

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 10-Q  
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(MARK ONE)

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

FOR THE QUARTERLY PERIOD ENDED JULY 30, 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.)

495 EAST JAVA DRIVE,  
SUNNYVALE, CALIFORNIA 94089  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES, INCLUDING ZIP CODE)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: (408) 822-6000

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
-----	-----
Common Stock.....	73,571,159

PART I -- FINANCIAL INFORMATION

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## PART I. FINANCIAL INFORMATION

## ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

## NETWORK APPLIANCE, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS  
(IN THOUSANDS)

	July 30, 1999	April 30, 1999
	-----	-----
	(UNAUDITED)	
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 230,025	\$ 221,284
Short-term investments	15,869	5,800
Accounts receivable, net	68,910	57,163
Inventories	15,019	13,581
Prepaid expenses and other assets	4,689	7,384
Deferred taxes	13,534	10,134
	-----	-----
Total current assets	348,046	315,346
PROPERTY AND EQUIPMENT, NET	25,016	19,271
DEPOSITS	4,500	7,000
OTHER ASSETS	4,772	4,730
	-----	-----
	\$ 382,334	\$ 346,347
	=====	=====
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	\$ 22,405	\$ 15,126
Income taxes payable	3,928	1,108
Accrued compensation and related benefits	10,213	15,189
Other accrued liabilities	8,890	7,633
Deferred revenue	12,959	11,474
	-----	-----
Total current liabilities	58,395	50,530
LONG-TERM OBLIGATIONS	68	93
	-----	-----
	58,463	50,623
	-----	-----
SHAREHOLDERS' EQUITY:		
Common stock	254,508	240,093
Retained earnings	69,422	55,954
Cumulative other comprehensive loss	(59)	(323)
	-----	-----
Total shareholders' equity	323,871	295,724
	-----	-----
	\$ 382,334	\$ 346,347
	=====	=====

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	
	JULY 30, 1999	JULY 31, 1998
NET SALES	\$103,279	\$ 57,375
COST OF SALES	42,539	23,239
Gross Margin	60,740	34,136
OPERATING EXPENSES:		
Sales and marketing	26,884	14,935
Research and development	11,220	6,081
General and administrative	3,818	1,885
Total operating expenses	41,922	22,901
INCOME FROM OPERATIONS	18,818	11,235
OTHER INCOME, NET	2,063	121
INCOME BEFORE INCOME TAXES	20,881	11,356
PROVISION FOR INCOME TAXES	7,413	4,259
NET INCOME	\$ 13,468	\$ 7,097
NET INCOME PER SHARE:		
Basic	\$ 0.18	\$ 0.11
Diluted	\$ 0.16	\$ 0.10
SHARES USED IN PER SHARE CALCULATIONS:		
Basic	73,094	67,096
Diluted	83,399	74,542

See accompanying notes to condensed consolidated financial statements.

## NETWORK APPLIANCE, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(IN THOUSANDS)

## (UNAUDITED)

	THREE MONTHS ENDED	
	JULY 30, 1999	JULY 31, 1998
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 13,468	\$ 7,097
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	2,837	2,122
Provision for doubtful accounts	304	100
Deferred income taxes	(3,400)	(217)
Deferred rent	(25)	(6)
Changes in assets and liabilities:		
Accounts receivable	(12,005)	(1,734)
Inventories	(1,219)	(1,021)
Prepaid expenses and other assets	2,595	716
Accounts payable	7,279	(2,500)
Income taxes payable	9,720	3,937
Accrued compensation and related benefits	(4,976)	(3,226)
Other accrued liabilities	1,257	126
Deferred revenue	1,485	989
Net cash provided by operating activities	17,320	6,383
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of short-term investments	(12,419)	(7,080)
Redemptions of short-term investments	2,350	2,950
Purchases of property and equipment	(8,306)	(2,340)
Payment/refund of deposits, net	2,500	(9,500)
Net cash used in investing activities	(15,875)	(15,970)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayments of long-term obligations	--	(3)
Proceeds from sale of common stock, net	7,296	3,751
Net cash provided by financing activities	7,296	3,748
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	8,741	(5,839)
CASH AND CASH EQUIVALENTS:		
Beginning of period	221,284	37,315
End of period	\$ 230,025	\$ 31,476
NONCASH INVESTING AND FINANCING ACTIVITIES:		
Income tax benefit from employee stock transactions	\$ 6,900	\$ 2,234
SUPPLEMENTAL CASH FLOW INFORMATION:		
Income taxes paid	\$ 34	\$ 453

See accompanying notes to condensed consolidated financial statements.

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-month period ended July 30, 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, 1999 and the risk factors as set forth in our Annual Report on Form 10-K, including, without limitation, risks relating to fluctuating operating results, customer and market acceptance of new products, dependence on new products, rapid technological change, litigation, 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, effect of certain anti-takeover provisions, dilution 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 2000 is a 52-week year. Fiscal 1999 was a 53-week year. The quarter ended July 30, 1999 includes 13 weeks of operating activity, compared to 14 weeks of activity for the corresponding period of the prior fiscal year.

**Foreign Currency Translation** - In the first quarter of fiscal 2000, we determined that the functional currencies of certain of our foreign subsidiaries had changed from the local currencies to the Euro. Accordingly, assets and liabilities of our foreign subsidiaries are translated into Euro 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 other comprehensive loss. The effect of the change in functional currencies did not have a material impact on our consolidated financial position, results of operations or cash flows.

3. INVENTORIES

Inventories consist of the following:

	JULY 30, 1999	APRIL 30, 1999
	-----	-----
	(IN THOUSANDS)	
Purchased components	\$ 3,552	\$ 5,316
Work in process	2,186	1,727
Finished goods	9,281	6,538
	-----	-----
	\$15,019	\$13,581
	=====	=====

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

4. COMMON STOCK AND NET INCOME PER SHARE

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

	THREE MONTHS ENDED	
	JULY 30, 1999	JULY 31, 1998
	-----	-----
(In thousands, except per share amounts)		
NET INCOME (NUMERATOR):		
Net income, basic and diluted	\$ 13,468	\$ 7,097
	=====	=====
SHARES (DENOMINATOR):		
Weighted average common shares outstanding	73,155	67,582
Weighted average common shares outstanding subject to repurchase	(61)	(486)
	-----	-----
Shares used in basic computation	73,094	67,096
Weighted average common shares outstanding subject to repurchase	61	486
Common shares issuable upon exercise of stock options	10,244	6,960
	-----	-----
Shares used in diluted computation	83,399	74,542
	=====	=====
NET INCOME PER SHARE:		
Basic	\$ 0.18	\$ 0.11
	=====	=====
Diluted	\$ 0.16	\$ 0.10
	=====	=====

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

## 5. COMPREHENSIVE INCOME

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

	THREE MONTHS ENDED	
	JULY 30, 1999	JULY 31, 1998
	(IN THOUSANDS)	
Net income	\$13,468	\$ 7,097
Change in cumulative translation adjustment	264	17
	-----	-----
Comprehensive income	\$13,732	\$ 7,114
	=====	=====

## 6. NEW ACCOUNTING PRONOUNCEMENTS

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, 2000. 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.

This Form 10-Q contains forward-looking statements about future results, which are subject to risks and uncertainties, including those discussed



below. 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.

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	
	JULY 30, 1999	JULY 31, 1998
Net sales	100.0%	100.0%
Cost of sales	41.2	40.5
Gross margin	58.8	59.5
Operating expenses:		
Sales and marketing	26.0	26.0
Research and development	10.9	10.6
General and administrative	3.7	3.3
Total operating expenses	40.6	39.9
Income from operations	18.2	19.6
Other income, net	2.0	0.2
Income before income taxes	20.2	19.8
Provision for income taxes	7.2	7.4
Net income	13.0%	12.4%

Net Sales -- Net sales increased by 80.0% to \$103.3 million for the three months ended July 30, 1999, from \$57.4 million for the three months ended July 31, 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:

- o growth in the network attached storage market, increased market acceptance of the appliance concept and the growing enterprise market driven by the need for reliable internet infrastructure;
- o acceleration in deployment of our products among Internet and enterprise related customers, particularly for E-business and new E-commerce applications;
- o strong demand for our F700 filer product family utilizing primarily fibre-channel connectivity;
- o increased worldwide shipment of NetApp(R) Cluster Failover;
- o increased worldwide demand for our NetCache(TM) solutions;
- o additional filer demand created by SnapMirror(TM) to store the remote replicated data for disaster recovery;
- o expansion of our direct sales force and
- o initial sales to our two new OEM partners.

Net sales growth was also positively impacted by:

- o a higher average selling price of our F700 filer product family due primarily to the increase in storage content;
- o the introduction of new software features with SnapMirror, SnapRestore(TM) and Cluster Failover and;
- o increased add on software licenses from multi-protocol, software subscription and service revenues due to a growing installed base.

Factors which partially offset overall net sales growth include declining unit sales of our older product family and decreases in base prices of our current product line due to competitive forces from the recent disk repricing.

International net sales (including United States exports) grew by 124.0% for the three-month period ended July 30, 1999, as compared to the comparable period of the prior fiscal year. International net sales were \$28.4 million, or 27.5% of total net sales, for the three-month period ended July 30, 1999. The increase in international sales for the three-month period ended July 30, 1999, was primarily a result of European sales growth, due to increased headcount in the direct sales force, increased indirect channel sales through resellers, increased shipments of filers, Cluster Failover solutions, NetCache appliances and increased sales of add-on software licenses. Asia Pacific net sales growth for the three-month period ended July 30, 1999, was also driven by increased headcount in the direct sales force, increased shipments of filers, NetCache appliances and increased sales of add-on software licenses, as compared to the corresponding period 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 58.8% for the three months July 30, 1999 from 59.5% for the three months ended July 31, 1998. Primary factors negatively impacting gross margin were:

- o the increase in the sales volume of the F700 product family carrying additional costs associated with greater disk drive and memory content;
- o recent price reductions on disk drives due to competitive pricing pressure from other storage vendors.

Factors negatively impacting gross margin were partially offset by:

- o the increase in product volume;
- o lower costs of key components and
- o increased manufacturing efficiencies.

Gross margin was also favorably impacted by the licensing of add on software from multi-protocol, Cluster Failover, SnapMirror and SnapRestore and support contracts, and by growth in software subscription and service revenues due to a larger installed base.

Our gross margin has been and will continue to be affected by a variety of factors, including:

- o competition;
- o product configuration;
- o direct versus indirect sales;

- o the mix and average selling prices of products, including software licensing;
- o new product introductions and enhancements; and
- o 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 80.0% to \$26.9 million for the three months ended July 30, 1999 from \$14.9 million for the three months ended July 31, 1998. These expenses were 26.0% of net sales for both the three months ended July 30, 1999 and July 31, 1998, respectively. 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.

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 84.5% to \$11.2 million for the three months ended July 30, 1999 from \$6.1 million for the three months ended July 31, 1998. These expenses represented 10.9% and 10.6% of net sales, respectively, for the three months ended July 30, 1999 and July 31, 1998. 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. These new products included the F700 series filers, the Cluster Failover solutions, the C700 family and Netcache software release, as well as new enterprise software offerings and data management tools with SnapMirror, SnapRestore and SecureAdmin(TM). 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 months ended July 30, 1999 and July 31, 1998, no software development costs were capitalized.

General and Administrative -- General and administrative expenses were \$3.8 million for the three months ended July 30, 1999, as compared to \$1.9 million for the three months ended July 31, 1998. These expenses represented 3.7% and 3.3% of net sales for the three months ended for such periods. Increases in absolute dollars were primarily due to increased headcount, expenses associated with initiatives to implement enterprise-wide management information systems, 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 \$2.1 million and \$0.1 million for the three months ended July 30, 1999 and July 31, 1998, respectively. The increase was due primarily to interest income earned on the net proceeds from the March 1999 follow-on public offering, cash generated from operations and net proceeds from stock option exercises. The first quarter of fiscal 1999 included losses from foreign currency transactions compared to minimal foreign currency losses recorded in the current quarter, primarily the

result of the implementation of our new hedging program.

Provision for Income Taxes -- Our effective tax rate was 35.5% for the three-months period ended July 30, 1999 compared to 37.5% for the three-months period ended July 31, 1998. The effective tax rates differed from the U.S. statutory rate of 35% primarily due to state taxes partially offset by earnings of foreign subsidiaries being taxed at lower rates.

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#### CERTAIN RISK FACTORS

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.

We conduct business internationally. For the three months ended July 30, 1999, approximately 27.5% 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 hedge risks associated with foreign currency transactions in order to minimize the impact of changes in foreign currency exchange rates on earnings. We utilize forward contracts to hedge trade and intercompany receivables and payables. All hedge contracts are marked to market through earnings every period. We believe that these forward contracts do not subject us to undue risk due to foreign exchange movements because gains and losses on these contracts are offset by losses and gains on the underlying assets and liabilities.

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 2000 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.

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#### LIQUIDITY AND CAPITAL RESOURCES

As of July 30, 1999, as compared to the April 30, 1999 balances, our cash, cash equivalents and short-term investments increased by \$18.8 million to \$245.9 million. Working capital increased by \$24.8 million to \$289.7 million. We generated cash from operating activities totaling \$17.3 million and \$6.4 million for the three-month periods ended July 30, 1999 and July 31, 1998, respectively. Net cash provided by operating activities for the three-month period ended July 30, 1999 principally related to net income of \$13.5 million, increases in accounts payable, income taxes payable, deferred revenue and other accrued liabilities and decreases in prepaid expenses and other assets, coupled with depreciation and amortization which are non-cash expenses, partially offset by increases in accounts receivable, inventories, deferred income taxes and decreases in accrued compensation and related benefits.

We used \$8.3 million and \$2.3 million of cash during the three-month periods ended July 30, 1999 and July 31, 1998, respectively, to purchase property and equipment. The increases were primarily attributed to our relocation in June 1999 to the Sunnyvale headquarters facility. During the current quarter, we received back our \$2.5 million deposit in connection with the \$36.0 million operating lease. We have used \$10.1 million and \$4.1 million during the three-month periods ended July 30, 1999 and July 31, 1998, respectively, for net short-term investment purchases. Financing activities provided \$7.3 million and \$3.7 million during the three-month periods ended July 30, 1999 and July 31, 1998, respectively. The increase in cash provided by financing activities for the three months ended July 30, 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 fiscal 1999, we executed agreements to acquire approximately 18 acres of land in Sunnyvale, California and to develop 393,000 square feet of buildings. We subsequently assigned our rights and obligations under all the agreements for the Sunnyvale facilities to a third-party entity and entered into three operating leases. The leases require monthly payments which vary based on the London Interbank Offered Rate (LIBOR) plus a spread (6.7% at July 30, 1999). The aggregate annual minimum rent commitments under the \$44.0 million lease is approximately \$2.9 million which began in August 1999. The lease payments under the \$48.0 million and \$36.0 million operating leases are expected to commence in June 2000 and will also vary based on LIBOR plus a spread.

The operating leases mentioned above require us to maintain specified financial covenants with which we were in compliance as of July 30, 1999.

Excluding the commitments related to the aforementioned properties, which we have assigned to third parties and accounted for 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, are

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

#### YEAR 2000

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

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As part of our general systems upgrade we have evaluated and selected various significant computer software applications which are represented by vendors as Year 2000 compliant. We have substantially completed installation of such software in our domestic operations by the end of the first quarter of fiscal 2000 which will be followed by installation in our international operations throughout fiscal 2000. 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 new 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 service providers and suppliers, however, our principal service providers and suppliers have represented to us that they are Year 2000 compliant. We can give you 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 in connection with our overall general systems upgrade program, including both internal and third party costs, 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 can not 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 Year 2000 compliant, 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 1998, the FASB issued 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, 2000. 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

We are exposed to market risk related to fluctuations in interest rates and in foreign currency exchange rates. We use certain derivative financial instruments to manage these risks. We do not use derivative financial instruments for speculative or trading purposes. All financial instruments are used in accordance with management-approved policies.

##### Market Interest Risk

Short-term Investments - As of July 30, 1999, we had short-term investments of \$15.9 million. These short-term investments consist of highly liquid investments with original maturities at the date of purchase between three and twelve months. These investments are subject to interest rate risk and will decrease in value if market interest rates increase. A hypothetical 10 percent increase in market interest rates from levels at July 30, 1999, would cause the fair value of these short-term investments to decline by an immaterial amount. Because we have the ability to hold these investments until maturity we would not expect any significant decline in value of our investments caused by market interest rate changes. Declines in interest rates over time will, however, reduce our interest income.

Operating Lease Commitments - As of July 30, 1999, we have outstanding lease commitments to a third-party entity under operating lease agreements, which vary based on a monthly LIBOR rate plus a spread. However, a hypothetical 10 percent decrease in interest rates would not have a material impact on us. Increases in interest rates could, however, increase our rent expenses associated with future lease payments. We do not currently hedge against interest rate increases.

The hypothetical changes and assumptions discussed above will be different from what actually occurs in the future. Furthermore, such computations do not anticipate actions that may be taken by management, should the hypothetical market changes actually occur over time. As a result, the effect on actual earnings in the future will differ from those described above.

Foreign Currency Exchange Rate Risk - We hedge risks associated with foreign currency transactions in order to minimize the impact of changes in foreign currency exchange rates on earnings. We utilize forward contracts to hedge against the short-term impact of foreign currency fluctuations on certain assets and liabilities denominated in foreign currencies. All hedge instruments are marked to market through earnings every period. We believe that these forward contracts do not subject us to undue risk due to foreign exchange

movements because gains and losses on these contracts are offset by losses and gains on the underlying assets and liabilities.

All contracts have a maturity of less than one year and we do not defer any gains and losses, as they are all accounted for through earnings every period.

The following table provides information about our foreign exchange forward contracts outstanding on July 30, 1999, (in thousands):

CURRENCY	BUY/ SELL	FOREIGN CURRENCY AMOUNT	CONTRACT VALUE USD	FAIR VALUE IN USD
EUR	Buy	5,026	5,256	5,391
EUR	Sell	16,273	16,548	17,455
GBP	Buy	1,000	1,639	1,619
GBP	Sell	3,752	6,162	6,073
CHF	Sell	1,891	1,265	1,271

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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



- 10.27 Construction Management Agreement (Phase II - Improvements), dated May 3, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.28 Lease Agreement (Phase II - Improvements), dated May 3, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.29 Lease Agreement (Phase II - Land), dated May 3, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.30 Pledge Agreement (Phase II - Land), dated May 3, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.31 Pledge Agreement (Phase II - Improvements), dated May 3, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.32 Purchase Agreement (Phase II - Land), dated May 3, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.33 Purchase Agreement (Phase II - Improvements), dated May 3, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.34 Construction Management Agreement (Phase III - Improvements), dated June 16, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.35 Lease Agreement (Phase III - Improvements), dated June 16, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.36 Lease Agreement (Phase III - Land), dated June 16, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.37 Pledge Agreement (Phase III - Land), dated June 16, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.38 Pledge Agreement (Phase III - Improvements), dated June 16, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.39 Purchase Agreement (Phase III - Land), dated June 16, 1999, by and between BNP Leasing Corporation and the Registrant
- 10.40 Purchase Agreement (Phase III - Improvements), dated June 16, 1999, by and between BNP Leasing Corporation 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  
Senior Vice President Finance and Operations,  
Chief Financial Officer and Secretary

Date: August 31, 1999

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EXHIBIT INDEX

EXHIBIT NUMBER -----	DESCRIPTION -----
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- 27.1 Financial Data Schedule

=====

CONSTRUCTION MANAGEMENT AGREEMENT  
(PHASE II - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION  
("BNPLC")

AND

NETWORK APPLIANCE, INC.  
("NAI")

MAY 3, 1999  
(SUNNYVALE, CALIFORNIA)

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#### EXHIBITS

Exhibit A	Legal Description
Exhibit B	Description of the Construction Project (With Site Plan Attached)
Exhibit C	Form of Contractor Estoppel
Exhibit D	Form of Design Professional Estoppel
Exhibit E	Notice Requesting Advance to Cover Insurance Deductible
Exhibit F	Construction Advance Request Form
Exhibit G	Notice of Voluntary NAI Funding Commitment
Exhibit H	Preemptive Notice by NAI
Exhibit I	Notice of Termination by NAI

(2)

#### CONSTRUCTION MANAGEMENT AGREEMENT (PHASE II - IMPROVEMENTS)

This CONSTRUCTION MANAGEMENT AGREEMENT (PHASE II - IMPROVEMENTS) (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 May 3, 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 (Phase II - Improvements) executed by BNPLC and NAI contemporaneously with this Agreement. By this reference, the Common Definitions and Provisions Agreement (Phase II - Improvements) is incorporated into and made a part of this Agreement for all purposes.)

#### RECITALS

Pursuant to the Lease Agreement (Phase II - Improvements) executed by BNPLC and NAI contemporaneously the this Agreement (the "IMPROVEMENTS LEASE"), which covers the Improvements on the Land described in Exhibit A, BNPLC is leasing the Improvements and any appurtenances thereto and all Improvements to NAI.

In anticipation of the construction of new or additional Improvements for NAI's use pursuant to the Improvements Lease, BNPLC and NAI have agreed upon the terms and conditions upon which BNPLC is willing to authorize NAI to arrange and manage such construction and upon which BNPLC is willing to provide funds for such construction, and by this Agreement BNPLC and NAI desire to evidence such agreement.

#### CONSENT AND AUTHORIZATION

Subject to the terms and conditions set forth in this Agreement and in the Improvements Lease, BNPLC does hereby grant its consent and authorization to NAI for the construction by NAI of the Construction Project on the Land and for the management by NAI of such construction; provided, however, all rights of NAI against BNPLC hereunder are expressly made subject and subordinate to the Permitted Encumbrances and to any other claims or encumbrances affecting the Land or the Property that may be asserted by third parties and that do not constitute Liens Removable by BNPLC.

#### GENERAL TERMS AND CONDITIONS

(3)

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1 CONSTRUCTION BY NAI.

(A) The Construction Project.

(1) Construction Approvals by BNPLC.

(a) Preconstruction Approvals by BNPLC. NAI submitted and obtained BNPLC's approval of the site plan and descriptions of the Construction Project referenced in Exhibit B. Also set forth in Exhibit B is a general description of the Construction Project. The Construction Project, as constructed by NAI pursuant to this Agreement, and all construction contracts and other agreements executed or adopted by NAI in connection therewith, shall be not materially inconsistent with the plans or other items referenced in Exhibit B, except to the extent otherwise provided by any Scope Change (as defined below) approved by BNPLC and except as otherwise provided in subparagraph 6(d) of the Improvements Lease if BNPLC should make a Landlord's Election to Continue Construction after any termination of this Agreement.

(b) Definition of Scope Change. As used herein, "SCOPE CHANGE" means a change to the Construction Project that, if implemented, will make the quality, function or capacity of the Improvements "materially different" (as defined below in this subparagraph) than as described or inferred by site plan, plans and renderings referenced in Exhibit B. The term "SCOPE CHANGE" is not intended to include the mere refinement, correction or detailing of the site plan, plans or renderings submitted to BNPLC by NAI. As used in this subparagraph, a "material difference" means a difference that could reasonably be expected to (a) after completion of the Construction Project and the

funding of all Construction Advances required in connection therewith, significantly reduce any excess of the market value of the Property over Stipulated Loss Value or significantly increase any excess of Stipulated Loss Value over the market value of the Property, (b) change the general character of the Improvements from that needed to accommodate the uses permitted by subparagraph 2(a) of the Improvements Lease, or (c) result in Projected Cost Overruns (as defined below).

(c) Approval of Scope Changes. Before making a Scope Change, NAI shall provide to BNPLC a reasonably detailed written description of the Scope Change, a revised construction budget for the Construction Project and a copy of any changes to the drawings, plans and specifications for the Improvements required in connection therewith, all of which must be approved in writing by BNPLC (or by any inspecting architect appointed by BNPLC from time to time) before the Scope Change is implemented. BNPLC's approval shall not in any event constitute a waiver of subparagraph 1(A) (3) or of any other provision of this Agreement or the Improvements Lease.

(2) NAI's Right to Control and Responsibility for Construction. Subject to the terms and conditions set forth in this Agreement and in the Improvements Lease, and prior to any termination of this Agreement as provided in subparagraphs 5(D) and 5(E), NAI shall have the sole right to control and the sole responsibility for the design and construction of the Construction Project, including the means, methods, sequences and procedures implemented to accomplish such design and construction. Although title to all Improvements will pass directly to BNPLC (as more particularly provided in Paragraph 7 of the Improvements Lease), 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 this Agreement and in Paragraph 6 of the Improvements Lease. Without limiting the foregoing, NAI acknowledges and agrees that:

(a) Performance of the Work. Except as provided in subparagraphs 5(C) and 5(F), NAI must, using its best skill and judgment and in an expeditious and economical manner not inconsistent with the interests of BNPLC, perform or cause to be performed all work required, and will provide or cause to be provided all supplies and materials

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required, to design and complete construction of the Construction Project (collectively "WORK"). The Work will include obtaining all necessary building permits and other governmental approvals required in connection with the design and construction of the Construction Project, including the design and construction of Normal Tenant Improvements (as defined below), or required in connection with the use and occupancy thereof (e.g., final certificates of occupancy). The Work will also include any repairs or restoration required because of damage to Improvements by fire or other casualty prior to the Base Rent Commencement Date (a "PRE-COMMENCEMENT CASUALTY"); however, the cost of any such repairs or restoration will be subject to reimbursement not only through Construction Advances made on and subject to the terms and conditions of this Agreement, but also through the application of Escrowed Proceeds as provided in the Improvements Lease. NAI will carefully schedule and supervise all Work, will check all materials and services used in connection with all Work and will keep full and detailed accounts as may be necessary to document expenditures made or expenses incurred for the Work. Subject to delays beyond the reasonable control of NAI, NAI shall cause all Work to be completed on or before July 1, 2000.

(b) Third Party Contracts.

1) NAI shall not enter into any construction contract or



other agreement with a third party concerning the Work or the Construction Project (a "THIRD PARTY CONTRACT") in the name of BNPLC or otherwise purport to bind BNPLC to any obligation to any third party.

2) In any Third Party Contract between NAI and any of its Affiliates (an "AFFILIATE'S CONTRACT") NAI shall reserve the right to terminate the contract at any time, without cause, and without subjecting NAI to liability for any Termination Fee (as defined below). Further, NAI shall not enter into any Affiliate's Contract that obligates NAI to pay more than would be required under an arms-length contract or that would require NAI to pay its Affiliate any amount in excess of the sum of actual, out-of-pocket direct costs and internal labor costs incurred by the Affiliate to perform such contract.

3) As necessary to limit the total Reimbursable Third Party Contract Termination Fees (as defined below) for which BNPLC may be required to provide Construction Advances to no more than \$7,000,000 (the "MAXIMUM PERMITTED TERMINATION FEES"), NAI shall reserve in every significant Third Party Contract an absolute express right to terminate such contract at any time, without cause. Although any Third Party Contract (other than an Affiliate's Contract) may require NAI to pay a specified Termination Fee in the event of such a termination, the specified Termination Fee must not exceed the difference computed by subtracting (I) the aggregate of all Termination Fees that have been paid or would become payable by NAI if NAI terminated all other Third Party Contracts, from (II) the Maximum Permitted Termination Fees. Without limiting the foregoing, NAI will manage and administer all Third Party Contracts as necessary to ensure that, at any point in time, NAI can terminate all such contracts without becoming liable for Termination Fees in excess of the Maximum Permitted Termination Fees.

4) As used in this Agreement, "TERMINATION FEE" means any amount, however denominated, for which NAI will be obligated under a Third Party Contract as a result of any election or decision by NAI to terminate such Third Party Contract, including demobilization costs; provided, however, amounts payable for Prior Work [as defined below] as of the date any such termination are not intended to be characterized as Termination Fees for purposes of this Agreement. If, as described in the preceding paragraph, NAI reserves an absolute express right in a Third Party Contract to terminate such contract at any time, without cause, for a specified dollar amount, such dollar amount will constitute a Termination Fee. If no such right is reserved in a Third Party Contract, the Termination Fee applicable

to such contract for purposes of this Agreement will be the amount of damages that NAI could be required to pay (in addition to payments required for Prior Work) upon an anticipatory repudiation of the Third Party Contract by NAI.

(c) Third Party Estoppels. If requested by BNPLC with respect to any material general construction contract between NAI and a third party contractor for any part of the Work, NAI shall cause the contractor to execute and deliver to BNPLC an estoppel letter substantially in the form of Exhibit C. Similarly, if requested by BNPLC with respect to any material architectural or engineering contract between NAI and a third party professional or firm for any part of the Work, NAI shall cause the professional or firm thereunder to execute and deliver to BNPLC an estoppel letter substantially in the form of Exhibit D.

(d) Adequacy of Drawings, Specifications and Budgets. BNPLC has made and will make no representations as to the adequacy of any budgets, site plans, renderings, plans, drawings or specifications for the

Construction Project, and no modification of any such budgets, site plans, renderings, plans, drawings or specifications that may be required from time to time will entitle NAI to any adjustment in the Construction Allowance.

(e) Existing Condition of the Land and Improvements. NAI is familiar with the conditions of the Land and any existing Improvements on the Land. NAI shall have no claim for damages against BNPLC or for an increase in the Construction Allowance by reason of any condition (concealed or otherwise) of or affecting the Land or Improvements.

(f) Correction of Defective Work. NAI will promptly correct all Work performed prior to any termination of this Agreement that does not comply with the requirements of this Agreement or that is otherwise defective (in either case, "DEFECTIVE WORK") at NAI's sole expense. If NAI fails to correct any Defective Work or fails to carry out Work in accordance with this Agreement, BNPLC may (but will not be required to) order NAI to stop all Work until the cause for such failure has been eliminated.

(g) Clean Up. Upon the completion of all Work, NAI will remove all waste material and rubbish from and about the Land, as well as all tools, construction equipment, machinery and surplus materials. NAI will keep the Land and the Improvements thereon in a reasonably safe and slightly condition as Work progresses.

(h) No Damage for Delays. NAI shall have no claim for damages against BNPLC or for an increase in the Construction Allowance by reason of any delay in the performance of any Work.

(i) No Fee For Construction Management. NAI shall have no claim for any fee or other compensation or for any reimbursement of internal administrative or overhead expenses of NAI under this Agreement, it being understood that NAI is executing this Agreement in consideration of the rights expressly granted to it herein and in the Improvements Lease.

(3) Quality of Work. NAI shall cause the Work undertaken and administered by it pursuant to this Agreement to be performed (a) in a safe and good and workmanlike manner, (b) in accordance with Applicable Laws, (c) in compliance with (i) the provisions of this Agreement and the Improvements Lease, (ii) the material provisions of the Permitted Encumbrances and (iii) the material provisions of the Development Documents, and (d) in a manner that, taken as a whole, enhances the value of the Property commensurate with any Construction Advances and Carrying Costs added to the Outstanding Construction Allowance in connection therewith.

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(B) Completion Notice . NAI shall provide a notice (a "COMPLETION NOTICE") to BNPLC promptly after construction of the Construction Project is substantially complete, advising BNPLC of the substantial completion.

## 2 CONSTRUCTION ADVANCES.

(A) Costs Subject to Reimbursement Through Construction Advances . Subject to the terms and conditions set forth herein, NAI shall be entitled to a Construction Allowance, from which BNPLC will make Construction Advances on Advance Dates from time to time to pay or reimburse NAI for the following costs ("REIMBURSABLE CONSTRUCTION-PERIOD COSTS") to the extent the following costs are not already included in Transaction Expenses paid by BNPLC from the Initial Funding Advance:

(1) the actual costs and expenses incurred or paid by NAI for the preparation, negotiation and execution of this Agreement and the other Operative Documents;

(2) the cost of title insurance or other out of pocket expenses described in subparagraph 5(c)(iii) of the Improvements Lease or of the Other Lease Agreement to the extent paid by NAI prior to the Base Rent Commencement Date;

(3) Commitment Fees;

(4) costs of the Work, including not only hard costs incurred for the new Improvements described in Exhibit B, 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;

(5) the cost of maintaining insurance required by (and consistent with the requirements of) the Improvements Lease and the Other Lease Agreement prior to the Base Rent Commencement Date, and costs of repairing any damage to the Improvements caused by a Pre-commencement Casualty to the extent such costs are not covered by Escrowed Proceeds made available to NAI as provided in the Improvements Lease and the Other Lease Agreement prior to the Base Rent Commencement Date ("REIMBURSABLE RESTORATION COSTS");

(6) Impositions that accrue or become due under the Improvements Lease or the Other Lease Agreement prior to the Base Rent Commencement Date; and

(7) except as otherwise provided in subparagraph below, Termination Fees payable by NAI in connection with any Third Party Contract between NAI and a Person not an Affiliate of NAI because of any election by NAI to cancel or terminate such contract during a CMA Suspension Period (as defined below).

In addition to other Construction Advances required by this subparagraph 2A, but subject to the other terms and conditions hereof, a Construction Advance will be provided by BNPLC on the Base Rent Commencement Date in the form of additional Escrowed Proceeds (to be held and applied like other Escrowed Proceeds pursuant to the Improvements Lease) equal to any

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reduction in property insurance proceeds paid or payable with respect to the Property because of a property insurance deductible permitted by Exhibit B attached to the Improvements Lease, if:

(I) damage to the Improvements has been caused by a Pre-commencement Casualty and, despite the exercise of reasonable diligence by NAI, NAI has been unable to complete the repair of such damage sufficiently in advance of the Base Rent Commencement Date to allow the reimbursement to NAI hereunder of all Reimbursable Restoration Costs attributable to such property insurance deductible; and

(II) at least five Business Days before the Base Rent Commencement Date, NAI has requested such additional Construction Advance by a notice in the form attached hereto as Exhibit E.

(B) Exclusions From Reimbursable Construction-Period Costs . Notwithstanding anything herein to the contrary, BNPLC shall not be required to make any Construction Advance to pay or to reimburse or compensate NAI for any of the following or any Absolute NAI Construction Obligations required because of or in connection with or arising out of any of the following:

(1) Environmental Losses;

(2) Losses that would not have been incurred but for any act or omission of NAI or of any NAI's contractors or subcontractors, which act

or omission is contrary in any material respect to the other terms and conditions of this Agreement or to the terms and conditions of the other Operative Documents, during the period that this Agreement remains in force or during any other period that NAI remains in possession or control of the Construction Project pursuant to the Improvements Lease or otherwise;

(3) Losses that would not have been incurred but for any fraud, misapplication of Construction Advances or other funds, 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;

(4) Losses that would not have been incurred but for any bankruptcy proceeding involving NAI; and

(5) costs of Normal Tenant Improvements (as defined below), except to the extent that BNPLC agrees to allow the reimbursement of such costs from the Construction Allowance as provided in subparagraph 3(B).

For purposes of this subparagraph, "acts and omissions" described in clause (2) preceding shall include (i) any decision by NAI to make any Scope Change without the prior approval of BNPLC, (ii) any failure of NAI to maintain insurance required by the Improvements Lease, the Other Lease Agreement or this Agreement, (iii) any decision of NAI not to continue or complete Work 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), and (v) any other material breach by NAI of this Agreement.

(C) Conditions to NAI's Right to Receive Construction Advances . BNPLC's obligation to provide Construction Advances to NAI from time to time under this Agreement shall be subject to the following terms and conditions, all of which terms and conditions are intended for the sole benefit of BNPLC, and none of which terms and conditions shall limit in any way the right of BNPLC to treat costs or expenditures incurred or paid by or on behalf of it as Construction Advances pursuant to subparagraph 6(d) of the Improvements Lease:

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(1) Construction Advance Requests. NAI must make a written request (a "CONSTRUCTION ADVANCE REQUEST") for any Construction Advance, specifying the amount of such advance, at least five Business Days prior to the Advance Date upon which the advance is to be paid. To be effective for purposes of this Agreement, a Construction Advance Request must be in substantially the form attached as Exhibit. NAI shall not submit more than one Construction Advance Request in any calendar month.

(2) Amount of the Advances.

(a) Limit Dependent Upon the Maximum Construction Allowance. NAI shall not be entitled to require any Construction Advance that would cause the Funded Construction Allowance to exceed the Maximum Construction Allowance.

(b) Limit Dependent Upon Costs Previously Incurred by NAI. NAI shall not be entitled to require any Construction Advance - other than a final additional Construction Advance required on the Base Rent Commencement Date because of a permitted property insurance deductible related to a Pre-commencement Casualty as described in subparagraph above - that would cause the aggregate of all Construction Advances to exceed the sum of:

(i) Reimbursable Construction-Period Costs that NAI has, to the reasonable satisfaction of BNPLC, substantiated as having been paid or incurred by NAI other than for Work (e.g., Impositions), plus

(ii) the Reimbursable Construction-Period Costs that NAI has, to the reasonable satisfaction of BNPLC, substantiated as having been paid or incurred for Prior Work as of the date of the Construction Advance Request requesting the advance.

As used in this Agreement, "PRIOR WORK" means all labor and services actually performed, and all materials actually delivered to the construction site, in accordance with this Agreement prior to the date in question as part of the Work, and "FUTURE WORK" means labor and services performed or to be performed, and materials delivered or to be delivered, after the date in question as part of the Work. For purposes of this Agreement, NAI and BNPLC intend to allocate Reimbursable Construction-Period Costs between Prior Work and Future Work in a manner that is generally consistent with the allocations expressed or implied in construction-related contracts negotiated in good faith between NAI and third parties not affiliated with NAI (e.g., a general contractor); however, in order to verify the amount of Reimbursable Construction-Period Costs actually paid or incurred by NAI and the proper allocation thereof between Prior Work and Future Work, BNPLC shall be entitled (but not required) to: (x) request, receive and review copies of such agreements between NAI and third parties and of draw requests, budgets or other supporting documents provided to NAI in connection with or pursuant to such agreements as evidence of the allocations expressed or implied therein, (y) from time to time engage one or more independent inspecting architects, certified public accountants or other appropriate professional consultants and, absent manifest error, rely without further investigation upon their reports and recommendations, and (z) without waiving BNPLC's right to challenge or verify allocations required with respect to future Construction Advances, rely without investigation upon the accuracy of NAI's own Construction Advance Requests.

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(c) Limit During CMA Suspension Period. Without limiting the other terms and conditions imposed by this Agreement for the benefit of BNPLC with respect all Construction Advances, BNPLC shall have no obligation to make any Construction Advance during any CMA Suspension Period (as defined below) that would cause the aggregate of all Construction Advances to exceed the sum of:

(i) Reimbursable Construction-Period Costs that NAI has, to the reasonable satisfaction of BNPLC, substantiated as having been paid or incurred by NAI other than for Work (e.g., Impositions), plus

(ii) the Reimbursable Construction-Period Costs that NAI has, to the reasonable satisfaction of BNPLC, substantiated as having been paid or incurred for Prior Work (as defined below) as of the date the CMA Suspension Period commenced.

For purposes of computing the limits described in this subparagraph 2(c)(2)(c), Reimbursable Construction-Period Costs "other than for Work" shall include Termination Fees that qualify as Reimbursable Construction-Period Costs pursuant to subparagraph 2(A)(7) ("REIMBURSABLE THIRD PARTY CONTRACT TERMINATION FEES"). NAI acknowledges, however, that Termination Fees will not exceed the Maximum Permitted Termination Fees, so long as NAI complies with the requirements of subparagraph 1(A)(2)(b). That is, but for an "act or omission of NAI" as such phrase is used in subparagraph 2(B)(2), the aggregate of all Termination Fees shall not exceed the Maximum Permitted Termination Fees. Accordingly, if the aggregate of any Termination Fees do exceed the Maximum Permitted Termination Fees, the excess shall not qualify as Reimbursable Third Party Contract Termination Fees.

(d) Restrictions Imposed for Administrative Convenience. NAI shall not request any Construction Advance (other than the final Construction Advance NAI intends to request) for an amount less than \$500,000.

(3) No Advances After Certain Dates. BNPLC shall have no obligation to make any Construction Advance (x) after the Base Rent Commencement Date,

(y) on or after the Designated Sale Date, or (z) on or after the date of any termination of this Agreement pursuant to subparagraph 5(D) or subparagraph 5(E).

(D) Breakage Costs for Construction Advances Requested But Not Taken. If NAI requests but thereafter declines to accept any Construction Advance, or if NAI requests a Construction Advance that it is not permitted to take because of its failure to satisfy any of the conditions specified in subparagraph 2(C), NAI shall pay upon demand any resulting Breakage Costs.

(E) No Third Party Beneficiaries. No contractor or other third party shall be entitled to require BNPLC to make advances as a third party beneficiary of this Agreement or of the Improvements Lease or otherwise.

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(F) No Waiver. No funding of Construction Advances and no failure of BNPLC to object to any Work proposed or performed by or for NAI shall constitute a waiver by BNPLC of the requirements contained in this Agreement.

(G) Funding by Participants. NAI acknowledges that, as provided in the Participation Agreement, each Participant has agreed to pay to BNPLC a Percentage (under and as defined in the Participation Agreement) of the Construction Advances required by this Agreement. NAI also acknowledges that BNPLC will not be responsible to NAI for any failure of any Participant to provide advances required by the Participation Agreement. So long as any Participant fails to provide its Percentage of any requested Construction Advance, then the amount of the Construction Advance for which BNPLC shall be obligated hereunder shall be reduced by the amount that the Participant should have provided, but failed to provide, in accordance with the Participation Agreement. No such reduction, however, of BNPLC's obligation hereunder shall release or impair the obligation of the Participant directly to NAI, created by NAI's status as a third party beneficiary of the Participant's commitment under the Participation Agreement to provide the Participant's Percentage of Construction Advances. Further, any such failure shall excuse BNPLC's obligation to provide the requested Construction Advance only to the extent of the funds that the applicable Participant or Participants should have advanced (but did not advance) to BNPLC, and in the event of any such failure:

(1) BNPLC will immediately notify NAI, but BNPLC will not in any event be liable to NAI for BNPLC's failure to do so.

(2) BNPLC will to the extent possible postpone reductions of Construction Advances because of the failure by any one or more Participants ("DEFAULTING PARTICIPANTS") to make required advances under the Participation Agreement (a "PARTICIPANT DEFAULT") by adjusting (and readjusting from time to time, as required) the funding "Percentages" of other Participants, and by requesting the other Participants to make advances to BNPLC on the basis of such adjusted Percentages, in each case as provided in the Participation Agreement; however, so long as a Participant Default continues, no Construction Advance shall be required that would cause the Outstanding Construction Allowance to exceed (1) the Maximum Construction Allowance available under this Agreement, less (2) all amounts that should have been, but because of a continuing Participant Default have not been, advanced by any one or more of the Participants to BNPLC under the Participation Agreement with respect to Construction Advances.

(3) Further, after a Participant Default, and so long as no CMA Termination Event (as defined below) has occurred and no Event of Default has occurred and is continuing, BNPLC shall do the following as reasonably requested by NAI, provided that nothing in this provision shall require BNPLC to take any action that would violate Applicable Laws, that would constitute a breach of BNPLC's obligations under the Participation Agreement, or that would require BNPLC to waive any rights or remedies it has under this Agreement or other Operative Documents:

(a) BNPLC shall promptly make a written demand upon the Defaulting Participants for the cure of the Participant Default, and

(b) BNPLC shall not unreasonably withhold its approval for the substitution of any new participant proposed by NAI for Defaulting Participants, if (A) the proposed substitution does not require BNPLC

to waive rights against the Defaulting Participants, (B) the new participant will agree (by executing supplement to the Participation Agreement as provided in the Participation Agreement) to provide funds to replace the payments that would otherwise be required of the Defaulting Participants with respect to future Construction Advances, (C) the new participant (or NAI) provides the funds (if any) needed to terminate the Defaulting Participants' rights to receive payments of "Net Cash Flow" (as defined in the Participation Agreement) that BNPLC will be required to pay the new participant under the terms of the substitution reasonably proposed by NAI, (D) the new participant (or NAI) provides and agrees in writing to provide funds needed to reimburse BNPLC for any and all Losses incurred by BNPLC in connection with or because of the substitution of the new participant for the Defaulting Participants, including any cost of defending and paying any claim asserted by Defaulting Participants because of the

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substitution (but not including any liability of BNPLC to the Defaulting Participants for damages caused by BNPLC's bad faith or gross negligence in the performance of BNPLC's obligations to the Defaulting Participants), (E) the obligations of BNPLC to the new participant per dollar of the new participant's "investment" (it being understood that such investment will be computed in a manner consistent with the examples set forth in Exhibit A to the Participation Agreement, but net of reimbursements to BNPLC under clause (D) preceding) shall not exceed the obligations per dollar of investment by the Defaulting Participants that BNPLC would have had to the Defaulting Participants if there had been no Participant Default, and (F) 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).

### 3 NORMAL TENANT IMPROVEMENTS.

(A) Definition of Normal Tenant Improvements. As used herein, "NORMAL TENANT IMPROVEMENTS" shall mean any "below-ceiling" interior finishes and special fixtures or equipment to be constructed for NAI within the Improvements as part of the Construction Project, BUT WILL NOT INCLUDE (1) costs of structural elements of the Construction Project, or (2) equipment that would be necessary for the use of the Improvements by any lessee (e.g., HVAC equipment, elevators, standard electrical wiring).

(B) Advances for Normal Tenant Improvements. Nothing herein shall be construed as a commitment or an agreement by BNPLC to pay for Normal Tenant Improvements, other than Normal Tenant Improvements contemplated in the description of the Construction Project set forth in Exhibit B and the attachments thereto. BNPLC does, however, acknowledge that incorporated into the total Construction Allowance is an amount for contingencies (e.g., cost overruns related to structural components of Improvements, HVAC equipment, elevators, etc.), for which BNPLC shall be obligated to provide Construction Advances on and subject to the terms and conditions set forth in Paragraph 2. To the extent, if any, that NAI does not exhaust the Construction Allowance by using Construction Advances for other costs (e.g., the actual costs incurred for structural components of Improvements, HVAC equipment, elevators, etc.), BNPLC will allow NAI to reimburse itself through Construction Advances funded on and subject to the terms and conditions of Paragraph for the costs of any Normal Tenant Improvements in addition to those contemplated in the description of the Construction Project set forth in Exhibit B and the attachments thereto. Otherwise, any such additional Normal Tenant Improvements will be paid for by NAI.

(C) Tenant's Obligation to Construct Normal Tenant Improvements. NAI shall construct all Normal Tenant Improvements in a good and workmanlike manner and in accordance with the same standards and requirements imposed by this Agreement for other Work.

### 4 COST OVERRUNS.

(A) Definition of Projected Cost Overruns . As used in this Agreement,

"PROJECTED COST OVERRUNS" shall mean the excess (if any), calculated as of the date of each Construction Advance Request, of (1) the total of projected Reimbursable Construction-Period Costs yet to be incurred or for which NAI has yet to be reimbursed hereunder (including projected Reimbursable Construction-Period Costs for Future Work), over (2) the sum of a) any Voluntary Construction Contribution NAI has committed to pay as provided in subparagraph 4(C), but has yet to pay, plus b) the balance of the remaining Construction Allowance then projected to be available to cover such costs. The balance of the remaining Construction Allowance then projected to be available will equal (i) the amount (if any) by which the Maximum Construction Allowance exceeds the Funded Construction Allowance, less (ii) the sum of (a) projected future Carrying Costs, plus (b) any funds that should have been but were not advanced to BNPLC by any Defaulting Participants under (and as defined in) the Participation Agreement.

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(B) Notice of Projected Cost Overruns . If for any reason (including any damage to the Property by fire or other casualty or any taking of any part of the Property by condemnation) NAI believes (after taking into account any Voluntary NAI Construction Contributions NAI has made or committed to make as provided in subparagraph 4(C)) that Projected Cost Overruns are more likely than not at the time NAI submits any Construction Advance Request, NAI shall state such belief in the Construction Advance Request and, if NAI can reasonably do so, NAI will estimate the approximate amount of such Projected Cost Overruns.

(C) Election to Make a Voluntary NAI Construction Contribution . As used in this Agreement, "VOLUNTARY NAI CONSTRUCTION CONTRIBUTION" shall mean a voluntary, nonrefundable payment made to BNPLC by NAI prior to the Base Rent Commencement Date and delivered with or pursuant to a notice in the form of Exhibit G, confirming that a Voluntary NAI Construction Contribution is being paid or will be paid pursuant to this subparagraph. To prevent the occurrence of or to cure any CMA Suspension Event described in subparagraph 5(A)(1), NAI shall be entitled (but not obligated) to make or commit to make a Voluntary NAI Construction Contribution in addition to (and, except as provided in the definition of Issue 97-10 Prepayment in the Common Definitions and Provisions Agreement (Phase II - Improvements), without reducing or excusing) any other amounts then due from NAI to BNPLC pursuant to the Operative Documents. Like other Qualified Prepayments, any Voluntary NAI Construction Contribution will reduce the Outstanding Construction Allowance as described in the definition thereof in the Common Definitions and Provisions Agreement (Phase II - Improvements). In contrast, however, to other Qualified Prepayments, Voluntary NAI Construction Contributions will be subtracted for purposes of calculating the Funded Construction Allowance and, thus, will effectively increase the subsequent Construction Advances available under the limit established by subparagraph 2(C)(2)(a).

#### 5 SUSPENSION AND TERMINATION.

(A) CMA Suspension Events . Each of the following events shall be a "CMA SUSPENSION EVENT" under this Agreement:

(1) Projection of Cost Overruns . Either (a) BNPLC shall receive any Construction Advance Request stating that NAI believes Projected Cost Overruns are more likely than not, as provided in subparagraph 4(B), or (b) (i) BNPLC shall otherwise determine in good faith that significant Projected Cost Overruns are likely (taking into account any failure of a Defaulting Participant to provide funds to BNPLC as required by the Participation Agreement and any prior Voluntary NAI Construction Contributions NAI has made or committed to make as provided in subparagraph 4(C)), (ii) BNPLC shall notify NAI of such determination and the basis therefor, and (iii) NAI shall fail to give any notice pursuant to subparagraph 4(C) that, by committing NAI to make or increase Voluntary NAI Construction Contributions, effectively eliminates the likelihood of the Projected Cost Overruns on or before five Business Days after BNPLC's notice to NAI of such determination.

(2) Interruption of Construction . The Construction Project shall, for any reason after Work commences (including any damage to the Property by fire or other casualty or any taking of any part of the Property by condemnation), no longer be substantially progressing (and shall not have progressed in any substantial way during the preceding forty-five days), in a good and workmanlike manner and substantially in accordance with Applicable Laws,



with Permitted Encumbrances, with Development Documents and with the requirements of this Agreement.

(3) Failure of NAI to Correct Defective Work . NAI shall fail to diligently pursue the correction of any Defective Work of which NAI has received notice.

(4) Failure of NAI to Provide Evidence of Costs and Expenses . BNPLC shall have requested, and NAI shall have failed to provide within ten Business Days after receipt of the request, with respect to any Construction Advance: (1) invoices, requests for payment from contractors and other evidence reasonably establishing that the costs and expenses for which NAI has requested or is requesting reimbursement constitute actual Reimbursable Construction-Period Costs, and (2)

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anceled checks, lien waivers and other evidence reasonably establishing that all prior Construction Advances have been used by NAI to pay, and only to pay, the Reimbursable Construction-Period Costs for which the prior advances were requested and made.

(B) FOCB Notices, Preemptive Notices and CMA Termination Events .

(1) As used herein, "FOCB NOTICE" means a notice from BNPLC to NAI that BNPLC is considering a termination of this Agreement pursuant to subparagraph below, provided that the notice is given prior to BNPLC's receipt from NAI of a Completion Notice and is given when:

- (a) any Event of Default has occurred and is continuing; or
- (b) any CMA Suspension Event shall have occurred, NAI shall have received notice of such CMA Suspension Event (a "CMA SUSPENSION NOTICE") and the CMA Suspension Event shall have continued for thirty days after NAI's receipt of such notice; or
- (c) NAI shall have failed to maintain the following insurance, or to provide insurance certificates to BNPLC as required by the Improvements Lease with respect to the following insurance, and such failure shall have continued for a period of five Business Days after any notice to NAI thereof:
  - 1) property insurance as required by the Improvements Lease, including builder's completed value risk insurance as BNPLC may require to protect BNPLC's and NAI's interests in the Improvements under construction against risks of physical loss, such insurance to be maintained by NAI at all times until completion of the Construction Project; and
  - 2) commercial general liability insurance as required by the Improvements Lease.

(2) As used herein, "PREEMPTIVE NOTICE" means a notice from NAI to BNPLC in the form attached hereto as Exhibit H, given after BNPLC has given any FOCB Notice, but before NAI has made any Issue 97-10 Election, that is sufficient and effective under clause (2) of the definition of Designated Sale Date in the Common Definitions and Provisions Agreement (Phase II - Improvements) to accelerate the Designated Sale Date to a date that is less than ninety days after the date of BNPLC's FOCB Notice.

(3) For purposes of this Agreement and the other Operative Documents, "CMA TERMINATION EVENT" shall mean:

- (a) BNPLC's receipt of a Notice of NAI's Intent to Terminate (as defined below); or
- (b) A failure of NAI for any reason whatsoever to deliver a duly executed, effective Preemptive Notice within thirty days after NAI's receipt of an FOCB Notice.

(C) Rights and Obligations of NAI During a CMA Suspension Period . As used herein, "CMA SUSPENSION PERIOD" shall mean any period (1) beginning with the

date of any CMA Suspension Notice, FOCB Notice or Notice of NAI's Intent to Terminate, and (2) ending on the earlier of (a) the first date upon which (i) no CMA Suspension Events shall be continuing, and (ii) no CMA Termination Events shall have occurred, or (b) the effective date of any termination of this Agreement as described in subparagraph 5(D) or subparagraph 5(E). During any CMA Suspension Period, NAI shall have the right to suspend the

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Work; provided, however, the obligations of NAI which are to survive any termination of this Agreement shall also continue and survive during any such suspension of the Work.

(D) Election by NAI to Terminate. NAI may elect to terminate this Agreement at any time prior to the Base Rent Commencement Date when NAI has determined that (1) the Construction Advances to be provided to it hereunder will not be sufficient to cover all Reimbursable Construction-Period Costs, whether because the cost of the Work exceeds budgeted expectations (resulting in Projected Cost Overruns), because of damage to the Property by fire or other casualty (other than damage that would not have occurred, or been uninsured or under-insured, but for an act or omission of NAI), because of a taking of any part of the Property by condemnation, or because NAI can no longer satisfy conditions to BNPLC's obligation to provide Construction Advances herein, or (2) the Construction Project cannot be substantially completed before the Base Rent Commencement Date for reasons other than a breach by NAI of this Agreement. To be effective, however, any such election to terminate this Agreement must be made by giving BNPLC and the Participants a notice thereof prior to the Base Rent Commencement Date in the form of Exhibit I (a "NOTICE OF NAI'S INTENT TO TERMINATE"), stating that NAI intends to terminate this Agreement pursuant to this subparagraph on a date specified therein, which date is not less than thirty days after the date of such notice. Unless terminated sooner pursuant to subparagraph 5(E), this Agreement will automatically terminate on the effective date so specified in any Notice of NAI's Intent to Terminate.

(E) BNPLC's Right to Terminate. BNPLC shall be entitled to terminate this Agreement at any time (x) more than ninety days after BNPLC has given an FOCB Notice as described in subparagraph 5(B)(1) (regardless of whether at the time of such termination by BNPLC an Event of Default or other event or circumstance described in subparagraph 5(B)(1) is continuing), provided that BNPLC shall not have received an effective Preemptive Notice within thirty days after its delivery of the FOCB Notice to NAI, (y) after the Designated Sale Date, or (z) after BNPLC's receipt of a Notice of NAI's Intent to Terminate.

(F) Rights and Obligations Surviving Termination. Following any termination of this Agreement as provided in subparagraph 5(D) or in 5(E), NAI shall have no obligation to continue or complete any Work; provided, however, no termination of this Agreement shall reduce or excuse the following rights and obligations of the parties, it being intended that all such rights and obligations shall survive and continue after any such termination:

(1) the rights and obligations of NAI and BNPLC under the other Operative Documents, including Absolute NAI Construction Obligations imposed upon NAI by the Improvements Lease; and

(2) NAI's obligations described in the next subparagraph 5(G).

(G) Cooperation by NAI Following any Termination. After any termination of this Agreement as provided in subparagraph or subparagraph , NAI shall comply with the following terms and conditions, all of which shall survive any such termination:

(1) NAI shall promptly deliver copies to BNPLC of all Third Party Contracts and purchase orders made by NAI in the performance of or in connection with the Work, together with all plans, drawings, specifications, bonds and other materials relating to the Work in NAI's possession, including all papers and documents relating to governmental permits, orders placed, bills and invoices, lien releases and financial management under this Agreement. All such deliveries shall be made free and clear of any liens, security interests, or encumbrances, except such as may be created by the Operative Documents.

(2) Promptly after any request from BNPLC made with respect to any Third

Party Contract, NAI shall deliver a letter confirming: (i) that NAI has not performed any act or executed any other instrument which invalidates or modifies such contract in whole or in part (or, if so, the nature of such modification); (ii) the extent to which such contract is valid and

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subsisting and in full force and effect; (iii) that there are no defaults or events of default then existing under such contract and, to NAI's knowledge, no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default or event of default (or, if there is a default, the nature of such default in detail); (iv) that the services and construction contemplated by such contract is proceeding in a satisfactory manner in all material respects (or if not, a detailed description of all significant problems with the progress of the services or construction); (v) in reasonable detail the then critical dates projected by NAI for work and deliveries required by such contract; (vi) the total amount received by the other party to such contract for work or services provided by the other party through the date of the letter; (vii) the estimated total cost of completing the services and work contemplated under such contract as of the date of the letter, together with any current draw or payment schedule for the contract; and (viii) any other information BNPLC may reasonably request to allow it to decide what steps it should take concerning the contract within BNPLC's rights under this Agreement and the other Operative Documents.

