

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(MARK ONE)

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

FOR THE QUARTERLY PERIOD ENDED JANUARY 28, 2000

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 JANUARY 28, 2000
-----	-----
Common Stock.....	152,284,841

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)

JANUARY 28, APRIL 30,

	2000	1999
	----- (UNAUDITED)	----- **
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 231,416	\$ 221,284
Short-term investments	58,636	5,800
Accounts receivable, net	99,674	57,163
Inventories	20,878	13,581
Prepaid expenses and other assets	9,653	7,384
Deferred taxes	27,171	10,134
	-----	-----
Total current assets	447,428	315,346
PROPERTY AND EQUIPMENT, NET	33,646	19,271
DEPOSITS	7,170	7,000
OTHER ASSETS	5,672	4,730
	-----	-----
	\$ 493,916	\$ 346,347
	=====	=====
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	\$ 21,991	\$ 15,126
Income taxes payable	4,195	1,108
Accrued compensation and related benefits	24,328	15,189
Other accrued liabilities	8,769	7,633
Deferred revenue	18,465	11,474
	-----	-----
Total current liabilities	77,748	50,530
LONG-TERM OBLIGATIONS	55	93
	-----	-----
	77,803	50,623
	-----	-----
SHAREHOLDERS' EQUITY:		
Common stock	312,144	240,093
Retained earnings	105,268	55,954
Cumulative other comprehensive loss	(1,299)	(323)
	-----	-----
Total shareholders' equity	416,113	295,724
	-----	-----
	\$ 493,916	\$ 346,347
	=====	=====

** Derived from audited consolidated financial statements.

See accompanying notes to condensed consolidated financial statements.

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NETWORK APPLIANCE, INC.

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

THREE MONTHS ENDED		NINE MONTHS ENDED	
JANUARY 28, 2000	JANUARY 29, 1999	JANUARY 28, 2000	JANUARY 29, 1999
-----	-----	-----	-----

NET SALES	\$ 151,290	\$ 75,616	\$ 379,281	\$ 198,616
COST OF SALES	61,415	30,818	155,471	80,938
	-----	-----	-----	-----
Gross Margin	89,875	44,798	223,810	117,678
	-----	-----	-----	-----
OPERATING EXPENSES:				
Sales and marketing	40,194	19,831	99,626	51,830
Research and development	16,424	7,815	41,106	20,618
General and administrative	5,470	2,655	13,775	7,092
	-----	-----	-----	-----
Total operating expenses	62,088	30,301	154,507	79,540
	-----	-----	-----	-----
INCOME FROM OPERATIONS	27,787	14,497	69,303	38,138
	-----	-----	-----	-----
OTHER INCOME (EXPENSE):				
Interest Income	2,860	626	7,503	1,634
Other income (expense), net	49	(84)	(350)	24
	-----	-----	-----	-----
Total other income, net	2,909	542	7,153	1,658
	-----	-----	-----	-----
INCOME BEFORE INCOME TAXES	30,696	15,039	76,456	39,796
PROVISION FOR INCOME TAXES	10,897	5,645	27,142	14,929
	-----	-----	-----	-----
NET INCOME	\$ 19,799	\$ 9,394	\$ 49,314	\$ 24,867
	=====	=====	=====	=====
NET INCOME PER SHARE (1):				
Basic	\$ 0.13	\$ 0.07	\$ 0.33	\$ 0.18
	=====	=====	=====	=====
Diluted	\$ 0.11	\$ 0.06	\$ 0.29	\$ 0.16
	=====	=====	=====	=====
Pro Forma - Basic (Note 8)	\$ 0.07	\$ 0.03	\$ 0.17	\$ 0.09
	=====	=====	=====	=====
Pro Forma - Diluted (Note 8)	\$ 0.06	\$ 0.03	\$ 0.14	\$ 0.08
	=====	=====	=====	=====
SHARES USED IN PER SHARE CALCULATIONS (1):				
Basic	150,461	137,476	148,294	135,606
	=====	=====	=====	=====
Diluted	175,168	157,864	170,316	153,358
	=====	=====	=====	=====
Pro Forma - Basic (Note 8)	300,922	274,952	296,588	271,212
	=====	=====	=====	=====
Pro Forma - Diluted (Note 8)	350,336	315,728	340,632	306,716
	=====	=====	=====	=====

(1) Share and per share amounts have been adjusted to reflect the two-for-one stock split which was effective December 20, 1999.

See accompanying notes to condensed consolidated financial statements.

NETWORK APPLIANCE, INC.

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

NINE MONTHS ENDED

-----	-----
JANUARY 28,	JANUARY 29,
2000	1999
-----	-----

CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 49,314	\$ 24,867
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	10,732	7,091
Provision for doubtful accounts	996	873
Deferred income taxes	(17,037)	(4,683)
Deferred rent	(38)	(47)
Changes in assets and liabilities:		
Accounts receivable	(43,667)	(17,397)
Inventories	(9,623)	(3,065)
Prepaid expenses and other assets	(3,379)	(1,069)
Accounts payable	6,865	(1,745)
Income taxes payable	41,287	11,812
Accrued compensation and related benefits	9,139	3,187
Other accrued liabilities	1,136	3,385
Deferred revenue	6,991	3,279
	-----	-----
Net cash provided by operating activities	52,716	26,488
	-----	-----
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of short-term investments	(62,636)	(15,230)
Redemptions of short-term investments	9,650	17,880
Purchases of property and equipment	(22,472)	(11,615)
Payment/refund of deposits, net	(170)	(7,000)
	-----	-----
Net cash used in investing activities	(75,628)	(15,965)
	-----	-----
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from sale of common stock, net	33,044	12,048
	-----	-----
Net cash provided by financing activities	33,044	12,048
	-----	-----
NET INCREASE IN CASH AND CASH EQUIVALENTS	10,132	22,571
CASH AND CASH EQUIVALENTS:		
Beginning of period	221,284	37,315
	-----	-----
End of period	\$ 231,416	\$ 59,886
	=====	=====
NONCASH INVESTING AND FINANCING ACTIVITIES:		
Income tax benefit from employee stock transactions	\$ 38,200	\$ 12,210
SUPPLEMENTAL CASH FLOW INFORMATION:		
Income taxes paid net of refund	\$ 1,517	\$ 7,031

See accompanying notes to condensed consolidated financial statements.

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

1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The accompanying condensed consolidated financial statements have been prepared by Network Appliance, Inc. without audit and reflect all adjustments, which are, in the opinion of management, necessary for a fair presentation of our financial position and results of operations for the interim periods. The statements have been prepared in accordance with the regulations of the Securities and Exchange Commission (SEC). Accordingly, they do not include all information and footnotes required by generally accepted accounting principles. The results of operations for the three and nine-month periods ended January 28, 2000 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 January 28, 2000 includes 13 weeks of operating activity, compared to 13 weeks of activity for the corresponding period of the prior fiscal year. The nine-months ended January 28, 2000 includes 39 weeks of activity, compared to 40 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 such foreign subsidiaries are translated into the 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.

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

3. INVENTORIES

Inventories consist of the following:

	JANUARY 28, 2000	APRIL 30, 1999
	-----	-----
	(IN THOUSANDS)	
Purchased components	\$ 7,741	\$ 5,316
Work in process	4,253	1,727
Finished goods	8,884	6,538
	-----	-----
	\$20,878	\$13,581
	=====	=====

4. 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		NINE MONTHS ENDED	
JANUARY 28, 2000	JANUARY 29, 1999	JANUARY 28, 2000	JANUARY 29, 1999

	-----	-----	-----	-----
(In thousands, except per share amounts)				
NET INCOME (NUMERATOR):				
Net income, basic and diluted	\$ 19,799	\$ 9,394	\$ 49,314	\$ 24,867
	=====	=====	=====	=====
SHARES (DENOMINATOR):				
Weighted average common shares outstanding	150,536	137,624	148,395	136,288
Weighted average common shares outstanding subject to repurchase	(75)	(148)	(101)	(682)
	-----	-----	-----	-----
Shares used in basic computation	150,461	137,476	148,294	135,606
Weighted average common shares outstanding subject to repurchase	75	148	101	682
Common shares issuable upon exercise of stock options	24,632	20,240	21,921	17,070
	-----	-----	-----	-----
Shares used in diluted computation	175,168	157,864	170,316	153,358
	=====	=====	=====	=====
NET INCOME PER SHARE:				
Basic	\$ 0.13	\$ 0.07	\$ 0.33	\$ 0.18
	=====	=====	=====	=====
Diluted	\$ 0.11	\$ 0.06	\$ 0.29	\$ 0.16
	=====	=====	=====	=====

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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		NINE MONTHS ENDED	
	JANUARY 28, 2000	JANUARY 29, 1999	JANUARY 28, 2000	JANUARY 29, 1999
	-----	-----	-----	-----
(IN THOUSANDS)				
Net income	\$ 19,799	\$ 9,394	\$ 49,314	\$ 24,867
Change in cumulative translation adjustment	(1,050)	(105)	(976)	(123)
	-----	-----	-----	-----
Comprehensive income	\$ 18,749	\$ 9,289	\$ 48,338	\$ 24,744
	=====	=====	=====	=====

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. 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.

7. COMMITMENTS

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 (7.5% at January 28, 2000). The aggregate annual minimum rent commitment under one lease, which began in August 1999, is approximately \$3.3 million. The lease payments under the other two 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 January 28, 2000.

We have commitments related to operating lease arrangements, under which we have an option to purchase the properties for an aggregate of \$190.0 million, or arrange for the sale of the properties to a third party for at least the option price with a contingent liability for any deficiency.

8. SUBSEQUENT EVENTS

On February 10, 2000, the Board of Directors approved a two-for-one stock split of the Company's common stock to be distributed on or about March 22, 2000 to holders of record on March 10, 2000. Pro forma share and per-share amounts have been presented within the Condensed Consolidated Statements of Income to reflect the stock split.

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		NINE MONTHS ENDED	
	JANUARY 28, 2000	JANUARY 29, 1999	JANUARY 28, 2000	JANUARY 29, 1999
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	40.6	40.8	41.0	40.8
Gross margin	59.4	59.2	59.0	59.2
Operating expenses:				
Sales and marketing	26.6	26.2	26.3	26.1
Research and development	10.8	10.3	10.8	10.4
General and administrative	3.6	3.5	3.6	3.5
Total operating expenses	41.0	40.0	40.7	40.0
Income from operations	18.4	19.2	18.3	19.2
Total other income, net	1.9	0.7	1.9	0.8
Income before income taxes	20.3	19.9	20.2	20.0
Provision for income taxes	7.2	7.5	7.2	7.5
Net income	13.1%	12.4%	13.0%	12.5%

Net Sales -- Net sales increased by 100.1% to \$151.3 million for the three-months ended January 28, 2000, from \$75.6 million for the three-months ended January 29, 1999. Net sales increased by 91.0% to \$379.3 million for the nine-months ended January 28, 2000, from \$198.6 million for the nine-months ended January 29, 1999. Net sales growth was across all geographies, products and markets. This increase in net sales for both the three and nine-months ended January 28, 2000 was primarily attributable to a higher volume of units shipped, as compared to the corresponding periods of the prior fiscal year. Factors impacting unit growth include:

- growth in the network attached storage market and increased market acceptance of the appliance concept;

- acceleration in deployment of our products among Internet and enterprise related customers, particularly for E-business and database applications;
- strong demand for our F700 filer product family utilizing primarily fibre-channel connectivity;
- increased worldwide demand for our NetCache(TM) solutions;
- increased worldwide shipment of NetApp(R) Cluster Failover solutions, which require another filer to take over in the event of a hardware failure;
- increased demand for the SnapMirror(TM) software option, which requires multiple filers to provide remote mirroring of data for quick disaster recovery and backup at remote sites;
- expansion of our direct sales force; and
- sales to our two OEM partners.

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Net sales growth was also positively impacted by:

- a higher average selling price due to the introduction of new software features: SnapMirror, SnapRestore(TM) and Cluster Failover, supporting mission-critical applications;
- the increase in storage capacity;
- increased add-on software revenue from multi-protocol solutions; and
- higher software subscription and service revenues to support a growing installed base.

Overall net sales growth was partially offset by declining unit sales of our older product family and declining average selling price of the caching product family due primarily to competitive pricing pressure.

International net sales (including United States exports) grew by 50.0% and 79.9% for the three and nine-month periods ended January 28, 2000, as compared to the comparable period of the prior fiscal year. International net sales were \$46.9 million, or 31.0% of total net sales, and \$109.6 million, or 28.9% of total net sales, for the three and nine-month periods ended January 28, 2000, respectively. The increase in international sales for the three and nine-month periods ended January 28, 2000, was primarily a result of European sales growth, due to increased headcount in the direct sales force, increased indirect channel sales, 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 and nine-month periods ended January 28, 2000, was also primarily driven by increased sales through resellers, 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 periods of the prior fiscal year.

We cannot assure you that our net sales will continue to increase in absolute dollars or at the rate at which they have grown in recent fiscal periods.

Gross Margin -- Gross margin increased slightly to 59.4% for the three-months ended January 28, 2000 from 59.2% for the three-months ended January 29, 1999. Gross margin decreased to 59.0% for the nine-months ended January 28, 2000 from 59.2% for the nine-months ended January 29, 1999.

Gross margin was favorably impacted by:

- increased licensing of add-on software products such as: multi-protocol, Cluster Failover, SnapMirror and SnapRestore

associated with new filers shipped;

- growth in software subscription due primarily to a larger installed base;
- increased manufacturing efficiencies;
- the increase in product volume; and
- lower costs of key components.

Gross margin was negatively impacted by sales price reductions on storage products due to competitive pricing pressure from other storage vendors and increased investments in customer service personnel in areas such as logistics and professional services.

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

- competition;
- product configuration;
- direct versus indirect sales;
- the mix and average selling prices of products, including software licenses;
- new product introductions and enhancements; and
- the cost of components and manufacturing labor.

