements and any Personal Property.

3 TERMS OF CONVEYANCE UPON PURCHASE. As necessary to consummate any sale of the Property to NAI or an Applicable Purchaser pursuant to this Agreement, BNPLC must, subject to any postponement permitted by subparagraph 1(C), promptly after the tender of the purchase price and any other payments to BNPLC required pursuant to Paragraph 1 or Paragraph 2, as applicable, convey all of BNPLC's right, title and interest in the Land, Improvements and other Property to NAI or the Applicable Purchaser, as the case may be, by BNPLC's execution, acknowledgment (where appropriate) and delivery of the Sale Closing Documents. Such conveyance by BNPLC will be subject only to the Permitted Encumbrances and any other encumbrances that do not constitute Liens Removable by BNPLC. However, such conveyance shall not include the rights of BNPLC or other Interested Parties under the indemnities provided in the Operative Documents, including rights to any payments then due from NAI under the indemnities or that may become due thereafter because of any expense or liability incurred by BNPLC or another Interested Party resulting in whole or in part from events or circumstances occurring or alleged to have occurred before such conveyance. All costs, both foreseen and unforeseen, of any purchase by NAI or an Applicable Purchaser hereunder shall be the responsibility of the purchaser. The Sale Closing Documents used to accomplish such conveyance shall consist of the following: (1) a Corporation Grant Deed in the form attached as Exhibit B, (2) a Bill of Sale and Assignment in the form attached as Exhibit C, (3) an Acknowledgment of Disclaimer of Representations and Warranties, in the form attached as Exhibit D, which NAI or the Applicable Purchaser must execute and return to BNPLC, (4) a Secretary's Certificate in the form attached as Exhibit E, and (5) a certificate concerning tax withholding in the form attached as Exhibit F. If for any reason BNPLC fails to tender the Sale Closing Documents as required by this Paragraph 3, BNPLC may cure such refusal at any time before thirty days after receipt of a demand for such cure from NAI.

4 SURVIVAL AND TERMINATION OF THE RIGHTS AND OBLIGATIONS OF NAI AND BNPLC.

(A) Status of this Agreement Generally. Except as expressly provided herein, this Agreement shall not terminate; nor shall NAI have any right to terminate this Agreement; nor shall NAI be entitled to any reduction of the Break Even Price, any Deficiency, the Maximum Remarketing Obligation, any Supplemental Payment or the Minimum Extended Remarketing Price hereunder; nor shall the obligations of NAI to BNPLC under Paragraph 1 be affected, by reason of (i) any damage to or the destruction of all or any part of the Property from whatever cause (though it is understood that NAI will receive any remaining Escrowed Proceeds yet to be applied as provided in the Lease that may result from such damage if NAI purchases the Property and the Escrowed Proceeds as herein provided), (ii) the taking of or damage to the Property or any portion thereof by eminent domain or otherwise for any reason (though it is understood that NAI will receive any remaining Escrowed Proceeds yet to be applied as provided in the Lease that may result from such taking or damage if NAI purchases the Property and the Escrowed Proceeds as herein provided), (iii) the prohibition, limitation or restriction of NAI's use of all or any portion of the Property or any interference with such use by governmental action or otherwise, (iv) any eviction of NAI or any party claiming under NAI by paramount title or otherwise, (v) NAI's prior acquisition or ownership of any interest in the Property, (vi) any default on the part of BNPLC under this Agreement, the Lease or any other agreement to which BNPLC is a party, or (vii) any other cause, whether similar or dissimilar to the foregoing, any existing or future law to the contrary notwithstanding. It is the intention of the parties hereto that the obligations of NAI to make payment to BNPLC hereunder shall be separate and

independent covenants and agreements from BNPLC's obligations under this Agreement or any other agreement between BNPLC and NAI; provided, however, that nothing in this subparagraph shall excuse BNPLC from its obligation to tender the Sale Closing Documents in substantially the form attached hereto as exhibits when required by Paragraph 3. Further, nothing in this subparagraph shall be construed as a waiver by NAI of any right NAI may have at law or in equity

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to the following remedies, whether because of BNPLC's failure to remove a Lien Removable by BNPLC or because of any other default by BNPLC under this Agreement: (i) the recovery of monetary damages, (ii) injunctive relief in case of the violation, or attempted or threatened violation, by BNPLC of any of the express covenants, agreements, conditions or provisions of this Agreement which are binding upon BNPLC, or (iii) a decree compelling performance by BNPLC of any of the express covenants, agreements, conditions or provisions of this Agreement which are binding upon BNPLC.

(B) Election by NAI to Terminate the Purchase Option and NAI's Initial Remarketing Rights and Obligations Prior to the Base Rent Commencement Date. At any time prior to the Base Rent Commencement Date, NAI may elect to terminate both the Purchase Option and NAI's Initial Remarketing Rights and Obligations, subject to the following conditions:

(1) To be effective, any such election to terminate must be made prior to the Base Rent Commencement Date and must be made after (x) NAI shall have given Notice of NAI's Election to Terminate pursuant to Paragraph 5(D) of the Construction Management Agreement, (y) BNPLC shall have given any FOCB Notice as provided in Paragraph 5(E) of the Construction Management Agreement, or (z) BNPLC shall have given notice of its election to accelerate the Designated Sale Date when an Event of Default has occurred and is continuing as provided in clause (5) of the definition Designated Sale Date in the Common Definitions and Provisions Agreement.

(2) To be effective, any such election to terminate must be made by giving BNPLC and the Participants a notice thereof in the form attached as Exhibit F prior to the Base Rent Commencement Date.

(3) No termination pursuant to this subparagraph 4(B) shall be effective, notwithstanding any notice NAI may have given as described in the preceding clause (2), unless contemporaneously with the giving of the notice (and in any event prior to the Base Rent Commencement Date) NAI shall deliver to BNPLC an Issue 97-10 Prepayment.

(4) If for any reason whatsoever, including any bona fide dispute over the amount of any required Issue 97-10 Prepayment, BNPLC does not receive both the notice described in the preceding clause (2) and a full Issue 97-10 Prepayment as described in the preceding clause (3) prior to the Base Rent Commencement Date, then without any notice or other action by the parties to this Agreement NAI shall cease to have any option to terminate pursuant to this subparagraph 4(B).

(C) Election by BNPLC to Terminate the Purchase Option and NAI's Initial Remarketing Rights and Obligations. By notice to NAI BNPLC shall be entitled to terminate both the Purchase Option and NAI's Initial Remarketing Rights and Obligations, as BNPLC deems appropriate in its sole and absolute discretion, at any time after receiving a notice given by NAI to make or attempt to make any Issue 97-10 Election. Upon any such termination by BNPLC, NAI shall become immediately obligated to pay BNPLC an Issue 97-10 Prepayment.

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(D) Automatic Termination of NAI's Rights. Without limiting BNPLC's right to enforce NAI's obligation to pay any Supplemental Payment or other amounts required by this Purchase Agreement, the rights of NAI (to be distinguished from the obligations of NAI) included in NAI's Initial Remarketing Rights and Obligations, the Purchase Option and NAI's Extended Remarketing Rights shall all terminate automatically if NAI shall fail to pay the full amount of any Supplemental Payment required by subparagraph 1(A)(2)(c) on the Designated Sale Date or if BNPLC shall elect a Voluntary Retention of the

Property as provided in subparagraph 1(A)(2)(a). If, however, NAI's Initial Remarketing Rights and Obligations are effectively terminated pursuant to subparagraph 4(B) or 4(C) prior to the Designated Sale Date, thereby excusing NAI from the obligation to make any Supplemental Payment pursuant to subparagraph 1(A)(2)(c) and precluding any Voluntary Retention of the Property pursuant to subparagraph 1(A)(2)(a), then NAI's Extended Remarketing Rights will not automatically terminate pursuant to this subparagraph. Further, notwithstanding anything in this subparagraph to the contrary, even after a failure to pay any required Supplemental Payment on the Designated Sale Date, NAI may nonetheless tender to BNPLC the full Break Even Price and all amounts then due under the Operative Documents, together with interest on the total Break Even Price computed at the Default Rate from the Designated Sale Date to the date of tender, on any Business Day within thirty days after the Designated Sale Date, and if presented with such a tender within thirty days after the Designated Sale Date, BNPLC must accept it and promptly thereafter deliver any Escrowed Proceeds and the Sale Closing Documents listed in Paragraph 3 to NAI.

(E) Termination of NAI's Extended Remarketing Rights to Permit a Sale by BNPLC. At any time more than ninety days after BNPLC has delivered a Third Party Sale Notice to NAI as described in subparagraph 2(C)(2), BNPLC may terminate NAI's Extended Remarketing Rights contemporaneously with the consummation of a sale of the Property by BNPLC to any third party (be it the prospective purchaser named in the Third Party Sale Notice or another third party) at a price equal to or in excess of the Third Party Target Price specified in the Third Party Sale Notice, so as to permit the sale of the Property unencumbered by NAI's Extended Remarketing Rights.

(F) Payment Only to BNPLC. All amounts payable under this Agreement by NAI and, if applicable, by an Applicable Purchaser must be paid directly to BNPLC, and no payment to any other party shall be effective for the purposes of this Agreement. In addition to the payments required under subparagraph 1(A), on the Designated Sale Date NAI must pay all amounts then due to BNPLC under the Lease or other Operative Documents.

(G) Remedies Under the Other Operative Documents. No repossession of or re-entering upon the Property or exercise of any other remedies available to BNPLC under the Lease or other Operative Documents shall terminate NAI's rights or obligations hereunder, all of which shall survive BNPLC's exercise of remedies under the other Operative Documents. NAI acknowledges that the consideration for this Agreement is separate and independent of the consideration for the Lease, the Construction Management Agreement and the Closing Certificate, and NAI's obligations hereunder shall not be affected or impaired by any event or circumstance that would excuse NAI from performance of its obligations under such other Operative Documents.

(H) Occupancy by NAI Prior to Closing of a Sale. Prior to the closing of any sale of the Property to NAI or an Applicable Purchaser hereunder, NAI's occupancy of the Land and Improvements and its use of the Property shall continue to be subject to the terms and conditions of the Lease, including the terms setting forth NAI's obligation to pay rent, Prior to any termination or expiration of the Lease pursuant to its express terms and conditions.

5 SECURITY FOR NAI'S OBLIGATIONS; RETURN OF FUNDS. NAI's obligations under this Agreement are secured by the Pledge Agreement, reference to which is hereby made for a description of the Collateral covered thereby and the rights and remedies provided to BNPLC thereby. Although the collateral agent appointed for BNPLC as provided in the Pledge Agreement shall be entitled to hold all Collateral as security for

the full and faithful performance by NAI of NAI's covenants and obligations under this Agreement, the Collateral shall not be considered an advance payment of the Break Even Price or any Supplemental Payment or a measure of BNPLC's damages should NAI breach this Agreement. If NAI does breach this Agreement and fails to cure the same within any time specified herein for the cure, BNPLC may, from time to time, without prejudice to any other remedy and without notice to NAI, require the collateral agent to immediately apply the proceeds of any disposition of the Collateral (and any cash included in the Collateral) to amounts then due hereunder from NAI. If by a Permitted Transfer BNPLC conveys its interest in the Property before the Designated Sale Date, BNPLC may also assign BNPLC's interest in the Collateral to the transferee. BNPLC shall be entitled to return any Collateral not sold or used to satisfy the obligations

secured by the Pledge Agreement directly to NAI notwithstanding any prior actual or attempted conveyance or assignment by NAI, voluntary or otherwise, of any right to receive the same; neither BNPLC nor the collateral agent named in the Pledge Agreement shall be responsible for the proper distribution or application by NAI of any such Collateral returned to NAI; and any such return of Collateral to NAI shall discharge any obligation of BNPLC to deliver such Collateral to all Persons claiming an interest in the Collateral. Further, BNPLC shall be entitled to deliver any Escrowed Proceeds it holds on the Designated Sale Date directly to NAI or to any Applicable Purchaser purchasing BNPLC's interest in the Property and the Escrowed Proceeds pursuant to this Agreement notwithstanding any prior actual or attempted conveyance or assignment by NAI, voluntary or otherwise, of any right to receive the same; BNPLC shall not be responsible for the proper distribution or application by NAI or any Applicable Purchaser of any such Escrowed Proceeds paid over to NAI or the Applicable Purchaser; and any such payment of Escrowed Proceeds to NAI or an Applicable Purchaser shall discharge any obligation of BNPLC to deliver the same to all Persons claiming an interest therein.

6 CERTAIN REMEDIES CUMULATIVE. No right or remedy herein conferred upon or reserved to BNPLC is intended to be exclusive of any other right or remedy BNPLC has with respect to the Property, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. In addition to other remedies available under this Agreement, either party shall be entitled, to the extent permitted by applicable law, to a decree compelling performance of any of the other party's agreements hereunder.

7 ATTORNEYS' FEES AND LEGAL EXPENSES. If either party to this Agreement commences any legal action or other proceeding to enforce any of the terms of this Agreement, or because of any breach by the other party or dispute hereunder, the party prevailing in such action or proceeding shall be entitled to recover from the other party all Attorneys' Fees incurred in connection therewith, whether or not such controversy, claim or dispute is prosecuted to a final judgment. Any such Attorneys' Fees incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from such judgment, and the obligation for such Attorneys' Fees is intended to be severable from other provisions of this Agreement and not to be merged into any such judgment.

8 ESTOPPEL CERTIFICATE. Upon request by BNPLC, NAI shall execute, acknowledge and deliver a written statement certifying that this Agreement is unmodified and in full effect (or, if there have been modifications, that this Agreement is in full effect as modified, and setting forth such modification) and either stating that no default exists hereunder or specifying each such default of which NAI has knowledge. Any such statement may be relied upon by any Participant or prospective purchaser or assignee of BNPLC with respect to the Property.

9 SUCCESSORS AND ASSIGNS. The terms, provisions, covenants and conditions hereof shall be binding upon NAI and BNPLC and their respective permitted successors and assigns and shall inure to the benefit of NAI and BNPLC and all permitted transferees, mortgagees, successors and assignees of NAI and BNPLC with respect to the Property; provided, that (A) the rights of BNPLC hereunder shall not pass to NAI or any Applicable Purchaser or any subsequent owner claiming through NAI or an Applicable Purchaser, (B) BNPLC shall not assign

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14 this Agreement or any rights hereunder except pursuant to a Permitted Transfer, and (C) NAI shall not assign this Agreement or any rights hereunder without the prior written consent of BNPLC.

[Signature pages follow.]

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Agreement to be executed as of January 20, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: _____
Name: _____
Title: _____

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[Continuation of signature pages to Purchase Agreement dated to be effective
January 20, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: _____
Lloyd G. Cox, Vice President

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EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situate in the City of Sunnyvale, State of
California, described as follows:

ARB No: _____
APN No: _____

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EXHIBIT B

CORPORATION GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

NAME: [NAI or the Applicable Purchaser]
ADDRESS: _____
ATTN: _____
CITY: _____
STATE: _____
Zip: _____

MAIL TAX STATEMENTS TO:

NAME: [NAI or the Applicable Purchaser]
ADDRESS: _____
ATTN: _____
CITY: _____
STATE: _____
Zip: _____

CORPORATION GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, BNP
LEASING CORPORATION, a Delaware corporation ("Grantor"), hereby grants to [NAI
or the Applicable Purchaser] ("Grantee") all of Grantor's interest in the land
situated in Sunnyvale, California, described on Annex A attached hereto and
hereby made a part hereof, together with the improvements currently located on
such land and together with any other right, title and interest of Grantor in
and to such land and any easements, rights-of-way, privileges and other rights
appurtenant to such land; provided, however, that this grant is subject to the

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LEASE CHANGES FROM TIME TO TIME BECAUSE OF ADJUSTMENTS FOR WHICH NAI REQUESTS BNPLC'S CONSENT OR APPROVAL, SO TOO WILL THE DESCRIPTION OF THE LAND BELOW CHANGE. ANY SUCH CHANGES WILL BE INCORPORATED INTO THE DESCRIPTION BELOW AND THIS "DRAFTING NOTE" WILL BE DELETED BEFORE THE DEED TO WHICH THIS DESCRIPTION IS ATTACHED IS ACTUALLY EXECUTED AND DELIVERED.]

All that certain real property situate in the City of Sunnyvale, State of California, described as follows:

PARCEL ONE:

PARCEL "A", as shown upon that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, page 2, in the Office of the Recorder of the County of Santa Clara.

EXCEPTING THEREFROM those portions thereof described in the Deed to Santa Clara Valley Transit District, recorded October 24, 1997, Document No. 13912193; Official Records.

ALSO EXCEPTING THEREFROM that portion of said PARCEL "A" described in the deed from 495 Java Drive Associates, L.P. to 475 Java Drive Associates, L.P. recorded September 16, 1998, Document No. 14395998; Official Records, as follows:

Beginning at the Northwest corner of Parcel A as shown upon said Parcel Map filed for record in Book 216 at Page 2; thence along the Westerly line of said Parcel A, South 14 degrees 51 minutes 33 seconds West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52 minutes 02 seconds East 134.85 feet; thence North 51 degrees 07 minutes 58 seconds West 49.68; thence North 38 degrees 52 minutes 02 seconds East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07 minutes 58 seconds West 44.97 feet to the point of beginning.

TOGETHER WITH that portion of PARCEL "A", as shown upon that certain Parcel Map filed for record on November 10, 1971 in Book 292 of Maps, page 41, in the Office of the Recorder of the County of Santa Clara, described in the deed from 475 Java Drive Associates, L.P. to 495 Java Drive Associates, L.P., recorded September 16, 1998, Document No. 14395997, Official Records, as follows:

Beginning at the Northwest corner of PARCEL "A" as shown upon that certain Parcel Map recorded in Book 216 of Maps at page 2; thence along the Westerly line of said PARCEL "A", South 14 degrees 51 minutes 33 seconds West 223.09 feet to a point hereinafter referred to as Point "X"; thence continuing along the Westerly line of last said Parcel A, South 14 degrees 51 minutes 33 seconds West 186.10 feet to a point on the Northeasterly line of that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records, said point being on a non-tangent curve concave Southwesterly and having a radius of 1002.05 feet, a radial line through said point bears North 45 degrees 01 minutes 56 seconds East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20 minutes 28 seconds an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52 minutes 02 seconds East 164.71 feet to the said Point of Beginning.

PARCEL TWO:

Exhibit B - Page 3

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Non-exclusive easements for storm drain purposes as granted to The Prudential Insurance Company of America by Deed recorded June 17, 1975 in Book B467, page 173, Official Records, particularly described in said deed.

Exhibit B - Page 4

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PARCEL THREE:

A non-exclusive easement for ingress to and egress from motor vehicle parking spaces as granted to The Prudential Insurance Company of America by Deed recorded June 17, 1975 in Book B467, page 178.

PARCEL FOUR:

Non-exclusive easements for ingress and egress granted by 475 Java Drive Associates, L.P. to 495 Java Drive Associates, L.P., described in the Reciprocal Easement Agreement recorded September 16, 1998, Document No. 14396001, Official Records, as follows:

ONE:

Commencing at the Northeasterly corner of that parcel of land described in the Deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records, said point lying on the Easterly line of said PARCEL "A", as shown upon that certain Parcel Map filed for record in Book 292, page 41; thence Northwesterly along the Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District along a curve to the left with a radius of 1002.05 feet, from which a radial line bears North 45 degrees 01 minutes 56 seconds East, through a central angle of 4 degrees 20 minutes 28 seconds for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52 minutes 02 seconds East 82.92 feet to a point hereafter referred to as Point A; thence North 51 degrees 07 minutes 58 seconds West 12.96 feet; thence South 38 degrees 52 minutes 02 seconds West 64.41 feet; thence Westerly along a tangent curve to the right with a radius of 20.00 feet, through a central angle of 64 degrees 20 minutes 39 seconds for an arc length of 22.46 feet to a point on said Northeasterly line of said parcel of land described in the Deed to Santa Clara Valley Transit District; thence Southeasterly along said Northeasterly line along a non-tangent curve to the right with a radius of 1002.05 feet, from which a radial line bears North 39 degrees 18 minutes 05 seconds East, through a central angle of 1 degree 23 minutes 23 seconds for an arc length of 24.30 feet to the true point of beginning.