(3) NAI will make every reasonable effort, as and to the extent requested by BNPLC, to secure the cancellation of any then existing Third Party Contract upon terms satisfactory to BNPLC. NAI shall bear any cancellation fees or other Losses resulting from any cancellation of a Third Party Contract after the effective date of a termination of this Agreement.

(4) NAI will make every reasonable effort, as and to the extent requested by BNPLC, to secure any required consents or approvals for an assignment of any then existing Third Party Contract to BNPLC or its designee, upon terms satisfactory to BNPLC. To the extent assignable, any Third Party Contract will be assigned by NAI to BNPLC upon request.

(5) If NAI has canceled any Third Party Contract before and in anticipation of a termination of this Agreement, NAI shall make every reasonable effort, as and to the extent requested by BNPLC, to secure a reinstatement of such Third Party Contract in favor of BNPLC and upon terms satisfactory to BNPLC.

(6) For a period not to exceed ten days after the termination, NAI shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, equipment, and supplies at the Property or in transit.

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Agreement to be executed as of May 3, 1999.

"NAI"  
NETWORK APPLIANCE, INC.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Continuation of signature pages to Construction Management Agreement (Phase II - Improvements) dated to be effective May 3, 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

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

Exhibit - Page 1

Exhibit B

DESCRIPTION OF THE CONSTRUCTION PROJECT

Subject to future Scope Changes, the Construction Project will be substantially consistent with the following general description and with the

Site Plan attached to this Exhibit.

In addition to the site plan, the following excerpts are taken from an appraisal prepared for BNPLC which summarizes information about the Improvements:

The improvements will consist of one, proposed, three-story, office/research and development building to be occupied by NAI. It will be located along the west side of Crossman Avenue, just north of Java Drive and, in the City of Sunnyvale, Santa Clara County, California. It is Phase II of the NAI corporate headquarters. Phase I is currently under construction adjacent to the subject property. The subject property is currently improved with a 25-year old, one-story industrial building containing 78,818 square feet. It is currently leased to TRW. The lease will terminate, the building will be vacated and then razed for the construction of the proposed improvements. Upon completion, the proposed building will contain 130,680 square feet of gross building area. The proposed improvements will be sited on a total of 5.99 acres.

Exhibit - Page 1

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Exhibit C  
ESTOPPEL FROM CONTRACTOR

\_\_\_\_\_, 199\_\_

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

Re: Assignment of Construction Contract

Ladies and Gentlemen:

The undersigned hereby represents to BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and covenants with BNPLC as follows:

1 The undersigned has entered into that certain [Construction Contract] (the "CONSTRUCTION CONTRACT") by and between the undersigned and Network Appliance, Inc. ("NAI") dated \_\_\_\_\_, \_\_\_\_\_ for the construction of the improvements to be constructed as part of NAI's Sunnyvale campus leased by NAI (the "IMPROVEMENTS") on the land described in the Improvements Lease Documents described below (the "LAND" and, together with the Improvements and any other improvements now on or constructed in the future on the Land, the "PROJECT").

2 The undersigned has been advised that, by a Lease Agreement (Phase II - Improvements) and a Construction Management Agreement (Phase II - Improvements), both dated as of May 3, 1999 (collectively, the "IMPROVEMENTS LEASE DOCUMENTS"), BNPLC is leasing the Project to NAI and has agreed, subject to the terms and conditions of the Improvements Lease Documents, to provide a construction allowance for the design and construction of the Improvements. The undersigned has also been advised that the Improvements Lease Documents expressly provide that third parties (including the undersigned) are not intended as beneficiaries of the Improvements Lease Documents and, thus, will have no standing to enforce any obligations of NAI or BNPLC under the Improvements Lease Documents, including any such obligation that BNPLC may have to provide the construction allowance. The undersigned understands that the Improvements Lease Documents expressly provide that NAI is not authorized to enter into any construction contract or other agreement with any third party in the name of BNPLC or to otherwise bind BNPLC to any contract with a third party.

3 A complete and correct copy of the Construction Contract is attached to this letter. The Construction Contract is in full force and effect and has not been modified or amended, except as provided in any written modifications or amendments which are also attached to this letter.

4 The undersigned has not sent or received any notice of default or any other notice for the purpose of terminating the Construction Contract, nor does the

undesigned have knowledge of any existing circumstance or event which, but for the elapse of time or otherwise, would constitute a default by the undersigned or by NAI under the Construction Contract.

Exhibit - Page 1

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BNP Leasing Corporation

\_\_\_\_\_, 199\_\_\_\_

Page 2

The undersigned acknowledges and agrees that:

a) Title to all Improvements shall, when constructed on the Land, pass directly to BNPLC, not to NAI. BNPLC shall not, however, be held liable for, and the undersigned shall not assert, any claims, demands or liabilities against BNPLC arising under or in any way relating to the Construction Contract; provided, this paragraph will not (1) be construed as a waiver of any statutory mechanic's or materialmen's liens against the interests of NAI in and to the Land or the improvements thereon that may otherwise exist or arise in favor of the undersigned, or (2) prohibit the undersigned from asserting any claims or making demands against BNPLC under the Construction Contract if BNPLC elects in writing, pursuant to paragraph b) below, to assume the Construction Contract in the event NAI's right to possession of the Land is terminated, it being understood that in the event of such an assumption BNPLC shall be liable for the unpaid balance of the contract sum due for the work of the undersigned, payable pursuant to (and subject to the terms and conditions set forth for the benefit of the owner in) the Construction Contract, but in no event shall BNPLC otherwise be personally liable for any acts or omissions on the part of NAI.

b) Upon any termination of NAI's right to possession of the Project under the Improvements Lease Documents, including any eviction of NAI resulting from an Event of Default (as defined in the Improvements Lease Documents), BNPLC shall be entitled (but not obligated), by notice to the undersigned and without the necessity of the execution of any other document, to assume NAI's rights and obligations under the Construction Contract, cure any defaults by NAI thereunder and enforce the Construction Contract and all rights of NAI thereunder. Within ten days of receiving notice from BNPLC that NAI's right to possession has been terminated, the undersigned shall send to BNPLC a written estoppel letter stating: (i) that the undersigned has not performed any act or executed any other instrument which invalidates or modifies the Construction Contract in whole or in part (or, if so, the nature of such modification); (ii) that the Construction Contract is valid and subsisting and in full force and effect; (iii) that there are no defaults or events of default then existing under the Construction Contract and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default or event of default (or, if there is a default, the nature of such default in detail); (iv) that the construction contemplated by the Construction Contract is proceeding in a satisfactory manner in all material respects (or if not, a detailed description of all significant problems with the progress of construction); (v) a reasonably detailed report of the then critical dates projected by the undersigned for work and deliveries required to complete the Project; (vi) the total amount received by the undersigned for construction through the date of the letter; (vii) the estimated total cost of completing the undersigned's work as of the date of the letter, together with a current draw schedule; and (viii) any other information BNPLC may request to allow it to decide whether to assume the Construction Contract. BNPLC shall have seven days from receipt of such written certificate containing all such requested information to decide whether to assume the Construction Contract. If BNPLC fails to assume the Construction Contract within such time, the undersigned agrees that BNPLC shall not be liable (and the undersigned shall not assert or bring any action against BNPLC, except to enforce statutory lien rights, if any, of the undersigned against the Land or improvements on the Land) for any damages or other amounts resulting from the breach or termination of the Construction Contract or under any other theory of liability of any kind or nature, but rather the undersigned shall look solely to NAI (and statutory lien rights, if any, of the undersigned against the Land and any improvements thereon) for the recovery of any such damages or other amounts.

c) If BNPLC notifies the undersigned that BNPLC shall not assume the Construction Contract pursuant to the preceding paragraph following the

termination of NAI's right to possession of the Project under the Improvements Lease Documents, the undersigned shall immediately discontinue the work under the Construction Contract and remove its personnel from the Project, and BNPLC shall be entitled to take exclusive possession of the Project. The undersigned shall also, upon request by BNPLC, deliver and assign to BNPLC all plans and specifications and other contract documents previously delivered to the undersigned (except that the undersigned may keep an original set of the Construction Contract and other contract documents executed by NAI), all other material relating to the work which belongs to BNPLC or NAI, and all

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BNP Leasing Corporation

\_\_\_\_\_, 199\_\_\_\_

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papers and documents relating to governmental permits, orders placed, bills and invoices, lien releases and financial management under the Construction Contract. Notwithstanding the undersigned's receipt of any notice from BNPLC that BNPLC declines to assume the Construction Contract, the undersigned shall for a period not to exceed fifteen days after receipt of such notice take such steps, at BNPLC's expense, as are reasonably necessary to preserve and protect work completed and in progress and to protect materials, equipment and supplies at the site or in transit.

d) If the Construction Contract is terminated by NAI before BNPLC is given the opportunity to elect whether or not to assume the Construction Contract as provided herein, BNPLC shall nonetheless have the right hereunder to assume the Construction Contract, as if it had not been terminated, upon any termination of NAI's right to possession of the Project under the Improvements Lease Documents; provided, however, that if the work of the undersigned under the Construction Contract has been disrupted because of NAI's termination of the Construction Contract, the undersigned shall be entitled to an equitable adjustment to the price of the Construction Contract, following any assumption thereof by BNPLC, for the additional costs incurred by the undersigned attributable to the disruption; and, provided further, that if BNPLC does assume the Construction Contract, BNPLC shall receive a credit against the price of the Construction Contract for any consideration paid to the undersigned by NAI because of NAI's prior termination of the Construction Contract (whether such consideration is designated a termination fee, settlement payment or otherwise).

e) No action taken by BNPLC or the undersigned with respect to the Construction Contract shall prejudice any other rights or remedies of BNPLC or the undersigned provided by law, by the Improvements Lease Documents, by the Construction Contract or otherwise against NAI.

f) The undersigned agrees promptly to notify BNPLC of any material default or claimed material default by NAI under the Construction Contract of which the undersigned is aware, describing with particularity the default and the action the undersigned believes is necessary to cure the same. The undersigned will send any such notice to BNPLC prominently marked "URGENT - NOTICE OF NAI'S DEFAULT UNDER CONSTRUCTION AGREEMENT WITH NETWORK APPLIANCE, INC. - SUNNYVALE, CALIFORNIA" at the address specified for notice below (or at such other addresses as BNPLC shall designate in notice sent to the undersigned), by certified or registered mail, return receipt requested. Following receipt of such notice, the undersigned will permit BNPLC or its designee to cure any such default within the time period reasonably required for such cure, but in no event less than thirty days. If it is necessary or helpful to take possession of all or any portion of the Project to cure a default by NAI under the Construction Contract, the time permitted by the undersigned for cure by BNPLC will include the time necessary to terminate NAI's right to possession of the Project and evict NAI, provided that BNPLC commences the steps required to exercise such right within sixty days after it is entitled to do so under the terms of the Improvements Lease Documents and applicable law. If the undersigned incurs additional costs due to the extension of the aforementioned cure period, the undersigned shall be entitled to an equitable adjustment to the price of the Construction Contract for such additional costs.

g) Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery or (b) expedited delivery service with proof of delivery or (c) United States mail, postage prepaid, registered or certified mail or (d) telegram, telex or telecopy, addressed as follows:

To the undersigned:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telecopy: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_\_\_\_  
Page 4

To BNPLC:

BNP Leasing Corporation

12201 Merit Drive, Suite 860  
Dallas, Texas 75251  
Attention: Lloyd G. Cox  
Telecopy: (972) 788-9191

A copy of any such notice or communication will also be sent to NAI by (a) personal delivery or (b) expedited delivery service with proof of delivery or (c) United States mail, postage prepaid, registered or certified mail or (d) telegram, telex or telecopy, addressed as follows:

Network Appliance, Inc.  
Attn: Corporate Secretary  
2770 San Thomas Expressway  
Santa Clara, CA 95051  
Telecopy: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_

h) The undersigned acknowledges that it has all requisite authority to execute this letter. The undersigned further acknowledges that BNPLC has requested this letter, and is relying on the truth and accuracy of the representations made herein, in connection with BNPLC's decision to advance funds for construction under the Improvements Lease Documents with NAI.

Very truly yours,

-----

By:

-----  
Name:

-----  
Title:

-----

NAI joins in the execution of this letter solely for the purpose of evidencing its consent hereto, including its consent to the provisions that would allow, but not require, BNPLC to assume the Construction Contract in the event NAI is evicted from the Project.

Network Appliance, Inc.

By:

-----  
Name:

-----  
Title:

-----

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_

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Exhibit D

ESTOPPEL FROM DESIGN PROFESSIONALS

\_\_\_\_\_, 199\_\_

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

Re: Assignment of [Architect's Agreement/Engineering Contract]

Ladies and Gentlemen:

The undersigned hereby represents to BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and covenants with BNPLC as follows:

1 The undersigned has entered into that certain [Architect's Agreement/Engineering Contract] (the "AGREEMENT") by and between the undersigned and Network Appliance, Inc. ("NAI") dated \_\_\_\_\_, \_\_\_ for the [design/engineering] of the improvements to be constructed as part of NAI's Sunnyvale campus leased by NAI (the "IMPROVEMENTS") on the land described in the Improvements Lease Documents described below (the "LAND" and, together with the Improvements and any other improvements now on or constructed in the future on the Land, the "PROJECT").

2 The undersigned has been advised that, by a Lease Agreement (Phase II Improvements) and a Construction Management Agreement (Phase II - Improvements), both dated as of May 3, 1999 (collectively, the "IMPROVEMENTS LEASE DOCUMENTS"), BNPLC is leasing the Project to NAI and has agreed, subject to the terms and conditions of the Improvements Lease Documents, to provide a construction allowance for the design and construction of the Improvements. The undersigned has also been advised that the Improvements Lease Documents expressly provide that third parties (including the undersigned) are not intended as beneficiaries of the Improvements Lease Documents and, thus, will have no standing to enforce any obligations of NAI or BNPLC under the Improvements Lease Documents, including any such obligation that BNPLC may have to provide the construction allowance. The undersigned understands that the Improvements Lease Documents expressly provide that NAI is not authorized to enter into any Agreement or other agreement with any third party in the name of BNPLC or to otherwise bind BNPLC to any contract with a third party.

3 A complete and correct copy of the Agreement is attached to this letter. The Agreement is in full force and effect and has not been modified or amended, except as provided in any written modifications or amendments which are also attached to this letter.

4 The undersigned has not sent or received any notice of default or any other notice for the purpose of terminating the Agreement, nor does the undersigned have knowledge of any existing circumstance or event which, but for the elapse of time or otherwise, would constitute a default by the undersigned or by NAI under the Agreement.

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_

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The undersigned acknowledges and agrees that:

a) BNPLC shall not be liable for, and the undersigned shall not assert, any claims, demands or liabilities against BNPLC arising under or in any way relating to the Agreement; provided, this paragraph will not (1) be construed as a waiver of any statutory mechanic's or materialmen's liens against the interests of NAI in and to the Land or the improvements thereon that may otherwise exist or arise in favor of the undersigned, or (2) prohibit the undersigned from asserting any claims or making demands against BNPLC under the Agreement if BNPLC elects in writing, pursuant to paragraph b) below, to assume the Agreement in the event NAI's right to possession of the Land is terminated, it being understood that in the event of such an assumption BNPLC shall be liable for the unpaid balance of the fees for services of the undersigned, payable pursuant to (and subject to the terms and conditions set forth for the benefit of the owner in) the Agreement, but in no event shall BNPLC otherwise be personally liable for any acts or omissions on the part of NAI.

b) Upon any termination of NAI's right to possession of the Project under the Improvements Lease Documents, including any eviction of NAI resulting from an Event of Default (as defined in the Improvements Lease Documents), BNPLC shall be entitled (but not obligated), by notice to the undersigned and without the necessity of the execution of any other document, to assume NAI's rights and obligations under the Agreement, cure any defaults by NAI thereunder and enforce the Agreement and all rights of NAI thereunder. Within ten days of receiving notice from BNPLC that NAI's right to possession has been terminated, the undersigned shall send to BNPLC a written estoppel letter stating: (i) that the undersigned has not performed any act or executed any other instrument which invalidates or modifies the Agreement in whole or in part (or, if so, the nature of such modification); (ii) that the Agreement is valid and subsisting and in full force and effect; (iii) that there are no defaults or events of default then existing under the Agreement and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default or event of default (or, if there is a default, the nature of such default in detail); (iv) that the services contemplated by the Agreement are proceeding in a satisfactory manner in all material respects (or if not, a detailed description of all significant problems with the progress of services); (v) a reasonably detailed report of the then critical dates projected by the undersigned for services required to complete the Project; (vi) the total amount received by the undersigned for services through the date of the letter; (vii) the estimated total cost of completing such services as of the date of the letter, together with a current payment schedule; and (viii) any other information BNPLC may request to allow it to decide whether to assume the Agreement. BNPLC shall have seven days from receipt of such written certificate containing all such requested information to decide whether to assume the Agreement. If BNPLC fails to assume the Agreement within such time, the undersigned agrees that BNPLC shall not be liable (and the undersigned shall not assert or bring any action against BNPLC or, except to enforce statutory lien rights, if any, of the undersigned against the Land or improvements on the Land) for any damages or other amounts resulting from the breach or termination of the Agreement or under any other theory of liability of any kind or nature, but rather the undersigned shall look solely to NAI (and statutory lien rights, if any, of the undersigned against the Land and any improvements thereon) for the recovery of any such damages or other amounts.

c) If BNPLC notifies the undersigned that BNPLC shall not assume the Agreement pursuant to the preceding paragraph following the termination of NAI's right to possession of the Project under the Improvements Lease Documents, the undersigned shall immediately deliver and assign to BNPLC the following: (1) copies of all plans and specifications for the Project or any component thereof previously generated by or delivered to the undersigned, (2) any other contract documents previously delivered to the undersigned (except that the undersigned may keep an original set of the Agreement and other contract documents executed by NAI), (3) any other material relating to the services provided under the Agreement, and (4) to the extent available to the undersigned all papers and documents relating to governmental permits, orders placed, bills and invoices, lien releases and financial management under the Agreement. Notwithstanding the undersigned's receipt of any notice from BNPLC that BNPLC declines to assume the Agreement, the undersigned shall for a period not to exceed thirty

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days after receipt of such notice take such steps, at BNPLC's expense, as are reasonably necessary to preserve the utility and value of services completed and in progress and to protect plans and specifications and other materials described in the preceding sentence.

d) If the Agreement is terminated by NAI before BNPLC is given the opportunity to elect whether or not to assume the Agreement as provided herein, BNPLC shall nonetheless have the right hereunder to assume the Agreement, as if it had not been terminated, upon any termination of NAI's right to possession of the Project under the Improvements Lease Documents; provided, however, that if the services of the undersigned under the Agreement has been disrupted because of NAI's termination of the Agreement, the undersigned shall be entitled to an equitable adjustment to the price of the Agreement, following any assumption thereof by BNPLC, for the additional costs incurred by the undersigned attributable to the disruption; and, provided further, that if BNPLC does assume the Agreement, BNPLC shall receive a credit against the price of the Agreement for any consideration paid to the undersigned by NAI because of NAI's prior termination of the Agreement (whether such consideration is designated a termination fee, settlement payment or otherwise).

e) No action taken by BNPLC or the undersigned with respect to the Agreement shall prejudice any other rights or remedies of BNPLC or the undersigned provided by law, by the Improvements Lease Documents, by the Agreement or otherwise against NAI.

f) The undersigned agrees promptly to notify BNPLC of any material default or claimed material default by NAI under the Agreement of which the undersigned is aware, describing with particularity the default and the action the undersigned believes is necessary to cure the same. The undersigned will send any such notice to BNPLC prominently marked "URGENT - NOTICE OF NAI'S DEFAULT UNDER DESIGN AGREEMENT WITH NETWORK APPLIANCE, INC. - SUNNYVALE, CALIFORNIA" at the address specified for notice below (or at such other addresses as BNPLC shall designate in notice sent to the undersigned), by certified or registered mail, return receipt requested. Following receipt of such notice, the undersigned will permit BNPLC or its designee to cure any such default within the time period reasonably required for such cure, but in no event less than thirty days.

g) Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery or (b) expedited delivery service with proof of delivery or (c) United States mail, postage prepaid, registered or certified mail or (d) telegram, telex or telecopy, addressed as follows:

To the undersigned: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telecopy: ( ) \_\_\_-\_\_\_\_\_

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_  
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To BNPLC:                   BNP Leasing Corporation  
                                  12201 Merit Drive, Suite 860  
                                  Dallas, Texas 75251  
                                  Attention: Lloyd G. Cox  
                                  Telecopy: (972) 788-9191

A copy of any such notice or communication will also be sent to NAI by (a) personal delivery or (b) expedited delivery service with proof of delivery or (c) United States mail, postage prepaid, registered or certified mail or (d) telegram, telex or telecopy, addressed as follows:

Network Appliance, Inc.

Attn: Corporate Secretary  
2770 San Thomas Expressway  
Santa Clara, CA 95051  
Telecopy: (\_\_\_\_) \_\_\_\_-\_\_\_\_

h) The undersigned acknowledges that it has all requisite authority to execute this letter. The undersigned further acknowledges that BNPLC has requested this letter, and is relying on the truth and accuracy of the representations made herein, in connection with BNPLC's decision to advance funds for design services under the Improvements Lease Documents with NAI.

Very truly yours,

-----

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NAI joins in the execution of this letter solely for the purpose of evidencing its consent hereto, including its consent to the provisions that would allow, but not require, BNPLC to assume the Agreement in the event NAI is evicted from the Project.

Network Appliance, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Exhibit E

NOTICE REQUESTING ADVANCE TO COVER PROPERTY INSURANCE DEDUCTIBLE

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

Re: Construction Management Agreement (Phase II - Improvements) dated as of May 3, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement or in the Common Definitions and Provisions Agreement (Phase II - Improvements) referenced in the Construction Management Agreement. This letter shall constitute a request made pursuant to subparagraph of the Construction Management Agreement for a final additional Construction Advance in the form of an addition to Escrowed Proceeds equal to:

\$ \_\_\_\_\_,

on the Base Rent Commencement Date, which will occur on:

\_\_\_\_\_, 199 .

To induce BNPLC to make such Construction Advance, NAI represents and

warrants as follows: (x) the dollar amount specified above equals the property insurance deductible permitted under the insurance requirements set forth in the Lease, (y) a Pre-commencement Casualty has resulted in damage to the Improvements, for which the cost of repairs will because of such deductible - exceed the Escrowed Proceeds paid or payable in connection with such damage under the property insurance maintained by NAI in accordance with the insurance requirements in the Improvements Lease, and (z) NAI has not and will not otherwise receive a Construction Advance to reimburse such excess costs prior to the expiration of BNPLC's obligation to make further Construction Advances as provided in subparagraph of the Construction Management Agreement.

NAI ACKNOWLEDGES THAT IF ANY REPRESENTATION ABOVE IS NOT TRUE, THEN NAI'S OBLIGATION TO INDEMNIFY AGAINST LOSSES SUSTAINED BY BNPLC OR ANY OTHER INTERESTED PARTY BECAUSE OF ITS RELIANCE ON THIS LETTER SHALL CONSTITUTE ABSOLUTE NAI CONSTRUCTION OBLIGATIONS UNDER THE CONSTRUCTION MANAGEMENT AGREEMENT AND THE IMPROVEMENTS LEASE.

Executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[cc all Participants]

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Exhibit F

CONSTRUCTION ADVANCE REQUEST FORM

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

Re: Construction Management Agreement (Phase II - Improvements) dated as of May 3, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement or in the Common Definitions and Provisions Agreement (Phase II - Improvements) referenced in the Construction Management Agreement. This letter shall constitute a Construction Advance Request, requesting a Construction Advance of:

\$ \_\_\_\_\_,

on the Advance Date that will occur on:

\_\_\_\_\_, 199 .

To induce BNPLC to make such Construction Advance, NAI represents and warrants as follows:

I. CALCULATION OF LIMIT IMPOSED BY SUBPARAGRAPH OF THE CONSTRUCTION MANAGEMENT AGREEMENT:

(1) NAI has paid or incurred bona fide Reimbursable Construction-Period Costs other than for Work (e.g., property taxes) of no less than \$ \_\_\_\_\_

(2) NAI has paid or incurred bona fide Reimbursable Construction-Period Costs for Prior Work of no less than \$ \_\_\_\_\_

(3) NAI has received prior Construction Advances of no more than \$ \_\_\_\_\_

LIMIT (1 + 2 - 3) \$ \_\_\_\_\_

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II. PROJECTED COST OVERRUNS:

NAI [CHECK ONE: \_ DOES / \_ DOES NOT ] believe that Projected Construction Overruns are more likely than not. [If NAI does believe that Projected Cost Overruns are more likely than not, and if NAI believes that the amount of such Projected Construction Overruns can be reasonably estimated, NAI estimates the same at \$ \_\_\_\_\_.]

NOTE: The Construction Management Agreement defines Projected Construction Overruns as the excess, if any, of (1) the total of projected Reimbursable Construction-Period Costs yet to be incurred or for which NAI has yet to be reimbursed hereunder (including projected Reimbursable Construction-Period Costs for Future Work), over (2) the balance of the remaining Construction Allowance projected to be available to cover such costs.

III. ABSENCE OF CERTAIN CMA SUSPENSION EVENTS:

A. The Construction Project is progressing without significant interruption in a good and workmanlike manner and substantially in accordance with Applicable Laws, with Permitted Encumbrances, with Development Documents and with the requirements of the Construction Management Agreement, except as follows: (IF THERE ARE NO EXCEPTIONS, INSERT "NO EXCEPTIONS")

-----  
-----  
-----  
-----

B. If NAI has received notice of any Defective Work, NAI has promptly corrected or is diligently pursuing the correction of such Defective Work, except as follows: (IF THERE ARE NO EXCEPTIONS, INSERT "NO EXCEPTIONS")

-----  
-----  
-----  
-----

NAI ACKNOWLEDGES THAT IF ANY REPRESENTATION ABOVE IS NOT TRUE, THEN NAI'S OBLIGATION TO INDEMNIFY AGAINST LOSSES SUSTAINED BY BNPLC OR ANY OTHER INTERESTED PARTY BECAUSE OF ITS RELIANCE ON THIS LETTER SHALL CONSTITUTE ABSOLUTE NAI CONSTRUCTION OBLIGATIONS UNDER THE CONSTRUCTION MANAGEMENT AGREEMENT AND THE IMPROVEMENTS LEASE.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[cc all Participants]

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Exhibit G

NOTICE OF VOLUNTARY NAI CONSTRUCTION CONTRIBUTION

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

Re: Construction Management Agreement (Phase II - Improvements) dated as of May 3, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement or in the Common Definitions and Provisions Agreement (Phase II - Improvements) referenced in the Construction Management Agreement. This letter shall constitute notice, given as described in subparagraph of the Construction Management Agreement, that NAI is paying with this letter, or unconditionally and irrevocably committing to pay as described below, a Voluntary NAI Construction Contribution in the amount of \$\_\_\_\_\_.

Such payment by NAI will be in addition to any Voluntary NAI Construction Contributions required by other notices given by NAI as described in subparagraph of the Construction Management Agreement.

Further, if the Voluntary NAI Construction Contribution required by this letter is not being delivered to BNPLC by NAI contemporaneously with this letter, then at such time as BNPLC's obligation to fund additional Construction Advances is excused by any of the terms and conditions set forth in the Construction Management Agreement, NAI shall be obligated to deliver such Voluntary NAI Construction Contribution as required to eliminate (or reduce to the maximum extent possible) Projected Cost Overruns, including any Projected Cost Overruns caused by the accrual of Carrying Costs under and as described in the Improvements Lease referenced in the Construction Management Agreement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[cc all Participants]

Exhibit H

PREEMPTIVE NOTICE BY NAI

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

Re: Construction Management Agreement (Phase II - Improvements) dated as of May 3, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement or in the Common Definitions and Provisions Agreement (Phase II - Improvements) referenced in the Construction Management Agreement. This letter is intended to constitute a Preemptive Notice, given as described in subparagraph of the Construction Management Agreement. As provided in clause (2) of the definition of Designated Sale Date in the Common Definitions and Provisions Agreement (Phase II - Improvements), this letter shall constitute notice, given in accordance with clause (2) of the definition of Common Definitions and Provisions Agreement (Phase II - Improvements), that NAI designates the following date as the Designated Sale Date:

-----, ----.

NAI acknowledges, however, that this notice will not be effective as a Preemptive Notice if (1) such date is sooner than thirty days after the date of this notice or later than ninety days after the date of any FOCB Notice previously given by BNPLC under the Construction Management Agreement, or (2) NAI has previously made any Issue 97-10 Election.

NAI hereby unconditionally, unequivocally and irrevocably: (1) waives any right to make any Issue 97-10 Election under any of the Operative Documents, and (2) acknowledges and agrees that for purposes of calculating the Supplemental Payment required by the Purchase Agreement, the Maximum Remarketing Obligation will equal the Break Even Price under the Purchase Agreement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[cc all Participants]

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Exhibit I

NOTICE OF TERMINATION BY NAI

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

Re: Construction Management Agreement (Phase II - Improvements) dated as of May 3, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement referenced above or in the Common Definitions and Provisions Agreement (Phase II - Improvements) referenced in the Construction Management Agreement.

NAI has determined that (1) the Construction Advances to be provided to it under the Construction Management Agreement will not be sufficient to cover all Construction-Period Reimbursable Costs, whether because the cost of the Work exceeds budgeted expectations (resulting in Projected Cost Overruns) or because NAI can no longer satisfy conditions to BNPLC's obligation to provide Construction Advances in the Construction Management Agreement, or (2) the Construction Project cannot be substantially completed before the Base Rent Commencement Date for reasons other than a breach by NAI of the Construction



Management Agreement. Accordingly, this letter shall constitute a Notice of NAI's Election to Terminate the Construction Management Agreement, given as provided in subparagraph of the Construction Management Agreement.

NAI irrevocably and unconditionally elects to terminate the Construction Management Agreement effective as of the following date (which), as required by subparagraph thereof is a date not less than thirty days after the date this notice is given):

\_\_\_\_\_, 19\_\_

NAI ACKNOWLEDGES THAT THE ELECTION MADE BY NAI DESCRIBED ABOVE CONSTITUTES AN ISSUE 97-10 ELECTION UNDER AND AS DEFINED IN THE OPERATIVE DOCUMENTS.

Executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[cc all Participants]

=====

LEASE AGREEMENT  
(PHASE II - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION  
("BNPLC")

AND

NETWORK APPLIANCE, INC.  
("NAI")

MAY 3, 1999

(SUNNYVALE, CALIFORNIA)

=====

[Phase II - Improvements]

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LEASE AGREEMENT

(PHASE II - IMPROVEMENTS)

This LEASE AGREEMENT (PHASE II- IMPROVEMENTS) (this "IMPROVEMENTS 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 May 3, 1999, the Effective Date. ("EFFECTIVE DATE" and other capitalized terms used and not otherwise defined in this Improvements Lease are intended to have the meanings assigned to them in the Common Definitions and Provisions Agreement (Phase II - Improvements) executed by BNPLC and NAI contemporaneously with this Improvements Lease. By this reference, the Common Definitions and Provisions Agreement (Phase II - Improvements) is incorporated into and made a part of this Improvements 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 Improvements 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 existing Improvements and the Improvements to be constructed on the Land as hereinafter provided, and by this Improvements 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) any and all Improvements; and
- (2) all easements and other rights appurtenant to the Improvements, whether now owned or hereafter acquired by BNPLC.

BNPLC's interest in all property described in clauses (1) and (2) above are hereinafter referred to collectively as the "REAL PROPERTY". The Real Property does not include the Land itself, it being understood that the Other Lease Agreement constitutes a separate lease of the Land and the appurtenances thereto, and only the Land and the appurtenances thereto, from BNPLC to NAI.

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 Improvements 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 Land and all renewals or replacements of or substitutions for any of the foregoing;

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- (b) the benefits, if any, conferred upon the owner of the Real Property by the Permitted Encumbrances (including Existing Space Leases) and Development Documents; and

- (c) any permits, licenses, franchises, certificates, and other rights and privileges against third parties (including the lessees under the Existing Space Leases) 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 Improvements Lease, to the Permitted Encumbrances (including the Existing Space Leases), 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 Improvements 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 Improvements 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 Improvements 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 NCI BNPLC shall be entitled to terminate this Improvements 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 Improvements 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 Improvements 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 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 (Phase II - Improvements). 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 Improvements 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:

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(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 (Phase II - Improvements), 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 Improvements 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 Improvements 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;
- (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
- (v) 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 Improvements 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 OR IN 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 IMPROVEMENTS 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.

### 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 Improvements 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 Improvements 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

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purposes of any financial reports that this Improvements 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:

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 (Phase II - Improvements), 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

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- 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 \$4,250,000 of Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$15,000,000; 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:

$$\$15,000,000 \times .30\% \times 30/360 = \$3,750$$

(i) 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
- 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 \$4,250,000 of Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of

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\$15,000,000; 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:

$$\$15,000,000 \times \{(40\% \times .30\%) + ([1 - 40\%] \times [6\% + 1.50\%])\} \times 30/360 = \$57,750$$

(i) 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
- 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 \$4,250,000 of Qualified Prepayments

have been received by BNPLC, leaving a Stipulated Loss Value of \$15,000,000; 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:

$$\$15,000,000 \times (6\% + 1.50\%) \times 30/360 = \$93,750$$

(d) Additional Rent. All amounts which NAI is required to pay to or on behalf of BNPLC pursuant to this Improvements 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 Improvements 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 March 3, 1999 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

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- three hundred sixty.

NAI shall pay Commitment Fees in arrears on the first Business Day of May, August, November and February of each calendar year, beginning with the first Business Day of August, 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.

(g) Administrative Agency Fees. Upon execution and delivery of this Improvements 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 March 3, 1999 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 March 3, 1999 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 Improvements 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 ; (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 Improvements 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.)

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(b) No Termination. Except as expressly provided in this Improvements Lease itself, this Improvements Lease shall not terminate, nor shall NAI have any right to terminate this Improvements Lease, nor shall NAI be entitled to any abatement of the Rent, nor shall the obligations of NAI under this Improvements 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 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 Improvements 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, (viii) any breach of the Existing Space Leases by any of the lessees thereunder, or (ix) 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements Lease which are binding upon BNPLC.

(c) Tax Reporting. BNPLC and NAI shall report this Improvements 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 Improvements 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 Improvements 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.

(d) Characterization of this Improvements Lease. For purposes of determining the appropriate financial accounting for this Improvements Lease and for purposes of determining their respective rights and remedies under state law, BNPLC and NAI believe and intend that (i) this Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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

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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 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 Improvements 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 Improvements 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 (including the Existing Space Leases), (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 IMPROVEMENTS LEASE OR OTHER OPERATIVE DOCUMENTS IS NOT ADEQUATE

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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 IMPROVEMENTS 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 IMPROVEMENTS 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 Improvements 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 Improvements 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 (Phase II - Improvements), (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 Improvements 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:

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, 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:

- the sum on the first day of such Construction Period of (i) Stipulated Loss Value under (and as defined in) the Common Definitions and Provisions Agreement (Phase II - Improvements) and (ii) Stipulated Loss Value under (and as defined in) the Other Common Definitions and Provisions Agreement, 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.

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 Combined Stipulated Loss Value is \$15,000,000; 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:

$$\$15,000,000 \times (6\% + 1.50\%) \times 30/360 = \$93,750$$

(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 (Phase II - Improvements)) or because of any Landlord's Election to Continue Construction, the

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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 Improvements 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 Improvements 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 Improvements Lease, and without terminating this Improvements 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 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;

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- 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 Improvements 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 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 Improvements 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.

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7. STATUS OF PROPERTY ACQUIRED WITH FUNDS PROVIDED BY BNPLC. All Improvements constructed during the term of this Improvements Lease shall be owned by BNPLC and shall constitute "Property" covered by this Improvements 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 Improvements 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 Improvements 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:

(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 Improvements 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 Improvements 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

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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.

(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

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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 Improvements 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 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 Improvements 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 , 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 Improvements 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

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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 Improvements 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 Improvements Lease. NAI agrees to have 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 Improvements 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, 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 Improvements 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

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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 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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.

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

(a) Compliance with Covenants and Laws. The use of the Property permitted by this Improvements Lease complies, or will comply after NAI obtains available permits as the tenant under this Improvements 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 Improvements 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 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 Improvements 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 owner of any interest in the Property by the Permitted Encumbrances (including the Existing Space Leases) 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

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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 this Improvements 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 Improvements 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 this Improvements 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 this Improvements 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 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;

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(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 this Improvements Lease has occurred and is continuing or, if a Default or Event of Default under this Improvements 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 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 Improvements 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 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 Improvements Lease; and (2) NAI shall be entitled to assign or transfer this Improvements 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 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 Improvements Lease.

(c) Consent Not a Waiver. No consent by BNPLC to a sale, assignment, transfer, mortgage, pledge or hypothecation of this Improvements Lease or NAI's interest hereunder, and no assignment or subletting of the Property or any part thereof in accordance with this Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements Lease and the other Operative Documents, then BNPLC shall thereby be released from any obligations arising after such assumption under this Improvements 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 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 Improvements Lease or the other Operative Documents.

(b) If NAI fails to perform any act or to take any action required of it by this Improvements Lease or the Closing Certificate, or to pay any money which NAI is required by this Improvements 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 Improvements 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 Improvements 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 Improvements Lease and the other Operative Documents without evaluating such information. For purposes of this Improvements 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 Improvements 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 Improvements 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 Paragraph 17), or NAI shall fail to comply with any term, provision or covenant of this Improvements 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 Improvements 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 (Phase II - Improvements)) 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 Improvements 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 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 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.

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(iii) Upon termination of NAI's right to possession, this Improvements 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 Improvements 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 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 Improvements Lease and abandoned the Property, this Improvements 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 Improvements Lease, including the right to recover the Rent as it becomes due under this Improvements 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 Improvements Lease; or

c) Reasonable withholding of consent to an assignment or subletting, or terminating a subletting or assignment by NAI.

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(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 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 favor of BNPLC under Applicable Law or in equity. In addition to other remedies provided in this Improvements 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 Improvements Lease, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this Improvements Lease to be performed by NAI, or to any other remedy allowed to BNPLC at law or in equity. Nothing contained in this

Improvements 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 Improvements 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 Improvements 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 will not in any event extend the time within which BNPLC must remove Liens Removable by BNPLC as required by Paragraph 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 Improvements Lease, to Permitted

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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 Improvements Lease or excuse NAI from its obligation to pay Rent.

21. SURRENDER UPON TERMINATION. Unless NAI or an Applicable Purchaser purchases or has purchased BNPLC's entire interest in the Property pursuant to the terms of the Purchase Agreement and BNPLC's entire interest in the Improvements and other "Property" under (and as defined in) the Other 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 Improvements Lease or the Other Lease Agreement, and (ii) demolition, alterations and additions which are expressly permitted by the terms of this Improvements Lease or the Other Lease Agreement 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.

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 Improvements 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 Improvements Lease shall reinstate, continue or extend the Term of this Improvements Lease and no extension of this Improvements 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 Improvements 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 Improvements 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 Improvements Lease, the express terms and provisions of this Improvements Lease shall control; provided, nothing herein will limit or impair NAI's obligations under the Closing Certificate following any expiration of termination of this Improvements Lease.

[The signature pages follow.]

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Improvements Lease Agreement to be executed as of May 3, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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[Continuation of signature pages to Lease Agreement dated to be effective May 3, 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:

PARCEL ONE

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 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 Improvements 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 Improvements 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;

(b) 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 (Phase II - Improvements) between Network Appliance, Inc. and BNP Leasing Corporation dated May 3, 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

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(Phase II - Improvements) between Network Appliance, Inc. and BNP Leasing Corporation dated May 3, 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 but excluding those Improvements to be demolished by NAI prior to the commencement of construction contemplated in the Construction Management 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 Improvements 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 Improvements 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 (Phase II - Improvements) between Network Appliance, Inc. and BNP Leasing Corporation dated May 3, 1999)";
  - (b) that NAI's insurance is primary, with any policies of BNPLC or other Interested Parties being excess, secondary and noncontributing;
  - (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

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- (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 Improvements Lease and new certificate or evidence of insurance must be delivered no later than 10 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 Improvements 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 (Phase II - Improvements) and Lease Agreement (Phase II - Land), both dated as of May 3, 1999, and both 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 two Lease Agreements referenced above. This letter constitutes notice to you that the LIBOR Period Election under both of the Lease Agreements 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 AGREEMENTS REFERENCED IN THE LEASE AGREEMENTS, 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]

Schedule 1

FINANCIAL COVENANTS

This Schedule 1 is attached to and made a part of (a) the Lease Agreement (Phase II - Improvements) (the "IMPROVEMENTS LEASE") dated to be effective as of May 3, 1999 (the "EFFECTIVE DATE"), between BNP Leasing Corporation, a Delaware corporation ("BNPLC") and Network Appliance, Inc., a California corporation ("NAI"), (b) the Lease Agreement (Phase II - Land) (the "LAND LEASE" and, together with the Improvements Lease, the "LEASES") dated to be effective as of the Effective Date, between BNPLC and NAI, (c) the Pledge Agreement (Phase II - Improvements) (the "PLEDGE AGREEMENT (IMPROVEMENTS)") 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, and (d) the Pledge Agreement (Phase II - Land) (collectively with the Pledge Agreement (Improvements), the "PLEDGE AGREEMENTS") 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 Leases or the Common Definitions and Provisions Agreements referenced in the Leases; 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 Agreements, 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

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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.

"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 Agreements, the Collateral Percentage for purposes of the Pledge Agreements 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.

"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): Collateral delivered and pledged under the Pledge Agreements in accordance with the requirements thereof (if any); plus 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis), 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 quarters ends after December 31, 1999.

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## 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 Agreements 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis).

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 1.50 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis) 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.

#### 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 Collateral delivered and pledged under the Pledge Agreements in accordance with the requirements thereof (if any), 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 1.25 to 1.00 through and including the end of the last quarter of NAI's fiscal year 2000, and of at least 1.50 to 1.00 thereafter; 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 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:

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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 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.

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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 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  
(PHASE II - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION

AND

NETWORK APPLIANCE, INC.

DATED AS OF MAY 3, 1999

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COMMON DEFINITIONS AND PROVISIONS AGREEMENT  
(PHASE II - IMPROVEMENTS)

This Common Definitions and Provisions Agreement (Phase II - Improvements), by and between BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and NETWORK APPLIANCE, INC., a California corporation ("NAI"), is dated as of May 3, 1999, the Effective Date.

RECITALS

Contemporaneously with the execution of this Common Definitions and Provisions Agreement (Phase II - Improvements), NAI is executing the Closing Certificate (as defined below) in favor of BNPLC, and BNPLC and NAI are executing the Improvements 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 Improvements Lease, the Construction Management Agreement and the Purchase Agreement (together with this Common Definitions and Provisions Agreement (Phase II - Improvements) 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 (Phase II - Improvements) 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

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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.

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 Improvements 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 Improvements 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 Improvements 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 Land, the Improvements or any interest in any other Property or as a party to the transactions described in the Improvements Lease or the other Operative Documents or in the Other Lease Agreement or the Other Purchase Agreement, (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 Improvements Lease or other Operative Documents or in the Other Lease Agreement or Other Purchase Agreement, 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 Improvements Lease or the other Operative Documents or in the Other Lease Agreement or Other Purchase Agreement.

"ADDITIONAL RENT" shall have the meaning assigned to it in subparagraph of the Improvements Lease.

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

"ADJUSTED EBIT" shall have the meaning assigned to it in Part I of Schedule 1 attached to the Improvements Lease and to 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 the first Business Day in May, 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 Improvements 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 Improvements 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(B)(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).

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"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.

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

"BASE RENT COMMENCEMENT DATE" means the earlier of (1) the first Business Day of July, 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 \$18,990,000 (before adding any Carrying Costs for the preceding month) and the Maximum Construction Allowance is \$19,000,000, 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 Improvements 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 Improvements 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.

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

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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 Improvements 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 Improvements 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 Improvements Lease.

"CLOSING CERTIFICATE" means the Closing Certificate and Agreement dated as of May 3, 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.

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

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"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 Improvements 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 V in the pricing grid below.

LEVELS	RATIO OF TOTAL DEBT TO ADJUSTED EBIT	COMMITMENT FEE RATE
Level I	less than 0.50	25.0 basis points
Level II	greater than or equal to 0.50, but less than 1.0	25.0 basis points
Level III	greater than or equal to 1.0, but less than 1.5	32.5 basis points
Level IV	greater than or equal to 1.5, but less than 2.0	50.0 basis points
Level V	greater than or equal to 2.0	50.0 basis points

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 Improvements 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 (PHASE II - IMPROVEMENTS)" 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 Improvements 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 Improvements 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 Improvements Lease.

"CONSTRUCTION MANAGEMENT AGREEMENT" means the Construction Management Agreement dated as of May 3, 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 Improvements 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.

"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:

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- (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 Improvements 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 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 May, 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

(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.

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"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 Improvements 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 May 3, 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.

"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) the Improvements 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,

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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 the Improvements 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 dated March 1997 by Hygeienetics Environmental Services, Inc.; Phase I dated June 1998 by Dames & Moore; and, an Asbestos Containing Material Survey conducted in 1989 by Vesar, Inc.

"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 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 Improvements 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 Improvements 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

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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 Improvements 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 Improvements Lease.

"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 Improvements Lease, and any additional compensation claimed by BNPLC pursuant to subparagraph 5.(b)(ii) of the Improvements 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 the Improvements 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 Purchase and Sale Agreement dated July 31, 1998, between Seller and NAI covering the Land described in Exhibit A attached to the Improvements Lease, as amended by a First Amendment to Purchase and Sale Agreement dated as of December 9, 1999, the interests of NAI therein having being assigned to BNPLC pursuant to the assignment dated as of May 3, 1999 between NAI and BNPLC, with the consent and approval of Seller.

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"EXISTING SPACE LEASES" means the following leases (whether one or more) of space within the Improvements to the extent the same are still in force on the Effective Date: indenture of lease dated June 12, 1975 between The Equitable Life Assurance Society of the United States, and landlord, and ESL Incorporated, as tenant, as amended by (a) that certain extension of lease dated June 16, 1980; (b) that certain extension of lease dated March 20, 1985; (c) that certain lease amendment dated August 1, 1989; (d) that certain lease amendment dated September 1, 1991; and (e) that certain third amendment to lease dated July 6, 1998.

"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 Improvements 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.

"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 Improvements 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

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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 Improvements 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 use of the buildings or other real property improvements.

"IMPROVEMENTS LEASE " means the Lease Agreement (Phase II - Improvements") dated as of May 3, 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.

"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.

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"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 Improvements Lease, the occurrence of which event cannot be objectively determined. For example, an Event of Default under subparagraph 17.(e) of the Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements Lease or by subparagraphs 4(B) or 4(C) of

the Purchase Agreement, equal in each case to (A) the Maximum Permitted 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 Improvements Lease and the Purchase Agreement.

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

"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

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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 Improvements Lease. (For purposes of the Improvements 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 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; (4) no LIBOR Period Election designated by NAI hereunder shall be different than the LIBOR Period Election specified under (and as defined in) the Other Common Definitions and Provisions Agreement; and (5) 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 Part IV of Schedule 1 attached to the Improvements 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 Improvements 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 Improvements Lease shall include any judgment liens established against the Property

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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 the Improvements 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 \$19,250,000, less the sum of the Initial Funding Advance under and as defined in this Agreement and the Initial Funding Advance under and as defined in the Other Common Definitions and Provisions Agreement.

"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) 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; or

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(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 Improvements Lease, the Construction Management Agreement, the Purchase Agreement, the Pledge Agreement and this Common Definitions and Provisions Agreement (Phase II - Improvements).

"OTHER COMMON DEFINITIONS AND PROVISIONS AGREEMENT" means the Common Definitions and Provisions Agreement (Phase II - Land), dated as of the Effective Date, between BNPLC and NAI, as such Common Definitions and Provisions Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"OTHER LEASE AGREEMENT" means the Lease Agreement (Phase II - Land), dated as of the Effective Date, between BNPLC and NAI, as such Lease Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"OTHER PURCHASE AGREEMENT" means the Purchase Agreement (Phase II - Land), dated as of the Effective Date, 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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"OUTSTANDING CONSTRUCTION ALLOWANCE" shall have the meaning assigned to it in subparagraph 6.(a) of the Improvements 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 Improvements 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 Improvements 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 Improvements 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.

"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 (including the Other Lease Agreement, the Other Purchase Agreement and all documents executed by BNPLC pursuant to the Other Purchase Agreement), (iii) any ground lease executed pursuant to the Other Purchase Agreement, (iv) 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 Improvements 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 Improvements 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 Improvements Lease and the Construction Management Agreement or for the operation of the Property for the purposes expressly permitted under subparagraph 2.(a) of the Improvements 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 Improvements 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 Land and 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 of the Improvements 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.

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"PLEDGE AGREEMENT" means the Pledge Agreement (Phase II - Improvements) 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) 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;

(b) costs incurred to maintain insurance required by (and consistent with the requirements of) the Improvements 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 Improvements Lease;

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(c) 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;

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

(e) 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 Improvements 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. Except to the extent covered by the Other Lease Agreement, all rights, titles and interests acquired by BNPLC under the Existing Contract are intended to be encompassed within the term "Property" as such term is used in

the Operative Documents.

"PURCHASE AGREEMENT " means the Purchase Agreement (Phase II - Improvements) dated as of May 3, 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.

"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

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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 Improvements Lease or any other provision of the Improvements 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 of the Improvements Lease.

"REAL PROPERTY " shall have the meaning assigned to it on page of the Improvements 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, 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 fifteen percent (15%).

"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 Martin/Crossman, LLC, a California limited liability company.

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"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 Improvements 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.

"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

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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 period commencing on or prior to the first Business Day of August, 1999, the Unsecured Spread will be the amount indicated for Level III 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
Level I	less than 0.5	125.0 basis points
Level II	greater than or equal to 0.5, but less than 1.0	137.5 basis points
Level III	greater than or equal to 1.0, but less than 1.5	150.0 basis points
Level IV	greater than or equal to 1.5, but less than 2.0	175.0 basis points
Level V	greater than or equal to 2.0	200.0 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 Improvements 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.

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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  
/Ref/ NAI Sunnyvale Synthetic Improvements 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.

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Address of BNPLC:

BNP Leasing Corporation  
12201 Merit Drive  
Suite 860



Dallas, Texas 75251  
Attention: Lloyd G. Cox  
Telecopy: (972) 788-9191

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 Improvements Lease or of the leasehold estate created by the Improvements 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 Improvements 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

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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 Improvements 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 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 Improvements 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.

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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 (Phase II - Improvements), 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 [Agreement]", "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.]

Common Definitions and Provisions Agreement (Phase II - Improvements) - Page 30

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Common Definitions and Provisions Agreement

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Common Definitions and Provisions Agreement (Phase II - Improvements) - Page 31

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[Continuation of signature pages to Common Definitions and Provisions Agreement (Phase II - Improvements) dated to be effective May 3, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: \_\_\_\_\_

Lloyd G. Cox, Vice President

Common Definitions and Provisions Agreement (Phase II - Improvements) - Page 32

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LEASE AGREEMENT  
(PHASE II - LAND)

BETWEEN

BNP LEASING CORPORATION  
("BNPLC")

AND

NETWORK APPLIANCE, INC.  
("NAI")

MAY 3, 1999  
(SUNNYVALE, CALIFORNIA)

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- Exhibit A Legal Description
- Exhibit B Insurance Requirements
- Exhibit C Libor Period Election Form
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LEASE AGREEMENT  
(PHASE II - LAND)

This LEASE AGREEMENT (PHASE II - LAND) (this "LAND 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 May 3, 1999, the Effective Date. ("EFFECTIVE DATE" and other capitalized terms used and not otherwise defined in this Land Lease are intended to have the meanings assigned to them in the Common Definitions and Provisions Agreement (Phase II - Land) executed by BNPLC and NAI contemporaneously with this Land Lease. By this reference, the Common Definitions and Provisions Agreement (Phase II - Land) is incorporated into and made a part of this Land Lease for all purposes.)

RECITALS

Pursuant to the Existing Contract, which covers the Land described in Exhibit , BNPLC is acquiring the Land and any appurtenances thereto and all existing Improvements thereon from Seller contemporaneously with the execution of this Land 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 to NAI, and by this Land 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) all easements and other rights appurtenant to the Land, whether now owned or hereafter acquired by BNPLC; and
- (3) (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 (3) above are hereinafter referred to collectively as the "REAL PROPERTY". The Real Property does not include any Improvements (now existing or those to be constructed as provided in the Other Lease Agreement and the Construction Management Agreement) or BNPLC's rights appurtenant to the Improvements, it being understood that the Other Lease Agreement constitutes a separate lease of the Improvements and the appurtenances thereto, and only the Improvements and the appurtenances thereto, from BNPLC to NAI.

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 below, BNPLC also hereby grants and assigns to NAI for the term of this Land Lease the right to use and enjoy (and, in the case of contract rights, to enforce) such rights or interests of BNPLC:

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- (a) the benefits, if any, conferred upon the owner of the Real Property by the Permitted Encumbrances and Development Documents; and
- (b) 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 Land 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 Land 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) Intentionally Deleted .

(c) Intentionally Deleted .

(d) Election by NAI to Terminate After Accelerating the Designated Sale Date .

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 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 (Phase II - Land). 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 Land 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 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

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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 (Phase II - Land), 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; and (C) immediately prior to any such extension, this Land 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 Land 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.

- (i) constructing, maintaining and using Improvements on the Land for purposes expressly permitted by and described in Paragraph 2(a) of the Other Lease Agreement; and
- (ii) other lawful purposes 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 Land 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 . BNPLC SHALL NOT BE RESPONSIBLE FOR ANY LATENT OR OTHER DEFECT OR CHANGE OF CONDITION IN 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 OF THIS LAND 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 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.

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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.

### 3. RENT.

(a) Base Rent Generally . 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 Land Lease as received on the next following Business Day. At least five days prior to any 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 Land Lease and the Pledge Agreement, the formulas for calculating Base Rent set out below in subparagraph 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 Land 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) Determination of Payment Due Dates, 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.

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

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.

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b) Consistent with clause (3) of the definition of LIBOR Period Election in the Common Definitions and Provisions Agreement (Phase II - Land), 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) (ii) (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.

(iii) 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:

- o Stipulated Loss Value on the first day of such Base Rent Period, times
- o 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
- o 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
- o 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 a total of \$1,750,000 of Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$15,000,000; 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:

$$\$15,000,000 \times .30\% \times 30/360 = \$3,750$$

(iv) 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:

- o Stipulated Loss Value on the first day of such Base Rent Period, times
- o the sum of:
  - (A) the product of:
    - (1) the Collateral Percentage for such Base Rent Period, times  
  
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    - (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
- o 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
- o 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 a total of \$1,750,000 of Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$15,000,000; 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:

$$\$15,000,000 \times \{(40\% \times .30\%) + ([1 - 40\%] \times [6\% + 1.50\%])\} \times 30/360 = \$57,750$$

(v) 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:

- o Stipulated Loss Value on the first day of such Base Rent Period, times
- o 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
- o 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
- o 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 a total of \$1,750,000 of Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$15,000,000; 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

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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:

$$\$15,000,000 \times (6\% + 1.50\%) \times 30/360 = \$93,750$$

(d) Additional Rent. All amounts which NAI is required to pay to or on behalf of BNPLC pursuant to this Land 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) Intentionally Deleted.

(f) Intentionally Deleted.

(g) Intentionally Deleted.

(h) Intentionally Deleted.

(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 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 Land 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 Land 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 Land Lease itself, this Land Lease shall not terminate, nor shall NAI have any right to terminate this Land Lease, nor shall NAI be entitled to any abatement of the Rent, nor shall the obligations of NAI under this Land 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

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development 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 of anyone claiming through or under NAI, (v) any default on the part of BNPLC under this Land Lease or under any other agreement to which BNPLC and NAI are parties, (vi) the inadequacy in any way whatsoever of 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 Land 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 Land 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 Land 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 Land 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 Land Lease which are binding upon BNPLC.

(c) Tax Reporting . BNPLC and NAI shall report this Land 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 Land 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 Land 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.

(d) Characterization of this Land Lease . For purposes of determining the appropriate financial accounting for this Land Lease and for purposes of determining their respective rights and remedies under state law, BNPLC and NAI believe

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and intend that (i) this Land 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 Land 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 Land 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 Land 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 Land 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 Land 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 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

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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. 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 Land Lease absent such increase.

(iii) Any amount required to be paid by NAI under this subparagraph 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 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 the Initial Funding Advance, (E) the breach by NAI of this Land Lease or any other document executed by NAI in connection herewith, (F) any failure of the Property or NAI itself to comply with Applicable Laws, (G) Permitted Encumbrances, (H) Hazardous Substance Activities, including those occurring prior to Effective Date, (I) any obligations under the Existing Contract related to the Property 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 LAND 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 LAND 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 LAND 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

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Property, whether such costs and expenses are incurred at the time of execution of this Land Lease or at any time during the Term.