Sales and Marketing -- Sales and marketing expenses consist primarily of salaries, commissions, advertising and promotional expenses and certain customer service and support costs. Sales and marketing

expenses increased 102.7% to \$40.2 million for the three-months ended January 28, 2000 from \$19.8 million for the three-months ended January 29, 1999. Sales and marketing expenses increased 92.2% to \$99.6 million for the nine-months ended January 28, 2000 from \$51.8 million for the nine-months ended January 29, 1999. These expenses were 26.6% and 26.2% of net sales for the three-months ended January 28, 2000 and January 29, 1999, respectively, and were 26.3% and 26.1%, respectively, of net sales for the nine-month periods then ended. The increase in absolute dollars was primarily related to the continued worldwide expansion and increased headcount growth of our sales and customer service organizations, and increased commission expenses. During the quarter ended January 28, 2000, we launched an advertising campaign, which also contributed to absolute dollar increases in sales and marketing 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, non-recurring engineering charges and fees paid to outside consultants. Research and development expenses increased 110.2% to \$16.4 million for the three-months ended January 28, 2000 from \$7.8 million for the three-months ended January 29, 1999. These expenses represented 10.8% and 10.3% of net sales, respectively, for the three-months ended January 28, 2000 and January 29, 1999. For the nine-month periods, research and development expenses increased 99.4% to \$41.1 million in fiscal 2000 from \$20.6 million in fiscal 1999, and represented 10.8% and 10.4% of net sales, respectively, for those periods. Research and development expenses increased in absolute dollars, primarily as a result of increased headcount, ongoing support of current and future product development and enhancement efforts, prototyping expenses and non-recurring engineering charges associated with the development of new products and technologies. These new products

included the F700 series filers, the Cluster Failover solutions, the C700 family, new enterprise software offerings and data management tools with SnapMirror, SnapRestore, SnapManager(TM) for Microsoft(R) Exchange and SecureAdmin(TM). New caching product introductions included Netcache software release 4.0 and Netcache 4.1, a streaming media appliance for Apple(R) Quicktime(TM), Microsoft(R) Windows Media(TM) and RealNetworks(R) Real System(TM) G2 users, delivering live broadcasting on the Internet. 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 introduce new products and expect that such expenditures will continue to increase in absolute dollars. For the three and nine-months ended January 28, 2000 and January 29, 1999, no software development costs were capitalized.

General and Administrative -- General and administrative expenses increased 106.1% to \$5.5 million for the three-months ended January 28, 2000, from \$2.7 million for the three-months ended January 29, 1999. These expenses represented 3.6% and 3.5% of net sales for the three-months ended for such periods. For the nine-month periods, general and administrative expenses increased 94.2% to \$13.8 million in fiscal 2000 from \$7.1 million in fiscal 1999 and represented 3.6% and 3.5% of net sales for the nine-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 in professional services, consulting fees and outside service fees. We believe that our general and administrative expenses will increase in absolute dollars as we continue to build our infrastructure.

Total Other Income, net -- Total other income, net, was \$2.9 million and \$0.5 million for the three-months ended January 28, 2000 and January 29, 1999, respectively. During the nine-months ended January 28, 2000, total other income, net, was \$7.2 million, as compared to \$1.7 million in the corresponding period of the prior year. 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 nine months of fiscal 1999 included gains from foreign currency transactions as compared to the nine months of fiscal 2000, where gains or losses from foreign transactions have been largely mitigated primarily through our hedging program.

Provision for Income Taxes -- Our effective tax rate was 35.5% for the three and nine-month periods ended January 28, 2000 compared to 37.5% for the three and nine-month periods ended January 29, 1999. 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.

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, 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. International sales (including U.S. exports) were approximately 31.0% and 28.9% of total net sales for the three and nine-months ended January 28, 2000, respectively. 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.

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.

LIQUIDITY AND CAPITAL RESOURCES

As of January 28, 2000, as compared to the April 30, 1999 balances, our cash, cash equivalents and short-term investments increased by \$63.0 million to \$290.1 million. Working capital increased by \$104.9 million to \$369.7 million. We generated cash from operating activities totaling \$52.7 million and \$26.5 million for the nine-month periods ended January 28, 2000 and January 29, 1999, respectively. Net cash provided by operating activities for the nine-month period ended January 28, 2000 principally related to net income of \$49.3 million, increases in accounts payable, income taxes payable, accrued compensation and related benefits, deferred revenue and other accrued liabilities, coupled with depreciation and amortization which are non-cash expenses, partially offset by increases in accounts receivable, inventories, prepaid expenses and other assets and deferred income taxes.

We used \$22.5 million and \$11.6 million of cash during the nine-month periods ended January 28, 2000 and January 29, 1999, respectively, for capital expenditures. The increases were primarily attributed to upgrades of software and computer equipment purchases and furniture and fixtures for the Sunnyvale headquarters facility. We have used \$53.0 million during the nine-month period ended January 28, 2000 and received net proceeds of \$2.7 million during the nine-month period ended January 29, 1999, for net short-term investment redemptions.

During the nine-month period of fiscal 2000, we received back our \$2.5 million deposit in connection with the \$36.0 million operating lease. In September 1999, we executed an agreement to acquire 9.9 acres of land in Sunnyvale, California and the accompanying 178,996 square foot building. Under terms of the agreement, we paid \$2.7 million of the \$23.4 million purchase price as a nonrefundable deposit. The agreement allows us to assign our rights and obligations to a third-party entity should we decide to enter into an operating lease. We intend to assign our rights and obligations to a third-party entity and enter into an operating lease provided we can obtain satisfactory leasing terms.

Financing activities provided \$33.0 million and \$12.0 million during the nine-month periods ended January 28, 2000 and January 29, 1999, respectively. The increase in cash provided by financing activities for the nine-months ended January 28, 2000, 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 November 1999, we executed an agreement to acquire 27.8 acres of land in Sunnyvale, California and the accompanying 354,266 square feet of buildings. Under terms of the agreement, we paid \$3.0 million of the \$61.0 million purchase price as a nonrefundable deposit. In December 1999, we assigned our rights and obligations under the agreement to a third-party entity and in exchange received back our \$3.0 million deposit in January 2000. We subsequently entered into a \$62.0 million operating lease for this property. Our lease payments will vary based on LIBOR plus a spread. The lease is for five years and can be renewed for two five-year periods, subject to the approval of the third-party entity. At the expiration or termination of the lease, we have the option to either purchase the property for \$62.0 million, or arrange for the sale of the property to a third party for at least \$62.0 with a contingent liability for any

deficiency. If the property is not purchased or sold as described above, we will be obligated for an additional lease payment of approximately \$51.5 million. The lease also requires us to maintain specified financial covenants with which we were in compliance as at January 28, 2000.

Excluding the commitment related to the aforementioned 178,996 square foot property, which we intend to assign to third parties and account 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 our \$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.

Over the past year, we have been testing our computer systems and applications to evaluate Year 2000 problems, executing remediation activities to fix non-compliant systems and monitoring and testing products and systems. To date, we have not experienced any problems complying with the Year 2000 issue and have not been informed of any failures of our products from customers or Year 2000 disruptions from third party vendors.

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. 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 January 28, 2000, we had short-term investments of \$58.6 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 January 28, 2000, 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 January 28, 2000, 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. However, our investment portfolio

offers a natural hedge against interest rate risk from our operating lease commitments in the event of a significant increase in the market interest rate.

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 January 28, 2000, (in thousands):

CURRENCY	BUY/ SELL	FOREIGN CURRENCY AMOUNT	CONTRACT VALUE USD	FAIR VALUE IN USD
EUR	Sell	10,400	10,685	10,290
EUR	Buy	2,000	2,011	1,979
GBP	Sell	6,500	10,223	10,638
CHF	Sell	4,300	2,646	2,636
CHF	Buy	1,000	614	613

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

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS

- 10.43 Industrial Lease Agreement, dated December 20, 1999 between TRW Inc. and the Company in connection with 1347 Crossman Avenue in Sunnyvale, California
- 10.44 Industrial Lease Agreement, dated December 20, 1999 between TRW Inc. and the Company in connection with 1350 Geneva Drive in Sunnyvale, California
- 10.45 Industrial Lease Agreement, dated December 20, 1999 between TRW Inc. and the Company in connection with 1345 Crossman Avenue in Sunnyvale, California

- 10.46 Industrial Lease Agreement, dated December 20, 1999 between TRW Inc. and the Company in connection with 1330 Geneva Drive in Sunnyvale, California
- 10.47 Assignment of Agreement of Sale, dated December 20, 1999, by and between BNP Leasing and the Company
- 10.48 Purchase and Sale Agreement, dated November 16, 1999, by and between TRW Inc. and ESL Incorporated and the Company
- 10.49 Closing Certificate (Phase IV) and Agreement, dated December 20, 1999, by and between BNP Leasing Corporation and the Company
- 10.50 Lease Agreement (Phase IV - Land), dated December 20, 1999, by and between BNP Leasing Corporation and the Company
- 10.51 Lease Agreement (Phase IV - Improvements), dated December 20, 1999, by and between BNP Leasing Corporation and the Company
- 10.52 Purchase Agreement (Phase IV - Land), dated December 20, 1999, by and between BNP Leasing Corporation and the Company
- 10.53 Purchase Agreement (Phase IV - Improvements), dated December 20, 1999, by and between BNP Leasing Corporation and the Company
- 10.54 Pledge Agreement (Phase IV - Land), dated December 20, 1999, by and between BNP Leasing Corporation and the Company
- 10.55 Pledge Agreement (Phase IV - Improvements), dated December 20, 1999, by and between BNP Leasing Corporation and the Company
- 10.56 Participation Agreement (Phase IV), dated December 20, 1999, by and between BNP Leasing Corporation and Banque Nationale De Paris
- 27.1 Financial Data Schedule
- 27.2 Restated Financial Data Schedules
- 27.3 Restated Financial Data Schedules
- 27.4 Restated Financial Data Schedules
- 27.5 Restated Financial Data Schedules
- 27.6 Restated Financial Data Schedules

(b) REPORTS ON FORM 8-K

None

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,

Date: February 29, 2000

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EXHIBIT INDEX

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27.4	Restated Financial Data Schedules
27.5	Restated Financial Data Schedules
27.6	Restated Financial Data Schedules

INDUSTRIAL LEASE
(1347 Crossman Avenue)

Effective Date: December ____, 1999

DEFINED TERMS

Landlord: NETWORK APPLIANCE, INC., a California corporation

Landlord's Address For Notice: 495 East Java Drive
Sunnyvale, California 94089
Attention: Mr. Thomas Bryant

Tenant: TRW INC., an Ohio corporation

Tenant's Address For Notice: TRW Inc.
12011 Sunset Hills Road
Reston, Virginia 20190
Attn: Ms. Marsha A. Klontz

And to:

TRW Electronic Systems
1330 Geneva Drive
P.O. Box 3510
Sunnyvale, California 94088-3510

Project: Certain parcels of land situated in Santa Clara County, California consisting of 27.848 acres of land described as APN #110-42.2.2.6.7.8, having addresses of 1345 and 1346 Crossman Avenue and 1330 and 1350 Geneva Drive in Sunnyvale, California

Building: 1347 Crossman Avenue, Sunnyvale, California

Premises: The Building, together with the Property

Property: That certain real property described in Exhibit A hereto

Term: From the Commencement Date to June 30, 2001

Commencement Date: December ____, 1999

Base Rent Per Month: Sixty-Nine Thousand One Hundred Forty-Three and 75/100 Dollars (\$69,143.75)

Lease Year: Shall refer to each three hundred sixty-five (365) day period during the Term commencing on the Commencement Date and on each anniversary thereof.

Permitted Uses: General office purposes and no other uses shall be permitted without the prior written consent of Landlord.

- A - Premises
- B - Estoppel Certificate

The Defined Terms set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. Each reference in this Lease to any of the Defined Terms shall mean the respective information above and shall be construed to incorporate all of the terms provided under the particular Lease paragraph pertaining to such information. In the event of any conflict between the Defined Terms and the provisions of the Lease, the latter shall control.

LANDLORD (_____) AND TENANT (_____) AGREE.
 initial initial

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1. PREMISES.

1.1. Premises. Landlord hereby leases to Tenant the Premises as shown on Exhibit A attached hereto, but excluding any other portion of the Project.

1.2. Reserved Rights. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except in case of an emergency) and/or to undertake the following: inspect the Premises and/or the performance by Tenant of the terms and conditions hereof. Landlord acknowledges and agrees that any such activities by Landlord on the Premises shall be subject to any reasonable security precautions created by Tenant as a result of any classified work performed by Tenant in the Building on behalf of the United States Government.

1.3. As-Is. Tenant acknowledges that Tenant has owned and occupied the Premises for an extensive period of time prior to the Commencement Date of this Lease and, as such, is familiar with the physical condition thereof. Tenant recognizes that Landlord would not lease the Premises except on an "as-is" basis and that Landlord has made no representations of any kind in connection with improvements or physical conditions on, or bearing on, the use or condition of the Premises.

2. TERM. The Term of the Lease shall commence ("Commencement Date") on the Commencement Date and expire on June 30, 2001. Tenant has determined that the Premises are acceptable for Tenant's use; and acknowledges that Landlord has made no representations or warranties in connection with the physical condition of the Premises or Tenant's use of the same upon which Tenant has relied directly or indirectly for any purpose.

3. RENT.

3.1 Base Rent. Tenant shall pay to Landlord, at such address as Landlord shall from time to time designate in writing to Tenant for the payment of Rent, the Base Rent, without notice, demand, offset or deduction, on the first day of each calendar month. Upon the execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. If the Term commences (or ends) on a date other than the first (or last) day of a month, Tenant shall pay on the Commencement Date or first day of the last month a pro rata portion of Base Rent, prorated on a per diem basis with respect to the portion of the month within the Term. All sums other than Base Rent which Tenant is obligated to pay under this Lease shall be deemed to be additional rent due hereunder, whether or not such sums are designated "additional rent." The term "Rent" means the Base Rent and all additional rent payable hereunder.

3.2 Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses and increased debt service. If Landlord has not received any installment of Rent within five (5) days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount, which is agreed to represent a reasonable estimate of the costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum ("Applicable Interest Rate") equal to the greater of (a) five percent (5%) per annum plus the then federal discount rate on advances to member banks in effect at the Federal Reserve Bank of San Francisco on the 25th day of the

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month preceding the date of this Lease or (b) ten percent (10%); provided, in no event shall the Applicable Interest Rate exceed the maximum interest rate permitted by law which may be charged under such circumstances. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment.