TWO:

Commencing at said Point A; thence North 38 degrees 52 minutes 02 seconds East 216.65 feet to the true point of beginning; thence North 51 degrees 07 minutes 58 seconds West 49.68 feet; thence North 38 degrees 52 minutes 02 seconds East 87.23 feet to the Northeasterly line of said PARCEL "A", as shown upon that certain Parcel Map filed for record in Book 216 at page 2; thence North 75 degrees 07 minutes 58 seconds West 13.91 feet along said Northeasterly line; thence South 38 degrees 52 minutes 02 seconds West 94.26 feet; thence South 51 degrees 07 minutes 58 seconds East 62.39 feet; thence North 38 degrees 52 minutes 02 seconds East 12.70 feet to the true point of beginning.

APN: 110-32-009

ARB: 110-3-X57,66.02

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ANNEX B

PERMITTED ENCUMBRANCES

[DRAFTING NOTE: TO THE EXTENT THAT ENCUMBRANCES (OTHER THAN "LIENS REMOVABLE BY BNPLC") ARE IDENTIFIED IN ADDITION TO THOSE DESCRIBED BELOW, SUCH ADDITIONAL ENCUMBRANCES WILL BE ADDED TO THE LIST BELOW AND THIS "DRAFTING NOTE" WILL BE DELETED BEFORE THIS DEED IS ACTUALLY EXECUTED AND DELIVERED BY BNPLC. SUCH ADDITIONAL ENCUMBRANCES WOULD INCLUDE ANY NEW ENCUMBRANCES APPROVED BY BNPLC AS "PERMITTED ENCUMBRANCES" UNDER THE LEASE FROM TIME TO TIME OR BECAUSE OF NAI'S REQUEST FOR BNPLC'S CONSENT OR APPROVAL TO AN ADJUSTMENT.]

This conveyance is subject to all encumbrances not constituting a "Lien Removable by BNPLC" (as defined in the Common Definitions and Provisions Agreement incorporated by reference into the Lease Agreement referenced in item #1 of the list below), including the following matters to the extent the same are still valid and in force:

1. Lease Agreement dated January 20, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

2. TAXES for the fiscal year [current year], a lien not yet due or payable.
3. EASEMENT for the purposes stated herein and incidents thereto
- Purpose : Slope
 In favor of : City of Sunnyvale
 Recorded : October 9, 1964 in Book 6695, page 430, Official Records
 Affects : A strip of land 18 feet in width, contiguous to and Westerly of the Westerly line of Crossman Road; and contiguous to and Northerly of the Northerly line of Java Drive.
4. EASEMENT for the purposes stated herein and incidents thereto
- Purpose : Public utilities
 In favor of : City of Sunnyvale
 Recorded : October 9, 1964 in Book 6695, page 450, Official Records
 Affects : A strip of land 7 feet in width, contiguous to and Westerly of the Westerly line of Crossman Road; and contiguous to and Northerly of the Northerly line of Java Drive.
5. AGREEMENT on the terms and conditions contained therein,
- For : Construction of additional storm drainage system facilities
 Between : City of Sunnyvale
 And : Moffett Park Associates, a joint venture partnership
 Recorded : November 2, 1966 in Book 7552, page 688, Official Records.
- AMENDED AGREEMENT recorded April 21, 1967 in Book 7700, page 638, Official Records.
6. LIMITATIONS, covenants, conditions, restrictions, reservations, exceptions or terms contained in Declaration of Protective Covenants - Moffett Industrial Park No. 2 recorded December 23, 1971 in Book 9640, page 443, Official Records.

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ASSIGNMENT AND ASSUMPTION of the rights, powers, duties, obligations and reservations of Moffett Park Associates, in favor of The Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

7. EASEMENT for the purposes stated herein and incidents thereto
- For : Ingress to and egress from motor vehicle parking spaces
 Granted to : ESL Incorporated
 Recorded : June 17, 1975 in Book B467, page 184, Official Records
 Affects : A portion of the Northerly 15 feet of said land.
8. EASEMENT for the purposes stated herein and incidents thereto
- Purpose : Any and all public service facilities
 Granted to : Santa Clara County Transit District
 Recorded : October 29, 1997 under Series No.13912193, Official Records
 Affects : A portion of said land 5.00 feet in width and 10.00 feet in length, alongside Java Drive.

9. EASEMENT for the purposes stated herein and incidents thereto
- Purpose : Construction and maintenance of streets drainage facilities, storm, sewers, water mains and pipes, street lighting facilities, sanitary sewer and other public utilities
- Granted to : City of Sunnyvale, a municipal corporation
- Recorded : September 18, 1998, under Series No. 14401233, Official Records
- Affects : Southwesterly portion of said land
10. RECIPROCAL EASEMENT for the purposes stated herein and incidents thereto
- Purpose : Grant of Driveway Easement: an easement for ingress and egress
- Granted to : 475 Java Drive Associates, L.P., a California Limited Partnership and 495 Java Drive Associates, L.P., a California Limited Partnership
- Recorded : September 16, 1998, under Series No. 14396001
- Reference is made to the record for further particulars.
11. EASEMENT for the purposes stated therein and incidents thereto
- Purpose : Public utilities
- Granted to : City of Sunnyvale
- Recorded : September 18, 1998, Document No. 14401234, Official Records
- Affects : A 7.00 foot wide strip of land, alongside Java Drive, particularly described and delineated in said instrument

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EXHIBIT C

BILL OF SALE AND ASSIGNMENT

Reference is made to: (1) that certain Purchase Agreement between BNP Leasing Corporation ("ASSIGNOR") and Network Appliance, Inc., dated as of January 20, 1999, (the "PURCHASE AGREEMENT") and (2) that certain Lease Agreement between Assignor, as landlord, and Network Appliance, Inc., as tenant, dated as of January 20, 1999 (the "LEASE"). (Capitalized terms used and not otherwise defined in this document are intended to have the meanings assigned to them in the Common Definitions and Provisions Agreement incorporated by reference into both the Purchase Agreement and Lease.)

As contemplated by the Purchase Agreement, Assignor hereby sells, transfers and assigns unto [NAI OR THE APPLICABLE PURCHASER, AS THE CASE MAY BE], a _____ ("ASSIGNEE"), all of Assignor's right, title and interest in and to the following property, if any, to the extent such property is assignable:

(a) the Lease;

(b) any pending or future award made because of any condemnation affecting the Property or because of any conveyance to be made in lieu thereof, and any unpaid award for damage to the Property and any unpaid proceeds of insurance or claim or cause of action for damage, loss or injury to the Property; and

(c) all other property included within the definition of "Property" as

set forth in the Purchase Agreement, including but not limited to any of the following transferred to Assignor by the tenant pursuant to Paragraph 7 of the Lease or otherwise acquired by Assignor, at the time of the execution and delivery of the Lease and Purchase Agreement or thereafter, by reason of Assignor's status as the owner of any interest in the Property: (1) any goods, equipment, furnishings, furniture, chattels and tangible personal property of whatever nature that are located on the Property and all renewals or replacements of or substitutions for any of the foregoing; (ii) the rights of Assignor, existing at the time of the execution of the Lease and Purchase Agreement or thereafter arising, under Permitted Encumbrances or Development Documents (both as defined in the Lease); and (iii) any other permits, licenses, franchises, certificates, and other rights and privileges related to the Property that Assignee would have acquired if Assignee had itself acquired the land conveyed by the Lease and constructed the Improvements included in the Property.

Provided, however, excluded from this conveyance and reserved to Assignor are any rights or privileges of Assignor under the following ("EXCLUDED RIGHTS"): (1) the indemnities set forth in the Lease, whether such rights are presently known or unknown, including rights of the Assignor to be indemnified against environmental claims of third parties as provided in the Lease which may not presently be known, (2) provisions in the Lease that establish the right of Assignor to recover any accrued unpaid rent under the Lease which may be outstanding as of the date hereof, (3) agreements between Assignor and "BNPLC's Parent" or any "Participant," both as defined in the Lease, or any modification or extension thereof, or (4) any other instrument being delivered to Assignor contemporaneously herewith pursuant to the Purchase Agreement. To the extent that this conveyance does include any rights to receive future payments under the Lease, such rights ("INCLUDED RIGHTS") shall be subordinate to Assignor's Excluded Rights, and Assignee hereby waives any rights to enforce Included Rights until such time as Assignor has received all payments to which it remains entitled by reason of Excluded Rights. If any amount shall be paid to Assignee on account of any Included Rights at any time before Assignor has received all payments to which it is entitled because of Excluded Rights, such amount shall be held in trust by Assignee for the benefit of Assignor, shall be segregated from the other funds of Assignee and shall forthwith be paid over to Assignor to be held by Assignor as collateral for, or then or at any time thereafter applied in whole or in part by Assignor against, the payments due to Assignor because of Excluded Rights, whether matured or unmatured, in such order as Assignor shall elect.

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Assignor does for itself and its successors covenant and agree to warrant and defend the title to the property assigned herein against the just and lawful claims and demands of any person claiming under or through a Lien Removable by BNPLC, but not otherwise.

Assignee hereby assumes and agrees to keep, perform and fulfill Assignor's obligations, if any, relating to any permits or contracts, under which Assignor has rights being assigned herein.

IN WITNESS WHEREOF, the parties have executed this instrument as of

_____ / _____.

ASSIGNOR:

BNP LEASING CORPORATION a Delaware corporation

By: _____
Its: _____

ASSIGNEE:

[NAI or the Applicable Purchaser], a

25, 1966 in Book 216 of Maps, page 2, in the Office of the Recorder of the County of Santa Clara.

EXCEPTING THEREFROM those portions thereof described in the Deed to Santa Clara Valley Transit District, recorded October 24, 1997, Document No. 13912193; Official Records.

ALSO EXCEPTING THEREFROM that portion of said PARCEL "A" described in the deed from 495 Java Drive Associates, L.P. to 475 Java Drive Associates, L.P. recorded September 16, 1998, Document No. 14395998; Official Records, as follows:

Beginning at the Northwest corner of Parcel A as shown upon said Parcel Map filed for record in Book 216 at Page 2; thence along the Westerly line of said Parcel A, South 14 degrees 51 minutes 33 seconds West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52 minutes 02 seconds East 134.85 feet; thence North 51 degrees 07 minutes 58 seconds West 49.68; thence North 38 degrees 52 minutes 02 seconds East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07 minutes 58 seconds West 44.97 feet to the point of beginning.

TOGETHER WITH that portion of PARCEL "A", as shown upon that certain Parcel Map filed for record on November 10, 1971 in Book 292 of Maps, page 41, in the Office of the Recorder of the County of Santa Clara, described in the deed from 475 Java Drive Associates, L.P. to 495 Java Drive Associates, L.P., recorded September 16, 1998, Document No. 14395997, Official Records, as follows:

Beginning at the Northwest corner of PARCEL "A" as shown upon that certain Parcel Map recorded in Book 216 of Maps at page 2; thence along the Westerly line of said PARCEL "A", South 14 degrees 51 minutes 33 seconds West 223.09 feet to a point hereinafter referred to as Point "X"; thence continuing along the Westerly line of last said Parcel A, South 14 degrees 51 minutes 33 seconds West 186.10 feet to a point on the Northeasterly line of that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records, said point being on a non-tangent curve concave Southwesterly and having a radius of 1002.05 feet, a radial line through said point bears North 45 degrees 01 minutes 56 seconds East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20 minutes 28 seconds an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52 minutes 02 seconds East 164.71 feet to the said Point of Beginning.

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PARCEL TWO:

Non-exclusive easements for storm drain purposes as granted to The Prudential Insurance Company of America by Deed recorded June 17, 1975 in Book B467, page 173, Official Records, particularly described in said deed.

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PARCEL THREE:

A non-exclusive easement for ingress to and egress from motor vehicle parking spaces as granted to The Prudential Insurance Company of America by Deed recorded June 17, 1975 in Book B467, page 178.

PARCEL FOUR:

Non-exclusive easements for ingress and egress granted by 475 Java Drive Associates, L.P. to 495 Java Drive Associates, L.P., described in the Reciprocal Easement Agreement recorded September 16, 1998, Document No. 14396001, Official Records, as follows:

ONE:

Commencing at the Northeasterly corner of that parcel of land described in the Deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records, said point lying on the Easterly line

of said PARCEL "A", as shown upon that certain Parcel Map filed for record in Book 292, page 41; thence Northwesterly along the Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District along a curve to the left with a radius of 1002.05 feet, from which a radial line bears North 45 degrees 01 minutes 56 seconds East, through a central angle of 4 degrees 20 minutes 28 seconds for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52 minutes 02 seconds East 82.92 feet to a point hereafter referred to as Point A; thence North 51 degrees 07 minutes 58 seconds West 12.96 feet; thence South 38 degrees 52 minutes 02 seconds West 64.41 feet; thence Westerly along a tangent curve to the right with a radius of 20.00 feet, through a central angle of 64 degrees 20 minutes 39 seconds for an arc length of 22.46 feet to a point on said Northeasterly line of said parcel of land described in the Deed to Santa Clara Valley Transit District; thence Southeasterly along said Northeasterly line along a non-tangent curve to the right with a radius of 1002.05 feet, from which a radial line bears North 39 degrees 18 minutes 05 seconds East, through a central angle of 1 degrees 23 minutes 23 seconds for an arc length of 24.30 feet to the true point of beginning.

TWO:

Commencing at said Point A; thence North 38 degrees 52 minutes 02 seconds East 216.65 feet to the true point of beginning; thence North 51 degrees 07 minutes 58 seconds West 49.68 feet; thence North 38 degrees 52 minutes 02 seconds East 87.23 feet to the Northeasterly line of said PARCEL "A", as shown upon that certain Parcel Map filed for record in Book 216 at page 2; thence North 75 degrees 07 minutes 58 seconds West 13.91 feet along said Northeasterly line; thence South 38 degrees 52 minutes 02 seconds West 94.26 feet; thence South 51 degrees 07 minutes 58 seconds East 62.39 feet; thence North 38 degrees 52 minutes 02 seconds East 12.70 feet to the true point of beginning.

APN: 110-32-009

ARB: 110-3-X57,66.02

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EXHIBIT D

ACKNOWLEDGMENT OF DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

THIS ACKNOWLEDGMENT OF DISCLAIMER OF REPRESENTATIONS AND WARRANTIES (this "CERTIFICATE") is made as of _____, _____, by [NAI or the Applicable Purchaser, as the case may be], a _____ ("GRANTEE").

Contemporaneously with the execution of this Certificate, BNP Leasing Corporation, a Delaware corporation ("BNPLC"), is executing and delivering to Grantee (1) a corporate grant deed and (2) a Bill of Sale and Assignment (the foregoing documents and any other documents to be executed in connection therewith are herein called the "CONVEYANCING DOCUMENTS" and any of the properties, rights or other matters assigned, transferred or conveyed pursuant thereto are herein collectively called the "SUBJECT PROPERTY").

NOTWITHSTANDING ANY PROVISION CONTAINED IN THE CONVEYANCING DOCUMENTS TO THE CONTRARY, GRANTEE ACKNOWLEDGES THAT BNPLC MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE OR KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO ENVIRONMENTAL MATTERS OR THE PHYSICAL CONDITION OF THE SUBJECT PROPERTY, AND GRANTEE, BY ACCEPTANCE OF THE CONVEYANCING DOCUMENTS, ACCEPTS THE SUBJECT PROPERTY "AS IS," "WHERE IS," "WITH ALL FAULTS" AND WITHOUT ANY SUCH REPRESENTATION OR WARRANTY BY GRANTOR AS TO ENVIRONMENTAL MATTERS, THE PHYSICAL CONDITION OF THE SUBJECT PROPERTY, COMPLIANCE WITH SUBDIVISION OR PLATTING REQUIREMENTS OR CONSTRUCTION OF ANY IMPROVEMENTS. Without limiting the generality of the foregoing, Grantee hereby further acknowledges and agrees that warranties of merchantability and fitness for a particular purpose are excluded from the transaction contemplated by the Conveyancing Documents, as are any warranties arising from a course of dealing or usage of trade. Grantee hereby assumes all risk and liability (and agrees that BNPLC shall not be liable for any special, direct, indirect, consequential, or other damages) resulting or arising from or relating to the ownership, use, condition, location, maintenance, repair, or operation of the Subject Property, except for damages proximately caused by (and attributed by any applicable principles of comparative fault to) the Established Misconduct of BNPLC. As used in the preceding sentence, "ESTABLISHED MISCONDUCT" is intended to have, and be limited to, the meaning given to it in the Common Definitions and Provisions Agreement

incorporated by reference into the Purchase Agreement between BNPLC and Network Appliance, Inc. dated January 20, 1999, pursuant to which Purchase Agreement BNPLC is delivering the Conveyancing Documents.

The provisions of this Certificate shall be binding on Grantee, its successors and assigns and any other party claiming through Grantee. Grantee hereby acknowledges that BNPLC is entitled to rely and is relying on this Certificate.

EXECUTED as of _____, ____.

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[NAI or the Applicable Purchaser]

By: _____

Name: _____

Title: _____

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EXHIBIT E

SECRETARY'S CERTIFICATE

The undersigned, [Secretary or Assistant Secretary] of BNP Leasing Corporation, a Delaware corporation (the "Corporation"), hereby certifies as follows:

1. That he is the duly, elected, qualified and acting Secretary [or Assistant Secretary] of the Corporation and has custody of the corporate records, minutes and corporate seal.

2. That the following named persons have been properly designated, elected and assigned to the office in the Corporation as indicated below; that such persons hold such office at this time and that the specimen signature appearing beside the name of such officer is his or her true and correct signature.

[THE FOLLOWING BLANKS MUST BE COMPLETED WITH THE NAMES AND SIGNATURES OF THE OFFICERS WHO WILL BE SIGNING THE DEED AND OTHER SALE CLOSING DOCUMENTS ON BEHALF OF THE CORPORATION.]

Name	Title	Signature
- - - - -	- - - - -	- - - - -
_____	_____	_____
_____	_____	_____

3. That the resolutions attached hereto and made a part hereof were duly adopted by the Board of Directors of the Corporation in accordance with the Corporation's Articles of Incorporation and Bylaws. Such resolutions have not been amended, modified or rescinded and remain in full force and effect.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of the Corporation on this __, day of _____, _____.

[signature and title]

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WHEREAS, pursuant to that certain Purchase Agreement (herein called the "Purchase Agreement") dated as of January 20, 1999, by and between BNP Leasing Corporation (the "Corporation") and [NAI OR THE APPLICABLE PURCHASER AS THE CASE MAY BE] ("Purchaser"), the Corporation agreed to sell and Purchaser agreed to purchase or cause the Applicable Purchaser (as defined in the Purchase Agreement) to purchase the Corporation's interest in the property (the "Property") located in Sunnyvale, California more particularly described therein.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the Corporation, in its best business judgment, deems it in the best interest of the Corporation and its shareholders that the Corporation convey the Property to Purchaser or the Applicable Purchaser pursuant to and in accordance with the terms of the Purchase Agreement.

RESOLVED FURTHER, that the proper officers of the Corporation, and each of them, are hereby authorized and directed in the name and on behalf of the Corporation to cause the Corporation to fulfill its obligations under the Purchase Agreement.

RESOLVED FURTHER, that the proper officers of the Corporation, and each of them, are hereby authorized and directed to take or cause to be taken any and all actions and to prepare or cause to be prepared and to execute and deliver any and all deeds and other documents, instruments and agreements that shall be necessary, advisable or appropriate, in such officer's sole and absolute discretion, to carry out the intent and to accomplish the purposes of the foregoing resolutions.

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EXHIBIT F

FIRPTA STATEMENT

Section 1445 of the Internal Revenue Code of 1986, as amended, provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. Sections 18805, 18815 and 26131 of the California Revenue and Taxation Code, as amended, provide that a transferee of a California real property interest must withhold income tax if the transferor is a nonresident seller.