(iv) NAI's obligations under this subparagraph 5.(c) shall survive the termination or expiration of this Land Lease. Any amount to be paid by NAI under this subparagraph 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 (Phase II - Land), (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 Land Lease and other Operative Documents) to include the following in the calculation of Stipulated Loss Value or the Break Even Price or collect Base Rent, a Supplemental Payment and other



amounts, the calculation of which depends upon the Stipulated Loss Value or the Break Even Price, 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 made under (and as defined in) the Construction Management Agreement or the Other Lease Agreement, including costs and expenditures incurred or paid by or on behalf of BNPLC after any Landlord's Election to Continue Construction under (and as defined in) the Other Lease Agreement, to the extent

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that such costs and expenditures are considered to be Construction Advances pursuant to subparagraph 6(e) of the Lease Agreement.

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) [Intentionally Deleted.].

6. INTENTIONALLY DELETED.

7. INTENTIONALLY DELETED.

8. ENVIRONMENTAL.

(a) Environmental Covenants by NAI . NAI covenants that:

(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 Land 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 Land Lease.

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(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 . 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.

(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

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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 Land 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) Intentionally Deleted .

(c) Failure to Obtain Insurance . If NAI fails to obtain any insurance or to provide confirmation of any such insurance as required by this Land 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, and as defined in, 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 . BNPLC is hereby authorized, in the name of NAI, at any time 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 Land 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 Land Lease. NAI agrees to have 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.

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(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) 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 (2) because of any judgment, decree or award for injury or damage to the Property (e.g., damage resulting from a third party's release of Hazardous Materials onto 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 Land Lease or the Property. NAI will promptly pay over to BNPLC any insurance, condemnation or other proceeds covered by this Paragraph 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 Land 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 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 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 an Event of Default .  
Notwithstanding the foregoing, 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.

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(e) NAI's Obligation to Restore. Regardless of the adequacy of any Remaining Proceeds available to NAI hereunder, and notwithstanding other provisions of this Land Lease to the contrary, if the Property is damaged 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 the same (in a manner consistent with the requirements and limitations imposed by this Land 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 Land 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:

(a) Compliance with Covenants and Laws. The use of the Property permitted by this Land Lease complies, or will comply after NAI obtains available permits as the tenant under this Land 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 any construction upon or use of the Property permitted by this Land 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 (and as defined in) 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

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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 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.

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(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. NAI shall not, without the prior consent of BNPLC, 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 the Other Lease Agreement 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 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 this Land 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 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 Land 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 this Land 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);

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(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 this Land 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 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 this Land Lease has occurred and is continuing or, if a Default or Event of Default under this Land 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.

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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 Land 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 this provision will not be construed to prohibit any sublease of space within Improvements expressly permitted by the Other Lease Agreement.

(b) Standard for BNPLC's Consent to Assignments and Certain Other Matters . Consents and approvals of BNPLC which are required by this Paragraph 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 Land Lease.

(c) Consent Not a Waiver . No consent by BNPLC to a sale, assignment, transfer, mortgage, pledge or hypothecation of this Land Lease or NAI's interest hereunder, and no assignment or subletting of the Property or any part thereof in accordance with this Land 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 Land 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 Land 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 Land 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 Land Lease and the other Operative Documents, then BNPLC shall thereby be released from any obligations arising after such assumption under this Land Lease or the other Operative Documents, 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 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 Land Lease or the other Operative Documents.

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(b) If NAI fails to perform any act or to take any action required of it by this Land Lease or the Closing Certificate, or to pay any money which NAI is required by this Land 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 Land 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 Land 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 Land Lease and the other Operative Documents without evaluating such information. For purposes of this Land 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 Land 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 Land 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 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 Paragraph 17), or NAI shall fail to comply with any term, provision or covenant of this Land Lease 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

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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 Land 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 (Phase II - Land)) 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 Land 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 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:

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(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 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 Land 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 Land 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 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 Land Lease and abandoned the Property, this Land 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 Land Lease, including the right to recover the Rent as it becomes due under this Land 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 Land 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 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 favor of BNPLC under Applicable Law or in equity. In addition to other remedies provided in this Land 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 Land Lease, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this Land Lease to be performed by NAI, or to any other remedy allowed to BNPLC at law or in equity. Nothing contained in this Land 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 Land 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 Land 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 will not in any event extend the time within which BNPLC must remove

Liens Removable by BNPLC as required by Paragraph 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 Land 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 Land Lease or excuse NAI from its obligation to pay Rent.

21. SURRENDER UPON TERMINATION. Unless NAI or an Applicable Purchaser purchases or has purchased BNPLC's entire interest in the Property pursuant to the terms of the Purchase Agreement and BNPLC's entire interest in the Improvements and other "Property" under (and as defined in) the Other 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 Land Lease or the Other Lease Agreement, and (ii) demolition, alterations and additions which are expressly permitted by the terms of this Land Lease or the Other Lease Agreement 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.

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 Land 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 Land Lease shall reinstate, continue or extend the Term of this Land Lease and no extension of this Land 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 Land 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 Land 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 Closing Certificate and the express terms and provisions of this Land Lease, the express terms and provisions of this Land Lease shall control; provided, nothing herein will limit or impair NAI's obligations under the Closing Certificate following any expiration of termination of this Land Lease.

IN WITNESS WHEREOF, NAI and BNPLC have caused this Land Lease Agreement to be executed as of May 3, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Continuation of signature pages to Lease Agreement dated to be effective May 3, 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

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

## 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 Land 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 under (and as defined in) the Other Lease Agreement, 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 Land 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;

(b) 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 (Phase II - Land) between Network Appliance, Inc. and BNP Leasing Corporation dated May 3, 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 (Phase II - Land) between Network Appliance, Inc. and BNP Leasing Corporation dated May 3, 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. INTENTIONALLY DELETED.

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. Intentionally Deleted..

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 Land Lease and new certificate or evidence of insurance must be delivered no later than 10 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 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 Land 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 (Phase II - Improvements) and Lease Agreement (Phase II - Land), both dated as of May 3, 1999, and both 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 two Lease Agreements referenced above. This letter constitutes notice to you that the LIBOR Period Election under both of the Lease Agreements 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 AGREEMENTS REFERENCED IN THE LEASE AGREEMENTS, 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 (Phase II Improvements) (the "IMPROVEMENTS LEASE") dated to be effective as of May 3, 1999 (the "EFFECTIVE DATE"), between BNP Leasing Corporation, a Delaware corporation ("BNPLC") and Network Appliance, Inc., a California corporation ("NAI"), (b) the Lease Agreement (Phase II - Land) (the "LAND LEASE" and, together with the Improvements Lease, the "LEASES") dated to be effective as of the Effective Date, between BNPLC and NAI, (c) the Pledge Agreement (Phase II - Improvements) (the "PLEDGE AGREEMENT (IMPROVEMENTS)") 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, and (d) the Pledge Agreement (Phase II - Land) (collectively with the Pledge Agreement (Improvements), the "PLEDGE AGREEMENTS") 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 Leases or the Common Definitions and Provisions Agreements referenced in the Leases; 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 Agreements, 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

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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.

"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 Agreements, the Collateral Percentage for purposes of the Pledge Agreements 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.

"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): Collateral delivered and pledged under the Pledge Agreements in accordance with the requirements thereof (if any); plus 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis), 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 quarters ends after December 31, 1999.

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#### 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 Agreements 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis).
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 1.50 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis) 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.

#### 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 Collateral delivered and pledged under the Pledge Agreements in accordance with the requirements thereof (if any), 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 1.25 to 1.00 through and including the end of the last quarter of NAI's fiscal year 2000, and of at least 1.50 to 1.00 thereafter; 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 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:

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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 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 (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, 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.

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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 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.

COMMON DEFINITIONS AND PROVISIONS AGREEMENT

(PHASE II - LAND)

BETWEEN

BNP LEASING CORPORATION

AND

NETWORK APPLIANCE, INC.

DATED AS OF MAY 3, 1999

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COMMON DEFINITIONS AND PROVISIONS AGREEMENT  
(PHASE II - LAND)

This Common Definitions and Provisions Agreement (Phase II - Land), by and between BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and NETWORK APPLIANCE, INC., a California corporation ("NAI"), is dated as of May 3, 1999, the Effective Date.

#### RECITALS

Contemporaneously with the execution of this Common Definitions and Provisions Agreement (Phase II - Improvements), NAI is executing the Closing Certificate (as defined below) in favor of BNPLC, and BNPLC and NAI are executing the Land Lease (as defined below) and the Purchase Agreement (as defined below), both of which concern the Property (as defined below). Each of the Closing Certificate, the Land Lease and the Purchase Agreement (together with this Common Definitions and Provisions Agreement (Phase II - Land) 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 (Phase II - Land) 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:

"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 Land 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 Land, the Improvements or any interest in any other Property or as a party to the transactions described in the Land Lease or the other Operative Documents or in the Other Lease Agreement or the Other Purchase Agreement, (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 Land Lease or other Operative Documents or in the Other Lease Agreement or Other Purchase Agreement, 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 Land Lease or the other Operative Documents or in the Other Lease Agreement or Other Purchase Agreement.

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

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

"ADVANCE DATE " means the first Business Day of every calendar month, beginning with the first Business Day in May, 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 Land 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.

"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.

"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 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.

"BASE RENT " means the rent payable by NAI pursuant to subparagraph of the Land Lease.

"BASE RENT COMMENCEMENT DATE " shall mean the earlier of (1) the first Business Day of July, 2000, or (2) the "Base Rent Commencement Date" under and as defined in the Other Common Definitions and Provisions Agreement.

"BASE RENT DATE " means a date upon which Base Rent must be paid under the Land 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:

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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 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 Land 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.

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"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 the Initial Funding Advance 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 an Advance Date or the last day of a Base Rent Period; or

(2) used to make or maintain the Initial Funding Advance upon the acceleration of the end of any Base Rent Period pursuant subparagraph 3.(c)(ii) of the Land 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 Land 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.

"CLOSING CERTIFICATE " means the Closing Certificate and Agreement dated as of May 3, 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.

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

"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 Land Lease, the Collateral Percentage for any Base Rent Period shall not exceed a fraction; the numerator of which fraction shall equal the value

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(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.

"COMMON DEFINITIONS AND PROVISIONS AGREEMENT (PHASE II - LAND) " means this Agreement, which is incorporated by reference into each of the other Operative Documents.

"CONSTRUCTION MANAGEMENT AGREEMENT " means the Construction Management Agreement dated as of May 3, 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 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.

"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.

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- (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 Land 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 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.

"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 May, 2004; or

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- (2) any Business Day designated as such in an irrevocable, unconditional notice given by NAI to BNPLC; 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 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

- (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) [Intentionally Deleted]; 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 Land 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 May 3, 1999.

"EFFECTIVE RATE " means for each Base Rent Period, the per annum rate determined by dividing (A) LIBOR for such Base Rent Period, as the case may be, by (B) one hundred percent (100%) minus the Eurodollar Rate Reserve Percentage for such Base Rent Period. If LIBOR or the Eurodollar Rate Reserve Percentage changes 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 Base Rent Period in accordance with the foregoing, then the "EFFECTIVE RATE" for that 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) the Land 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 the Land 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 dated March 1997 by Hygeienetics Environmental Services, Inc.; Phase I dated June 1998 by Dames & Moore; and, an Asbestos Containing



Material Survey conducted in 1989 by Vesar, Inc.

"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 BNPLC to collect such proceeds. Notwithstanding the foregoing,

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"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 Land 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 of the Land 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 Land 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 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 Land Lease.

"EXCLUDED TAXES " means (1) all federal, state and local income taxes upon Base Rent, any interest paid to BNPLC or any Participant pursuant to subparagraph 3.(j) of the Land Lease, and any additional compensation claimed by BNPLC pursuant to subparagraph 5.(b)(ii) of the Land Lease; (2) any transfer or change of ownership taxes assessed because of BNPLC's

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transfer or conveyance to any third party of any rights or interest in the Land 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 Purchase and Sale Agreement dated July 31, 1998, between Seller and NAI covering the Land described in Exhibit A attached to the Land Lease, as amended by a First Amendment to Purchase and Sale Agreement dated as of December 9, 1999, the interests of NAI therein having being assigned to BNPLC pursuant to the assignment dated as of May 3, 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 Land 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.

"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 Land 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.

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"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 Land 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 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 maintenance of the Property; or (3) 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.

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"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 Land Lease, the occurrence of which event cannot be objectively determined. For example, an Event of Default under subparagraph 17.(e) of the Land 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 Land 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 Land 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 Land 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.

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

"LAND LEASE " means the Lease Agreement (Phase II - Land") dated as of May 3, 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 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 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 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 the Initial Funding Advance during any Base Rent Period for which 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 attached to the Land Lease. (For purposes of the Land 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

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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 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; (4) no LIBOR Period Election designated by NAI hereunder shall be different than the LIBOR Period Election specified under (and as defined in) the Other Common Definitions and Provisions Agreement; and (5) 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 Part IV of Schedule 1 attached to the Land 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 Land 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 Land 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

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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 the Land 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 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.

"OPERATIVE DOCUMENTS " means the Closing Certificate, the Land Lease, the Purchase Agreement, the Pledge Agreement and this Common Definitions and Provisions Agreement (Phase II - Land).

"OTHER COMMON DEFINITIONS AND PROVISIONS AGREEMENT " means the Common Definitions and Provisions Agreement (Phase II - Improvements), dated as of the Effective Date, between BNPLC and NAI, as such Common Definitions and Provisions Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"OTHER LEASE AGREEMENT " means the Lease Agreement (Phase II - Improvements), dated as of the Effective Date, between BNPLC and NAI, as such Lease Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"OTHER PURCHASE AGREEMENT " means the Purchase Agreement (Phase II - Improvements), dated as of the Effective Date, 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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"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 Land 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 Land 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 Land 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.

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

"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 (including the Other Lease Agreement, the Other Purchase Agreement and all documents executed by BNPLC pursuant to the Other Purchase Agreement), (iii) any ground lease executed pursuant to the Other Purchase Agreement, (iv) 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 Land Lease, and (v) 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 Land 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 Other Lease Agreement and the Construction Management Agreement or for the operation of the Property for the purposes expressly permitted under subparagraph 2.(a) of the Land 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.

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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 Land 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 Land and 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 of the Land 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 (Phase II - Land) 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.

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"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.

"PROPERTY " means the Personal Property and the Real Property, collectively. All rights, titles and interests acquired by BNPLC under the Existing Contract are, to the extent not covered by the Land Lease and thus not encompassed within this definition of Property, are intended to be covered by the Other Lease Agreement and encompassed within the term "Property" as defined in the Other Common Definitions and Provisions Agreement.

"PURCHASE AGREEMENT " means the Purchase Agreement (Phase II - Land) dated as of May 3, 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.

"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 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 Land Lease or any other provision of the Land Lease. For purposes of computing the total Qualified Prepayments (and other amounts dependent upon Qualified Prepayments, such as Stipulated Loss Value) 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 Land Lease.

"REAL PROPERTY " shall have the meaning assigned to it on page 1 of the Land Lease.

"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, 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 fifteen percent (15%).

"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.

"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 Martin/Crossman, LLC, a California limited liability company.

"STIPULATED LOSS VALUE " as of any date means the amount equal to the sum of the Initial Funding Advance, 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 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 Land Lease.

"THIRD PARTY PRICE " shall have the meaning assigned to it in subparagraph 1(A) (2) of the Purchase Agreement.

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"THIRD PARTY SALE NOTICE " shall have the meaning assigned to it in subparagraph 2(C) of the Purchase Agreement.

"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.

"UNSECURED SPREAD " means, for each 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 period commencing on or prior to the first Business Day of August, 1999, the Unsecured Spread will be the amount indicated for Level III 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

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(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
Level I	less than 0.5	125.0 basis points
Level II	greater than or equal to 0.5, but less than 1.0	137.5 basis points
Level III	greater than or equal to 1.0, but less than 1.5	150.0 basis points
Level IV	greater than or equal to 1.5, but less than 2.0	175.0 basis points
Level V	greater than or equal to 2.0	200.0 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 Land 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 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.

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  
/Ref/ NAI Sunnyvale Synthetic Land Lease

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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 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

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

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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 Land Lease or of the leasehold estate created by the Land 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 Land 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 Land 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 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 Land 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

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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 (Phase II - Land), 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 [Agreement]", "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".

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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 (Phase II - Land) to be executed as of May 3, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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[Continuation of signature pages to Common Definitions and Provisions Agreement (Phase II - Land) dated to be effective May 3, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: \_\_\_\_\_  
Lloyd G. Cox, Vice President

Common Definitions and Provisions Agreement (Phase II - Land) - Page 26

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PLEDGE AGREEMENT  
(PHASE II - LAND)

AMONG

BNP LEASING CORPORATION  
("BNPLC")

BANQUE NATIONALE DE PARIS, AS AGENT  
("AGENT")

NETWORK APPLIANCE, INC.  
("NAI")

AND

PARTICIPANTS AS DESCRIBED HEREIN

MAY 3, 1999

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PLEDGE AGREEMENT  
(PHASE II - LAND)

This PLEDGE AGREEMENT (PHASE II - LAND) (this "AGREEMENT") is made as of May 3, 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 (Phase II - Land) dated as of the Effective Date (the "COMMON DEFINITIONS AND PROVISIONS AGREEMENT (PHASE II - LAND)"); and (ii) a Purchase Agreement (Phase II - Land) dated as of the Effective Date (the "PURCHASE AGREEMENT"), pursuant to which NAI has agreed to make a "SUPPLEMENTAL PAYMENT" (as defined in the Common Definitions and Provisions Agreement (Phase II - Land)), 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 (Phase II - Land)), 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 BNPLC 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 (Phase II - Land) and not otherwise defined herein shall have the same meanings herein as set forth in the Common Definitions and Provisions Agreement (Phase II - Land). 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.

"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, 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 Land Lease an amount equal to interest at the Default Rate (as defined in the Land 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 Land 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 Land 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

(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

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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 Land Lease, including any such Event of Default consisting of a failure of NAI to comply with the requirements of Exhibit I attached to the Land Lease; and

(2) (a) any failure of NAI to make any payment required by and when first due under the Land Lease, regardless of whether any period provided in the Land 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 Land 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.)

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"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 Land 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, and (ii) 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 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.

"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 Land Lease, the Purchase Agreement and the Participation Agreement.

"TRANSITION ACCOUNT" shall have the meaning given it in Section

"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 Land 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 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

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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 on or after the first Business Day of October, 2000, 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 commencement the first Base 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.

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#### 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

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event will BNPLC be required to approve a substitution pursuant to this Section 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 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

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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 Land 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.

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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 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 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.

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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.

#### 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 (Phase II - Land) 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

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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, (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, and (D) reimburse Agent upon request for any legal opinion Agent may elect to obtain from a nationally recognized commercial law firm authorized to practice in New York concerning the enforceability, first priority and perfection of Agent's security interest in any Collateral maintained in New York, if BNPLC or any Participant should at any time elect to use a Deposit Taker that will maintain one or more Accounts in New York.

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 Land 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.

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#### 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 Land 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.

#### ARTICLE X OTHER RECOURSE

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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, 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

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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 telecopy, 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 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.

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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 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 (Phase II - Land), 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 (Phase II - Land) are incorporated into this Agreement for all purposes as if set forth in this Article.

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.

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[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 May 3, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_

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[Continuation of signature pages to Pledge Agreement (Phase II - Land) dated to be effective May 3, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: \_\_\_\_\_

Lloyd G. Cox, Vice President

[Continuation of signature pages to Pledge Agreement (Phase II - Land) dated to be effective May 3, 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 (Phase II - Land) dated May 3, 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 (Phase II - Land)  
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  
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Network Appliance, Inc.  
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1. Reference is made to the Pledge Agreement (Phase II - Land) (the "PLEDGE  
AGREEMENT") dated May 3, 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 (Phase II - Land) (the "PLEDGE AGREEMENT") dated May 3, 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 of the Pledge Agreement no later than 12:00 noon (San Francisco time) on the Base Rent Date specified above, in the amount of:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).]

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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]

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ATTACHMENT 4  
TO PLEDGE AGREEMENT

NOTICE OF SECURITY INTEREST

[-----, -----]

[Name of Deposit Taker]  
[Address of Deposit Taker]

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1. Reference is made to the Pledge Agreement (Phase II - Land) (the "PLEDGE AGREEMENT") dated May 3, 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);

(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;

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(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:

"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).

(d) Deposit Taker shall promptly notify NAI and Agent if the representations made by Deposit Taker above cease to be true and correct.

(e) 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]

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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 Land 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
3. The Minimum Collateral Value on the Base Rent Commencement Date was \$7,200,000 (reflecting a Collateral Percentage of 60% times Stipulated Loss Value).
4. 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

Assumptions: Assume the same facts as in Example No. 1, and in addition assume that:

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1. 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.
2. 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
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

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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 (Phase II - Land) dated May 3, 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 (Phase II - Land) 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 (Phase II - Land) referenced above (the "PLEDGE AGREEMENT"). 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 (\$\_\_\_\_\_),

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 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 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 presentation 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 (Phase II - Land) dated May 3, 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 (Phase II - Land) 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 (Phase II - Land) referenced above (the "PLEDGE AGREEMENT"). 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:

[cc BNPLC and NAI]

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 (Phase II - Land) dated May 3, 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 (Phase II - Land) 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 (Phase II - Land) referenced above (the "PLEDGE AGREEMENT"). 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 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 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 presentation 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 (Phase II - Land) dated May 3, 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 (Phase II - Land) 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 (Phase II - Land) referenced above (the

"PLEDGE AGREEMENT"). 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:

[cc BNPLC and NAI]

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 (Phase II - Land) dated May 3, 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 (Phase II - Land) 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 (Phase II - Land) referenced above (the "PLEDGE AGREEMENT"). 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 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 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:

[cc BNPLC]

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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 (Phase II - Land) dated May 3, 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 (Phase II - Land) 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 (Phase II - Land) referenced above (the "PLEDGE AGREEMENT"). 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.

BANQUE NATIONALE DE PARIS, AS AGENT

Name:  
Title:

[cc BNPLC and NAI]

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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 (Phase II - Land) dated May 3, 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 (Phase II - Land) 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 (Phase II - Land) referenced above (the "PLEDGE AGREEMENT"). 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:

[cc BNPLC]

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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 (Phase II - Land) dated May 3, 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 (Phase II - Land) 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 (Phase II - Land) referenced above (the "PLEDGE AGREEMENT"). 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:

[cc BNPLC and NAI]

=====

PLEDGE AGREEMENT  
(PHASE II - IMPROVEMENTS)

AMONG

BNP LEASING CORPORATION  
("BNPLC")

BANQUE NATIONALE DE PARIS, AS AGENT  
("AGENT")

NETWORK APPLIANCE, INC.  
("NAI")

AND

PARTICIPANTS AS DESCRIBED HEREIN

MAY 3, 1999

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PLEDGE AGREEMENT  
(PHASE II - IMPROVEMENTS)

This PLEDGE AGREEMENT (PHASE II - IMPROVEMENTS) (this "AGREEMENT") is made as of May 3, 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 (Phase II - Improvements) dated as of the Effective Date (the "COMMON DEFINITIONS AND PROVISIONS AGREEMENT (PHASE II - IMPROVEMENTS)"); and (ii) a Purchase Agreement (Phase II - Improvements) 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 (Phase II - Improvements)), 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 (Phase II - Improvements)), 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 BNPLC 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 (Phase II - Improvements) and not otherwise defined herein shall have the same meanings herein as set forth in the Common Definitions and Provisions Agreement (Phase II - Improvements). 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.

"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, or otherwise) return to NAI or return to Agent for disposition or application as provided herein or as required by applicable law.

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 Improvements Lease an amount equal to interest at the Default Rate (as defined in the Improvements 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 Improvements 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 Improvements 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

(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 Improvements Lease, including any such Event of Default consisting of a failure of NAI to comply with the requirements of Exhibit I attached to the Improvements Lease; and

(2) (a) any failure of NAI to make any payment required by and when first due under the Improvements Lease, regardless of whether any period provided in the Improvements 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 Improvements 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 Improvements 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.

"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 Improvements Lease, the Purchase Agreement and the Participation Agreement.

"TRANSITION ACCOUNT" shall have the meaning given it in Section

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"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 Improvements 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 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

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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 on or after the first Business Day of October, 2000, 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 commencement the first Base 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 3.3 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.

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#### 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

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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 Improvements 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.

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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 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;

6.1.2 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

6.1.3 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 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.

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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 5.3 Disqualified Deposit Takers (in accordance with the requirements of Sections 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.

#### 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 (Phase II - Improvements) 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.

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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, (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, and (D) reimburse Agent upon request for any legal opinion Agent may elect to obtain from a nationally recognized commercial law firm authorized to practice in New York concerning the enforceability, first priority and perfection of Agent's security interest in any Collateral maintained in New York, if BNPLC or any Participant should at any time elect to use a Deposit Taker that will maintain one or more Accounts in New York.

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 Improvements 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.

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#### 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.

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#### 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 Improvements 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.

#### 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

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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, 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 telecopy, 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 NEGLIGENCE 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 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 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

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Section 12.1 Provisions Incorporated From Other Operative Documents . Reference is made to the Common Definitions and Provisions Agreement (Phase II - Improvements), 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 (Phase II - Improvements) are incorporated into this Agreement for all purposes as if set forth in this Article.

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 May 3, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_

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[Continuation of signature pages to Pledge Agreement (Phase II - Improvements) dated to be effective May 3, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: \_\_\_\_\_  
Lloyd G. Cox, Vice President

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[Continuation of signature pages to Pledge Agreement (Phase II - Improvements) dated to be effective May 3, 1999]

"AGENT"

BANQUE NATIONALE DE PARIS

By:

-----  
Name:

-----  
Title:

By:

-----  
Name:

-----  
Title:

"PARTICIPANT"

BANQUE NATIONALE DE PARIS

By:

-----  
Name:

-----  
Title:

By:

-----  
Name:

-----  
Title:

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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 (Phase II - Improvements) dated May 3, 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 (Phase  
II - Improvements) 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

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ATTACHMENT 2  
TO PLEDGE AGREEMENT  
SUPPLEMENT TO PLEDGE AGREEMENT

[ \_\_\_\_\_, \_\_\_\_\_ ]

Banque Nationale de Paris

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Network Appliance, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. Reference is made to the Pledge Agreement (Phase II - Improvements) (the "PLEDGE AGREEMENT") dated May 3, 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:

-----

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 (Phase II - Improvements) (the "PLEDGE AGREEMENT") dated May 3, 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:

\_\_\_\_\_ 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]

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ATTACHMENT 4  
TO PLEDGE AGREEMENT  
NOTICE OF SECURITY INTEREST  
[\_\_\_\_\_, \_\_\_\_]

[Name of Deposit Taker]

[Address of Deposit Taker]

\_\_\_\_\_  
\_\_\_\_\_

1. Reference is made to the Pledge Agreement (Phase II - Improvements) (the "PLEDGE AGREEMENT") dated May 3, 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);

(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;

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(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: \_\_\_\_\_

"NAI"  
Network Appliance, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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).

(d) Deposit Taker shall promptly notify NAI and Agent if the representations made by Deposit Taker above cease to be true and correct.

(e) 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 Improvements 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
3. The Minimum Collateral Value on the Base Rent Commencement Date was \$7,200,000 (reflecting a Collateral Percentage of 60% times Stipulated Loss Value).
4. 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

Assumptions: Assume the same facts as in Example No. 1, and in addition assume that:

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- 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
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
		-----

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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 (Phase II - Improvements) dated May 3, 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 (Phase II - Improvements) 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 (Phase II - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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 (Phase II - Improvements) dated May 3, 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 (Phase II - Improvements) 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 (Phase II - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC and NAI]

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 (Phase II - Improvements) dated May 3, 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 (Phase II - Improvements) 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 (Phase II - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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 (Phase II - Improvements) dated May 3, 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  
(Phase II - Improvements) 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 (Phase II - Improvements) referenced  
above (the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC and NAI]

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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 (Phase II - Improvements) dated May 3, 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 (Phase II - Improvements) 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 (Phase II - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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 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 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: \_\_\_\_\_

[cc BNPLC]

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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 (Phase II - Improvements) dated May 3, 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 (Phase II - Improvements) 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 (Phase II - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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.

BANQUE NATIONALE DE PARIS, AS AGENT

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[cc BNPLC and NAI]

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 (Phase II - Improvements) dated May 3, 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 (Phase II - Improvements) 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 (Phase II - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC]

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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 (Phase II - Improvements) dated May 3, 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

(Phase II - Improvements) 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 (Phase II - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC and NAI]

=====

PURCHASE AGREEMENT  
(PHASE II - LAND)

BETWEEN

BNP LEASING CORPORATION

("BNPLC")

AND

NETWORK APPLIANCE, INC.

("NAI")

MAY 3, 1999

(SUNNYVALE, CALIFORNIA)

=====

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#### Exhibits and Schedules

- Exhibit A Legal Description
- Exhibit B Requirements Re: Form of Grant Deed and Ground Lease
- Exhibit C Bill of Sale and Assignment
- Exhibit D Acknowledgment and Disclaimer
- Exhibit E Secretary's Certificate
- Exhibit F Certificate Concerning Tax Withholding

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#### PURCHASE AGREEMENT (PHASE II - LAND)

This PURCHASE AGREEMENT (PHASE II - LAND) (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 May 3, 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 (Phase I - Land) executed by BNPLC and NAI contemporaneously with this Agreement. By this reference, the Common Definitions and Provisions Agreement (Phase II - Land) 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 , 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 Agreement (Phase II - Land) executed by

BNPLC and NAI contemporaneously with this Agreement (the "LAND LEASE"), BNPLC is leasing the Land to NAI. (All of BNPLC's interests, including those created by the documents delivered at the closing under the Existing Contract, in the Land and in all other real and personal property from time to time covered by the Land Lease and included within the "Property" as defined therein are hereinafter collectively referred to as the "PROPERTY". The Property does not include the Improvements, it being understood that the Other Purchase Agreement constitutes a separate agreement providing for the possible sale of the Improvements and the appurtenances thereto, and only the Improvements and the appurtenances thereto, from BNPLC to NAI or a third party designated by NAI.)

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

##### 1 NAI'S OPTIONS AND OBLIGATIONS ON THE DESIGNATED SALE DATE.

(A) Right to Purchase; Right and Obligation to Remarket . Whether or not an Event of Default shall have occurred and be continuing or the Land Lease shall have been terminated, but subject to Paragraph 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 , 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

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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 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 (Phase II - Land).

(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 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, but less the aggregate amounts (if any) of Direct Payments to Participants and Deposit Taker Losses (other than Excluded Deposit Taker Losses).

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(2) Determination of Third Party Price. The Third Party Price required of any Applicable Purchaser purchasing from BNPLC under subparagraph 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 (Phase II - Land), 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 paid to NAI pursuant to subparagraph 1(A)(2)(b) or pursuant to subparagraph , 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 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 (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 . 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 .

(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 shall cut off and terminate any interest in the Land 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 Land 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 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 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 , promptly after the Designated Sale Date NAI shall deliver to BNPLC copies of books and records of NAI which will be necessary or useful to any future owner's or occupant's use of the Property.

## 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).

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(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 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 Land 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 or this Paragraph , 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 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

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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 (Phase II - Land) to an Affiliate of BNPLC or that covers BNPLC's entire interest in the Land 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 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 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 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-1 or Exhibit B-2 or Exhibit B-4, as required by Exhibit B, (2) if required by Exhibit B, a Ground Lease in the form attached as Exhibit B-3, which NAI or the Applicable Purchase must execute and return to BNPLC, (3) a Bill of Sale and Assignment in the form attached as Exhibit C, (4) 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, (5) a Secretary's Certificate in the form attached as Exhibit E, and (6) 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, 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 Land Lease that may result from such damage

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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 Land 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 Land 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 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) Intentionally Deleted.

(C) Intentionally Deleted .

(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 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). However, 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 Land Lease or other Operative Documents.

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(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 Land 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 Land Lease 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 its use of the Property shall continue to be subject to the terms and conditions of the Land Lease, including the terms setting forth NAI's obligation to pay rent, prior to any termination or expiration of the Land 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.

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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 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 May 3, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By:

-----  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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[Continuation of signature pages to Purchase Agreement (Phase II - Land) dated to be effective May 3, 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: All that certain Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet

Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

EXHIBIT B

REQUIREMENTS RE: FORM OF GRANT DEED AND GROUND LEASE

The form of deed to be used to convey BNPLC's interest in the Land to NAI or an Applicable Purchaser will depend upon whether BNPLC's interest in the Improvements has been or is being conveyed at the same time to the same party.

If BNPLC's interests in BOTH the Land and the Improvements are to be conveyed to NAI or an Applicable Purchaser at the same time, because a sale under this Purchase Agreement and a sale under the Other Purchase Agreement (covering the Improvements) are being consummated at the same time and to the same party, then the one deed in form attached as Exhibit B-1 will be used to convey both.

If, however, a sale of BNPLC's interest in the Improvements pursuant to the Other Purchase Agreement has not been consummated before, and is not being consummated contemporaneously with the sale of BNPLC's interest in the Land under this Agreement, then BNPLC's interest in the Land will be conveyed by a deed in the from attached as Exhibit B-2, and BNPLC and the grantee under such deed shall, as a condition to BNPLC's obligation to deliver the deed, execute and deliver a Ground Lease covering the Land in the form attached hereto as Exhibit B-3.

Finally, BNPLC's interest in the Land will be conveyed by a deed in the from attached as Exhibit B-4 if BNPLC's interest in the Improvements has been sold pursuant to the Other Purchase Agreement before a sale of BNPLC's interest in the Land under this Agreement, or if BNPLC's interest in the Improvements is being sold contemporaneously with a sale of BNPLC's interest in the Land, but the purchaser of the Improvements is not the same as the purchaser of the Land.

EXHIBIT B-1

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

(Covering Land and Improvements)

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 and all improvements on such land, together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to such land or the improvements thereon; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances"). Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the land or improvements conveyed by this deed.

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BNP LEASING CORPORATION

Date: As of \_\_\_\_\_

By: \_\_\_\_\_  
Its:

Attest: \_\_\_\_\_  
Its:

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_

By: \_\_\_\_\_  
Its:

Attest: \_\_\_\_\_  
Its:

STATE OF \_\_\_\_\_ )  
  )        SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  )        SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the

person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase II - Land) incorporated by reference into the Lease Agreement (Phase II - Land) referenced in the last item of the list below), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year [current year], a lien not yet due or payable.
2. General and Special Taxes and Assessments, if any, for the fiscal year 1998-99.

Assessment No.:	110-32-004
Code No.:	09-059
First Installment:	\$34,099.75 Paid
Second Installment:	\$34,099.75 Payable, but not yet due
Assessed Valuation of Personal Property:	None
Homeowners Exemption:	None

3. Supplemental Taxes for the fiscal year 1998-99 assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

Assessors Parcel No.:	110-32-004-71
First Installment:	Paid
Second Installment:	\$4,217.87, Payable, but not yet due

4. Supplemental Taxes for the fiscal year 1998-99 assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

Assessors Parcel No.:	110-32-004-72
First Installment:	Paid
Second Installment:	\$16,226.03, Payable, but not yet due

5. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California, resulting from changes of ownership or completion of construction on or after the date of this policy.

6. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

4

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In Favor Of:	City of Sunnyvale, A Municipal Corporation
For:	Slope Easement
Recorded:	October 9, 1964, in Book 6695 at Page 430, Official Records
Affects:	The Southeasterly 18 feet of Said Land

7. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:	City of Sunnyvale, A Municipal Corporation
For:	Public Utilities
Recorded:	October 9, 1964, in Book 6695 at Page 450, Official Records
Affects:	The Southeasterly 7 feet of Said Land

8. Covenants, Conditions and Restrictions in the Declaration of Restrictions; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions or Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin

are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Executed By: Moffett Park Associates, A Partnership  
Recorded: December 23, 1971 in Book 9640 at Page 443 of Official Records

An Assignment and Assumption

Executed by: Moffett Park Associates, A Partnership  
To: The Prudential Insurance Company of America,  
a New Jersey Corporation  
Recorded: February 8, 1977 in Book C583 at Page 685 of Official Records

9. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Moffett Park Associates, A Partnership  
For: Private and Public Utility Purposes  
Recorded: November 29, 1974, in Book B190, page 398, as Instrument No. 4903681, Official Records  
Affects: The Northerly 5 feet of Said Land

10. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Paul Enterprises, A Partnership, and Northwest Poultry and Dairy Products Co., an Oregon Corporation  
For: 5 Foot Wide Storm Drain Easement  
Recorded: June 17, 1975, in Book B467, page 167, as Instrument No. 5032895, Official Records  
Affects: As follows:

PARCEL ONE

A 5.00 Foot Wide Storm Drain easement 2.50 feet on each side of the center line of an existing Storm Drain Pipe, said center line of said pipe being described as follows:

5

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Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps at Page 20, records of Santa Clara County,

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing pipe and the True Point of Beginning of this description;

Thence South 75 deg 07' 58" East parallel with and istant 2.50 feet Northerly measured at right angles, from the Southerly line of siad Parcel "A' and along said existing pipe, a distance of 407.55 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly measured at right angles from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

PARCEL TWO

A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwestern corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing Storm Drain Pipe described in Parcel 1 above;

Thence South 75 deg 07' 58" East along the center line of said pipe described in said Parcel 1, a distance of 35.00 feet to the Point of Intersection of the center line of an existing 12 inch Storm Drain Pipe and the True Point of Beginning of this description;

Thence North 14 deg 51' 33" East along the center line of said existing 12 inch pipe, a distance of 87.00 feet;

Thence North 75 deg 07' 58" West and continuing along a center line of an existing 6 inch Storm Drain Pipe, a distance of 35.00 feet to a point on the Westerly line of said Parcel "A".

The sidelines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the Northerly side of the pipe described in Parcel 1 above to the Westerly line of said Parcel "A".

11. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:           The Prudential Insurance Company of America, a  
New Jersey Corporation  
For:                     A 5 foot wide Storm Drain Easement

Recorded:               June 17, 1975 in Book B467, page 173, as Instrument  
No. 5032896 Official Records  
Affects:                As follows:

PARCEL ONE

A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch Storm Drain Pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps at Page 20, records of Santa Clara County,

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing storm drain pipe running along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of Parcel "A" a distance of 156.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True Point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe a distance of 15.00 feet.

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the



said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL TWO

A 5.00 foot wide storm drain easement, 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" a said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing storm drain pipe running thence along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of said Parcel "A", a distance of 289.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe, a distance of 15.00 feet.

The side lines of said 5.00 foot easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL THREE

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A 5.00 foot storm drain easement, 2.50 feet on each side of the center line of an existing storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing pipe;

Thence South 75 deg 07'58" East parallel with and distant 2.50 feet Northerly, measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 161.05 feet and the True Point of Beginning of this description;

Thence again South 75 deg k07' 58" East continuing along said existing pipe a distance of 246.50 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly, measured at right angles, from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

12. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:           The Prudential Insurance Company of America,

new Jersey Corporation  
For: A pedestrian and motor vehicle Right-of-Way for  
the purposes of Ingress and Egress from motor  
vehicle parking spaces  
Recorded: June 17, 1975, in Book B467, page 178, as Instrument  
No. 5032897 Official  
Records  
Affects: As follows:

An 11 foot strip of land over a portion of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps, at Page 20, records of Santa Clara County and being more particularly described as follows:

Commencing at the Southeast corner of said Parcel "A", said Southeast corner also being a point on the Westerly line of Crossman Road (90.00 feet wide); Thence North 75 deg 7' 58" West along the Southerly line of said Parcel "A", a distance of 40.00 feet to the True Point of Beginning of this description;

Thence continuing along said Southerly line North 75 deg 07' 58" West, a distance of 322.50 feet;

Thence North 14 deg 52' 02" East, a distance of 11.00 feet;

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Thence South 75 deg 07' 58" East parallel with and distant Northerly 11.00 feet measured at right angles from said Southerly line of said Parcel "A", a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 11.00 feet to the True Point of Beginning.

13. Any rights, Interests or Claims which may exist or arise by reason of the following facts shown by a survey made by Kier & Wright, dated March 18, 1999, as Job No. 96214-2 and inspections of said land:

(A) the fact that the landscaping area, patio and walkways located along the northwesterly boundary is for the common use of the adjoining property lying to the northwest of said land.

(B) the fact that the driveway located near the most northerly corner along the northeasterly boundary is for the common use of the adjoining property lying to the northeast of said land.

(C) the fact that the fence along the northwesterly boundary and across the most northerly corner encroaches onto the adjoining properties lying to the northwest and northeast of said land.

(D) the fact that the fence located near the southwesterly corner on the southwesterly boundary encroaches onto the adjoining property lying to the southwest of said land.

(E) the fact that the concrete curbs located along the northeasterly and southeasterly boundaries encroach onto the 7.00 foot Public Utility easement (6695-OR-450); onto the 18.00 foot Slope easement (6695-OR-430); onto the 5.00 foot Storm Drain easement (9790-OR-380, B467-OR-167 and B467-OR-173); and onto the 5.00 foot Public Utility easement (B190-OR-398).

14. Lease Agreement (Phase II - Land) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and Lease Agreement (Phase II - Improvements) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

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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  
(Covering Land but not the Improvements On the Land)

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 (the "Land"), together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to the Land; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances") and any reservations or qualifications set forth below. Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the Land.

Although this deed conveys Grantor's interest in the Land itself, this deed does not convey any interest in any buildings or other improvements on the Land (collectively, "Improvements") or any rights or easements appurtenant to Improvements. Grantor retains and reserves all right, title and interest of Grantor in and to Improvements and any rights and easements appurtenant to Improvements, together with a leasehold estate in and to the Land and any rights and easements appurtenant to the Land, which leasehold estate will permit the construction, maintenance and use of Improvements by Grantor and Grantor's successors and assigns on and subject to the terms and conditions set forth in the Ground Lease dated of even date herewith, executed by Grantee, as lessor, and Grantor, as lessee. Reference is made to such Ground Lease, all the terms and conditions of which are incorporated into this deed as if set forth herein.

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BNP LEASING CORPORATION

Date: As of \_\_\_\_\_

By: \_\_\_\_\_  
Its:

Attest:  
Its:

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_

By: \_\_\_\_\_  
Its:

Attest: \_\_\_\_\_

Its:

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map

recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase II - Land) incorporated by reference into the Lease Agreement (Phase II - Land) referenced in the last item of the list below), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year [current year], a lien not yet due or payable.
2. General and Special Taxes and Assessments, if any, for the fiscal year 1998-99.

Assessment No.:	110-32-004
Code No.:	09-059
First Installment:	\$34,099.75 Paid
Second Installment:	\$34,099.75 Payable, but not yet due
Assessed Valuation of Personal Property:	None
Homeowners Exemption:	None

3. Supplemental Taxes for the fiscal year 1998-99 assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

Assessors Parcel No.:	110-32-004-71
First Installment:	Paid
Second Installment:	\$4,217.87, Payable, but not yet due

4. Supplemental Taxes for the fiscal year 1998-99 assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and

Taxation Code of the State of California.

Assessors Parcel No.: 110-32-004-72  
First Installment: Paid  
Second Installment: \$16,226.03, Payable, but not yet due

- 5. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California, resulting from changes of ownership or completion of construction on or after the date of this policy.
- 6. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

30

In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Slope Easement  
Recorded: October 9, 1964, in Book 6695 at Page 430, Official Records  
Affects: The Southeasterly 18 feet of Said Land

- 7. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Public Utilities  
Recorded: October 9, 1964, in Book 6695 at Page 450, Official Records  
Affects: The Southeasterly 7 feet of Said Land

- 8. Covenants, Conditions and Restrictions in the Declaration of Restrictions; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions or Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Executed By: Moffett Park Associates, A Partnership  
Recorded: December 23, 1971 in Book 9640 at Page 443 of Official Records

An Assignment and Assumption

Executed by: Moffett Park Associates, A Partnership  
To: The Prudential Insurance Company of America, a New Jersey Corporation  
Recorded: February 8, 1977 in Book C583 at Page 685 of Official Records

- 9. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Moffett Park Associates, A Partnership  
For: Private and Public Utility Purposes  
Recorded: November 29, 1974, in Book B190, page 398, as Instrument No. 4903681, Official Records  
Affects: The Northerly 5 feet of Said Land

- 10. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Paul Enterprises, A Partnership, and Northwest Poultry and Dairy Products Co., an Oregon Corporation

For: 5 Foot Wide Storm Drain Easement  
Recorded: June 17, 1975, in Book B467, page 167,  
as Instrument No. 5032895, Official  
Records  
Affects: As follows:

PARCEL ONE

A 5.00 Foot Wide Storm Drain easement 2.50 feet on each side of the center line of an existing Storm Drain Pipe, said center line of said pipe being described as follows:

5

31

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps at Page 20, records of Santa Clara County,

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing pipe and the True Point of Beginning of this description;

Thence South 75 deg 07' 58" East parallel with and distant 2.50 feet Northerly measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 407.55 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly measured at right angles from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

PARCEL TWO

A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwestern corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing Storm Drain Pipe described in Parcel 1 above;

Thence South 75 deg 07' 58" East along the center line of said pipe described in said Parcel 1, a distance of 35.00 feet to the Point of Intersection of the center line of an existing 12 inch Storm Drain Pipe and the True Point of Beginning of this description;

Thence North 14 deg 51' 33" East along the center line of said existing 12 inch pipe, a distance of 87.00 feet;

Thence North 75 deg 07' 58" West and continuing along a center line of an existing 6 inch Storm Drain Pipe, a distance of 35.00 feet to a point on the Westerly line of said Parcel "A".

The sidelines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the Northerly side of the pipe described in Parcel 1 above to the Westerly line of said Parcel "A".

11. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: The Prudential Insurance Company of  
America, a New Jersey Corporation  
For: A 5 foot wide Storm Drain Easement

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Recorded: June 17, 1975 in Book B467, page 173,  
as Instrument No. 5032896 Official  
Records  
Affects: As follows:

PARCEL ONE

A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch Storm Drain Pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps at Page 20, records of Santa Clara County,

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing storm drain pipe running along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of Parcel "A" a distance of 156.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True Point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe a distance of 15.00 feet.

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL TWO

A 5.00 foot wide storm drain easement, 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" a said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing storm drain pipe running thence along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of said Parcel "A", a distance of 289.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe, a distance of 15.00 feet.

The side lines of said 5.00 foot easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL THREE



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A 5.00 foot storm drain easement, 2.50 feet on each side of the center line of an existing storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing pipe;

Thence South 75 deg 07' 58" East parallel with and distant 2.50 feet Northerly, measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 161.05 feet and the True Point of Beginning of this description;

Thence again South 75 deg 07' 58" East continuing along said existing pipe a distance of 246.50 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly, measured at right angles, from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

12. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:	The Prudential Insurance Company of America, new Jersey Corporation
For:	A pedestrian and motor vehicle Right-of-Way for the purposes of Ingress and Egress from motor vehicle parking spaces
Recorded:	June 17, 1975, in Book B467, page 178, as Instrument No. 5032897 Official Records
Affects:	As follows:

An 11 foot strip of land over a portion of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps, at Page 20, records of Santa Clara County and being more particularly described as follows:

Commencing at the Southeast corner of said Parcel "A", said Southeast corner also being a point on the Westerly line of Crossman Road (90.00 feet wide); Thence North 75 deg 7' 58" West along the Southerly line of said Parcel "A", a distance of 40.00 feet to the True Point of Beginning of this description;

Thence continuing along said Southerly line North 75 deg 07' 58" West, a distance of 322.50 feet;

Thence North 14 deg 52' 02" East, a distance of 11.00 feet;

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Thence South 75 deg 07' 58" East parallel with and distant Northerly 11.00

feet measured at right angles from said Southerly line of said Parcel "A", a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 11.00 feet to the True Point of Beginning.

13. Any rights, Interests or Claims which may exist or arise by reason of the following facts shown by a survey made by Kier & Wright, dated March 18, 1999, as Job No. 96214-2 and inspections of said land:
- (A) the fact that the landscaping area, patio and walkways located along the northwesterly boundary is for the common use of the adjoining property lying to the northwest of said land.
  - (B) the fact that the driveway located near the most northerly corner along the northeasterly boundary is for the common use of the adjoining property lying to the northeast of said land.
  - (C) the fact that the fence along the northwesterly boundary and across the most northerly corner encroaches onto the adjoining properties lying to the northwest and northeast of said land.
  - (D) the fact that the fence located near the southwesterly corner on the southwesterly boundary encroaches onto the adjoining property lying to the southwest of said land.
  - (E) the fact that the concrete curbs located along the northeasterly and southeasterly boundaries encroach onto the 7.00 foot Public Utility easement (6695-OR-450); onto the 18.00 foot Slope easement (6695-OR-430); onto the 5.00 foot Storm Drain easement (9790-OR-380, B467-OR-167 and B467-OR-173); and onto the 5.00 foot Public Utility easement (B190-OR-398).
14. Lease Agreement (Phase II - Land) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and Lease Agreement (Phase II - Improvements) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

EXHIBIT B-3

GROUND LEASE

This GROUND LEASE (this "GROUND LEASE"), by and between BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), whose address is 12201 Merit Drive, Suite 860, Dallas, Texas 75251, and [NAI or the Applicable Purchaser], a \_\_\_\_\_ ("LESSOR"), whose address is \_\_\_\_\_, as of \_\_\_\_\_, \_\_\_\_\_ (the "GL EFFECTIVE DATE").

RECITALS

This Ground Lease is being executed pursuant to a Purchase Agreement (Phase II - Land) dated as of May 3, 1999 (the "PURCHASE AGREEMENT"), between BNP Leasing Corporation and Network Appliance, Inc., covering the land described in Annex 1 attached hereto (the "LAND"). Incorporated by reference into the Purchase Agreement is a Common Definitions and Provisions Agreement (Phase II - Land) dated as of the effective date of the Purchase Agreement (the "CDPA"), between BNP Leasing Corporation and Network Appliance, Inc. The CDPA is hereby incorporated into and made a part of this Ground Lease for all purposes. Capitalized terms defined in the CDPA and used but not otherwise defined herein are intended in this Ground Lease to have the respective meanings ascribed to them in the CDPA. The provisions in Article II of the CDPA are intended to apply to this Ground Lease as if set forth herein and as if this Ground Lease were one of the "Operative Documents" as defined therein.

Lessor and BNPLC have reached agreement as to the terms and conditions upon which Lessor is willing to lease the Land described in Annex 1 to BNPLC for a term of approximately just less than 35 years, and by this Ground Lease Lessor and BNPLC desire to evidence such agreement.

GRANTING CLAUSES

NOW, THEREFORE, in consideration of the rent to be paid and the covenants and agreements to be performed by BNPLC, as hereinafter set forth, Lessor does hereby LEASE, DEMISE and LET unto BNPLC for the term hereinafter set forth the Land, together with:

(1) all easements and rights-of-way now owned or hereafter acquired by Lessor for use in connection with the Land or as a means of access thereto; and

(2) all right, title and interest of Lessor, now owned or hereafter acquired, in and to (A) any land lying within the right-of-way of any street, open or proposed, adjoining the Land, (B) any and all sidewalks and alleys adjacent to the Land and (C) any strips and gores between the Land and any abutting land not owned by Lessor.

The Land and all of the property described in the preceding clauses (1) and (2) 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 Lessor as the owner of any interest in the Real Property, Lessor also hereby grants and assigns to BNPLC for the term of this Ground Lease (and thereafter, if BNPLC purchases the Real Property from Lessor pursuant to the Repurchase

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Option described in Paragraph ) the right to use and enjoy (and, in the case of contract rights, to enforce) such rights or interests of Lessor:

(a) the Permitted Encumbrances; and

(b) any general intangibles, permits, licenses, franchises, certificates, and other rights and privileges related to the Real Property that BNPLC (rather than Lessor) would have acquired if BNPLC had itself acquired the fee estate in the Real Property (excluding, however, any rights and privileges of Lessor under this Ground Lease, any rights or privileges of Lessor under the Purchase Agreement or other Operative Documents, and [without limiting Lessor's obligations under subparagraphs , or ] any rights and privileges of Lessor under the Development Documents described in Annex 3).

Such rights and interests of Lessor, whether now existing or hereafter arising, are hereinafter collectively called the "GL PERSONAL PROPERTY". The Real Property and the GL Personal Property are hereinafter sometimes collectively called the "GL PROPERTY."

Provided, however, the leasehold estate conveyed hereby and BNPLC's rights hereunder are expressly made subject and subordinate to the Permitted Encumbrances, including those listed on Annex 2. FURTHER, IF AND SO LONG AS THE OTHER LEASE AGREEMENT AND THE OTHER PURCHASE AGREEMENT (BOTH AS DEFINED IN THE CDPA) REMAIN IN FORCE, THE RIGHTS AND OBLIGATIONS OF LESSOR AND BNPLC HEREUNDER SHALL BE SUBJECT TO ANY CONTRARY PROVISIONS THEREIN. ACCORDINGLY, BNPLC'S RIGHTS UNDER PARAGRAPH BELOW SHALL BE SUBJECT TO THE PROVISIONS GOVERNING INSURANCE AND CONDEMNATION IN THE OTHER LEASE AGREEMENT, IF AND SO LONG AS THE OTHER LEASE AGREEMENT REMAINS IN FORCE.

#### GENERAL TERMS AND CONDITIONS

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

1. GROUND LEASE TERM AND EARLY TERMINATION BY BNPLC. The term of this Ground Lease (the "GROUND LEASE TERM") shall commence on and include the GL Effective Date and end on last Business Day prior to the thirty-fifth anniversary of the GL Effective Date. However, subject to the prior approval of any Leasehold Mortgagee, BNPLC shall have the right to terminate this Ground Lease by giving a notice to Lessor stating that BNPLC unequivocally elects to terminate effective as of a date specified in such notice, which may be any date more than thirty days after the notice and after the expiration or termination of the Lease pursuant to its terms.

2. NO OTHER GROUND LEASE TERMINATION. Except as expressly provided herein, this Ground Lease shall not terminate, nor shall Lessor have any right to terminate this Ground Lease, nor shall the obligations of Lessor under this Ground 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 GL Property from whatever cause, (ii) the taking of the GL Property or any portion thereof by eminent domain or otherwise for any reason, (iii) any default on the part of BNPLC under this Ground Lease or under any other agreement to which Lessor and BNPLC are parties, or (iv) 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 Lessor hereunder shall be separate and independent of the covenants and agreements of BNPLC. However, nothing in this Paragraph shall be construed as a waiver by Lessor of any right Lessor may have at law or in equity to recover monetary damages for any default under this Ground Lease by BNPLC.

3. GROUND LEASE RENT. On each anniversary of the GL Effective Date, BNPLC shall make a payment to Lessor of rent for the then preceding year ("GROUND LEASE RENT"), in currency that at the time of payment is legal tender for public and private debts in the United States of America. Each such payment of Ground Lease Rent shall equal the Fair Rental Value, determined as provided in Annex 4.

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#### 4 USE OF GL PROPERTY.

(A) Permitted Uses and Construction of Improvements . Subject to the Permitted Encumbrances and the terms hereof, BNPLC may use and occupy the GL Property for any purpose permitted by Applicable Laws and may construct, maintain and use any Improvements on the Land which are permitted by Applicable Laws.

(B) Cooperation by Lessor and its Affiliates.

(1) After the expiration or any earlier termination of the Lease, if a use of the GL Property by BNPLC or any new Improvements or any removal or modification of Improvements proposed by BNPLC would violate any Permitted Encumbrance, Development Document or Applicable Law unless Lessor or any of its Affiliates, as an owner of adjacent property or otherwise, gave its consent or approval thereto or agreed to join in a modification of a Permitted Encumbrance or Development Document, then Lessor shall give and cause its Affiliates to give such consent or approval or join in such modification.

(2) To the extent, if any, that any Permitted Encumbrance, Development Document or Applicable Law requires the consent or approval of Lessor or any of its Affiliates or of the City of South San Francisco or any other Person to an assignment of this Ground Lease or a transfer of any interest in the GL Property by BNPLC or its successors or assigns, Lessor will without charge give and cause its Affiliates to give such consent or approval and will cooperate in any way reasonably requested by BNPLC to assist BNPLC to obtain such consent or approval from the City or any other Person; provided, however, the assignment or transfer is not then prohibited by the Lease.

(3) Lessor's obligations under this subparagraph 4(B) shall be binding upon any successor or assign of Lessor with respect to the Land and other properties encumbered by the Permitted Encumbrances or subject to the Development Documents, and such obligations shall survive any sale of Lessor's interest in the GL Property to BNPLC because of BNPLC's exercise of the Repurchase Option (as defined in Paragraph ).

(C) Title to Improvements . Any and all Improvements of whatever nature at any time constructed, placed or maintained upon any part of the Land shall be and remain the property of BNPLC and BNPLC's sublessee's, assignees, licensees and concessionaires, as their interests may appear; provided, any such Improvements which remain on the Land when this Ground Lease expires or is terminated shall become and thereupon be the property of Lessor, free and clear of any Liens Removable by BNPLC. It is the intention of Lessor and BNPLC that severance of fee title to the Land and the Improvements shall not change the character of the Improvements as real property. BNPLC may at any time after Lessor ceases to have

possession of the GL Property as tenant under the Lease and prior to the expiration or termination of this Ground Lease remove all or any Improvements from the Land without the consent of Lessor and without any obligation to Lessor or its Affiliates to provide compensation or to construct other Improvements on or about the Land.