3.3 Net Lease. Tenant acknowledges that the Rent shall be absolutely net and carefree to the Landlord, except as set forth herein. Landlord shall not be responsible for any costs, charges, expenses or outlays of any nature or kind whatsoever arising from or relating to the Premises, except as provided for herein. Tenant shall pay all such charges, impositions, costs and expenses of every nature and kind to Landlord's complete exoneration.

4. UTILITIES. Tenant shall pay all charges for heat, water, gas, electricity and any other utilities used on the Premises directly to the utility provider. Landlord shall not be liable to Tenant for interruption in or curtailment of any utility service, nor shall any such interruption or curtailment constitute constructive eviction or grounds for rental abatement. In the event the Premises is not separately metered, Landlord shall have the option, subject to Landlord's review and the terms of this Lease, to cause the Premises to be separately metered at Tenant's cost and expense.

5. TAXES.

5.1 Real Property Taxes. Tenant shall pay any and all of the Real Property Taxes for the Premises to the relevant taxing authority on or before the date due. Tenant shall provide Landlord with written evidence of such payment of taxes concomitantly with the payment thereof.

5.2 Definition of Real Property Taxes. "Real Property Taxes" shall be the sum of the following: all real property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges, housing fund assessments, open space charges, childcare fees, school fees or any other assessments, levies, fees or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including fees "in-lieu" of any such tax or assessment) which are assessed, levied, charged, confirmed or imposed by any public authority upon the Project (or any real property comprising any portion thereof) or its operations, together with all taxes, assessments or other fees imposed by any public authority upon or measured by any Rent or other charges payable hereunder, including any gross income tax or excise tax levied by the local governmental authority, the federal government or any other governmental body with respect to receipt of such rental, or upon, with respect to or by reason of the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof, or upon this transaction or any document to which Tenant is a party creating or transferring an interest in the Premises, together with any tax imposed in substitution, partially or totally, of any tax previously included within the aforesaid definition or any additional tax the nature of which was previously included within the aforesaid definition, together with the costs and expenses (including attorneys fees) of challenging any of the foregoing or seeking the reduction in or abatement, redemption or return of any of the foregoing,

but only to the extent of any such reduction, abatement, redemption or return. Nothing contained in this Lease shall require Tenant to pay any franchise, corporate, estate or inheritance tax of Landlord, or any income, profits or revenue tax or charge upon the net income of Landlord.

5.3 Personal Property Taxes. Prior to delinquency, Tenant shall pay all taxes and assessments levied upon trade fixtures, alterations, additions, improvements, inventories and other personal property located and/or installed on the Property by Tenant; and Tenant shall provide Landlord copies of receipts for payment of all such taxes and assessments. To the extent any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced by Landlord.

6. INSURANCE.

6.1 Landlord. Landlord shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

6.1.1. Building. Insurance insuring the Building and the Landlord's interest in any betterments and improvements against fire and extended coverage (including "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as is required by any synthetic lender of Landlord with an interest in the Building at the time, together with rental value insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Tenant shall reimburse Landlord for the cost of such insurance for such period of time that is consistent with the Term of this Lease within ten (10) business days of receipt of request therefor, provided such request is accompanied by related invoices therefor.

6.2 Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

6.2.1. Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal and advertising injury coverage, with deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Tenant shall provide for restoration of the aggregate limit;

6.2.2. Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and insuring Tenant against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

6.2.3. Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Tenant in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers

endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000); and

6.2.4. Property Insurance. "All risk" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any personal property, fixtures and equipment, including electronic data processing equipment, of Tenant (and coverage for the full replacement cost thereof including business interruption of Tenant) ("Tenant's

Property").

6.3 General.

6.3.2. Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least A (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

6.3.2. Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for all insurance required to be maintained by Tenant prior to the date of possession of the Premises. Tenant shall, at least ten (10) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after sixty (60) days prior written notice to the parties named as additional insureds in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least (10) days' notice has been given to Landlord). If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and cost resulting from said failure.

6.3.3. Additional Insureds. Landlord and any property management company of Landlord for the Premises shall be included as additional insureds, to the extent that the Tenant has an obligation under Section 6.4, under all of the policies required by Section 6.2.1. The policies required under Section 6.2.1 shall provide for severability of interest.

6.3.4. Primary Coverage. All insurance to be maintained by Tenant shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Landlord. The limits of insurance maintained by Tenant shall not limit Tenant's liability under this Lease.

6.3.5. Waiver of Subrogation. Landlord and Tenant each waives any right to recover against the other for claims for damages to its property covered by insurance. This provision is intended to waive fully, and for the benefit of Landlord and Tenant, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier.

6.4 Indemnity. Tenant shall indemnify, defend by counsel satisfactory to Landlord, and hold harmless Landlord from and against any and all claims arising from (i) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, the Building or elsewhere and (ii) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of

this Lease, arising from any negligence of Tenant or any of Tenant's agents, contractors or employees, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises or the Building arising from any cause; and Tenant hereby waives all claims in respect thereof against Landlord except to the extent such claims are caused by Landlord's gross negligence or willful misconduct.

6.5 Exemption of Landlord from Liability. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Premises or the Building, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage

or injury results from conditions arising upon the Premises, the Building or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the Building.

7. REPAIRS AND MAINTENANCE.

7.1. Tenant. Tenant shall keep and maintain any and all portions of the Premises and the Building, including structural portions thereof, floors and floor coverings, interior plumbing, HVAC and other building system equipment, electrical wiring, fixtures and equipment in good repair and in a clean and safe condition, and repair and/or replace any and all of the foregoing in a good and workmanlike manner. Without limiting the foregoing, Tenant shall, at Tenant's sole expense, (a) immediately replace all broken glass in the Premises with glass equal to or in excess of the specification and quality of the original glass; and (b) repair any area damaged by Tenant, Tenant's agents, employees, invitees and visitors, including any damage caused by any roof penetration, whether or not such roof penetration was approved by Landlord.

7.2. Landlord. Landlord shall have no obligation whatsoever to maintain any portion of the Building or Premises. Tenant waives any right to repair at the expense of Landlord under any applicable governmental laws, ordinances, statutes, orders or regulations now or hereafter in effect respecting the Premises.

8. ALTERATIONS.

8.1. Trade Fixtures; Alterations. Tenant may install necessary trade fixtures, equipment and furniture in the Building, provided that such items are installed and are removable without structural damage to the Building. Tenant shall not make, or allow to be made, any alterations or physical additions in, about or to the Premises that affect the structural aspects of the Building, the Building roof or Building foundation without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall reimburse Landlord for all costs which Landlord may incur in connection with granting approval to Tenant for any such alterations and additions, including any costs or expenses which Landlord may

incur in electing to have outside architects and engineers review said matters. If a Notice of Completion is required for such work, Tenant shall file it and provide Landlord with a copy. Tenant shall provide Landlord with a set of "as-built" drawings for any such work.

8.2. Damage; Removal. Tenant assumes the risk of damage to any of Tenant's fixtures, equipment, furniture or alterations. Tenant shall repair all damage to the Premises and/or Building caused by the installation or removal of such items. Upon the termination of this Lease, Tenant shall remove any or all alterations, additions, improvements and partitions made or installed by Tenant and restore the Premises to their condition existing prior to the construction of any such items; provided, however, Landlord may permit, upon written notice to Tenant (to the extent requested to do so by Tenant at the time notice thereof is given), any such items designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner and so as not to cause any damage to the Premises, the Building or the Project whatsoever.

8.3. Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) days prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Landlord may take such action as may be necessary to remove such lien and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon at the Applicable Interest Rate from the date of expenditure.

9. USE.

The Premises shall be used only for the Permitted Uses and for no other uses and otherwise consistent with any applicable governmental laws, ordinances, statutes, orders and regulations and any declaration of covenants, conditions and restrictions or any supplement thereto which has been recorded in any official or public records with respect to the Project or any portion thereof. Tenant shall comply with all applicable governmental laws, ordinances, and statutes applicable to the Premises or Building. Tenant shall not commit waste, overload the floors or structure of the Building, subject the Premises or the Project to any use which would damage the same or raise or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Tenant shall not use any parking spaces for the Project other than the parking spaces located on the Premises. Landlord shall not be responsible for non-compliance by any other tenant or occupant with any of the rules or regulations or any other terms or provisions of such tenant's or occupant's lease. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted.

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10. ENVIRONMENTAL MATTERS.

10.1. Hazardous Materials. Tenant shall not cause, or allow any of Tenant's employees, agents, customers, visitors, invitees, licensees, contractors, assignees or subtenants (collectively, "Tenant's Parties") to cause or permit, any Hazardous Materials to be brought upon, stored, manufactured, generated, blended, handled, recycled, treated, disposed or used on, under or about the Premises, the Building or the Project, except for routine office and janitorial supplies and the Hazardous Materials listed on Schedule 1 hereto in usual and customary quantities stored, used and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance, material, controlled substance, waste or combination thereof which is hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, wastes or combinations thereof which are listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, such properties or effects. As used herein, "Environmental Laws" means any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing which are applicable to Tenant or the Premises. Tenant and Tenant's Parties shall comply with all Environmental Laws and promptly notify Landlord of the presence of any Hazardous Materials, other than as permitted above, on the Premises or any violation of any Environmental Law. Landlord shall have the right to inspect the Premises and to conduct tests and investigations to determine whether Tenant is in compliance with the foregoing provisions. If such tests indicate the presence of any environmental condition, Tenant shall reimburse Landlord for the cost of conducting such tests. The phrase "environmental condition" shall mean any condition relating to any Hazardous Materials, including surface water, groundwater, drinking water supply, land, surface or subsurface strata or the ambient air and includes air, land and water pollutants, being present at the Property in violation of Environmental Laws or in a manner which, in the reasonable opinion of the Landlord's environmental consultant, is substantially likely to cause health problems for occupants of the Premises or a future violation of Environmental Law. In the event of any such environmental condition, Tenant shall promptly take any and all steps necessary to rectify the same or shall, at Tenant's election, reimburse Landlord, upon demand, for the cost to Landlord of performing rectifying work. Upon the expiration or earlier termination of this Lease, Tenant shall remove any and all Hazardous Materials on, under or about the Premises.

10.2. Indemnification. Tenant shall indemnify, protect, defend (by counsel acceptable to Landlord) and hold harmless Landlord and its partners, directors, officers, employees, shareholders, lenders, agents, contractors and each of their respective successors and assigns (individually and collectively, "Indemnities") from and against any and all claims, judgments, causes of action, damages, penalties, fines, taxes, costs, liabilities, losses and expenses arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (a) Tenant and/or Tenant's Parties' breach of any prohibition or provision of the preceding section, or (b) the presence of Hazardous Materials on, under or about the Premises or other properties as a result (directly or indirectly) of Tenant's and/or Tenant's Parties' activities, or failure to act

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when legally required to do so in connection with the Premises. This indemnity shall include the cost of any required or necessary repair, cleanup or detoxification, and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease. The written consent by Landlord to the presence of Hazardous Materials on, under or about the Premises shall not excuse Tenant from Tenant's obligation of indemnification pursuant hereto. Tenant's obligations pursuant to the foregoing indemnity shall survive the termination of this Lease.

11. DAMAGE AND DESTRUCTION.

11.1. Casualty. If the Building should be damaged or destroyed by fire or other casualty, Tenant shall give immediate written notice to Landlord. Within thirty (30) days after receipt thereof, Landlord shall notify Tenant whether such repairs can reasonably be made: (1) within thirty (30) days; (2) in more than thirty (30) days but in less than ninety (90) days; or (3) in more than ninety (90) days from the date of such notice.

11.1.1. Less Than 30 Days. If the Building should be damaged only to such extent that rebuilding or repairs can be reasonably completed within thirty (30) days, this Lease shall not terminate and, provided that insurance proceeds are available to fully repair the damage, Landlord shall repair the Building, except that Landlord shall not be required to rebuild, repair or replace any alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of Tenant. The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and the Building are unfit for occupancy.

11.1.2. Greater Than 30 Days. If the Building should be damaged only to such extent that rebuilding or repairs can be reasonably completed in more than thirty (30) days but in less than ninety (90) days, then Landlord shall have the option of: (1) terminating the Lease effective upon the occurrence of such damage, in which event the Rent shall be abated from the date Tenant vacates the Building; or (2) electing to repair the Building, provided insurance proceeds are available to fully repair the damage (except that Landlord shall not be required to rebuild, repair or replace any part of the alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of Tenant). The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and the Building is unfit for occupancy.

11.1.3. Greater Than 90 Days. If the Building should be so damaged that rebuilding or repairs cannot be completed within ninety (90) days, either Landlord or Tenant may terminate by giving written notice within ten (10) days after notice from Landlord regarding the time period of repair; and this Lease and the Rent shall be abated from the date Tenant vacates the Building. In the event that neither party elects to terminate this Lease, Landlord shall promptly commence and diligently prosecute to completion the repairs to the Building, provided insurance proceeds are available to fully repair the damage (except that Landlord shall not be required to rebuild, repair or replace any alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of

Tenant). During the time when Landlord is prosecuting such repairs to completion, the Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and only during the period that the Building is unfit for occupancy.

11.2. Tenant's Fault. If any portion of the Building is damaged resulting from the fault, negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

11.3. Uninsured Casualty. In the event that any portion of the Building is damaged and is not fully covered by insurance proceeds received by Landlord or in the event that the holder of any indebtedness secured by the Premises requires that the insurance proceeds be applied to such indebtedness, then Tenant shall have the right to terminate this Lease by delivering written notice of termination to Landlord within thirty (30) days after the date of notice to Tenant of any such event. In the event that Tenant does not elect to terminate this Lease, Landlord shall have the right to terminate this Lease by delivering written notice to Tenant within thirty (30) days after such election by Tenant or Tenant's failure to elect, as applicable, whereupon all rights and obligations shall cease and terminate hereunder.

11.4. Waiver. With respect to any damage or destruction which Landlord is obligated to repair or may elect to repair, Tenant waives all rights to terminate this Lease pursuant to rights otherwise presently or hereafter accorded by law.