To inform [NAI OR THE APPLICABLE PURCHASER] (the "Transferee") that withholding of tax is not required upon the disposition of a California real property interest by transferor, BNP Leasing Corporation (the "Seller"), the undersigned hereby certifies the following on behalf of the Seller:

1. The Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. The United States employer identification number for the Seller is _____;
3. The office address of the Seller is _____.
4. The Seller is qualified to do business in California.

The Seller understands that this certification may be disclosed to the Internal Revenue Service and/or to the California Franchise Tax Board by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

The Seller understands that the Transferee is relying on this affidavit in determining whether withholding is required upon said transfer.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Seller.

Dated: _____, ____.

By: _____
Name: _____
Title: _____

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Exhibit F

NOTICE OF ELECTION TO TERMINATE THE PURCHASE OPTION AND
NAI'S INITIAL REMARKETING RIGHTS AND OBLIGATIONS

BNP Leasing Corporation
12201 Merit Drive
Suite 860
Dallas, Texas 75251
Attention: Lloyd G. Cox

Re: Purchase Agreement dated as of January 20, 1999 (the "PURCHASE AGREEMENT"), between Network Appliance, Inc. ("NAI") and BNP Leasing Corporation ("BNPLC")

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Purchase Agreement referenced above. This letter shall constitute a notice, given before the Base Rent Commencement Date pursuant to subparagraph 4(B) of the Purchase Agreement, of NAI's election to terminate the Purchase Option and NAI's Initial Remarketing Rights and Obligations. NAI irrevocably elects to terminate the Purchase Option and NAI's Initial Remarketing Rights and Obligations effective immediately, subject only to the conditions described below.

NAI ACKNOWLEDGES THAT THE ELECTION MADE BY NAI DESCRIBED ABOVE CONSTITUTES AN ISSUE 97-10 ELECTION UNDER AND AS DEFINED IN THE OPERATIVE DOCUMENTS.

NAI also acknowledges that its right to terminate the Purchase Option and NAI's Initial Remarketing Rights and Obligations is subject to the condition precedent that (x) NAI shall have given Notice of NAI's Election to Terminate pursuant to Paragraph 5(D) of the Construction Management Agreement, or (y) BNPLC shall have given any FOEB Notice as provided in Paragraph 5(E) of the Construction Management Agreement, or (z) BNPLC shall have given notice of its election to accelerate the Designated Sale Date when an Event of Default has occurred and is continuing as provided in clause (5) of the definition Designated Sale Date in the Common Definitions and Provisions Agreement. Accordingly, if none of the notices described in the preceding sentence have been given, the Purchase Option and NAI's Initial Remarketing Rights and Obligations shall not terminate by reason of this notice.

NAI further acknowledges that no termination of the Purchase Option and NAI's Initial Remarketing Rights and Obligations by NAI pursuant to this notice shall be effective, unless contemporaneously with the giving of this notice NAI shall deliver to BNPLC a full Issue 97-10 Prepayment. NAI hereby covenants to pay, if NAI has not already done so, a full Issue 97-10 Prepayment to BNPLC.

Finally, NAI acknowledges that a termination of the Purchase Option and NAI's Initial Remarketing Rights and Obligations pursuant to this notice shall cause the Lease to terminate as of the Base Rent Commencement Date pursuant to subparagraph 1(b) of the Lease.

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Executed this ____ day of _____, 19__.

NETWORK APPLIANCE, INC.

Name: _____
Title: _____

[cc all Participants]

Exhibit F - Page 2

=====

\$44,000,000

PLEDGE AGREEMENT

AMONG

BNP LEASING CORPORATION

("BNPLC")

BANQUE NATIONALE DE PARIS, AS AGENT

("AGENT")

NETWORK APPLIANCE, INC.

("NAI")

AND

PARTICIPANTS AS DESCRIBED HEREIN

JANUARY 20, 1999

=====

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PLEDGE AGREEMENT

This PLEDGE AGREEMENT (this "AGREEMENT") is made as of January 20, 1999 (the "EFFECTIVE DATE"), by NETWORK APPLIANCE, INC., a California corporation ("NAI"); BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"); BANQUE NATIONALE DE PARIS ("BNPLC'S PARENT"), as a "PARTICIPANT"; and BANQUE NATIONALE DE PARIS, acting in its capacity as agent for BNPLC and the Participants (in such capacity, "AGENT"), is made and dated as of the Effective Date.

RECITALS

A. NAI and BNPLC are parties to: (i) a Common Definitions and Provisions Agreement dated as of the Effective Date (the "COMMON DEFINITIONS AND PROVISIONS Agreement"); and (ii) a Purchase Agreement dated as of the Effective Date (the "PURCHASE AGREEMENT"), pursuant to which NAI has agreed to make a "SUPPLEMENTAL PAYMENT" or "ISSUE 97-10 PREPAYMENT" (both as defined in the Common Definitions and Provisions Agreement), in consideration of the rights granted to NAI by the Purchase Agreement.

B. Pursuant to a Participation Agreement dated the date hereof (the

"PARTICIPATION AGREEMENT"), BNPLC's Parent has agreed with BNPLC to participate in the risks and rewards to BNPLC of the Purchase Agreement and other Operative Documents (as defined in the Common Definitions and Provisions Agreement), and the parties to this Agreement anticipate that other financial institutions may become parties to the Participation Agreement as Participants, agreeing to participate in the risks and rewards to BNPLC of the Purchase Agreement and other Operative Documents.

C. NAI may from time to time deliver cash collateral for its obligations to NPLC under the Purchase Agreement and for BNPLC's corresponding obligations to Participants under the Participation Agreement. This Agreement sets forth the terms and conditions governing such cash collateral.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.1 Capitalized Terms Used But Not Defined in This Agreement. All capitalized terms used in this Agreement which are defined in Article I of the Common Definitions and Provisions Agreement and not otherwise defined herein shall have the same meanings herein as set forth in the Common Definitions and Provisions Agreement. All terms used in this Agreement which are defined in the UCC and not otherwise defined herein shall have the same meanings herein as set forth therein, except where the context otherwise requires.

Section 1.2 Definitions. When used in this Agreement, the following terms shall have the following respective meanings:

"ACCOUNT" shall mean any deposit account maintained by a Deposit Taker into which Cash Collateral may be deposited at any time, excluding the Transition Account.

"ACCOUNT OFFICE" shall mean, with respect to any Account maintained by any Deposit Taker, the office of such Deposit Taker in California or New York at which such Account is maintained as specified in the applicable Deposit Taker's Acknowledgment and Agreement.

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"AGENT" shall have the meaning given to that term in the introductory paragraph hereof.

"BNPLC" shall have the meaning given to that term in the introductory paragraph hereof.

"BNPLC'S CORRESPONDING OBLIGATIONS TO PARTICIPANTS" shall mean BNPLC's obligations under the Participation Agreement to pay Participants their respective Percentages of (or amounts equal to their respective Percentages of) sums "actually received by BNPLC" (as defined in the Participation Agreement) in satisfaction of NAI's Purchase Agreement Obligations; provided, however, any modification of the Participation Agreement executed after the date hereof without NAI's written consent shall not be considered for purposes of determining BNPLC's Corresponding Obligations to Participants under this Agreement.

"CASH COLLATERAL" shall mean (i) all money of NAI which NAI has delivered to Agent for deposit with a Deposit Taker pursuant to this Agreement, and (ii) any additional money delivered to Agent as Collateral pursuant to Section 4.9.

"CERTIFICATE OF DEPOSIT" shall mean a certificate of deposit issued by a Deposit Taker as required by Section 5.4 below to evidence an Account into which Cash Collateral has been deposited pursuant to this Agreement. Each Certificate of Deposit shall be issued in an amount equal to the Value of the Account which it evidences and shall otherwise be in the form set forth as ATTACHMENT 1.

"COLLATERAL" shall have the meaning given to that term in Section 2.1 hereof.

"COLLATERAL IMBALANCE" shall mean on any date prior to the Designated Sale Date that the Value (without duplication) of Accounts maintained by and Certificates of Deposit issued by the Deposit Taker for any Participant (other than a Disqualified Deposit Taker) does not equal such Participant's Percentage, multiplied by the lesser of (1) the Minimum Collateral Value in effect on such date, or (2) the aggregate Value of all Collateral subject to this Agreement on such date. For purposes of determining whether a Collateral Imbalance exists, the Value of any Accounts maintained by a bank that is acting as Deposit Taker for two or more Participants will be deemed to be held for them in proportion to their respective Percentages, and the Value of any Accounts maintained by a bank as Deposit Taker for both a Participant and BNPLC (as in the case of BNPLC's Parent acting as Deposit Taker for itself, as a Participant, and for BNPLC) will be deemed to be held for the Participant only to the extent necessary to prevent or mitigate a Collateral Imbalance and otherwise for BNPLC.

"COLLATERAL PERCENTAGE" shall mean the percentage designated by NAI or required during a Mandatory Collateral Period pursuant to Article III.

"DEFAULT" means any Event of Default and any default, event or condition which would, with the giving of any requisite notices and the passage of any requisite periods of time, constitute an Event of Default.

"DEPOSIT TAKER" for BNPLC shall mean BNPLC's Parent and for each Participant shall mean the Participant itself; provided, that each of BNPLC and the Participants, for itself only, may from time to time designate another Deposit Taker as provided in Sections 4.4 and 4.5 below.

"DEPOSIT TAKER LOSSES" shall mean the Value of any Cash Collateral delivered to a Deposit Taker, but that the Deposit Taker will not (because of the insolvency of the Deposit Taker, offsets by the Deposit Taker in violation of the Deposit Taker's Acknowledgment and Agreement,

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or otherwise) return to NAI or return to Agent for disposition or application as provided herein or as required by applicable law.

"DEPOSIT TAKER'S ACKNOWLEDGMENT AND AGREEMENT" shall have the meaning given to that term in subsection 4.1.2 hereof.

"DISQUALIFIED DEPOSIT TAKER" shall mean any Deposit Taker with whom Agent may decline to deposit Collateral pursuant to Section 4.1.

"EVENT OF DEFAULT" shall mean the occurrence of any of the following:

(a) the failure by NAI to pay all or any part of NAI's Purchase Agreement Obligations when due, after giving effect to any applicable notice and grace periods expressly provided for in the Purchase Agreement;

(b) the failure by NAI to provide funds as and when required by Section 5.1 of this Agreement, if within seven Business Days after such failure commences NAI does not (1) cure such failure by delivering the funds required by Section 5.1, and (2) pay to BNPLC as additional Rent under the Lease an amount equal to interest at the Default Rate (as defined in the Lease) on such funds for the period from which they were first due to the date of receipt by Agent;

(c) the failure of the pledge or security interest contemplated herein in the Transition Account or any Account, Certificate of Deposit or Cash Collateral to be a Qualified Pledge (regardless of the characterization of the Transition Account or any Accounts, Certificates of Deposit or Cash Collateral as deposit accounts, instruments or general intangibles under the UCC), if within five Business Days after NAI becomes aware of such failure, NAI does not (1) notify Agent, BNPLC and the Participants of such failure, and (2) cure such failure, and (3) to the extent required by Section 7.2.9, pay to BNPLC any additional Base Rent that has accrued under the Lease because of (or that would have accrued if BNPLC had been aware of) such failure, together with interest at the Default Rate on any such

additional Base Rent;

(d) the failure of any representation herein by NAI to be true (other than a failure described in another clause of this definition of Event of Default), if such failure is not cured within thirty days after NAI receives written notice thereof from Agent;

(e) the failure of any representation made by NAI in subsection 7.1.1 to be true, if within fifteen (15) days after NAI becomes aware of such failure, NAI does not (1) notify Agent, BNPLC and the Participants of such failure, and (2) cure such failure, and (3) pay to BNPLC any additional Base Rent that has accrued under the Lease because of (or that would have accrued if BNPLC had been aware of) such failure, and (4) pay to BNPLC interest at the Default Rate on any such additional Base Rent;

(f) the failure by NAI timely and properly to observe, keep or perform any covenant, agreement, warranty or condition herein required to be observed, kept or performed (other than a failure described in another clause of this definition of Event of Default), if such failure is not cured within thirty days after NAI receives written notice thereof from Agent; and

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(g) the failure by BNPLC to pay when due on or after the Designated Sale Date any of BNPLC's Corresponding Obligations to Participants, after giving effect to any applicable notice and grace periods expressly provided for in the Participation Agreement.

Notwithstanding the foregoing, if ever the aggregate Value of Cash Collateral held by Agent and the Deposit Takers EXCEEDS the Minimum Collateral Value then in effect, a failure of the pledge or security interest contemplated herein in SUCH EXCESS Cash Collateral to be a valid, perfected, first priority pledge or security interest shall not constitute an Event of Default under this Agreement. Accordingly, to provide a cure as required to avoid an Event of Default under clauses (c) or (e) of this definition, NAI could deliver additional Cash Collateral - the pledge of which or security interest in which created by this Agreement is a Qualified Pledge sufficient in amount to cause the aggregate Value of the Cash Collateral then held by Agent and the Deposit Takers subject to a Qualified Pledge hereunder to equal or exceed the Minimum Collateral Value.

"FAILED COLLATERAL TEST DATE" means any date upon which commences a Mandatory Collateral Period as described in Part III of Schedule 1.

"INITIALLY QUALIFIED DEPOSIT TAKER" means (1) Banque Nationale de Paris, acting through any branch, office or agency that can lawfully maintain an Account as a Deposit Taker hereunder, and (2) any of the fifty largest (measured by total assets) U.S. banks, or one of the one hundred largest (measured by total assets) banks in the world, with debt ratings of at least (i) A- (in the case of long term debt) and A-1 (in the case of short term debt) or the equivalent thereof by Standard and Poor's Corporation, and (ii) A3 (in the case of long term debt) and P-2 (in the case of short term debt) or the equivalent thereof by Moody's Investor Service, Inc. The parties believe it improbable that the ratings systems used by Standard and Poor's Corporation and by Moody's Investor Service, Inc. will be discontinued or changed, but if such ratings systems are discontinued or changed, NAI shall be entitled to select and use a comparable ratings systems as a substitute for the S&P Rating or the Moody Rating, as the case may be, for purposes of determining the status of any bank as an Initially Qualified Deposit Taker.

"LIEN" shall mean, with respect to any property or assets, any right or interest therein of a creditor to secure indebtedness of any kind which is owed to him or any other arrangement with such creditor which provides for the payment of such indebtedness out of such property or assets or which allows him to have such indebtedness satisfied out of such property or assets prior to the general creditors of any owner thereof, including any lien, mortgage, security interest, pledge, deposit, production payment, rights of a vendor under any title retention or conditional sale agreement

or lease substantially equivalent thereto, tax lien, mechanic's or materialman's lien, or any other charge or encumbrance for security purposes, whether arising by law or agreement or otherwise, but excluding any right of setoff which arises without agreement in the ordinary course of business. "Lien" also means any filed financing statement, any registration with an issuer of uncertificated securities, or any other arrangement which would serve to perfect a Lien described in the preceding sentence, regardless of whether such financing statement is filed, such registration is made, or such arrangement is undertaken before or after such Lien exists.

"MATERIAL LEASE DEFAULT" shall mean any of the following:

(1) any "Event of Default" under and as defined in the Lease, including any such Event of Default consisting of a failure of NAI to comply with the requirements of Exhibit I attached to the Lease; and

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(2) (a) any failure of NAI to make any payment required by and when first due under the Lease, regardless of whether any period provided in the Lease for the cure of such failure by NAI shall have expired, and (b) any other default, event or condition which would, with the giving of any requisite notices and the passage of any requisite periods of time, constitute an "Event of Default" under and as defined in the Lease, if such other default, event or failure involves a material noncompliance with Applicable Law. (For purposes of this definition, "material" noncompliance with Applicable Law will include any noncompliance, the correction of which has been requested by a governmental authority, or because of which a threat of action against the Property or BNPLC has been asserted by a governmental authority.)

"MANDATORY COLLATERAL PERIOD" shall mean any period, as determined in accordance with Part III of Schedule 1, during which NAI is required to maintain a Collateral Percentage of one hundred percent (100%) pursuant to Section 3.2.

"MINIMUM COLLATERAL VALUE" shall mean (1) as of the Designated Sale Date or any prior date, an amount equal to the Collateral Percentage multiplied by the Stipulated Loss Value determined as of that date in accordance with the Lease; and (2) as of any date after the Designated Sale Date, an amount equal to the Break Even Price plus any unpaid interest accrued on past due amounts payable pursuant to Paragraph 1(a) of the Purchase Agreement.

"NAI" shall have the meaning given to that term in the introductory paragraph hereof.

"NAI'S PURCHASE AGREEMENT OBLIGATIONS" shall mean all of NAI's obligations under the Purchase Agreement, including (i) NAI's obligation to pay any Supplemental Payment as required under subparagraph 1(A) of the Purchase Agreement, (ii) NAI's obligation to pay any Issue 97-10 Prepayment as required by subparagraph 4(C) of the Purchase Agreement, and (iii) any damages incurred by BNPLC because of (A) NAI's breach of the Purchase Agreement or (B) the rejection by NAI of the Purchase Agreement in any bankruptcy or insolvency proceeding.

"NOTICE OF SECURITY INTEREST" shall have the meaning given to that term in subsection 4.1.1 hereof.

"OTHER LIABLE PARTY" shall mean any Person, other than NAI, who may now or may at any time hereafter be primarily or secondarily liable for any of the Secured Obligations or who may now or may at any time hereafter have granted to Agent a pledge of or security interest in any of the Collateral.

"PARTICIPANTS" shall mean BNPLC's Parent and any other financial institutions which may hereafter become parties to (i) this Agreement by completing, executing and delivering to NAI and Agent a Supplement, and (ii) the Participation Agreement.

"PARTICIPATION AGREEMENT" shall have the meaning given to such term in Recital B hereof.

"PERCENTAGE" shall mean with respect to each Participant and the Deposit Taker for such Participant, such Participant's "Percentage" under and as defined in the Participation Agreement for purposes of computing such Participant's right thereunder to receive payments of (or amounts equal to a percentage of) any sales proceeds or Supplemental Payment received by BNPLC under the Purchase Agreement. Percentages may be adjusted from time to time as provided in the Participation Agreement or as provided in supplements thereto executed as provided in the Participation Agreement.

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"QUALIFIED PLEDGE" means a pledge or security interest that constitutes a valid, perfected, first priority pledge or security interest.

"SECURED OBLIGATIONS" shall mean and include both NAI's Purchase Agreement Obligations and BNPLC's Corresponding Obligations to Participants.

"SUPPLEMENT" shall mean a supplement to this Agreement in the form of ATTACHMENT 2.

"TRANSACTION DOCUMENTS" shall mean, collectively, this Agreement, the Lease, the Purchase Agreement and the Participation Agreement.

"TRANSITION ACCOUNT" shall have the meaning given it in Section 5.2.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of California from time to time, and the Uniform Commercial Code as in effect in any other jurisdiction which governs the perfection or non-perfection of the pledge of and security interests in the Collateral created by this Agreement.

"VALUE" shall mean with respect to any Account, Certificate of Deposit or Cash Collateral on any date, a dollar value determined as follows (without duplication):

(a) cash shall be valued at its face amount on such date;

(b) an Account shall be valued at the principal balance thereof on such date; and

(c) a Certificate of Deposit shall be valued at the face amount thereof.

Section 1.3 Attachments. All attachments to this Agreement are a part hereof for all purposes.

Section 1.4 Amendment of Defined Instruments. Unless the context otherwise requires or unless otherwise provided herein, references in this Agreement to a particular agreement, instrument or document (including references to the Lease, Purchase Agreement and Participation Agreement) also refer to and include all valid renewals, extensions, amendments, modifications, supplements or restatements of any such agreement, instrument or document; provided that nothing contained in this Section shall be construed to authorize any Person to execute or enter into any such renewal, extension, amendment, modification, supplement or restatement.