5 ASSIGNMENT AND SUBLETTING; PASS THROUGH OF BNPLC'S LIABILITY INSURANCE AND INDEMNITY RIGHTS. BNPLC may sublet or assign this Ground Lease without the consent of Lessor or any of its Affiliates, subject only to limitations set forth in the Lease for the benefit of Lessor so long as those limitations remain in force.

To the extent that BNPLC may from time to time after the expiration or earlier termination of the Other Lease Agreement require any subtenant to agree to maintain liability insurance against claims of third parties and agree to make BNPLC an additional or named insured under such insurance, BNPLC shall also require the subtenant to agree to make Lessor an additional or named insured. However, BNPLC shall have no liability to Lessor for a breach by the subtenant of any such agreements, and to the extent that BNPLC's rights as an additional or named insured are subject to exceptions or limitations concerning BNPLC's own acts or omissions or the acts or omissions of anyone other than the subtenant, so too may Lessor's rights as an additional or named insured be subject to exceptions or limitations concerning Lessor's own acts or omissions or the acts or omissions of anyone other than the subtenant.

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To the extent that BNPLC may itself from time to time after the expiration or earlier termination of the Other Lease Agreement maintain liability insurance against claims of third parties which may arise because of any occurrence on or alleged to have occurred on or about the GL Property, BNPLC shall cause Lessor to be an additional or named insured under such insurance, provided Lessor pays or reimburses BNPLC for any additional insurance premium required to have Lessor made an insured.

To the extent that BNPLC may from time to time after the expiration or earlier termination of the Other Lease Agreement require any subtenant to agree to indemnify BNPLC against Environmental Losses or other Losses concerning the GL Property, BNPLC shall also require the subtenant to agree to indemnify Lessor. However, BNPLC shall have no liability to Lessor for a breach by the subtenant of any such agreement, and to the extent that BNPLC's rights as an indemnitee of the subtenant are subject to exceptions or limitations concerning BNPLC's own acts or omissions or the acts or omissions of anyone other than the subtenant, so too may Lessor's rights as an indemnitee be subject to exceptions or limitations concerning Lessor's own acts or omissions or the acts or omissions of anyone other than the subtenant.

6 REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSOR Concerning the Property. Lessor represents, warrants and covenants as follows:

(A) Title to the Property . This Ground Lease shall vest in BNPLC good and marketable title to a leasehold estate in the Land, subject only to the terms and conditions hereof, the Permitted Encumbrances, the Development Documents and any Liens Removable by BNPLC. Lessor shall not, without the prior consent of BNPLC, create, place or authorize, or through any act or failure to act, acquiesce in the placing of, any deed of trust, mortgage or other Lien, whether statutory, constitutional or contractual against or covering the GL Property or any part thereof (other than Permitted Encumbrances and Liens Removable by BNPLC), regardless of whether the same are expressly or otherwise subordinate to the Operative Documents or BNPLC's interest in the Property.

(B) Modification of Permitted Encumbrances and Development Documents . Without the prior consent of BNPLC, Lessor 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 the GL Property or any improvements constructed thereon.

(C) Performance and Preservation of the Development Documents and Permitted Encumbrances for the Benefit of BNPLC . Not only during the term of the Other Lease Agreement, but thereafter throughout the term of this Ground Lease, Lessor shall comply with and perform the obligations imposed by the Permitted Encumbrances and the Development Documents upon Lessor or upon any owner of the

Land, and shall do whatever is required to preserve the rights and benefits conferred or intended to be conferred by the Permitted Encumbrances and the Development Documents, as necessary to facilitate the construction of the Construction Project on the Land as contemplated in the Other Lease Agreement and the use of the Improvements included in the Construction Project by BNPLC and its successors, assigns and subtenants under this Ground Lease after the expiration or any earlier termination of the Other Lease Agreement. Further, if Lessor or any Affiliate of Lessor now or hereafter owns, acquires or leases land (other than the Land) that is the subject of a Permitted Encumbrance or Development Document, then Lessor shall, and shall cause its Affiliate to, assume liability for and indemnify BNPLC and other Interested Parties and defend and hold them harmless from and against all Losses (including Losses caused by any decline in the value of the Property or of the Improvements) that they would not have incurred or suffered but for (i) a termination of such Permitted Encumbrance or Development Document, to which Lessor or its Affiliate agreed, or which resulted from a breach thereof by Lessor or its Affiliate, or (ii) a refusal of Lessor or its Affiliate to agree to any waiver or modification requested by BNPLC of restrictions upon the Property or the transfer thereof imposed by such Permitted Encumbrance or Development Document, or (iii) anything done, authorized or suffered by Lessor or its Affiliate in violation of such Permitted Encumbrance or Development Document. Lessor's obligations under this subparagraph shall be binding upon any successor or assign of Lessor or its Affiliates with respect to their interest in properties subject to the Development Documents and Permitted Encumbrances.

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#### 7 INSURANCE AND CONDEMNATION.

(A) Entitlement to Insurance and Condemnation Proceeds . All insurance and condemnation proceeds payable with respect to any damage to or taking of the GL Property shall be payable to and become the property of BNPLC; provided, however, Lessor shall be entitled to receive condemnation proceeds awarded for the value of Lessor's remainder interest in the Land exclusive of the Improvements. BNPLC is authorized to take all action necessary on behalf of both BNPLC and Lessor (as lessor under this Ground Lease) to collect insurance and condemnation proceeds.

(B) Collection of Insurance Proceeds . In the event any of the GL 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 make proof of loss, (ii) each insurance company concerned is hereby authorized and directed to make payment for such loss directly to BNPLC for application as required by subparagraph 7(A), and (iii) BNPLC's consent must be obtained for any settlement, adjustment or compromise of any claims for loss, damage or destruction under any policy or policies of insurance.

(C) Collection of Condemnation Proceeds . All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the GL Property and all judgments, decrees and awards for injury or damage to the GL Property shall be paid to BNPLC and applied as provided in subparagraph 7(A) above. BNPLC is hereby authorized, in the name of Lessor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award concerning condemnation of any of the GL 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.

#### 8 LEASEHOLD MORTGAGES.

(A) By Leasehold Mortgage BNPLC may encumber BNPLC's leasehold estate in the GL Property created by this Ground Lease, as well as BNPLC's rights and interests in buildings, fixtures, equipment and Improvements situated on the Land and rents, issues, profits, revenues and other income to be derived by BNPLC therefrom.

(B) Any Leasehold Mortgagee or other party, including any corporation formed by a Leasehold Mortgagee, may become the legal owner of the leasehold estate created by this Ground Lease, and of the Improvements, equipment, fixtures and other property assigned as additional security pursuant to a Leasehold Mortgage, by foreclosure of a Leasehold Mortgage or as a result of the assignment or conveyance in lieu of foreclosure. Further, any such Leasehold Mortgagee or

other party may itself, after becoming the legal owner and holder of the leasehold estate created by this Ground Lease, or of any Improvements, equipment, fixtures and other property assigned as additional security pursuant to a Leasehold Mortgage, convey or pledge the same without the consent of Lessor.

(C) Lessor shall serve notice of any default by BNPLC hereunder upon any Leasehold Mortgagee. No notice of a default by BNPLC shall be deemed effective until it is so served. Any Leasehold Mortgagee shall have the right to correct or cure any such default within the same period of time after receipt of such notice as is given to BNPLC under this Ground Lease to correct or cure defaults, plus an additional period of thirty days thereafter. Lessor will accept performance by any Leasehold Mortgagee of any covenant, condition or agreement on BNPLC's part to be performed hereunder with the same force and effect as though performed by BNPLC.

(D) If this Ground Lease should terminate by reason of a disaffirmance or rejection of this Ground Lease by BNPLC or any receiver, liquidator or trustee for the property of BNPLC, or by any governmental authority which had taken possession of the business or property of BNPLC by reason of the insolvency or alleged insolvency of BNPLC, then:

(1) Lessor shall give notice thereof to each Leasehold Mortgagee; and upon request of any Leasehold Mortgagee made within sixty days after Lessor has given such notice, Lessor shall enter into a new ground lease of the

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GL Property with such Leasehold Mortgagee for the remainder of the Ground Lease Term, at the same Ground Lease Rent and on the same terms and conditions as contained in this Ground Lease.

(2) The estate of the Leasehold Mortgagee, as lessee under the new lease, shall have priority equal to the estate of BNPLC hereunder. That is, there shall be no charge, lien or burden upon the GL Property prior to or superior to the estate granted by such new lease which was not prior to or superior to the estate of BNPLC under this Ground Lease as of the date immediately preceding the termination of this Ground Lease.

(3) Notwithstanding the foregoing, if Lessor shall receive requests to enter into a new ground lease from more than one Leasehold Mortgagee, Lessor shall be required to enter into only one new ground lease, and the new ground lease shall be to the requesting Leasehold Mortgagee who holds the highest priority lien or interest in BNPLC's leasehold estate in the Land. If the liens or security interests of two or more such requesting Leasehold Mortgagees which shared the highest priority just prior to the termination of this Ground Lease, the new ground lease shall name all such Leasehold Mortgagees as co-tenants thereunder.

(E) If BNPLC has agreed with any Leasehold Mortgagee that such Leasehold Mortgagee's consent will be required to any modification or early termination of this Ground Lease by BNPLC, and if Lessor has been notified of such agreement, such consent will be required.

(F) No Leasehold Mortgagee will assume any liability under this Ground Lease either by virtue of its Leasehold Mortgage or by any subsequent receipt or collection of rents or profits generated from the GL Property, unless and until the Leasehold Mortgagee acquires BNPLC's leasehold estate in the GL Property at foreclosure or by deed in lieu of foreclosure.

(G) Although the foregoing provisions concerning Leasehold Mortgages and Leasehold Mortgagees will be self operative, Lessor agrees to include, in addition to the items specified in Paragraph 11, confirmation of the foregoing in any statement provided to a Leasehold Mortgagee or prospective Leasehold Mortgagee pursuant to Paragraph .

#### 9 EVENTS OF DEFAULT.

(A) Definition of Ground Lease Default . Each of the following events shall be deemed to be a "GROUND LEASE DEFAULT" by BNPLC under this Ground Lease:

(1) BNPLC shall fail to pay when due any installment of Ground Lease Rent

due hereunder and such failure shall continue for sixty days after BNPLC receives notice thereof.

(2) BNPLC shall fail to comply with any term, provision or covenant of this Ground Lease (other than as described in the other clauses of this subparagraph 9(A), and shall not cure such failure prior to the earlier of (A) ninety days after notice thereof is sent to BNPLC, or (B) the date any writ or order is issued for the levy or sale of any property owned by Lessor or its Affiliates (including the GL Property) because of such failure or any criminal action is instituted 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 actions is instituted, if such failure is susceptible of cure but cannot with reasonable diligence be cured within such ninety day period, and if BNPLC shall promptly have commenced to cure the same and shall thereafter prosecute the curing thereof with reasonable diligence, the period within which such failure may be cured shall be extended for such further period as shall be necessary for the curing thereof with reasonable diligence.

(B) Remedy . Upon the occurrence of a Ground Lease Default which is not cured within any applicable period expressly permitted by subparagraph 9(A), Lessor's sole and exclusive remedies shall be to sue BNPLC for the collection of any amount due under this Ground Lease, to sue for the specific enforcement of BNPLC's obligations hereunder, or to enjoin the continuation of the Ground Lease Default; provided, however, no limitation of Lessor's remedies contained herein will prevent Lessor from recovering any reasonable costs Lessor may incur to mitigate its damages by curing a Ground Lease Default that

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BNPLC has failed to cure itself (so long as the cure by Lessor is pursued in a lawful manner and the costs Lessor seeks to recover do not exceed the actual damages to be mitigated). Lessor may not terminate this Ground Lease or BNPLC's right to possession under this Ground Lease. Any judgment which Lessor may obtain against BNPLC for amounts due under this Ground Lease may be collected only through resort of a judgement lien against BNPLC's interest in the GL Property and any Improvements. BNPLC shall have no personal liability for the payment amounts due under this or for the performance of any obligations of BNPLC under this Ground Lease.

10 QUIET ENJOYMENT. Neither Lessor nor any third party lawfully claiming any right or interest in the GL Property shall during the Ground Lease Term disturb BNPLC's peaceable and quiet enjoyment of the GL Property; however, such enjoyment shall be subject to the terms, provisions, covenants, agreements and conditions of this Ground Lease and the Permitted Encumbrances, to which this Ground Lease is subject and subordinate as hereinabove set forth.

11 ESTOPPEL CERTIFICATE. Lessor shall from time to time, within ten days after receipt of request by BNPLC, deliver a statement in writing certifying:

(A) that this Ground Lease is unmodified and in full force and effect (or if modified that this Ground Lease as so modified is in full force and effect);

(B) that to the knowledge of Lessor BNPLC has not previously assigned or hypothecated its rights or interests under this Ground Lease, except as is described in such statement with as much specificity as Lessor is able to provide;

(C) the term of this Ground Lease and the Ground Lease Rent then in effect and any additional charges;

(D) that BNPLC is not in default under any provision of this Ground Lease (or if in default, the nature thereof in detail) and a statement as to any outstanding obligations on the part of Lessor or BNPLC; and

(E) such other matters as are reasonably requested by BNPLC.

Lessor's failure to deliver such statement within such time shall be conclusive upon BNPLC (i) that this Ground Lease is in full force and effect, without modification except as may be represented by BNPLC, (ii) that there are no uncured defaults in BNPLC's performance hereunder.





to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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45  
STATE OF \_\_\_\_\_ )  
                              ) )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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ANNEX 1

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner

also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

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ANNEX 2

PERMITTED ENCUMBRANCES

The leasehold and other interests in the Land hereby conveyed by Lessor are conveyed subject to the following matters to the extent the same are still valid and in force:

[THE SAME LIST OF PERMITTED ENCUMBRANCES ATTACHED TO THE GRANT DEED FROM BNPLC TO NAI OR THE APPLICABLE PURCHASER SHALL BE INSERTED HERE.]

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ANNEX 3

LIST OF DEVELOPMENT DOCUMENTS

NONE

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ANNEX 4

DETERMINATION OF FAIR RENTAL VALUE

Each annual payment of Ground Lease Rent will equal the Fair Rental Value, computed as of the most recent Rental Determination Date when such payment becomes due. As used in this Annex:

"FAIR RENTAL VALUE" means (and all appraisers and other persons involved in the determination of the Fair Rental Value will be so advised) the annual rent, as determined in accordance with this Annex, that would be agreed upon between a willing tenant, under no compulsion to lease, and a willing landlord, under no compulsion to lease, for unimproved land comparable in size and location to the Land, exclusive of any Improvements but assuming that there is no higher and better use for such land than as a site for improvements of comparable size and utility to the Improvements, at the time a determination is required under hereunder and taking into consideration the condition of the Land, the encumbrances affecting the title to the Land and all applicable zoning, land use approvals and other governmental permits relating to the Land at the time of such determination; and

"RENTAL DETERMINATION DATE" means the GL Effective Date and each fifth anniversary of the GL Effective Date.

If Lessor and BNPLC have not agreed upon Fair Rental Value as of any Rental

Determination Date within one hundred eighty days after the such date, then Fair Rental Value will be determined as follows:

(a) Lessor and BNPLC shall each appoint a real estate appraiser who is familiar with rental values for properties in the vicinity of the Land and who has not previously acted for either party. Each party will make the appointment no later than ten days after receipt of notice from the other party that the appraisal process described in this Annex has been invoked. The agreement of the two appraisers as to Fair Rental Value will be binding upon Lessor and BNPLC. If the two appraisers cannot agree upon the Fair Rental Value within ten days following their appointment, they shall within another ten days agree upon a third real estate appraiser. Immediately thereafter, each of the first two appraisers will submit his best estimate of the appropriate Fair Rental Value (together with a written report supporting such estimate) to the third appraiser and the third appraiser will choose between the two estimates. The estimate of Fair Rental Value chosen by the third appraiser as the closest to the prevailing annual fair rental value will be binding upon Lessor and BNPLC. Notification in writing of this estimate shall be made to Lessor and BNPLC within fifteen days following the selection of the third appraiser.

(b) If appraisers must be selected under the procedure set out above and either BNPLC or Lessor fails to appoint an appraiser or fails to notify the other party of such appointment within fifteen days after receipt of notice that the prescribed time for appointing the appraisers has passed, then the other party's appraiser will determine the Fair Rental Value. All appraisers selected for the appraisal process set out in this Annex will be disinterested, reputable, qualified real estate appraisers with the designation of MAI or equivalent and with at least 5 years experience in appraising properties comparable to the Land.

(c) If a third appraiser must be chosen under the procedure set out above, he or she will be chosen on the basis of objectivity and competence, not on the basis of his relationship with the other appraisers or the parties to this Ground Lease, and the first two appraisers will be so advised. Although the first two appraisers will be instructed to attempt in good faith to agree upon the third appraiser, if for any reason they cannot agree within the prescribed time, either Lessor and BNPLC may require the first two appraisers to immediately submit its top choice for the third appraiser to the then highest ranking officer of the California Bar Association who will agree to help and who has no attorney/client or other significant relationship to either Lessor or BNPLC. Such officer will have complete discretion to select the most objective and competent third appraiser from between the choices of each of the first two appraisers, and will do so within twenty days after such choices are submitted to him.

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(d) Either Lessor or BNPLC may notify the appraiser selected by the other party to demand the submission of an estimate of Fair Rental Value or a choice of a third appraiser as required under the procedure described above; and if the submission of such an estimate or choice is required but the other party's appraiser fails to comply with the demand within fifteen days after receipt of such notice, then the Fair Rental Value or choice of the third appraiser, as the case may be, selected by the other appraiser (i.e., the notifying party's appraiser) will be binding upon Lessor and BNPLC.

(e) Lessor and BNPLC shall each bear the expense of the appraiser appointed by it, and the expense of the third appraiser and of any officer of the California Bar Association who participates in the appraisal process described above will be shared equally by Lessor and BNPLC.

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## REPURCHASE OPTION

Subject to the terms of this Annex, BNPLC shall have an option (the "OPTION") to buy Lessor's fee interest in the GL Property at any time during the term of this Ground Lease for a purchase price (the "OPTION PRICE") to Lessor equal to the fair market value of the GL Property, determined as described in the next paragraph.

For the purposes of this Annex, "fair market value" of the GL Property means (and all appraisers and other persons involved in the determination of the Option Price will be so advised) the price that would be agreed upon between a willing buyer, under no compulsion to buy, and a willing seller, under no compulsion to sell, for the Land, exclusive of any Improvements as if the Land were unimproved, but assuming that there is no higher and better use for the Land than as a site for the construction of improvements of comparable size and utility to the Improvements, at the time of BNPLC's exercise of the Option and taking into consideration the encumbrances affecting the title to the Land and all applicable zoning, land use approvals and other governmental permits relating to the Land at the time of the exercise of the Option.

If BNPLC exercises the Option, which BNPLC may do by notifying Lessor that BNPLC has elected to buy Lessor's interest in the GL Property as provided herein, then:

(a) To the extent, if any, required as a condition imposed by law to the conveyance of the fee interest in the GL Property to BNPLC, Lessor shall promptly at its expense do whatever is necessary to obtain approvals of a new Parcel Map or lot line adjustments.

(b) Upon BNPLC's tender of the Option Price to Lessor, Lessor will convey to BNPLC by general warranty deed and assignment, subject only to the Permitted Encumbrances, good and marketable title to the fee estate in the Land, to Lessor's interest in all other GL Property and, to the extent still in force, to Lessor's Extended Remarketing Rights under the Purchase Agreement.

(c) BNPLC's obligation to close the purchase shall be subject to the following terms and conditions, all of which are for the benefit of BNPLC: (1) BNPLC shall have been furnished with evidence satisfactory to BNPLC that Lessor can convey title as required by the preceding subparagraph; (2) nothing shall have occurred or been discovered after BNPLC exercised the Option that could significantly and adversely affect title to the GL Property or BNPLC's use thereof, (3) all of the representations of Lessor in this Ground Lease shall continue to be true as if made effective on the date of the closing and, with respect to any such representations which may be limited to the knowledge of Lessor or any of Lessor's representatives, would continue to be true on the date of the closing if all relevant facts and circumstances were known to Lessor and such representatives, (4) BNPLC shall find the Option Price acceptable after it is determined as provided in this Annex, and (5) BNPLC shall have been tendered the deed and other documents which are described in this Annex as documents to be delivered to BNPLC at the closing of BNPLC's purchase.

(d) Closing of the purchase will be scheduled on the first Business Day following thirty days after the Option Price is established in accordance with the terms and conditions of this Annex and after any approvals described in subparagraph (a) above are obtained, and prior to closing BNPLC's occupancy of the GL Property shall continue to be subject to the terms and conditions of this Ground Lease, including the terms setting forth BNPLC's obligation to pay rent. Closing shall take place at the offices of any title insurance company reasonably selected by BNPLC to insure title under the title insurance policy described below.

(e) Any transfer taxes or notices or registrations required by law in connection with the sale contemplated by this Annex will be the responsibility of Lessor.

(f) Lessor will deliver a certificate of nonforeign status to BNPLC at closing as needed to comply with the provisions of the Foreign Investors Real Property Tax Act (FIRPTA) or any comparable federal, state or local law in effect at the time.

(g) Lessor will also pay for and deliver to BNPLC at the closing an owner's title insurance policy in the full amount of the Option Price, issued by a title insurance company designated by BNPLC (or written confirmation from the title company that it is then prepared to issue such a policy), and subject only to standard printed exceptions which the title insurance company refuses to delete or modify in a manner acceptable to BNPLC and to Permitted Encumbrances.

(h) Lessor shall also deliver at the closing all other documents or things reasonably required to be delivered to BNPLC or by the title insurance company to evidence Lessor's ability to transfer the GL Property to BNPLC.

If Lessor and BNPLC do not otherwise agree upon the amount of the Option Price within twenty days after BNPLC exercises the Option, the Option Price shall be determined in accordance with the following procedure:

(1) Lessor and BNPLC shall each appoint a real estate appraiser who is familiar with properties in the vicinity of the Land and who has not previously acted for either party. Each party will make the appointment no later than ten days after receipt of notice from the other party that the appraisal process described in this Annex has been invoked. The agreement of the two appraisers as to the Option Price will be binding upon Lessor and BNPLC. If the two appraisers cannot agree upon the Option Price within ten days following their appointment, they shall within another ten days agree upon a third real estate appraiser. Immediately thereafter, each of the first two appraisers will submit his best estimate of the appropriate Option Price (together with a written report supporting such estimate) to the third appraiser and the third appraiser will choose between the two estimates. The estimate of Option Price chosen by the third appraiser as the closest to the prevailing fair market value will be binding upon Lessor and BNPLC. Notification in writing of the Option Price shall be made to Lessor and BNPLC within fifteen days following the selection of the third appraiser.

(2) If appraisers must be selected under the procedure set out above and either BNPLC or Lessor fails to appoint an appraiser or fails to notify the other party of such appointment within fifteen days after receipt of notice that the prescribed time for appointing the appraisers has passed, then the other party's appraiser will determine the Option Price. All appraisers selected for the appraisal process set out in this Annex will be disinterested, reputable, qualified real estate appraisers with the designation of MAI or equivalent and with at least 5 years experience in appraising properties comparable to the Land.

(3) If a third appraiser must be chosen under the procedure set out above, he will be chosen on the basis of objectivity and competence, not on the basis of his relationship with the other appraisers or the parties to this Ground Lease, and the first two appraisers will be so advised. Although the first two appraisers will be instructed to attempt in good faith to agree upon the third appraiser, if for any reason they cannot agree within the prescribed time, either Lessor and BNPLC may require the first two appraisers to immediately submit its top choice for the third appraiser to the then highest ranking officer of the California Bar Association who will agree to help and who has no attorney/client or other significant relationship to either Lessor or BNPLC. Such officer will have complete discretion to select the most objective and competent third appraiser from between the choices of each of the first two appraisers, and will do so within ten days after such choices are submitted to him.

(4) Either Lessor or BNPLC may notify the appraiser selected by the other party to demand the submission of an estimate of Option Price or a choice of a third appraiser as required under the procedure described above; and if the submission of such an estimate or choice is required but the other party's appraiser fails to comply with the demand within fifteen days after receipt of such notice, then the Option Price or choice of the third appraiser, as the case may be, selected by the other appraiser (i.e., the notifying party's

appraiser) will be binding upon Lessor and BNPLC.

(5) Lessor and BNPLC shall each bear the expense of the appraiser appointed by it, and the expense of the third appraiser and of any officer of the California Bar Association who participates in the appraisal process described above will be shared equally by Lessor and BNPLC.

EXHIBIT B-4

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  
(Covering Land but not the Improvements On the Land)

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 (the "Land"), together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to the Land; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances") and any reservations or qualifications set forth below. Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the Land.

Although this deed conveys Grantor's interest in the Land itself, this deed does not convey any interest in any buildings or other improvements on the Land (collectively, "Improvements") or any rights or easements appurtenant to Improvements. Prior to or contemporaneously with the delivery of this deed, Grantor has conveyed or is conveying the Improvements and appurtenant rights and easements to another party.

BNP LEASING CORPORATION

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its:

Attest: \_\_\_\_\_

Its:

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its:

Attest: \_\_\_\_\_

Its:

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase II - Land) incorporated by reference into the Lease Agreement (Phase II - Land) referenced in the last item of the list below), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year [current year], a lien not yet due or payable.

2. General and Special Taxes and Assessments, if any, for the fiscal year 1998-99.

Assessment No.: 110-32-004  
Code No.: 09-059  
First Installment: \$34,099.75 Paid  
Second Installment: \$34,099.75 Payable, but not yet due  
Assessed Valuation of  
Personal Property: None  
Homeowners Exemption: None

3. Supplemental Taxes for the fiscal year 1998-99 assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

Assessors Parcel No.: 110-32-004-71  
First Installment: Paid  
Second Installment: \$4,217.87, Payable, but not yet due

4. Supplemental Taxes for the fiscal year 1998-99 assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

Assessors Parcel No.: 110-32-004-72  
First Installment: Paid  
Second Installment: \$16,226.03, Payable, but not yet due

5. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California, resulting from changes of ownership or completion of construction on or after the date of this policy.

6. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

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In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Slope Easement  
Recorded: October 9, 1964, in Book 6695 at Page 430, Official Records  
Affects: The Southeasterly 18 feet of Said Land

7. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Public Utilities  
Recorded: October 9, 1964, in Book 6695 at Page 450, Official Records  
Affects: The Southeasterly 7 feet of Said Land

8. Covenants, Conditions and Restrictions in the Declaration of Restrictions; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions or Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Executed By: Moffett Park Associates, A Partnership  
Recorded: December 23, 1971 in Book 9640 at Page 443 of Official Records

An Assignment and Assumption

Executed by: Moffett Park Associates, A Partnership

To: The Prudential Insurance Company of  
America, a New Jersey Corporation  
Recorded: February 8, 1977 in Book C583 at Page 685  
of Official Records

9. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Moffett Park Associates, A Partnership  
For: Private and Public Utility Purposes  
Recorded: November 29, 1974, in Book B190, page 398,  
as Instrument No. 4903681, Official  
Records  
Affects: The Northerly 5 feet of Said Land

10. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Paul Enterprises, A Partnership, and  
Northwest Poultry and Dairy Products  
Co., an Oregon Corporation  
For: 5 Foot Wide Storm Drain Easement  
Recorded: June 17, 1975, in Book B467, page 167,  
as Instrument No. 5032895, Official  
Records  
Affects: As follows:

PARCEL ONE

A 5.00 Foot Wide Storm Drain easement 2.50 feet on each side of the center line of an existing Storm Drain Pipe, said center line of said pipe being described as follows:

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Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps at Page 20, records of Santa Clara County,

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing pipe and the True Point of Beginning of this description;

Thence South 75 deg 07' 58" East parallel with and istant 2.50 feet Northerly measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 407.55 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly measured at right angles from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

PARCEL TWO

A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwestern corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of

the existing Storm Drain Pipe described in Parcel 1 above;

Thence South 75 deg 07' 58" East along the center line of said pipe described in said Parcel 1, a distance of 35.00 feet to the Point of Intersection of the center line of an existing 12 inch Storm Drain Pipe and the True Point of Beginning of this description;

Thence North 14 deg 51' 33" East along the center line of said existing 12 inch pipe, a distance of 87.00 feet;

Thence North 75 deg 07' 58" West and continuing along a center line of an existing 6 inch Storm Drain Pipe, a distance of 35.00 feet to a point on the Westerly line of said Parcel "A".

The sidelines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the Northerly side of the pipe described in Parcel 1 above to the Westerly line of said Parcel "A".

11. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:	The Prudential Insurance Company of America, a New Jersey Corporation
For:	A 5 foot wide Storm Drain Easement

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60

Recorded:	June 17, 1975 in Book B467, page 173, as Instrument No. 5032896 Official Records
Affects:	As follows:

PARCEL ONE

A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch Storm Drain Pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps at Page 20, records of Santa Clara County,

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing storm drain pipe running along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of Parcel "A" a distance of 156.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True Point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe a distance of 15.00 feet.

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL TWO

A 5.00 foot wide storm drain easement, 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" a said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A"

a distance of 2.50 feet to the Point of Intersection of the center line of the existing storm drain pipe running thence along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of said Parcel "A", a distance of 289.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe, a distance of 15.00 feet.

The side lines of said 5.00 foot easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL THREE

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A 5.00 foot storm drain easement, 2.50 feet on each side of the center line of an existing storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing pipe;

Thence South 75 deg 07'58" East parallel with and distant 2.50 feet Northerly, measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 161.05 feet and the True Point of Beginning of this description;

Thence again South 75 deg 07' 58" East continuing along said existing pipe a distance of 246.50 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly, measured at right angles, from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

12. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:	The Prudential Insurance Company of America, new Jersey Corporation
For:	A pedestrian and motor vehicle Right-of-Way for the purposes of Ingress and Egress from motor vehicle parking spaces
Recorded:	June 17, 1975, in Book B467, page 178, as Instrument No. 5032897 Official Records
Affects:	As follows:

An 11 foot strip of land over a portion of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps, at Page 20, records of Santa Clara County and being more particularly described as follows:

Commencing at the Southeast corner of said Parcel "A", said Southeast corner also being a point on the Westerly line of Crossman Road (90.00 feet wide); Thence North 75 deg 7' 58" West along the Southerly line of said Parcel "A", a distance of 40.00 feet to the True Point of Beginning of this description;

Thence continuing along said Southerly line North 75 deg 07' 58" West, a distance of 322.50 feet;

Thence North 14 deg 52' 02" East, a distance of 11.00 feet;

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Thence South 75 deg 07' 58" East parallel with and distant Northerly 11.00 feet measured at right angles from said Southerly line of said Parcel "A", a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 11.00 feet to the True Point of Beginning.

13. Any rights, Interests or Claims which may exist or arise by reason of the following facts shown by a survey made by Kier & Wright, dated March 18, 1999, as Job No. 96214-2 and inspections of said land:

(A) the fact that the landscaping area, patio and walkways located along the northwesterly boundary is for the common use of the adjoining property lying to the northwest of said land.

(B) the fact that the driveway located near the most northerly corner along the northeasterly boundary is for the common use of the adjoining property lying to the northeast of said land.

(C) the fact that the fence along the northwesterly boundary and across the most northerly corner encroaches onto the adjoining properties lying to the northwest and northeast of said land.

(D) the fact that the fence located near the southwesterly corner on the southwesterly boundary encroaches onto the adjoining property lying to the southwest of said land.

(E) the fact that the concrete curbs located along the northeasterly and southeasterly boundaries encroach onto the 7.00 foot Public Utility easement (6695-OR-450); onto the 18.00 foot Slope easement (6695-OR-430); onto the 5.00 foot Storm Drain easement (9790-OR-380, B467-OR-167 and B467-OR-173); and onto the 5.00 foot Public Utility easement (B190-OR-398).

14. Lease Agreement (Phase II - Land) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and Lease Agreement (Phase II - Improvements) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

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#### EXHIBIT C

#### BILL OF SALE AND ASSIGNMENT

Reference is made to: (1) that certain Purchase Agreement (Phase II - Land) between BNP Leasing Corporation ("ASSIGNOR") and Network Appliance, Inc., dated as of May 3, 1999, (the "PURCHASE AGREEMENT") and (2) that certain Lease Agreement (Phase II - Land) between Assignor, as landlord, and Network Appliance, Inc., as tenant, dated as of May 3, 1999 (the "LAND 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 (Phase II - Land) incorporated by reference into both the Purchase Agreement and Land 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 Land 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.

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 Land 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 Land Lease which may not presently be known, (2) provisions in the Land Lease that establish the right of Assignor to recover any accrued unpaid rent under the Land 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 Land 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 Land 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.

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 \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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STATE OF \_\_\_\_\_ )
COUNTY OF \_\_\_\_\_ ) SS

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared
\_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the persons whose names are subscribed
to the within instrument and acknowledged to me that they executed the same in
their authorized capacities, and that by their signatures on the instrument the
person, or the entity upon behalf of which the persons acted, executed the
instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )
COUNTY OF \_\_\_\_\_ ) SS

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared
\_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the persons whose names are subscribed
to the within instrument and acknowledged to me that they executed the same in
their authorized capacities, and that by their signatures on the instrument the
person, or the entity upon behalf of which the persons acted, executed the
instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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ANNEX A
LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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 DOCUMENT 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: All that certain Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

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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 (Phase II - Land) incorporated by reference into the Purchase Agreement between BNPLC and Network Appliance, Inc. dated May 3, 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 \_\_\_\_\_, \_\_\_\_.

[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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CORPORATE RESOLUTIONS OF  
BNP LEASING CORPORATION

WHEREAS, pursuant to that certain Purchase Agreement (Phase II - Land) (herein called the "Purchase Agreement") dated as of May 3, 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: \_\_\_\_\_

=====

PURCHASE AGREEMENT  
(PHASE II - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION

("BNPLC")

AND

NETWORK APPLIANCE, INC.

("NAI")

MAY 3, 1999

(SUNNYVALE, CALIFORNIA)

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#### PURCHASE AGREEMENT (PHASE II - IMPROVEMENTS)

This PURCHASE AGREEMENT (PHASE II - IMPROVEMENTS) (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 May 3, 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 (Phase I - Improvements) executed by BNPLC and NAI contemporaneously with this Agreement. By this reference, the Common Definitions and Provisions Agreement (Phase II - Improvements) 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, 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 Agreement (Phase II - Improvements) executed by BNPLC and NAI contemporaneously with this Agreement (the "IMPROVEMENTS LEASE"), BNPLC is leasing the Improvements on the Land 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 Improvements and in all other real and personal property from time to time covered by the Improvements Lease and included within the "Property" as defined therein are hereinafter collectively referred to as the "PROPERTY". The Property does not include the Land itself, it being understood that the Other Purchase Agreement constitutes a separate agreement providing for the possible sale of the Land and the appurtenances thereto, and only the Land and the appurtenances thereto, from BNPLC to NAI or a third party designated by NAI.)

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

#### 1 NAI'S OPTIONS AND OBLIGATIONS ON THE DESIGNATED SALE DATE.

(A) Right to Purchase; Right and Obligation to Remarket . Whether or not an Event of Default shall have occurred and be continuing or the Improvements Lease shall have been terminated, but subject to Paragraph 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

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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 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 (Phase II - Improvements).

(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.

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If any Supplemental Payment or other amount payable to BNPLC pursuant to this subparagraph 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 equal to the sum of Construction-Period Indemnity Payments, if any, that NAI declined to pay pursuant to subparagraph 5(d)(ii) of the Improvements 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 Improvements 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 Improvements 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 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 (Phase II - Improvements), 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.

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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 paid to NAI pursuant to subparagraph 1(A)(2)(b) or pursuant to subparagraph 2(b), 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 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 (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 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 Improvements 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 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.

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(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 in connection with the construction contemplated by the Construction Management Agreement and the Improvements 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 Improvements 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 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.

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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 Improvements 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 (Phase II - Improvements) to an Affiliate of BNPLC or that covers BNPLC's entire interest in the 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 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 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 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

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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-1 or Exhibit B-2 or Exhibit B-3, as required by 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 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 Improvements 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 Improvements 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 Improvements 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 . Further, nothing in this subparagraph 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 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 (Phase II - Improvements).

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(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.

(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 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 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, on the Designated Sale Date NAI must pay all amounts then due to BNPLC under the Improvements 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 Improvements 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 Improvements Lease, the Construction Management Agreement and the Closing Certificate, and NAI's

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 Improvements and its use of the Property shall continue to be subject to the terms and conditions of the Improvements Lease, including the terms setting forth NAI's obligation to pay rent, prior to any termination or expiration of the Improvements 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.

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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 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 May 3, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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[Continuation of signature pages to Purchase Agreement (Phase II - Improvements) dated to be effective May 3, 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: All that certain Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:



A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

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EXHIBIT B

REQUIREMENTS RE: FORM OF GRANT DEED

The form of deed to be used to convey BNPLC's interest in the Improvements to NAI or an Applicable Purchaser will depend upon whether BNPLC's interest in the Land has been or is being conveyed at the same time to the same party.

If BNPLC's interests in BOTH the Land and the Improvements are to be conveyed to NAI or an Applicable Purchaser at the same time, because a sale under this Purchase Agreement and a sale under the Other Purchase Agreement (covering the Land) are being consummated at the same time and to the same party, then the one deed in form attached as Exhibit B-1 will be used to convey both.

If, however, a sale of BNPLC's interest in the Land pursuant to the Other Purchase Agreement has not been consummated before, and is not being consummated contemporaneously with the sale of BNPLC's interest in the Improvements under this Agreement, then BNPLC's interest in the Improvements will be conveyed by a deed in the from attached as Exhibit B-2.

Finally, BNPLC's interest in the Improvements will be conveyed by a deed in the from attached as Exhibit B-3 if BNPLC's interest in the Land has been sold pursuant to the Other Purchase Agreement before a sale of BNPLC's interest in the Improvements under this Agreement, or if BNPLC's interest in the Improvements is being sold contemporaneously with a sale of BNPLC's interest in the Land, but the purchaser of the Improvements is not the same as the purchaser of the Land.

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EXHIBIT B-1

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  
(Covering Land and Improvements)

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 and all improvements on such land, together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to such land or the improvements thereon; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances"). Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the land or improvements conveyed by this deed.

Exhibit - Page 2

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BNP LEASING CORPORATION

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT B-1 - PAGE 2

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ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

EXHIBIT B-1 - PAGE 3

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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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase II - Land) incorporated by reference into the Lease Agreement (Phase II - Land) referenced in the last item of the list below), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year [current year], a lien not yet due or payable.
2. General and Special Taxes and Assessments, if any, for the fiscal year 1998-99.

Assessment No.: 110-32-004  
Code No.: 09-059  
First Installment: \$34,099.75 Paid  
Second Installment: \$34,099.75 Payable, but not yet due  
Assessed Valuation of  
Personal Property: None  
Homeowners Exemption: None

3. Supplemental Taxes for the fiscal year 1998-99 assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

Assessors Parcel No.: 110-32-004-71  
First Installment: Paid  
Second Installment: \$4,217.87, Payable, but not yet due

4. Supplemental Taxes for the fiscal year 1998-99 assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

Assessors Parcel No.: 110-32-004-72  
First Installment: Paid  
Second Installment: \$16,226.03, Payable, but not yet due

5. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California, resulting from changes of ownership or completion of construction on or after the date of this policy.

6. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Slope Easement

EXHIBIT B-1 - PAGE 4

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Recorded: October 9, 1964, in Book 6695 at Page 430,  
Official Records  
Affects: The Southeasterly 18 feet of Said Land

7. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Public Utilities  
Recorded: October 9, 1964, in Book 6695 at Page 450,  
Official Records  
Affects: The Southeasterly 7 feet of Said Land

8. Covenants, Conditions and Restrictions in the Declaration of Restrictions; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions or Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Executed By: Moffett Park Associates, A Partnership  
Recorded: December 23, 1971 in Book 9640 at Page 443 of Official Records

An Assignment and Assumption

Executed by: Moffett Park Associates, A Partnership  
To: The Prudential Insurance Company of America, a New Jersey Corporation  
Recorded: February 8, 1977 in Book C583 at Page 685 of Official Records

9. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Moffett Park Associates, A Partnership  
For: Private and Public Utility Purposes  
Recorded: November 29, 1974, in Book B190, page 398, as Instrument No. 4903681, Official Records  
Affects: The Northerly 5 feet of Said Land

10. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Paul Enterprises, A Partnership, and Northwest Poultry and Dairy Products Co., an Oregon Corporation  
For: 5 Foot Wide Storm Drain Easement  
Recorded: June 17, 1975, in Book B467, page 167, as Instrument No. 5032895, Official Records  
Affects: As follows:

PARCEL ONE

A 5.00 Foot Wide Storm Drain easement 2.50 feet on each side of the center line of an existing Storm Drain Pipe, said center line of said pipe being described as follows:

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps at Page 20, records of Santa Clara County,

EXHIBIT B-1 - PAGE 5

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Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing pipe and the True Point of Beginning of this description;

Thence South 75 deg 07' 58" East parallel with and distant 2.50 feet Northerly measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 407.55 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly measured at right angles from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of

42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

PARCEL TWO

A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwestern corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing Storm Drain Pipe described in Parcel 1 above;

Thence South 75 deg 07' 58" East along the center line of said pipe described in said Parcel 1, a distance of 35.00 feet to the Point of Intersection of the center line of an existing 12 inch Storm Drain Pipe and the True Point of Beginning of this description;

Thence North 14 deg 51' 33" East along the center line of said existing 12 inch pipe, a distance of 87.00 feet;

Thence North 75 deg 07' 58" West and continuing along a center line of an existing 6 inch Storm Drain Pipe, a distance of 35.00 feet to a point on the Westerly line of said Parcel "A".

The sidelines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the Northerly side of the pipe described in Parcel 1 above to the Westerly line of said Parcel "A".

- 11. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: The Prudential Insurance Company of America, a New Jersey Corporation  
For: A 5 foot wide Storm Drain Easement  
Recorded: June 17, 1975 in Book B467, page 173, as Instrument No. 5032896 Official Records  
Affects: As follows:

PARCEL ONE

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A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch Storm Drain Pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps at Page 20, records of Santa Clara County,

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing storm drain pipe running along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of Parcel "A" a distance of 156.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True Point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe a distance of 15.00 feet.

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL TWO

A 5.00 foot wide storm drain easement, 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" a said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing storm drain pipe running thence along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of said Parcel "A", a distance of 289.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe, a distance of 15.00 feet.

The side lines of said 5.00 foot easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL THREE

A 5.00 foot storm drain easement, 2.50 feet on each side of the center line of an existing storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

EXHIBIT B-1 - PAGE 7

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Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing pipe;

Thence South 75 deg 07'58" East parallel with and distant 2.50 feet Northerly, measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 161.05 feet and the True Point of Beginning of this description;

Thence again South 75 deg k07' 58" East continuing along said existing pipe a distance of 246.50 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly, measured at right angles, from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

12. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:                   The Prudential Insurance Company of America,  
  new Jersey Corporation  
For:                               A pedestrian and motor vehicle Right-of-Way  
  for the purposes of Ingress and Egress from  
  motor vehicle parking spaces  
Recorded:                       June 17, 1975, in Book B467, page 178, as  
  Instrument No. 5032897 Official Records  
Affects:                         As follows:

An 11 foot strip of land over a portion of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps, at Page 20, records of Santa Clara County and being more particularly described as follows:

Commencing at the Southeast corner of said Parcel "A", said Southeast corner also being a point on the Westerly line of Crossman Road (90.00 feet wide);

Thence North 75 deg 7' 58" West along the Southerly line of said Parcel "A", a distance of 40.00 feet to the True Point of Beginning of this description;

Thence continuing along said Southerly line North 75 deg 07' 58" West, a distance of 322.50 feet;

Thence North 14 deg 52' 02" East, a distance of 11.00 feet;

Thence South 75 deg 07' 58" East parallel with and distant Northerly 11.00 feet measured at right angles from said Southerly line of said Parcel "A", a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 11.00 feet to the True Point of Beginning.

13. Any rights, Interests or Claims which may exist or arise by reason of the following facts shown by a survey made by Kier & Wright, dated March 18, 1999, as Job No. 96214-2 and inspections of said land:

EXHIBIT B-1 - PAGE 8

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(A) the fact that the landscaping area, patio and walkways located along the northwesterly boundary is for the common use of the adjoining property lying to the northwest of said land.

(B) the fact that the driveway located near the most northerly corner along the northeasterly boundary is for the common use of the adjoining property lying to the northeast of said land.

(C) the fact that the fence along the northwesterly boundary and across the most northerly corner encroaches onto the adjoining properties lying to the northwest and northeast of said land.

(D) the fact that the fence located near the southwesterly corner on the southwesterly boundary encroaches onto the adjoining property lying to the southwest of said land.

(E) the fact that the concrete curbs located along the northeasterly and southeasterly boundaries encroach onto the 7.00 foot Public Utility easement (6695-OR-450); onto the 18.00 foot Slope easement (6695-OR-430); onto the 5.00 foot Storm Drain easement (9790-OR-380, B467-OR-167 and B467-OR-173); and onto the 5.00 foot Public Utility easement (B190-OR-398).

14. Lease Agreement (Phase II - Land) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and Lease Agreement (Phase II - Improvements) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

EXHIBIT B-1 - PAGE 9



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

(Covering Improvements but not the Land under the Improvements)

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 buildings and other improvements (the "Improvements") on the land situated in Sunnyvale, California, described on Annex A attached hereto and hereby made a part hereof (the "Land"), together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to the Improvements; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances") and any reservations or qualifications set forth below. Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the Improvements.

Although this deed conveys Grantor's interest in the Improvements, this deed does not convey any interest in the Land under the Improvements or any rights or easements appurtenant to Improvements. Grantor retains and reserves all right, title and interest of Grantor in and to the Land and any rights and easements appurtenant to Land. Further, this deed does not convey any right of access over or right to use the Land, it being understood that the right of Grantee or its successors and assigns to maintain or use the improvements conveyed hereby shall be on and subject to the terms and conditions of any separate ground lease or deed that Grantee may from time to time obtain from the owner of the Land. If Grantee does not obtain a separate deed or ground lease giving Grantee the authority to maintain the Improvements on the Land, Grantee shall remove or abandon the Improvements promptly upon request of the owner of the Land. Nothing herein or in the agreements pursuant to which this deed is being delivered shall be construed as an obligation on the part of Grantor to deliver or cooperate reasonably in obtaining for Grantee any deed or ground lease covering the Land described on Annex A.

BNP LEASING CORPORATION

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT B-2 - PAGE 2

ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

EXHIBIT B-2 - PAGE 3

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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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase II - Land) incorporated by reference into the Lease Agreement (Phase II - Land) referenced in the last item of the list below), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year [current year], a lien not yet due or payable.
2. General and Special Taxes and Assessments, if any, for the fiscal year 1998-99.

Assessment No.:	110-32-004
Code No.:	09-059
First Installment:	\$34,099.75 Paid
Second Installment:	\$34,099.75 Payable, but not yet due
Assessed Valuation of Personal Property:	None
Homeowners Exemption:	None

3. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California, resulting from changes of ownership or completion of construction on or after the date of this policy.
4. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Pacific Gas and Electric Company, a California Corporation  
For: A Line of Poles

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Recorded: February 6, 1951, in Book 2147 at Page 279,  
Official Records  
Affects: A Strip of land 5 feet in width over the  
portion of Said Land lying within the North  
1/2 of Lot 6, Crossman Sub. No. 2

5. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Slope Easement  
Recorded: October 9, 1964, in Book 6695 at Page 430,  
Official Records  
Affects: The Southeasterly 18 feet of Said Land

6. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Public Utilities  
Recorded: October 9, 1964, in Book 6695 at Page 450,  
Official Records  
Affects: The Southeasterly 7 feet of Said Land

7. Covenants, Conditions and Restrictions in the Declaration of Restrictions; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions or Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Executed By: Moffett Park Associates, A Partnership  
Recorded: December 23, 1971 in Book 9640 at Page 443 of  
Official Records

An Assignment and Assumption

Executed by: Moffett Park Associates, A Partnership  
To: The Prudential Insurance Company of America,  
a New Jersey Corporation  
Recorded: February 8, 1977 in Book C583 at Page 685 of  
Official Records

8. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Moffett Park Associates, A Partnership  
For: Private and Public Utility Purposes  
Recorded: November 29, 1974, in Book B190, page 398, as  
Instrument No. 4903681, Official Records  
Affects: The Northerly 5 feet of Said Land

9. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Paul Enterprises, A Partnership, and  
Northwest Poultry and Dairy Products Co., an  
Oregon Corporation  
For: 5 Foot Wide Storm Drain Easement  
Recorded: June 17, 1975, in Book B467, page 167, as  
Instrument No. 5032895, Official Records  
Affects: As follows:

PARCEL ONE

A 5.00 Foot Wide Storm Drain easement 2.50 feet on each side of the center line of an existing Storm Drain Pipe, said center line of said pipe being described as follows:

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps at Page 20, records of Santa Clara County,

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Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing pipe and the True Point of Beginning of this description;

Thence South 75 deg 07' 58" East parallel with and distant 2.50 feet Northerly measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 407.55 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly measured at right angles from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

PARCEL TWO

A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwestern corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing Storm Drain Pipe described in Parcel 1 above;

Thence South 75 deg 07' 58" East along the center line of said pipe described in said Parcel 1, a distance of 35.00 feet to the Point of Intersection of the center line of an existing 12 inch Storm Drain Pipe and the True Point of Beginning of this description;

Thence North 14 deg 51' 33" East along the center line of said existing 12 inch pipe, a distance of 87.00 feet;

Thence North 75 deg 07' 58" West and continuing along a center line of an existing 6 inch Storm Drain Pipe, a distance of 35.00 feet to a point on the Westerly line of said Parcel "A".

The sidelines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the Northerly side of the pipe described in Parcel 1 above to the Westerly line of said Parcel "A".

10. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:	The Prudential Insurance Company of America, a New Jersey Corporation
For:	A 5 foot wide Storm Drain Easement

Recorded: June 17, 1975 in Book B467, page 173, as  
Instrument No. 5032896 Official Records  
Affects: As follows:

PARCEL ONE

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A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch Storm Drain Pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps at Page 20, records of Santa Clara County,

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing storm drain pipe running along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of Parcel "A" a distance of 156.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True Point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe a distance of 15.00 feet.

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL TWO

A 5.00 foot wide storm drain easement, 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" a said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing storm drain pipe running thence along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of said Parcel "A", a distance of 289.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe, a distance of 15.00 feet.

The side lines of said 5.00 foot easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL THREE

A 5.00 foot storm drain easement, 2.50 feet on each side of the center line of an existing storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

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Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing pipe;

Thence South 75 deg 07'58" East parallel with and distant 2.50 feet Northerly, measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 161.05 feet and the True Point of Beginning of this description;

Thence again South 75 deg k07' 58" East continuing along said existing pipe a distance of 246.50 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly, measured at right angles, from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

11. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:	The Prudential Insurance Company of America, new Jersey Corporation
For:	A pedestrian and motor vehicle Right-of-Way for the purposes of Ingress and Egress from motor vehicle parking spaces
Recorded:	June 17, 1975, in Book B467, page 178, as Instrument No. 5032897 Official Records
Affects:	As follows:

An 11 foot strip of land over a portion of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps, at Page 20, records of Santa Clara County and being more particularly described as follows:

Commencing at the Southeast corner of said Parcel "A", said Southeast corner also being a point on the Westerly line of Crossman Road (90.00 feet wide);

Thence North 75 deg 7' 58" West along the Southerly line of said Parcel "A", a distance of 40.00 feet to the True Point of Beginning of this description;

Thence continuing along said Southerly line North 75 deg 07' 58" West, a distance of 322.50 feet;

Thence North 14 deg 52' 02" East, a distance of 11.00 feet;

Thence South 75 deg 07' 58" East parallel with and distant Northerly 11.00 feet measured at right angles from said Southerly line of said Parcel "A", a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 11.00 feet to the True Point of Beginning.

12. Any rights, Interests or Claims which may exist or arise by reason of the following facts shown by a survey made by Kier & Wright, dated March 18, 1999, as Job No. 96214-2 and inspections of said land:

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(A) the fact that the landscaping area, patio and walkways located along the northwesterly boundary is for the common use of the adjoining property lying to the northwest of said land.

(B) the fact that the driveway located near the most northerly corner along the northeasterly boundary is for the common use of the adjoining property lying to the northeast of said land.

(C) the fact that the fence along the northwesterly boundary and across the most northerly corner encroaches onto the adjoining properties lying to the northwest and northeast of said land.

(D) the fact that the fence located near the southwesterly corner on the southwesterly boundary encroaches onto the adjoining property lying to the southwest of said land.

(E) the fact that the concrete curbs located along the northeasterly and southeasterly boundaries encroach onto the 7.00 foot Public Utility easement (6695-OR-450); onto the 18.00 foot Slope easement (6695-OR-430); onto the 5.00 foot Storm Drain easement (9790-OR-380, B467-OR-167 and B467-OR-173); and onto the 5.00 foot Public Utility easement (B190-OR-398).

13. Lease Agreement (Phase II - Land) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and Lease Agreement (Phase II - Improvements) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

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EXHIBIT B-3

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

(Covering Improvements but not Land under the Improvements)

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 buildings and other improvements (the "Improvements") on the land situated in Sunnyvale, California, described on Annex A attached hereto and hereby made a part hereof (the "Land"), together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to the Improvements; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances") and any reservations or qualifications set forth below. Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the Improvements.



Although this deed conveys Grantor's interest in the Improvements on the Land, this deed does not convey any interest in the Land itself or any rights or easements appurtenant to Land. Prior to or contemporaneously with the delivery of this deed, Grantor has conveyed or is conveying the Land and appurtenant rights and easements to another party, subject to the terms and conditions of a Ground Lease dated \_\_\_\_\_, filed or to be filed for record in the Santa Clara County records. Grantor is assigning it's rights as lessee under the Ground Lease to Grantee by a separate instrument dated of even date herewith.

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BNP LEASING CORPORATION

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

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ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

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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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase II - Land) incorporated by reference into the Lease Agreement (Phase II - Land) referenced in the last item of the list below), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year [current year], a lien not yet due or payable.
2. General and Special Taxes and Assessments, if any, for the fiscal year 1998-99.

Assessment No.: 110-32-004  
Code No.: 09-059  
First Installment: \$34,099.75 Paid  
Second Installment: \$34,099.75 Payable, but not yet due  
Assessed Valuation of  
Personal Property: None  
Homeowners Exemption: None

3. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California, resulting from changes of ownership or completion of construction on or after the date of this policy.
4. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Pacific Gas and Electric Company,  
a California corporation  
For: A Line of Poles  
Recorded: February 6, 1951, in Book 2147 at Page 279,  
Official Records  
Affects: A strip of land 5 feet in width over the  
portion of Said Land lying within the North  
1/2 of Lot 6, Crossman Sub. No. 2

5. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Slope Easement

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Recorded: October 9, 1964, in Book 6695 at Page 430,  
Official Records  
Affects: The Southeasterly 18 feet of Said Land

6. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: City of Sunnyvale, A Municipal Corporation  
For: Public Utilities  
Recorded: October 9, 1964, in Book 6695 at Page 450,  
Official Records  
Affects: The Southeasterly 7 feet of Said Land

7. Covenants, Conditions and Restrictions in the Declaration of Restrictions; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions or Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Executed By: Moffett Park Associates, A Partnership  
Recorded: December 23, 1971 in Book 9640 at Page 443 of  
Official Records

An Assignment and Assumption

Executed by: Moffett Park Associates, A Partnership  
To: The Prudential Insurance Company of America,  
a New Jersey Corporation  
Recorded: February 8, 1977 in Book C583 at Page 685 of  
Official Records

8. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Moffett Park Associates, A Partnership  
For: Private and Public Utility Purposes  
Recorded: November 29, 1974, in Book B190, page 398, as  
Instrument No. 4903681, Official Records  
Affects: The Northerly 5 feet of Said Land

9. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of: Paul Enterprises, A Partnership, and  
Northwest Poultry and Dairy Products Co., an  
Oregon Corporation  
For: 5 Foot Wide Storm Drain Easement  
Recorded: June 17, 1975, in Book B467, page 167, as  
Instrument No. 5032895, Official Records  
Affects: As follows:

PARCEL ONE

A 5.00 Foot Wide Storm Drain easement 2.50 feet on each side of the center line of an existing Storm Drain Pipe, said center line of said pipe being described as follows:

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps at Page 20, records of Santa Clara County,

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Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing pipe and the True Point of Beginning of this description;

Thence South 75 deg 07' 58" East parallel with and istant 2.50 feet Northerly measured at right angles, from the Southerly line of siad Parcel "A" and along said existing pipe, a distance of 407.55 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly measured at right angles from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

PARCEL TWO

A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwestern corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing Storm Drain Pipe described in Parcel 1 above;

Thence South 75 deg 07' 58" East along the center line of said pipe described in said Parcel 1, a distance of 35.00 feet to the Point of Intersection of the center line of an existing 12 inch Storm Drain Pipe and the True Point of Beginning of this description;

Thence North 14 deg 51' 33" East along the center line of said existing 12 inch pipe, a distance of 87.00 feet;

Thence North 75 deg 07' 58" West and continuing along a center line of an existing 6 inch Storm Drain Pipe, a distance of 35.00 feet to a point on the Westerly line of said Parcel "A".