12. EMINENT DOMAIN.

12.1. Total Condemnation. If all of the Premises is condemned by eminent domain, inversely condemned or sold in lieu of condemnation for any public or quasi-public use or purpose ("Condemned"), this Lease shall terminate as of the date of title vesting in such proceeding and Rent shall be adjusted to the date of termination.

12.2. Partial Condemnation. If any portion of the Premises is Condemned and such partial condemnation renders the Premises unusable for Tenant's business, or if a substantial portion of the Building is Condemned, this Lease shall terminate as of the date of title vesting or order of immediate possession in such proceeding and Rent shall be adjusted to the date of termination. If such partial condemnation does not render the Premises unusable for the business of Tenant or less than a substantial portion of the Building is Condemned, Landlord shall promptly restore the Premises to the extent of any condemnation proceeds recovered by Landlord, excluding the portion thereof lost in such condemnation, and this Lease shall continue in full force and effect except that after the date of such title vesting Rent shall be adjusted, as reasonably determined by Landlord.

12.3. Award. If the Premises are wholly or partially Condemned, Landlord shall be entitled to the entire award paid for such condemnation, and Tenant waives any claim to any part of the award from Landlord or the condemning authority; provided that Tenant shall have the right to recover from the condemning authority such compensation as may be separately awarded

to Tenant in connection with costs in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment to a new location.

12.4. Temporary Condemnation. In the event of a temporary condemnation, this Lease shall remain in effect, Tenant shall continue to pay

Rent and Tenant shall receive any award made for such condemnation. If a temporary condemnation remains in effect at the expiration or earlier termination of this Lease, Tenant shall pay Landlord the reasonable cost of performing any obligations required of Tenant with respect to the surrender of the Premises. If a temporary condemnation is for a period which extends beyond the Term, this Lease shall terminate as of the date of occupancy by the condemning authority and any such award shall be distributed in accordance with the preceding section.

13. DEFAULT.

13.1. Events of Defaults. The occurrence of any of the following events shall, at Landlord's option, constitute an "Event of Default":

13.1.1. Vacation or abandonment of the Premises for a period of thirty (30) consecutive days, and Tenant waives any right to notice Tenant may have under applicable law;

13.1.2. Failure to pay Rent on the date when due, the failure continuing for a period of five (5) days after payment is due;

13.1.3. Failure to perform Tenant's covenants hereunder (except default in the payment of Rent); provided, if such default is susceptible of cure and Tenant has promptly commenced the cure of such default and is diligently prosecuting such cure to completion, then the same must remain uncured for thirty (30) days after written notice thereof from Landlord;

13.1.4. The making of a general assignment by Tenant for the benefit of creditors, the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing, the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold, Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due, any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets, Tenant taking any action toward the dissolution or winding up of Tenant's affairs, the cessation or suspension of Tenant's use of the Premises, or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold;

13.1.5. The making of any material misrepresentation or omission by Tenant in any materials delivered by or on behalf of Tenant to Landlord pursuant to this Lease; or

13.1.6. A default by Tenant beyond any applicable notice and cure period pursuant to the terms of any lease entered into between Landlord and Tenant for space in the Project.

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13.2. Remedies.

13.2.1. Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice, this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord.

13.2.1.1. Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or relet the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as

Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

13.2.1.2. Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (b) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant 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 Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (a) and (b) above, shall be computed at the greater of 10% per annum or 5% per annum plus the federal discount rate on advances to member banks in effect at the Federal Reserve Bank of San Francisco on the 25th day of the month preceding the date of this Lease, and as used in (c) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

13.2.2. Continuation. Even though an Event of Default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession; and Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may, during the period Tenant is in default, enter the Premises and relet the same, or any portion thereof, to third parties for Tenant's account and Tenant shall be liable to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises and like costs. Reletting may be for a period shorter or longer than the remaining Term. Tenant shall continue to pay the Rent on the date the same is due. No act by Landlord hereunder, including acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease, shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. In the event that Landlord elects to relet the

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Premises, the rent that Landlord receives from reletting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent and Additional Rent; second, all costs, including maintenance, incurred by Landlord in reletting; and, third, Base Rent and Tenant's Share of Increases under this Lease. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date Rent is due under this Lease, the rent received from the reletting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs, including maintenance, Landlord incurred in reletting that remain after applying the rent received from reletting as provided hereinabove. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the Applicable Interest Rate from the date of such expenditure.

13.3. Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

14. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or sublet, whether voluntarily or involuntarily or by operation of law, the Premises or any part thereof without Landlord's prior written approval, which shall not be unreasonably withheld. The merger of Tenant with any other entity or the transfer of any controlling or managing ownership or beneficial interest in Tenant shall constitute an assignment hereunder. If Tenant desires to assign this Lease or sublet any or all of the Building, Tenant shall give Landlord written notice forty-five (45) days prior to the anticipated effective date of the assignment or sublease. Landlord shall then have a period of thirty (30) days following receipt of such notice and all related documents and agreements associated with the assignment or sublease, including without limitation, the financial statements of any proposed assignee or subtenant, to notify Tenant in writing that Landlord elects: (1) to permit Tenant to assign this Lease or sublet such space, subject however to Landlord's prior written approval of the proposed assignee or subtenant and of any related documents or agreements associated with the assignment or sublease received by Landlord hereunder or reasonably requested by Landlord; (2) to disapprove such proposed assignment or subletting or (3) to terminate this Lease as of the date specified in Landlord's notice thereof. If Landlord should fail to notify Tenant in writing of such election, Landlord shall be deemed to have elected option (2). This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void. If Tenant receives rent or other consideration for any such transfer in excess of the Rent, or in case of the sublease of a portion of the Premises, in excess of such Rent that is fairly allocable to such portion, after appropriate adjustments to assure that all other payments required hereunder are appropriately taken into account, Tenant shall pay Landlord one hundred percent (100%) of the

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difference between each such payment of rent or other consideration and the Rent required hereunder. Landlord may, without waiving any rights or remedies, collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of the preceding sentence. Tenant shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to the Lease by assignees of Tenant without notifying Tenant or any successor of Tenant and without obtaining their consent. No permitted transfer shall be effective until there has been delivered to Landlord a counterpart of the transfer instrument in which the transferee agrees to be and remain jointly and severally liable with Tenant for the payment of Rent pertaining to the space and for the performance of all the terms and provisions of this Lease relating thereto arising on or after the date of the transfer. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Premises, the Building or the Project.

15. ESTOPPEL, ATTORNMENT AND SUBORDINATION.

15.1. Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed (and acknowledged if required by any lender), in the form attached hereto as Exhibit B, to any proposed mortgagee, purchaser or Landlord. Tenant's failure to deliver said statement in such time period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (c) no more than one period's Base Rent has been paid in advance. Landlord reserves the right to substitute a different form of estoppel certificate upon the request of any proposed mortgagee or purchaser. If any financier should require that this Lease be amended (other than in the description of the Premises, the Term, the Permitted Use, the Rent or as will substantially, materially and adversely affect the rights of Tenant), Landlord shall give written notice thereof to Tenant, which notice shall be accompanied by a Lease supplement embodying such amendments. Tenant shall, within ten (10) days after the receipt of Landlord's notice, execute the tendered Lease supplement.

15.2. Attornment. In the event of a foreclosure proceeding,

the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease; provided, however, Tenant's obligation to attorn to such purchaser shall be conditioned upon Tenant's receipt of a non-disturbance agreement.

15.3. Subordination. This Lease shall be subject and subordinate to all ground leases and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Project or Landlord's interest therein, or on or against all such ground leases, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination. If requested, Tenant shall execute whatever documentation may be required to further effect the provisions of this paragraph.

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16. MISCELLANEOUS.

16.1. General.

16.1.1. Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Premises; and there are no agreements either oral or written other than as set forth herein.

16.1.2. Time of Essence. Time is of the essence of this Lease.

16.1.3. Attorneys' Fees. In any action which either party brings to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be a part of the judgment in said action.

16.1.4. Severable. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

16.1.5. Law. This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises are located.

16.1.6. No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this document shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

16.1.7. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, to the extent assignment is approved by Landlord, Tenant.

16.1.8. Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

16.1.9. Memorandum of Lease. Tenant shall not record this Lease or a short form memorandum hereof without Landlord's prior written consent.

16.1.10. Agency, Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease or any acts of the parties hereto shall be deemed to create any relationship other than the relationship of landlord and tenant.

16.1.11. Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate

all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

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16.2. Signs. All signs and graphics of every kind visible in or from public view or corridors, or the exterior of the Building or Premises shall be subject to Landlord's prior written approval and shall be subject to any applicable governmental laws, ordinances, and regulations and in compliance with Landlord's signage program. Tenant shall remove all such signs and graphics prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including without limitation, discoloration caused by such installation or removal.

16.3. Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing, and no waiver shall affect any default other than the default specified in the waiver and then said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party.

16.4. Financial Statements. Tenant shall provide to any lender, purchaser or Landlord, within ten (10) days after request, a current, accurate, certified financial statement for Tenant and Tenant's business prepared under generally accepted accounting principles consistently applied and such other certified financial information or tax returns as may be reasonably required by Landlord, purchaser or any lender of either.

16.5. Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of the individual partners, directors, officers, shareholders, agents or employees of Landlord; and Tenant shall look solely to the Building for satisfaction of any liability and shall not look to other assets of Landlord nor seek recourse against the assets of the individual partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

16.6. Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to Landlord's Address and Tenant's Address, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

16.7. Brokerage Commission. Tenant warrants to Landlord that Tenant's sole contact with Landlord or with the Premises in connection with this transaction has been directly with Landlord, and that no broker or finder can properly claim a right to a commission or a finder's fee based upon contacts between the claimant and Tenant. Tenant and Landlord, respectively, shall each indemnify, defend by counsel acceptable to the other, protect and hold each other harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Premises and this Lease.

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16.8. Authorization. Tenant shall furnish to Landlord, within ten (10) days after written request, evidence satisfactory to Landlord that the person who executed this Lease on behalf of Tenant was duly authorized to do so.

Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

16.9. Holding Over; Surrender.

16.9.1. If Tenant holds over the Premises or any part thereof after expiration or the earlier termination of the Term, such holding over shall constitute a month-to-month tenancy, at a rent equal to the Base Rent in effect immediately prior to such holding over plus one hundred percent (100%) thereof. This paragraph shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease. Without limiting the foregoing, if Tenant holds over the Premises or any part thereof after expiration or the earlier termination of the Term, Tenant shall indemnify, defend, protect and hold Landlord harmless from any and all claims (including claims of succeeding tenants), causes of action, expenses (including reasonable attorneys' fees), liabilities and lawsuits resulting from such a holdover.

16.9.2. Upon the termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

16.10. Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

16.11. Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition.

16.12. Addenda. The Addenda attached hereto, if any, and identified with this Lease and initialed by the parties hereto are incorporated herein by this reference as if fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date set forth above.

"Landlord"

NETWORK APPLIANCE, INC.
a California corporation

By: _____
Its: _____

"Tenant"

TRW INC., an Ohio corporation

By: _____
Its: _____

EXHIBIT A

PREMISES

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EXHIBIT B

ESTOPPEL CERTIFICATE

Re: Lease dated _____, 19__ ("Lease") by and
between _____ ("Landlord") and
_____ ("Tenant").

Gentlemen:

Reference is made to the above-described Lease in which the undersigned is the Tenant. We understand that you are entering into a transaction with the Landlord which relates to, among other things, this Lease; and we hereby, as a material inducement for you to enter into such transaction with Landlord, represent that:

1. A true and correct copy of the Lease is attached hereto as Exhibit 1.

2. There are no modifications, amendments, supplements, arrangements, side letters or understandings, oral or written, of any sort, modifying, amending, altering, supplementing or changing the terms of the Lease except as follows: .

3. The Lease is in full force and effect, and the Lease has been duly executed and delivered by, and is a binding obligation of, the Tenant as set forth therein.

4. The undersigned acknowledges (a) that rent on the Lease has been paid up to and including _____, 19__, (b) that monthly rent during the _____ (____) years of the term of the Lease is _____ Dollars (\$ _____) per month and (c) that rent has not been paid for any period after _____, 19__, and shall not be paid for a period in excess of one (1) month in advance.

5. The improvements on the Premises are free from defects in design, materials and workmanship; and the improvements meet all governmental requirements, including, but not limited to, zoning and environmental requirements.

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6. The Lease is not in default, and Landlord has performed the obligations required to be performed by Landlord under the terms thereof through the date hereof.

Dated: _____, 19__

Very truly yours,

"Tenant"

_____, a

By: _____
Its: _____

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SCHEDULE 1
HAZARDOUS MATERIALS

1

INDUSTRIAL LEASE
(1350 Geneva)

Effective Date: December ____, 1999

DEFINED TERMS

Landlord: NETWORK APPLIANCE, INC., a California corporation

Landlord's Address For Notice: 495 East Java Drive
Sunnyvale, California 94089
Attention: Mr. Thomas Bryant

Tenant: TRW INC., an Ohio corporation

Tenant's Address For Notice: TRW Inc.
12011 Sunset Hills Road
Reston, Virginia 20190
Attn: Ms. Marsha A. Klontz

And to:

TRW Electronic Systems
1330 Geneva Drive
P.O. Box 3510
Sunnyvale, California 94088-3510

Project: Certain parcels of land situated in Santa Clara County, California consisting of 27.848 acres of land described as APN #110-42.2.2.6.7.8, having addresses of 1345 and 1346 Crossman Avenue and 1330 and 1350 Geneva Drive in Sunnyvale, California

Building: 1350 Geneva, Sunnyvale, California

Premises: The Building, together with the Property

Property: That certain real property described in Exhibit A hereto

Term: From the Commencement Date to June 30, 2002

Commencement Date: December ____, 1999

Base Rent Per Month: Ninety-Nine Thousand Eight Hundred Thirty-Seven and 25/100 Dollars (\$99,837.25)

Lease Year: Shall refer to each three hundred sixty-five (365) day period during the Term commencing on the Commencement Date and on each anniversary thereof.

Permitted Uses: General office purposes and no other uses shall be permitted without the prior

written consent of Landlord.