Section 1.5 References and Titles. All references in this Agreement to Attachments, Articles, Sections, subsections, and other subdivisions refer to the Attachments, Articles, Sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any subdivision are for convenience only and do not constitute any part of any such subdivision and shall be disregarded in construing the language contained in this Agreement. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The phrases "this Article," "this Section" and "this subsection" and similar phrases

refer only to the Articles, Sections or subsections hereof in which the phrase occurs. The word "or" is not exclusive, and the word "including" (in all of its forms) means "including without limitation". Pronouns in masculine, feminine and neuter

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gender shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa unless the context otherwise requires.

ARTICLE II SECURITY INTEREST

Section 2.1 Pledge and Grant of Security Interest. As security for the Secured Obligations, NAI hereby pledges and assigns to Agent (for the ratable benefit of BNPLC and the Participants) and grants to Agent (for the ratable benefit of BNPLC and the Participants) a continuing security interest and lien in and against all right, title and interest of NAI in and to the following property, whether now owned or hereafter acquired by NAI (collectively and severally, the "COLLATERAL"):

(a) All Cash Collateral, all Accounts, the Transition Account and all Certificates of Deposit issued from time to time and general intangibles arising therefrom or relating thereto (however, "general intangibles" as used in this clause shall not include any general intangibles not related to Cash Collateral, Accounts, the Transition Account or Certificates of Deposit issued from time to time, and thus will not include, without limitation, any intellectual property of NAI); and all documents, instruments and agreements evidencing the same; and all extensions, renewals, modifications and replacements of the foregoing; and any interest or other amounts payable in connection therewith; and

(b) All proceeds of the foregoing (including whatever is receivable or received when Collateral or proceeds is invested, sold, collected, exchanged, returned, substituted or otherwise disposed of, whether such disposition is voluntary or involuntary, including rights to payment and return premiums and insurance proceeds under insurance with respect to any Collateral, and all rights to payment with respect to any cause of action affecting or relating to the Collateral).

The pledge, assignment and grant of a security interest made by NAI hereunder is for security of the Secured Obligations only; the parties to this Agreement do not intend that NAI's delivery of the Collateral to Agent as herein provided will constitute an advance payment of any Secured Obligations or liquidated damages, nor do the parties intend that the Collateral increase the dollar amount of the Secured Obligations.

Section 2.2 Return of Collateral After the Secured Obligations are Satisfied in Full. If any proceeds of Collateral remain after all Secured Obligations have been paid in full, Agent will deliver or direct the Deposit Takers to deliver such proceeds to NAI or other Persons entitled thereto by law.

ARTICLE III DESIGNATION OF MINIMUM COLLATERAL PERCENTAGE

Section 3.1 Determination of Minimum Collateral Percentage Generally. Effective as of the date of this Agreement, and until a new Collateral Percentage becomes effective, the Collateral Percentage is zero percent (0%). Subject to the provisions of this Article III, NAI may from time to time designate a new Collateral Percentage between 0% and 100% by written notice delivered to Agent, BNPLC and the Participants in the form of ATTACHMENT 3. Any new Collateral Percentage so designated shall not become effective, however, until the commencement of the later of (A) the first Base Rent Period to commence after the second anniversary of the Effective Date, or (B) the next following Base Rent Period which is at least ten Business Days after (1) the receipt of such notice by Agent, BNPLC and the Participants, and (2) the approval in writing by a "Majority" under (and as defined in) the Participation Agreement of the new Collateral Percentage designated by NAI (which approval may be withheld in the sole and absolute discretion of BNPLC or any Participant); provided, however, the prior approval of a Majority under the Participation Agreement will not be required for a designation by NAI of a Collateral Percentage above zero percent (0%) that is to become effective as of the

Rent Period starting after the second anniversary of the Effective Date, if the notice from NAI designating such Collateral Percentage is delivered to Agent, BNPLC and the Participants at least ten Business Days prior to such Base Rent Period. In any event, if NAI provides more than one notice of a change in the Collateral Percentage to be effective on a particular Base Rent Date, then the latest such notice from NAI which satisfies the requirements of the preceding sentence (and of Sections 3.2 and 3.3) will control. After any Collateral Percentage becomes effective as provided in this Article, it shall remain in effect until a different Collateral Percentage becomes effective as provided in this Article.

Section 3.2 Limitations on NAI's Right to Lower the Collateral Percentage. Notwithstanding the foregoing, no designation by NAI of a new Collateral Percentage will be effective to reduce the Collateral Percentage if the designation is given, or the reduction would otherwise become effective, on or after the Designated Sale Date or when any of the following shall have occurred and be continuing:

3.2.1 any Material Lease Default;

3.2.2 any Event of Default under and as defined in this Agreement;

3.2.3 any Default under and as defined in this Agreement -- excluding, however, any such Default limited to a failure of NAI described in clause (c) or clause (e) of the definition of Event of Default above, with respect to which the time for cure specified in clause (c) or clause (e), as applicable, has not expired.

Section 3.3 Mandatory Collateral Periods. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, THE COLLATERAL PERCENTAGE DURING ANY MANDATORY COLLATERAL PERIOD SHALL BE ONE HUNDRED PERCENT (100%). No later than five Business Days prior to any Failed Collateral Test Date, NAI shall notify Agent, BNPLC and the Participants of the conditions set forth in Part III of Schedule 1 that NAI will be unable to satisfy on the Failed Collateral Test Date.

ARTICLE IV PROVISIONS CONCERNING DEPOSIT TAKERS

Section 4.1 Qualification of Deposit Takers Generally. Agent may decline to deposit or maintain Collateral hereunder with any Person designated as a Deposit Taker, if such Person has failed to satisfy or no longer satisfies the following requirements:

4.1.1 Such Person must have received from Agent and NAI a completed, executed Notice of Security Interest in the form of ATTACHMENT 4 (a "NOTICE OF SECURITY INTEREST") which specifically identifies any and all Accounts in which such Person shall hold Cash Collateral delivered to it pursuant to this Agreement and which designates Account Offices with respect to all such Accounts in New York or California.

4.1.2 Such Person must have executed the Acknowledgment and Agreement at the end of such Notice of Security Interest (the "DEPOSIT TAKER'S ACKNOWLEDGMENT AND AGREEMENT") and returned the same to Agent. Further, such Person must have complied with the Deposit Taker's Acknowledgment and Agreement, and the representations set forth therein with respect to such Person must continue to be true and correct.

4.1.3 Such Person must be a commercial bank, organized under the laws of the United States of America or a state thereof or under the laws of another country which is doing business in the United States of America; must be authorized to maintain deposit accounts for others through Account Offices in New York or California (as specified in the Deposit Taker's

Acknowledgment and Agreement); and must be an Affiliate of BNPLC or the Participant for whom such Person will act as Deposit Taker or must have a combined capital, surplus and undivided profits of at least \$500,000,000.

4.1.4 Such Person must have complied with the provisions in this Agreement applicable to Deposit Takers, including the provisions of Section 5.4 concerning the issuance and redemption of Certificates of Deposit.

Section 4.2 Existing Deposit Takers. BNPLC's Parent (as Deposit Taker for itself and for BNPLC) has received a Notice of Security Agreement dated the Effective Date and has responded to such a notice with a Deposit Taker's Acknowledgment and Agreement dated the Effective Date, as contemplated in subsections 4.1.1 and 4.1.2.

Section 4.3 Replacement of Participants Proposed by NAI. So long as no Event of Default has occurred and is continuing, BNPLC shall not unreasonably withhold its approval for a substitution under the Participation Agreement of a new Participant proposed by NAI for any Participant, the Deposit Taker for whom would no longer meet the requirements for an Initially Qualified Deposit Taker; provided, however, that (A) the proposed substitution can be accomplished without a release or breach by BNPLC of its rights and obligations under the Participation Agreement; (B) the new Participant will agree (by executing a Supplement and a supplement to the Participation Agreement as contemplated therein and by other agreements as may be reasonably required by BNPLC and NAI) to become a party to the Participation Agreement and to this Agreement, to designate an Initially Qualified Deposit Taker as the Deposit Taker for it under this Agreement and to accept a Percentage under the Participation Agreement equal to the Percentage of the Participant to be replaced; (C) the new Participant (or NAI) will provide the funds required to pay the termination fee by Section 6.4 of the Participation Agreement to accomplish the substitution; (D) NAI (or the new Participant) agrees in writing to indemnify and defend BNPLC for any and all Losses incurred by BNPLC in connection with or because of the substitution, including the cost of preparing supplements to the Participation Agreement and this Agreement and including any cost of defending and paying any claim asserted by the Participant to be replaced because of the substitution (but not including any liability of BNPLC to such Participant for damages caused by BNPLC's bad faith or gross negligence in the performance of BNPLC's obligations under the Participation Agreement prior to the substitution); (E) the new Participant shall be a reputable financial institution having a net worth of no less than seven and one half percent (7.5%) of total assets and total assets of no less than \$10,000,000,000.00 (all according to then recent audited financial statements); and (F) in no event will BNPLC be required to approve a substitution pursuant to this Section 4.3 which will replace a Participant that is an Affiliate of BNPLC. BNPLC shall attempt in good faith to assist (and cause BNPLC's Parent to attempt in good faith to assist) NAI in identifying a new Participant that NAI may propose to substitute for an existing Participant pursuant to this Section, as NAI may reasonably request from time to time. However, in no event shall BNPLC itself, or any of its Affiliates, be required to take the Percentage of any Participant to be replaced.

Section 4.4 Mandatory Substitution for Disqualified Deposit Takers. If any Deposit Taker shall cease to satisfy the requirements set forth in Section 4.1, the party for whom such Disqualified Deposit Taker has been designated as Deposit Taker (i.e., BNPLC or the applicable Participant) shall promptly (1) provide notice thereof to Agent and NAI, and (2) designate a substitute Deposit Taker and cause the substitute to satisfy the requirements set forth in Section 4.1. Pending the designation of the substitute and the satisfaction by it of the requirements set forth in Section 4.1, Agent may withdraw Collateral held by the Disqualified Deposit Taker and deposit such Collateral with other Deposit Takers, subject to Section 5.3 below.

Section 4.5 Voluntary Substitution of Deposit Takers. With the written approval of Agent, which approval will not be unreasonably withheld, BNPLC or any Participant may at any time designate for itself a new Deposit Taker (in replacement of any prior Deposit Taker acting for it hereunder); provided, the Person so designated has satisfied the requirements set forth in Section 4.1; and, provided further, unless the designation of a new Deposit Taker is required by Section 4.4 to replace a Disqualified Deposit Taker, at the time of the

replacement such Person must be an Initially Qualified Deposit Taker.

Section 4.6 Delivery of Notice of Security Interest by NAI and Agent. To the extent required for the designation of a new Deposit Taker by BNPLC or any Participant pursuant to Section 4.5, or to permit the substitution or replacement of a Deposit Taker for BNPLC or any Participant as provided in Sections 4.4 and 4.5, NAI and Agent shall promptly execute and deliver any properly completed Notice of Security Interest requested by BNPLC or the applicable Participant.

Section 4.7 Constructive Possession of Collateral. The possession by a Deposit Taker of any deposit accounts, money, instruments, chattel paper or other property constituting Collateral or evidencing Collateral shall be deemed to be possession by Agent or a person designated by Agent, for purposes of perfecting the security interest granted to Agent hereunder pursuant to the UCC or other Applicable Law; and notifications to a Deposit Taker by other Persons holding any such property, and Acknowledgments, receipts or confirmations from any such Persons delivered to a Deposit Taker, shall be deemed notifications to, or Acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of such Deposit Taker for the benefit of Agent for the purposes of perfecting such security interests under Applicable Law.

Section 4.8 Attempted Setoff by Deposit Takers. By delivery of a Deposit Taker's Acknowledgment and Agreement, each Deposit Taker shall be required to agree not to setoff or attempt a setoff, WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF AGENT, Secured Obligations owed to it against any Collateral held by it from time to time. Further, by delivery of a Deposit Taker's Acknowledgment and Agreement, each Deposit Taker shall be required to agree not to setoff or attempt a setoff, WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF BOTH NAI AND AGENT, obligations owed to it other than Secured Obligations against any Collateral held by it from time to time. Any Deposit Taker for BNPLC or a Participant shall not be permitted by BNPLC or the applicable Participant, as the case may be, to violate such agreements. However, NAI acknowledges and agrees (without limiting its right to recover damages from a Deposit Taker that violates such agreements) that Agent shall not be responsible for, or be deemed to have taken any action against NAI because of, any Deposit Taker's violation of such agreements; and, neither BNPLC nor any Participant shall be responsible for, or be deemed to have taken any action against NAI because of, any violation of such agreements by a Deposit Taker for another party.

Section 4.9 Deposit Taker Losses. Agent shall not be responsible for any Deposit Taker Losses. However, Deposit Taker Losses with respect to a Deposit Taker for a particular Participant shall reduce the amount of BNPLC's Corresponding Obligations to Participants which are payable to such Participant as provided in Section 2.2 of the Participation Agreement. Further, when Deposit Taker Losses with respect to a Deposit Taker for a particular Participant are incurred in excess of the payments of Secured Obligations that such Participant would then have been entitled to receive under the Participation Agreement but for such Deposit Taker Losses, such Participant must immediately pay the excess to Agent as additional Collateral hereunder, failing which NAI may recover any damages suffered by it because of the Deposit Taker Losses from such Deposit Taker or such Participant.

Section 4.10 Losses Resulting from Failure of Deposit Taker to Comply with this Agreement. Any Participant, the Deposit Taker for whom has failed to comply with the requirements of this Agreement or any Notices of Security Interest and any Deposit Taker's Acknowledgments and Agreements (the

"RESPONSIBLE PARTICIPANT") must defend, indemnify, and hold harmless BNPLC, Agent and the other Participants from and against any Losses resulting from such failure. Without limiting the foregoing, if the failure of a Deposit Taker for a Responsible Participant to comply strictly with the terms of this Agreement (including, without limitation, the provisions of Section 5.4 concerning the issuance and redemption of Certificates of Deposit and the requirement that any cash deposits be held in a deposit account located in either New York or California) causes, in whole or in part, the security interest of Agent in the Collateral held by such Deposit Taker to be unperfected, then any and all Losses suffered as a result of such nonperfection shall be borne solely by the

Responsible Participant and shall not be shared by BNPLC, Agent or the other Participants.

ARTICLE V DELIVERY AND MAINTENANCE OF CASH COLLATERAL

Section 5.1 Delivery of Funds by NAI. On each Base Rent Date, NAI must deliver to Agent, subject to the pledge and security interest created hereby, funds as Cash Collateral then needed (if any) to cause the Value of the Collateral to be no less than the Minimum Collateral Value. Each delivery of funds required by the preceding sentence must be received by Agent no later than 12:00 noon (San Francisco time) on the date it is required; if received after 12:00 noon it will be considered for purposes of the Lease as received on the next following Business Day. At least five Business Days prior to any Base Rent Date upon which it is expected that NAI will be required to deliver additional funds pursuant to this Section, NAI shall notify BNPLC, Agent and each of the Participants thereof and of the amount NAI expects to deliver to Agent as Cash Collateral on the applicable Base Rent Date. In addition to required deliveries of Cash Collateral as provided in the foregoing provisions, NAI may on any date (whether or not a Base Rent Date) deliver additional Cash Collateral to Agent as necessary to prevent any Default from becoming an Event of Default. Upon receipt of any funds delivered to it by NAI as Cash Collateral, Agent shall immediately deposit the same with the Deposit Takers in accordance with the requirements of Sections 5.3 and 5.4 below.

Section 5.2 Transition Account. Pending deposit in the Accounts or other application as provided herein, all Cash Collateral received by Agent shall be credited to and held by Agent in an account (the "TRANSITION ACCOUNT") styled "NAI Collateral Account, held for the benefit of BNP Leasing Corporation and the Participants," separate and apart from all other property and funds of NAI or other Persons, and no other property or funds shall be deposited in the Transition Account. The books and records of Agent shall reflect that the Transition Account and all Cash Collateral on deposit therein are owned by NAI, subject to a pledge and security interest in favor of Agent for the benefit of BNPLC and Participants.

Section 5.3 Allocation of Cash Collateral Among Deposit Takers. Funds received by Agent from NAI as Cash Collateral will be allocated for deposit among the Deposit Takers as follows:

first, to the extent possible the funds will be allocated as required to rectify and prevent any Collateral Imbalance; and

second, the funds will be allocated to the Deposit Taker for BNPLC, unless the Deposit Taker for BNPLC has become a Disqualified Deposit Taker, in which case the funds will be allocated to other Deposit Takers who are not Disqualified Deposit Takers as Agent deems appropriate.

Further, if for any reason a Collateral Imbalance is determined by Agent to exist, Agent shall, as required to rectify or mitigate the Collateral Imbalance, promptly reallocate Collateral among Deposit Takers by withdrawing Cash Collateral from some Accounts and redepositing it in other Accounts. (If any party to this Agreement believes that the Value of the Accounts held by a particular Deposit Taker causes a Collateral Imbalance to exist, that party will promptly notify BNPLC, NAI and Agent.) Subject to the foregoing, and provided that Agent does not thereby create or exacerbate a Collateral Imbalance, Agent

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may withdraw and redeposit Cash Collateral in order to reallocate the same among Deposit Takers from time to time as Agent deems appropriate. For purposes of illustration only, examples of the allocations required by this Section are set forth in ATTACHMENT 5.

Section 5.4 Issuance and Redemption of Certificates of Deposit. Upon the receipt of any deposit of Cash Collateral from Agent, each Deposit Taker shall issue a Certificate of Deposit evidencing the Account into which such deposit is made and deliver such Certificate of Deposit to Agent for the benefit of BNPLC and the Participants. Each Certificate of Deposit shall be issued in an amount equal to the Value of the Account which it evidences and shall otherwise be in the form set forth as ATTACHMENT 1 to this Agreement. Upon depositing any Cash Collateral into an Account that is already evidenced by an outstanding

Certificate of Deposit, Agent will surrender the outstanding Certificate of Deposit, and in exchange the Deposit Taker receiving the deposit will issue a new Certificate of Deposit, evidencing the total amount of Cash Collateral in the Account after the deposit. A Deposit Taker that has issued a Certificate of Deposit may require the surrender of the Certificate of Deposit as a condition to a withdrawal from the Account evidenced thereby, including any withdrawal required or permitted by this Agreement. Upon surrender of a Certificate of Deposit in connection with a withdrawal of less than all of the Cash Collateral in the Account evidenced thereby, the applicable Deposit Taker will concurrently issue a new Certificate of Deposit to Agent, evidencing the balance of the Cash Collateral remaining on deposit in the Account after the withdrawal. Notwithstanding the foregoing, if any Certificate of Deposit held by Agent shall be destroyed, lost or stolen, the Deposit Taker that issued the Certificate, upon the written request of Agent, shall issue a new Certificate of Deposit to Agent in lieu of and in substitution for the Certificate of Deposit so destroyed, lost or stolen. However, as applicant for the substitute Certificate of Deposit, Agent must indemnify (at no cost to NAI) the applicable Deposit Taker against any liability on the Certificate of Deposit destroyed, lost or stolen, and Agent shall furnish to the Deposit Taker an affidavit of an officer of Agent setting forth the fact of destruction, loss or theft and confirming the status of Agent as holder of the Certificate of Deposit immediately prior to the destruction, loss or theft. If any Certificate of Deposit held by Agent shall become mutilated, the Deposit Taker that issued the Certificate, upon the written request of Agent, shall issue a new Certificate of Deposit to Agent in exchange and substitution for the mutilated Certificate of Deposit. Agent shall hold all Certificates of Deposit for the benefit of BNPLC and the Participants, subject to the pledge and security interest created hereby.

Section 5.5 Status of the Accounts Under the Reserve Requirement Regulations. Deposit Takers shall be permitted to structure the Accounts as nonpersonal time deposits under 12 C.F.R., Part II, Chapter 204 (commonly known as "Regulation D"). Accordingly, each Deposit Taker may require at least seven days advance notice of any withdrawal or transfer of funds from Accounts it maintains and may limit the number of withdrawals or transfers from such Accounts to no more than six in any calendar month, notwithstanding anything to the contrary herein or in any deposit agreement that NAI and any Deposit Taker may enter into with respect to any Account. As necessary to satisfy the seven days notice requirement with respect to withdrawals by Agent when required by NAI pursuant to the provisions below, Agent shall notify Deposit Takers promptly after receipt of any notice from NAI described in subsection 6.1.2 or 6.2.1 or in Section 6.3.