The sidelines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the Northerly side of the pipe described in Parcel 1 above to the Westerly line of said Parcel "A".

10. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:	The Prudential Insurance Company of America, a New Jersey Corporation
For:	A 5 foot wide Storm Drain Easement
Recorded:	June 17, 1975 in Book B467, page 173, as Instrument No. 5032896 Official Records
Affects:	As follows:

PARCEL ONE

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A 5.00 foot wide Storm Drain Easement 2.50 feet on each side of the center line of an existing 12 inch Storm Drain Pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps at Page 20, records of Santa Clara County,

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A", a distance of 2.50 feet to the Point of Intersection of said center line of said existing storm drain pipe running along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of Parcel "A" a distance of 156.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True Point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe a distance of 15.00 feet.

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL TWO

A 5.00 foot wide storm drain easement, 2.50 feet on each side of the center line of an existing 12 inch storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southeast corner of Parcel "A" a said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

Thence North 14 deg 52' 02" East along the Easterly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing storm drain pipe running thence along the Southerly line of said Parcel "A";

Thence North 75 deg 07' 58" West along the center line of last said pipe running along the Southerly line of said Parcel "A", a distance of 289.00 feet to the Point of Intersection of the center line of an existing 12 inch storm drain pipe and the True point of Beginning of this description;

Thence North 14 deg 52' 02" East along the center line of said existing 12 inch pipe, a distance of 15.00 feet.

The side lines of said 5.00 foot easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot Right-of-Way from the said True Point of Beginning of this description to point 2.50 feet North of an existing storm drain inlet structure.

PARCEL THREE

A 5.00 foot storm drain easement, 2.50 feet on each side of the center line of an existing storm drain pipe, said center line of said pipe being described as follows:

Commencing at the Southwest corner of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974 in Book 345 of Maps, at Page 20, records of Santa Clara County;

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Thence North 14 deg 51' 33" East along the Westerly line of said Parcel "A" a distance of 2.50 feet to the Point of Intersection of the center line of the existing pipe;

Thence South 75 deg 07'58" East parallel with and distant 2.50 feet Northerly, measured at right angles, from the Southerly line of said Parcel "A" and along said existing pipe, a distance of 161.05 feet and the True Point of Beginning of this description;

Thence again South 75 deg k07' 58" East continuing along said existing pipe a distance of 246.50 feet;

Thence North 14 deg 52' 02" East parallel with and distant 42.50 feet Westerly, measured at right angles, from the Easterly line of said Parcel "A" and along said existing pipe, a distance of 215 feet to an existing catch basin;

Thence South 75 deg 07' 58" East on a line that is perpendicular to the Easterly line of said Parcel "A" and along said existing pipe, a distance of 42.50 feet to a point on the Easterly line of said Parcel "A".

The side lines of said 5.00 Easement as described above shall be prolonged or shortened so as to form a continuous 5.00 foot right of way from said Westerly line of said Parcel "A" to said Easterly line of said Parcel "A".

11. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In Favor Of:	The Prudential Insurance Company of America, new Jersey Corporation
For:	A pedestrian and motor vehicle Right-of-Way for the purposes of Ingress and Egress from motor vehicle parking spaces
Recorded:	June 17, 1975, in Book B467, page 178, as Instrument No. 5032897 Official Records
Affects:	As follows:

An 11 foot strip of land over a portion of Parcel "A" as said Parcel "A" is shown on that certain Parcel Map filed for record on August 28, 1974, in Book 345 of Maps, at Page 20, records of Santa Clara County and being more particularly described as follows:

Commencing at the Southeast corner of said Parcel "A", said Southeast corner also being a point on the Westerly line of Crossman Road (90.00 feet wide);

Thence North 75 deg 7' 58" West along the Southerly line of said Parcel "A", a distance of 40.00 feet to the True Point of Beginning of this description;

Thence continuing along said Southerly line North 75 deg 07' 58" West, a distance of 322.50 feet;

Thence North 14 deg 52' 02" East, a distance of 11.00 feet;

Thence South 75 deg 07' 58" East parallel with and distant Northerly 11.00 feet measured at right angles from said Southerly line of said Parcel "A", a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 11.00 feet to the True Point of Beginning.

12. Any rights, Interests or Claims which may exist or arise by reason of the following facts shown by a survey made by Kier & Wright, dated March 18, 1999, as Job No. 96214-2 and inspections of said land:

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(A) the fact that the landscaping area, patio and walkways located along the northwesterly boundary is for the common use of the adjoining property lying to the northwest of said land.

(B) the fact that the driveway located near the most northerly corner along the northeasterly boundary is for the common use of the adjoining property lying to the northeast of said land.

(C) the fact that the fence along the northwesterly boundary and across the most northerly corner encroaches onto the adjoining properties lying to the northwest and northeast of said land.

(D) the fact that the fence located near the southwesterly corner on the southwesterly boundary encroaches onto the adjoining property lying to the southwest of said land.

(E) the fact that the concrete curbs located along the northeasterly and southeasterly boundaries encroach onto the 7.00 foot Public Utility easement (6695-OR-450); onto the 18.00 foot Slope easement (6695-OR-430); onto the 5.00 foot Storm Drain easement (9790-OR-380, B467-OR-167 and B467-OR-173); and onto the 5.00 foot Public Utility easement (B190-OR-398).

13. Lease Agreement (Phase II - Land) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and Lease Agreement (Phase II - Improvements) dated May 3, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

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EXHIBIT C

BILL OF SALE AND ASSIGNMENT

Reference is made to: (1) that certain Purchase Agreement (Phase II - Improvements) between BNP Leasing Corporation ("ASSIGNOR") and Network Appliance, Inc., dated as of May 3, 1999, (the "PURCHASE AGREEMENT") and (2) that certain Lease Agreement (Phase II Improvements) between Assignor, as landlord, and Network Appliance, Inc., as tenant, dated as of May 3, 1999 (the "IMPROVEMENTS 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 (Phase II - Improvements) incorporated by

reference into both the Purchase Agreement and Improvements 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 Improvements Lease [DRAFTING NOTE: THE FOLLOWING WILL BE ADDED ONLY IF APPLICABLE BECAUSE OF THE SIMULTANEOUS DELIVERY OF A GRANT DEED IN THE FORM OF EXHIBIT B-3: and the Ground Lease dated \_\_\_\_\_, between \_\_\_\_\_, as lessor, and Assignor, as lessee, filed for record on in \_\_\_\_\_ of Santa Clara County records (the "GROUND 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 Improvements Lease or otherwise acquired by Assignor, at the time of the execution and delivery of the Improvements Lease and Purchase Agreement or thereafter, by reason of Assignor's status as the owner of any interest in the Property: (i) 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 Improvements Lease and Purchase Agreement or thereafter arising, under Permitted Encumbrances or Development Documents (both as defined in the Improvements 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 Improvements covered by the Improvements 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 Improvements 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 Improvements Lease which may not presently be known, (2) provisions in the Improvements Lease that establish the right of Assignor to recover any accrued unpaid rent under the Improvements 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 Improvements 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 Improvements 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

EXHIBIT - PAGE 1

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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.

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 \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT C - PAGE 2

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STATE OF \_\_\_\_\_ )  
  )       SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  )       SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

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ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE OTHER 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 DOCUMENT 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: All that certain Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE

All of Parcel "A" as said Parcel is shown upon that certain Parcel Map entitled "For: Moffett Park Association, being a Redivision of Parcel "B" of Parcel Map recorded in Book 292 of Maps in Page 41", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 28, 1974 in Book 345 of Map, at Page 20.

PARCEL TWO

An Easement for pedestrian and motor vehicle Right-of-Way for the purpose of ingress over a portion of land more particularly described as follows:

A 15 foot strip of land over a portion of "Parcel "A", as said Parcel "A" is shown on that certain Parcel Map filed for record on October 25, 1966 in Book 216 of Maps, at Page 2, records of Santa Clara County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel "A", said Northeast corner also being a point on the center line of Crossman Road (90.00 feet wide); thence North 75 deg 07' 58" West along the Northerly line of said parcel "A", a distance of 85.00 feet to the True Point of Beginning of this description; thence continuing along said Northerly line North 75 deg 07' 58" West, a distance of 322.50 feet; thence South 14 deg 52' 02" West, a distance of 15.00 feet; thence South 75 deg 07' 58" East parallel with and distance 15.00 feet Southerly measured at right angles from the Northerly line of said Parcel "A" a distance of 322.50 feet; thence North 14 deg 52' 02" East, a distance of 15.00 feet to the True Point of Beginning.

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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 (Phase II - Improvements) incorporated by reference into the Purchase Agreement between BNPLC and Network Appliance, Inc. dated May 3, 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 \_\_\_\_\_, \_\_\_\_.

[NAI or the Applicable Purchaser]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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
----	-----	-----
-----	-----	-----

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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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CORPORATE RESOLUTIONS OF  
BNP LEASING CORPORATION

WHEREAS, pursuant to that certain Purchase Agreement (Phase II - Improvements) (herein called the "Purchase Agreement") dated as of May 3, 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.

EXHIBIT E - PAGE 2

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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: \_\_\_\_\_

Exhibit K

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 (Phase II - Improvements) dated as of May 3, 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 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 (Phase II - Improvements). 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 Improvements Lease to terminate as of the Base Rent Commencement Date pursuant to subparagraph 1(b) of the Improvements Lease.

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Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[cc all Participants]

=====

CONSTRUCTION MANAGEMENT AGREEMENT  
(PHASE III - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION  
("BNPLC")

AND

NETWORK APPLIANCE, INC.  
("NAI")

JUNE 16, 1999  
(SUNNYVALE, CALIFORNIA)

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#### EXHIBITS

Exhibit A Legal Description

Exhibit B Description of the Construction Project  
(With Site Plan Attached)

Exhibit C Form of Contractor Estoppel



- Exhibit D Form of Design Professional Estoppel
- Exhibit E Notice Requesting Advance to Cover Insurance Deductible
- Exhibit F Construction Advance Request Form
- Exhibit G Notice of Voluntary NAI Funding Commitment
- Exhibit H Preemptive Notice by NAI
- Exhibit I Notice of Termination by NAI

(2)

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CONSTRUCTION MANAGEMENT AGREEMENT  
(PHASE III - IMPROVEMENTS)

This CONSTRUCTION MANAGEMENT AGREEMENT (Phase III - IMPROVEMENTS) (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 June 16, 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 (Phase III - Improvements) executed by BNPLC and NAI contemporaneously with this Agreement. By this reference, the Common Definitions and Provisions Agreement (Phase III - Improvements) is incorporated into and made a part of this Agreement for all purposes.)

RECITALS

Pursuant to the Lease Agreement (Phase III - Improvements) executed by BNPLC and NAI contemporaneously the this Agreement (the "IMPROVEMENTS LEASE"), which covers the Improvements on the Land described in Exhibit A, BNPLC is leasing the Improvements and any appurtenances thereto to NAI.

In anticipation of the construction of new or additional Improvements for NAI's use pursuant to the Improvements Lease, BNPLC and NAI have agreed upon the terms and conditions upon which BNPLC is willing to authorize NAI to arrange and manage such construction and upon which BNPLC is willing to provide funds for such construction, and by this Agreement BNPLC and NAI desire to evidence such agreement.

CONSENT AND AUTHORIZATION

Subject to the terms and conditions set forth in this Agreement and in the Improvements Lease, BNPLC does hereby grant its consent and authorization to NAI for the construction by NAI of the Construction Project on the Land and for the management by NAI of such construction; provided, however, all rights of NAI against BNPLC hereunder are expressly made subject and subordinate to the Permitted Encumbrances and to any other claims or encumbrances affecting the Land or the Property that may be asserted by third parties and that do not constitute Liens Removable by BNPLC.

GENERAL TERMS AND CONDITIONS

(3)

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1 CONSTRUCTION BY NAI.

(A) The Construction Project.

(1) Construction Approvals by BNPLC.

(a) Preconstruction Approvals by BNPLC. NAI submitted and obtained BNPLC's approval of the site plan and descriptions of the Construction Project referenced in Exhibit B. Also set forth in Exhibit B is a general description of the Construction Project. The Construction Project, as constructed by NAI pursuant to this Agreement, and all construction contracts and other agreements executed or adopted by NAI in connection therewith, shall be not materially inconsistent with the plans or other items referenced in Exhibit B, except to the extent otherwise provided by any Scope Change (as defined below) approved by BNPLC and except as otherwise provided in subparagraph 6(d) of the Improvements Lease if BNPLC should make a Landlord's Election to Continue Construction after any termination of this Agreement.

(b) Definition of Scope Change. As used herein, "SCOPE CHANGE" means a change to the Construction Project that, if implemented, will make the quality, function or capacity of the Improvements "materially different" (as defined below in this subparagraph) than as described or inferred by site plan, plans and renderings referenced in Exhibit B. The term "SCOPE CHANGE" is not intended to include the mere refinement, correction or detailing of the site plan, plans or renderings submitted to BNPLC by NAI. As used in this subparagraph, a "material difference" means a difference that could reasonably be expected to (a) after completion of the Construction Project and the funding of all Construction Advances required in connection therewith, significantly reduce any excess of the market value of the Property over Stipulated Loss Value or significantly increase any excess of Stipulated Loss Value over the market value of the Property, (b) change the general character of the Improvements from that needed to accommodate the uses permitted by subparagraph 2(a) of the Improvements Lease, or (c) result in Projected Cost Overruns (as defined below).

(c) Approval of Scope Changes. Before making a Scope Change, NAI shall provide to BNPLC a reasonably detailed written description of the Scope Change, a revised construction budget for the Construction Project and a copy of any changes to the drawings, plans and specifications for the Improvements required in connection therewith, all of which must be approved in writing by BNPLC (or by any inspecting architect appointed by BNPLC from time to time) before the Scope Change is implemented. BNPLC's approval shall not in any event constitute a waiver of subparagraph 1(A) (3) or of any other provision of this Agreement or the Improvements Lease.

(2) NAI's Right to Control and Responsibility for Construction. Subject to the terms and conditions set forth in this Agreement and in the Improvements Lease, and prior to any termination of this Agreement as provided in subparagraphs 5(D) and 5(E), NAI shall have the sole right to control and the sole responsibility for the design and construction of the Construction Project, including the means, methods, sequences and procedures implemented to accomplish such design and construction. Although title to all Improvements will pass directly to BNPLC (as more particularly provided in Paragraph 7 of the Improvements Lease), 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 this Agreement and in Paragraph 6 of the Improvements Lease. Without limiting the foregoing, NAI acknowledges and agrees that:

(a) Performance of the Work. Except as provided in subparagraphs 5(C) and 5(F) NAI must, using its best skill and judgment and in an expeditious and economical manner not inconsistent with the interests of BNPLC, perform or cause to be performed all work required, and will provide or cause to be provided all supplies and materials

required, to design and complete construction of the Construction Project (collectively "WORK"). The Work will include obtaining all necessary building permits and other governmental approvals required in connection with the design and construction of the Construction Project, including the design and construction of Normal Tenant Improvements (as defined below), or required in connection with the

use and occupancy thereof (e.g., final certificates of occupancy). The Work will also include any repairs or restoration required because of damage to Improvements by fire or other casualty prior to the Base Rent Commencement Date (a "PRE-COMMENCEMENT CASUALTY"); however, the cost of any such repairs or restoration will be subject to reimbursement not only through Construction Advances made on and subject to the terms and conditions of this Agreement, but also through the application of Escrowed Proceeds as provided in the Improvements Lease. NAI will carefully schedule and supervise all Work, will check all materials and services used in connection with all Work and will keep full and detailed accounts as may be necessary to document expenditures made or expenses incurred for the Work. Subject to delays beyond the reasonable control of NAI, NAI shall cause all Work to be completed on or before the first Business Day of October, 2000.

(b) Third Party Contracts.

1) NAI shall not enter into any construction contract or other agreement with a third party concerning the Work or the Construction Project (a "THIRD PARTY CONTRACT") in the name of BNPLC or otherwise purport to bind BNPLC to any obligation to any third party.

2) In any Third Party Contract between NAI and any of its Affiliates (an "AFFILIATE'S CONTRACT") NAI shall reserve the right to terminate the contract at any time, without cause, and without subjecting NAI to liability for any Termination Fee (as defined below). Further, NAI shall not enter into any Affiliate's Contract that obligates NAI to pay more than would be required under an arms-length contract or that would require NAI to pay its Affiliate any amount in excess of the sum of actual, out-of-pocket direct costs and internal labor costs incurred by the Affiliate to perform such contract.

3) As necessary to limit the total Reimbursable Third Party Contract Termination Fees (as defined below) for which BNPLC may be required to provide Construction Advances to no more than \$4,000,000 (the "MAXIMUM PERMITTED TERMINATION FEES"), NAI shall reserve in every significant Third Party Contract an absolute express right to terminate such contract at any time, without cause. Although any Third Party Contract (other than an Affiliate's Contract) may require NAI to pay a specified Termination Fee in the event of such a termination, the specified Termination Fee must not exceed the difference computed by subtracting (I) the aggregate of all Termination Fees that have been paid or would become payable by NAI if NAI terminated all other Third Party Contracts, from (II) the Maximum Permitted Termination Fees. Without limiting the foregoing, NAI will manage and administer all Third Party Contracts as necessary to ensure that, at any point in time, NAI can terminate all such contracts without becoming liable for Termination Fees in excess of the Maximum Permitted Termination Fees.

4) As used in this Agreement, "TERMINATION FEE" means any amount, however denominated, for which NAI will be obligated under a Third Party Contract as a result of any election or decision by NAI to terminate such Third Party Contract, including demobilization costs; provided, however, amounts payable for Prior Work [as defined below] as of the date any such termination are not intended to be characterized as Termination Fees for purposes of this Agreement. If, as described in the preceding paragraph, NAI reserves an absolute express right in a Third Party Contract to terminate such contract at any time, without cause, for a specified dollar amount, such dollar amount will constitute a Termination Fee. If no such right is reserved in a Third Party Contract, the Termination Fee applicable

to such contract for purposes of this Agreement will be the amount of damages that NAI could be required to pay (in addition

to payments required for Prior Work) upon an anticipatory repudiation of the Third Party Contract by NAI.

(c) Third Party Estoppels. If requested by BNPLC with respect to any material general construction contract between NAI and a third party contractor for any part of the Work, NAI shall cause the contractor to execute and deliver to BNPLC an estoppel letter substantially in the form of Exhibit C. Similarly, if requested by BNPLC with respect to any material architectural or engineering contract between NAI and a third party professional or firm for any part of the Work, NAI shall cause the professional or firm thereunder to execute and deliver to BNPLC an estoppel letter substantially in the form of Exhibit D.

(d) Adequacy of Drawings, Specifications and Budgets. BNPLC has made and will make no representations as to the adequacy of any budgets, site plans, renderings, plans, drawings or specifications for the Construction Project, and no modification of any such budgets, site plans, renderings, plans, drawings or specifications that may be required from time to time will entitle NAI to any adjustment in the Construction Allowance.

(e) Existing Condition of the Land and Improvements. NAI is familiar with the conditions of the Land and any existing Improvements on the Land. NAI shall have no claim for damages against BNPLC or for an increase in the Construction Allowance by reason of any condition (concealed or otherwise) of or affecting the Land or Improvements.

(f) Correction of Defective Work. NAI will promptly correct all Work performed prior to any termination of this Agreement that does not comply with the requirements of this Agreement or that is otherwise defective (in either case, "DEFECTIVE WORK") at NAI's sole expense. If NAI fails to correct any Defective Work or fails to carry out Work in accordance with this Agreement, BNPLC may (but will not be required to) order NAI to stop all Work until the cause for such failure has been eliminated.

(g) Clean Up. Upon the completion of all Work, NAI will remove all waste material and rubbish from and about the Land, as well as all tools, construction equipment, machinery and surplus materials. NAI will keep the Land and the Improvements thereon in a reasonably safe and sightly condition as Work progresses.

(h) No Damage for Delays. NAI shall have no claim for damages against BNPLC or for an increase in the Construction Allowance by reason of any delay in the performance of any Work.

(i) No Fee For Construction Management. NAI shall have no claim for any fee or other compensation or for any reimbursement of internal administrative or overhead expenses of NAI under this Agreement, it being understood that NAI is executing this Agreement in consideration of the rights expressly granted to it herein and in the Improvements Lease.

(3) Quality of Work. NAI shall cause the Work undertaken and administered by it pursuant to this Agreement to be performed (a) in a safe and good and workmanlike manner, (b) in accordance with Applicable Laws, (c) in compliance with (i) the provisions of this Agreement and the Improvements Lease, (ii) the material provisions of the Permitted Encumbrances and (iii) the material provisions of the Development Documents, and (d) in a manner that, taken as a whole, enhances the value of the Property commensurate with any Construction Advances and Carrying Costs added to the Outstanding Construction Allowance in connection therewith.

(B) Completion Notice. NAI shall provide a notice (a "COMPLETION NOTICE") to BNPLC promptly after construction of the Construction Project is substantially complete, advising BNPLC of the substantial completion.

## 2 CONSTRUCTION ADVANCES.

(A) Costs Subject to Reimbursement Through Construction Advances. Subject to the terms and conditions set forth herein, NAI shall be entitled to a

Construction Allowance, from which BNPLC will make Construction Advances on Advance Dates from time to time to pay or reimburse NAI for the following costs ("REIMBURSABLE CONSTRUCTION-PERIOD COSTS") to the extent the following costs are not already included in Transaction Expenses paid by BNPLC from the Initial Funding Advance:

- (1) the actual costs and expenses incurred or paid by NAI for the preparation, negotiation and execution of this Agreement and the other Operative Documents;
- (2) the cost of title insurance or other out of pocket expenses described in subparagraph 5(c)(iii) of the Improvements Lease or of the Other Lease Agreement to the extent paid by NAI prior to the Base Rent Commencement Date;
- (3) Commitment Fees;
- (4) costs of the Work, including not only hard costs incurred for the new Improvements described in Exhibit B, but also the following costs to the extent reasonably incurred in connection with the Construction Project:
  - o 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,
  - o site preparation costs, and
  - o costs of offsite and other public improvements required as conditions of governmental approvals for the Construction Project;
- (5) the cost of maintaining insurance required by (and consistent with the requirements of) the Improvements Lease and the Other Lease Agreement prior to the Base Rent Commencement Date, and costs of repairing any damage to the Improvements caused by a Pre-commencement Casualty to the extent such costs are not covered by Escrowed Proceeds made available to NAI as provided in the Improvements Lease and the Other Lease Agreement prior to the Base Rent Commencement Date ("REIMBURSABLE RESTORATION COSTS");
- (6) Impositions that accrue or become due under the Improvements Lease or the Other Lease Agreement prior to the Base Rent Commencement Date; and
- (7) except as otherwise provided in subparagraph 2(B) below, Termination Fees payable by NAI in connection with any Third Party Contract between NAI and a Person not an Affiliate of NAI because of any election by NAI to cancel or terminate such contract during a CMA Suspension Period (as defined below).

In addition to other Construction Advances required by this subparagraph 2(A), but subject to the other terms and conditions hereof, a Construction Advance will be provided by BNPLC on the Base Rent Commencement Date in the form of additional Escrowed Proceeds (to be held and applied like other Escrowed Proceeds pursuant to the Improvements Lease) equal to any reduction in property insurance proceeds paid or payable with respect to the Property because of a property insurance deductible permitted by Exhibit B attached to the Improvements Lease, if:

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(I) damage to the Improvements has been caused by a Pre-commencement Casualty and, despite the exercise of reasonable diligence by NAI, NAI has been unable to complete the repair of such damage sufficiently in advance of the Base Rent Commencement Date to allow the reimbursement to NAI hereunder of all Reimbursable Restoration Costs attributable to such property insurance deductible; and

(II) at least five Business Days before the Base Rent Commencement Date, NAI has requested such additional Construction Advance by a notice in the form attached hereto as Exhibit E.

(B) Exclusions From Reimbursable Construction-Period Costs. Notwithstanding anything herein to the contrary, BNPLC shall not be required to make any Construction Advance to pay or to reimburse or compensate NAI for any of the following or any Absolute NAI Construction Obligations required because of or in connection with or arising out of any of the following:

(1) Environmental Losses;

(2) Losses that would not have been incurred but for any act or omission of NAI or of any NAI's contractors or subcontractors, which act or omission is contrary in any material respect to the other terms and conditions of this Agreement or to the terms and conditions of the other Operative Documents, during the period that this Agreement remains in force or during any other period that NAI remains in possession or control of the Construction Project pursuant to the Improvements Lease or otherwise;

(3) Losses that would not have been incurred but for any fraud, misapplication of Construction Advances or other funds, 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;

(4) Losses that would not have been incurred but for any bankruptcy proceeding involving NAI; and

(5) costs of Normal Tenant Improvements (as defined below), except to the extent that BNPLC agrees to allow the reimbursement of such costs from the Construction Allowance as provided in subparagraph 3(B).

For purposes of this subparagraph, "acts and omissions" described in clause (2) preceding shall include (i) any decision by NAI to make any Scope Change without the prior approval of BNPLC, (ii) any failure of NAI to maintain insurance required by the Improvements Lease, the Other Lease Agreement or this Agreement, (iii) any decision of NAI not to continue or complete Work 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), and (v) any other material breach by NAI of this Agreement.

(C) Conditions to NAI's Right to Receive Construction Advances. BNPLC's obligation to provide Construction Advances to NAI from time to time under this Agreement shall be subject to the following terms and conditions, all of which terms and conditions are intended for the sole benefit of BNPLC, and none of which terms and conditions shall limit in any way the right of BNPLC to treat costs or expenditures incurred or paid by or on behalf of it as Construction Advances pursuant to subparagraph 6(d) of the Improvements Lease:

(1) Construction Advance Requests. NAI must make a written request (a "CONSTRUCTION ADVANCE REQUEST") for any Construction Advance, specifying the amount of such advance, at least five Business Days prior to the Advance Date upon which the advance is to be paid. To be effective for purposes of this Agreement, a Construction Advance Request

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must be in substantially the form attached as Exhibit F. NAI shall not submit more than one Construction Advance Request in any calendar month.

(2) Amount of the Advances.

(a) Limit Dependent Upon the Maximum Construction Allowance. NAI shall not be entitled to require any Construction Advance that would cause the Funded Construction Allowance to exceed the Maximum Construction Allowance.

(b) Limit Dependent Upon Costs Previously Incurred by NAI. NAI shall not be entitled to require any Construction Advance - other than a final additional Construction Advance required on the Base Rent Commencement Date because of a permitted property insurance deductible related to a Pre-commencement Casualty as described in subparagraph

2(A) above - that would cause the aggregate of all Construction Advances to exceed the sum of:

(i) Reimbursable Construction-Period Costs that NAI has, to the reasonable satisfaction of BNPLC, substantiated as having been paid or incurred by NAI other than for Work (e.g., Impositions), plus

(ii) the Reimbursable Construction-Period Costs that NAI has, to the reasonable satisfaction of BNPLC, substantiated as having been paid or incurred for Prior Work as of the date of the Construction Advance Request requesting the advance.

As used in this Agreement, "PRIOR WORK" means all labor and services actually performed, and all materials actually delivered to the construction site, in accordance with this Agreement prior to the date in question as part of the Work, and "FUTURE WORK" means labor and services performed or to be performed, and materials delivered or to be delivered, after the date in question as part of the Work. For purposes of this Agreement, NAI and BNPLC intend to allocate Reimbursable Construction-Period Costs between Prior Work and Future Work in a manner that is generally consistent with the allocations expressed or implied in construction-related contracts negotiated in good faith between NAI and third parties not affiliated with NAI (e.g., a general contractor); however, in order to verify the amount of Reimbursable Construction-Period Costs actually paid or incurred by NAI and the proper allocation thereof between Prior Work and Future Work, BNPLC shall be entitled (but not required) to: (x) request, receive and review copies of such agreements between NAI and third parties and of draw requests, budgets or other supporting documents provided to NAI in connection with or pursuant to such agreements as evidence of the allocations expressed or implied therein, (y) from time to time engage one or more independent inspecting architects, certified public accountants or other appropriate professional consultants and, absent manifest error, rely without further investigation upon their reports and recommendations, and (z) without waiving BNPLC's right to challenge or verify allocations required with respect to future Construction Advances, rely without investigation upon the accuracy of NAI's own Construction Advance Requests.

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(c) Limit During CMA Suspension Period. Without limiting the other terms and conditions imposed by this Agreement for the benefit of BNPLC with respect all Construction Advances, BNPLC shall have no obligation to make any Construction Advance during any CMA Suspension Period (as defined below) that would cause the aggregate of all Construction Advances to exceed the sum of:

(i) Reimbursable Construction-Period Costs that NAI has, to the reasonable satisfaction of BNPLC, substantiated as having been paid or incurred by NAI other than for Work (e.g., Impositions), plus

(ii) the Reimbursable Construction-Period Costs that NAI has, to the reasonable satisfaction of BNPLC, substantiated as having been paid or incurred for Prior Work (as defined below) as of the date the CMA Suspension Period commenced.

For purposes of computing the limits described in this subparagraph 2(C)(2)(C), Reimbursable Construction-Period Costs "other than for Work" shall include Termination Fees that qualify as Reimbursable Construction-Period Costs pursuant to subparagraph 2(A)(7) ("REIMBURSABLE THIRD PARTY CONTRACT TERMINATION FEES"). NAI acknowledges, however, that Termination Fees will not exceed the Maximum Permitted Termination Fees, so long as NAI complies with the requirements of subparagraph 1(A)(2)(b). That is, but for an "act or omission of NAI" as such phrase is used in subparagraph 2(B)(2), the aggregate of all Termination Fees shall not exceed the Maximum Permitted Termination Fees. Accordingly, if the aggregate of any Termination Fees do exceed the Maximum Permitted Termination Fees, the excess shall not qualify as Reimbursable Third Party Contract

Termination Fees.

(d) Restrictions Imposed for Administrative Convenience. NAI shall not request any Construction Advance (other than the final Construction Advance NAI intends to request) for an amount less than \$500,000.

(3) No Advances After Certain Dates. BNPLC shall have no obligation to make any Construction Advance (x) after the Base Rent Commencement Date, (y) on or after the Designated Sale Date, or (z) on or after the date of any termination of this Agreement pursuant to subparagraph 5(D) or subparagraph 5(E).

(D) Breakage Costs for Construction Advances Requested But Not Taken. If NAI requests but thereafter declines to accept any Construction Advance, or if NAI requests a Construction Advance that it is not permitted to take because of its failure to satisfy any of the conditions specified in subparagraph 2(c), NAI shall pay upon demand any resulting Breakage Costs.

(E) No Third Party Beneficiaries. No contractor or other third party shall be entitled to require BNPLC to make advances as a third party beneficiary of this Agreement or of the Improvements Lease or otherwise.

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(F) No Waiver. No funding of Construction Advances and no failure of BNPLC to object to any Work proposed or performed by or for NAI shall constitute a waiver by BNPLC of the requirements contained in this Agreement.

(G) Funding by Participants. NAI acknowledges that, as provided in the Participation Agreement, each Participant has agreed to pay to BNPLC a Percentage (under and as defined in the Participation Agreement) of the Construction Advances required by this Agreement. NAI also acknowledges that BNPLC will not be responsible to NAI for any failure of any Participant to provide advances required by the Participation Agreement. So long as any Participant fails to provide its Percentage of any requested Construction Advance, then the amount of the Construction Advance for which BNPLC shall be obligated hereunder shall be reduced by the amount that the Participant should have provided, but failed to provide, in accordance with the Participation Agreement. No such reduction, however, of BNPLC's obligation hereunder shall release or impair the obligation of the Participant directly to NAI, created by NAI's status as a third party beneficiary of the Participant's commitment under the Participation Agreement to provide the Participant's Percentage of Construction Advances. Further, any such failure shall excuse BNPLC's obligation to provide the requested Construction Advance only to the extent of the funds that the applicable Participant or Participants should have advanced (but did not advance) to BNPLC, and in the event of any such failure:

(1) BNPLC will immediately notify NAI, but BNPLC will not in any event be liable to NAI for BNPLC's failure to do so.

(2) BNPLC will to the extent possible postpone reductions of Construction Advances because of the failure by any one or more Participants ("DEFAULTING PARTICIPANTS") to make required advances under the Participation Agreement (a "PARTICIPANT DEFAULT") by adjusting (and readjusting from time to time, as required) the funding "Percentages" of other Participants, and by requesting the other Participants to make advances to BNPLC on the basis of such adjusted Percentages, in each case as provided in the Participation Agreement; however, so long as a Participant Default continues, no Construction Advance shall be required that would cause the Outstanding Construction Allowance to exceed (1) the Maximum Construction Allowance available under this Agreement, less (2) all amounts that should have been, but because of a continuing Participant Default have not been, advanced by any one or more of the Participants to BNPLC under the Participation Agreement with respect to Construction Advances.

(3) Further, after a Participant Default, and so long as no CMA Termination



Event (as defined below) has occurred and no Event of Default has occurred and is continuing, BNPLC shall do the following as reasonably requested by NAI, provided that nothing in this provision shall require BNPLC to take any action that would violate Applicable Laws, that would constitute a breach of BNPLC's obligations under the Participation Agreement, or that would require BNPLC to waive any rights or remedies it has under this Agreement or other Operative Documents:

(a) BNPLC shall promptly make a written demand upon the Defaulting Participants for the cure of the Participant Default, and

(b) BNPLC shall not unreasonably withhold its approval for the substitution of any new participant proposed by NAI for Defaulting Participants, if (A) the proposed substitution does not require BNPLC to waive rights against the Defaulting Participants, (B) the new participant will agree (by executing supplement to the Participation Agreement as provided in the Participation Agreement) to provide funds to replace the payments that would otherwise be required of the Defaulting Participants with respect to future Construction Advances, (C) the new participant (or NAI) provides the funds (if any) needed to terminate the Defaulting Participants' rights to receive payments of "Net Cash Flow" (as defined in the Participation Agreement) that BNPLC will be required to pay the new participant under the terms of the substitution reasonably proposed by NAI, (D) the new participant (or NAI) provides and agrees in writing to provide funds needed to reimburse BNPLC for any and all Losses incurred by BNPLC in connection with or because of the substitution of the new participant for the Defaulting Participants, including any cost of defending and paying any claim asserted by Defaulting Participants because of the

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substitution (but not including any liability of BNPLC to the Defaulting Participants for damages caused by BNPLC's bad faith or gross negligence in the performance of BNPLC's obligations to the Defaulting Participants), (E) the obligations of BNPLC to the new participant per dollar of the new participant's "investment" (it being understood that such investment will be computed in a manner consistent with the examples set forth in Exhibit A to the Participation Agreement, but net of reimbursements to BNPLC under clause (D) preceding) shall not exceed the obligations per dollar of investment by the Defaulting Participants that BNPLC would have had to the Defaulting Participants if there had been no Participant Default, and (F) 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).

### 3 NORMAL TENANT IMPROVEMENTS.

(A) Definition of Normal Tenant Improvements. As used herein, "NORMAL TENANT IMPROVEMENTS" shall mean any "below-ceiling" interior finishes and special fixtures or equipment to be constructed for NAI within the Improvements as part of the Construction Project, BUT WILL NOT INCLUDE (1) costs of structural elements of the Construction Project, or (2) equipment that would be necessary for the use of the Improvements by any lessee (e.g., HVAC equipment, elevators, standard electrical wiring).

(B) Advances for Normal Tenant Improvements. Nothing herein shall be construed as a commitment or an agreement by BNPLC to pay for Normal Tenant Improvements, other than Normal Tenant Improvements contemplated in the description of the Construction Project set forth in Exhibit B and the attachments thereto. BNPLC does, however, acknowledge that incorporated into the total Construction Allowance is an amount for contingencies (e.g., cost overruns related to structural components of Improvements, HVAC equipment, elevators, etc.), for which BNPLC shall be obligated to provide Construction Advances on and subject to the terms and conditions set forth in Paragraph 2. To the extent, if any, that NAI does not exhaust the Construction Allowance by using Construction Advances for other costs (e.g., the actual costs incurred for structural components of Improvements, HVAC equipment, elevators, etc.), BNPLC will allow NAI to reimburse itself through Construction Advances funded on and subject to the terms and conditions of Paragraph 2 for the costs of any Normal Tenant

Improvements in addition to those contemplated in the description of the Construction Project set forth in Exhibit B and the attachments thereto. Otherwise, any such additional Normal Tenant Improvements will be paid for by NAI.

(C) Tenant's Obligation to Construct Normal Tenant Improvements. NAI shall construct all Normal Tenant Improvements in a good and workmanlike manner and in accordance with the same standards and requirements imposed by this Agreement for other Work.

#### 4 COST OVERRUNS.

(A) Definition of Projected Cost Overruns. As used in this Agreement, "PROJECTED COST OVERRUNS" shall mean the excess (if any), calculated as of the date of each Construction Advance Request, of (1) the total of projected Reimbursable Construction-Period Costs yet to be incurred or for which NAI has yet to be reimbursed hereunder (including projected Reimbursable Construction-Period Costs for Future Work), over (2) the sum of a) any Voluntary Construction Contribution NAI has committed to pay as provided in subparagraph 4(c), but has yet to pay, plus b) the balance of the remaining Construction Allowance then projected to be available to cover such costs. The balance of the remaining Construction Allowance then projected to be available will equal (i) the amount (if any) by which the Maximum Construction Allowance exceeds the Funded Construction Allowance, less (ii) the sum of (a) projected future Carrying Costs, plus (b) any funds that should have been but were not advanced to BNPLC by any Defaulting Participants under (and as defined in) the Participation Agreement.

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(B) Notice of Projected Cost Overruns. If for any reason (including any damage to the Property by fire or other casualty or any taking of any part of the Property by condemnation) NAI believes (after taking into account any Voluntary NAI Construction Contributions NAI has made or committed to make as provided in subparagraph 4(C)) that Projected Cost Overruns are more likely than not at the time NAI submits any Construction Advance Request, NAI shall state such belief in the Construction Advance Request and, if NAI can reasonably do so, NAI will estimate the approximate amount of such Projected Cost Overruns.

(C) Election to Make a Voluntary NAI Construction Contribution. As used in this Agreement, "VOLUNTARY NAI CONSTRUCTION CONTRIBUTION" shall mean a voluntary, nonrefundable payment made to BNPLC by NAI prior to the Base Rent Commencement Date and delivered with or pursuant to a notice in the form of Exhibit G, confirming that a Voluntary NAI Construction Contribution is being paid or will be paid pursuant to this subparagraph. To prevent the occurrence of or to cure any CMA Suspension Event described in subparagraph 5(A)(1), NAI shall be entitled (but not obligated) to make or commit to make a Voluntary NAI Construction Contribution in addition to (and, except as provided in the definition of Issue 97-10 Prepayment in the Common Definitions and Provisions Agreement (Phase III - Improvements), without reducing or excusing) any other amounts then due from NAI to BNPLC pursuant to the Operative Documents. Like other Qualified Prepayments, any Voluntary NAI Construction Contribution will reduce the Outstanding Construction Allowance as described in the definition thereof in the Common Definitions and Provisions Agreement (Phase III - Improvements). In contrast, however, to other Qualified Prepayments, Voluntary NAI Construction Contributions will be subtracted for purposes of calculating the Funded Construction Allowance and, thus, will effectively increase the subsequent Construction Advances available under the limit established by subparagraph 2(C)(2)(a).

#### 5 SUSPENSION AND TERMINATION.

(A) CMA Suspension Events. Each of the following events shall be a "CMA SUSPENSION EVENT" under this Agreement:

(1) Projection of Cost Overruns. Either (a) BNPLC shall receive any Construction Advance Request stating that NAI believes Projected Cost Overruns are more likely than not, as provided in subparagraph 4(B), or (b) (i) BNPLC shall otherwise determine in good faith that significant Projected Cost Overruns are likely (taking into account any failure of a Defaulting Participant to provide funds to BNPLC as required by the Participation Agreement and any prior Voluntary NAI Construction Contributions NAI has made or committed to make as provided in subparagraph 4(C)), (ii) BNPLC shall notify NAI of such determination and the basis therefor, and (iii) NAI shall fail to give any notice pursuant to subparagraph 4(C) that, by committing NAI to make or increase Voluntary NAI Construction Contributions, effectively eliminates the likelihood of the Projected Cost Overruns on or before five Business Days after BNPLC's notice to NAI of such determination.

(2) Interruption of Construction. The Construction Project shall, for any reason after Work commences (including any damage to the Property by fire or other casualty or any taking of any part of the Property by condemnation), no longer be substantially progressing (and shall not have progressed in any substantial way during the preceding forty-five days), in a good and workmanlike manner and substantially in accordance with Applicable Laws, with Permitted Encumbrances, with Development Documents and with the requirements of this Agreement.

(3) Failure of NAI to Correct Defective Work. NAI shall fail to diligently pursue the correction of any Defective Work of which NAI has received notice.

(4) Failure of NAI to Provide Evidence of Costs and Expenses. BNPLC shall have requested, and NAI shall have failed to provide within ten Business Days after receipt of the request, with respect to any Construction Advance: (1) invoices, requests for payment from contractors and other evidence reasonably establishing that the costs and expenses for which NAI has requested or is requesting reimbursement constitute actual Reimbursable Construction-Period Costs, and (2)

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anceled checks, lien waivers and other evidence reasonably establishing that all prior Construction Advances have been used by NAI to pay, and only to pay, the Reimbursable Construction-Period Costs for which the prior advances were requested and made.

(B) FOCB Notices, Preemptive Notices and CMA Termination Events.

(1) As used herein, "FOCB NOTICE" means a notice from BNPLC to NAI that BNPLC is considering a termination of this Agreement pursuant to subparagraph below, provided that the notice is given prior to BNPLC's receipt from NAI of a Completion Notice and is given when:

(a) any Event of Default has occurred and is continuing; or

(b) any CMA Suspension Event shall have occurred, NAI shall have received notice of such CMA Suspension Event (a "CMA SUSPENSION NOTICE") and the CMA Suspension Event shall have continued for thirty days after NAI's receipt of such notice; or

(c) NAI shall have failed to maintain the following insurance, or to provide insurance certificates to BNPLC as required by the Improvements Lease with respect to the following insurance, and such failure shall have continued for a period of five Business Days after any notice to NAI thereof:

1) property insurance as required by the Improvements Lease, including builder's completed value risk insurance as BNPLC may require to protect BNPLC's and NAI's interests in the Improvements under construction against risks of physical loss, such insurance to be maintained by NAI at all times until completion of the Construction Project; and

2) commercial general liability insurance as required by the Improvements Lease.

(2) As used herein, "PREEMPTIVE NOTICE" means a notice from NAI to BNPLC in the form attached hereto as Exhibit , given after BNPLC has given any FOCB Notice, but before NAI has made any Issue 97-10 Election, that is sufficient and effective under clause (2) of the definition of Designated Sale Date in the Common Definitions and Provisions Agreement (Phase III - Improvements) to accelerate the Designated Sale Date to a date that is less than ninety days after the date of BNPLC's FOCB Notice.

(3) For purposes of this Agreement and the other Operative Documents, "CMA TERMINATION EVENT" shall mean:

(a) BNPLC's receipt of a Notice of NAI's Intent to Terminate (as defined below); or

(b) A failure of NAI for any reason whatsoever to deliver a duly executed, effective Preemptive Notice within thirty days after NAI's receipt of an FOCB Notice.

(C) Rights and Obligations of NAI During a CMA Suspension Period. As used herein, "CMA SUSPENSION PERIOD" shall mean any period (1) beginning with the date of any CMA Suspension Notice, FOCB Notice or Notice of NAI's Intent to Terminate, and (2) ending on the earlier of (a) the first date upon which (i) no CMA Suspension Events shall be continuing, and (ii) no CMA Termination Events shall have occurred, or (b) the effective date of any termination of this Agreement as described in subparagraph 5(D) or 5(E) subparagraph. During any CMA Suspension Period, NAI shall have the right to suspend the

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Work; provided, however, the obligations of NAI which are to survive any termination of this Agreement shall also continue and survive during any such suspension of the Work.

(D) Election by NAI to Terminate. NAI may elect to terminate this Agreement at any time prior to the Base Rent Commencement Date when NAI has determined that (1) the Construction Advances to be provided to it hereunder will not be sufficient to cover all Reimbursable Construction-Period Costs, whether because the cost of the Work exceeds budgeted expectations (resulting in Projected Cost Overruns), because of damage to the Property by fire or other casualty (other than damage that would not have occurred, or been uninsured or under-insured, but for an act or omission of NAI), because of a taking of any part of the Property by condemnation, or because NAI can no longer satisfy conditions to BNPLC's obligation to provide Construction Advances herein, or (2) the Construction Project cannot be substantially completed before the Base Rent Commencement Date for reasons other than a breach by NAI of this Agreement. To be effective, however, any such election to terminate this Agreement must be made by giving BNPLC and the Participants a notice thereof prior to the Base Rent Commencement Date in the form of Exhibit I (a "NOTICE OF NAI'S INTENT TO Terminate"), stating that NAI intends to terminate this Agreement pursuant to this subparagraph on a date specified therein, which date is not less than thirty days after the date of such notice. Unless terminated sooner pursuant to subparagraph 5(E), this Agreement will automatically terminate on the effective date so specified in any Notice of NAI's Intent to Terminate.

(E) BNPLC's Right to Terminate. BNPLC shall be entitled to terminate this Agreement at any time (x) more than ninety days after BNPLC has given an FOCB Notice as described in subparagraph (regardless of whether at the time of such termination by BNPLC an Event of Default or other event or circumstance described in subparagraph is continuing), provided that BNPLC shall not have received an effective Preemptive Notice within thirty days after its delivery of the FOCB Notice to NAI, (y) after the Designated Sale Date, or (z) after BNPLC's receipt of a Notice of NAI's Intent to Terminate.

(F) Rights and Obligations Surviving Termination. Following any termination of this Agreement as provided in subparagraph 5(D) or in 5(E), NAI shall have no obligation to continue or complete any Work; provided, however, no termination of this Agreement shall reduce or excuse the following rights and obligations of

the parties, it being intended that all such rights and obligations shall survive and continue after any such termination:

(1) the rights and obligations of NAI and BNPLC under the other Operative Documents, including Absolute NAI Construction Obligations imposed upon NAI by the Improvements Lease; and

(2) NAI's obligations described in the next subparagraph 5(G).

(G) Cooperation by NAI Following any Termination. After any termination of this Agreement as provided in subparagraph 5(D) or subparagraph 5(E), NAI shall comply with the following terms and conditions, all of which shall survive any such termination:

(1) NAI shall promptly deliver copies to BNPLC of all Third Party Contracts and purchase orders made by NAI in the performance of or in connection with the Work, together with all plans, drawings, specifications, bonds and other materials relating to the Work in NAI's possession, including all papers and documents relating to governmental permits, orders placed, bills and invoices, lien releases and financial management under this Agreement. All such deliveries shall be made free and clear of any liens, security interests, or encumbrances, except such as may be created by the Operative Documents.

(2) Promptly after any request from BNPLC made with respect to any Third Party Contract, NAI shall deliver a letter confirming: (i) that NAI has not performed any act or executed any other instrument which invalidates or modifies such contract in whole or in part (or, if so, the nature of such modification); (ii) the extent to which such contract is valid and

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subsisting and in full force and effect; (iii) that there are no defaults or events of default then existing under such contract and, to NAI's knowledge, no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default or event of default (or, if there is a default, the nature of such default in detail); (iv) that the services and construction contemplated by such contract is proceeding in a satisfactory manner in all material respects (or if not, a detailed description of all significant problems with the progress of the services or construction); (v) in reasonable detail the then critical dates projected by NAI for work and deliveries required by such contract; (vi) the total amount received by the other party to such contract for work or services provided by the other party through the date of the letter; (vii) the estimated total cost of completing the services and work contemplated under such contract as of the date of the letter, together with any current draw or payment schedule for the contract; and (viii) any other information BNPLC may reasonably request to allow it to decide what steps it should take concerning the contract within BNPLC's rights under this Agreement and the other Operative Documents.

(3) NAI will make every reasonable effort, as and to the extent requested by BNPLC, to secure the cancellation of any then existing Third Party Contract upon terms satisfactory to BNPLC. NAI shall bear any cancellation fees or other Losses resulting from any cancellation of a Third Party Contract after the effective date of a termination of this Agreement.

(4) NAI will make every reasonable effort, as and to the extent requested by BNPLC, to secure any required consents or approvals for an assignment of any then existing Third Party Contract to BNPLC or its designee, upon terms satisfactory to BNPLC. To the extent assignable, any Third Party Contract will be assigned by NAI to BNPLC upon request.

(5) If NAI has canceled any Third Party Contract before and in anticipation of a termination of this Agreement, NAI shall make every reasonable effort, as and to the extent requested by BNPLC, to secure a reinstatement of such Third Party Contract in favor of BNPLC and upon terms satisfactory to BNPLC.

(6) For a period not to exceed ten days after the termination, NAI shall

take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, equipment, and supplies at the Property or in transit.

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Agreement to be executed as of June 16, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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[Continuation of signature pages to Construction Management Agreement (Phase III - Improvements) dated to be effective June 16, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: \_\_\_\_\_  
Henry Setina, Vice President

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Exhibit A

LEGAL DESCRIPTION

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38(degrees) 52' 02" East 134.85 feet; thence North 51(degrees) 07' 58" West 49.68; thence North 38(degrees) 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75(degrees) 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14(degrees) 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04(degrees) 20' 28" an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38(degrees) 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

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Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4(degrees) 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38(degrees) 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38(degrees) 52' 02" West, through a central angle of 28(degrees) 09' 05" for an arc length of 38.32 feet; thence North 38(degrees) 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90(degrees) 00' 00" for an arc length of 26.70 feet; thence North 51(degrees) 07' 58" West 19.80 feet; thence the following three courses: North 38(degrees) 52' 02" East 12.69 feet North 51(degrees) 07' 58" West 49.68 feet; North 38(degrees) 52' 02" 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 South 75(degrees) 07' 58" East 13.45 feet along said Northeasterly line; thence South 38(degrees) 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88(degrees) 46' 22" West, through a central angle of 52(degrees) 21' 36" for an arc length of 12.79 feet; thence South 51(degrees) 07' 58" East 85.87 feet; thence South 38(degrees) 52' 02" West 252.96 feet; North 51(degrees) 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10(degrees) 35' 40" West, through a central angle of 40(degrees) 32' 18" for an arc length of 14.15 feet; thence South 38(degrees) 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60(degrees) 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District;

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thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42(degrees) 01' 23" East, through a central angle of 1(degree) 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

APN: 110-32-010  
ARB: 110-03-x066

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Exhibit B

#### DESCRIPTION OF THE CONSTRUCTION PROJECT

Subject to future Scope Changes, the Construction Project will be substantially consistent with the following general description and with the Site Plan attached to this Exhibit.

In addition to the site plan, attached to and made a part of this Exhibit are excerpts from an appraisal prepared for BNPLC, which describe the Construction Project.

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Exhibit C

ESTOPPEL FROM CONTRACTOR



\_\_\_\_\_, 199\_\_

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

Re: Assignment of Construction Contract

Ladies and Gentlemen:

The undersigned hereby represents to BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and covenants with BNPLC as follows:

1 The undersigned has entered into that certain [Construction Contract] (the "CONSTRUCTION CONTRACT") by and between the undersigned and Network Appliance, Inc. ("NAI") dated , \_\_\_\_ for the construction of the improvements to be constructed as part of NAI's Sunnyvale campus leased by NAI (the "IMPROVEMENTS") on the land described in the Improvements Lease Documents described below (the "LAND" and, together with the Improvements and any other improvements now on or constructed in the future on the Land, the "PROJECT").

2 The undersigned has been advised that, by a Lease Agreement (Phase II - Improvements) and a Construction Management Agreement (Phase II - Improvements), both dated as of June 16, 1999 (collectively, the "IMPROVEMENTS LEASE DOCUMENTS"), BNPLC is leasing the Project to NAI and has agreed, subject to the terms and conditions of the Improvements Lease Documents, to provide a construction allowance for the design and construction of the Improvements. The undersigned has also been advised that the Improvements Lease Documents expressly provide that third parties (including the undersigned) are not intended as beneficiaries of the Improvements Lease Documents and, thus, will have no standing to enforce any obligations of NAI or BNPLC under the Improvements Lease Documents, including any such obligation that BNPLC may have to provide the construction allowance. The undersigned understands that the Improvements Lease Documents expressly provide that NAI is not authorized to enter into any construction contract or other agreement with any third party in the name of BNPLC or to otherwise bind BNPLC to any contract with a third party.

3 A complete and correct copy of the Construction Contract is attached to this letter. The Construction Contract is in full force and effect and has not been modified or amended, except as provided in any written modifications or amendments which are also attached to this letter.

4 The undersigned has not sent or received any notice of default or any other notice for the purpose of terminating the Construction Contract, nor does the undersigned have knowledge of any existing circumstance or event which, but for the elapse of time or otherwise, would constitute a default by the undersigned or by NAI under the Construction Contract.

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_

Page 2

The undersigned acknowledges and agrees that:

a) Title to all Improvements shall, when constructed on the Land, pass directly to BNPLC, not to NAI. BNPLC shall not, however, be held liable for, and the undersigned shall not assert, any claims, demands or liabilities against BNPLC arising under or in any way relating to the Construction Contract; provided, this paragraph will not (1) be construed as a waiver of any statutory mechanic's or materialmen's liens against the interests of NAI in and to the Land or the improvements thereon that may otherwise exist or arise in favor of the undersigned, or (2) prohibit the undersigned from asserting any claims or making demands against BNPLC under the Construction Contract if BNPLC elects in writing, pursuant to paragraph b) below, to assume the Construction Contract in the event NAI's right to possession of the Land is terminated, it being understood that in the event of such an assumption BNPLC shall be liable for the unpaid balance of the contract sum due for the work of the undersigned, payable pursuant to (and subject to the terms and conditions set forth for the benefit

of the owner in) the Construction Contract, but in no event shall BNPLC otherwise be personally liable for any acts or omissions on the part of NAI.

b) Upon any termination of NAI's right to possession of the Project under the Improvements Lease Documents, including any eviction of NAI resulting from an Event of Default (as defined in the Improvements Lease Documents), BNPLC shall be entitled (but not obligated), by notice to the undersigned and without the necessity of the execution of any other document, to assume NAI's rights and obligations under the Construction Contract, cure any defaults by NAI thereunder and enforce the Construction Contract and all rights of NAI thereunder. Within ten days of receiving notice from BNPLC that NAI's right to possession has been terminated, the undersigned shall send to BNPLC a written estoppel letter stating: (i) that the undersigned has not performed any act or executed any other instrument which invalidates or modifies the Construction Contract in whole or in part (or, if so, the nature of such modification); (ii) that the Construction Contract is valid and subsisting and in full force and effect; (iii) that there are no defaults or events of default then existing under the Construction Contract and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default or event of default (or, if there is a default, the nature of such default in detail); (iv) that the construction contemplated by the Construction Contract is proceeding in a satisfactory manner in all material respects (or if not, a detailed description of all significant problems with the progress of construction); (v) a reasonably detailed report of the then critical dates projected by the undersigned for work and deliveries required to complete the Project; (vi) the total amount received by the undersigned for construction through the date of the letter; (vii) the estimated total cost of completing the undersigned's work as of the date of the letter, together with a current draw schedule; and (viii) any other information BNPLC may request to allow it to decide whether to assume the Construction Contract. BNPLC shall have seven days from receipt of such written certificate containing all such requested information to decide whether to assume the Construction Contract. If BNPLC fails to assume the Construction Contract within such time, the undersigned agrees that BNPLC shall not be liable (and the undersigned shall not assert or bring any action against BNPLC, except to enforce statutory lien rights, if any, of the undersigned against the Land or improvements on the Land) for any damages or other amounts resulting from the breach or termination of the Construction Contract or under any other theory of liability of any kind or nature, but rather the undersigned shall look solely to NAI (and statutory lien rights, if any, of the undersigned against the Land and any improvements thereon) for the recovery of any such damages or other amounts.

c) If BNPLC notifies the undersigned that BNPLC shall not assume the Construction Contract pursuant to the preceding paragraph following the termination of NAI's right to possession of the Project under the Improvements Lease Documents, the undersigned shall immediately discontinue the work under the Construction Contract and remove its personnel from the Project, and BNPLC shall be entitled to take exclusive possession of the Project. The undersigned shall also, upon request by BNPLC, deliver and assign to BNPLC all plans and specifications and other contract documents previously delivered to the undersigned (except that the undersigned may keep an original set of the Construction Contract and other contract documents executed by NAI), all other material relating to the work which belongs to BNPLC or NAI, and all

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_

Page 3

papers and documents relating to governmental permits, orders placed, bills and invoices, lien releases and financial management under the Construction Contract. Notwithstanding the undersigned's receipt of any notice from BNPLC that BNPLC declines to assume the Construction Contract, the undersigned shall for a period not to exceed fifteen days after receipt of such notice take such steps, at BNPLC's expense, as are reasonably necessary to preserve and protect work completed and in progress and to protect materials, equipment and supplies at the site or in transit.

d) If the Construction Contract is terminated by NAI before BNPLC is given the opportunity to elect whether or not to assume the Construction Contract as provided herein, BNPLC shall nonetheless have the right hereunder to assume the Construction Contract, as if it had not been terminated, upon any termination of

NAI's right to possession of the Project under the Improvements Lease Documents; provided, however, that if the work of the undersigned under the Construction Contract has been disrupted because of NAI's termination of the Construction Contract, the undersigned shall be entitled to an equitable adjustment to the price of the Construction Contract, following any assumption thereof by BNPLC, for the additional costs incurred by the undersigned attributable to the disruption; and, provided further, that if BNPLC does assume the Construction Contract, BNPLC shall receive a credit against the price of the Construction Contract for any consideration paid to the undersigned by NAI because of NAI's prior termination of the Construction Contract (whether such consideration is designated a termination fee, settlement payment or otherwise).

e) No action taken by BNPLC or the undersigned with respect to the Construction Contract shall prejudice any other rights or remedies of BNPLC or the undersigned provided by law, by the Improvements Lease Documents, by the Construction Contract or otherwise against NAI.

f) The undersigned agrees promptly to notify BNPLC of any material default or claimed material default by NAI under the Construction Contract of which the undersigned is aware, describing with particularity the default and the action the undersigned believes is necessary to cure the same. The undersigned will send any such notice to BNPLC prominently marked "URGENT - NOTICE OF NAI'S DEFAULT UNDER CONSTRUCTION AGREEMENT WITH NETWORK APPLIANCE, INC. - SUNNYVALE, CALIFORNIA" at the address specified for notice below (or at such other addresses as BNPLC shall designate in notice sent to the undersigned), by certified or registered mail, return receipt requested. Following receipt of such notice, the undersigned will permit BNPLC or its designee to cure any such default within the time period reasonably required for such cure, but in no event less than thirty days. If it is necessary or helpful to take possession of all or any portion of the Project to cure a default by NAI under the Construction Contract, the time permitted by the undersigned for cure by BNPLC will include the time necessary to terminate NAI's right to possession of the Project and evict NAI, provided that BNPLC commences the steps required to exercise such right within sixty days after it is entitled to do so under the terms of the Improvements Lease Documents and applicable law. If the undersigned incurs additional costs due to the extension of the aforementioned cure period, the undersigned shall be entitled to an equitable adjustment to the price of the Construction Contract for such additional costs.

g) Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery or (b) expedited delivery service with proof of delivery or (c) United States mail, postage prepaid, registered or certified mail or (d) telegram, telex or telecopy, addressed as follows:

To the undersigned:

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Telecopy: ( ) \_\_\_\_-\_\_\_\_

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_

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To BNPLC: BNP Leasing Corporation  
-----  
12201 Merit Drive, Suite 860  
Dallas, Texas 75251  
Attention: Lloyd G. Cox  
Telecopy: (972) 788-9191

A copy of any such notice or communication will also be sent to NAI by (a) personal delivery or (b) expedited delivery service with proof of delivery or (c) United States mail, postage prepaid, registered or certified mail or (d) telegram, telex or telecopy, addressed as follows:

Network Appliance, Inc.  
Attn: Corporate Secretary

2770 San Thomas Expressway  
Santa Clara, CA 95051  
Telecopy: (\_\_\_\_) \_\_\_\_-\_\_\_\_

h) The undersigned acknowledges that it has all requisite authority to execute this letter. The undersigned further acknowledges that BNPLC has requested this letter, and is relying on the truth and accuracy of the representations made herein, in connection with BNPLC's decision to advance funds for construction under the Improvements Lease Documents with NAI.