EXHIBITS

- A - Premises
- B - Estoppel Certificate

The Defined Terms set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. Each reference in this Lease to any of the Defined Terms shall mean the respective information above and shall be construed to incorporate all of the terms provided under the particular Lease paragraph pertaining to such information. In the event of any conflict between the Defined Terms and the provisions of the Lease, the latter shall control.

LANDLORD (_____) AND TENANT (_____) AGREE.
 initial initial

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1. PREMISES.

1.1. Premises. Landlord hereby leases to Tenant the Premises as shown on Exhibit A attached hereto, but excluding any other portion of the Project.

1.2. Reserved Rights. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except in case of an emergency) and/or to undertake the following: inspect the Premises and/or the performance by Tenant of the terms and conditions hereof. Landlord acknowledges and agrees that any such activities by Landlord on the Premises shall be subject to any reasonable security precautions created by Tenant as a result of any classified work performed by Tenant in the Building on behalf of the United States Government.

1.3. As-Is . Tenant acknowledges that Tenant has owned and occupied the Premises for an extensive period of time prior to the Commencement Date of this Lease and, as such, is familiar with the physical condition thereof. Tenant recognizes that Landlord would not lease the Premises except on an "as-is" basis and that Landlord has made no representations of any kind in connection with improvements or physical conditions on, or bearing on, the use or condition of the Premises.

2. TERM. The Term of the Lease shall commence ("Commencement Date") on the Commencement Date and expire on June 30, 2002. Tenant has determined that the Premises are acceptable for Tenant's use; and acknowledges that Landlord has made no representations or warranties in connection with the physical condition of the Premises or Tenant's use of the same upon which Tenant has relied directly or indirectly for any purpose.

3. RENT.

3.1. Base Rent. Tenant shall pay to Landlord, at such address as Landlord shall from time to time designate in writing to Tenant for the payment of Rent, the Base Rent, without notice, demand, offset or deduction, on the first day of each calendar month. Upon the execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. If the Term commences (or ends) on a date other than the first (or last) day of a month, Tenant shall pay on the Commencement Date or first day of the last month a pro rata portion of Base Rent, prorated on a per diem basis with respect to the portion of the month within the Term. All sums other than Base Rent which Tenant is obligated to pay under this Lease shall be deemed to be additional rent due hereunder, whether or not such sums are designated "additional rent." The term "Rent" means the Base Rent and all additional rent payable hereunder.

3.2. Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses and increased debt service. If Landlord has not received any installment of Rent within five (5) days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount, which is agreed to represent a reasonable estimate of the costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum ("Applicable Interest Rate") equal to the greater of (a) five percent (5%) per annum plus the then federal discount rate on advances to member banks in effect at the Federal Reserve Bank of San Francisco on the 25th day of the

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month preceding the date of this Lease or (b) ten percent (10%); provided, in no event shall the Applicable Interest Rate exceed the maximum interest rate permitted by law which may be charged under such circumstances. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment.

3.3. Net Lease. Tenant acknowledges that the Rent shall be absolutely net and carefree to the Landlord, except as set forth herein. Landlord shall not be responsible for any costs, charges, expenses or outlays of any nature or kind whatsoever arising from or relating to the Premises, except as provided for herein. Tenant shall pay all such charges, impositions, costs and expenses of every nature and kind to Landlord's complete exoneration.

4. UTILITIES. Tenant shall pay all charges for heat, water, gas, electricity and any other utilities used on the Premises directly to the utility provider. Landlord shall not be liable to Tenant for interruption in or curtailment of any utility service, nor shall any such interruption or curtailment constitute constructive eviction or grounds for rental abatement. In the event the Premises is not separately metered, Landlord shall have the option, subject to Landlord's review and the terms of this Lease, to cause the Premises to be separately metered at Tenant's cost and expense.

5. TAXES.

5.1. Real Property Taxes. Tenant shall pay any and all of the Real Property Taxes for the Premises to the relevant taxing authority on or before the date due. Tenant shall provide Landlord with written evidence of such payment of taxes concomitantly with the payment thereof.

5.2. Definition of Real Property Taxes. "Real Property Taxes" shall be the sum of the following: all real property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges, housing fund assessments, open space charges, childcare fees, school fees or any other assessments, levies, fees or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including fees "in-lieu" of any such tax or assessment) which are assessed, levied, charged, confirmed or imposed by any public authority upon the Project (or any real property comprising any portion thereof) or its operations, together with all taxes, assessments or other fees imposed by any public authority upon or measured by any Rent or other charges payable hereunder, including any gross income tax or excise tax levied by the local governmental authority, the federal government or any other governmental body with respect to receipt of such rental, or upon, with respect to or by reason of the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof, or upon this transaction or any document to which Tenant is a party creating or transferring an interest in the Premises, together with any tax imposed in substitution, partially or totally, of any tax previously included within the aforesaid definition or any additional tax the nature of which was previously included within the aforesaid definition, together with the costs and expenses (including attorneys fees) of challenging any of the foregoing or seeking the reduction in or abatement, redemption or return of any of the foregoing,

but only to the extent of any such reduction, abatement, redemption or return. Nothing contained in this Lease shall require Tenant to pay any franchise, corporate, estate or inheritance tax of Landlord, or any income, profits or revenue tax or charge upon the net income of Landlord.

5.3. Personal Property Taxes. Prior to delinquency, Tenant shall pay all taxes and assessments levied upon trade fixtures, alterations, additions, improvements, inventories and other personal property located and/or installed on the Property by Tenant; and Tenant shall provide Landlord copies of receipts for payment of all such taxes and assessments. To the extent any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced by Landlord.

6. INSURANCE.

6.1. Landlord. Landlord shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

6.1.1. Building. Insurance insuring the Building and the Landlord's interest in any betterments and improvements against fire and extended coverage (including "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as is required by any synthetic lender of Landlord with an interest in the Building at the time, together with rental value insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Tenant shall reimburse Landlord for the cost of such insurance for such period of time that is consistent with the Term of this Lease within ten (10) business days of receipt of request therefor, provided such request is accompanied by related invoices therefor.

6.2. Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

6.2.1. Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal and advertising injury coverage, with deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Tenant shall provide for restoration of the aggregate limit;

6.2.2. Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and insuring Tenant against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

6.2.3. Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Tenant in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers

endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000); and

6.2.4. Property Insurance. "All risk" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any personal property, fixtures and equipment, including electronic data processing equipment, of Tenant (and coverage for the full replacement cost thereof including business interruption of Tenant) ("Tenant's Property").

6.3. General.

6.3.1. Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least A (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

6.3.2. Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for all insurance required to be maintained by Tenant prior to the date of possession of the Premises. Tenant shall, at least ten (10) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after sixty (60) days prior written notice to the parties named as additional insureds in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least (10) days' notice has been given to Landlord). If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and cost resulting from said failure.

6.3.3. Additional Insureds. Landlord and any property management company of Landlord for the Premises shall be included as additional insureds, to the extent that the Tenant has an obligation under Section 6.4, under all of the policies required by Section 6.2.1. The policies required under Section 6.2.1 shall provide for severability of interest.

6.3.4. Primary Coverage. All insurance to be maintained by Tenant shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Landlord. The limits of insurance maintained by Tenant shall not limit Tenant's liability under this Lease.

6.3.5. Waiver of Subrogation. Landlord and Tenant each waives any right to recover against the other for claims for damages to its property covered by insurance. This provision is intended to waive fully, and for the benefit of Landlord and Tenant, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier.

6.4. Indemnity. Tenant shall indemnify, defend by counsel satisfactory to Landlord, and hold harmless Landlord from and against any and all claims arising from (i) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, the Building or elsewhere and (ii) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of

this Lease, arising from any negligence of Tenant or any of Tenant's agents, contractors or employees, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises or the Building arising from any cause; and Tenant hereby waives all claims in respect thereof against Landlord except to the extent such claims are caused by Landlord's gross negligence or willful misconduct.

6.5. Exemption of Landlord from Liability. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Premises or the Building, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises, the Building or

from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the Building.

7. REPAIRS AND MAINTENANCE.

7.1. Tenant. Tenant shall keep and maintain any and all portions of the Premises and the Building, including structural portions thereof, floors and floor coverings, interior plumbing, HVAC and other building system equipment, electrical wiring, fixtures and equipment in good repair and in a clean and safe condition, and repair and/or replace any and all of the foregoing in a good and workmanlike manner. Without limiting the foregoing, Tenant shall, at Tenant's sole expense, (a) immediately replace all broken glass in the Premises with glass equal to or in excess of the specification and quality of the original glass; and (b) repair any area damaged by Tenant, Tenant's agents, employees, invitees and visitors, including any damage caused by any roof penetration, whether or not such roof penetration was approved by Landlord.

7.2. Landlord. Landlord shall have no obligation whatsoever to maintain any portion of the Building or Premises. Tenant waives any right to repair at the expense of Landlord under any applicable governmental laws, ordinances, statutes, orders or regulations now or hereafter in effect respecting the Premises.

8. ALTERATIONS.

8.1. Trade Fixtures; Alterations. Tenant may install necessary trade fixtures, equipment and furniture in the Building, provided that such items are installed and are removable without structural damage to the Building. Tenant shall not make, or allow to be made, any alterations or physical additions in, about or to the Premises that affect the structural aspects of the Building, the Building roof or Building foundation without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall reimburse Landlord for all costs which Landlord may incur in connection with granting approval to Tenant for any such alterations and additions, including any costs or expenses which Landlord may

incur in electing to have outside architects and engineers review said matters. If a Notice of Completion is required for such work, Tenant shall file it and provide Landlord with a copy. Tenant shall provide Landlord with a set of "as-built" drawings for any such work.

8.2. Damage; Removal. Tenant assumes the risk of damage to any of Tenant's fixtures, equipment, furniture or alterations. Tenant shall repair all damage to the Premises and/or Building caused by the installation or removal of such items. Upon the termination of this Lease, Tenant shall remove any or all alterations, additions, improvements and partitions made or installed by Tenant and restore the Premises to their condition existing prior to the construction of any such items; provided, however, Landlord may permit, upon written notice to Tenant (to the extent requested to do so by Tenant at the time notice thereof is given), any such items designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner and so as not to cause any damage to the Premises, the Building or the Project whatsoever.

8.3. Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) days prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Landlord may take such action as may be necessary to remove such lien and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon at the Applicable Interest Rate from the date of expenditure.

9. USE.

The Premises shall be used only for the Permitted Uses and for no other uses and otherwise consistent with any applicable governmental laws, ordinances, statutes, orders and regulations and any declaration of covenants, conditions and restrictions or any supplement thereto which has been recorded in any official or public records with respect to the Project or any portion thereof. Tenant shall comply with all applicable governmental laws, ordinances, and statutes applicable to the Premises or Building. Tenant shall not commit waste, overload the floors or structure of the Building, subject the Premises or the Project to any use which would damage the same or raise or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Tenant shall not use any parking spaces for the Project other than the parking spaces located on the Premises. Landlord shall not be responsible for non-compliance by any other tenant or occupant with any of the rules or regulations or any other terms or provisions of such tenant's or occupant's lease. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted.

10. ENVIRONMENTAL MATTERS.

10.1. Hazardous Materials. Tenant shall not cause, or allow any of Tenant's employees, agents, customers, visitors, invitees, licensees, contractors, assignees or subtenants (collectively, "Tenant's Parties") to cause or permit, any Hazardous Materials to be brought upon, stored, manufactured, generated, blended, handled, recycled, treated, disposed or used on, under or about the Premises, the Building or the Project, except for routine office and janitorial supplies and the Hazardous Materials listed on Schedule 1 hereto in usual and customary quantities stored, used and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance, material, controlled substance, waste or combination thereof which is hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, wastes or combinations thereof which are listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, such properties or effects. As used herein, "Environmental Laws" means any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing which are applicable to Tenant or the Premises. Tenant and Tenant's Parties shall comply with all Environmental Laws and promptly notify Landlord of the presence of any Hazardous Materials, other than as permitted above, on the Premises or any violation of any Environmental Law. Landlord shall have the right to inspect the Premises and to conduct tests and investigations to determine whether Tenant is in compliance with the foregoing provisions. If such tests indicate the presence of any environmental condition, Tenant shall reimburse Landlord for the cost of conducting such tests. The phrase "environmental condition" shall mean any condition relating to any Hazardous Materials, including surface water, groundwater, drinking water supply, land, surface or subsurface strata or the ambient air and includes air, land and water pollutants, being present at the Property in violation of Environmental Laws or in a manner which, in the reasonable opinion of the Landlord's environmental consultant, is substantially likely to cause health problems for occupants of the Premises or a future violation of Environmental Law. In the event of any such environmental condition, Tenant shall promptly take any and all steps necessary to rectify the same or shall, at Tenant's election, reimburse Landlord, upon demand, for the cost to Landlord of performing rectifying work. Upon the expiration or earlier termination of this Lease, Tenant shall remove any and all Hazardous Materials on, under or about the Premises.

10.2. Indemnification. Tenant shall indemnify, protect, defend (by counsel acceptable to Landlord) and hold harmless Landlord and its partners,

directors, officers, employees, shareholders, lenders, agents, contractors and each of their respective successors and assigns (individually and collectively, "Indemnities") from and against any and all claims, judgments, causes of action, damages, penalties, fines, taxes, costs, liabilities, losses and expenses arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (a) Tenant and/or Tenant's Parties' breach of any prohibition or provision of the preceding section, or (b) the presence of Hazardous Materials on, under or about the Premises or other properties as a result (directly or indirectly) of Tenant's and/or Tenant's Parties' activities, or failure to act

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when legally required to do so in connection with the Premises. This indemnity shall include the cost of any required or necessary repair, cleanup or detoxification, and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease. The written consent by Landlord to the presence of Hazardous Materials on, under or about the Premises shall not excuse Tenant from Tenant's obligation of indemnification pursuant hereto. Tenant's obligations pursuant to the foregoing indemnity shall survive the termination of this Lease.