Section 5.6 Acknowledgment by NAI that Requirements of this Agreement are Commercially Reasonable. NAI acknowledges and agrees that the requirements set forth herein concerning receipt, deposit, withdrawal, allocation, application and distribution of Cash Collateral by Agent, including the requirements and time periods set forth in the next Article, are commercially reasonable.

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ARTICLE VI WITHDRAWAL OF CASH COLLATERAL

NAI may not withdraw Cash Collateral, except as follows:

Section 6.1 Withdrawal of Collateral Prior to the Designated Sale Date. NAI may require Agent to present Certificates of Deposit for payment and withdraw Cash Collateral from Accounts on any date prior to the Designated Sale Date and to deliver such Cash Collateral to NAI (which delivery shall be free and clear of all liens and security interests hereunder); provided, however, that in each case:

6.1.1 Such withdrawal and delivery of the Cash Collateral to NAI will not cause the Value of the remaining Collateral to be less than the Minimum Collateral Value.

6.1.2 by a notice in the form of ATTACHMENT 6, NAI must give Agent, BNPLC and the Participants notice of the required withdrawal at least ten days prior to the date upon which the withdrawal is to occur.

6.1.3 No Default or Event of Default shall have occurred and be continuing at the time NAI gives the notice required by the preceding

subsection or on the date upon which the withdrawal is required.

6.1.4 NAI must pay to Agent any and all costs incurred by Agent in connection with the withdrawal.

6.1.5 Agent shall determine the Accounts from which to make any withdrawal required by NAI pursuant to this Section as necessary to prevent or mitigate any Collateral Imbalance.

Section 6.2 Withdrawal and Application of Cash Collateral to Reduce or Satisfy the Secured Obligations to the Participants. To reduce the "Break Even Price" or "Supplemental Payment" required under (and as defined in) the Purchase Agreement (and, thus, to reduce the Secured Obligations), NAI may require Agent to withdraw Cash Collateral then held by or for Agent pursuant to this Agreement on the Designated Sale Date and to deliver the same on the Designated Sale Date or on any date thereafter prior to an Event of Default (which delivery shall be free and clear of all liens and security interests hereunder) directly to the Participants in proportion to their respective rights to payment of BNPLC's Corresponding Obligations to Participants and for application thereto or the reduction thereof pursuant to Section 2.2 of the Participation Agreement; provided, that:

6.2.1 by a notice in the form of ATTACHMENT 7, NAI must have notified Agent, BNPLC and each of the Participants of the required withdrawal and payment to Participants at least ten days prior to the date upon which it is to occur;

6.2.2 the required withdrawal shall be made as determined by Agent, first, from the Accounts maintained by the Deposit Takers for the Participants, and then (to the extent necessary) from the Accounts maintained by the Deposit Taker for BNPLC; and

6.2.3 in any event, no withdrawals or payments directly to Participants shall be required by this Section 6.2 (or permitted over the objection of BNPLC) in excess of those required to satisfy BNPLC's Corresponding Obligations to Participants or to reduce such obligations to zero under the Participation Agreement.

Section 6.3 Withdrawal and Application of Cash Collateral to Reduce or Satisfy the Secured Obligations to BNPLC. To satisfy NAI's Purchase Agreement Obligations, NAI may require Agent to withdraw any Cash Collateral held by the Deposit Taker for BNPLC pursuant to this Agreement on the

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Designated Sale Date and to deliver the same on the Designated Sale Date or on any date thereafter prior to an Event of Default (which delivery shall be free and clear of all liens and security interests hereunder) directly to BNPLC as a payment on behalf of NAI of amounts due under the Purchase Agreement; provided, that by a notice in the form of ATTACHMENT 8, NAI must have notified Agent and BNPLC of the required withdrawal and payment to BNPLC at least ten days prior to the date upon which it is to occur.

Section 6.4 Withdrawal of Cash Collateral From Accounts Maintained by Disqualified Deposit Takers. NAI may from time to time prior to the Designated Sale Date (regardless of the existence of any Default or Event of Default) require Agent to withdraw any or all Cash Collateral from any Account maintained by a Disqualified Deposit Taker and deposit it, still subject to the pledge and grant of security interest hereunder, with other Deposit Takers who are not Disqualified Deposit Takers (in accordance with the requirements of Sections 5.3 and 5.4) on any date prior to the Designated Sale Date; provided, that by a notice in the form of ATTACHMENT 9, NAI must have notified Agent, BNPLC and each of the Participants of the required withdrawal at least ten days prior to the date upon which it is to occur.

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ARTICLE VII REPRESENTATIONS AND COVENANTS OF NAI

Section 7.1 Representations of NAI. NAI represents to BNPLC, Agent and the Participants as follows:

7.1.1 NAI is the legal and beneficial owner of the Collateral (or, in the case of after-acquired Collateral, at the time NAI acquires rights in the Collateral, will be the legal and beneficial owner thereof). No other Person has (or, in the case of after-acquired Collateral, at the time NAI acquires rights therein, will have) any right, title, claim or interest (by way of Lien, purchase option or otherwise) in, against or to the Collateral, except for rights created hereunder.

7.1.2 Agent has (or in the case of after-acquired Collateral, at the time NAI acquires rights therein, will have) a valid, first priority, perfected pledge of and security interest in the Collateral, regardless of the characterization of the Collateral as deposit accounts, instruments or general intangibles under the UCC, but assuming that the representations of each Deposit Taker in its Deposit Taker's Acknowledgment and Agreement are true.

7.1.3 NAI has delivered to Agent, together with all necessary stock powers, endorsements, assignments and other necessary instruments of transfer, the originals of all documents, instruments and agreements evidencing Accounts, Certificates of Deposit or Cash Collateral.

7.1.4 NAI's chief executive office is located at the address of NAI set forth in Article II of the Common Definitions and Provisions Agreement or at another address in California specified in a notice that NAI has given to Agent as required by Section 7.2.4.

7.1.5 To the knowledge of NAI, neither the ownership or the intended use of the Collateral by NAI, nor the pledge of Accounts or the grant of the security interest by NAI to Agent herein, nor the exercise by Agent of its rights or remedies hereunder, will (i) violate any provision of (a) Applicable Law, (b) the articles or certificate of incorporation, charter or bylaws of NAI, or (c) any agreement, judgment, license, order or permit applicable to or binding upon NAI, or (ii) result in or require the creation of any Lien, charge or encumbrance upon any assets or properties of NAI except as expressly contemplated in this Agreement. Except as expressly contemplated in this Agreement, to the knowledge of NAI no consent, approval, authorization or order of, and no notice to or filing with any court, governmental authority or third party is required in connection with the pledge or grant by NAI of the security interest contemplated herein or the exercise by Agent of its rights and remedies hereunder.

Section 7.2 Covenants of NAI. NAI hereby agrees as follows:

7.2.1 NAI, at NAI's expense, shall promptly procure, execute and deliver to Agent all documents, instruments and agreements and perform all acts which are necessary, or which Agent may reasonably request, to establish, maintain, preserve, protect and perfect the Collateral, the pledge thereof to Agent or the security interest granted to Agent therein and the first priority of such pledge or security interest or to enable Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the preceding sentence, NAI shall (A) procure, execute and deliver to Agent all stock powers, endorsements, assignments, financing statements and other instruments of transfer requested by Agent, (B) deliver to Agent promptly upon receipt all originals of Collateral consisting of instruments, documents and chattel paper and (C) cause the security interest of Agent in any Collateral

consisting of securities to be recorded or registered in the books of any financial intermediary or clearing corporation requested by Agent.

7.2.2 NAI shall not use or consent to any use of any Collateral in

violation of any provision of the this Agreement or any other Transaction Document or any Applicable Law.

7.2.3 NAI shall pay promptly when due all taxes and other governmental charges, all Liens and all other charges now or hereafter imposed upon, relating to or affecting any Collateral.

7.2.4 Without thirty days' prior written notice to Agent, NAI shall not change NAI's name or place of business (or, if NAI has more than one place of business, its chief executive office).

7.2.5 NAI shall appear in and defend, on behalf of Agent, any action or proceeding which may affect NAI's title to or Agent's interest in the Collateral.

7.2.6 Subject to the express rights of NAI under Article VI, NAI shall not surrender or lose possession of (other than to Agent or a Deposit Taker pursuant hereto), sell, encumber, lease, rent, option, or otherwise dispose of or transfer any Collateral or right or interest therein, and NAI shall keep the Collateral free of all Liens.

7.2.7 NAI will not take any action which would in any manner impair the value or enforceability of Agent's pledge of or security interest in any Collateral, nor will NAI fail to take any action which is required to prevent (and which NAI knows is required to prevent) an impairment of the value or enforceability of Agent's pledge of or security interest in any Collateral.

7.2.8 NAI shall pay (and shall indemnify and hold harmless Agent from and against) all Losses incurred by Agent in connection with or because of (A) the interest acquired by Agent in any Collateral pursuant to this Agreement, or (B) the negotiation or administration of this Agreement, whether such Losses are incurred at the time of execution of this Agreement or at any time in the future. Costs and expenses included in such Losses may include, without limitation, all filing and recording fees, taxes, UCC search fees and Attorneys' Fees incurred by Agent with respect to the Collateral.

7.2.9 Without limiting the foregoing, within five Business Days after NAI becomes aware of any failure of the pledge or security interest contemplated herein in the Transition Account or any Account, Certificate of Deposit or Cash Collateral to be a valid, perfected, first priority pledge or security interest (regardless of the characterization of the Transition Account or any Accounts, Certificates of Deposit or Cash Collateral as deposit accounts, instruments or general intangibles under the UCC), NAI shall notify Agent, BNPLC and the Participants of such failure. In addition, if the failure would not exist but for NAI's delivery of Cash Collateral to Agent subject to prior Liens or other claims by one or more third parties, or but for the grant by NAI itself of any Lien or other interest in the Collateral to one or more third parties, then, in addition to any other remedies available to BNPLC or Agent under the circumstances, NAI must pay to BNPLC any additional Base Rent that has accrued under the Lease because of (or that would have accrued if BNPLC had been aware of) the failure, together with interest at the Default Rate on any such additional Base Rent.

ARTICLE VIII AUTHORIZED ACTION BY AGENT

Section 8.1 Power of Attorney. NAI hereby irrevocably appoints Agent as NAI's attorney-in-fact for the purpose of authorizing Agent to perform (but Agent shall not be obligated to and shall incur no

liability to NAI or any third party for failure to perform) any act which NAI is obligated by this Agreement to perform, and to exercise, consistent with the other provisions of this Agreement, such rights and powers as NAI might exercise with respect to the Collateral during any period in which a Default or Event of Default has occurred and is continuing, including the right to (a) collect by legal proceedings or otherwise and endorse, receive and receipt for all dividends, interest, payments, proceeds and other sums and property now or

hereafter payable on or on account of the Collateral; (b) enter into any extension, reorganization, deposit, merger, consolidation or other agreement pertaining to, or deposit, surrender, accept, hold or apply other property in exchange for the Collateral; (c) insure, process, preserve and enforce the Collateral; (d) make any compromise or settlement, and take any action it deems advisable, with respect to the Collateral; (e) pay any indebtedness of NAI relating to the Collateral; and (f) execute UCC financing statements and other documents, instruments and agreements required hereunder. NAI agrees that such care as Agent gives to the safekeeping of its own property of like kind shall constitute reasonable care of the Collateral when in Agent's possession; provided, however, that Agent shall not be obligated to NAI to give any notice or take any action to preserve rights against any other Person in connection with the Secured Obligations or with respect to the Collateral.

ARTICLE IX DEFAULT AND REMEDIES

Section 9.1 Remedies. In addition to all other rights and remedies granted to Agent, BNPLC or the Participants by this Agreement, the Lease, the Purchase Agreement, the Participation Agreement, the UCC and other Applicable Laws, Agent may, upon the occurrence and during the continuance of any Event of Default, exercise any one or more of the following rights and remedies, all of which will be in furtherance of its rights as a secured party under the UCC:

(a) Agent may collect, receive, appropriate or realize upon the Collateral or otherwise foreclose or enforce the pledge of or security interests in any or all Collateral in any manner permitted by Applicable Law or in this Agreement; and

(b) Agent may notify any or all Deposit Takers to pay all or any portion of the Collateral held by such Deposit Taker(s) directly to Agent.

Agent shall distribute the proceeds of all Collateral received by Agent after the occurrence of an Event of Default to BNPLC and the Participants for application to the Secured Obligations. If any proceeds of Collateral remain after all Secured Obligations have been paid in full, Agent will deliver or direct the Deposit Takers to deliver such proceeds to NAI or other Persons entitled thereto. In any case where notice of any sale or disposition of any Collateral is required, NAI hereby agrees that seven (7) Business Days notice of such sale or disposition is reasonable.

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ARTICLE X OTHER RECOURSE

Section 10.1 Recovery Not Limited. To the fullest extent permitted by applicable law, NAI waives any right to require that Agent, BNPLC or the Participants proceed against any other Person, exhaust any Collateral or other security for the Secured Obligations, or to have any Other Liable Party joined with NAI in any suit arising out of the Secured Obligations or this Agreement, or pursue any other remedy in their power. NAI waives any and all notice of acceptance of this Agreement. NAI further waives notice of the creation, modification, rearrangement, renewal or extension for any period of any of the Secured Obligations of any Other Liable Party from time to time and any defense arising by reason of any disability or other defense of any Other Liable Party or by reason of the cessation from any cause whatsoever of the liability of any Other Liable Party. Until all of the Secured Obligations shall have been paid in full, NAI shall have no right to subrogation, reimbursement, contribution or indemnity against any Other Liable Party and NAI waives the right to enforce any remedy which Agent, BNPLC or any Participant has or may hereafter have against any Other Liable Party, and waives any benefit of and any right to participate in any other security whatsoever now or hereafter held by Agent, BNPLC or any Participant. NAI authorizes Agent, BNPLC and the Participants, without notice or demand and without any reservation of rights against NAI and without affecting NAI's liability hereunder or on the Secured Obligations, from time to time to (a) take or hold any other property of any type from any other Person as security for the Secured Obligations, and exchange, enforce, waive and release any or all of such other property, (b) after any Event of Default, apply or require the application of the Collateral (in accordance with this Agreement) or such other property in any order they may determine and to direct the order or manner of sale thereof as they may determine, (c) renew, extend for any period, accelerate, modify, compromise, settle or release any of the obligations of any

Other Liable Party with respect to any or all of the Secured Obligations or other security for the Secured Obligations, and (d) release or substitute any Other Liable Party.

ARTICLE XI PROVISIONS CONCERNING AGENT

In the event of any conflict between the following and other provisions in this Agreement, the following will control:

Section 11.1 Appointment and Authority. BNPLC and each Participant hereby irrevocably authorizes Agent, and Agent hereby undertakes, to take all actions and to exercise such powers under this Agreement as are specifically delegated to Agent by the terms hereof, together with all other powers reasonably incidental thereto. The relationship of Agent to the Participants is only that of one commercial bank acting as collateral agent for others, and nothing herein shall be construed to constitute Agent a trustee or other fiduciary for any Participant or anyone claiming through or under a Participant nor to impose on Agent duties and obligations other than those expressly provided for in this Agreement. With respect to any matters not expressly provided for in this Agreement and any matters which this Agreement places within the discretion of Agent, Agent shall not be required to exercise any discretion or take any action, and it may request instructions from BNPLC and Participants with respect to any such matter, in which case it shall be required to act or to refrain from acting (and shall be fully protected and free from liability to all Participants in so acting or refraining from acting) upon the instructions of the Majority, as defined in the Participation Agreement, including itself as a Participant and BNPLC; provided, however, that Agent shall not be required to take any action which exposes it to a risk of personal liability that it considers unreasonable or which is contrary to this Agreement or the other documents referenced herein or to Applicable Law.

Section 11.2 Exculpation, Agent's Reliance, Etc. Neither Agent nor any of its directors, officers, agents, attorneys, or employees shall be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement, INCLUDING THEIR NEGLIGENCE OF ANY KIND,

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EXCEPT THAT EACH SHALL BE LIABLE FOR ITS OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Without limiting the generality of the foregoing, Agent (1) may treat the rights of any Participant under its Participation Agreement as continuing until Agent receives written notice of the assignment or transfer of those rights in accordance with such Participation Agreement, signed by such Participant and in form satisfactory to Agent; (2) may consult with legal counsel (including counsel for NAI), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, unless the action taken or omitted constitutes misconduct; (3) makes no warranty or representation and shall not be responsible for any statements, warranties or representations made in or in connection with this Agreement or the other documents referenced herein; (4) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of the Transaction Documents on the part of any party thereto, or to inspect the property (including the books and records) of any party thereto; (5) shall not be responsible to any Participant for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of any Transaction Document or any instrument or document furnished in connection therewith; (6) may rely upon the representations and warranties of NAI, Participants and Deposit Takers in exercising its powers hereunder; and (6) shall incur no liability under or in respect of the Transaction Documents by acting upon any notice, consent, certificate or other instrument or writing (including any teletype, telegram, cable or telex) believed by it to be genuine and signed or sent by the proper Person or Persons.

Section 11.3 Participant's Credit Decisions. Each Participant acknowledges that it has, independently and without reliance upon Agent or any other Participant, made its own analysis of NAI and the transactions contemplated hereby and its own independent decision to enter into the Transaction Documents to which it is a party. Each Participant also acknowledges that it will, independently and without reliance upon Agent or any other Participant and based on such documents and information as it shall deem appropriate at the time,

continue to make its own credit decisions in taking or not taking action under the Transaction Documents.

Section 11.4 Indemnity. Each Participant agrees to indemnify Agent (to the extent not reimbursed by NAI within ten days after demand) from and against such Participant's Percentage of any and all Losses of any kind or nature whatsoever which to any extent (in whole or in part) may be imposed on, incurred by, or asserted against Agent growing out of, resulting from or in any other way associated with any of the Collateral, the Transaction Documents and the transactions and events (including the enforcement thereof) at any time associated therewith or contemplated therein. THE FOREGOING INDEMNIFICATION SHALL APPLY WHETHER OR NOT SUCH LOSSES ARE IN ANY WAY OR TO ANY EXTENT OWED, IN WHOLE OR IN PART, UNDER ANY CLAIM OR THEORY OF STRICT LIABILITY, OR ARE CAUSED, IN WHOLE OR IN PART, BY ANY NEGLIGENT ACT OR OMISSION OF ANY KIND BY AGENT, PROVIDED ONLY THAT NO PARTICIPANT SHALL BE OBLIGATED UNDER THIS SECTION TO INDEMNIFY AGENT FOR THAT PORTION, IF ANY, OF ANY LOSS WHICH IS PROXIMATELY CAUSED BY AGENT'S OWN INDIVIDUAL GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AS DETERMINED IN A FINAL JUDGMENT RENDERED AGAINST AGENT. Cumulative of the foregoing, each Participant agrees to reimburse Agent promptly upon demand for such Participant's Percentage share of any costs and expenses to be paid to Agent by NAI hereunder to the extent that Agent is not timely reimbursed by NAI as provided in subsection 7.2.8. As used in this Section the term "Agent" shall refer not only to the Person designated as such in the introductory paragraph of this Agreement, but also to each director, officer, agent, attorney, employee, representative and Affiliate of such Person.

Section 11.5 Agent's Rights as Participant and Deposit Taker. In its capacity as a Participant, Banque Nationale de Paris shall have the same rights and obligations as any Participant and may exercise such rights as though it were not Agent. In its capacity as a Deposit Taker, Banque Nationale de Paris

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shall have the same rights and obligations as any Deposit Taker and may exercise such rights as though it were not Agent. Banque Nationale de Paris and any of its Affiliates may accept deposits from, lend money to, act as Trustee under indentures of, and generally engage in any kind of business with NAI or its Affiliates, all as if Banque Nationale de Paris were not designated as the Agent hereunder and without any duty to account therefor to any other Participant.