Very truly yours,

-----

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NAI joins in the execution of this letter solely for the purpose of evidencing its consent hereto, including its consent to the provisions that would allow, but not require, BNPLC to assume the Construction Contract in the event NAI is evicted from the Project.

Network Appliance, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_\_\_  
Page 1

Exhibit D

ESTOPPEL FROM DESIGN PROFESSIONALS

\_\_\_\_\_, 199\_\_

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

Re: Assignment of [Architect's Agreement/Engineering Contract]

Ladies and Gentlemen:

The undersigned hereby represents to BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and covenants with BNPLC as follows:

1 The undersigned has entered into that certain [Architect's

Agreement/Engineering Contract] (the "AGREEMENT") by and between the undersigned and Network Appliance, Inc. ("NAI") dated , \_\_\_\_ for the [design/engineering] of the improvements to be constructed as part of NAI's Sunnyvale campus leased by NAI (the "IMPROVEMENTS") on the land described in the Improvements Lease Documents described below (the "LAND" and, together with the Improvements and any other improvements now on or constructed in the future on the Land, the "PROJECT").

2 The undersigned has been advised that, by a Lease Agreement (Phase III - Improvements) and a Construction Management Agreement (Phase III - Improvements), both dated as of June 16, 1999 (collectively, the "IMPROVEMENTS LEASE DOCUMENTS"), BNPLC is leasing the Project to NAI and has agreed, subject to the terms and conditions of the Improvements Lease Documents, to provide a construction allowance for the design and construction of the Improvements. The undersigned has also been advised that the Improvements Lease Documents expressly provide that third parties (including the undersigned) are not intended as beneficiaries of the Improvements Lease Documents and, thus, will have no standing to enforce any obligations of NAI or BNPLC under the Improvements Lease Documents, including any such obligation that BNPLC may have to provide the construction allowance. The undersigned understands that the Improvements Lease Documents expressly provide that NAI is not authorized to enter into any Agreement or other agreement with any third party in the name of BNPLC or to otherwise bind BNPLC to any contract with a third party.

3 A complete and correct copy of the Agreement is attached to this letter. The Agreement is in full force and effect and has not been modified or amended, except as provided in any written modifications or amendments which are also attached to this letter.

4 The undersigned has not sent or received any notice of default or any other notice for the purpose of terminating the Agreement, nor does the undersigned have knowledge of any existing circumstance or event which, but for the elapse of time or otherwise, would constitute a default by the undersigned or by NAI under the Agreement.

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BNP Leasing Corporation

\_\_\_\_\_, 199\_\_

Page 2

The undersigned acknowledges and agrees that:

a) BNPLC shall not be liable for, and the undersigned shall not assert, any claims, demands or liabilities against BNPLC arising under or in any way relating to the Agreement; provided, this paragraph will not (1) be construed as a waiver of any statutory mechanic's or materialmen's liens against the interests of NAI in and to the Land or the improvements thereon that may otherwise exist or arise in favor of the undersigned, or (2) prohibit the undersigned from asserting any claims or making demands against BNPLC under the Agreement if BNPLC elects in writing, pursuant to paragraph b) below, to assume the Agreement in the event NAI's right to possession of the Land is terminated, it being understood that in the event of such an assumption BNPLC shall be liable for the unpaid balance of the fees for services of the undersigned, payable pursuant to (and subject to the terms and conditions set forth for the benefit of the owner in) the Agreement, but in no event shall BNPLC otherwise be personally liable for any acts or omissions on the part of NAI.

b) Upon any termination of NAI's right to possession of the Project under the Improvements Lease Documents, including any eviction of NAI resulting from an Event of Default (as defined in the Improvements Lease Documents), BNPLC shall be entitled (but not obligated), by notice to the undersigned and without the necessity of the execution of any other document, to assume NAI's rights and obligations under the Agreement, cure any defaults by NAI thereunder and enforce the Agreement and all rights of NAI thereunder. Within ten days of receiving notice from BNPLC that NAI's right to possession has been terminated, the undersigned shall send to BNPLC a written estoppel letter stating: (i) that the undersigned has not performed any act or executed any other instrument which invalidates or modifies the Agreement in whole or in part (or, if so, the nature of such modification); (ii) that the Agreement is valid and subsisting and in full force and effect; (iii) that there are no defaults or events of default then existing under the Agreement and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a

default or event of default (or, if there is a default, the nature of such default in detail); (iv) that the services contemplated by the Agreement are proceeding in a satisfactory manner in all material respects (or if not, a detailed description of all significant problems with the progress of services); (v) a reasonably detailed report of the then critical dates projected by the undersigned for services required to complete the Project; (vi) the total amount received by the undersigned for services through the date of the letter; (vii) the estimated total cost of completing such services as of the date of the letter, together with a current payment schedule; and (viii) any other information BNPLC may request to allow it to decide whether to assume the Agreement. BNPLC shall have seven days from receipt of such written certificate containing all such requested information to decide whether to assume the Agreement. If BNPLC fails to assume the Agreement within such time, the undersigned agrees that BNPLC shall not be liable (and the undersigned shall not assert or bring any action against BNPLC or, except to enforce statutory lien rights, if any, of the undersigned against the Land or improvements on the Land) for any damages or other amounts resulting from the breach or termination of the Agreement or under any other theory of liability of any kind or nature, but rather the undersigned shall look solely to NAI (and statutory lien rights, if any, of the undersigned against the Land and any improvements thereon) for the recovery of any such damages or other amounts.

c) If BNPLC notifies the undersigned that BNPLC shall not assume the Agreement pursuant to the preceding paragraph following the termination of NAI's right to possession of the Project under the Improvements Lease Documents, the undersigned shall immediately deliver and assign to BNPLC the following: (1) copies of all plans and specifications for the Project or any component thereof previously generated by or delivered to the undersigned, (2) any other contract documents previously delivered to the undersigned (except that the undersigned may keep an original set of the Agreement and other contract documents executed by NAI), (3) any other material relating to the services provided under the Agreement, and (4) to the extent available to the undersigned all papers and documents relating to governmental permits, orders placed, bills and invoices, lien releases and financial management under the Agreement. Notwithstanding the undersigned's receipt of any notice from BNPLC that BNPLC declines to assume the Agreement, the undersigned shall for a period not to exceed thirty

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_\_\_  
Page 3

days after receipt of such notice take such steps, at BNPLC's expense, as are reasonably necessary to preserve the utility and value of services completed and in progress and to protect plans and specifications and other materials described in the preceding sentence.

d) If the Agreement is terminated by NAI before BNPLC is given the opportunity to elect whether or not to assume the Agreement as provided herein, BNPLC shall nonetheless have the right hereunder to assume the Agreement, as if it had not been terminated, upon any termination of NAI's right to possession of the Project under the Improvements Lease Documents; provided, however, that if the services of the undersigned under the Agreement has been disrupted because of NAI's termination of the Agreement, the undersigned shall be entitled to an equitable adjustment to the price of the Agreement, following any assumption thereof by BNPLC, for the additional costs incurred by the undersigned attributable to the disruption; and, provided further, that if BNPLC does assume the Agreement, BNPLC shall receive a credit against the price of the Agreement for any consideration paid to the undersigned by NAI because of NAI's prior termination of the Agreement (whether such consideration is designated a termination fee, settlement payment or otherwise).

e) No action taken by BNPLC or the undersigned with respect to the Agreement shall prejudice any other rights or remedies of BNPLC or the undersigned provided by law, by the Improvements Lease Documents, by the Agreement or otherwise against NAI.

f) The undersigned agrees promptly to notify BNPLC of any material default or claimed material default by NAI under the Agreement of which the undersigned is aware, describing with particularity the default and the action the undersigned believes is necessary to cure the same. The undersigned will send

any such notice to BNPLC prominently marked "URGENT - NOTICE OF NAI'S DEFAULT UNDER DESIGN AGREEMENT WITH NETWORK APPLIANCE, INC. - SUNNYVALE, CALIFORNIA" at the address specified for notice below (or at such other addresses as BNPLC shall designate in notice sent to the undersigned), by certified or registered mail, return receipt requested. Following receipt of such notice, the undersigned will permit BNPLC or its designee to cure any such default within the time period reasonably required for such cure, but in no event less than thirty days.

g) Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery or (b) expedited delivery service with proof of delivery or (c) United States mail, postage prepaid, registered or certified mail or (d) telegram, telex or telecopy, addressed as follows:

To the undersigned:

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telecopy: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_

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BNP Leasing Corporation  
\_\_\_\_\_, 199\_\_\_\_  
Page 4

To BNPLC: BNP Leasing Corporation

12201 Merit Drive, Suite 860  
Dallas, Texas 75251  
Attention: Lloyd G. Cox  
Telecopy: (972) 788-9191

A copy of any such notice or communication will also be sent to NAI by (a) personal delivery or (b) expedited delivery service with proof of delivery or (c) United States mail, postage prepaid, registered or certified mail or (d) telegram, telex or telecopy, addressed as follows:

Network Appliance, Inc.  
Attn: Corporate Secretary  
2770 San Thomas Expressway  
Santa Clara, CA 95051  
Telecopy: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_

h) The undersigned acknowledges that it has all requisite authority to execute this letter. The undersigned further acknowledges that BNPLC has requested this letter, and is relying on the truth and accuracy of the representations made herein, in connection with BNPLC's decision to advance funds for design services under the Improvements Lease Documents with NAI.

Very truly yours,

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NAI joins in the execution of this letter solely for the purpose of evidencing its consent hereto, including its consent to the provisions that would allow, but not require, BNPLC to assume the Agreement in the event NAI is evicted from the Project.

Network Appliance, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Exhibit E

NOTICE REQUESTING ADVANCE TO COVER PROPERTY INSURANCE DEDUCTIBLE

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

Re: Construction Management Agreement (Phase III - Improvements) dated as of June 16, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement or in the Common Definitions and Provisions Agreement (Phase III - Improvements) referenced in the Construction Management Agreement. This letter shall constitute a request made pursuant to subparagraph 2(A) of the Construction Management Agreement for a final additional Construction Advance in the form of an addition to Escrowed Proceeds equal to:

\$ \_\_\_\_\_,

on the Base Rent Commencement Date, which will occur on:

\_\_\_\_\_, 199 .

To induce BNPLC to make such Construction Advance, NAI represents and warrants as follows: (x) the dollar amount specified above equals the property insurance deductible permitted under the insurance requirements set forth in the Lease, (y) a Pre-commencement Casualty has resulted in damage to the Improvements, for which the cost of repairs will - because of such deductible - exceed the Escrowed Proceeds paid or payable in connection with such damage under the property insurance maintained by NAI in accordance with the insurance requirements in the Improvements Lease, and (z) NAI has not and will not otherwise receive a Construction Advance to reimburse such excess costs prior to the expiration of BNPLC's obligation to make further Construction Advances as provided in subparagraph 2(C)(3) of the Construction Management Agreement.

NAI ACKNOWLEDGES THAT IF ANY REPRESENTATION ABOVE IS NOT TRUE, THEN NAI'S OBLIGATION TO INDEMNIFY AGAINST LOSSES SUSTAINED BY BNPLC OR ANY OTHER INTERESTED PARTY BECAUSE OF ITS RELIANCE ON THIS LETTER SHALL CONSTITUTE ABSOLUTE NAI CONSTRUCTION OBLIGATIONS UNDER THE CONSTRUCTION MANAGEMENT AGREEMENT AND THE IMPROVEMENTS LEASE.

Executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[cc all Participants]



Exhibit F

CONSTRUCTION ADVANCE REQUEST FORM

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

Re: Construction Management Agreement (Phase III - Improvements) dated as of June 16, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement or in the Common Definitions and Provisions Agreement (Phase III - Improvements) referenced in the Construction Management Agreement. This letter shall constitute a Construction Advance Request, requesting a Construction Advance of:

\$ \_\_\_\_\_,

on the Advance Date that will occur on:

\_\_\_\_\_, 199\_.

To induce BNPLC to make such Construction Advance, NAI represents and warrants as follows:

I. CALCULATION OF LIMIT IMPOSED BY SUBPARAGRAPH 2(C) (2) (b) OF THE CONSTRUCTION MANAGEMENT AGREEMENT:

(1) NAI has paid or incurred bona fide Reimbursable Construction-Period Costs other than for Work (e.g., property taxes) of no less than \$ \_\_\_\_\_

(2) NAI has paid or incurred bona fide Reimbursable Construction-Period Costs for Prior Work of no less than \$ \_\_\_\_\_

(3) NAI has received prior Construction Advances of no more than \$ \_\_\_\_\_

LIMIT (1 + 2 - 3) \$ \_\_\_\_\_

II. PROJECTED COST OVERRUNS:

NAI [CHECK ONE: \_ DOES / \_ DOES NOT] believe that Projected Construction Overruns are more likely than not. [If NAI does believe that Projected Cost Overruns are more likely than not, and if NAI believes that the amount of such Projected Construction Overruns can be reasonably estimated, NAI estimates the same at \$ \_\_\_\_\_.]

NOTE: The Construction Management Agreement defines Projected Construction Overruns as the excess, if any, of (1) the total of projected Reimbursable Construction-Period Costs yet to be incurred or for which NAI has yet to be reimbursed hereunder (including projected Reimbursable Construction-Period Costs for Future Work), over (2) the balance of the remaining Construction Allowance projected to be available to cover such costs.

III. ABSENCE OF CERTAIN CMA SUSPENSION EVENTS:

A. The Construction Project is progressing without significant interruption in a good and workmanlike manner and substantially in accordance with Applicable Laws, with Permitted Encumbrances, with Development Documents and with the requirements of the Construction Management Agreement, except as follows: (IF THERE ARE NO EXCEPTIONS, INSERT "NO EXCEPTIONS")

-----  
-----  
-----  
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B. If NAI has received notice of any Defective Work, NAI has promptly corrected or is diligently pursuing the correction of such Defective Work, except as follows: (IF THERE ARE NO EXCEPTIONS, INSERT "NO EXCEPTIONS")

-----  
-----  
-----  
-----

NAI ACKNOWLEDGES THAT IF ANY REPRESENTATION ABOVE IS NOT TRUE, THEN NAI'S OBLIGATION TO INDEMNIFY AGAINST LOSSES SUSTAINED BY BNPLC OR ANY OTHER INTERESTED PARTY BECAUSE OF ITS RELIANCE ON THIS LETTER SHALL CONSTITUTE ABSOLUTE NAI CONSTRUCTION OBLIGATIONS UNDER THE CONSTRUCTION MANAGEMENT AGREEMENT AND THE IMPROVEMENTS LEASE.

Executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[cc all Participants]

Exhibit - Page 2

Exhibit G

NOTICE OF VOLUNTARY NAI CONSTRUCTION CONTRIBUTION

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

Re: Construction Management Agreement (Phase III - Improvements) dated as of June 16, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement or in the Common Definitions and Provisions Agreement (Phase III - Improvements) referenced in the Construction Management Agreement. This letter shall constitute notice, given as described in subparagraph 4(c) of the Construction Management Agreement, that NAI is paying with this letter, or unconditionally and irrevocably committing to pay as described below, a Voluntary NAI Construction Contribution in the amount of \$\_\_\_\_\_.

Such payment by NAI will be in addition to any Voluntary NAI Construction

Contributions required by other notices given by NAI as described in subparagraph 4(c) of the Construction Management Agreement.

Further, if the Voluntary NAI Construction Contribution required by this letter is not being delivered to BNPLC by NAI contemporaneously with this letter, then at such time as BNPLC's obligation to fund additional Construction Advances is excused by any of the terms and conditions set forth in the Construction Management Agreement, NAI shall be obligated to deliver such Voluntary NAI Construction Contribution as required to eliminate (or reduce to the maximum extent possible) Projected Cost Overruns, including any Projected Cost Overruns caused by the accrual of Carrying Costs under and as described in the Improvements Lease referenced in the Construction Management Agreement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[cc all Participants]

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Exhibit H

PREEMPTIVE NOTICE BY NAI

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

Re: Construction Management Agreement (Phase III - Improvements) dated as of June 16, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement or in the Common Definitions and Provisions Agreement (Phase III - Improvements) referenced in the Construction Management Agreement. This letter is intended to constitute a Preemptive Notice, given as described in subparagraph 5(B) of the Construction Management Agreement. As provided in clause (2) of the definition of Designated Sale Date in the Common Definitions and Provisions Agreement (Phase III - Improvements), this letter shall constitute notice, given in accordance with clause (2) of the definition of Common Definitions and Provisions Agreement (Phase III - Improvements), that NAI designates the following date as the Designated Sale Date:

-----, ----.

NAI acknowledges, however, that this notice will not be effective as a Preemptive Notice if (1) such date is sooner than thirty days after the date of this notice or later than ninety days after the date of any FOCB Notice previously given by BNPLC under the Construction Management Agreement, or (2) NAI has previously made any Issue 97-10 Election.

NAI hereby unconditionally, unequivocally and irrevocably: (1) waives any right to make any Issue 97-10 Election under any of the Operative Documents, and (2) acknowledges and agrees that for purposes of calculating the Supplemental Payment required by the Purchase Agreement, the Maximum Remarketing Obligation will equal the Break Even Price under the Purchase Agreement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Network Appliance, Inc.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[cc all Participants]

Exhibit - Page 1

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Exhibit I

NOTICE OF TERMINATION BY NAI

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

Re: Construction Management Agreement (Phase III - Improvements) dated as of June 16, 1999 (the "CONSTRUCTION MANAGEMENT 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 Construction Management Agreement referenced above or in the Common Definitions and Provisions Agreement (Phase III - Improvements) referenced in the Construction Management Agreement.

NAI has determined that (1) the Construction Advances to be provided to it under the Construction Management Agreement will not be sufficient to cover all Construction-Period Reimbursable Costs, whether because the cost of the Work exceeds budgeted expectations (resulting in Projected Cost Overruns) or because NAI can no longer satisfy conditions to BNPLC's obligation to provide Construction Advances in the Construction Management Agreement, or (2) the Construction Project cannot be substantially completed before the Base Rent Commencement Date for reasons other than a breach by NAI of the Construction Management Agreement. Accordingly, this letter shall constitute a Notice of NAI's Election to Terminate the Construction Management Agreement, given as provided in subparagraph 5(D) of the Construction Management Agreement.

NAI irrevocably and unconditionally elects to terminate the Construction Management Agreement effective as of the following date (which, as required by subparagraph 5(D) thereof is a date not less than thirty days after the date this notice is given):

\_\_\_\_\_, 199\_\_

NAI ACKNOWLEDGES THAT THE ELECTION MADE BY NAI DESCRIBED ABOVE CONSTITUTES AN ISSUE 97-10 ELECTION UNDER AND AS DEFINED IN THE OPERATIVE DOCUMENTS.

Executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[cc all Participants]

Exhibit - Page 1



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LEASE AGREEMENT  
(PHASE III - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION  
("BNPLC")

AND

NETWORK APPLIANCE, INC.  
("NAI")

JUNE 16, 1999  
(SUNNYVALE, CALIFORNIA)

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Exhibit B Insurance Requirements

Exhibit C LIBOR Period Election Form

Schedule 1 Financial Covenants and Other Requirements



(PHASE III - IMPROVEMENTS)

This LEASE AGREEMENT (PHASE III- IMPROVEMENTS) (this "IMPROVEMENTS 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 June 16, 1999, the Effective Date. ("EFFECTIVE DATE" and other capitalized terms used and not otherwise defined in this Improvements Lease are intended to have the meanings assigned to them in the Common Definitions and Provisions Agreement (Phase III - Improvements) executed by BNPLC and NAI contemporaneously with this Improvements Lease. By this reference, the Common Definitions and Provisions Agreement (Phase III - Improvements) is incorporated into and made a part of this Improvements Lease for all purposes.)

RECITALS

Pursuant to the Existing Contracts, which cover the Land described in Exhibit A, NAI is leasing the Land and any appurtenances thereto from Seller.

In anticipation of BNPLC's lease of Improvements to be constructed on the Land and subsequent acquisition of the Land and lease thereof to NAI pursuant to the Agreement to Lease, BNPLC and NAI have reached agreement as to the terms and conditions upon which BNPLC is willing to lease the Improvements to be constructed on the Land as hereinafter provided, and by this Improvements 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. any and all Improvements; and
2. all easements and other rights appurtenant to the Improvements, whether now owned or hereafter acquired by BNPLC.

BNPLC's interest in all property described in clauses (1) and (2) above are hereinafter referred to collectively as the "REAL PROPERTY". The Real Property does not include the Land itself, it being understood that when executed pursuant to the Agreement to Lease, the Other Lease Agreement will constitute a separate lease of the Land and the appurtenances thereto, and only the Land and the appurtenances thereto, from BNPLC to NAI.

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 Contracts or acquired by BNPLC pursuant to Paragraph 7 below, BNPLC also hereby grants and assigns to NAI for the term of this Improvements 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 Land and all renewals or replacements of or substitutions for any of the foregoing;

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- (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

Improvements 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 Improvements Lease (the "TERM") shall commence on and include the Effective Date, and end on the first Business Day of July, 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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 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 (Phase III - Improvements). 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 Improvements 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:

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(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 (Phase III - Improvements), 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 Improvements 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 Improvements 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;
- (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 and other support facilities that NAI may provide to its employees; and
- (v) 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 Improvements 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 OR IN 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 IMPROVEMENTS 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 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.

### 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 Improvements 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 Improvements 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

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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 Improvements 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:

- 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 (Phase III - Improvements), 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:

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

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- o 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
- o 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
- o 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 Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$20,000,000; 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:

$$\$20,000,000 \times .30\% \times 30/360 = \$5,000$$

(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:

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

- o 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
- o three hundred sixty.

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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 Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$20,000,000; 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:

$$\$20,000,000 \times \{(40\% \times .30\%) + ([1 - 40\%] \times [6\% + 1.50\%])\} \times 30/360 = \$77,000$$

(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:

- o Stipulated Loss Value on the first day of such Base Rent Period, times
- o 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
- o 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
- o 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 Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$20,000,000; 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:

$$\$20,000,000 \times (6\% + 1.50\%) \times 30/360 = \$125,000$$

D. Additional Rent . All amounts which NAI is required to pay to or on behalf of BNPLC pursuant to this Improvements 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 Improvements 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 June 2, 1999 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:

- o the Commitment Fee Rate for such Construction Period, times an amount equal to:

- (i) the Maximum Construction Allowance, less

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- (ii) the Funded Construction Allowance on the first day of such Construction Period; times

- o the number of days in such Construction Period; divided by

- o three hundred sixty.

NAI shall pay Commitment Fees in arrears on the first Business Day of May, August, November and February of each calendar year, beginning with the first Business Day of August, 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.

G. Administrative Agency Fees . Upon execution and delivery of this Improvements 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 June 2, 1999 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 June 2, 1999 from BNPLC to NAI.

H. Underwriting Fee . Upon execution and delivery of this Improvements Lease by BNPLC, an Underwriting Fee (the "UNDERWRITING 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 June 2, 1999 from BNPLC to NAI.

I. 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.

J. 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.

K. 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 below, it is the intention of BNPLC and NAI that Base Rent, the Arrangement Fees, the Upfront Syndication Fees, the Underwriting Fee, 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 Improvements 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 Improvements Lease or the transactions contemplated herein.

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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 Improvements Lease itself, this Improvements Lease shall not terminate, nor shall NAI have any right to terminate this Improvements Lease, nor shall NAI be entitled to any abatement of the Rent, nor shall the obligations of NAI under this Improvements 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 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements Lease which are binding upon BNPLC.

(c). Tax Reporting . BNPLC and NAI shall report this Improvements 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 Improvements 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

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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 Improvements 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.

(d). Characterization of this Improvements Lease . For purposes of determining the appropriate financial accounting for this Improvements Lease and for purposes of determining their respective rights and remedies under state law, BNPLC and NAI believe and intend that (i) this Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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 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 Improvements 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

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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.(a) 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 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 Improvements 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 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 Improvements 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 Contracts that survive the closing thereunder, or (K) any bodily or personal injury or death or property

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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 , 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 IMPROVEMENTS 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 IMPROVEMENTS 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 IMPROVEMENTS LEASE.

(iii) Costs and expenses for which NAI shall be responsible pursuant to this subparagraph 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 Improvements 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 Improvements 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.

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(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 .

(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 (Phase III - Improvements), (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 Improvements 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:

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.

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

- o the sum on the first day of such Construction Period of (i) Stipulated Loss Value under (and as defined in) the Common Definitions and Provisions Agreement (Phase III - Improvements) and (ii) after the execution and effective date of the Other Lease Agreement and the

Other Purchase Agreement, Stipulated Loss Value under (and as defined in) the Other Common Definitions and Provisions Agreement, times

- o the sum of (a) the Effective Rate with respect to such Construction Period, plus (b) the Unsecured Spread for such Construction Period, times
- o 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
- o three hundred sixty.

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 Combined Stipulated Loss Value is \$15,000,000; 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:

$$\$15,000,000 \times (6\% + 1.50\%) \times 30/360 = \$93,750$$

If the date that the Other Lease Agreement and the Other Purchase Agreement are executed and become effective falls within, but not on the first date of, a Construction Period, then Carrying Costs will accrue during such Construction Period on the Stipulated Loss Value under the Other Lease Agreement, but such accrual will not commence until the date upon which the Other Lease Agreement and Other Purchase Agreement are executed and become effective. (Prior to that date, interest under the Agreement to Lease will continue to accrue.)

(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 (Phase III - Improvements)) 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 Improvements 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 Improvements 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 Improvements Lease, and without terminating this Improvements 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 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;

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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 Improvements 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 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 Improvements 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 Improvements Lease shall be owned by BNPLC and shall constitute "Property" covered by this Improvements 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 Improvements 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 Improvements 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:

(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 Improvements 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 Improvements Lease.

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(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. 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.

(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, 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 Improvements 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 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 Improvements 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 , 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 Improvements 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 Improvements 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 Improvements Lease. NAI agrees to have 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 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 Improvements 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 Improvements 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.

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(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 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 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 Improvements 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 Improvements 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 Improvements 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

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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 Improvements 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:

(a) Compliance with Covenants and Laws. The use of the Property permitted by this Improvements Lease complies, or will comply after NAI obtains available permits as the tenant under this Improvements 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 Improvements 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 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 Improvements 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 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 this Improvements 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 Improvements 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 this Improvements 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 this Improvements 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 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;

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(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 III 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 this Improvements Lease has occurred and is continuing or, if a Default or Event of Default under this Improvements 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 Improvements 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 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 Improvements Lease; and (2) NAI shall be entitled to assign or transfer this Improvements 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.

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(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 Improvements Lease.

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

Improvements 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 Improvements Lease and the other Operative Documents, then BNPLC shall thereby be released from any obligations arising after such assumption under this Improvements 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 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 Improvements Lease or the other Operative Documents.

(b) If NAI fails to perform any act or to take any action required of it by this Improvements Lease or the Closing Certificate, or to pay any money which NAI is required by this Improvements 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 Improvements 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 Improvements 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 Improvements Lease and the other Operative Documents without evaluating such information. For purposes of this Improvements 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 Improvements 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 Improvements 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 Paragraph 17), or NAI shall fail to comply with any term, provision or covenant of this Improvements 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 Improvements Lease.

(c) NAI shall abandon the Property.

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(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 (Phase III - Improvements) 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 Improvements 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 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,

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alterations, equipment and fixtures thereon and remove any persons in possession thereof. Any property 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 Improvements 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 Improvements 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)c) and 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 Improvements Lease and abandoned the Property, this Improvements 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 Improvements Lease, including the right to recover the Rent as it becomes due under this Improvements Lease. NAI's right to possession shall not be deemed to have been terminated by BNPLC except pursuant to subparagraph 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 Improvements Lease; or

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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 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 favor of BNPLC under Applicable Law or in equity. In addition to other remedies provided in this Improvements 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 Improvements Lease, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this Improvements Lease to be performed by NAI, or to any other remedy allowed to BNPLC at law or in equity. Nothing contained in this Improvements 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 Improvements 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 Improvements 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.

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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 Improvements 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 Improvements Lease or excuse NAI from its obligation to pay Rent.

21. SURRENDER UPON TERMINATION. Unless NAI or an Applicable Purchaser purchases or has purchased BNPLC's entire interest in the Property pursuant to the terms of the Purchase Agreement and BNPLC's entire interest in the Improvements and other "Property" under (and as defined in) the Other 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 Improvements Lease or the Other Lease Agreement, and (ii) demolition, alterations and additions which are expressly permitted by the terms of this Improvements Lease or the Other Lease Agreement 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.

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 Improvements 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 Improvements Lease shall reinstate, continue or extend the Term of this Improvements Lease and no extension of this Improvements 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 Improvements 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 Improvements 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 Improvements Lease, the express terms and provisions of this Improvements Lease shall control; provided, nothing herein will limit or impair NAI's obligations under the Closing Certificate following any expiration of termination of this Improvements Lease.

[The signature pages follow.]

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Improvements Lease Agreement to be executed as of June 16, 1999.

" NAI "

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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[Continuation of signature pages to Lease Agreement dated to be effective June 16, 1999]

" BNPLC "

BNP LEASING CORPORATION

By: \_\_\_\_\_  
Henry Setina, Vice President

## Exhibit A

## LEGAL DESCRIPTION

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

## PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28" an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

## PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy



Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22" West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on

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said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

APN: 110-32-010  
ARB: 110-03-x066

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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 Improvements 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 Improvements 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;

(b) 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 (Phase III - Improvements) between Network Appliance, Inc. and BNP Leasing Corporation dated June 16, 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

(Phase III - Improvements) between Network Appliance, Inc. and BNP Leasing Corporation dated June 16, 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: From and after the commencement of any construction of Improvements on or about the Land or the delivery of any materials in anticipation of such construction:

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 but excluding those Improvements to be demolished by NAI prior to the commencement of construction contemplated in the Construction Management 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 Improvements 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 Improvements 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 (Phase III - Improvements) between Network Appliance, Inc. and BNP Leasing Corporation dated June 16, 1999";
- (b) that NAI's insurance is primary, with any policies of BNPLC or other Interested Parties being excess, secondary and noncontributing;
- (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

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- (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 Improvements Lease and new certificate or evidence of insurance must be

delivered no later than 10 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 Improvements 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.

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 (Phase III - Improvements) and Lease Agreement (Phase III - Land), both dated as of June 16, 1999, and both 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 two Lease Agreements referenced above. This letter constitutes notice to you that the LIBOR Period Election under both of the Lease Agreements 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 AGREEMENTS REFERENCED IN THE LEASE AGREEMENTS, 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 (Phase III - Improvements) (the "IMPROVEMENTS LEASE") dated to be effective as of June 16, 1999 (the "EFFECTIVE DATE"), between BNP Leasing Corporation, a Delaware corporation ("BNPLC") and Network Appliance, Inc., a California corporation ("NAI"), (b) the Lease Agreement (Phase III - Land) (the "LAND LEASE" and, together with the Improvements Lease, the "LEASES") dated to be effective as of the Effective Date, between BNPLC and NAI, (c) the Pledge Agreement (Phase III Improvements) (the "PLEDGE AGREEMENT (IMPROVEMENTS)") 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, and (d) the Pledge Agreement (Phase III - Land) (collectively with the Pledge Agreement (Improvements), the "PLEDGE AGREEMENTS") 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 Leases or the Common Definitions and Provisions Agreements referenced in the Leases; 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 Agreements, 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

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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.

"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 Agreements, the Collateral Percentage for purposes of the Pledge Agreements 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.

"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): Collateral delivered and pledged under the Pledge Agreements in accordance with the requirements thereof (if any); plus 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 Debt of NAI and its

Subsidiaries (determined on a consolidated basis), 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 quarters ends after December 31, 1999.

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## 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 Agreements 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis).
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 1.50 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis) 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.

## PART III - TESTS FOR MANDATORY COLLATERAL PERIODS

If, as of the end of the latest fiscal quarter of NAI ending before any Collateral Test Date, NAI shall have both:

(A) failed to maintain a ratio of (1) the sum (without duplication of any item) of Collateral delivered and pledged under the Pledge Agreements in accordance with the requirements thereof (if any), 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 1.5 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;

such Collateral Test Date shall constitute a "FAILED COLLATERAL TEST DATE" for purposes of the determination of Mandatory Collateral Periods. A Mandatory Collateral Period shall commence on each Failed Collateral Test, and such Mandatory Collateral Period shall continue until the second of any two subsequent CONSECUTIVE Collateral Test Dates, neither of which constitutes a Failed Collateral Test Date.

For purposes of illustration only, assume that the following dates are consecutive Collateral Test Dates, some of which are Failed Collateral Test



Dates and some of which are not, as indicated opposite each date:

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Date	Failed Collateral Test Date?
February 15, 2001	Yes
May 12, 2001	No
August 16, 2001	Yes
November 11, 2001	No
February 18, 2002	No
May 14, 2002	Yes
August 18, 2002	Yes
November 18, 2002	No
February 15, 2003	No

Under these assumptions, the entire period from February 15, 2001 to February 18, 2002 falls within one or more Mandatory Collateral Periods. Also, the entire period commencing May 14, 2002 and ending February 15, 2003 falls within one or more Mandatory Collateral Periods. The period from February 18, 2002 to May 14, 2002 does not constitute Mandatory Collateral Period.

#### 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 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;

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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 (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, 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 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 twenty percent (20%) of NAI's total assets as of the end of the prior fiscal year.

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.

COMMON DEFINITIONS AND PROVISIONS AGREEMENT

(PHASE III - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION

AND

NETWORK APPLIANCE, INC.

DATED AS OF JUNE 16, 1999

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COMMON DEFINITIONS AND PROVISIONS AGREEMENT  
(PHASE III - IMPROVEMENTS)

This Common Definitions and Provisions Agreement (Phase III - Improvements), by and between BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and NETWORK APPLIANCE, INC., a California corporation ("NAI"), is dated as of June 16, 1999, the Effective Date.

RECITALS

Contemporaneously with the execution of this Common Definitions and Provisions Agreement (Phase III - Improvements), NAI is executing the Closing Certificate (as defined below) in favor of BNPLC, and BNPLC and NAI are executing the Improvements 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 Improvements Lease, the Construction Management Agreement and the Purchase Agreement (together with this Common Definitions and Provisions Agreement (Phase III - Improvements) 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 (Phase III - Improvements) 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.

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 Improvements 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 Improvements 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 Improvements 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 Land, the Improvements or any interest in any other Property or as a party to the transactions described in the Improvements Lease or the other Operative Documents or in the Agreement to Lease, the Other Lease Agreement or the Other Purchase Agreement, (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 Improvements Lease or other Operative Documents or in the Agreement to Lease, the Other Lease Agreement or Other Purchase Agreement, 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 Improvements Lease or the other Operative Documents or in the Agreement to Lease, the Other Lease Agreement or Other Purchase Agreement.



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

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

"ADJUSTED EBIT" shall have the meaning assigned to it in Part I of Schedule 1 attached to the Improvements Lease and to 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 the first Business Day in May, 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.

"AGREEMENT TO LEASE" shall mean the Agreement to Lease dated as of June 16, 1999 between BNPLC and NAI, pursuant to which BNPLC has agreed to provide funds for the acquisition of the Land and NAI has agreed to cause Seller to convey the fee interest in the Land to BNPLC, subject only to Permitted Encumbrances.

"APPLICABLE LAWS" means any or all of the following, to the extent applicable to NAI or the Property or the Improvements 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 Improvements 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(B)(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.

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

"BASE RENT COMMENCEMENT DATE" means the earlier of (1) the first Business Day of October, 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 \$22,065,000 (before adding any Carrying Costs for the preceding month) and the Maximum Construction Allowance is \$22,055,000, 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 Improvements 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 Improvements 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 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 Improvements 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

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(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 Agreement; or

(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 Improvements 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 Improvements 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 Improvements Lease.

"CLOSING CERTIFICATE" means the Closing Certificate and Agreement dated as of June 16, 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. (Upon execution of the Amended and Restated Closing Certificate pursuant to and as defined in the Agreement to Lease, references in the Operative Documents to the Closing Certificate shall constitute references to the Amended and Restated Closing Certificate.)

"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.

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"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.

"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 Improvements 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 V in the pricing grid below.

LEVELS	RATIO OF TOTAL DEBT TO ADJUSTED EBIT	COMMITMENT FEE RATE
Level I	less than 0.50	25.0 basis points
Level II	greater than or equal to 0.50, but less than 1.0	25.0 basis points
Level III	greater than or equal to 1.0, but less than 1.5	32.5 basis points
Level IV	greater than or equal to 1.5, but less than 2.0	50.0 basis points
Level V	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 Improvements 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 (PHASE III - IMPROVEMENTS)" 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 Improvements 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 Improvements 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 Improvements Lease.

"CONSTRUCTION MANAGEMENT AGREEMENT" means the Construction Management Agreement dated as of June 16, 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 Improvements 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 Improvements 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 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

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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 May, 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

(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

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(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 Improvements 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 June 16, 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.

"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) the Improvements 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.

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"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 the Improvements 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 dated March 1997 by Hygienetics Environmental Services, Inc.; Phase I dated June 1998 by Dames & Moore; and, an Asbestos Containing Material Survey conducted in 1989 by Vesar, Inc.

"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 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 Improvements 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 of the Improvements Lease, transferred to a purchaser under the Purchase Agreement as therein provided or applied as a Qualified

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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 Improvements 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 Improvements Lease.

"EXCLUDED TAXES" means (1) all federal, state and local income taxes upon Base Rent, Administrative Agency Fees, the Underwriting Fee, Commitment Fees, any interest paid to BNPLC or any Participant pursuant to subparagraph 3.(j) of the Improvements Lease, and any additional compensation claimed by BNPLC pursuant to subparagraph 5.(b)(ii) of the Improvements 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 the Improvements 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.

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"EXISTING CONTRACTS" means the Option Agreement and Ground Lease covering the Land between NAI and Seller, both dated June 11, 1998.

"FAILED COLLATERAL TEST DATE" shall have the meaning indicated in Part III of Schedule 1 attached to the Improvements 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.

"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 Improvements 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

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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 Improvements 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 use of the buildings or other real property improvements.

"IMPROVEMENTS LEASE" means the Lease Agreement (Phase III - Improvements") dated as of June 16, 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.

"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.

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"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 Improvements Lease, the occurrence of which event cannot be objectively determined. For example, an Event of Default under subparagraph 17.(e) of the Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements Lease or by subparagraphs 4(B) or 4(C) of the Purchase Agreement, equal in each case to (A) the Maximum Permitted 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 Improvements Lease and the Purchase Agreement.

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

"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

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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 Improvements Lease. (For purposes of the Improvements 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 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; (4) no LIBOR Period Election designated by NAI hereunder shall be different than the LIBOR Period Election specified under (and as defined in) the Other Common Definitions and Provisions Agreement; and (5) 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 Part IV of Schedule 1 attached to the Improvements Lease, "Lien" includes any Liens under ERISA relating to Unfunded Benefit Liabilities of which NAI is required to notify BNPLC under subparagraph of the Improvements 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 Improvements 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

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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 the Improvements 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 computed as follows:

(1) Prior to any Advance Date that occurs after BNPLC's acquisition of the fee interest in the Land as provided in the Agreement to Lease and after BNPLC and NAI execute the Other Lease and all other Phase III Land Documents under and as defined in the Agreement to Lease, the Maximum Construction Allowance will equal to \$48,000,000, less the sum of the Total

Land Commitment under and defined in the Agreement to Lease and the Initial Funding Advance under and as defined in this Agreement.

(2) On and after any Advance Date that occurs after BNPLC's acquisition of the fee interest in the Land as provided in the Agreement to Lease and after BNPLC and NAI execute the Other Lease and all other Phase III Land Documents under and as defined in the Agreement to Lease, the Maximum Construction Allowance will equal to \$48,000,000, less the sum of the Initial Funding Advance under and defined in the Other Common Definitions and Provisions Agreement and the Initial Funding Advance under and as defined in this Agreement.

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"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) 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; 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 Improvements Lease, the Construction Management Agreement, the Purchase Agreement, the Pledge Agreement and this Common Definitions and Provisions Agreement (Phase III - Improvements).

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"OTHER COMMON DEFINITIONS AND PROVISIONS AGREEMENT" means the Common Definitions and Provisions Agreement (Phase III - Land), to be executed as described in the Agreement to Lease, between BNPLC and NAI, as such Common Definitions and Provisions Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms. (For purposes of the Operative Documents, until the Other Common Definitions and Provisions Agreement is executed as provided in the Agreement to Lease, all references to the Other Common Definitions and Provisions Agreement in the Operative Documents will be deemed references to the form of Common Definitions and Provisions Agreement (Phase III - Land) attached the Agreement to Lease, except when a contrary intent is indicated by the context of the reference.)

"OTHER LEASE AGREEMENT" means the Lease Agreement (Phase III - Land), to be executed as described in the Agreement to Lease, between BNPLC and NAI, as such Lease Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms. (For purposes of the Operative Documents, until the Other Lease Agreement is executed as provided in the Agreement to Lease, all references to the Other Lease Agreement in the Operative Documents will be deemed references to the form of Lease Agreement (Phase III - Land) attached the Agreement to Lease, except when a contrary intent is indicated by the context of the reference.)

"OTHER PURCHASE AGREEMENT" means the Purchase Agreement (Phase III - Land), to be executed as described in the Agreement to Lease, 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. (For purposes of the Operative Documents, until the Other Purchase Agreement is executed as provided in the Agreement to Lease, all references to the Other Purchase Agreement in the Operative Documents will be deemed references to the form of Purchase Agreement (Phase III - Land) attached the Agreement to Lease, except when a contrary intent is indicated by the context of the reference.)

"OUTSTANDING CONSTRUCTION ALLOWANCE" shall have the meaning assigned to it in subparagraph of the Improvements 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 Improvements 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 Improvements 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 Improvements 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.

"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 (including the Other Lease Agreement, the Other Purchase Agreement and all documents executed by BNPLC pursuant to the Agreement to Lease or the Other Purchase Agreement), (iii) any ground lease executed pursuant to the Other Purchase Agreement, (iv) 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 Improvements 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 Improvements 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 Improvements Lease and the Construction Management Agreement or for the operation of the Property for the purposes expressly permitted under subparagraph 2.(a) of the Improvements 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 Improvements 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 Land and 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 Improvements 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 (Phase III - Improvements) 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.

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"PROJECT COSTS" means the following:

(a) 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 attached to the Construction Management Agreement, but also the following costs to the extent reasonably incurred in connection with the Construction Project:

- o 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,
- o site preparation costs, and

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

(b) costs incurred to maintain insurance required by (and consistent with the requirements of) the Improvements 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 Improvements Lease;

(c) 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;

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

(e) 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 Improvements 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. The fee interest in the Land itself will not be included in the Property. However, prior to a Closing under and as defined in the Agreement to Lease, when the Other Lease Agreement is executed and all right, title and interest of BNPLC in the Land shall be encompassed within the term "Property" as used in the Other Lease Agreement and the Other Purchase Agreement, if BNPLC should acquire any right, title and interest in and to the Land (for example, a option to purchase the Land by the acceptance of an assignment of the Existing Contracts from NAI under the Agreement to Lease) such right, title and interest of BNPLC shall be encompassed within the term "Property" as such term is used in the Operative Documents.

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"PURCHASE AGREEMENT" means the Purchase Agreement (Phase III - Improvements) dated as of May 3, 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.

"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 Improvements Lease or any other provision of the Improvements 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 Improvements Lease.

"REAL PROPERTY" shall have the meaning assigned to it on page 1 of the Improvements 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

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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, 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 fifteen percent (15%).

"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 period commencing on a Failed Collateral Test Date and continuing through the next Collateral Test Date (under and as defined in Schedule 1 attached to the Lease)

that does not constitute a Failed Collateral Test Date, the Secured Spread shall equal one-half of the Unsecured Spread.

"SELLER" means 475 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, the Upfront Syndication Fees, the Underwriting Fee, 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 Improvements 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.

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"THIRD PARTY SALE NOTICE" shall have the meaning assigned to it in subparagraph 2(C) of the Purchase Agreement.

"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.

"UNDERWRITING FEE" shall have the meaning assigned to it in subparagraph of the Improvements Lease.

"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.

"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 period commencing on or prior to the first Business Day of January, 2000, the Unsecured Spread will be the amount indicated for Level III 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

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(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
Level I	less than 0.5	125.0 basis points
Level II	greater than or equal to 0.5, but less than 1.0	137.5 basis points
Level III	greater than or equal to 1.0, but less than 1.5	150.0 basis points
Level IV	greater than or equal to 1.5, but less than 2.0	175.0 basis points
Level V	greater than or equal to 2.0	200.0 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 Improvements 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.

"UPFRONT SYNDICATION FEES" shall have the meaning assigned to it in subparagraph 2(M) of the Closing Certificate and Agreement.

"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:

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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: 1.

Federal Reserve Bank of New York  
ABA 026007689 Banque Nationale de Paris  
/BNP/ BNP San Francisco  
/AC/ 14334000176  
/Ref/ NAI Sunnyvale Synthetic Improvements 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:

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BNP Leasing Corporation  
12201 Merit Drive  
Suite 860  
Dallas, Texas 75251  
Attention: Lloyd G. Cox  
Telecopy: (972) 788-9191

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 Improvements Lease or of the leasehold estate created by the Improvements 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 Improvements 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

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fact that the same person may acquire or hold, directly or indirectly, the Improvements 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 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 Improvements 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.

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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 (Phase III - Improvements), 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 [Agreement]", "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.]

Common Definitions and Provisions Agreement  
(Phase III - Improvements) - Page 31

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Common Definitions and Provisions Agreement (Phase III - Improvements) to be executed as of June 16, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Common Definitions and Provisions Agreement  
(Phase III - Improvements) - Page 32

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[Continuation of signature pages to Common Definitions and Provisions Agreement (Phase III - Improvements) dated to be effective June 16, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: \_\_\_\_\_

Henry Setina, Vice President

Common Definitions and Provisions Agreement  
(Phase III - Improvements) - Page 33

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LEASE AGREEMENT  
(PHASE III - LAND)

BETWEEN

BNP LEASING CORPORATION  
("BNPLC")

AND

NETWORK APPLIANCE, INC.  
("NAI")

JUNE 16, 1999  
(SUNNYVALE, CALIFORNIA)

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#### LEASE AGREEMENT (PHASE III - LAND)

This LEASE AGREEMENT (PHASE III - LAND) (this "LAND 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 [EFFECTIVE DATE], the Effective Date. ("EFFECTIVE DATE" and other capitalized terms used and not otherwise defined in this Land Lease are intended to have the meanings assigned to them in the Common Definitions and Provisions Agreement (Phase III - Land) executed by BNPLC and NAI contemporaneously with this Land Lease. By this reference, the Common Definitions and Provisions Agreement (Phase III - Land) is incorporated into and made a part of this Land Lease for all purposes.)

#### RECITALS

Pursuant to the Existing Contracts, which covers the Land described in Exhibit , BNPLC is acquiring the Land and any appurtenances thereto from Seller contemporaneously with the execution of this Land Lease.

In anticipation of BNPLC's acquisition of the Land under the Existing Contracts, BNPLC and NAI have reached agreement as to the terms and conditions upon which BNPLC is willing to lease the Land to NAI, and by this Land 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) all easements and other rights appurtenant to the Land, whether now owned or hereafter acquired by BNPLC; and
- (3) (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 (3) above are hereinafter referred to collectively as the "REAL PROPERTY". The Real Property does not include any Improvements (now existing or those to be constructed as provided in the Other Lease Agreement and the Construction Management Agreement) or BNPLC's rights appurtenant to the Improvements, it being understood that the Other Lease Agreement constitutes a separate lease of the Improvements and the appurtenances thereto, and only the Improvements and the appurtenances thereto, from BNPLC to NAI.

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 Contracts or acquired by BNPLC pursuant to Paragraph 7 below, BNPLC also hereby grants and assigns to NAI for the term of this Land Lease the right to use and enjoy (and, in the case of contract rights, to enforce) such rights or interests of BNPLC:

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- (a) the benefits, if any, conferred upon the owner of the Real Property by the Permitted Encumbrances and Development Documents; and
- (b) 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 Land 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 Land Lease (the "TERM") shall commence on and include the Effective Date, and end on the first Business Day of July, 2004, unless sooner terminated as expressly herein provided.
  - (b) Intentionally Deleted.

(c) Intentionally Deleted.

(d) Election by NAI to Terminate After Accelerating the Designated Sale Date.

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 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 (Phase II - Land). 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 Land 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 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

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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 (Phase II - Land), 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; and (C) immediately prior to any such extension, this Land 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 Land 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.

(i) constructing, maintaining and using Improvements on the Land for purposes expressly permitted by and described in Paragraph 2(a) of the Other Lease Agreement; and

(ii) other lawful purposes 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 Land 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 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 LAND 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.

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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.

3. RENT.

(a) Base Rent Generally . 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 Land Lease as received on the next following Business Day. At least five days prior to any 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 Land 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 Land 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) Determination of Payment Due Dates, 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.

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

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.

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b) Consistent with clause (3) of the definition of LIBOR Period Election in the Common Definitions and Provisions Agreement (Phase II - Land), 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 .

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.

(iii) 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:

- o Stipulated Loss Value on the first day of such Base Rent Period, times
- o 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
- o 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
- o 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 Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$20,000,000; 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:

$$\$20,000,000 \times .30\% \times 30/360 = \$5,000$$

(iv) 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:

- o Stipulated Loss Value on the first day of such Base Rent Period, times
- o the sum of:
  - (A) the product of:
    - (1) the Collateral Percentage for such Base Rent Period, times  
  
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    - (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
- o 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
- o 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 Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$20,000,000; 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:

$$\$20,000,000 \times \{(40\% \times .30\%) + ([1 - 40\%] \times [6\% + 1.50\%])\} \times 30/360 = \$77,000$$

(v) 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:

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

- o 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
- o 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 Qualified Prepayments have been received by BNPLC, leaving a Stipulated Loss Value of \$20,000,000; 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;

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and that such Base Rent Period contains exactly thirty days. Under such assumptions, the Base Rent for the hypothetical Base Rent Period will equal:

$$\$20,000,000 \times (6\% + 1.50\%) \times 30/360 = \$125,000$$

(d) Additional Rent . All amounts which NAI is required to pay to or on behalf of BNPLC pursuant to this Land 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) Intentionally Deleted .

(f) Intentionally Deleted .

(g) Intentionally Deleted .

(h) Intentionally Deleted .

(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 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 Land 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 Land 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 Land Lease itself, this Land Lease shall not terminate, nor shall NAI have any right to terminate this Land Lease, nor shall NAI be entitled to any abatement of the Rent, nor shall the obligations of NAI under this Land 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

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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 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 Land Lease or under any other agreement to which BNPLC and NAI are parties, (vi) the inadequacy in any way whatsoever of 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 Land 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 Land 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 Land 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 Land 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 Land Lease which are binding upon BNPLC.

(c) Tax Reporting . BNPLC and NAI shall report this Land 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 Land 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 Land 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 Land Lease . For purposes of determining the appropriate financial accounting for this Land Lease and for purposes of determining their respective rights and remedies under state law, BNPLC and NAI believe and intend that (i) this Land 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 Land 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 Land 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 Land 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 Land 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 Land 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 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.

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(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. 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 Land 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 the Initial Funding Advance, (E) the breach by NAI of this Land Lease or any other document executed by NAI in connection herewith, (F) any failure of the Property or NAI itself to comply with Applicable Laws, (G) Permitted Encumbrances, (H) Hazardous Substance

Activities, including those occurring prior to Effective Date, (I) any obligations under the Existing Contracts related to the Property 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 LAND 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 LAND 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 LAND 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

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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 Land Lease or at any time during the Term.

(iv) NAI's obligations under this subparagraph 5.(c) shall survive the termination or expiration of this Land 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 (Phase II - Land), (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 Land Lease and other Operative Documents) to include the following in the calculation of Stipulated Loss Value or the Break Even Price or collect Base Rent, a Supplemental Payment and other amounts, the calculation of which depends upon the Stipulated Loss Value or the Break Even Price, BNPLC acknowledges and agrees that nothing in subparagraph or the preceding subparagraphs of this Paragraph 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 made under (and as defined in) the Construction Management Agreement or the Other Lease Agreement, including costs and expenditures incurred or paid by or on behalf of BNPLC after any

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Landlord's Election to Continue Construction under (and as defined in) the Other Lease Agreement, to the extent that such costs and expenditures are considered to be Construction Advances pursuant to subparagraph 6(e) of the Lease Agreement.

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) [Intentionally Deleted].

6. INTENTIONALLY DELETED.

7. INTENTIONALLY DELETED.

8. ENVIRONMENTAL.

(a) Environmental Covenants by NAI . NAI covenants that:

(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 Land 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 Land Lease.

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(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 . 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.

(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, 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

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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 . NAI shall deliver and maintain with BNPLC for each liability insurance policy required by this Land 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) Intentionally Deleted .

(c) Failure to Obtain Insurance . If NAI fails to obtain any insurance or to provide confirmation of any such insurance as required by this Land 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, and as defined in, 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 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 Land 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 Land Lease. NAI agrees to have 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 shall govern the application of proceeds received by BNPLC or NAI during the Term from any third party (1) 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 (2) because of any judgment, decree or award for injury or damage to the Property (e.g., damage resulting from a third party's release of Hazardous Materials onto 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 Land 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 , 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 Land 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 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 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 an Event of Default . Notwithstanding the foregoing, 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

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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 Land Lease to the contrary, if the Property is damaged 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 the same (in a manner consistent with the requirements and limitations imposed by this Land 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 Land 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:

(a) Compliance with Covenants and Laws. The use of the Property permitted by this Land Lease complies, or will comply after NAI obtains available permits as the tenant under this Land 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 any construction upon or use of the Property permitted by this Land 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 (and as defined in) 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 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

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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. NAI shall not, without the prior consent of BNPLC, 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 the Other Lease Agreement 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 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 this Land 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 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 Land 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 this Land 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

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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 this Land 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 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 this Land Lease has occurred and is continuing or, if a Default or Event of Default under this Land 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.

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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 Land 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 this provision will not be construed to prohibit any sublease of space within Improvements expressly permitted by the Other Lease Agreement.

(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 Land Lease.