11. DAMAGE AND DESTRUCTION.

11.1. Casualty. If the Building should be damaged or destroyed by fire or other casualty, Tenant shall give immediate written notice to Landlord. Within thirty (30) days after receipt thereof, Landlord shall notify Tenant whether such repairs can reasonably be made: (1) within thirty (30) days; (2) in more than thirty (30) days but in less than ninety (90) days; or (3) in more than ninety (90) days from the date of such notice.

11.1.1. Less Than 30 Days. If the Building should be damaged only to such extent that rebuilding or repairs can be reasonably completed within thirty (30) days, this Lease shall not terminate and, provided that insurance proceeds are available to fully repair the damage, Landlord shall repair the Building, except that Landlord shall not be required to rebuild, repair or replace any alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of Tenant. The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and the Building are unfit for occupancy.

11.1.2. Greater Than 30 Days. If the Building should be damaged only to such extent that rebuilding or repairs can be reasonably completed in more than thirty (30) days but in less than ninety (90) days, then Landlord shall have the option of: (1) terminating the Lease effective upon the occurrence of such damage, in which event the Rent shall be abated from the date Tenant vacates the Building; or (2) electing to repair the Building, provided insurance proceeds are available to fully repair the damage (except that Landlord shall not be required to rebuild, repair or replace any part of the alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of Tenant). The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and the Building is unfit for occupancy.

11.1.3. Greater Than 90 Days. If the Building should be so damaged that rebuilding or repairs cannot be completed within ninety (90) days, either Landlord or Tenant may terminate by giving written notice within ten (10) days after notice from Landlord regarding the time period of repair; and this Lease and the Rent shall be abated from the date Tenant vacates the Building. In the event that neither party elects to terminate this Lease, Landlord shall promptly commence and diligently prosecute to completion the repairs to the Building, provided insurance proceeds are available to fully repair the damage (except that Landlord shall not be required to rebuild, repair or replace any alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of

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Tenant). During the time when Landlord is prosecuting such repairs to completion, the Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and only during the period that the Building is unfit for occupancy.

11.2. Tenant's Fault. If any portion of the Building is damaged resulting from the fault, negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

11.3. Uninsured Casualty. In the event that any portion of the Building is damaged and is not fully covered by insurance proceeds received by Landlord or in the event that the holder of any indebtedness secured by the Premises requires that the insurance proceeds be applied to such indebtedness, then Tenant shall have the right to terminate this Lease by delivering written notice of termination to Landlord within thirty (30) days after the date of notice to Tenant of any such event. In the event that Tenant does not elect to terminate this Lease, Landlord shall have the right to terminate this Lease by delivering written notice to Tenant within thirty (30) days after such election by Tenant or Tenant's failure to elect, as applicable, whereupon all rights and obligations shall cease and terminate hereunder.

11.4. Waiver. With respect to any damage or destruction which Landlord is obligated to repair or may elect to repair, Tenant waives all rights to terminate this Lease pursuant to rights otherwise presently or hereafter accorded by law.

12. EMINENT DOMAIN.

12.1. Total Condemnation. If all of the Premises is condemned by eminent domain, inversely condemned or sold in lieu of condemnation for any public or quasi-public use or purpose ("Condemned"), this Lease shall terminate as of the date of title vesting in such proceeding and Rent shall be adjusted to the date of termination.

12.2. Partial Condemnation. If any portion of the Premises is Condemned and such partial condemnation renders the Premises unusable for Tenant's business, or if a substantial portion of the Building is Condemned, this Lease shall terminate as of the date of title vesting or order of immediate possession in such proceeding and Rent shall be adjusted to the date of termination. If such partial condemnation does not render the Premises unusable for the business of Tenant or less than a substantial portion of the Building is Condemned, Landlord shall promptly restore the Premises to the extent of any condemnation proceeds recovered by Landlord, excluding the portion thereof lost in such condemnation, and this Lease shall continue in full force and effect except that after the date of such title vesting Rent shall be adjusted, as reasonably determined by Landlord.

12.3. Award. If the Premises are wholly or partially Condemned, Landlord shall be entitled to the entire award paid for such condemnation, and Tenant waives any claim to any part of the award from Landlord or the condemning authority; provided that Tenant shall have the right to recover from the condemning authority such compensation as may be separately awarded

to Tenant in connection with costs in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment to a new location.

12.4. Temporary Condemnation. In the event of a temporary condemnation, this Lease shall remain in effect, Tenant shall continue to pay Rent and Tenant shall receive any award made for such condemnation. If a temporary condemnation remains in effect at the expiration or earlier termination of this Lease, Tenant shall pay Landlord the reasonable cost of performing any obligations required of Tenant with respect to the surrender of the Premises. If a temporary condemnation is for a period which extends beyond the Term, this Lease shall terminate as of the date of occupancy by the condemning authority and any such

award shall be distributed in accordance with the preceding section.

13. DEFAULT.

13.1. Events of Defaults. The occurrence of any of the following events shall, at Landlord's option, constitute an "Event of Default":

13.1.1. Vacation or abandonment of the Premises for a period of thirty (30) consecutive days, and Tenant waives any right to notice Tenant may have under applicable law;

13.1.2. Failure to pay Rent on the date when due, the failure continuing for a period of five (5) days after payment is due;

13.1.3. Failure to perform Tenant's covenants hereunder (except default in the payment of Rent); provided, if such default is susceptible of cure and Tenant has promptly commenced the cure of such default and is diligently prosecuting such cure to completion, then the same must remain uncured for thirty (30) days after written notice thereof from Landlord;

13.1.4. The making of a general assignment by Tenant for the benefit of creditors, the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing, the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold, Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due, any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets, Tenant taking any action toward the dissolution or winding up of Tenant's affairs, the cessation or suspension of Tenant's use of the Premises, or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold;

13.1.5. The making of any material misrepresentation or omission by Tenant in any materials delivered by or on behalf of Tenant to Landlord pursuant to this Lease; or

13.1.6. A default by Tenant beyond any applicable notice and cure period pursuant to the terms of any lease entered into between Landlord and Tenant for space in the Project.

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13.2. Remedies.

13.2.1. Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice, this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord.

13.2.1.1. Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or relet the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

13.2.1.2. Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent

that had been earned at the time of termination, (b) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant 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 Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (a) and (b) above, shall be computed at the greater of 10% per annum or 5% per annum plus the federal discount rate on advances to member banks in effect at the Federal Reserve Bank of San Francisco on the 25th day of the month preceding the date of this Lease, and as used in (c) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

13.2.2. Continuation. Even though an Event of Default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession; and Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may, during the period Tenant is in default, enter the Premises and relet the same, or any portion thereof, to third parties for Tenant's account and Tenant shall be liable to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises and like costs. Reletting may be for a period shorter or longer than the remaining Term. Tenant shall continue to pay the Rent on the date the same is due. No act by Landlord hereunder, including acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease, shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. In the event that Landlord elects to relet the

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Premises, the rent that Landlord receives from reletting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent and Additional Rent; second, all costs, including maintenance, incurred by Landlord in reletting; and, third, Base Rent and Tenant's Share of Increases under this Lease. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date Rent is due under this Lease, the rent received from the reletting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs, including maintenance, Landlord incurred in reletting that remain after applying the rent received from reletting as provided hereinabove. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the Applicable Interest Rate from the date of such expenditure.

13.3. Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

14. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or sublet, whether voluntarily or involuntarily or by operation of law, the Premises or any part thereof without Landlord's prior written approval, which shall not be unreasonably withheld. The merger of Tenant with any other entity or the transfer of any controlling or managing ownership or beneficial interest in Tenant shall constitute an assignment hereunder. If Tenant desires to assign this Lease or sublet any or all of the Building, Tenant shall give Landlord

written notice forty-five (45) days prior to the anticipated effective date of the assignment or sublease. Landlord shall then have a period of thirty (30) days following receipt of such notice and all related documents and agreements associated with the assignment or sublease, including without limitation, the financial statements of any proposed assignee or subtenant, to notify Tenant in writing that Landlord elects: (1) to permit Tenant to assign this Lease or sublet such space, subject however to Landlord's prior written approval of the proposed assignee or subtenant and of any related documents or agreements associated with the assignment or sublease received by Landlord hereunder or reasonably requested by Landlord; (2) to disapprove such proposed assignment or subletting or (3) to terminate this Lease as of the date specified in Landlord's notice thereof. If Landlord should fail to notify Tenant in writing of such election, Landlord shall be deemed to have elected option (2). This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void. If Tenant receives rent or other consideration for any such transfer in excess of the Rent, or in case of the sublease of a portion of the Premises, in excess of such Rent that is fairly allocable to such portion, after appropriate adjustments to assure that all other payments required hereunder are appropriately taken into account, Tenant shall pay Landlord one hundred percent (100%) of the

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difference between each such payment of rent or other consideration and the Rent required hereunder. Landlord may, without waiving any rights or remedies, collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of the preceding sentence. Tenant shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to the Lease by assignees of Tenant without notifying Tenant or any successor of Tenant and without obtaining their consent. No permitted transfer shall be effective until there has been delivered to Landlord a counterpart of the transfer instrument in which the transferee agrees to be and remain jointly and severally liable with Tenant for the payment of Rent pertaining to the space and for the performance of all the terms and provisions of this Lease relating thereto arising on or after the date of the transfer. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Premises, the Building or the Project.

15. ESTOPPEL, ATTORNMENT AND SUBORDINATION.

15.1. Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed (and acknowledged if required by any lender), in the form attached hereto as Exhibit B, to any proposed mortgagee, purchaser or Landlord. Tenant's failure to deliver said statement in such time period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (c) no more than one period's Base Rent has been paid in advance. Landlord reserves the right to substitute a different form of estoppel certificate upon the request of any proposed mortgagee or purchaser. If any financier should require that this Lease be amended (other than in the description of the Premises, the Term, the Permitted Use, the Rent or as will substantially, materially and adversely affect the rights of Tenant), Landlord shall give written notice thereof to Tenant, which notice shall be accompanied by a Lease supplement embodying such amendments. Tenant shall, within ten (10) days after the receipt of Landlord's notice, execute the tendered Lease supplement.

15.2. Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease; provided, however, Tenant's obligation to attorn to such purchaser shall be conditioned upon Tenant's receipt of a non-disturbance agreement.

15.3. Subordination. This Lease shall be subject and subordinate to all ground leases and the lien of all mortgages and deeds of trust which now or

hereafter affect the Premises or the Project or Landlord's interest therein, or on or against all such ground leases, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination. If requested, Tenant shall execute whatever documentation may be required to further effect the provisions of this paragraph.

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16. MISCELLANEOUS.

16.1. General.

16.1.1. Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Premises; and there are no agreements either oral or written other than as set forth herein.

16.1.2. Time of Essence. Time is of the essence of this Lease.

16.1.3. Attorneys' Fees. In any action which either party brings to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be a part of the judgment in said action.

16.1.4. Severable. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

16.1.5. Law. This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises are located.

16.1.6. No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this document shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

16.1.7. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, to the extent assignment is approved by Landlord, Tenant.

16.1.8. Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

16.1.9. Memorandum of Lease. Tenant shall not record this Lease or a short form memorandum hereof without Landlord's prior written consent.

16.1.10. Agency, Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease or any acts of the parties hereto shall be deemed to create any relationship other than the relationship of landlord and tenant.

16.1.11. Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

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16.2. Signs. All signs and graphics of every kind visible in or from public view or corridors, or the exterior of the Building or Premises shall be

subject to Landlord's prior written approval and shall be subject to any applicable governmental laws, ordinances, and regulations and in compliance with Landlord's signage program. Tenant shall remove all such signs and graphics prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including without limitation, discoloration caused by such installation or removal.

16.3. Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing, and no waiver shall affect any default other than the default specified in the waiver and then said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party.

16.4. Financial Statements. Tenant shall provide to any lender, purchaser or Landlord, within ten (10) days after request, a current, accurate, certified financial statement for Tenant and Tenant's business prepared under generally accepted accounting principles consistently applied and such other certified financial information or tax returns as may be reasonably required by Landlord, purchaser or any lender of either.

16.5. Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of the individual partners, directors, officers, shareholders, agents or employees of Landlord; and Tenant shall look solely to the Building for satisfaction of any liability and shall not look to other assets of Landlord nor seek recourse against the assets of the individual partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

16.6. Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to Landlord's Address and Tenant's Address, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

16.7. Brokerage Commission. Tenant warrants to Landlord that Tenant's sole contact with Landlord or with the Premises in connection with this transaction has been directly with Landlord, and that no broker or finder can properly claim a right to a commission or a finder's fee based upon contacts between the claimant and Tenant. Tenant and Landlord, respectively, shall each indemnify, defend by counsel acceptable to the other, protect and hold each other harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Premises and this Lease.

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16.8. Authorization. Tenant shall furnish to Landlord, within ten (10) days after written request, evidence satisfactory to Landlord that the person who executed this Lease on behalf of Tenant was duly authorized to do so. Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

16.9. Holding Over; Surrender.

16.9.1. If Tenant holds over the Premises or any part thereof after expiration or the earlier termination of the Term, such holding over shall constitute a month-to-month tenancy, at a rent equal to the Base Rent in effect immediately prior to such holding over plus one hundred percent (100%) thereof. This paragraph shall not be construed as Landlord's permission for Tenant to

hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease. Without limiting the foregoing, if Tenant holds over the Premises or any part thereof after expiration or the earlier termination of the Term, Tenant shall indemnify, defend, protect and hold Landlord harmless from any and all claims (including claims of succeeding tenants), causes of action, expenses (including reasonable attorneys' fees), liabilities and lawsuits resulting from such a holdover.

16.9.2. Upon the termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

16.10. Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

16.11. Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition.

16.12. Addenda. The Addenda attached hereto, if any, and identified with this Lease and initialed by the parties hereto are incorporated herein by this reference as if fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date set forth above.

"Landlord"

NETWORK APPLIANCE, INC.
a California corporation

By: _____
Its: _____

"Tenant"

TRW INC., an Ohio corporation

By: _____
Its: _____

EXHIBIT A

PREMISES

EXHIBIT B

ESTOPPEL CERTIFICATE

Re: Lease dated _____, 19__ ("Lease") by and
between _____ ("Landlord")
and _____ ("Tenant").