Section 11.6 Investments. Whenever Agent in good faith determines that it is uncertain about how to distribute any funds which it has received hereunder, or whenever Agent in good faith determines that there is any dispute among BNPLC and Participants about how such funds should be distributed, Agent may choose to defer distribution of the funds which are the subject of such uncertainty or dispute. If Agent in good faith believes that the uncertainty or dispute will not be promptly resolved, or if Agent is otherwise required to invest funds pending distribution, Agent shall invest such funds pending distribution, all interest on any such investment shall be distributed upon the distribution of such investment and in the same proportion and to the same Persons as such investment. All moneys received by Agent for distribution to BNPLC or Participants shall be held by Agent pending such distribution solely as Agent hereunder, and Agent shall have no equitable title to any portion thereof.

Section 11.7 Benefit of Article XI. The provisions of this Article (other than the following Section 11.8) are intended solely for the benefit of Agent, BNPLC and Participants, and NAI shall not be entitled to rely on any such provision or assert any such provision in a claim or defense against Agent, BNPLC or any Participant. Agent, BNPLC and Participants may waive or amend such provisions as they desire without any notice to or consent of NAI.

Section 11.8 Resignation. Agent may resign at any time by giving written notice thereof to BNPLC, Participants and NAI. Upon any such resignation the Majority (as defined in the Participation Agreement) shall have the right to appoint a successor Agent, subject to NAI's consent, such consent not to be unreasonably withheld. A successor must be appointed for any retiring Agent, and such Agent's resignation shall become effective when such successor accepts such appointment. If, within thirty days after the date of the retiring Agent's resignation, no successor Agent has been appointed and has accepted such appointment, then the retiring Agent may appoint a successor Agent, which shall be a commercial bank organized or licensed to conduct a banking or trust

business under the laws of the United States of America or of any state thereof. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation hereunder, the provisions of this Article 10.1 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

ARTICLE XII MISCELLANEOUS

Section 12.1 Provisions Incorporated From Other Operative Documents. Reference is made to the Common Definitions and Provisions Agreement, to the Purchase Agreement and to the Participation Agreement for a statement of the terms thereof. Without limiting the generality of the foregoing, the provisions of Article II of the Common Definitions and Provisions Agreement are incorporated into this Agreement for all purposes as if set forth in this Article.

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Section 12.2 Cumulative Rights, etc. Except as herein expressly provided to the contrary, the rights, powers and remedies of Agent, BNPLC and the Participants under this Agreement shall be in addition to all rights, powers and remedies given to them by virtue of any Applicable Law, any other Transaction Document or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing their respective rights hereunder. NAI waives any right to require Agent, BNPLC or any Participant to proceed against any Person or to exhaust any Collateral or to pursue any remedy in Agent's, BNPLC's or such Participant's power.

Section 12.3 Survival of Agreements. All representations and warranties of NAI herein, and all covenants and agreements herein shall survive the execution and delivery of this Agreement, the execution and delivery of any other Transaction Documents and the creation of the Secured Obligations and continue until terminated or released as provided herein.

Section 12.4 Other Liable Party. Neither this Agreement nor the exercise by Agent or the failure of Agent to exercise any right, power or remedy conferred herein or by law shall be construed as relieving any Other Liable Party from liability on the Secured Obligations or any deficiency thereon. This Agreement shall continue irrespective of the fact that the liability of any Other Liable Party may have ceased or irrespective of the validity or enforceability of any other agreement evidencing or securing the Secured Obligations to which NAI or any Other Liable Party may be a party, and notwithstanding the reorganization, death, incapacity or bankruptcy of any Other Liable Party, or any other event or proceeding affecting any Other Liable Party.

Section 12.5 Termination. Following the Designated Sale Date, upon satisfaction in full of all Secured Obligations and upon written request for the termination hereof delivered by NAI to Agent, (i) this Agreement and the pledge and security interest created hereby shall terminate and all rights to the Collateral shall revert to NAI and (ii) Agent will, upon NAI's request and at NAI's expense execute and deliver to NAI such documents as NAI shall reasonably request to evidence such termination and release.

[The signature pages follow.]

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IN WITNESS WHEREOF, NAI, BNPLC, Agent and the Participants whose signatures appear below have caused this Agreement to be executed as of January 20, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: _____

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[Continuation of signature pages to Pledge Agreement dated to be effective
January 20, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: _____
Lloyd G. Cox, Vice President

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[Continuation of signature pages to Pledge Agreement dated to be effective
January 20, 1999]

"AGENT"

BANQUE NATIONALE DE PARIS

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

"PARTICIPANT"

BANQUE NATIONALE DE PARIS

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTACHMENT 1
TO PLEDGE AGREEMENT
CERTIFICATE OF DEPOSIT
(No. _____)

[_____, ____]

[NAME OF THE ISSUING
DEPOSIT TAKER AND THE
ADDRESS OF ITS APPLICABLE
ACCOUNT OFFICE]

PAYABLE TO
THE ORDER OF: BANQUE NATIONALE DE PARIS, as Agent under the Pledge
Agreement dated January 20, 1999, among Network Appliance,
Inc., BNP Leasing Corporation, Banque Nationale de Paris and
any other financial institutions which are from time to time
Participants under such Pledge Agreement and Banque
Nationale de Paris, acting in its capacity as agent for
BNPLC and the Participants

Dollars

in current funds, without interest, seven days after presentment of this
certificate properly endorsed.

The bank issuing this certificate acknowledges and certifies that on the
date indicated above the payee deposited the dollar amount indicated above,
and that such amount shall be payable as provided above.

Authorized Signature

ATTACHMENT 2
TO PLEDGE AGREEMENT
SUPPLEMENT TO PLEDGE AGREEMENT
[_____, ____]

Banque Nationale de Paris

Network Appliance, Inc.

1. Reference is made to the Pledge Agreement (the "PLEDGE AGREEMENT") dated January 20, 1999 among Network Appliance, Inc. ("NAI"), BNP Leasing Corporation ("BNPLC"), Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement (collectively, the "PARTICIPANTS") and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants (in such capacity, "AGENT"). Unless otherwise defined herein, all capitalized terms used in this Supplement have the respective meanings given to those terms in the Pledge Agreement.

2. The undersigned hereby certifies to Agent and NAI that the undersigned has become a party to the Participation Agreement by executing a supplement as provided therein and that its Percentage thereunder is _____%.

3. The undersigned, by executing and delivering this Supplement to NAI and Agent, hereby agrees to become a party to the Pledge Agreement and agrees to be bound by all of the terms thereof applicable to Participants. The Deposit Taker for the undersigned shall be _____, until such time as another Deposit Taker for the undersigned shall be designated in accordance with Sections 4.4 or 4.5 of the Pledge Agreement. The undersigned certifies to Agent and NAI that such Deposit Taker is an Initially Qualified Deposit Taker and satisfies the requirements for a Deposit Taker set forth in Section 4.1 of the Pledge Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Supplement as of the day and year indicated above.

[_____]

By:

Name:

Title:

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ATTACHMENT 3
TO PLEDGE AGREEMENT

NOTICE OF NAI'S ELECTION TO CHANGE THE COLLATERAL PERCENTAGE

[_____, ____]

Banque Nationale de Paris
[address of BNP]

Re: Pledge Agreement (the "PLEDGE AGREEMENT") dated January 20, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement referenced above. This letter constitutes notice to you, as Agent under the Pledge Agreement, that pursuant to Section 3.1 of the Pledge Agreement, NAI elects to change the Collateral Percentage to:

_____ percent (___%),

on the following Base Rent Date:

_____, ____

NAI expects that multiplying the new Collateral Percentage specified above against Stipulated Loss Value of:

_____ Dollars (\$_____),

will result in an expected new Minimum Collateral Value of:

_____ Dollars (\$_____).

[NOTE: THE NEXT PARAGRAPH WILL BE INCLUDED ONLY IN A NOTICE OF AN INCREASE IN THE COLLATERAL PERCENTAGE, BECAUSE OF WHICH NAI WILL BE REQUIRED TO DELIVER ADDITIONAL CASH COLLATERAL TO SATISFY THE MINIMUM COLLATERAL VALUE REQUIREMENTS IN SECTION 5.1 OF THE PLEDGE AGREEMENT:

Because of the increase in the Collateral Percentage which will result from this notice and the corresponding increase in the Minimum Collateral Value, NAI will deliver additional Cash Collateral to you as required by Section 5.1 of the Pledge Agreement no later than 12:00 noon (San Francisco time) on the Base Rent Date specified above, in the amount of:

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_____ Dollars (\$_____).]

To assure you that NAI has satisfied the conditions to its right to change the Collateral Percentage as provided in this notice, and to induce you to rely upon this notice in discharging your responsibilities under the Pledge Agreement, NAI certifies to you that:

1. NAI is giving this notice to you, BNPLC and the Participants at least ten Business Days prior to the Base Rent Date specified above, and such Base Rent Date is the commencement of a Base Rent Period.

2. No Event of Default or other event or circumstance that would, pursuant to Section 3.2 of the Pledge Agreement, preclude NAI from designating the new Collateral Percentage above has occurred and is continuing, and NAI does not anticipate that on the Base Rent Date specified above there will have occurred and be continuing any such Event of Default or other event or circumstance.

3. No Mandatory Collateral Period shall be in effect as of the effective date specified above.

NOTE: YOU SHALL BE ENTITLED TO DISREGARD THIS NOTICE IF THE STATEMENTS ABOVE ARE NOT CORRECT. HOWEVER, WE ASK THAT YOU NOTIFY NAI IMMEDIATELY IF FOR ANY REASON YOU BELIEVE THIS NOTICE IS DEFECTIVE.

Network Appliance, Inc.

By:

Name: -----

Title: -----

[cc BNPLC and all Participants]

[_____, _____]

[Name of Deposit Taker]
[Address of Deposit Taker]

1. Reference is made to the Pledge Agreement (the "PLEDGE AGREEMENT") dated January 20, 1999 among Network Appliance, Inc. ("NAI"), BNP Leasing Corporation ("BNPLC"), Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement (collectively, the "PARTICIPANTS") and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants (in such capacity, "AGENT"). Unless otherwise defined herein, all capitalized terms used in this Notice have the respective meanings given to those terms in the Pledge Agreement.

2. NAI has informed Agent that NAI has established with the addressee of this Notice (the "DEPOSIT TAKER") the following non-interest bearing Account(s) to be maintained at the following Account Office(s):

Account Type -----	Account Office -----	Account Number -----
Time Deposit	_____	_____
Time Deposit	_____	_____
Time Deposit	_____	_____

NAI has further informed Agent that NAI intends to maintain Cash Collateral in such Account(s), and that to evidence such Account(s) and the amount of Cash Collateral held therein from time to time, NAI has authorized the Deposit Taker to issue Certificates of Deposit payable to the order of Agent as provided in the Pledge Agreement.

3. NAI and Agent hereby notify Deposit Taker that, pursuant to the Pledge Agreement, NAI has granted to Agent, for the ratable benefit of BNPLC and the Participants as security for the Secured Obligations, a pledge of and security interest in all Accounts and other Collateral maintained by NAI with Deposit Taker, including the Account(s) described in Section 2 above.

4. In furtherance of such grant, NAI and Agent hereby authorize and direct Deposit Taker to:

(a) hold all Collateral for Agent and as Agent's bailee, separate and apart from all other property and funds of NAI and all other Persons and to permit no other funds to be deposited or credited to the Account(s);

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(b) make a notation in its books and records of the interest of Agent in the Collateral and that the Account(s) and all deposits therein or sums credited thereto are subject to a pledge and security interest in favor of Agent;

(c) issue and redeem Certificates of Deposit evidencing the Account(s), as directed by Agent pursuant to the Pledge Agreement;

(d) take such other steps as Agent may reasonably request to record, maintain, validate and perfect its pledge of and security interest in the Collateral; and

(e) upon receipt of notice from Agent that an Event of Default has occurred, transfer and deliver to Agent or its nominee, together with all necessary endorsements, all or such portion of the Collateral held by Deposit Taker as Agent shall direct; provided, however, that in connection therewith the Deposit Taker may require compliance by Agent with the provisions in Section 5.4 of the Pledge Agreement for redemption of any

outstanding Certificates of Deposit which evidence the Account(s).

5. NAI and Agent agree that (a) the possession by Deposit Taker of all money, instruments, chattel paper and other property constituting Collateral shall be deemed to be possession by Agent or a person designated by Agent, for purposes of perfecting the security interest granted to Agent hereunder pursuant to Section 9305, 8313 or 8213 of the UCC (as the case may be), and (b) notifications by Deposit Taker to other Persons holding any such property, and Acknowledgments, receipts or confirmations from such Persons delivered to Deposit Taker, shall be deemed notifications to, or Acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of the Deposit Taker for the benefit of Agent for the purposes of perfecting such security interests under applicable law.

6. As contemplated by the Pledge Agreement, please acknowledge Deposit Taker's receipt of, and consent to, this notice and confirm the representations and agreements set forth in the Acknowledgment and Agreement attached hereto by executing the same and returning this letter to Agent. For your files, a copy of this letter is enclosed which you may retain. The authorizations and directions set forth herein may not be revoked or modified without the written consent of Agent.

"AGENT"

BANQUE NATIONALE DE PARIS

By:

Name: -----
Title: -----

By:

Name: -----
Title: -----

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"NAI"

Network Appliance, Inc.

By:

Name: -----
Title: -----

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ACKNOWLEDGMENT AND AGREEMENT
OF DEPOSIT TAKER

Deposit Taker hereby acknowledges receipt of, and consents to, the above notice, acknowledges that it will hold the Collateral for Agent and as Agent's bailee, agrees to comply with the authorizations and directions set forth above and represents to and agrees with NAI and Agent as follows:

(a) Deposit Taker is a commercial bank, organized under the laws of

the United States of America or a state thereof or under the laws of another country which is doing business in the United States of America. Deposit Taker is authorized to maintain deposit accounts for others through the Account Offices specified in the above notice, and Deposit Taker will not move the accounts described in the above notice to other offices without the prior written authorization of Agent and NAI.

(b) Deposit Taker has a combined capital, surplus and undivided profits of at least \$500,000,000.

(c) The information set forth above regarding the Account(s) is accurate. Such Account(s) is (are) currently open and Deposit Taker has no prior notice of any other pledge, security interest, Lien, adverse claim or interest in such Account(s).

(e) Deposit Taker shall promptly notify NAI and Agent if the representations made by Deposit Taker above cease to be true and correct.

(f) Deposit Taker shall not (i) allow the withdrawal of funds from any Account by any Person other than Agent, or (ii) WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF AGENT, setoff or attempt to setoff any Secured Obligations owed to Deposit Taker against any Collateral held from time to time by Deposit Taker, or (iii) WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF BOTH NAI AND AGENT, setoff or attempt to setoff any obligations owed to Deposit Taker other than Secured Obligations, against any Collateral held from time to time by Deposit Taker.

[_____]

By: _____
Name: _____
Title: _____

[Date]

ATTACHMENT 5
TO PLEDGE AGREEMENT

EXAMPLES OF CALCULATIONS REQUIRED
TO AVOID A COLLATERAL IMBALANCE

The examples below are provided to illustrate the calculations required for allocations of Cash Collateral in a manner that will avoid a Collateral Imbalance. The examples are not intended to reflect actual numbers under this Agreement or actual Percentages of BNPLC or any of the Participants; nor are the examples intended to provide a formula for the allocations that would be appropriate in every case. The examples also reflect adjustments that would be appropriate if the Collateral Percentage were adjusted from time to time from and after the Base Rent Commencement Date, although this Agreement provides that such percentage is not to increase above zero until the second anniversary of the Effective Date (expected to be well after the Base Rent Commencement Date), except in a Mandatory Collateral Period, during which such percentage would be 100%.

EXAMPLE NO. 1

Assumptions:

1. Two Participants ("Participant A" and "Participant B") are parties to the Participation Agreement with BNPLC. Participant A's Percentage is 50% and Participant B's Percentage is 45%, leaving BNPLC with a Percentage of 5%.
2. On the Base Rent Commencement Date, Funding Advances (including those to cover Carrying Costs under the Lease) totaled \$12,000,000, resulting in a Stipulated Loss Value of \$12,000,000, allocable as follows:

A.	BNPLC's Parent (providing BNPLC's share) (5%).....	\$ 600,000
B.	Participant A (50%).....	6,000,000
C.	Participant B (45%).....	5,400,000

	TOTAL.....	\$12,000,000

- The Minimum Collateral Value on the Base Rent Commencement Date was \$7,200,000 (reflecting a Collateral Percentage of 60% times Stipulated Loss Value).
- On the Base Rent Commencement Date, NAI had delivered to Agent Cash Collateral of \$7,200,000, equal to the Minimum Collateral Value, as required by Section 5.1 of this Agreement.

Allocation of Cash Collateral Required: To avoid a Collateral Imbalance under these assumptions, Agent would be required to allocate the \$7,200,000 to the Deposit Takers for BNPLC and the Participants as follows:

A.	BNPLC's Deposit Taker (5% of Minimum Collateral Value).....	\$ 360,000
B.	Participant A's Deposit Taker (50% of Minimum Collateral Value).....	3,600,000
C.	Participant B's Deposit Taker (45% of Minimum Collateral Value).....	3,240,000

	TOTAL.....	\$7,200,000

EXAMPLE NO. 2

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Assumptions: Assume the same facts as in Example No. 1, and in addition assume that:

- Effective as of the first Base Rent Date, NAI increased its Collateral Percentage from 60% to 80%, raising the Minimum Collateral Value to \$9,600,000. Because of such increase, NAI also delivered an additional \$2,400,000 as Cash Collateral to Agent on the first Base Rent Date, bringing the total of all Cash Collateral delivered by NAI to \$9,600,000 as required by Section 5.1 of this Agreement.
- Also effective as of the first Base Rent Date, a new Participant approved by NAI ("Participant C") became a party to this Agreement and the Participation Agreement, taking a Percentage of 20%. Simultaneously, Participant A and Participant B entered into supplements to the Participation Agreement which reduced their Percentages to 40% and 35%, respectively.

Allocation of Cash Collateral Required: To avoid a Collateral Imbalance under these assumptions, Agent would be required to allocate the Cash Collateral as required to leave the Deposit Takers for BNPLC and the Participants with the following amounts:

A.	BNPLC's Deposit Taker (5% of Minimum Collateral Value).....	\$ 480,000
B.	Participant A's Deposit Taker (40% of Minimum Collateral Value).....	3,840,000
C.	Participant B's Deposit Taker (35% of Minimum Collateral Value).....	3,360,000
D.	Participant C's Deposit Taker (20% of Minimum Collateral Value).....	1,920,000

	TOTAL.....	\$9,600,000

Thus, to prevent a Collateral Imbalance, Agent would have to allocate the \$2,400,000 of additional Cash Collateral it received on the first Base Rent Date as follows:

A.	BNPLC's Deposit Taker (\$480,000 less \$360,000 already on deposit)	.....\$	120,000
B.	Participant A's Deposit Taker (\$3,840,000 less \$3,600,000 already on deposit)	.....	240,000
C.	Participant B's Deposit Taker (\$3,360,000 less \$3,240,000 already on deposit)	.....	120,000
D.	Participant C's Deposit Taker (\$1,920,000 less \$0 already on deposit)	..	1,920,000
	TOTAL	.....	\$2,400,000

EXAMPLE NO. 3

Assumptions: Assume the same facts as in Example No. 2, except that:

1. Instead of increasing its Collateral Percentage from 60% to 80%, NAI increased its Collateral Percentage to 70% on the first Base Rent Date, raising the Minimum Collateral Value to \$8,400,000. Because of such increase, NAI delivered an additional \$1,200,000 as additional Cash Collateral to Agent on the first Base Rent Date, bringing the total of all Cash Collateral delivered by NAI to \$8,400,000 as required by Section 5.1 of this Agreement.