(c) Consent Not a Waiver . No consent by BNPLC to a sale, assignment, transfer, mortgage, pledge or hypothecation of this Land Lease or NAI's interest

hereunder, and no assignment or subletting of the Property or any part thereof in accordance with this Land 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 Land 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 Land 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 Land 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 Land Lease and the other Operative Documents, then BNPLC shall thereby be released from any obligations arising after such assumption under this Land Lease or the other Operative Documents, 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 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 Land Lease or the other Operative Documents.

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(b) If NAI fails to perform any act or to take any action required of it by this Land Lease or the Closing Certificate, or to pay any money which NAI is required by this Land 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 Land 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 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 Land 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 Land Lease and the other Operative Documents without evaluating such information. For purposes of this Land 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 Land 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 Land 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 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 Paragraph 17), or NAI shall fail to comply with any term, provision or covenant of this Land Lease 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

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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 Land 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 (Phase II - Land)) 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 Land 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 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:

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(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 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 Land 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 Land 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 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 Land Lease and abandoned the Property, this Land 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 Land Lease, including the right to recover the Rent as it becomes due under this Land 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:

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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 Land 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 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 favor of BNPLC under Applicable Law or in equity. In addition to other remedies provided in this Land 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 Land Lease, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this Land Lease to be performed by NAI, or to any other remedy allowed to BNPLC at law or in equity. Nothing contained in this Land 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 Land 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 Land 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.

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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 Land 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 Land Lease or excuse NAI from its obligation to pay Rent.

21. SURRENDER UPON TERMINATION. Unless NAI or an Applicable Purchaser purchases or has purchased BNPLC's entire interest in the Property pursuant to the terms of the Purchase Agreement and BNPLC's entire interest in the Improvements and other "Property" under (and as defined in) the Other 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 Land Lease or the Other Lease Agreement, and (ii) demolition, alterations and additions which are expressly permitted by the terms of this Land Lease or the Other Lease Agreement 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.

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 Land 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 Land Lease shall reinstate, continue or extend the Term of this Land Lease and no extension of this Land 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 Land 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 Land 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 Closing Certificate and the express terms and provisions of this Land Lease, the express terms and provisions of this Land Lease shall control; provided, nothing herein will limit or impair NAI's obligations under the Closing Certificate following any expiration of termination of this Land Lease.

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[The signature pages follow.]

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Land Lease Agreement to be executed as of [EFFECTIVE DATE].

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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[Continuation of signature pages to Lease Agreement dated to be effective [EFFECTIVE DATE]]

"BNPLC"

BNP LEASING CORPORATION

By: \_\_\_\_\_  
Henry Setina, Vice President

## Exhibit A

## LEGAL DESCRIPTION

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

## PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38(degrees) 52' 02" East 134.85 feet; thence North 51(degrees) 07' 58" West 49.68; thence North 38(degrees) 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75(degrees) 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14E 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04(degrees) 20' 28" an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38(degrees) 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

## PARCEL TWO:

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Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

## PARCEL THREE:



A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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 45E 01' 56" East, through a central angle of 4E 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38E 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38E 52' 02" West, through a central angle of 28E 09' 05" for an arc length of 38.32 feet; thence North 38E 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90E 00' 00" for an arc length of 26.70 feet; thence North 51E 07' 58" West 19.80 feet; thence the following three courses: North 38E 52' 02" East 12.69 feet North 51E 07' 58" West 49.68 feet; North 38E 52' 02" 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 South 75E 07' 58" East 13.45 feet along said Northeasterly line; thence South 38E 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88E 46' 22" West, through a central angle of 52E 21' 36" for an arc length of 12.79 feet; thence South 51E 07' 58" East 85.87 feet; thence South 38E 52' 02" West 252.96 feet; North 51E 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10E 35' 40" West, through a central angle of 40E 32' 18" for an arc length of 14.15 feet; thence South 38E 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60E 45' 15" for an arc length 21.21 feet to a point on

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said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42E 01' 23" East, through a central angle of 1E 19' 55" for an arc length of 23.29 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 Land 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 under (and as defined in) the Other Lease Agreement, 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 Land 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;
  - (b) 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 (Phase II - Land) between Network Appliance, Inc. and BNP Leasing Corporation dated [EFFECTIVE DATE])";
  - (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 (Phase II - Land) between Network Appliance, Inc. and BNP Leasing Corporation dated [EFFECTIVE DATE]"; and

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- (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. INTENTIONALLY DELETED.

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. Intentionally Deleted.

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 Land Lease and new certificate or evidence of insurance must be delivered no later than 10 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 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 Land 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.

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 (Phase III - Improvements) and Lease Agreement (Phase III Land), both dated as of [EFFECTIVE DATE], and both 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 two Lease Agreements referenced above. This letter constitutes notice to you that the LIBOR Period Election under both of the Lease Agreements 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 AGREEMENTS REFERENCED IN THE LEASE AGREEMENTS, 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 (Phase III - Improvements) (the "IMPROVEMENTS LEASE") dated to be effective as of [EFFECTIVE DATE] (the "EFFECTIVE DATE"), between BNP Leasing Corporation, a Delaware corporation ("BNPLC") and Network Appliance, Inc., a California corporation ("NAI"), (b) the Lease Agreement (Phase III - Land) (the "LAND LEASE" and, together with the Improvements Lease, the "LEASES") dated to be effective as of the Effective Date, between BNPLC and NAI, (c) the Pledge Agreement (Phase III - Improvements) (the "PLEDGE AGREEMENT (IMPROVEMENTS)") 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, and (d) the Pledge Agreement (Phase III - Land) (collectively with the Pledge Agreement (Improvements), the "PLEDGE AGREEMENTS") 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 Leases or the Common Definitions and Provisions Agreements referenced in the Leases; 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 Agreements, 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 credits 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

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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.

"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 Agreements, the Collateral Percentage for purposes of the Pledge Agreements 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.

"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): Collateral delivered and pledged under the Pledge Agreements in accordance with the requirements thereof (if any); plus 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis), 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 quarters ends after December 31, 1999.

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#### 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 Agreements 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis).
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 1.50 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 Debt of NAI and its Subsidiaries (determined on a consolidated basis) 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

If, as of the end of the latest fiscal quarter of NAI ending before any Collateral Test Date, NAI shall have both:

(A) failed to maintain a ratio of (1) the sum (without duplication of any item) of Collateral delivered and pledged under the Pledge Agreements in accordance with the requirements thereof (if any), 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 1.5 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;

such Collateral Test Date shall constitute a "FAILED COLLATERAL TEST DATE" for purposes of the determination of Mandatory Collateral Periods. A Mandatory Collateral Period shall commence on each Failed Collateral Test, and such Mandatory Collateral Period shall continue until the second of any two subsequent CONSECUTIVE Collateral Test Dates, neither of which constitutes a Failed Collateral Test Date.

For purposes of illustration only, assume that the following dates are consecutive Collateral Test Dates, some of which are Failed Collateral Test Dates and some of which are not, as indicated opposite each date:

Date ----	Failed Collateral Test Date? -----
February 15, 2001	Yes
May 12, 2001	No
August 16, 2001	Yes
November 11, 2001	No
February 18, 2002	No
May 14, 2002	Yes
August 18, 2002	Yes
November 18, 2002	No
February 15, 2003	No

Under these assumptions, the entire period from February 15, 2001 to February 18, 2002 falls within one or more Mandatory Collateral Periods. Also, the entire period commencing May 14, 2002 and ending February 15, 2003 falls within one or more Mandatory Collateral Periods. The period from February 18, 2002 to May 14, 2002 does not constitute Mandatory Collateral Period.

#### 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:

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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 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 business.

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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 twenty percent (20%) of NAI's total assets as of the end of the prior fiscal year.

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.

COMMON DEFINITIONS AND PROVISIONS AGREEMENT  
(PHASE III - LAND)

BETWEEN

BNP LEASING CORPORATION

AND

NETWORK APPLIANCE, INC.

DATED AS OF [EFFECTIVE DATE]

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This Common Definitions and Provisions Agreement (Phase III - Land), by and between BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), and NETWORK APPLIANCE, INC., a California corporation ("NAI"), is dated as of [EFFECTIVE DATE], the Effective Date.

#### RECITALS

Contemporaneously with the execution of this Common Definitions and Provisions Agreement (Phase II - Improvements), NAI is executing the Closing Certificate (as defined below) in favor of BNPLC, and BNPLC and NAI are executing the Land Lease (as defined below) and the Purchase Agreement (as defined below), both of which concern the Property (as defined below). Each of the Closing Certificate, the Land Lease and the Purchase Agreement (together with this Common Definitions and Provisions Agreement (Phase II - Land) 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 (Phase II - Land) and incorporating it by reference into each of the other Operative Documents.

#### AGREEMENTS

#### 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:

"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 Land 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 Land, the Improvements or any interest in any other Property or as a party to the transactions described in the Land Lease or the other Operative Documents or in the Other Lease Agreement or the Other Purchase Agreement, (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 Land Lease or other Operative Documents or in the Other Lease Agreement or Other Purchase Agreement, 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 Land Lease or the other Operative Documents or in the Other Lease Agreement or Other Purchase Agreement.

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"ADDITIONAL RENT " shall have the meaning assigned to it in subparagraph of the Land Lease.

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

"ADVANCE DATE " means the first Business Day of every calendar month, beginning with the first Business Day in May, 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 Land 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.

"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.

"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 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.

"BASE RENT " means the rent payable by NAI pursuant to subparagraph of the Land Lease.

"BASE RENT COMMENCEMENT DATE " shall mean the earlier of (1) the first Business Day of October, 2000, or (2) the "Base Rent Commencement Date" under and as defined in the Other Common Definitions and Provisions Agreement.

"BASE RENT DATE " means a date upon which Base Rent must be paid under the Land 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:

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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 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 Land 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.

Common Definitions and Provisions Agreement (Phase II - Land) - Page 3

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"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 the Initial Funding Advance 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 an Advance Date or the last day of a Base Rent Period; or

(2) used to make or maintain the Initial Funding Advance upon the acceleration of the end of any Base Rent Period pursuant subparagraph 3.(c)(ii) of the Land 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 Land 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.

"CLOSING CERTIFICATE " means the Amended and Restated Closing Certificate and Agreement dated as of [EFFECTIVE DATE] 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.

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

"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 Land Lease, the Collateral

Common Definitions and Provisions Agreement (Phase II - Land) - Page 4

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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.

"COMMON DEFINITIONS AND PROVISIONS AGREEMENT (PHASE II - LAND) " means this Agreement, which is incorporated by reference into each of the other Operative Documents.

"CONSTRUCTION MANAGEMENT AGREEMENT " means the Construction Management Agreement dated as of June 16, 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 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.

"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

Common Definitions and Provisions Agreement (Phase II - Land) - Page 5

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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 Land 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 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.

"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 May, 2004; or

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- (2) any Business Day designated as such in an irrevocable, unconditional notice given by NAI to BNPLC; 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 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

- (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) [Intentionally Deleted]; 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 Land 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 [EFFECTIVE DATE].

"EFFECTIVE RATE " means for each Base Rent Period, the per annum rate determined by dividing (A) LIBOR for such Base Rent Period, as the case may be, by (B) one hundred percent (100%) minus the Eurodollar Rate Reserve Percentage for such Base Rent Period. If LIBOR or the Eurodollar Rate Reserve Percentage changes 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 Base Rent Period in accordance with the foregoing, then the "EFFECTIVE RATE" for that 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) the Land 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 the Land 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 dated March 1997 by Hygeienetics Environmental Services, Inc.; Phase I dated June 1998 by Dames & Moore; and, an Asbestos Containing Material Survey conducted in 1989 by Vesar, Inc.

"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 BNPLC to collect such proceeds. Notwithstanding the foregoing,

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"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 Land 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 of the Land 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 Land 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 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 of the Land Lease.

"EXCLUDED TAXES " means (1) all federal, state and local income taxes upon Base Rent, any interest paid to BNPLC or any Participant pursuant to subparagraph of the Land Lease, and any additional compensation claimed by BNPLC pursuant to subparagraph of the Land Lease; (2) any transfer or change of ownership taxes assessed because of BNPLC's

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transfer or conveyance to any third party of any rights or interest in the Land 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 CONTRACTS " means the Option Agreement and Ground Lease covering the Land between NAI and Seller, both dated June 11, 1998.

"FAILED COLLATERAL TEST DATE " shall have the meaning indicated in Part III of Schedule 1 attached to the Improvements 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.

"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 of the Land 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,

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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 Land 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 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 maintenance of the Property; or

(3) 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 of the Land Lease, the occurrence of which event cannot be objectively determined. For example, an Event of

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Default under subparagraph 17.(e) of the Land 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 Land 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 Land 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 Land 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.

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

"LAND LEASE " means the Lease Agreement (Phase III - Land") dated as of [EFFECTIVE DATE] 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 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 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 Bankers' 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 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 the Initial Funding Advance during any Base Rent Period for which 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 attached to the Land Lease. (For purposes of the Land 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)

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NAI shall not be entitled to 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; (4) no LIBOR Period Election designated by NAI hereunder shall be different than the LIBOR Period Election specified under (and as defined in) the Other Common Definitions and Provisions Agreement; and (5) 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 Part IV of Schedule 1 attached to the Land 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 Land 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 Land 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.

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

"OPERATIVE DOCUMENTS " means the Closing Certificate, the Land Lease, the Purchase Agreement, the Pledge Agreement and this Common Definitions and Provisions Agreement (Phase II - Land).

"OTHER COMMON DEFINITIONS AND PROVISIONS AGREEMENT " means the Common Definitions and Provisions Agreement (Phase III - Improvements), dated as of the June 16, 1999, between BNPLC and NAI, as such Common Definitions and Provisions Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"OTHER LEASE AGREEMENT " means the Lease Agreement (Phase III - Improvements), dated as of June 16, 1999, between BNPLC and NAI, as such Lease Agreement may be extended, supplemented, amended, restated or otherwise modified from time to time in accordance with its terms.

"OTHER PURCHASE AGREEMENT " means the Purchase Agreement (Phase III - Improvements), dated as of June 16, 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.

"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



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participate in all or some of the risks and rewards to BNPLC of the Land 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 Land 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 June 16, 1999, pursuant to which BNPLC's Parent has agreed to participate in the risks and rewards to BNPLC of the Land 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.

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

"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 (including the Other Lease Agreement, the Other Purchase Agreement and all documents executed by BNPLC pursuant to the Other Purchase Agreement), (iii) any ground lease executed pursuant to the Other Purchase Agreement, (iv) 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 Land 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 Land 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 Other Lease Agreement and the Construction Management Agreement or for the operation of the Property for the purposes expressly permitted under subparagraph 2.(a) of the Land 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.

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"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 Land 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 Land and 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 Contracts, 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 Land 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 (Phase III - Land) 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.

"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.

"PROPERTY " means the Personal Property and the Real Property, collectively. Any rights, titles and interests acquired by BNPLC under the Existing Contracts, to the extent not covered by the Land Lease and thus not encompassed within this definition of Property, are intended to be covered by the Other Lease Agreement and encompassed within the term "Property" as defined in the Other Common Definitions and Provisions Agreement.

"PURCHASE AGREEMENT " means the Purchase Agreement (Phase III - Land) dated as of [EFFECTIVE DATE] 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.

"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 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 of the Land Lease or any other provision of the Land Lease. For purposes of computing the total Qualified Prepayments (and other amounts dependent upon Qualified Prepayments, such as Stipulated Loss Value) 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 Land Lease.

"REAL PROPERTY " shall have the meaning assigned to it on page 1 of the Land Lease.

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"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, 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 fifteen percent (15%).

"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.

"SECURED SPREAD " means thirty basis points (30/100 of 1%); provided, however, that for purposes of calculating the Base Rent for any period commencing on a Failed Collateral Test Date and continuing through the next Collateral Test Date (under and as defined in Schedule 1 attached to the Lease) that does not constitute a Failed Collateral Test Date, the Secured Spread shall equal one-half of the Unsecured Spread.

"SELLER " means 475 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, 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 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 Land Lease.

"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.

"THIRD PARTY SALE PROPOSAL " shall have the meaning assigned to it in subparagraph 2(C) of the Purchase Agreement.

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"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.

"UNSECURED SPREAD " means, for each 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 period commencing on or prior to the first Business Day of January, 2000, the Unsecured Spread will be the amount indicated for Level III 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
Level I	less than 0.5	125.0 basis points
Level II	greater than or equal to 0.5, but less than 1.0	137.5 basis points
Level III	greater than or equal to 1.0, but less than 1.5	150.0 basis points
Level IV	greater than or equal to 1.5, but less than 2.0	175.0 basis points
Level V	greater than or equal to 2.0	200.0 basis points

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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 Land 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 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.

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  
/Ref/ NAI Sunnyvale Synthetic Land 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.

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(iii) 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

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

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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 Land Lease or of the leasehold estate created by the Land 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 Land 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 Land 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 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 Land 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.

Common Definitions and Provisions Agreement (Phase II - Land) - Page 22

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 (Phase II - Land), 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 [Agreement]", "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.]

Common Definitions and Provisions Agreement (Phase II - Land) - Page 24

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Common Definitions and Provisions Agreement (Phase II - Land) to be executed as of [EFFECTIVE DATE].

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Common Definitions and Provisions Agreement (Phase II - Land) - Page 25

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[Continuation of signature pages to Common Definitions and Provisions Agreement (Phase II - Land) dated to be effective [EFFECTIVE DATE]]

"BNPLC"

BNP LEASING CORPORATION

By: \_\_\_\_\_  
Henry Setina, Vice President

Common Definitions and Provisions Agreement (Phase II - Land) - Page 26

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PLEDGE AGREEMENT  
(PHASE III - LAND)

AMONG

BNP LEASING CORPORATION  
("BNPLC")

BANQUE NATIONALE DE PARIS, AS AGENT  
("AGENT")

NETWORK APPLIANCE, INC.  
("NAI")

AND

PARTICIPANTS AS DESCRIBED HEREIN

JUNE 16, 1999

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PLEDGE AGREEMENT  
(PHASE III - LAND)

This PLEDGE AGREEMENT (PHASE III - LAND) (this "AGREEMENT") is made as of [EFFECTIVE DATE] (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 (Phase III - Land) dated as of the Effective Date (the "COMMON DEFINITIONS AND PROVISIONS AGREEMENT (PHASE III - LAND)"); and (ii) a Purchase Agreement (Phase III - Land) dated as of the Effective Date (the "PURCHASE AGREEMENT"), pursuant to which NAI has agreed to make a "SUPPLEMENTAL PAYMENT" (as defined in the Common Definitions and Provisions Agreement (Phase III - Land)), in consideration of the rights granted to NAI by the Purchase Agreement.

B. Pursuant to a Participation Agreement dated as of June 16, 1999 (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 (Phase III - Land)), 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 BNPLC 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 (Phase III - Land) and not otherwise defined herein shall have the same meanings herein as set forth in the Common Definitions and Provisions Agreement (Phase III - Land). 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.

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"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.

"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.

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"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, 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 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 Land Lease an amount equal to interest at the Default Rate (as defined in the Land 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 Land 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 Land 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

(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.

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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 Land Lease, including any such Event of Default consisting of a failure of NAI to comply with the requirements of Exhibit I attached to the Land Lease; and

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(2)(a) any failure of NAI to make any payment required by and when first due under the Land Lease, regardless of whether any period provided in the Land 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 Land 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 Land 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, and (ii) 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.

"QUALIFIED PLEDGE" means a pledge or security interest that constitutes a valid, perfected, first priority pledge or security interest.

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"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 Land 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 Land 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 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

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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 on or after the first Business Day of January, 2001, or (B) the next following Base Rent Period which is at least ten Business Days after the receipt of such notice by Agent, BNPLC and the Participants. Further, after the first change in the Collateral Percentage resulting from a designation by NAI of a Collateral Percentage greater than zero percent (0%), any subsequent change resulting from NAI's designation of a new Collateral Percentage shall not become effective before the first Business Day of the first Base Rent Period that commences at least ninety days after the effective date of the last preceding change in the Collateral 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 this Section (and of Sections and ) 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;

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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 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 and .

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

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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,

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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

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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 Land 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:

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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 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

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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 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.

#### 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.

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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 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.

#### ARTICLE VII REPRESENTATIONS AND COVENANTS OF NAI

Section 7.1 Representations of NAI. NAI represents to BNPLC, Agent and the Participants as follows:

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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 (Phase III - Land) 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, (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, and (D) reimburse Agent upon request for any legal opinion Agent may elect to obtain from a nationally recognized commercial law firm authorized to practice in New York concerning the enforceability, first priority and perfection of Agent's security interest in any Collateral maintained in New York, if BNPLC or any Participant should at any time elect to use a Deposit Taker that will maintain one or more Accounts in New York.

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7.2.2 NAI shall not use or consent to any use of any Collateral in violation of any provision of 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 Land 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

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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 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 Land 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.

#### ARTICLE X OTHER RECOURSE

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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 BNPIC; 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, 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

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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 telecopy, 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 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

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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 (Phase III - Land), 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 (Phase III - Land) are incorporated into this Agreement for all purposes as if set forth in this Article.

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

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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 [EFFECTIVE DATE].

"NAI"  
NETWORK APPLIANCE, INC.

By: \_\_\_\_\_

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[Continuation of signature pages to Pledge Agreement (Phase III - Land) dated to be effective [EFFECTIVE DATE]]

"BNPLC"  
BNP LEASING CORPORATION

By: \_\_\_\_\_  
Henry Setina, Vice President

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[Continuation of signature pages to Pledge Agreement (Phase III - Land) dated to be effective [EFFECTIVE DATE]]

"AGENT"

BANQUE NATIONALE DE PARIS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"PARTICIPANT"

BANQUE NATIONALE DE PARIS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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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  
(Phase III - Land) dated [EFFECTIVE DATE], 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 (Phase III - Land)  
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

1

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ATTACHMENT 2  
TO PLEDGE AGREEMENT

SUPPLEMENT TO PLEDGE AGREEMENT

[ \_\_\_\_\_, \_\_\_\_ ]

Banque Nationale de Paris

-----  
-----  
-----

Network Appliance, Inc.

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-----  
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1. Reference is made to the Pledge Agreement (Phase III - Land) (the "PLEDGE AGREEMENT") dated [EFFECTIVE DATE] 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 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 (Phase III - Land) (the "PLEDGE AGREEMENT") dated [EFFECTIVE DATE] 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 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 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]

ATTACHMENT 4  
TO PLEDGE AGREEMENT

NOTICE OF SECURITY INTEREST

[\_\_\_\_\_, \_\_\_\_]

[Name of Deposit Taker]  
[Address of Deposit Taker]

1. Reference is made to the Pledge Agreement (Phase III - Land) (the "PLEDGE AGREEMENT") dated [EFFECTIVE DATE] 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]

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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 Land 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
3. The Minimum Collateral Value on the Base Rent Commencement Date was \$7,200,000 (reflecting a Collateral Percentage of 60% times Stipulated Loss Value).
4. 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

Assumptions: Assume the same facts as in Example No. 1, and in addition assume that:

1. 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.
2. 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.

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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
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 (Phase III - Land) dated [EFFECTIVE DATE] 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 (Phase III - Land) 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 (Phase III - Land) referenced above (the "PLEDGE AGREEMENT"). 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 (Phase III - Land) dated [EFFECTIVE DATE] 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 (Phase III - Land) 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 (Phase III - Land) referenced above (the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC and NAI]

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 (Phase III - Land) dated [EFFECTIVE DATE] 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 (Phase III - Land) 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 (Phase III - Land) referenced above (the "PLEDGE AGREEMENT"). 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 (Phase III - Land) dated [EFFECTIVE DATE] 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  
(Phase III - Land) 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 (Phase III - Land) referenced above  
(the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC and NAI]

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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 (Phase III - Land) dated [EFFECTIVE DATE] 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 (Phase III - Land) 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 (Phase III - Land) referenced above (the "PLEDGE AGREEMENT"). 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 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 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: \_\_\_\_\_

[cc BNPLC]

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 (Phase III - Land) dated [EFFECTIVE DATE] 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 (Phase III - Land) 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 (Phase III - Land) referenced above (the "PLEDGE AGREEMENT"). 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.

BANQUE NATIONALE DE PARIS, AS AGENT

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[cc BNPLC and NAI]

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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 (Phase III - Land) dated [EFFECTIVE DATE] 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 (Phase III - Land) 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 (Phase III - Land) referenced above (the "PLEDGE AGREEMENT"). 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,

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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.]

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: \_\_\_\_\_

[cc BNPLC]

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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 (Phase III - Land) dated [EFFECTIVE DATE] 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 (Phase III - Land) 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 (Phase III - Land) referenced above (the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC and NAI]

=====

PLEDGE AGREEMENT  
(PHASE III - IMPROVEMENTS)

AMONG

BNP LEASING CORPORATION  
("BNPLC")

BANQUE NATIONALE DE PARIS, AS AGENT  
("AGENT")

NETWORK APPLIANCE, INC.  
("NAI")

AND

PARTICIPANTS AS DESCRIBED HEREIN

JUNE 16, 1999

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PLEDGE AGREEMENT  
(PHASE III - IMPROVEMENTS)

This PLEDGE AGREEMENT (PHASE III - IMPROVEMENTS) (this "AGREEMENT") is made as of June 16, 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 (Phase III - Improvements) dated as of the Effective Date (the "COMMON DEFINITIONS AND PROVISIONS AGREEMENT (PHASE III - IMPROVEMENTS)"); and (ii) a Purchase Agreement (Phase III - Improvements) 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 (Phase III - Improvements)), 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 (Phase III - Improvements)), 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 BNPLC 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 (Phase III - Improvements) and not otherwise defined herein shall have the same meanings herein as set forth in the Common Definitions and Provisions Agreement (Phase III - Improvements). 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.

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"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.

"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 and below.

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"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, 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 Improvements Lease an amount equal to interest at the Default Rate (as defined in the Improvements 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 Improvements 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 Improvements 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 Improvements Lease, including any such Event of Default consisting of a failure of NAI to comply with the requirements of Exhibit I attached to the Improvements Lease; and

(2)(a) any failure of NAI to make any payment required by and when first due under the Improvements Lease, regardless of whether any period provided in the Improvements 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 Improvements 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 Improvements 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 Improvements 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 Improvements 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 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.

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## 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 on or after the first Business Day of January, 2001, or (B) the next following Base Rent Period which is at least ten Business Days after the receipt of such notice by Agent, BNPLC and the Participants. Further, after the first change in the Collateral Percentage resulting from a designation by NAI of a Collateral Percentage greater than zero percent (0%), any subsequent change resulting from NAI's designation of a new Collateral Percentage shall not become effective before the first Business Day of the first Base Rent Period that commences at least ninety days after the effective date of the last preceding change in the Collateral 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 this Section (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

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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.

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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

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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.

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#### 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 Improvements 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 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

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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.

#### 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.

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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 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.

ARTICLE VII REPRESENTATIONS AND COVENANTS OF NAI

Section 7.1 Representations of NAI . NAI represents to BNPLC, Agent and the Participants as follows:

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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 (Phase III - Improvements) 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, (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, and (D) reimburse Agent upon request for any legal opinion Agent may elect to obtain from a nationally recognized commercial law firm authorized to practice in New York concerning the enforceability, first priority and perfection of Agent's security interest in any Collateral maintained in New York, if

BNPLC or any Participant should at any time elect to use a Deposit Taker that will maintain one or more Accounts in New York.

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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 Improvements 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.

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#### 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.

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#### 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 Improvements 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.

#### 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.

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#### 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, 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 telecopy, 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

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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 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.

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#### ARTICLE XII MISCELLANEOUS

Section 12.1 Provisions Incorporated From Other Operative Documents . Reference is made to the Common Definitions and Provisions Agreement (Phase III - Improvements), 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 (Phase III - Improvements) are incorporated into this Agreement for all purposes as if set forth in this Article.

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 June 16, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_

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[Continuation of signature pages to Pledge Agreement (Phase III - Improvements) dated to be effective June 16, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: \_\_\_\_\_  
Henry Setina, Vice President

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[Continuation of signature pages to Pledge Agreement (Phase III - Improvements) dated to be effective June 16, 1999]

"AGENT"

BANQUE NATIONALE DE PARIS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"PARTICIPANT"

BANQUE NATIONALE DE PARIS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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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  
(Phase III - Improvements) dated June 16, 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 (Phase III -  
Improvements) 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

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ATTACHMENT 2  
TO PLEDGE AGREEMENT

SUPPLEMENT TO PLEDGE AGREEMENT

[\_\_\_\_\_, \_\_\_\_]

Banque Nationale de Paris  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Network Appliance, Inc.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. Reference is made to the Pledge Agreement (Phase III - Improvements)  
(the "PLEDGE AGREEMENT") dated June 16, 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 (Phase III - Improvements) (the "PLEDGE AGREEMENT") dated June 16, 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:

\_\_\_\_\_ 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]

ATTACHMENT 4  
TO PLEDGE AGREEMENT

NOTICE OF SECURITY INTEREST

[\_\_\_\_\_, \_\_\_\_]

[Name of Deposit Taker]  
[Address of Deposit Taker]

1. Reference is made to the Pledge Agreement (Phase III - Improvements) (the "PLEDGE AGREEMENT") dated June 16, 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).

(d) Deposit Taker shall promptly notify NAI and Agent if the representations made by Deposit Taker above cease to be true and correct.

(e) 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]

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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 Improvements 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
3. The Minimum Collateral Value on the Base Rent Commencement Date was \$7,200,000 (reflecting a Collateral Percentage of 60% times Stipulated Loss Value).
4. 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

Assumptions: Assume the same facts as in Example No. 1, and in addition assume that:

1. 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.

2. 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
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.

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 (Phase III - Improvements) dated June \_\_, 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 (Phase III - Improvements) 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 (Phase III - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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 (Phase III - Improvements) dated June 16, 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 (Phase III - Improvements) 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 (Phase III - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC and NAI]

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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 (Phase III - Improvements) dated June 16, 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 (Phase III - Improvements) 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 (Phase III - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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 (Phase III - Improvements) dated June 16, 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  
(Phase III - Improvements) 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 (Phase III - Improvements) referenced  
above (the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC and NAI]

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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 (Phase III - Improvements) dated June 16, 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 (Phase III - Improvements) 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 (Phase III - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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 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 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: \_\_\_\_\_

[cc BNPLC]

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 (Phase III - Improvements) dated June 16, 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

(Phase III - Improvements) 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 (Phase III - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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.

BANQUE NATIONALE DE PARIS, AS AGENT

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[cc BNPLC and NAI]

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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 (Phase III - Improvements) dated June 16, 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 (Phase III - Improvements) 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 (Phase III - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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,

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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.]

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 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: \_\_\_\_\_

[cc BNPLC]

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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 (Phase III - Improvements) dated June 16, 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 (Phase III - Improvements) 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 (Phase III - Improvements) referenced above (the "PLEDGE AGREEMENT"). 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: \_\_\_\_\_

[cc BNPLC and NAI]

PURCHASE AGREEMENT  
(PHASE III - LAND)

BETWEEN

BNP LEASING CORPORATION

("BNPLC")

AND

NETWORK APPLIANCE, INC.

("NAI")

JUNE 16, 1999

(SUNNYVALE, CALIFORNIA)

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PURCHASE AGREEMENT  
(PHASE III - LAND)

This PURCHASE AGREEMENT (PHASE III - LAND) (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 [EFFECTIVE DATE], 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 (Phase I - Land) executed by BNPLC and NAI contemporaneously with this Agreement. By this reference, the Common Definitions and Provisions Agreement (Phase III - Land) is incorporated into and made a part of this Agreement for all purposes.)

RECITALS

Pursuant to the Existing Contracts, which cover the Land described in Exhibit A, BNPLC is acquiring the Land and any appurtenances thereto from Seller contemporaneously with the execution of this Agreement. Pursuant to the Lease Agreement (Phase III - Land) executed by BNPLC and NAI contemporaneously with this Agreement (the "LAND LEASE"), BNPLC is leasing the Land to NAI. (All of BNPLC's interests, including those created by the documents delivered at the closing under the Existing Contracts, in the Land and in all other real and personal property from time to time covered by the Land Lease and included within the "Property" as defined therein are hereinafter collectively referred to as the "PROPERTY". The Property does not include the Improvements, it being understood that the Other Purchase Agreement constitutes a separate agreement providing for the possible sale of the Improvements and the appurtenances thereto, and only the Improvements and the appurtenances thereto, from BNPLC to NAI or a third party designated by NAI.)

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

1 NAI's OPTIONS AND OBLIGATIONS ON THE DESIGNATED SALE DATE.

(A) Right to Purchase; Right and Obligation to Remarket . Whether or not an Event of Default shall have occurred and be continuing or the Land Lease shall have been terminated, but subject to Paragraph 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

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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 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 (Phase III - Land).

(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, but less the aggregate amounts (if any) of Direct Payments to Participants and Deposit Taker Losses.

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(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 (Phase III - Land), 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 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 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 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

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BNPLC in the ordinary course of BNPLC's business), but not including personal obligations of NAI to BNPLC under the Land 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 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 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 books and records of NAI which will be necessary or useful to any future owner's or occupant's use of the Property.

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).

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(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 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 Land 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 or this Paragraph , 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 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

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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 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 (Phase III - Land) to an Affiliate of BNPLC or that covers BNPLC's entire interest in the Land 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 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 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 , promptly after the tender of the purchase price and any other payments to BNPLC required pursuant to Paragraph or Paragraph , as applicable, convey all of BNPLC's right, title and interest in the Land 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-1 or Exhibit B-2 or Exhibit B-4, as required by Exhibit B, (2) if required by Exhibit B, a Ground Lease in the form attached as Exhibit B-3, which NAI or the Applicable Purchase must execute and return to BNPLC, (3) a Bill of Sale and Assignment in the form attached as Exhibit C, (4) 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, (5) a Secretary's Certificate in the form attached as Exhibit E, and (6) 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 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 Land Lease that may result from such damage

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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 Land 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 Land 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 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) Intentionally Deleted.

(C) Intentionally Deleted .

(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 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). However, 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 1A, on the Designated Sale Date NAI must pay all amounts then due to BNPLC under the Land Lease or other Operative Documents.

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(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 Land 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 Land Lease 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 its use of the Property shall continue to be subject to the terms and conditions of the Land Lease, including the terms setting forth NAI's obligation to pay rent, prior to any termination or expiration of the Land 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.

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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 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 [EFFECTIVE DATE].

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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[Continuation of signature pages to Purchase Agreement (Phase III - Land) dated to be effective [EFFECTIVE DATE]]

"BNPLC"

BNP LEASING CORPORATION



By: \_\_\_\_\_  
Henry Setina, Vice President

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EXHIBIT A

LEGAL DESCRIPTION

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28" an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

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Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official

Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22" West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a

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radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

APN: 110-32-010  
ARB: 110-03-x066

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EXHIBIT B

REQUIREMENTS RE: FORM OF GRANT DEED AND GROUND LEASE

The form of deed to be used to convey BNPLC's interest in the Land to NAI or an Applicable Purchaser will depend upon whether BNPLC's interest in the

Improvements has been or is being conveyed at the same time to the same party.

If BNPLC's interests in BOTH the Land and the Improvements are to be conveyed to NAI or an Applicable Purchaser at the same time, because a sale under this Purchase Agreement and a sale under the Other Purchase Agreement (covering the Improvements) are being consummated at the same time and to the same party, then the one deed in form attached as Exhibit B-1 will be used to convey both.

If, however, a sale of BNPLC's interest in the Improvements pursuant to the Other Purchase Agreement has not been consummated before, and is not being consummated contemporaneously with the sale of BNPLC's interest in the Land under this Agreement, then BNPLC's interest in the Land will be conveyed by a deed in the form attached as Exhibit B-2, and BNPLC and the grantee under such deed shall, as a condition to BNPLC's obligation to deliver the deed, execute and deliver a Ground Lease covering the Land in the form attached hereto as Exhibit B-3.

Finally, BNPLC's interest in the Land will be conveyed by a deed in the form attached as Exhibit B-4 if BNPLC's interest in the Improvements has been sold pursuant to the Other Purchase Agreement before a sale of BNPLC's interest in the Land under this Agreement, or if BNPLC's interest in the Improvements is being sold contemporaneously with a sale of BNPLC's interest in the Land, but the purchaser of the Improvements is not the same as the purchaser of the Land.

EXHIBIT B-1

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  
(Covering Land and Improvements)

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 and all improvements on such land, together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to such land or the improvements thereon; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances"). Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the land or improvements conveyed by this deed.

Date: As of \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
                                  )       SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or  
proved to me on the basis of satisfactory evidence) to be the persons whose  
names are subscribed to the within instrument and acknowledged to me that they  
executed the same in their authorized capacities, and that by their signatures  
on the instrument the person, or the entity upon behalf of which the persons  
acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
                                  )       SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or  
proved to me on the basis of satisfactory evidence) to be the persons whose  
names are subscribed to the within instrument and acknowledged to me that they  
executed the same in their authorized capacities, and that by their signatures  
on the instrument the person, or the entity upon behalf of which the persons  
acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28"

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an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for

record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22"

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West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

APN: 110-32-010  
ARB: 110-03-x066

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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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase III - Land) incorporated by reference into the Lease Agreement (Phase III - Land) referenced in the last item of the list below), including the

following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
2. THE LIEN of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code, resulting from changes of ownership or completion of construction on or after the date hereof.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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.

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NOTICE OF WAIVER OF CONSTRUCTION CREDITS regarding said Agreements, recorded September 28, 1976 in Book C307, page 346, Official Records.

6. Covenants, Conditions and Restrictions in the Declaration of Protective Covenants - Moffett Industrial Park No. 2) recorded December 23, 1971 in Book 9640, page 443, Official Records; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions and Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code, or (b) related to handicap but does not discriminate against handicapped persons.

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
  - Purpose : Streets and street improvements
  - Granted to : City of Sunnyvale
  - Recorded : November 16, 1976 in Book C414, page 95, Official Records

Affects : The most Westerly corner of said Parcel `A', as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.

8. EASEMENT for the purposes stated herein and incidents thereto  
Purpose : for ingress and egress of motor vehicles  
Granted to : 495 Java Drive Associates, L.P., a California Limited Partnership  
Recorded : September 16, 1998, under Series No. 14396001, Official Records  
Affects: as follows:

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

Being portions of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

PARCEL 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 in said Office of the Recorder of the County of Santa Clara, said point lying on the

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Easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet to a point hereafter referred to as Point A; thence North 51 degrees 07' 58" West 12.96 feet; thence South 38 degrees 52' 02" 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' 39" 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' 05" East, through a central angle of 1 degree 23' 23" for an arc length of 24.30 feet to the true point of beginning.

PARCEL TWO:

Commencing at said Point A; thence North 38 degrees 52' 02" East 216.65 feet to the true point of beginning; thence North 51 degrees 07' 58" West 49.68 feet; thence North 38 degrees 52' 02" 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' 58" West 13.91 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 94.26 feet; thence South 51 degrees 07' 58" East 62.39 feet; thence North 38 degrees 52' 02" East 12.70 feet to the true point of beginning.

9. ANY RIGHTS, interests, or claims adverse to those of the vestee herein which may exist or arise by reason of the following facts shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.

- a. Concrete walks and concrete berms or landscaping enclosures extend across the Easterly and Northerly boundary lines of the subject real



property onto adjoining lands.

- b. A wood fence extends across the Easterly boundary line of the subject real property, onto adjoining land.
- c. Underground gas and electric lines, and storm drains, extend across the Easterly boundary line of the subject real property, onto or from adjoining land.
- d. An electric box and an electric vault exist on the Northerly boundary line of the subject real property.
- e. Construction of certain public improvements is in progress, in the Southwesterly corner of the subject real property, alongside the intersection of Java Drive and Geneva Drive.

10. Lease Agreement (Phase III - Land) dated [EFFECTIVE DATE], by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and Lease Agreement (Phase III - Improvements) dated June 16, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

EXHIBIT B-2

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

(Covering Land but not the Improvements On the Land)

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 (the "Land"), together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to the Land; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances") and any reservations or qualifications set forth below. Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the Land.

Although this deed conveys Grantor's interest in the Land itself, this deed does not convey any interest in any buildings or other improvements on the Land (collectively, "Improvements") or any rights or easements appurtenant to Improvements. Grantor retains and reserves all right, title and interest of Grantor in and to Improvements and any rights and easements appurtenant to Improvements, together with a leasehold estate in and to the Land and any rights and easements appurtenant to the Land, which leasehold estate will permit the

construction, maintenance and use of Improvements by Grantor and Grantor's successors and assigns on and subject to the terms and conditions set forth in the Ground Lease dated of even date herewith, executed by Grantee, as lessor, and Grantor, as lessee. Reference is made to such Ground Lease, all the terms and conditions of which are incorporated into this deed as if set forth herein.

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BNP LEASING CORPORATION

Date: As of \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28"

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an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official

Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22"

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West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

APN: 110-32-010  
ARB: 110-03-x066

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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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase III - Land) incorporated by reference into the Lease Agreement (Phase III - Land) referenced in the last item of the list below), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
2. THE LIEN of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code, resulting from changes of ownership or completion of construction on or after the date hereof.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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.

NOTICE OF WAIVER OF CONSTRUCTION CREDITS regarding said Agreements, recorded September 28, 1976 in Book C307, page 346, Official Records.

6. Covenants, Conditions and Restrictions in the Declaration of Protective Covenants - Moffett Industrial Park No. 2) recorded December 23, 1971 in Book 9640, page 443, Official Records; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions and Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code, or (b) related to handicap but does not discriminate against handicapped persons.

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  
Purpose : Streets and street improvements  
Granted to : City of Sunnyvale  
Recorded : November 16, 1976 in Book C414, page 95, Official Records  
Affects : The most Westerly corner of said Parcel `A', as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
8. EASEMENT for the purposes stated herein and incidents thereto  
Purpose : for ingress and egress of motor vehicles  
Granted to : 495 Java Drive Associates, L.P., a California Limited Partnership  
Recorded : September 16, 1998, under Series No. 14396001, Official Records  
Affects : as follows:

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

Being portions of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

PARCEL 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 in said Office of the Recorder of the County of Santa Clara, said point lying on the

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Easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet to a point hereafter referred to as Point A; thence North 51 degrees 07' 58" West 12.96 feet; thence South 38 degrees 52' 02" 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' 39" 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' 05" East, through a central angle of 1 degree 23' 23" for an arc length of 24.30 feet to the true point of beginning.

PARCEL TWO:

Commencing at said Point A; thence North 38 degrees 52' 02" East 216.65 feet to the true point of beginning; thence North 51 degrees 07' 58" West 49.68 feet; thence North 38 degrees 52' 02" 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' 58" West 13.91

feet along said Northeasterly line; thence South 38 degrees 52' 02" West 94.26 feet; thence South 51 degrees 07' 58" East 62.39 feet; thence North 38 degrees 52' 02" East 12.70 feet to the true point of beginning.

9. ANY RIGHTS, interests, or claims adverse to those of the vestee herein which may exist or arise by reason of the following facts shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
  - a. Concrete walks and concrete berms or landscaping enclosures extend across the Easterly and Northerly boundary lines of the subject real property onto adjoining lands.
  - b. A wood fence extends across the Easterly boundary line of the subject real property, onto adjoining land.
  - c. Underground gas and electric lines, and storm drains, extend across the Easterly boundary line of the subject real property, onto or from adjoining land.
  - d. An electric box and an electric vault exist on the Northerly boundary line of the subject real property.
  - e. Construction of certain public improvements is in progress, in the Southwesterly corner of the subject real property, alongside the intersection of Java Drive and Geneva Drive.
10. Lease Agreement (Phase III - Land) dated [EFFECTIVE DATE], by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and Lease Agreement (Phase III - Improvements) dated June 16, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

EXHIBIT B-3

GROUND LEASE

This GROUND LEASE (this "GROUND LEASE"), by and between BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), whose address is 12201 Merit Drive, Suite 860, Dallas, Texas 75251, and [NAI or the Applicable Purchaser], a \_\_\_\_\_ ("LESSOR"), whose address is \_\_\_\_\_. as of \_\_\_\_\_, \_\_\_\_ (the "GL EFFECTIVE DATE").

RECITALS

This Ground Lease is being executed pursuant to a Purchase Agreement (Phase III - Land) dated as of [EFFECTIVE DATE] (the "PURCHASE AGREEMENT"), between BNP Leasing Corporation and Network Appliance, Inc., covering the land described in Annex 1 attached hereto (the "LAND"). Incorporated by reference into the Purchase Agreement is a Common Definitions and Provisions Agreement (Phase III - Land) dated as of the effective date of the Purchase Agreement (the "CDPA"), between BNP Leasing Corporation and Network Appliance, Inc. The CDPA is hereby incorporated into and made a part of this Ground Lease for all purposes. Capitalized terms defined in the CDPA and used but not otherwise defined herein are intended in this Ground Lease to have the respective meanings ascribed to them in the CDPA. The provisions in Article II of the CDPA are intended to apply to this Ground Lease as if set forth herein and as if this Ground Lease were one of the "Operative Documents" as defined therein.

Lessor and BNPLC have reached agreement as to the terms and conditions upon which Lessor is willing to lease the Land described in Annex 1 to BNPLC for a term of approximately just less than 35 years, and by this Ground Lease Lessor and BNPLC desire to evidence such agreement.

GRANTING CLAUSES

NOW, THEREFORE, in consideration of the rent to be paid and the covenants and agreements to be performed by BNPLC, as hereinafter set forth, Lessor does hereby LEASE, DEMISE and LET unto BNPLC for the term hereinafter set forth the Land, together with:

1. all easements and rights-of-way now owned or hereafter acquired by Lessor for use in connection with the Land or as a means of access thereto; and
2. all right, title and interest of Lessor, now owned or hereafter acquired, in and to (A) any land lying within the right-of-way of any street, open or proposed, adjoining the Land, (B) any and all sidewalks and alleys adjacent to the Land and (C) any strips and gores between the Land and any abutting land not owned by Lessor.

The Land and all of the property described in the preceding clauses (1) and (2) 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 Lessor as the owner of any interest in the Real Property, Lessor also hereby grants and assigns to BNPLC for

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the term of this Ground Lease (and thereafter, if BNPLC purchases the Real Property from Lessor pursuant to the Repurchase Option described in Paragraph \_\_\_ ) the right to use and enjoy (and, in the case of contract rights, to enforce) such rights or interests of Lessor:

- (a) the Permitted Encumbrances; and
- (b) any general intangibles, permits, licenses, franchises, certificates, and other rights and privileges related to the Real Property that BNPLC (rather than Lessor) would have acquired if BNPLC had itself acquired the fee estate in the Real Property (excluding, however, any rights and privileges of Lessor under this Ground Lease, any rights or privileges of Lessor under the Purchase Agreement or other Operative Documents, and [without limiting Lessor's obligations under subparagraphs \_\_\_, or \_\_\_] any rights and privileges of Lessor under the Development Documents described in Annex 3).

Such rights and interests of Lessor, whether now existing or hereafter arising, are hereinafter collectively called the "GL PERSONAL PROPERTY". The Real Property and the GL Personal Property are hereinafter sometimes collectively called the "GL PROPERTY."

Provided, however, the leasehold estate conveyed hereby and BNPLC's rights hereunder are expressly made subject and subordinate to the Permitted Encumbrances, including those listed on Annex 2. FURTHER, IF AND SO LONG AS THE OTHER LEASE AGREEMENT AND THE OTHER PURCHASE AGREEMENT (BOTH AS DEFINED IN THE CDPA) REMAIN IN FORCE, THE RIGHTS AND OBLIGATIONS OF LESSOR AND BNPLC HEREUNDER SHALL BE SUBJECT TO ANY CONTRARY PROVISIONS THEREIN. ACCORDINGLY, BNPLC'S RIGHTS UNDER PARAGRAPH BELOW SHALL BE SUBJECT TO THE PROVISIONS GOVERNING INSURANCE AND CONDEMNATION IN THE OTHER LEASE AGREEMENT, IF AND SO LONG AS THE OTHER LEASE AGREEMENT REMAINS IN FORCE.

#### GENERAL TERMS AND CONDITIONS

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

1 GROUND LEASE TERM AND EARLY TERMINATION BY BNPLC. The term of this Ground Lease (the "GROUND LEASE TERM") shall commence on and include the GL Effective Date and end on last Business Day prior to the thirty-fifth anniversary of the GL Effective Date. However, subject to the prior approval of any Leasehold Mortgagee, BNPLC shall have the right to terminate this Ground Lease by giving a notice to Lessor stating that BNPLC unequivocally elects to terminate effective as of a date specified in such notice, which may be any date



more than thirty days after the notice and after the expiration or termination of the Lease pursuant to its terms.

2 NO OTHER GROUND LEASE TERMINATION. Except as expressly provided herein, this Ground Lease shall not terminate, nor shall Lessor have any right to terminate this Ground Lease, nor shall the obligations of Lessor under this Ground 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 GL Property from whatever cause, (ii) the taking of the GL Property or any portion thereof by eminent domain or otherwise for any reason, (iii) any default on the part of BNPLC under this Ground Lease or under any other agreement to which Lessor and BNPLC are parties, or (iv) 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 Lessor hereunder shall be separate and independent of the covenants and agreements of BNPLC. However, nothing in this Paragraph shall be construed as a waiver by Lessor of any right Lessor may have at law or in equity to recover monetary damages for any default under this Ground Lease by BNPLC.

3 GROUND LEASE RENT. On each anniversary of the GL Effective Date, BNPLC shall make a payment to Lessor of rent for the then preceding year ("GROUND LEASE RENT"), in currency that at the time of payment is legal tender for public and

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private debts in the United States of America. Each such payment of Ground Lease Rent shall equal the Fair Rental Value, determined as provided in Annex 4.

4 USE OF GL PROPERTY.

(A) Permitted Uses and Construction of Improvements. Subject to the Permitted Encumbrances and the terms hereof, BNPLC may use and occupy the GL Property for any purpose permitted by Applicable Laws and may construct, maintain and use any Improvements on the Land which are permitted by Applicable Laws.

(B) Cooperation by Lessor and its Affiliates.

(1) After the expiration or any earlier termination of the Lease, if a use of the GL Property by BNPLC or any new Improvements or any removal or modification of Improvements proposed by BNPLC would violate any Permitted Encumbrance, Development Document or Applicable Law unless Lessor or any of its Affiliates, as an owner of adjacent property or otherwise, gave its consent or approval thereto or agreed to join in a modification of a Permitted Encumbrance or Development Document, then Lessor shall give and cause its Affiliates to give such consent or approval or join in such modification.

(2) To the extent, if any, that any Permitted Encumbrance, Development Document or Applicable Law requires the consent or approval of Lessor or any of its Affiliates or of the City of South San Francisco or any other Person to an assignment of this Ground Lease or a transfer of any interest in the GL Property by BNPLC or its successors or assigns, Lessor will without charge give and cause its Affiliates to give such consent or approval and will cooperate in any way reasonably requested by BNPLC to assist BNPLC to obtain such consent or approval from the City or any other Person; provided, however, the assignment or transfer is not then prohibited by the Lease.

(3) Lessor's obligations under this subparagraph shall be binding upon any successor or assign of Lessor with respect to the Land and other properties encumbered by the Permitted Encumbrances or subject to the Development Documents, and such obligations shall survive any sale of Lessor's interest in the GL Property to BNPLC because of BNPLC's exercise of the Repurchase Option (as defined in Paragraph \_\_\_).

(C) Title to Improvements. Any and all Improvements of whatever nature at any time constructed, placed or maintained upon any part of the Land shall be and remain the property of BNPLC and BNPLC's sublessee's, assignees, licensees and concessionaires, as their interests may appear; provided, any such Improvements which remain on the Land when this Ground Lease expires or is terminated shall become and thereupon be the property of Lessor, free and clear

of any Liens Removable by BNPLC. It is the intention of Lessor and BNPLC that severance of fee title to the Land and the Improvements shall not change the character of the Improvements as real property. BNPLC may at any time after Lessor ceases to have possession of the GL Property as tenant under the Lease and prior to the expiration or termination of this Ground Lease remove all or any Improvements from the Land without the consent of Lessor and without any obligation to Lessor or its Affiliates to provide compensation or to construct other Improvements on or about the Land.

5 ASSIGNMENT AND SUBLETTING; PASS THROUGH OF BNPLC'S LIABILITY INSURANCE AND INDEMNITY RIGHTS. BNPLC may sublet or assign this Ground Lease without the consent of Lessor or any of its Affiliates, subject only to limitations set forth in the Lease for the benefit of Lessor so long as those limitations remain in force.

To the extent that BNPLC may from time to time after the expiration or earlier termination of the Other Lease Agreement require any subtenant to agree to maintain liability insurance against claims of third parties and agree to make BNPLC an additional or named insured under such insurance, BNPLC shall also require the subtenant to agree to make Lessor an additional or named insured. However, BNPLC shall have no liability to Lessor for a breach by the subtenant of any such agreements, and to the extent that BNPLC's rights as an additional or named insured are subject to exceptions or limitations concerning BNPLC's own acts or omissions or the acts or omissions of anyone other than the subtenant, so too

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39 may Lessor's rights as an additional or named insured be subject to exceptions or limitations concerning Lessor's own acts or omissions or the acts or omissions of anyone other than the subtenant.

To the extent that BNPLC may itself from time to time after the expiration or earlier termination of the Other Lease Agreement maintain liability insurance against claims of third parties which may arise because of any occurrence on or alleged to have occurred on or about the GL Property, BNPLC shall cause Lessor to be an additional or named insured under such insurance, provided Lessor pays or reimburses BNPLC for any additional insurance premium required to have Lessor made an insured.

To the extent that BNPLC may from time to time after the expiration or earlier termination of the Other Lease Agreement require any subtenant to agree to indemnify BNPLC against Environmental Losses or other Losses concerning the GL Property, BNPLC shall also require the subtenant to agree to indemnify Lessor. However, BNPLC shall have no liability to Lessor for a breach by the subtenant of any such agreement, and to the extent that BNPLC's rights as an indemnitee of the subtenant are subject to exceptions or limitations concerning BNPLC's own acts or omissions or the acts or omissions of anyone other than the subtenant, so too may Lessor's rights as an indemnitee be subject to exceptions or limitations concerning Lessor's own acts or omissions or the acts or omissions of anyone other than the subtenant.

6 REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSOR Concerning the Property. Lessor represents, warrants and covenants as follows:

(A) Title to the Property. This Ground Lease shall vest in BNPLC good and marketable title to a leasehold estate in the Land, subject only to the terms and conditions hereof, the Permitted Encumbrances, the Development Documents and any Liens Removable by BNPLC. Lessor shall not, without the prior consent of BNPLC, create, place or authorize, or through any act or failure to act, acquiesce in the placing of, any deed of trust, mortgage or other Lien, whether statutory, constitutional or contractual against or covering the GL Property or any part thereof (other than Permitted Encumbrances and Liens Removable by BNPLC), regardless of whether the same are expressly or otherwise subordinate to the Operative Documents or BNPLC's interest in the Property.

(B) Modification of Permitted Encumbrances and Development Documents. Without the prior consent of BNPLC, Lessor 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 the GL Property or any improvements constructed thereon.

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(C) Performance and Preservation of the Development Documents and Permitted Encumbrances for the Benefit of BNPLC. Not only during the term of the Other Lease Agreement, but thereafter throughout the term of this Ground Lease, Lessor shall comply with and perform the obligations imposed by the Permitted Encumbrances and the Development Documents upon Lessor or upon any owner of the Land, and shall do whatever is required to preserve the rights and benefits conferred or intended to be conferred by the Permitted Encumbrances and the Development Documents, as necessary to facilitate the construction of the Construction Project on the Land as contemplated in the Other Lease Agreement and the use of the Improvements included in the Construction Project by BNPLC and its successors, assigns and subtenants under this Ground Lease after the expiration or any earlier termination of the Other Lease Agreement. Further, if Lessor or any Affiliate of Lessor now or hereafter owns, acquires or leases land (other than the Land) that is the subject of a Permitted Encumbrance or Development Document, then Lessor shall, and shall cause its Affiliate to, assume liability for and indemnify BNPLC and other Interested Parties and defend and hold them harmless from and against all Losses (including Losses caused by any decline in the value of the Property or of the Improvements) that they would not have incurred or suffered but for (i) a termination of such Permitted Encumbrance or Development Document, to which Lessor or its Affiliate agreed, or which resulted from a breach thereof by Lessor or its Affiliate, or (ii) a refusal of Lessor or its Affiliate to agree to any waiver or modification requested by BNPLC of restrictions upon the Property or the transfer thereof imposed by such Permitted Encumbrance or Development Document, or (iii) anything done, authorized or suffered by Lessor or its Affiliate in violation of such Permitted Encumbrance or Development Document. Lessor's obligations under this subparagraph 6(C) shall be binding upon any successor or assign of Lessor or its Affiliates with respect to their interest in properties subject to the Development Documents and Permitted Encumbrances.

#### 7 INSURANCE AND CONDEMNATION.

(A) Entitlement to Insurance and Condemnation Proceeds. All insurance and condemnation proceeds payable with respect to any damage to or taking of the GL Property shall be payable to and become the property of BNPLC; provided, however, Lessor shall be entitled to receive condemnation proceeds awarded for the value of Lessor's remainder interest in the Land exclusive of the Improvements. BNPLC is authorized to take all action necessary on behalf of both BNPLC and Lessor (as lessor under this Ground Lease) to collect insurance and condemnation proceeds.