Gentlemen:

Reference is made to the above-described Lease in which the undersigned is the Tenant. We understand that you are entering into a transaction with the Landlord which relates to, among other things, this Lease; and we hereby, as a material inducement for you to enter into such transaction with Landlord, represent that:

1. A true and correct copy of the Lease is attached hereto as Exhibit 1.

2. There are no modifications, amendments, supplements, arrangements, side letters or understandings, oral or written, of any sort, modifying, amending, altering, supplementing or changing the terms of the Lease except as follows: .

3. The Lease is in full force and effect, and the Lease has been duly executed and delivered by, and is a binding obligation of, the Tenant as set forth therein.

4. The undersigned acknowledges (a) that rent on the Lease has been paid up to and including _____, 19__, (b) that monthly rent during the _____ (____) years of the term of the Lease is _____ Dollars (\$_____) per month and (c) that rent has not been paid for any period after _____, 19__, and shall not be paid for a period in excess of one (1) month in advance.

5. The improvements on the Premises are free from defects in design, materials and workmanship; and the improvements meet all governmental requirements, including, but not limited to, zoning and environmental requirements.

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6. The Lease is not in default, and Landlord has performed the obligations required to be performed by Landlord under the terms thereof through the date hereof.

Dated: _____, 19__

Very truly yours,

"Tenant"

_____, a

By: _____
Its: _____

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HAZARDOUS MATERIALS

INDUSTRIAL LEASE
(1345 Crossman Avenue)

Effective Date: December ____, 1999

DEFINED TERMS

Landlord: NETWORK APPLIANCE, INC., a California corporation

Landlord's Address For Notice: 495 East Java Drive
Sunnyvale, California 94089
Attention: Mr. Thomas Bryant

Tenant: TRW INC., an Ohio corporation

Tenant's Address For Notice: TRW Inc.
12011 Sunset Hills Road
Reston, Virginia 20190
Attn: Ms. Marsha A. Klontz

And to:

TRW Electronic Systems
1330 Geneva Drive
P.O. Box 3510
Sunnyvale, California 94088-3510

Project: Certain parcels of land situated in Santa Clara County, California consisting of 27.848 acres of land described as APN #110-42.2.2.6.7.8, having addresses of 1345 and 1346 Crossman Avenue and 1330 and 1350 Geneva Drive in Sunnyvale, California

Building: 1345 Crossman Avenue, Sunnyvale, California

Premises: The Building, together with the Property

Property: That certain real property described in Exhibit A hereto

Term: From the Commencement Date to December 31, 2000

Commencement Date: December ____, 1999

Base Rent Per Month: One Hundred Fifteen Thousand and No/100 Dollars (\$115,000.00)

Lease Year: Shall refer to each three hundred sixty-five (365) day period during the Term commencing on the Commencement Date and on each anniversary thereof.

Permitted Uses: General office purposes and no other uses shall be permitted without the prior written

consent of Landlord.

EXHIBITS

- A - Premises
- B - Estoppel Certificate

The Defined Terms set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. Each reference in this Lease to any of the Defined Terms shall mean the respective information above and shall be construed to incorporate all of the terms provided under the particular Lease paragraph pertaining to such information. In the event of any conflict between the Defined Terms and the provisions of the Lease, the latter shall control.

LANDLORD (_____) AND TENANT (_____) AGREE.
 initial initial

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1. PREMISES.

1.1. Premises. Landlord hereby leases to Tenant the Premises as shown on Exhibit A attached hereto, but excluding any other portion of the Project.

1.2. Reserved Rights. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except in case of an emergency) and/or to undertake the following: inspect the Premises and/or the performance by Tenant of the terms and conditions hereof. Landlord acknowledges and agrees that any such activities by Landlord on the Premises shall be subject to any reasonable security precautions created by Tenant as a result of any classified work performed by Tenant in the Building on behalf of the United States Government.

1.3. As-Is. Tenant acknowledges that Tenant has owned and occupied the Premises for an extensive period of time prior to the Commencement Date of this Lease and, as such, is familiar with the physical condition thereof. Tenant recognizes that Landlord would not lease the Premises except on an "as-is" basis and that Landlord has made no representations of any kind in connection with improvements or physical conditions on, or bearing on, the use or condition of the Premises.

2. TERM. The Term of the Lease shall commence ("Commencement Date") on the Commencement Date and expire on December 31, 2000. Tenant has determined that the Premises are acceptable for Tenant's use; and acknowledges that Landlord has made no representations or warranties in connection with the physical condition of the Premises or Tenant's use of the same upon which Tenant has relied directly or indirectly for any purpose.

3. RENT.

3.1. Base Rent. Tenant shall pay to Landlord, at such address as Landlord shall from time to time designate in writing to Tenant for the payment of Rent, the Base Rent, without notice, demand, offset or deduction, on the first day of each calendar month. Upon the execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. If the Term commences (or ends) on a date other than the first (or last) day of a month, Tenant shall pay on the Commencement Date or first day of the last month a pro rata portion of Base Rent, prorated on a per diem basis with respect to the portion of the month within the Term. All sums other than Base Rent which Tenant is obligated to pay under this Lease shall be deemed to be additional rent due hereunder, whether or not such sums are designated "additional rent." The term "Rent" means the Base Rent and all additional rent payable hereunder.

3.2. Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses and increased debt service. If Landlord has not received any installment of Rent within five (5) days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount, which is agreed to represent a reasonable estimate of the costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum ("Applicable Interest Rate") equal to the greater of (a) five percent (5%) per annum plus the then federal discount rate on advances to member banks in effect at the Federal Reserve Bank of San Francisco on the 25th day of the

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month preceding the date of this Lease or (b) ten percent (10%); provided, in no event shall the Applicable Interest Rate exceed the maximum interest rate permitted by law which may be charged under such circumstances. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment.

3.3. Net Lease. Tenant acknowledges that the Rent shall be absolutely net and carefree to the Landlord, except as set forth herein. Landlord shall not be responsible for any costs, charges, expenses or outlays of any nature or kind whatsoever arising from or relating to the Premises, except as provided for herein. Tenant shall pay all such charges, impositions, costs and expenses of every nature and kind to Landlord's complete exoneration.

4. UTILITIES. Tenant shall pay all charges for heat, water, gas, electricity and any other utilities used on the Premises directly to the utility provider. Landlord shall not be liable to Tenant for interruption in or curtailment of any utility service, nor shall any such interruption or curtailment constitute constructive eviction or grounds for rental abatement. In the event the Premises is not separately metered, Landlord shall have the option, subject to Landlord's review and the terms of this Lease, to cause the Premises to be separately metered at Tenant's cost and expense.

5. TAXES.

5.1. Real Property Taxes. Tenant shall pay any and all of the Real Property Taxes for the Premises to the relevant taxing authority on or before the date due. Tenant shall provide Landlord with written evidence of such payment of taxes concomitantly with the payment thereof.

5.2. Definition of Real Property Taxes. "Real Property Taxes" shall be the sum of the following: all real property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges, housing fund assessments, open space charges, childcare fees, school fees or any other assessments, levies, fees or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including fees "in-lieu" of any such tax or assessment) which are assessed, levied, charged, confirmed or imposed by any public authority upon the Project (or any real property comprising any portion thereof) or its operations, together with all taxes, assessments or other fees imposed by any public authority upon or measured by any Rent or other charges payable hereunder, including any gross income tax or excise tax levied by the local governmental authority, the federal government or any other governmental body with respect to receipt of such rental, or upon, with respect to or by reason of the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof, or upon this transaction or any document to which Tenant is a party creating or transferring an interest in the Premises, together with any tax imposed in substitution, partially or totally, of any tax previously included within the aforesaid definition or any additional tax the nature of which was previously included within the aforesaid definition, together with the costs and expenses (including attorneys fees) of challenging any of the foregoing or seeking the reduction in or abatement, redemption or return of any of the foregoing,

but only to the extent of any such reduction, abatement, redemption or return. Nothing contained in this Lease shall require Tenant to pay any franchise, corporate, estate or inheritance tax of Landlord, or any income, profits or revenue tax or charge upon the net income of Landlord.

5.3. Personal Property Taxes. Prior to delinquency, Tenant shall pay all taxes and assessments levied upon trade fixtures, alterations, additions, improvements, inventories and other personal property located and/or installed on the Property by Tenant; and Tenant shall provide Landlord copies of receipts for payment of all such taxes and assessments. To the extent any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced by Landlord.

6. INSURANCE.

6.1. Landlord. Landlord shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

6.1.1. Building. Insurance insuring the Building and the Landlord's interest in any betterments and improvements against fire and extended coverage (including "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as is required by any synthetic lender of Landlord with an interest in the Building at the time, together with rental value insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Tenant shall reimburse Landlord for the cost of such insurance for such period of time that is consistent with the Term of this Lease within ten (10) business days of receipt of request therefor, provided such request is accompanied by related invoices therefor.

6.2. Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

6.2.1. Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal and advertising injury coverage, with deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Tenant shall provide for restoration of the aggregate limit;

6.2.2. Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and insuring Tenant against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

6.2.3. Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Tenant in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers

endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000); and

6.2.4. Property Insurance. "All risk" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any personal property, fixtures and equipment, including electronic data processing equipment, of Tenant (and coverage for the full replacement cost thereof including business interruption of Tenant) ("Tenant's Property").

6.3. General.

6.3.1. Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least A (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

6.3.2. Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for all insurance required to be maintained by Tenant prior to the date of possession of the Premises. Tenant shall, at least ten (10) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after sixty (60) days prior written notice to the parties named as additional insureds in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least (10) days' notice has been given to Landlord). If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and cost resulting from said failure.

6.3.3. Additional Insureds. Landlord and any property management company of Landlord for the Premises shall be included as additional insureds, to the extent that the Tenant has an obligation under Section 6.4, under all of the policies required by Section 6.2.1. The policies required under Section 6.2.1 shall provide for severability of interest.

6.3.4. Primary Coverage. All insurance to be maintained by Tenant shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Landlord. The limits of insurance maintained by Tenant shall not limit Tenant's liability under this Lease.

6.3.5. Waiver of Subrogation. Landlord and Tenant each waives any right to recover against the other for claims for damages to its property covered by insurance. This provision is intended to waive fully, and for the benefit of Landlord and Tenant, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier.

6.4. Indemnity. Tenant shall indemnify, defend by counsel satisfactory to Landlord, and hold harmless Landlord from and against any and all claims arising from (i) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, the Building or elsewhere and (ii) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of

this Lease, arising from any negligence of Tenant or any of Tenant's agents, contractors or employees, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises or the Building arising from any cause; and Tenant hereby waives all claims in respect thereof against Landlord except to the extent such claims are caused by Landlord's gross negligence or willful misconduct.

6.5. Exemption of Landlord from Liability. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Premises or the Building, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises, the Building or

from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the Building.

7. REPAIRS AND MAINTENANCE.

7.1. Tenant. Tenant shall keep and maintain any and all portions of the Premises and the Building, including structural portions thereof, floors and floor coverings, interior plumbing, HVAC and other building system equipment, electrical wiring, fixtures and equipment in good repair and in a clean and safe condition, and repair and/or replace any and all of the foregoing in a good and workmanlike manner. Without limiting the foregoing, Tenant shall, at Tenant's sole expense, (a) immediately replace all broken glass in the Premises with glass equal to or in excess of the specification and quality of the original glass; and (b) repair any area damaged by Tenant, Tenant's agents, employees, invitees and visitors, including any damage caused by any roof penetration, whether or not such roof penetration was approved by Landlord.

7.2. Landlord. Landlord shall have no obligation whatsoever to maintain any portion of the Building or Premises. Tenant waives any right to repair at the expense of Landlord under any applicable governmental laws, ordinances, statutes, orders or regulations now or hereafter in effect respecting the Premises.

8. ALTERATIONS.

8.1. Trade Fixtures; Alterations. Tenant may install necessary trade fixtures, equipment and furniture in the Building, provided that such items are installed and are removable without structural damage to the Building. Tenant shall not make, or allow to be made, any alterations or physical additions in, about or to the Premises that affect the structural aspects of the Building, the Building roof or Building foundation without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall reimburse Landlord for all costs which Landlord may incur in connection with granting approval to Tenant for any such alterations and additions, including any costs or expenses which Landlord may

incur in electing to have outside architects and engineers review said matters. If a Notice of Completion is required for such work, Tenant shall file it and provide Landlord with a copy. Tenant shall provide Landlord with a set of "as-built" drawings for any such work.

8.2. Damage; Removal. Tenant assumes the risk of damage to any of Tenant's fixtures, equipment, furniture or alterations. Tenant shall repair all damage to the Premises and/or Building caused by the installation or removal of such items. Upon the termination of this Lease, Tenant shall remove any or all alterations, additions, improvements and partitions made or installed by Tenant and restore the Premises to their condition existing prior to the construction of any such items; provided, however, Landlord may permit, upon written notice to Tenant (to the extent requested to do so by Tenant at the time notice thereof is given), any such items designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner and so as not to cause any damage to the Premises, the Building or the Project whatsoever.

8.3. Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) days prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Landlord may take such action as may be necessary to remove such lien and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon at the Applicable Interest Rate from the date of expenditure.

9. USE.

The Premises shall be used only for the Permitted Uses and for no other uses and otherwise consistent with any applicable governmental laws, ordinances, statutes, orders and regulations and any declaration of covenants, conditions and restrictions or any supplement thereto which has been recorded in any official or public records with respect to the Project or any portion thereof. Tenant shall comply with all applicable governmental laws, ordinances, and statutes applicable to the Premises or Building. Tenant shall not commit waste, overload the floors or structure of the Building, subject the Premises or the Project to any use which would damage the same or raise or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Tenant shall not use any parking spaces for the Project other than the parking spaces located on the Premises. Landlord shall not be responsible for non-compliance by any other tenant or occupant with any of the rules or regulations or any other terms or provisions of such tenant's or occupant's lease. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted.