Allocation of Cash Collateral Required: To avoid a Collateral Imbalance under these assumptions, Agent would be required to allocate the Cash Collateral as required to leave the Deposit Takers for BNPLC and the Participants with the following amounts:

A.	BNPLC's Deposit Taker (5% of Minimum Collateral Value)\$	420,000
----	--	---------	---------

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B.	Participant A's Deposit Taker (40% of Minimum Collateral Value)	3,360,000
C.	Participant B's Deposit Taker (35% of Minimum Collateral Value)	2,940,000
D.	Participant C's Deposit Taker (20% of Minimum Collateral Value)	.....	1,680,000
	TOTAL	.....	\$8,400,000

Thus, to prevent a Collateral Imbalance, Agent would have to allocate the \$1,200,000 of additional Cash Collateral it received on the first Base Rent Date as follows:

A.	BNPLC's Deposit Taker (\$420,000 less \$360,000 already on deposit)	.....\$	60,000
B.	Participant A's Deposit Taker (\$3,360,000 less \$3,600,000 already on deposit)	.....	(240,000)
C.	Participant B's Deposit Taker (\$2,940,000 less \$3,240,000 already on deposit)	.....	(300,000)
D.	Participant C's Deposit Taker (\$1,680,000 less \$0 already on deposit)	..	1,680,000
	TOTAL	.....	\$1,200,000

NOTE: THE NEGATIVE AMOUNTS (IN PARENTHESIS) ABOVE REPRESENT REQUIRED WITHDRAWALS RATHER THAN DEPOSITS. AS EXAMPLE NO. 3 ILLUSTRATES, TO AVOID A COLLATERAL IMBALANCE AGENT MAY FROM TIME TO TIME HAVE TO WITHDRAW CASH COLLATERAL HELD BY THE DEPOSIT TAKER FOR ONE PARTICIPANT AND DEPOSIT IT IN AN ACCOUNT MAINTAINED BY A DEPOSIT TAKER FOR ANOTHER PARTICIPANT.

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ATTACHMENT 6
TO PLEDGE AGREEMENT

NOTICE OF NAI'S REQUIREMENT TO
WITHDRAW EXCESS CASH COLLATERAL

[_____, ____]

Banque Nationale de Paris
[address of BNP]

Re: Pledge Agreement dated January 20, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement referenced above. This letter constitutes notice to you, as Agent under the Pledge Agreement, that pursuant to Section 6.1 of the Pledge Agreement, NAI requires you to withdraw from the Accounts and return to NAI the following amount:

_____ Dollars (\$_____)

on the following date:

_____, ____

To assure you that NAI has satisfied the conditions to its right to require such withdrawal, and to induce you to comply with this notice, NAI certifies to you that:

1. Your withdrawal and delivery of the amount specified above to NAI will not cause the Value of the remaining Collateral to be less than the Minimum Collateral Value. After giving effect to such withdrawal, the Collateral remaining in the Accounts maintained by the Deposit Takers will be:

_____ Dollars (\$_____),

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and the Minimum Collateral Value on the date specified above will equal:

_____ Dollars (\$_____).

Such Minimum Collateral Value equals the Collateral Percentage of:

_____ percent (___%),

times the Stipulated Loss Value of:

_____ Dollars (\$_____).

2. NAI is giving this notice to you, BNPLC and the Participants at least ten days prior to the Base Rent Date specified above.

3. No Default or Event of Default has occurred and is continuing as of the date of this notice, and NAI does not anticipate that any Default or Event of Default will have occurred and be continuing on the date upon which the withdrawal is required.

4. NAI agrees that you may determine the Accounts from which to make any withdrawal required by NAI pursuant to this Section as necessary to prevent or mitigate any Collateral Imbalance.

NOTE: YOU SHALL BE ENTITLED TO DISREGARD THIS NOTICE IF THE STATEMENTS ABOVE ARE NOT CORRECT OR IF THE DATE FOR WITHDRAWAL SPECIFIED ABOVE IS LESS THAN TEN DAYS AFTER YOUR RECEIPT OF THIS NOTICE. HOWEVER, WE ASK THAT YOU NOTIFY NAI IMMEDIATELY IF FOR ANY REASON YOU BELIEVE THIS NOTICE IS DEFECTIVE.

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Please remember that the express terms of Certificates of Deposit issued pursuant to the Pledge Agreement require presentment of the Certificates of Deposit seven days before Cash Collateral is to be withdrawn from the Accounts they evidence. Accordingly, you must present Certificates of Deposit to Deposit Takers seven days prior to the withdrawal of Cash Collateral required by this notice. For your convenience, we have attached a letter as Annex 1 to this notice that you might execute and send to Deposit Takers to advise them of your intent to withdraw and of your presentment of Certificates of Deposit as required in connection therewith. The attached letter also sets forth the amounts NAI believes you must withdraw from each Account to avoid a Collateral Imbalance.

Network Appliance, Inc.

By: _____
Name: _____
Title: _____

[cc BNPLC and all Participants]

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Annex 1
TO NAI'S NOTICE OF REQUIREMENT TO
WITHDRAW CASH EXCESS COLLATERAL

[_____, ____]

Deposit Takers on the
Attached Distribution List

Re: Pledge Agreement dated January 20, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement referenced above. This letter constitutes notice from the undersigned, as Agent under the Pledge Agreement, that pursuant to Section 6.1 of the Pledge Agreement, NAI requires Agent to withdraw from the Accounts and return to NAI the amounts listed below on the following date:

_____, ____

Accordingly, on such date, the undersigned intends to withdraw the following amounts from the following Accounts, and with this letter the undersigned is presenting Certificates of Deposit as required in connection with such withdrawal:

Deposit Taker	Account No.	Amount
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____
4. _____	_____	\$ _____
	TOTAL WITHDRAWALS:	\$ _____

BANQUE NATIONALE DE PARIS, AS AGENT

Name: _____
Title: _____

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ATTACHMENT 7
TO PLEDGE AGREEMENT

NOTICE OF NAI'S REQUIREMENT OF
DIRECT PAYMENTS TO PARTICIPANTS

[_____, ____]

Banque Nationale de Paris
[address of BNP]

Re: Pledge Agreement dated January 20, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings

assigned to them in the Pledge Agreement referenced above. This letter constitutes notice to you, as Agent under the Pledge Agreement, that pursuant to Section 6.2 of the Pledge Agreement, NAI requires you to withdraw from the Accounts and pay directly to the Participants (in proportion to their respective Percentages) the following amount:

_____ Dollars (\$_____)

on the following date (which, NAI acknowledges, must be the Designated Sale Date or a date thereafter prior to an Event of Default):

_____, ____

The amount specified above equals the following percentage (equal to the aggregate of all Participant's Percentages):

_____ percent (___%),

times the total of all Cash Collateral presently pledged under the Pledge Agreement:

_____ Dollars (\$_____).

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To assure you that NAI has satisfied the conditions to its right to require such withdrawal, and to induce you to comply with this notice, NAI certifies to you that NAI is giving this notice to you, BNPLC and the Participants at least ten days prior to the date of required withdrawal and payment specified above.

Please remember that the express terms of Certificates of Deposit issued pursuant to the Pledge Agreement require presentment of the Certificates of Deposit seven days before Cash Collateral is to be withdrawn from the Accounts they evidence. Accordingly, you must present Certificates of Deposit to Deposit Takers seven days prior to the withdrawal of Cash Collateral required by this notice. For your convenience, we have attached a letter as Annex 1 to this notice that you might execute and send to Deposit Takers to advise them of your intent to withdraw and of your presentment of Certificates of Deposit as required in connection therewith. The attached letter also sets forth the amounts NAI believes you must withdraw from each Account to comply with subsection 6.2.2 of the Pledge Agreement.

Network Appliance, Inc.

By:

Name:

Title:

[cc BNPLC and all Participants]

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Annex 1
TO NAI'S NOTICE OF REQUIREMENT TO
WITHDRAW CASH COLLATERAL FOR
DIRECT PAYMENTS TO PARTICIPANTS

[_____, ____]

Deposit Takers on the

Attached Distribution List

Re: Pledge Agreement dated January 20, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement referenced above. This letter constitutes notice from the undersigned, as Agent under the Pledge Agreement, that pursuant to Section 6.2 of the Pledge Agreement, NAI requires Agent to withdraw from the Accounts and pay to the Participants (in proportion to their respective Percentages) the amounts listed below on the following date:

_____, ____

Accordingly, on such date, the undersigned intends to withdraw the following amounts from the following Accounts, and with this letter the undersigned is presenting Certificates of Deposit as required in connection with such withdrawal:

Deposit Taker	Account No.	Amount
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____
4. _____	_____	\$ _____
	TOTAL WITHDRAWALS:	\$ _____

BANQUE NATIONALE DE PARIS, AS AGENT

Name: _____
Title: _____

ATTACHMENT 8
TO PLEDGE AGREEMENT

NOTICE OF NAI'S REQUIREMENT OF
DIRECT PAYMENT TO BNPLC

[_____, ____]

Banque Nationale de Paris
[address of BNP]

Re: Pledge Agreement dated January 20, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement referenced above. This letter constitutes notice to you, as Agent under the Pledge Agreement, that pursuant to Section 6.3 of the Pledge Agreement, NAI requires you to withdraw from the Account maintained by the Deposit Taker for BNPLC and pay directly to BNPLC on behalf of NAI as a payment required by the Purchase Agreement the following amount:

_____ Dollars (\$_____)

on the following date (which, NAI acknowledges, must be the Designated Sale Date or a date thereafter prior to an Event of Default):

_____, ____

To assure you that NAI has satisfied the conditions to its right to require such withdrawal, and to induce you to comply with this notice, NAI certifies to you that NAI is giving this notice to you and BNPLC at least ten days prior to the date of required withdrawal and payment specified above.

Please remember that the express terms of Certificates of Deposit issued pursuant to the Pledge Agreement require presentation of the Certificates of Deposit seven days before Cash Collateral is to be withdrawn from the Accounts they evidence. Accordingly, you must present Certificates of Deposit to the Deposit Taker for BNPLC seven days prior to the withdrawal of Cash Collateral required by this notice. For your convenience, we have attached a letter as Annex 1 to this notice that you might execute and send to the Deposit Taker for BNPLC to advise it of your intent to withdraw and of your presentment of Certificates of Deposit as required in connection therewith. The attached letter also sets forth the amount NAI believes you must withdraw to comply with Section 6.3 of the Pledge Agreement.

Network Appliance, Inc.

By:

Name: _____
Title: _____

Annex 1
TO NAI'S NOTICE OF REQUIREMENT OF
DIRECT PAYMENT TO BNPLC

[_____, ____]

[Name of the Deposit Taker for BNPLC]
[Address of such Deposit Taker]

Re: Pledge Agreement dated January 20, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement referenced above. This letter constitutes notice from the undersigned, as Agent under the Pledge Agreement, that pursuant to Section 6.3 of the Pledge Agreement, NAI requires Agent to withdraw from the Account maintained by you, as Deposit Taker for BNPLC, the sum of:

_____ Dollars (\$_____)

and pay the same to BNPLC as a payment required by the Purchase Agreement on the following date:

_____, ____

Accordingly, on such date, the undersigned intends to withdraw such amount from the following Account maintained by you as Deposit Taker for BNPLC, and with this letter the undersigned is presenting Certificate(s) of Deposit as required in connection with such withdrawal.

Deposit Taker	Account No.	Amount
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____
4. _____	_____	\$ _____
	TOTAL WITHDRAWALS:	\$ _____

BANQUE NATIONALE DE PARIS, AS AGENT

Name: _____
Title: _____

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ATTACHMENT 9
TO PLEDGE AGREEMENT

NOTICE OF NAI'S REQUIREMENT OF A WITHDRAWAL
OF CASH COLLATERAL FROM
A DISQUALIFIED DEPOSIT TAKER

[_____, ____]

Banque Nationale de Paris
[address of BNP]

Re: Pledge Agreement dated January 20, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement referenced above. This letter constitutes notice to you, as Agent under the Pledge Agreement, that pursuant to Section 6.4 of the Pledge Agreement, NAI requires you to withdraw from the following Account maintained by the following Deposit Taker:

Deposit Taker _____ Account No. _____

Cash Collateral in the following amount:

_____ Dollars (\$_____)

and to deposit such Cash Collateral with other Deposit Takers who are not Disqualified Deposit Takers no later than ten days after the date upon which you receive this notice.

To assure you that NAI has the right to require such withdrawal, and to induce you to comply with this notice, NAI certifies to you that the Deposit Taker specified above has become a Disqualified Deposit Taker because it no longer satisfies the requirements listed in Section 4.1 of the Pledge Agreement. Specifically, such Deposit Taker no longer satisfies the following requirements:

[NAI MUST INSERT HERE A DESCRIPTION OF WHICH REQUIREMENTS THE DEPOSIT TAKER NO LONGER SATISFIES AND HOW NAI HAS DETERMINED THAT THE REQUIREMENTS ARE NO LONGER SATISFIED, ALL IN SUFFICIENT DETAIL TO PERMIT THE PARTICIPANT FOR WHOM SUCH DEPOSIT TAKER HAS BEEN MAINTAINING AN ACCOUNT TO RESPOND IF IT BELIEVES THAT NAI IS IN ERROR.]

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Please remember that the express terms of Certificates of Deposit issued pursuant to the Pledge Agreement require presentment of the Certificates of Deposit seven days before Cash Collateral is to be withdrawn from the Accounts they evidence. Accordingly, you must present Certificates of Deposit to the Deposit Taker specified above seven days prior to the withdrawal of Cash Collateral required by this notice. For your convenience, we have attached a letter as Annex 1 to this notice that you might execute and send to such Deposit Taker to advise it of your intent to withdraw and of your presentment of Certificates of Deposit as required in connection therewith. The attached letter also sets forth the amount NAI believes you must withdraw to comply with Section 6.4 of the Pledge Agreement.

Network Appliance, Inc.

By: _____
Name: _____
Title: _____

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Annex 1
TO NAI'S NOTICE OF REQUIREMENT OF A WITHDRAWAL
OF CASH COLLATERAL FROM
A DISQUALIFIED DEPOSIT TAKER

[_____, ____]

[Name of the Deposit Taker for BNPLC]
[Address of such Deposit Taker]

Re: Pledge Agreement dated January 20, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement referenced above. This letter constitutes notice from the undersigned, as Agent under the Pledge Agreement, that pursuant to Section 6.4 of the Pledge Agreement, NAI has advised Agent that you are a Disqualified Deposit Taker, and NAI requires Agent to withdraw from the Account maintained by you, as a Deposit Taker under the Pledge Agreement, the sum of:

_____ Dollars (\$_____)

no later than the following date:

_____, ____

Accordingly, on such date, the undersigned intends to withdraw such amount from the Account maintained by you as Deposit Taker (Account No. _____), and with this letter the undersigned is presenting Certificate(s) of Deposit as required in connection with such withdrawal.

BANQUE NATIONALE DE PARIS, AS AGENT

Name: _____
Title: _____

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NETWORK APPLIANCE, INC.
ORIGINAL EQUIPMENT MANUFACTURER (OEM) PRODUCT AGREEMENT

Network Appliance Inc. OEM Product Agreement dated November 6 ,1998 between Network Appliance, Inc. ("NetApp") with its principal place of business at 2770 San Tomas Expressway, Santa Clara, California, USA 95051 and FUJITSULIMITED("Fujitsu"), with its principal place of business at 1-1, Kamikodanaka 4-Chome, Nakahara-ku, Kawasaki 211-8588, Japan concerning the certain hardware and software products.

The parties hereby agree as follows:

1. DEFINITIONS

- 1.1 PRODUCTS shall mean the Filer products as described and specified in ANNEX 1 PRODUCTS, including all future improvements, modifications, or corrections, options or spare parts. PRODUCTS consist of HARDWARE PRODUCTS and SOFTWARE PRODUCTS.
- 1.2 HARDWARE PRODUCTS shall mean the hardware products listed on ANNEX 1 products in the Section "HARDWARE PRODUCTS," including complete equipment, units, options, if any, consumables and new products.
- 1.3 SOFTWARE PRODUCTS shall mean the Filer software programs as described in ANNEX 1 PRODUCTS in the Section "SOFTWARE PRODUCTS ", including all future improvements, modifications, bug fixes or corrections to same during the term of this AGREEMENT, defined as NEW VERSIONS or NEW RELEASES.
- 1.3.1. NEW VERSIONS shall mean significant changes, enhancements and/or functional improvements of the SOFTWARE PRODUCT. Each function or feature which operated properly in the immediately preceding SOFTWARE PRODUCT release should operate properly and consistently in such subsequent NEW VERSION.

NEW VERSIONS shall be delivered to Fujitsu by NetApp in accordance with the terms and conditions specified in ANNEX 5 TECHNICAL SUPPORT. NEW VERSIONS shall be designated by a change in the digit(s) preceding the decimal in the PRODUCT version number, such as 2.0 following 1.0.

- 1.3.2. NEW RELEASES shall mean amendments, bug fixes or other corrections including minor improvements that will be issued by NetApp. NEW RELEASES shall be delivered to Fujitsu by NetApp in accordance with ANNEX 5 TECHNICAL SUPPORT.

Each function or feature which operated properly in the immediately preceding SOFTWARE PRODUCT release should operate properly and consistently in such subsequent NEW RELEASE. NEW RELEASE shall be designated by a

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change in the digit(s) following the decimal in the PRODUCT version number, such as 2.1 following 2.0.

- 1.4 DOCUMENTATION shall mean SYSTEM DOCUMENTATION and USER DOCUMENTATION.
- 1.4.1. SYSTEM DOCUMENTATION shall mean (a) the current and updated version(s) of the technical documentation for the manufacturing engineering and maintenance of HARDWARE PRODUCTS as well as packaging and transportation instructions and (b) SOFTWARE PRODUCT to the extent customary in the software business for similar PRODUCTS. The current version of SYSTEM DOCUMENTATION is listed in ANNEX 1.

SYSTEM DOCUMENTATION for the engineering and maintenance of PRODUCTS shall be provided in a reproducible manner in the English language and/or Japanese language as far as available.

1.4.2. USER DOCUMENTATION shall mean all User Manuals and/or Reference Guides for the PRODUCTS as listed in ANNEX 1, and any update version thereof.

USER DOCUMENTATION shall be provided in a reproducible manner in the English language and/or Japanese language as far as available.

1.5 AGREEMENT shall mean this AGREEMENT and all attached ANNEXES, all documents referenced in this AGREEMENT and all amendments to this AGREEMENT to be concluded by the parties in the future.

1.6 EFFECTIVE DATE shall mean the date of signing of this AGREEMENT by the parties.

2. APPOINTMENT and LICENSE GRANT

2.1 NetApp hereby appoints Fujitsu as a non-exclusive OEM of the HARDWARE PRODUCTS in Japan, and Fujitsu accepts said appointment under the terms and conditions set forth in this AGREEMENT. Fujitsu may distribute the HARDWARE PRODUCTS to its customer by itself or through its distributors. Fujitsu and NetApp intend to expand the relationship and the territory of distribution worldwide on a case by case basis subject to a subsequent agreement. Fujitsu shall then stage any such worldwide roll out in cooperation and coordination with NetApp field operations to avoid channel conflict.

2.2 The HARDWARE PRODUCTS to be sold to Fujitsu under this AGREEMENT may contain the SOFTWARE PRODUCTS. NetApp hereby grants to Fujitsu a perpetual, non-exclusive, worldwide and royalty-free license to use, reproduce and distribute such SOFTWARE PRODUCTS to its customer, by itself or through its distributors, in connection with the HARDWARE PRODUCTS. The license

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granted under this Section 2.2 shall include the right for Fujitsu and its distributors to use the SOFTWARE PRODUCTS for support and demonstration to its/their customers.

2.3 NetApp hereby grants to Fujitsu a perpetual, non-exclusive, worldwide and royalty-free license to use, modify, reproduce, translate and distribute DOCUMENTATION to its customer, by itself or through its distributors, in connection with the PRODUCTS, provided NetApp shall own all rights to the translations and modifications.