(B) Collection of Insurance Proceeds. In the event any of the GL 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 make proof of loss, (ii) each insurance company concerned is hereby authorized and directed to make payment for such loss directly to BNPLC for application as required by subparagraph \_\_\_, and (iii) BNPLC's consent must be obtained for any settlement, adjustment or compromise of any claims for loss, damage or destruction under any policy or policies of insurance.

(C) Collection of Condemnation Proceeds. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the GL Property and all judgments, decrees and awards for injury or damage to the GL Property shall be paid to BNPLC and applied as provided in subparagraph 7(A) above. BNPLC is hereby authorized, in the name of Lessor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award concerning condemnation of any of the GL 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.

#### 8 LEASEHOLD MORTGAGES.

(A) By Leasehold Mortgage BNPLC may encumber BNPLC's leasehold estate in the GL Property created by this Ground Lease, as well as BNPLC's rights and interests in buildings, fixtures, equipment and Improvements situated on the Land and rents, issues, profits, revenues and other income to be derived by BNPLC therefrom.

(B) Any Leasehold Mortgagee or other party, including any corporation formed

by a Leasehold Mortgagee, may become the legal owner of the leasehold estate created by this Ground Lease, and of the Improvements, equipment, fixtures

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and other property assigned as additional security pursuant to a Leasehold Mortgage, by foreclosure of a Leasehold Mortgage or as a result of the assignment or conveyance in lieu of foreclosure. Further, any such Leasehold Mortgagee or other party may itself, after becoming the legal owner and holder of the leasehold estate created by this Ground Lease, or of any Improvements, equipment, fixtures and other property assigned as additional security pursuant to a Leasehold Mortgage, convey or pledge the same without the consent of Lessor.

(C) Lessor shall serve notice of any default by BNPLC hereunder upon any Leasehold Mortgagee. No notice of a default by BNPLC shall be deemed effective until it is so served. Any Leasehold Mortgagee shall have the right to correct or cure any such default within the same period of time after receipt of such notice as is given to BNPLC under this Ground Lease to correct or cure defaults, plus an additional period of thirty days thereafter. Lessor will accept performance by any Leasehold Mortgagee of any covenant, condition or agreement on BNPLC's part to be performed hereunder with the same force and effect as though performed by BNPLC.

(D) If this Ground Lease should terminate by reason of a disaffirmance or rejection of this Ground Lease by BNPLC or any receiver, liquidator or trustee for the property of BNPLC, or by any governmental authority which had taken possession of the business or property of BNPLC by reason of the insolvency or alleged insolvency of BNPLC, then:

(1) Lessor shall give notice thereof to each Leasehold Mortgagee; and upon request of any Leasehold Mortgagee made within sixty days after Lessor has given such notice, Lessor shall enter into a new ground lease of the GL Property with such Leasehold Mortgagee for the remainder of the Ground Lease Term, at the same Ground Lease Rent and on the same terms and conditions as contained in this Ground Lease.

(2) The estate of the Leasehold Mortgagee, as lessee under the new lease, shall have priority equal to the estate of BNPLC hereunder. That is, there shall be no charge, lien or burden upon the GL Property prior to or superior to the estate granted by such new lease which was not prior to or superior to the estate of BNPLC under this Ground Lease as of the date immediately preceding the termination of this Ground Lease.

(3) Notwithstanding the foregoing, if Lessor shall receive requests to enter into a new ground lease from more than one Leasehold Mortgagee, Lessor shall be required to enter into only one new ground lease, and the new ground lease shall be to the requesting Leasehold Mortgagee who holds the highest priority lien or interest in BNPLC's leasehold estate in the Land. If the liens or security interests of two or more such requesting Leasehold Mortgagees which shared the highest priority just prior to the termination of this Ground Lease, the new ground lease shall name all such Leasehold Mortgagees as co-tenants thereunder.

(E) If BNPLC has agreed with any Leasehold Mortgagee that such Leasehold Mortgagee's consent will be required to any modification or early termination of this Ground Lease by BNPLC, and if Lessor has been notified of such agreement, such consent will be required.

(F) No Leasehold Mortgagee will assume any liability under this Ground Lease either by virtue of its Leasehold Mortgage or by any subsequent receipt or collection of rents or profits generated from the GL Property, unless and until the Leasehold Mortgagee acquires BNPLC's leasehold estate in the GL Property at foreclosure or by deed in lieu of foreclosure.

(G) Although the foregoing provisions concerning Leasehold Mortgages and Leasehold Mortgagees will be self operative, Lessor agrees to include, in addition to the items specified in Paragraph 11, confirmation of the foregoing in any statement provided to a Leasehold Mortgagee or prospective Leasehold Mortgagee pursuant to Paragraph 11.

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## 9 EVENTS OF DEFAULT.

(A) Definition of Ground Lease Default. Each of the following events shall be deemed to be a "GROUND LEASE DEFAULT" by BNPLC under this Ground Lease:

(1) BNPLC shall fail to pay when due any installment of Ground Lease Rent due hereunder and such failure shall continue for sixty days after BNPLC receives notice thereof.

(2) BNPLC shall fail to comply with any term, provision or covenant of this Ground Lease (other than as described in the other clauses of this subparagraph), and shall not cure such failure prior to the earlier of (A) ninety days after notice thereof is sent to BNPLC, or (B) the date any writ or order is issued for the levy or sale of any property owned by Lessor or its Affiliates (including the GL Property) because of such failure or any criminal action is instituted 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 actions is instituted, if such failure is susceptible of cure but cannot with reasonable diligence be cured within such ninety day period, and if BNPLC shall promptly have commenced to cure the same and shall thereafter prosecute the curing thereof with reasonable diligence, the period within which such failure may be cured shall be extended for such further period as shall be necessary for the curing thereof with reasonable diligence.

(B) Remedy. Upon the occurrence of a Ground Lease Default which is not cured within any applicable period expressly permitted by subparagraph 9(A), Lessor's sole and exclusive remedies shall be to sue BNPLC for the collection of any amount due under this Ground Lease, to sue for the specific enforcement of BNPLC's obligations hereunder, or to enjoin the continuation of the Ground Lease Default; provided, however, no limitation of Lessor's remedies contained herein will prevent Lessor from recovering any reasonable costs Lessor may incur to mitigate its damages by curing a Ground Lease Default that BNPLC has failed to cure itself (so long as the cure by Lessor is pursued in a lawful manner and the costs Lessor seeks to recover do not exceed the actual damages to be mitigated). Lessor may not terminate this Ground Lease or BNPLC's right to possession under this Ground Lease. Any judgment which Lessor may obtain against BNPLC for amounts due under this Ground Lease may be collected only through resort of a judgement lien against BNPLC's interest in the GL Property and any Improvements. BNPLC shall have no personal liability for the payment amounts due under this or for the performance of any obligations of BNPLC under this Ground Lease.

10 QUIET ENJOYMENT. Neither Lessor nor any third party lawfully claiming any right or interest in the GL Property shall during the Ground Lease Term disturb BNPLC's peaceable and quiet enjoyment of the GL Property; however, such enjoyment shall be subject to the terms, provisions, covenants, agreements and conditions of this Ground Lease and the Permitted Encumbrances, to which this Ground Lease is subject and subordinate as herein above set forth.

11 ESTOPPEL CERTIFICATE. Lessor shall from time to time, within ten days after receipt of request by BNPLC, deliver a statement in writing certifying:

(A) that this Ground Lease is unmodified and in full force and effect (or if modified that this Ground Lease as so modified is in full force and effect);

(B) that to the knowledge of Lessor BNPLC has not previously assigned or hypothecated its rights or interests under this Ground Lease, except as is described in such statement with as much specificity as Lessor is able to provide;

(C) the term of this Ground Lease and the Ground Lease Rent then in effect and any additional charges;

(D) that BNPLC is not in default under any provision of this Ground Lease (or if in default, the nature thereof in detail) and a statement as to any outstanding obligations on the part of Lessor or BNPLC; and

(E) such other matters as are reasonably requested by BNPLC.





Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

APN: 110-32-001  
ARB: 110-03-x066

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ANNEX 2

PERMITTED ENCUMBRANCES

The leasehold and other interests in the Land hereby conveyed by Lessor are conveyed subject to the following matters to the extent the same are still valid and in force:

[THE SAME LIST OF PERMITTED ENCUMBRANCES ATTACHED TO THE GRANT DEED FROM BNPLC TO NAI OR THE APPLICABLE PURCHASER SHALL BE INSERTED HERE.]

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ANNEX 3

LIST OF DEVELOPMENT DOCUMENTS

NONE

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ANNEX 4

DETERMINATION OF FAIR RENTAL VALUE

Each annual payment of Ground Lease Rent will equal the Fair Rental Value, computed as of the most recent Rental Determination Date when such payment becomes due. As used in this Annex:

"FAIR RENTAL VALUE" means (and all appraisers and other persons involved in the determination of the Fair Rental Value will be so advised) the annual rent, as determined in accordance with this Annex, that would be agreed upon between a willing tenant, under no compulsion to lease, and a willing landlord, under no compulsion to lease, for unimproved land comparable in size and location to the Land, exclusive of any Improvements but assuming that there is no higher and better use for such land than as a site for improvements of comparable size and utility to the Improvements, at the time a determination is required under hereunder and taking into consideration the condition of the Land, the encumbrances affecting the title to the Land and all applicable zoning, land use approvals and other governmental permits relating to the Land at the time of such determination; and

"RENTAL DETERMINATION DATE" means the GL Effective Date and each fifth anniversary of the GL Effective Date.

If Lessor and BNPLC have not agreed upon Fair Rental Value as of any Rental Determination Date within one hundred eighty days after the such date, then Fair Rental Value will be determined as follows:

(a) Lessor and BNPLC shall each appoint a real estate appraiser who is familiar with rental values for properties in the vicinity of the Land and who has not previously acted for either party. Each party will make the appointment no later than ten days after receipt of notice from the other party that the appraisal process described in this Annex has been invoked. The agreement of the two appraisers as to Fair Rental Value will be binding upon Lessor and BNPLC. If the two appraisers cannot agree upon the Fair Rental Value within ten days following their appointment, they shall within another ten days agree upon a third real estate appraiser. Immediately thereafter, each of the first two appraisers will submit his best estimate of the appropriate Fair Rental



Value (together with a written report supporting such estimate) to the third appraiser and the third appraiser will choose between the two estimates. The estimate of Fair Rental Value chosen by the third appraiser as the closest to the prevailing annual fair rental value will be binding upon Lessor and BNPLC. Notification in writing of this estimate shall be made to Lessor and BNPLC within fifteen days following the selection of the third appraiser.

(b) If appraisers must be selected under the procedure set out above and either BNPLC or Lessor fails to appoint an appraiser or fails to notify the other party of such appointment within fifteen days after receipt of notice that the prescribed time for appointing the appraisers has passed, then the other party's appraiser will determine the Fair Rental Value. All appraisers selected for the appraisal process set out in this Annex will be disinterested, reputable, qualified real estate appraisers with the designation of MAI or equivalent and with at least 5 years experience in appraising properties comparable to the Land.

(c) If a third appraiser must be chosen under the procedure set out above, he or she will be chosen on the basis of objectivity and competence, not on the basis of his relationship with the other appraisers or the parties to this Ground Lease, and the first two appraisers will be so advised. Although the first two appraisers will be instructed to attempt in good faith to agree upon the third appraiser, if for any reason they cannot agree within the prescribed time, either Lessor and BNPLC may require the first two appraisers to immediately submit its top choice for the third appraiser to the then highest ranking officer of the California Bar Association who will agree to help and who has no attorney/client or other significant relationship to either Lessor or BNPLC. Such officer will have complete discretion to select the most objective and competent third appraiser from between the choices of each of the first two appraisers, and will do so within twenty days after such choices are submitted to him.

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(d) Either Lessor or BNPLC may notify the appraiser selected by the other party to demand the submission of an estimate of Fair Rental Value or a choice of a third appraiser as required under the procedure described above; and if the submission of such an estimate or choice is required but the other party's appraiser fails to comply with the demand within fifteen days after receipt of such notice, then the Fair Rental Value or choice of the third appraiser, as the case may be, selected by the other appraiser (i.e., the notifying party's appraiser) will be binding upon Lessor and BNPLC.

(e) Lessor and BNPLC shall each bear the expense of the appraiser appointed by it, and the expense of the third appraiser and of any officer of the California Bar Association who participates in the appraisal process described above will be shared equally by Lessor and BNPLC.

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#### ANNEX 5

#### REPURCHASE OPTION

Subject to the terms of this Annex, BNPLC shall have an option (the "OPTION") to buy Lessor's fee interest in the GL Property at any time during the term of this Ground Lease for a purchase price (the "OPTION PRICE") to Lessor equal to the fair market value of the GL Property, determined as described in the next paragraph.

For the purposes of this Annex, "fair market value" of the GL Property means (and all appraisers and other persons involved in the determination of the Option Price will be so advised) the price that would be agreed upon between a willing buyer, under no compulsion to buy, and a willing seller, under no compulsion to sell, for the Land, exclusive of any Improvements as if the Land were unimproved, but assuming that there is no higher and better use for the

Land than as a site for the construction of improvements of comparable size and utility to the Improvements, at the time of BNPLC's exercise of the Option and taking into consideration the encumbrances affecting the title to the Land and all applicable zoning, land use approvals and other governmental permits relating to the Land at the time of the exercise of the Option.

If BNPLC exercises the Option, which BNPLC may do by notifying Lessor that BNPLC has elected to buy Lessor's interest in the GL Property as provided herein, then:

(a) To the extent, if any, required as a condition imposed by law to the conveyance of the fee interest in the GL Property to BNPLC, Lessor shall promptly at its expense do whatever is necessary to obtain approvals of a new Parcel Map or lot line adjustments.

(b) Upon BNPLC's tender of the Option Price to Lessor, Lessor will convey to BNPLC by general warranty deed and assignment, subject only to the Permitted Encumbrances, good and marketable title to the fee estate in the Land, to Lessor's interest in all other GL Property and, to the extent still in force, to Lessor's Extended Remarketing Rights under the Purchase Agreement.

(c) BNPLC's obligation to close the purchase shall be subject to the following terms and conditions, all of which are for the benefit of BNPLC: (1) BNPLC shall have been furnished with evidence satisfactory to BNPLC that Lessor can convey title as required by the preceding subparagraph; (2) nothing shall have occurred or been discovered after BNPLC exercised the Option that could significantly and adversely affect title to the GL Property or BNPLC's use thereof, (3) all of the representations of Lessor in this Ground Lease shall continue to be true as if made effective on the date of the closing and, with respect to any such representations which may be limited to the knowledge of Lessor or any of Lessor's representatives, would continue to be true on the date of the closing if all relevant facts and circumstances were known to Lessor and such representatives, (4) BNPLC shall find the Option Price acceptable after it is determined as provided in this Annex, and (5) BNPLC shall have been tendered the deed and other documents which are described in this Annex as documents to be delivered to BNPLC at the closing of BNPLC's purchase.

(d) Closing of the purchase will be scheduled on the first Business Day following thirty days after the Option Price is established in accordance with the terms and conditions of this Annex and after any approvals described in subparagraph (a) above are obtained, and prior to closing BNPLC's occupancy of the GL Property shall continue to be subject to the terms and conditions of this Ground Lease, including the terms setting forth BNPLC's obligation to pay rent. Closing shall take place at the offices of any title insurance company reasonably selected by BNPLC to insure title under the title insurance policy described below.

(e) Any transfer taxes or notices or registrations required by law in connection with the sale contemplated by this Annex will be the responsibility of Lessor.

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(f) Lessor will deliver a certificate of nonforeign status to BNPLC at closing as needed to comply with the provisions of the Foreign Investors Real Property Tax Act (FIRPTA) or any comparable federal, state or local law in effect at the time.

(g) Lessor will also pay for and deliver to BNPLC at the closing an owner's title insurance policy in the full amount of the Option Price, issued by a title insurance company designated by BNPLC (or written confirmation from the title company that it is then prepared to issue such a policy), and subject only to standard printed exceptions which the title insurance company refuses to delete or modify in a manner acceptable to BNPLC and to Permitted Encumbrances.

(h) Lessor shall also deliver at the closing all other documents or things reasonably required to be delivered to BNPLC or by the title insurance company to evidence Lessor's ability to transfer the GL

Property to BNPLC.

If Lessor and BNPLC do not otherwise agree upon the amount of the Option Price within twenty days after BNPLC exercises the Option, the Option Price shall be determined in accordance with the following procedure:

(1) Lessor and BNPLC shall each appoint a real estate appraiser who is familiar with properties in the vicinity of the Land and who has not previously acted for either party. Each party will make the appointment no later than ten days after receipt of notice from the other party that the appraisal process described in this Annex has been invoked. The agreement of the two appraisers as to the Option Price will be binding upon Lessor and BNPLC. If the two appraisers cannot agree upon the Option Price within ten days following their appointment, they shall within another ten days agree upon a third real estate appraiser. Immediately thereafter, each of the first two appraisers will submit his best estimate of the appropriate Option Price (together with a written report supporting such estimate) to the third appraiser and the third appraiser will choose between the two estimates. The estimate of Option Price chosen by the third appraiser as the closest to the prevailing fair market value will be binding upon Lessor and BNPLC. Notification in writing of the Option Price shall be made to Lessor and BNPLC within fifteen days following the selection of the third appraiser.

(2) If appraisers must be selected under the procedure set out above and either BNPLC or Lessor fails to appoint an appraiser or fails to notify the other party of such appointment within fifteen days after receipt of notice that the prescribed time for appointing the appraisers has passed, then the other party's appraiser will determine the Option Price. All appraisers selected for the appraisal process set out in this Annex will be disinterested, reputable, qualified real estate appraisers with the designation of MAI or equivalent and with at least 5 years experience in appraising properties comparable to the Land.

(3) If a third appraiser must be chosen under the procedure set out above, he will be chosen on the basis of objectivity and competence, not on the basis of his relationship with the other appraisers or the parties to this Ground Lease, and the first two appraisers will be so advised. Although the first two appraisers will be instructed to attempt in good faith to agree upon the third appraiser, if for any reason they cannot agree within the prescribed time, either Lessor and BNPLC may require the first two appraisers to immediately submit its top choice for the third appraiser to the then highest ranking officer of the California Bar Association who will agree to help and who has no attorney/client or other significant relationship to either Lessor or BNPLC. Such officer will have complete discretion to select the most objective and competent third appraiser from between the choices of each of the first two appraisers, and will do so within ten days after such choices are submitted to him.

(4) Either Lessor or BNPLC may notify the appraiser selected by the other party to demand the submission of an estimate of Option Price or a choice of a third appraiser as required under the procedure described above; and if the submission of such an estimate or choice is required but the other party's appraiser fails to comply with the demand within fifteen days after receipt of such notice, then the Option Price or choice of the third appraiser, as the case may be, selected by the other appraiser (i.e., the notifying party's appraiser) will be binding upon Lessor and BNPLC.

(5) Lessor and BNPLC shall each bear the expense of the appraiser appointed by it, and the expense of the third appraiser and of any officer of the California Bar Association

who participates in the appraisal process described above will be shared equally by Lessor and BNPLC.

EXHIBIT-4

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 (Covering Land but not the Improvements On the Land)

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 (the "Land"), together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to the Land; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances") and any reservations or qualifications set forth below. Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the Land.

Although this deed conveys Grantor's interest in the Land itself, this deed does not convey any interest in any buildings or other improvements on the Land (collectively, "Improvements") or any rights or easements appurtenant to Improvements. Prior to or contemporaneously with the delivery of this deed, Grantor has conveyed or is conveying the Improvements and appurtenant rights and easements to another party.

BNP LEASING CORPORATION

Date: As of

By: Its:

Attest: Its:

[NAI or Applicable Purchaser]

Date: As of

By: Its:

Attest: Its:

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28"

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an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel `A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22"

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West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

APN: 110-32-010  
ARB: 110-03-x066

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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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase III - Land) incorporated by reference into the Lease Agreement (Phase III - Land) referenced in the last item of the list below), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
2. THE LIEN of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code, resulting from changes of ownership or completion of construction on or after the date hereof.
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

Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.

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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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.

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NOTICE OF WAIVER OF CONSTRUCTION CREDITS regarding said Agreements, recorded September 28, 1976 in Book C307, page 346, Official Records.

6. Covenants, Conditions and Restrictions in the Declaration of Protective Covenants - Moffett Industrial Park No. 2) recorded December 23, 1971 in Book 9640, page 443, Official Records; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions and Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code, or (b) related to handicap but does not discriminate against handicapped persons.

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
  - Purpose : Streets and street improvements
  - Granted to : City of Sunnyvale
  - Recorded : November 16, 1976 in Book C414, page 95, Official Records
  - Affects : The most Westerly corner of said Parcel 'A', as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
8. EASEMENT for the purposes stated herein and incidents thereto
  - Purpose : for ingress and egress of motor vehicles
  - Granted to : 495 Java Drive Associates, L.P., a California Limited Partnership
  - Recorded : September 16, 1998, under Series No. 14396001, Official Records
  - Affects : as follows:



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

Being portions of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

PARCEL 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 in said Office of the Recorder of the County of Santa Clara, said point lying on the

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Easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet to a point hereafter referred to as Point A; thence North 51 degrees 07' 58" West 12.96 feet; thence South 38 degrees 52' 02" 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' 39" 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' 05" East, through a central angle of 1 degree 23' 23" for an arc length of 24.30 feet to the true point of beginning.

PARCEL TWO:

Commencing at said Point A; thence North 38 degrees 52' 02" East 216.65 feet to the true point of beginning; thence North 51 degrees 07' 58" West 49.68 feet; thence North 38 degrees 52' 02" 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' 58" West 13.91 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 94.26 feet; thence South 51 degrees 07' 58" East 62.39 feet; thence North 38 degrees 52' 02" East 12.70 feet to the true point of beginning.

9. ANY RIGHTS, interests, or claims adverse to those of the vestee herein which may exist or arise by reason of the following facts shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
  - a. Concrete walks and concrete berms or landscaping enclosures extend across the Easterly and Northerly boundary lines of the subject real property onto adjoining lands.
  - b. A wood fence extends across the Easterly boundary line of the subject real property, onto adjoining land.
  - c. Underground gas and electric lines, and storm drains, extend across the Easterly boundary line of the subject real property, onto or from adjoining land.
  - d. An electric box and an electric vault exist on the Northerly boundary line of the subject real property.
  - e. Construction of certain public improvements is in progress, in the Southwesterly corner of the subject real property, alongside the

intersection of Java Drive and Geneva Drive.

10. Lease Agreement (Phase III - Land) dated [EFFECTIVE DATE], by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and Lease Agreement (Phase III - Improvements) dated June 16, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

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EXHIBIT C

BILL OF SALE AND ASSIGNMENT

Reference is made to: (1) that certain Purchase Agreement (Phase III - Land) between BNP Leasing Corporation ("ASSIGNOR") and Network Appliance, Inc., dated as of [EFFECTIVE DATE], (the "PURCHASE AGREEMENT") and (2) that certain Lease Agreement (Phase III - Land) between Assignor, as landlord, and Network Appliance, Inc., as tenant, dated as of [EFFECTIVE DATE] (the "LAND 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 (Phase III - Land) incorporated by reference into both the Purchase Agreement and Land 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 Land 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.

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 Land 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 Land Lease which may not presently be known, (2) provisions in the Land Lease that establish the right of Assignor to recover any accrued unpaid rent under the Land 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 Land 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 Land 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.

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



Signature \_\_\_\_\_

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ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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 DOCUMENT TO WHICH THIS DESCRIPTION IS ATTACHED IS ACTUALLY EXECUTED AND DELIVERED.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28" an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North

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38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in

and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22" West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58"

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East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

APN: 110-32-010  
ARB: 110-03-x066

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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 (Phase III - Land) incorporated by reference into the Purchase Agreement between BNPLC and Network Appliance, Inc. dated [EFFECTIVE DATE], 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 \_\_\_\_\_, \_\_\_\_\_.

[NAI or the Applicable Purchaser]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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 -----
-----	-----	-----
-----	-----	-----
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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]

CORPORATE RESOLUTIONS OF  
BNP LEASING CORPORATION

WHEREAS, pursuant to that certain Purchase Agreement (Phase III - Land) (herein called the "Purchase Agreement") dated as of [EFFECTIVE DATE], 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.

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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PURCHASE AGREEMENT  
(PHASE III - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION

("BNPLC")

AND

NETWORK APPLIANCE, INC.

("NAI")

JUNE 16, 1999

(SUNNYVALE, CALIFORNIA)

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#### PURCHASE AGREEMENT (PHASE III - IMPROVEMENTS)

This PURCHASE AGREEMENT (PHASE III - IMPROVEMENTS) (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 June 16, 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 (Phase III - Improvements) executed by BNPLC and NAI contemporaneously with this

Agreement. By this reference, the Common Definitions and Provisions Agreement (Phase III - Improvements) is incorporated into and made a part of this Agreement for all purposes.)

#### RECITALS

Pursuant to the Existing Contracts, which cover the Land described in Exhibit , NAI has leased the Land for a term of 25 years and may acquire or cause BNPLC to acquire Seller's fee interest in the Land and any appurtenances thereto.

Pursuant to the Construction Management Agreement (the "CONSTRUCTION MANAGEMENT AGREEMENT") and the Lease Agreement (Phase III - Improvements) (the "IMPROVEMENTS LEASE") executed by BNPLC and NAI contemporaneously with this Agreement, BNPLC is agreeing to provide funding for the construction and completion of Improvements on the Land, all of which will be owned by BNPLC, and is leasing the Improvements to NAI. (All of BNPLC's interests, including those created by the documents delivered at the closing under the Existing Contracts, in the Improvements and in all other real and personal property from time to time covered by the Improvements Lease and included within the "Property" as defined therein are hereinafter collectively referred to as the "PROPERTY". The Property does not include the fee estate in the Land itself, it being understood that even after any conveyance of the fee estate in the Land to BNPLC under the Existing Contracts or otherwise, the Other Purchase Agreement will constitute a separate agreement providing for the possible sale of the Land and the appurtenances thereto, and only the Land and the appurtenances thereto, from BNPLC to NAI or a third party designated by NAI.)

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

##### 1 NAI'S OPTIONS AND OBLIGATIONS ON THE DESIGNATED SALE DATE.

(A) Right to Purchase; Right and Obligation to Remarket. Whether or not an Event of Default shall have occurred and be continuing or the Improvements Lease shall have been terminated, but subject to Paragraph 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).

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(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 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 (Phase III - Improvements).

(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 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. As used herein, the "BALANCE OF UNPAID CONSTRUCTION-PERIOD INDEMNITY PAYMENTS" means an amount equal to the sum of Construction-Period Indemnity Payments, if any, that NAI declined to pay pursuant to subparagraph 5(d)(ii) of the Improvements 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 Improvements 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 Improvements 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 (Phase III - Improvements), NAI does not deliver a Remarketing Notice to BNPLC within the time period specified above, then the Third Party Price will be an

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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 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 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 (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 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 Improvements 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 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.

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(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 in connection with the construction contemplated by the Construction Management Agreement and the Improvements 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 Improvements 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 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

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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 Improvements 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 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 (Phase III - Improvements) to an Affiliate of BNPLC or that covers BNPLC's entire interest in the 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 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 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 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-1 or Exhibit B-2 or Exhibit B-3, as required by 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, 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 Improvements 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 Improvements 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 Improvements 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 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.

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(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 (Phase III - Improvements).

(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.

(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 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)(a), 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, on the

Designated Sale Date NAI must pay all amounts then due to BNPLC under the Improvements 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 Improvements 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 Improvements 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 Improvements and its use of the Property shall continue to be subject to the terms and conditions of the Improvements Lease, including the terms setting forth NAI's obligation to pay rent, prior to any termination or expiration of the Improvements 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.

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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 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.]

IN WITNESS WHEREOF, NAI and BNPLC have caused this Agreement to be executed as of June 16, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Continuation of signature pages to Purchase Agreement (Phase III - Improvements) dated to be effective June 16, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: -----  
Henry Setina, Vice President

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EXHIBIT A

LEGAL DESCRIPTION

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28" an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

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Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22" West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a

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radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42

degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

EXHIBIT B

REQUIREMENTS RE: FORM OF GRANT DEED

The form of deed to be used to convey BNPLC's interest in the Improvements to NAI or an Applicable Purchaser will depend upon whether Seller has conveyed the fee interest in the Land to BNPLC as contemplated in the Agreement to Lease and, if so, whether BNPLC's interest in the Land has been or is being conveyed at the same time to the same party.

If BNPLC has received a conveyance of the fee interest in the Land from Seller and BNPLC's interests in BOTH the Land and the Improvements are to be conveyed to NAI or an Applicable Purchaser at the same time, because a sale under this Purchase Agreement and a sale under the Other Purchase Agreement (covering the Land) are being consummated at the same time and to the same party, then the one deed in form attached as Exhibit B-1 will be used to convey both.

If, however, BNPLC has received a conveyance of the fee interest in the Land from Seller, but a sale of BNPLC's interest in the Land pursuant to the Other Purchase Agreement has not been consummated before, and is not being consummated contemporaneously with, the sale of BNPLC's interest in the Improvements under this Agreement, then BNPLC's interest in the Improvements will be conveyed by a deed in the from attached as Exhibit B-2.

BNPLC's interest in the Improvements will be conveyed by a deed in the from attached as Exhibit B-3 if (1) BNPLC has received a conveyance of the fee interest in the Land from Seller, and (2) BNPLC's interest in the Land has been sold pursuant to the Other Purchase Agreement before a sale of BNPLC's interest in the Improvements under this Agreement, or BNPLC's interest in the Improvements is being sold contemporaneously with a sale of BNPLC's interest in the Land, but the purchaser of the Improvements is not the same as the purchaser of the Land.

Finally, if BNPLC has not received a conveyance of the fee interest in the Land, then BNPLC's interest in the Improvements will be conveyed by a deed in the from attached as Exhibit B-4.

EXHIBIT B-1

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: \_\_\_\_\_





proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature -----

ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

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an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

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Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22"

West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the

left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degrees 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase III - Improvements) incorporated by reference into the [Lease Agreement (Phase III - Improvements) referenced in the last item of the list below]), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
2. THE LIEN of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code, resulting from changes of ownership or completion of construction on or after the date hereof.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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.

NOTICE OF WAIVER OF CONSTRUCTION CREDITS regarding said Agreements, recorded September 28, 1976 in Book C307, page 346, Official Records.

6. Covenants, Conditions and Restrictions in the Declaration of Protective Covenants - Moffett Industrial Park No. 2) recorded December 23, 1971 in Book 9640, page 443, Official Records; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions and Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code, or (b) relates to handicap but does not discriminate against handicapped persons.

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  
 Purpose : Streets and street improvements  
 Granted to : City of Sunnyvale  
 Recorded : November 16, 1976 in Book C414, page 95, Official Records  
 Affects : The most Westerly corner of said Parcel `A', as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
8. EASEMENT for the purposes stated herein and incidents thereto  
 Purpose : for ingress and egress of motor vehicles  
 Granted to : 495 Java Drive Associates, L.P., a California Limited Partnership  
 Recorded : September 16, 1998, under Series No. 14396001, Official Records  
 Affects : as follows:

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

Being portions of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

PARCEL 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 in said Office of the Recorder of the County of Santa Clara, said point lying

on the Easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet to a point hereafter referred to as Point A; thence North 51 degrees 07' 58" West 12.96 feet; thence South 38 degrees 52' 02" 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' 39" 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' 05" East, through a central angle of 1 degree 23' 23" for an arc length of 24.30 feet to the true point of beginning.

PARCEL TWO:

Commencing at said Point A; thence North 38 degrees 52' 02" East 216.65 feet to the true point of beginning; thence North 51 degrees 07' 58" West 49.68 feet; thence North 38 degrees 52' 02" 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' 58" West 13.91 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 94.26 feet; thence South 51 degrees 07' 58" East 62.39 feet; thence North 38 degrees 52' 02" East 12.70 feet to the true point of beginning.

9. ANY RIGHTS, interests, or claims adverse to those of the vestee herein which may exist or arise by reason of the following facts shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
1. Concrete walks and concrete berms or landscaping enclosures extend across the Easterly and Northerly boundary lines of the subject real property onto adjoining lands.
  2. A wood fence extends across the Easterly boundary line of the subject real property, onto adjoining land.
  3. Underground gas and electric lines, and storm drains, extend across the Easterly boundary line of the subject real property, onto or from adjoining land.
  4. An electric box and an electric vault exist on the Northerly boundary line of the subject real property.
  5. Construction of certain public improvements is in progress, in the Southwesterly corner of the subject real property, alongside the intersection of Java Drive and Geneva Drive.

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10. [Lease Agreement (Phase III - Land) dated \_\_\_\_\_, \_\_\_\_\_, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and] Lease Agreement (Phase III - Improvements) dated June 16, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

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EXHIBIT B-2

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

(Covering Improvements but not the Land under the Improvements)

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 buildings and other improvements (the "Improvements") on the land situated in Sunnyvale, California, described on Annex A attached hereto and hereby made a part hereof (the "Land"), together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to the Improvements; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances") and any reservations or qualifications set forth below. Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the Improvements.

Although this deed conveys Grantor's interest in the Improvements, this deed does not convey any interest in the Land under the Improvements or any rights or easements appurtenant to Land. Grantor retains and reserves all right, title and interest of Grantor in and to the Land and any rights and easements appurtenant to Land. Further, this deed does not convey any right of access over or right to use the Land, it being understood that the right of Grantee or its successors and assigns to maintain or use the improvements conveyed hereby shall be on and subject to the terms and conditions of any separate ground lease or deed that Grantee may from time to time obtain from the owner of the Land. If Grantee does not obtain a separate deed or ground lease giving Grantee the authority to maintain the Improvements on the Land, Grantee shall remove or abandon the Improvements promptly upon request of the owner of the Land. Nothing herein or in the agreements pursuant to which this deed is being delivered shall be construed as an obligation on the part of Grantor to deliver or cooperate reasonably in obtaining for Grantee any deed or ground lease covering the Land described on Annex A.

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BNP LEASING CORPORATION

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its:

Attest: \_\_\_\_\_

Its:

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_

By: \_\_\_\_\_

Its:

Attest: \_\_\_\_\_

Its:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ANNEX A  
LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book

292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28"

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an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22"

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West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

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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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase III - Improvements) incorporated by reference into the [Lease Agreement (Phase III - Improvements) referenced in the last item of the list below]), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
2. THE LIEN of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code,

resulting from changes of ownership or completion of construction on or after the date hereof.

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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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.

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NOTICE OF WAIVER OF CONSTRUCTION CREDITS regarding said Agreements, recorded September 28, 1976 in Book C307, page 346, Official Records.

6. Covenants, Conditions and Restrictions in the Declaration of Protective Covenants - Moffett Industrial Park No. 2) recorded December 23, 1971 in Book 9640, page 443, Official Records; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions and Restrictions do not provide for reversion of title in the event of a breach thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code, or (b) relates to handicap but does not discriminate against handicapped persons.

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  
Purpose : Streets and street improvements  
Granted to : City of Sunnyvale  
Recorded : November 16, 1976 in Book C414, page 95, Official Records  
Affects : The most Westerly corner of said Parcel `A', as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
8. EASEMENT for the purposes stated herein and incidents thereto  
Purpose : for ingress and egress of motor vehicles  
Granted to : 495 Java Drive Associates, L.P., a California Limited Partnership

Recorded : September 16, 1998, under Series No. 14396001, Official  
Records  
Affects : as follows:

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

Being portions of Parcel A, as shown upon that certain Parcel Map  
filed for record in Book 292 at page 41, on November 10, 1971, in  
the Office of the Recorder of the County of Santa Clara and a  
portion of Parcel A, as shown upon that certain Parcel Map filed  
for record in Book 216 at Page 2, on October 25, 1966, in the  
Office of the Recorder of the County of Santa Clara, described as  
follows:

PARCEL 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 in said Office of the Recorder of the County of Santa  
Clara, said point lying

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on the Easterly line of said Parcel A, as shown upon that certain  
Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4  
degrees 20' 28" for an arc length of 75.92 feet to the true point of  
beginning; thence North 38 degrees 52' 02" East 82.92 feet to a point  
hereafter referred to as Point A; thence North 51 degrees 07' 58" West  
12.96 feet; thence South 38 degrees 52' 02" 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' 39" 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' 05" East, through a central angle of 1  
degree 23' 23" for an arc length of 24.30 feet to the true point of  
beginning.

PARCEL TWO:

Commencing at said Point A; thence North 38 degrees 52' 02" East 216.65  
feet to the true point of beginning; thence North 51 degrees 07' 58"  
West 49.68 feet; thence North 38 degrees 52' 02" 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'  
58" West 13.91 feet along said Northeasterly line; thence South 38  
degrees 52' 02" West 94.26 feet; thence South 51 degrees 07' 58" East  
62.39 feet; thence North 38 degrees 52' 02" East 12.70 feet to the true  
point of beginning.

9. ANY RIGHTS, interests, or claims adverse to those of the vestee herein  
which may exist or arise by reason of the following facts shown on a  
survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR  
THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998,  
prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No.  
97208-2.
1. Concrete walks and concrete berms or landscaping enclosures  
extend across the Easterly and Northerly boundary lines of the  
subject real property onto adjoining lands.
  2. A wood fence extends across the Easterly boundary line of the  
subject real property, onto adjoining land.

3. Underground gas and electric lines, and storm drains, extend across the Easterly boundary line of the subject real property, onto or from adjoining land.
4. An electric box and an electric vault exist on the Northerly boundary line of the subject real property.
5. Construction of certain public improvements is in progress, in the Southwesterly corner of the subject real property, alongside the intersection of Java Drive and Geneva Drive.

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6. [Lease Agreement (Phase III - Land) dated \_\_\_\_\_, \_\_\_\_\_, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and] Lease Agreement (Phase III - Improvements) dated June 16, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

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EXHIBIT B-3  
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  
(Covering Improvements but not the Land under the Improvements)

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 buildings and other improvements (the "Improvements") on the land situated in Sunnyvale, California, described on Annex A attached hereto and hereby made a part hereof (the "Land"), together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to the Improvements; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances") and any reservations or qualifications set forth below. Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the Improvements.

Although this deed conveys Grantor's interest in the Improvements on the Land, this deed does not convey any interest in the Land itself or any rights or easements appurtenant to Land. Prior to or contemporaneously with the delivery of this deed, Grantor has conveyed or is conveying the Land and appurtenant

rights and easements to another party, subject to the terms and conditions of a Ground Lease dated \_\_\_\_\_, filed or to be filed for record in the Santa Clara County records. Grantor is assigning it's rights as lessee under the Ground Lease to Grantee by a separate instrument dated of even date herewith.

BNP LEASING CORPORATION

Date: As of \_\_\_\_\_ By: \_\_\_\_\_ Its:

Attest: \_\_\_\_\_ Its:

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_ By: \_\_\_\_\_ Its:

Attest: \_\_\_\_\_ Its:

STATE OF \_\_\_\_\_ ) ) SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ ) ) SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

## ANNEX A

## LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

## PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28"

an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

## PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map

recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial line bears North 88 degrees 46' 22"

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West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

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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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase III - Improvements) incorporated by reference into the [Lease Agreement (Phase III - Improvements) referenced in the last item of the list below]), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
2. THE LIEN of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code, resulting from changes of ownership or completion of construction on or after the date hereof.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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.

NOTICE OF WAIVER OF CONSTRUCTION CREDITS regarding said Agreements, recorded September 28, 1976 in Book C307, page 346, Official Records.

6. Covenants, Conditions and Restrictions in the Declaration of Protective Covenants - Moffett Industrial Park No. 2) recorded December 23, 1971 in Book 9640, page 443, Official Records; which provide that a violation thereof shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value. Said Covenants, Conditions and Restrictions do not provide for reversion of title in the event of a breach



thereof. Restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607, of the United States Code, or (b) relates to handicap but does not discriminate against handicapped persons.

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  
Purpose : Streets and street improvements  
Granted to : City of Sunnyvale  
Recorded : November 16, 1976 in Book C414, page 95, Official Records  
Affects : The most Westerly corner of said Parcel `A', as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
8. EASEMENT for the purposes stated herein and incidents thereto  
Purpose : for ingress and egress of motor vehicles  
Granted to : 495 Java Drive Associates, L.P., a California Limited Partnership  
Recorded : September 16, 1998, under Series No. 14396001, Official  
Affects: Records as follows:

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

Being portions of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

PARCEL 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 in said Office of the Recorder of the County of Santa Clara, said point lying on the

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Easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet to a point hereafter referred to as Point A; thence North 51 degrees 07' 58" West 12.96 feet; thence South 38 degrees 52' 02" 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' 39" 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' 05" East, through a central angle of 1 degree 23' 23" for an arc length of 24.30 feet to the true point of beginning.

PARCEL TWO:

Commencing at said Point A; thence North 38 degrees 52' 02" East 216.65 feet to the true point of beginning; thence North 51 degrees 07' 58"

West 49.68 feet; thence North 38 degrees 52' 02" 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' 58" West 13.91 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 94.26 feet; thence South 51 degrees 07' 58" East 62.39 feet; thence North 38 degrees 52' 02" East 12.70 feet to the true point of beginning.

- 9. ANY RIGHTS, interests, or claims adverse to those of the vestee herein which may exist or arise by reason of the following facts shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
  - 1. Concrete walks and concrete berms or landscaping enclosures extend across the Easterly and Northerly boundary lines of the subject real property onto adjoining lands.
  - 2. A wood fence extends across the Easterly boundary line of the subject real property, onto adjoining land.
  - 3. Underground gas and electric lines, and storm drains, extend across the Easterly boundary line of the subject real property, onto or from adjoining land.
  - 4. An electric box and an electric vault exist on the Northerly boundary line of the subject real property.
  - 5. Construction of certain public improvements is in progress, in the Southwesterly corner of the subject real property, alongside the intersection of Java Drive and Geneva Drive.

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- 6. [Lease Agreement (Phase III - Land) dated \_\_\_\_\_, \_\_\_\_\_, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and] Lease Agreement (Phase III - Improvements) dated June 16, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.

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EXHIBIT B-4  
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: \_\_\_\_\_

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 buildings and other improvements (the "Improvements") on the land situated in Sunnyvale, California, described on Annex A attached hereto and hereby made a part hereof (the "Land"), together with the any other right, title and interest of Grantor in and to any easements, rights-of-way, privileges and other rights appurtenant to the Improvements; provided, however, that this grant is subject to the encumbrances described on Annex B (the "Permitted Encumbrances") and any reservations or qualifications set forth below. Grantee hereby assumes the obligations (including any personal obligations) of Grantor, if any, created by or under, and agrees to be bound by the terms and conditions of, the Permitted Encumbrances to the extent that the same concern or apply to the Improvements.

Although this deed conveys Grantor's interest in the Improvements, this deed does not convey any interest in the Land under the Improvements or any rights or easements appurtenant to Land. Rather, Grantor merely quitclaims unto Grantee all right, titles and interests (if any) of Grantor in and to the Land and any rights and easements appurtenant to Land. Further, this deed does not purport to convey any right of access over or right to use the Land, it being understood that the right of Grantee or its successors and assigns to maintain or use the improvements conveyed hereby shall be on and subject to the terms and conditions of any separate ground lease or deed that Grantee may from time to time obtain from the owner of the Land. If Grantee does not obtain a separate deed or ground lease giving Grantee the authority to maintain the Improvements on the Land, Grantee shall remove or abandon the Improvements promptly upon request of the owner of the Land. Nothing herein or in the agreements pursuant to which this deed is being delivered shall be construed as an obligation on the part of Grantor to deliver or cooperate reasonably in obtaining for Grantee any deed or ground lease covering the Land described on Annex A.

BNP LEASING CORPORATION

Date: As of \_\_\_\_\_ By: \_\_\_\_\_ Its:

Attest: \_\_\_\_\_ Its:

[NAI or Applicable Purchaser]

Date: As of \_\_\_\_\_ By: \_\_\_\_\_ Its:

Attest: \_\_\_\_\_ Its:

STATE OF \_\_\_\_\_ ) ) SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE LAND 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.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10,

1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14 degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28"

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an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning. As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of 14.00 feet, from which a radial

line bears North 88 degrees 46' 22"

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West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

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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 LAND LEASE OR THE OTHER LEASE AGREEMENT 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 (Phase III - Land Use/Acquisition incorporated by reference into the [Lease Agreement (Phase III - Land Use/Acquisition referenced in the last item of the list below)]), including the following matters to the extent the same are still valid and in force:

1. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
2. THE LIEN of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code, resulting from changes of ownership or completion of construction on or after the date hereof.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
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 Northerly of the Northerly line of Java Drive, as shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.

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.

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NOTICE OF WAIVER OF CONSTRUCTION CREDITS regarding said Agreements, recorded  
September 28, 1976 in Book C307, page 346, Official Records.

6. Covenants, Conditions and Restrictions in the Declaration of Protective  
Covenants - Moffett Industrial Park No. 2) recorded December 23, 1971 in  
Book 9640, page 443, Official Records; which provide that a violation  
thereof shall not defeat or render invalid the lien of any Mortgage or Deed  
of Trust made in good faith and for value. Said Covenants, Conditions and  
Restrictions do not provide for reversion of title in the event of a breach  
thereof. Restrictions, if any, based upon race, color, religion, sex,  
handicap, familial status, or national origin are deleted, unless and only  
to the extent that said covenant (a) is exempt under Chapter 42, Section  
3607, of the United States Code, or (b) relates to handicap but does not  
discriminate against handicapped persons.

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  
Purpose : Streets and street improvements  
Granted to : City of Sunnyvale  
Recorded : November 16, 1976 in Book C414, page 95, Official Records  
Affects : The most Westerly corner of said Parcel `A', as shown on  
a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND  
TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA  
DRIVE", dated April 15, 1998, prepared by Kier & Wright  
Civil Engineers & Surveyors, Inc., Job No. 97208-2.
8. EASEMENT for the purposes stated herein and incidents thereto  
Purpose : for ingress and egress of motor vehicles  
Granted to : 495 Java Drive Associates, L.P., a California Limited  
Partnership  
Recorded : September 16, 1998, under Series No. 14396001, Official  
Records  
Affects : as follows:

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

Being portions of Parcel A, as shown upon that certain Parcel Map filed  
for record in Book 292 at page 41, on November 10, 1971, in the Office  
of the Recorder of the County of Santa Clara and a portion of Parcel A,  
as shown upon that certain Parcel Map filed for record in Book 216 at  
Page 2, on October 25, 1966, in the Office of the Recorder of the  
County of Santa Clara, described as follows:

PARCEL 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 in said Office of  
the Recorder of the County of Santa Clara, said point lying on the

Easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet to a point hereafter referred to as Point A; thence North 51 degrees 07' 58" West 12.96 feet; thence South 38 degrees 52' 02" 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' 39" 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' 05" East, through a central angle of 1 degree 23' 23" for an arc length of 24.30 feet to the true point of beginning.

PARCEL TWO:

Commencing at said Point A; thence North 38 degrees 52' 02" East 216.65 feet to the true point of beginning; thence North 51 degrees 07' 58" West 49.68 feet; thence North 38 degrees 52' 02" 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' 58" West 13.91 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 94.26 feet; thence South 51 degrees 07' 58" East 62.39 feet; thence North 38 degrees 52' 02" East 12.70 feet to the true point of beginning.

9. ANY RIGHTS, interests, or claims adverse to those of the vestee herein which may exist or arise by reason of the following facts shown on a survey plat entitled "TOPOGRAPHIC AND ALTA/ACSM LAND TITLE SURVEY FOR THE MOZART DEVELOPMENT COMPANY 475 JAVA DRIVE", dated April 15, 1998, prepared by Kier & Wright Civil Engineers & Surveyors, Inc., Job No. 97208-2.
1. Concrete walks and concrete berms or landscaping enclosures extend across the Easterly and Northerly boundary lines of the subject real property onto adjoining lands.
  2. A wood fence extends across the Easterly boundary line of the subject real property, onto adjoining land.
  3. Underground gas and electric lines, and storm drains, extend across the Easterly boundary line of the subject real property, onto or from adjoining land.
  4. An electric box and an electric vault exist on the Northerly boundary line of the subject real property.
  5. Construction of certain public improvements is in progress, in the Southwesterly corner of the subject real property, alongside the intersection of Java Drive and Geneva Drive.

6. [Lease Agreement (Phase III - Land) dated \_\_\_\_\_, \_\_\_\_\_, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee, and] Lease Agreement (Phase III - Improvements) dated June 16, 1999, by and between BNP Leasing Corporation, as lessor, and Network Appliance, Inc., as lessee.



## EXHIBIT C

## BILL OF SALE AND ASSIGNMENT

Reference is made to: (1) that certain Purchase Agreement (Phase III - Improvements) between BNP Leasing Corporation ("ASSIGNOR") and Network Appliance, Inc., dated as of June 16, 1999, (the "PURCHASE AGREEMENT") and (2) that certain Lease Agreement (Phase III - Improvements) between Assignor, as landlord, and Network Appliance, Inc., as tenant, dated as of June 16, 1999 (the "IMPROVEMENTS 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 (Phase III - Improvements) incorporated by reference into both the Purchase Agreement and Improvements 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 Improvements Lease [DRAFTING NOTE: THE FOLLOWING WILL BE ADDED ONLY IF APPLICABLE BECAUSE OF THE SIMULTANEOUS DELIVERY OF A GRANT DEED IN THE FORM OF EXHIBIT B-3: and the Ground Lease dated \_\_\_\_\_, between \_\_\_\_\_, as lessor, and Assignor, as lessee, filed for record on in \_\_\_\_\_ of Santa Clara County records (the "GROUND 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 Improvements Lease or otherwise acquired by Assignor, at the time of the execution and delivery of the Improvements Lease and Purchase Agreement or thereafter, by reason of Assignor's status as the owner of any interest in the Property: (i) 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 Improvements Lease and Purchase Agreement or thereafter arising, under Permitted Encumbrances or Development Documents (both as defined in the Improvements 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 Improvements covered by the Improvements 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 Improvements 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 Improvements Lease which may not presently be known, (2) provisions in the Improvements Lease that establish the right of Assignor to recover any accrued unpaid rent under the Improvements 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 Improvements 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 Improvements 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



STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ANNEX A

LEGAL DESCRIPTION

[DRAFTING NOTE: TO THE EXTENT THAT THE "LAND" COVERED BY THE OTHER 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 DOCUMENT TO WHICH THIS DESCRIPTION IS ATTACHED IS ACTUALLY EXECUTED AND DELIVERED.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

All of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara.

Together with that portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described 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' 33" West 223.09 feet to a point hereinafter referred to as Point "X"; thence leaving said Westerly line North 38 degrees 52' 02" East 134.85 feet; thence North 51 degrees 07' 58" West 49.68; thence North 38 degrees 52' 02" East 87.23 feet to the Northerly line of last said Parcel A; thence along said Northerly line North 75 degrees 07' 58" West 44.97 feet to the point of beginning.

Excepting therefrom that parcel of land described in the deed to Santa Clara Valley Transit District, recorded October 24, 1997 as Instrument No. 13912192, Official Records in said Office of the Recorder of the County of Santa Clara, described as follows:

Also, excepting therefrom that portion of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the office of the Recorder of the County of Santa Clara, described as follows:

Beginning at above mentioned Point "X"; thence along the Easterly line of Parcel A as shown upon said Parcel Map filed for record in Book 292 at page 41 South 14

degrees 51' 33" 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 in said Office of the Recorder of the County of Santa Clara, 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' 56" East; thence Northwesterly along said Northeasterly line and along said curve through a central angle of 04 degrees 20' 28" an arc length of 75.92 feet; thence leaving said Northeasterly line non-tangent from last said curve North 38 degrees 52' 02" East 164.71 feet to said Point of beginning.

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As created by that certain Certificate of Compliance (Lot Line Adjustment) recorded September 16, 1998, under Series No. 14395996.

PARCEL TWO:

Storm drain(age) easements, so described in the deeds referred to hereafter, in and as to certain portions of Parcel 'A', so designated on the Parcel Map recorded August 28, 1974 in Book 345 of Maps, page 20, Santa Clara County Records.

Said easements are the same as are described in the deeds to Los Altos Venture, a Joint Venture consisting of Mape Industries, Inc., a California corporation, and REBMA California Six, Inc., a Missouri corporation, recorded December 29, 1971 in Book 9647, page 183, and April 17, 1972 in Book 9790, page 380, Official Records; and to Paul Enterprises, a partnership, and Northwest Poultry and Dairy Products Co., an Oregon corporation, recorded June 17, 1975 in Book B467, page 167, Official Records.

PARCEL THREE:

A non-exclusive easement for ingress and egress as shown in that certain Reciprocal Easement Agreement recorded September 16, 1998 under Series No. 14396001, more particularly described as follows:

Being a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at page 41, on November 10, 1971, in the Office of the Recorder of the County of Santa Clara, and a portion of Parcel A, as shown upon that certain Parcel Map filed for record in Book 216 at Page 2, on October 25, 1966, in the Office of the Recorder of the County of Santa Clara, described as follows:

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 in said Office of the Recorder of the County of Santa Clara, said point lying on the easterly line of said Parcel A, as shown upon that certain Parcel Map filed for record in Book 292 at 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' 56" East, through a central angle of 4 degrees 20' 28" for an arc length of 75.92 feet to the true point of beginning; thence North 38 degrees 52' 02" East 82.92 feet; thence Southeasterly along a non-tangent curve to the left with a radius of 78.00 feet, from which a radial line bears South 38 degrees 52' 02" West, through a central angle of 28 degrees 09' 05" for an arc length of 38.32 feet; thence North 38 degrees 52' 02" East 177.73 feet; thence Northwesterly along a curve to the left with a radius of 17.00 feet through a central angle of 90 degrees 00' 00" for an arc length of 26.70 feet; thence North 51 degrees 07' 58" West 19.80 feet; thence the following three courses: North 38 degrees 52' 02" East 12.69 feet North 51 degrees 07' 58" West 49.68 feet; North 38 degrees 52' 02" 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 South 75 degrees 07' 58" East 13.45 feet along said Northeasterly line; thence South 38 degrees 52' 02" West 74.94 feet; thence Southerly along a non-tangent curve to the left with a radius of

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14.00 feet, from which a radial line bears North 88 degrees 46' 22" West, through a central angle of 52 degrees 21' 36" for an arc length of 12.79 feet; thence South 51 degrees 07' 58" East 85.87 feet; thence South 38 degrees 52' 02" West 252.96 feet; North 51 degrees 07' 58" West 41.72 feet; thence Southwesterly along a non-tangent curve to the left with a radius of 20.00 feet, from which a radial line bears North 10 degrees 35' 40" West, through a central angle of 40 degrees 32' 18" for an arc length of 14.15 feet; thence South 38 degrees 52' 02" West 29.48 feet; thence Southerly along a tangent curve to the left with a radius of 20.00 feet, through a central angle of 60 degrees 45' 15" for an arc length 21.21 feet to a point on said Northeasterly line of said parcel of land described in the deed to Santa Clara Valley Transit District; thence Northwesterly along said Northeasterly line along a non-tangent curve to the left with a radius of 1002.05 feet, from which a radial line bears North 42 degrees 01' 23" East, through a central angle of 1 degree 19' 55" for an arc length of 23.29 feet to the True Point of Beginning.

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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 (Phase III - Improvements) incorporated by reference into the Purchase Agreement between BNPLC and Network Appliance, Inc. dated June 16, 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 \_\_\_\_\_, \_\_\_\_\_.

[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
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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 \_\_\_\_\_, \_\_\_\_.

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[signature and title]

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CORPORATE RESOLUTIONS OF  
BNP LEASING CORPORATION

WHEREAS, pursuant to that certain Purchase Agreement (Phase III - Improvements) (herein called the "Purchase Agreement") dated as of June 16, 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.

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 K

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 (Phase III - Improvements) dated as of June 16,  
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 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 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 (Phase  
III - Improvements). 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 Improvements Lease to terminate as of the Base Rent Commencement Date  
pursuant to subparagraph 1(b) of the Improvements Lease.

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Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

NETWORK APPLIANCE, INC.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[cc all Participants]

<ARTICLE> 5  
<MULTIPLIER> 1,000

<PERIOD-TYPE>	3-MOS	
<FISCAL-YEAR-END>		APR-28-2000
<PERIOD-START>		MAY-01-1999
<PERIOD-END>		JUL-30-1999
<CASH>		230,025
<SECURITIES>		15,869
<RECEIVABLES>		68,910
<ALLOWANCES>		2,190
<INVENTORY>		15,019
<CURRENT-ASSETS>		348,046
<PP&E>		42,109
<DEPRECIATION>		17,093
<TOTAL-ASSETS>		382,334
<CURRENT-LIABILITIES>		58,395
<BONDS>		0
<PREFERRED-MANDATORY>		0
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<COMMON>		254,508
<OTHER-SE>		69,363
<TOTAL-LIABILITY-AND-EQUITY>		382,334
<SALES>		103,279
<TOTAL-REVENUES>		103,279
<CGS>		42,539
<TOTAL-COSTS>		42,539
<OTHER-EXPENSES>		41,922
<LOSS-PROVISION>		0
<INTEREST-EXPENSE>		0
<INCOME-PRETAX>		20,881
<INCOME-TAX>		7,413
<INCOME-CONTINUING>		13,468
<DISCONTINUED>		0
<EXTRAORDINARY>		0
<CHANGES>		0
<NET-INCOME>		13,468
<EPS-BASIC>		0.18
<EPS-DILUTED>		0.16