2.4 Fujitsu shall not: (a) copy, in whole or in part, software components of the Products; (b) modify the software; (c) reverse engineer, reverse compile or reverse assemble all or any portion of the software; or (d) rent, lease, distribute, sell or create derivative works of the software.

2.5 The parties agree to negotiate in good faith any agreement for additional products on similar terms and conditions.

3. ORDERING PROCEDURE

3.1 Purchase Order(s)

3.1.1. Fujitsu's written purchase orders shall be issued subject to the terms and conditions of this AGREEMENT and shall then form the basis of NetApp's delivery obligations.

Each purchase order will include the following product information:

- Purchase order number and date
- Products quantity to be delivered
- Specification number and revision level
- Part number and revision level

- Item description
- Unit price
- Requested date of delivery
- Shipping instructions, including specification of carrier and delivery place
- Reference to this AGREEMENT

3.1.2. NetApp shall accept in writing each purchase order within five (5) business days after receipt of the purchase order or reject such purchase order within the same time frame if it is not in conformance with the terms and conditions of this AGREEMENT. The purchase order accepted or deemed accepted shall be a legally binding contract between the parties for delivery of PRODUCT; however the terms and conditions of this AGREEMENT shall prevail over any terms and conditions contained in such purchase order.

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3.1.3. If the purchase order is neither expressly accepted nor rejected within said five (5) day period, it shall be deemed accepted.

3.2 Cancellation or Rescheduling

Notwithstanding Section 3.1.2 above, after acceptance of a purchase order, Fujitsu may cancel or reschedule such purchase order in writing with regard to the total or partial quantity of PRODUCTS ordered, subject to the rescheduling, cancellation and/or restocking charges stated in ANNEX 2 LEAD TIMES AND FORECAST. Should such cancellation or rescheduling take place prior to the latest cancellation or rescheduling date as stated in ANNEX 2 LEAD TIMES AND FORECAST, NetApp shall have no claim for damages concerning such cancellation or rescheduling, except as stated in ANNEX 2 LEAD TIMES AND FORECAST.

3.3 Forecast

Fujitsu shall furnish NetApp on a monthly reoccurring basis, commencing with the EFFECTIVE DATE, a six(6) month non-binding rolling forecast reflecting its requirements for PRODUCT (S). Fujitsu's forecast will aid NetApp in its planning and satisfaction of Fujitsu needs.

3.4 Lead times, Emergency Orders

Lead times for complete units of PRODUCTS, repaired PRODUCTS and Emergency Orders for minor quantities are stated in ANNEX 2 LEAD TIMES AND FORECAST which may be updated from time to time. Such Emergency Orders may be transmitted by fax.

4. TRADENAMES, TRADEMARKS, IDENTIFICATION

4.1 Without the other party's written approval neither party shall use in advertising, publicity or the like any of the other Party's tradenames, trademarks, or symbols of PRODUCTS. Notwithstanding the foregoing, Fujitsu shall be licensed to use NetApp trademarks consistent with this Section 4. The NetApp name shall remain on back panels of the products. Fujitsu may relabel the front panel of PRODUCTS, including the Fujitsu handle on system cabinets, to reflect the Fujitsu brand. Subject to Section 4.1(a), Fujitsu may use its own name on the filer PRODUCTS.

a. Fujitsu agrees to provide visibility of the use of NetApp technology in the Fujitsu filer products in such areas as product collateral (print and online), press releases and on NetApp software, except for Fujitsu's catalog. Fujitsu will consider including NetApp brand visibility in Fujitsu advertising. In addition, Fujitsu shall exercise commercially reasonable efforts to use the term "filer" in publicly referring to the OEM PRODUCTS.

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b. NetApp shall provide usage guidelines for Fujitsu's use

of NetApp Marks pursuant to this Section 4. In addition, NetApp shall provide product feature information, claims and other marketing materials for the OEM PRODUCTS, all of which will in all material respects be accurate and comply with all applicable legal requirements. Fujitsu may rely on and use such product feature information, claims, and other materials provided by NetApp in connection with Fujitsu's marketing and distribution of the OEM Products. For any modification of product feature materials or claims materials directly tied to NetApp technology which Fujitsu desires to make, Fujitsu will confer with NetApp for feedback. Fujitsu will ensure that its materials are accurate and fully consistent with the usage guidelines, product feature information, claims and other marketing materials for the OEM Products which have been previously provided by or approved by NetApp, as updated from time to time by written notice to Fujitsu. Subject to this Section 4.1 (a) Fujitsu may use its own name, trade names, trademarks, symbol, logo, brand and serial numbers with regard to the use, sale etc. of PRODUCTS, or Fujitsu products containing or consisting of PRODUCTS. NetApp shall permanently affix its serial number on PRODUCTS for identification purposes at a location mutually agreed upon by the parties.

4.3 Fujitsu repackaging and relabeling of products shall meet NetApp Quality Assurance standards. Fujitsu shall be liable to NetApp for any changes to products affecting quality standards that have not been approved in writing by NetApp and result from Fujitsu repackaging.

5. DELIVERY

- 5.1 NetApp shall deliver the products in accordance with Fujitsu purchase order.
- 5.2 NetApp shall comply with Fujitsu directions concerning carrier(s) and means of transportation or routing. If Fujitsu fails to indicate a specific carrier, NetApp shall itself arrange for appropriate and agreed transportation.
- 5.3 Fujitsu may arrange for direct payment of freight charges by Fujitsu to carrier, otherwise NetApp shall separately list freight charges on invoices and have a copy of the freight bills attached to the invoices.
- 5.4 NetApp shall keep records of the shipment(s) and the related serial numbers and shall make them available to Fujitsu on request.
- 5.5 Each shipment shall be accompanied with the appropriate shipping papers. All shipping papers and related invoices must, inter alia, state the correct purchase order number and serial numbers of PRODUCTS shipped. Packaging and transportation instructions will be provided in duplicate and in a reproducible manner.
- 5.6 NetApp shall deliver the SOFTWARE PRODUCTS and its USER DOCUMENTATION no later than the time when they are generally available to any other distributor or customer of NetApp. NetApp shall use reasonable efforts

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to deliver preliminary "as-is" documentation at least one month prior to such time for review by Fujitsu..

- 5.7 SYSTEM DOCUMENTATION shall be delivered to Fujitsu no later than the time when they are generally available to any other distributor or customer of NetApp.
- 5.8 NetApp shall render advance notification on any NEW VERSIONS, NEW RELEASES or other technical (especially concerning features, functionality or interfaces) or marketing information regarding PRODUCTS to Fujitsu not later than the time when they are generally available to any other distributor or customer.

6. QUALITY ASSURANCE AND ACCEPTANCE

6.1 Quality Assurance Manual and Workmanship Standard

No later than sixty(60) days after the Effective Date, NetApp will submit to Fujitsu its Manufacturing Quality Manual which complies with ISO 9002 standard.. Workmanship for PRODUCTS will meet IPC-A-610...Workmanship Standard. NetApp's quality system and major subcontractors used in the manufacture or assembly of products shall be

certified to ISO 9002 or higher. Fujitsu may at its option with reasonable notice visit NetApp manufacturing and subcontractors facilities to verify conformance to the submitted DOCUMENTATION.

6.2 General Inspection System

Upon the reasonable request of Fujitsu, NetApp shall permit inspection of NetApp's compliance with the Quality Assurance Manual.

6.3 First Article Test

If Fujitsu chooses to perform a first article test, such test will be performed at NetApp's point of manufacture or Fujitsu facility prior to the delivery of the first quantity shipment of each type or modified version of PRODUCTS. Future deliveries shall be subject to the successful passing of such test. Should the test be performed at NetApp's facility, it shall be conducted without charge to Fujitsu.

6.4 Final Inspection Test

6.4.1. NetApp shall perform a Final Inspection Test on each system (100 percent Test) prior to shipment. Such Inspection Test shall demonstrate compliance of the PRODUCTS with the applicable specifications.

6.4.2. Fujitsu is entitled to witness in-process Inspection and the Final Inspection Test of systems. If Fujitsu presence is required, Fujitsu shall inform NetApp at least 10 days prior to such test to facilitate scheduling of test activities.

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6.5 Company Inspection

Within thirty(30) days after receipt of PRODUCTS in the premises of Fujitsu, Fujitsu shall inspect PRODUCTS. PRODUCTS will be presumed accepted upon shipment, unless Fujitsu shall reject in writing any such PRODUCT within such period for defects or return such PRODUCTS within the same time frame if they are not in conformance with the applicable specifications described in ANNEX 1 PRODUCTS. Any such defective PRODUCTS shall be subject to standard Return Materials Authorization ("RMA") procedures.

6.6 Should any products fail to pass inspection, Fujitsu shall notify NetApp in writing without undue delay, preferably by fax in order to accelerate the correction.

Fujitsu may request from NetApp a Return Material Authorization number, which NetApp will provide within 48 hours. Upon receipt of a RMA number, Fujitsu may, at NetApp's charge if a defect is found, return PRODUCTS to NetApp for defect verification and repair or replacement. NetApp will promptly verify any defect in the PRODUCTS and will deliver to freight forwarder and repair or replace PRODUCTS at no charge to Fujitsu within thirty(30) days of receipt of defective PRODUCTS. If Fujitsu advises NetApp that an emergency condition exists, NetApp will use its reasonable efforts to expedite repair or replacement to meet the needs of Fujitsu.

7. DOWN-LEVEL PRODUCTS

7.1 Fujitsu shall have the right to order down-level HARDWARE PRODUCTS for delivery not more than sixty (60) days following the announced end of life of the products using normal delivery within normal lead times.

8. WARRANTY

8.1 NetApp warrants that for a period of one year for HARDWARE PRODUCTS and ninety (90) days for SOFTWARE PRODUCTS following delivery by NetApp to Fujitsu, the PRODUCTS and associated DOCUMENTATION shall (a) meet in all material respects all specifications agreed upon by NetApp and Fujitsu, and (b) conform in all material respects to applicable regulatory agency requirements. In the event any defect is discovered within such period, Fujitsu will use its reasonable efforts to identify the defects prior to advising NetApp of the defects and requiring NetApp's technical involvement to correct such defects. NetApp agrees to correct such defects at NetApp's costs and expense within a time as defined in ANNEX

4, TECHNICAL SUPPORT following receipt of notice thereof.

For the warranty period, NetApp will repair or replace the PRODUCT, or refund the purchase price, at its option. Replacement parts for the HARDWARE PRODUCTS are warranted for ninety (90) days or the remainder of the warranty period in effect on the original HARDWARE PRODUCTS, whichever is greater.

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- 8.2 NetApp shall not be responsible for fixing any defects of PRODUCTS resulting from Fujitsu or Fujitsu customer(s)' modification of PRODUCTS.
- 8.3 If any errors are discovered by Fujitsu after the end of the warranty period, NetApp agrees to eliminate such errors on terms and conditions as defined in ANNEX 3 PRICES, TERMS OF PAYMENT and ANNEX 4 TECHNICAL SUPPORT.
- 8.4 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE FOREGOING WARRANTIES OF NETAPP ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. INFRINGEMENT INDEMNIFICATION

9.1 NetApp agrees to indemnify, hold harmless and defend Fujitsu, its distributors and its/their customers (hereinafter collectively "Indemnified Party") from and against any and all damages, costs, and expenses, including reasonable attorneys' fees, incurred in connection with a claim which, if true, would constitute an infringement claim; provided NetApp is notified promptly in writing of an infringement claim and given sole control over its defense or settlement, and Fujitsu provides reasonable assistance in defense of the same.

9.2 Following notice of an Infringement Claim, NetApp may, at its expense, either procure for the Indemnified Party the right to (i) continue to distribute and use the alleged infringing PRODUCTS and DOCUMENTATION, or (ii) replace or modify the PRODUCTS and DOCUMENTATION to make it non-infringing. If NetApp elects to replace or modify the PRODUCTS, such replacement and modification shall meet in all material respects the specifications agreed upon by NetApp and Fujitsu.

9.3 NetApp shall have no liability for any Infringement Claim based on (i) Indemnified Party's modification of the PRODUCTS and DOCUMENTATION without NetApp's approval or (ii) Indemnified Party's combination of the PRODUCTS with products other than those supplied from NetApp; provided that alleged infringement would not have occurred without such modification or combination.

10. CHANGE REQUEST/MODIFICATIONS

NetApp shall retain the right to modify or discontinue PRODUCTS, provided it gives Fujitsu 60 days prior written notice of such modifications for form, fit or function changes or of discontinuance of PRODUCT. All changes other than form, fit or function shall be in accordance with ANNEX 6 ENGINEERING CHANGE NOTICE provisions.

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11. NON-DISCLOSURE

11.1 Each party agrees to maintain in confidence any and all confidential information delivered to it by the other party. Each party shall exercise at least the same degree of care as it uses in PRODUCTS its own confidential information by the same nature, but in any event, at least a reasonable degree of care. Such information required to be held in confidence shall, if in writing, be marked "Confidential". Oral information that is designated as confidential at the time of disclosure thereof shall be reduced to writing and marked "Confidential", and forwarded to the receiving party within ten(10) days after its oral communication. A receiving party may disclose confidential information of the disclosing party to its employees or third parties contracting with the receiving party as may be necessary in the design, manufacture, service and distribution of the PRODUCTS, but only if they are bound by

confidentiality obligations at least as stringent as stated herein.

The obligations hereunder shall not apply to information that (1) is or becomes public domain; (2) is received from a third party without confidentiality obligation to the disclosing party; (3) is known by the receiving party without use of the other party's confidential information; (4) is independently developed by the receiving party or (5) is required to be disclosed by operation of law; provided, however, that the receiving party shall notify the disclosing party as soon as reasonably possible in order for the disclosing party to attempt to obtain an appropriate protective order.

11.2

Any announcement of the execution of this AGREEMENT, press release or other like publicity or advertising material which contains information not previously announced relating to this AGREEMENT shall be made available to third parties only with the prior review and written approval of each party, which approval shall not unreasonably be withheld.

12. PAYMENT

12.1 In consideration of the PRODUCT delivery, the licenses granted in Section 2 and all other rights stated in this AGREEMENT, Fujitsu agrees to pay the amounts detailed in ANNEX 3 - PRICES, TERMS OF PAYMENTS.

12.2 Any and all payments shall be in US Dollars, if not specifically stated otherwise.

12.3 If so required by applicable laws, Fujitsu shall withhold the amount of the income tax imposed by the government of Japan on the payment to be made by Fujitsu to NetApp hereunder, and shall, without undue delay, effect the payment of such tax so withheld to the appropriate tax authorities of the government. If Fujitsu makes payment of such tax so withheld, Fujitsu shall, as promptly as possible, send to NetApp an official tax receipt or other evidence issued by such appropriate tax authorities.

13. TECHNICAL SUPPORT

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13.1 NetApp agrees to provide technical support to Fujitsu according to the provisions of ANNEX 4 TECHNICAL SUPPORT.

14 .ARBITRATION

If any dispute arising out of or related to this AGREEMENT is not resolved between the parties, such dispute shall be finally settled by arbitration. If NetApp initiates such arbitration, the arbitration shall take place in Tokyo, Japan in accordance with the Japan Commercial Arbitration Association rules. If Fujitsu initiates such arbitration, the arbitration shall take place in Santa Clara County, California USA in accordance with American Arbitration Association rules. An award rendered in accordance with the arbitration shall be final and binding on the parties, and any judgment upon such an award may be entered in any court of competent jurisdiction. Any such arbitration shall be conducted in the English language.

15 .EXPORT CONTROL

Notwithstanding any other provisions of this AGREEMENT to the contrary, each of the parties agrees that no products, items, commodities or technical data or information obtained from a party nor any direct product of such technical data or information is intended to or shall be exported or reexported, directly or indirectly, to any destination restricted or prohibited by applicable law without necessary authorization by the relevant governmental authority, including (without limitation) the Japanese Ministry of International Trade and Industry, the United States Bureau of Export Administration or other governmental authorities of the United States with jurisdiction with respect to export matters.

16 .NOTICES

All notice required or permitted under this AGREEMENT will be in writing, will reference this AGREEMENT and will be deemed given: (a) when delivered personally; (b) when sent by facsimile; (c) ten (10) days after having been sent by registered or certified air mail, return receipt requested, postage prepaid; or (d) the third business day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the address set forth in ANNEX 5 NOTICES (or to such address as may be designated by a party by giving written notice to the other party pursuant to this Section 16).

17 RECORDS

Fujitsu shall keep, for five (5) years following the sales transaction to Fujitsu's

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customer, accurate customer and PRODUCT information necessary for technical support or to adequately administer a recall of any OEM PRODUCTS. NetApp shall keep, for five (5) years following the supply of each OEM PRODUCT to Fujitsu, accurate PRODUCT information necessary for technical support of such OEM PRODUCT.

18 TERMS AND TERMINATION

18.1 The terms of this AGREEMENT shall commence on the EFFECTIVE DATE and continue thereafter for an initial period of three(3) years and thereafter for successive one(1) year periods unless either party gives not less than six(6) months notice prior to the end of any such period of its intention not to renew.

18.2 Either party may elect to terminate this AGREEMENT for a material breach of this AGREEMENT by the other party upon delivery of at least one(1) month's prior written notice to the other party; provided, however, if such material breach of contract is cured by the other party within said one(1) month before the effective date of termination, such election and notice shall be of no further force and effect and this AGREEMENT shall not be terminated thereby.

18.3 Notwithstanding anything to the contrary set forth in this AGREEMENT, the termination or expiration of this AGREEMENT shall not affect (i) any purchase orders which have been accepted by NetApp prior to termination of this AGREEMENT and (ii) the right of Fujitsu's customers to use the SOFTWARE PRODUCTS which have been properly delivered before the termination or expiration of this AGREEMENT. Sections 1, 8, 9, 11, 12, 15, 16, 17, 18.3 and 19 shall survive termination or expiration of this AGREEMENT.

18.4 For 5 years after shipment of PRODUCTS to Fujitsu, NetApp shall support the PRODUCTS (including spare parts) or its functional equivalent to Fujitsu pursuant to the terms and conditions of this AGREEMENT that Fujitsu needs:

- to fulfill its contractual delivery obligations (e.g. by a binding tender) which have been entered into on the basis of quotation prior to the expiration of this AGREEMENT, and/or
- to replace and/or expand systems to which products are already connected to or embedded therein.

This subsection survives the termination of this Agreement.

19 . MISCELLANEOUS

19.1 Subject to the current provisions of any applicable license between NetApp and the licensors of Java software, if Fujitsu desires to develop Java-based applets and applications for filer administration, NetApp agrees to grant a non-exclusive and worldwide license of such software under terms and conditions to be negotiated

provided such license is permissible under NetApp licenses with third parties.

- 19.2 Except as specifically stated in this Agreement, neither this Agreement nor any of the rights, interests or obligations of any party arising hereunder shall be assigned or delegated by any party hereto without the prior written consent of the other party. Any unauthorized assignment or delegation shall be null and void.
- 19.3 This AGREEMENT may not be modified except by a written agreement executed by the duly representatives of the party hereto.
- 19.4 If any provision of this AGREEMENT, or portion thereof, shall be held to be unenforceable, that provision of this AGREEMENT will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this AGREEMENT will continue in full force and effect.
- 19.5 This AGREEMENT shall be governed by and construed in accordance with the laws of California USA, without reference to its rules governing choice of law.
- 19.6 This AGREEMENT states the entire agreement between the parties with respect to the subject matter hereof.
- 19.7 The English language version of this Agreement shall be controlling.

FUJITSU LIMITED

NETWORK APPLIANCE INC.

Signature
Print

Title

Date

Signature

Date

- ANNEX 1 PRODUCTS, SYSTEM DOCUMENTATION, USER DOCUMENTATION
- ANNEX 2 LEAD TIMES, ROLLING FORECAST
- ANNEX 3 PRICES, TERMS OF PAYMENT
- ANNEX 4 TECHNICAL SUPPORT-Customer Service Standards
- ANNEX 5 NOTICES
- ANNEX 6 CHANGE NOTICE PROCEDURE

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