10. ENVIRONMENTAL MATTERS.

10.1. Hazardous Materials. Tenant shall not cause, or allow any of Tenant's employees, agents, customers, visitors, invitees, licensees, contractors, assignees or subtenants (collectively, "Tenant's Parties") to cause or permit, any Hazardous Materials to be brought upon, stored, manufactured, generated, blended, handled, recycled, treated, disposed or used on, under or about the Premises, the Building or the Project, except for routine office and janitorial supplies and the Hazardous Materials listed on Schedule 1 hereto in usual and customary quantities stored, used and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance, material, controlled substance, waste or combination thereof which is hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, wastes or combinations thereof which are listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, such properties or effects. As used herein, "Environmental Laws" means any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing which are applicable to Tenant or the Premises. Tenant and Tenant's Parties shall comply with all Environmental Laws and promptly notify Landlord of the presence of any Hazardous Materials, other than as permitted above, on the Premises or any violation of any Environmental Law. Landlord shall have the right to inspect the Premises and to conduct tests and investigations to determine whether Tenant is in compliance with the foregoing provisions. If such tests indicate the presence of any environmental condition, Tenant shall reimburse Landlord for the cost of conducting such tests. The phrase "environmental condition" shall mean any condition relating to any Hazardous Materials, including surface water, groundwater, drinking water supply, land, surface or subsurface strata or the ambient air and includes air, land and water pollutants, being present at the Property in violation of Environmental Laws or in a manner which, in the reasonable opinion of the Landlord's environmental consultant, is substantially likely to cause health problems for occupants of the Premises or a future violation of Environmental Law. In the event of any such environmental condition, Tenant shall promptly take any and all steps necessary to rectify the same or shall, at Tenant's election, reimburse Landlord, upon demand, for the cost to Landlord of performing rectifying work. Upon the expiration or earlier termination of this Lease, Tenant shall remove any and all Hazardous Materials on, under or about the Premises.

10.2. Indemnification. Tenant shall indemnify, protect, defend (by counsel acceptable to Landlord) and hold harmless Landlord and its partners,

directors, officers, employees, shareholders, lenders, agents, contractors and each of their respective successors and assigns (individually and collectively, "Indemnities") from and against any and all claims, judgments, causes of action, damages, penalties, fines, taxes, costs, liabilities, losses and expenses arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (a) Tenant and/or Tenant's Parties' breach of any prohibition or provision of the preceding section, or (b) the presence of Hazardous Materials on, under or about the Premises or other properties as a result (directly or indirectly) of Tenant's and/or Tenant's Parties' activities, or failure to act

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when legally required to do so in connection with the Premises. This indemnity shall include the cost of any required or necessary repair, cleanup or detoxification, and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease. The written consent by Landlord to the presence of Hazardous Materials on, under or about the Premises shall not excuse Tenant from Tenant's obligation of indemnification pursuant hereto. Tenant's obligations pursuant to the foregoing indemnity shall survive the termination of this Lease.

11. DAMAGE AND DESTRUCTION.

11.1. Casualty. If the Building should be damaged or destroyed by fire or other casualty, Tenant shall give immediate written notice to Landlord. Within thirty (30) days after receipt thereof, Landlord shall notify Tenant whether such repairs can reasonably be made: (1) within thirty (30) days; (2) in more than thirty (30) days but in less than ninety (90) days; or (3) in more than ninety (90) days from the date of such notice.

11.1.1. Less Than 30 Days. If the Building should be damaged only to such extent that rebuilding or repairs can be reasonably completed within thirty (30) days, this Lease shall not terminate and, provided that insurance proceeds are available to fully repair the damage, Landlord shall repair the Building, except that Landlord shall not be required to rebuild, repair or replace any alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of Tenant. The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and the Building are unfit for occupancy.

11.1.2. Greater Than 30 Days. If the Building should be damaged only to such extent that rebuilding or repairs can be reasonably completed in more than thirty (30) days but in less than ninety (90) days, then Landlord shall have the option of: (1) terminating the Lease effective upon the occurrence of such damage, in which event the Rent shall be abated from the date Tenant vacates the Building; or (2) electing to repair the Building, provided insurance proceeds are available to fully repair the damage (except that Landlord shall not be required to rebuild, repair or replace any part of the alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of Tenant). The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and the Building is unfit for occupancy.

11.1.3. Greater Than 90 Days. If the Building should be so damaged that rebuilding or repairs cannot be completed within ninety (90) days, either Landlord or Tenant may terminate by giving written notice within ten (10) days after notice from Landlord regarding the time period of repair; and this Lease and the Rent shall be abated from the date Tenant vacates the Building. In the event that neither party elects to terminate this Lease, Landlord shall promptly commence and diligently prosecute to completion the repairs to the Building, provided insurance proceeds are available to fully repair the damage (except that Landlord shall not be required to rebuild, repair or replace any alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of

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Tenant). During the time when Landlord is prosecuting such repairs to completion, the Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and only during the period that the Building is unfit for occupancy.

11.2. Tenant's Fault. If any portion of the Building is damaged resulting from the fault, negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

11.3. Uninsured Casualty. In the event that any portion of the Building is damaged and is not fully covered by insurance proceeds received by Landlord or in the event that the holder of any indebtedness secured by the Premises requires that the insurance proceeds be applied to such indebtedness, then Tenant shall have the right to terminate this Lease by delivering written notice of termination to Landlord within thirty (30) days after the date of notice to Tenant of any such event. In the event that Tenant does not elect to terminate this Lease, Landlord shall have the right to terminate this Lease by delivering written notice to Tenant within thirty (30) days after such election by Tenant or Tenant's failure to elect, as applicable, whereupon all rights and obligations shall cease and terminate hereunder.

11.4. Waiver. With respect to any damage or destruction which Landlord is obligated to repair or may elect to repair, Tenant waives all rights to terminate this Lease pursuant to rights otherwise presently or hereafter accorded by law.

12. EMINENT DOMAIN.

12.1. Total Condemnation. If all of the Premises is condemned by eminent domain, inversely condemned or sold in lieu of condemnation for any public or quasi-public use or purpose ("Condemned"), this Lease shall terminate as of the date of title vesting in such proceeding and Rent shall be adjusted to the date of termination.

12.2. Partial Condemnation. If any portion of the Premises is Condemned and such partial condemnation renders the Premises unusable for Tenant's business, or if a substantial portion of the Building is Condemned, this Lease shall terminate as of the date of title vesting or order of immediate possession in such proceeding and Rent shall be adjusted to the date of termination. If such partial condemnation does not render the Premises unusable for the business of Tenant or less than a substantial portion of the Building is Condemned, Landlord shall promptly restore the Premises to the extent of any condemnation proceeds recovered by Landlord, excluding the portion thereof lost in such condemnation, and this Lease shall continue in full force and effect except that after the date of such title vesting Rent shall be adjusted, as reasonably determined by Landlord.

12.3. Award. If the Premises are wholly or partially Condemned, Landlord shall be entitled to the entire award paid for such condemnation, and Tenant waives any claim to any part of the award from Landlord or the condemning authority; provided that Tenant shall have the right to recover from the condemning authority such compensation as may be separately awarded

to Tenant in connection with costs in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment to a new location.

12.4. Temporary Condemnation. In the event of a temporary condemnation, this Lease shall remain in effect, Tenant shall continue to pay Rent and Tenant shall receive any award made for such condemnation. If a temporary condemnation remains in effect at the expiration or earlier termination of this Lease, Tenant shall pay Landlord the reasonable cost of performing any obligations required of Tenant with respect to the surrender of the Premises. If a temporary condemnation is for a period which extends beyond the Term, this Lease shall terminate as of the date of occupancy by the condemning authority and any such

award shall be distributed in accordance with the preceding section.

13. DEFAULT.

13.1. Events of Defaults. The occurrence of any of the following events shall, at Landlord's option, constitute an "Event of Default":

13.1.1. Vacation or abandonment of the Premises for a period of thirty (30) consecutive days, and Tenant waives any right to notice Tenant may have under applicable law;

13.1.1 Vacation or abandonment of the Premises for a period of thirty (30) consecutive days, and Tenant waives any right to notice Tenant may have under applicable law;

13.1.2. Failure to pay Rent on the date when due, the failure continuing for a period of five (5) days after payment is due;

13.1.3. Failure to perform Tenant's covenants hereunder (except default in the payment of Rent); provided, if such default is susceptible of cure and Tenant has promptly commenced the cure of such default and is diligently prosecuting such cure to completion, then the same must remain uncured for thirty (30) days after written notice thereof from Landlord;

13.1.4. The making of a general assignment by Tenant for the benefit of creditors, the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing, the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold, Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due, any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets, Tenant taking any action toward the dissolution or winding up of Tenant's affairs, the cessation or suspension of Tenant's use of the Premises, or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold;

13.1.5. The making of any material misrepresentation or omission by Tenant in any materials delivered by or on behalf of Tenant to Landlord pursuant to this Lease; or

13.1.6. A default by Tenant beyond any applicable notice and cure period pursuant to the terms of any lease entered into between Landlord and Tenant for space in the Project.

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13.2. Remedies.

13.2.1. Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice, this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord.

13.2.1.1. Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or relet the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

13.2.1.2. Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (b) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant 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 Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (a) and (b) above, shall be computed at the greater of 10% per annum or 5% per annum plus the federal discount rate on advances to member banks in effect at the Federal Reserve Bank of San Francisco on the 25th day of the month preceding the date of this Lease, and as used in (c) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

13.2.2. Continuation. Even though an Event of Default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession; and Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may, during the period Tenant is in default, enter the Premises and relet the same, or any portion thereof, to third parties for Tenant's account and Tenant shall be liable to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises and like costs. Reletting may be for a period shorter or longer than the remaining Term. Tenant shall continue to pay the Rent on the date the same is due. No act by Landlord hereunder, including acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease, shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. In the event that Landlord elects to relet the

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Premises, the rent that Landlord receives from reletting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent and Additional Rent; second, all costs, including maintenance, incurred by Landlord in reletting; and, third, Base Rent and Tenant's Share of Increases under this Lease. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date Rent is due under this Lease, the rent received from the reletting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs, including maintenance, Landlord incurred in reletting that remain after applying the rent received from reletting as provided hereinabove. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the Applicable Interest Rate from the date of such expenditure.

13.3. Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

14. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or sublet, whether voluntarily or involuntarily or by operation of law, the Premises or any part thereof without Landlord's prior written approval, which shall not be

unreasonably withheld. The merger of Tenant with any other entity or the transfer of any controlling or managing ownership or beneficial interest in Tenant shall constitute an assignment hereunder. If Tenant desires to assign this Lease or sublet any or all of the Building, Tenant shall give Landlord written notice forty-five (45) days prior to the anticipated effective date of the assignment or sublease. Landlord shall then have a period of thirty (30) days following receipt of such notice and all related documents and agreements associated with the assignment or sublease, including without limitation, the financial statements of any proposed assignee or subtenant, to notify Tenant in writing that Landlord elects: (1) to permit Tenant to assign this Lease or sublet such space, subject however to Landlord's prior written approval of the proposed assignee or subtenant and of any related documents or agreements associated with the assignment or sublease received by Landlord hereunder or reasonably requested by Landlord; (2) to disapprove such proposed assignment or subletting or (3) to terminate this Lease as of the date specified in Landlord's notice thereof. If Landlord should fail to notify Tenant in writing of such election, Landlord shall be deemed to have elected option (2). This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void. If Tenant receives rent or other consideration for any such transfer in excess of the Rent, or in case of the sublease of a portion of the Premises, in excess of such Rent that is fairly allocable to such portion, after appropriate adjustments to assure that all other payments required hereunder are appropriately taken into account, Tenant shall pay Landlord one hundred percent (100%) of the

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difference between each such payment of rent or other consideration and the Rent required hereunder. Landlord may, without waiving any rights or remedies, collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of the preceding sentence. Tenant shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to the Lease by assignees of Tenant without notifying Tenant or any successor of Tenant and without obtaining their consent. No permitted transfer shall be effective until there has been delivered to Landlord a counterpart of the transfer instrument in which the transferee agrees to be and remain jointly and severally liable with Tenant for the payment of Rent pertaining to the space and for the performance of all the terms and provisions of this Lease relating thereto arising on or after the date of the transfer. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Premises, the Building or the Project.

15. ESTOPPEL, ATTORNMEN AND SUBORDINATION.

15.1. Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed (and acknowledged if required by any lender), in the form attached hereto as Exhibit B, to any proposed mortgagee, purchaser or Landlord. Tenant's failure to deliver said statement in such time period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (c) no more than one period's Base Rent has been paid in advance. Landlord reserves the right to substitute a different form of estoppel certificate upon the request of any proposed mortgagee or purchaser. If any financier should require that this Lease be amended (other than in the description of the Premises, the Term, the Permitted Use, the Rent or as will substantially, materially and adversely affect the rights of Tenant), Landlord shall give written notice thereof to Tenant, which notice shall be accompanied by a Lease supplement embodying such amendments. Tenant shall, within ten (10) days after the receipt of Landlord's notice, execute the tendered Lease supplement.

15.2. Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease; provided, however, Tenant's obligation to attorn to such purchaser shall be

conditioned upon Tenant's receipt of a non-disturbance agreement.

15.3. Subordination. This Lease shall be subject and subordinate to all ground leases and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Project or Landlord's interest therein, or on or against all such ground leases, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination. If requested, Tenant shall execute whatever documentation may be required to further effect the provisions of this paragraph.

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16. MISCELLANEOUS.

16.1. General.

16.1.1. Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Premises; and there are no agreements either oral or written other than as set forth herein.

16.1.2. Time of Essence. Time is of the essence of this Lease.

16.1.3. Attorneys' Fees. In any action which either party brings to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be a part of the judgment in said action.

16.1.4. Severable. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

16.1.5. Law. This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises are located.

16.1.6. No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this document shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

16.1.7. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, to the extent assignment is approved by Landlord, Tenant.

16.1.8. Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

16.1.9. Memorandum of Lease. Tenant shall not record this Lease or a short form memorandum hereof without Landlord's prior written consent.

16.1.10. Agency, Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease or any acts of the parties hereto shall be deemed to create any relationship other than the relationship of landlord and tenant.

16.1.11. Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

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16.2. Signs. All signs and graphics of every kind visible in or from public view or corridors, or the exterior of the Building or Premises shall be subject to Landlord's prior written approval and shall be subject to any applicable governmental laws, ordinances, and regulations and in compliance with Landlord's signage program. Tenant shall remove all such signs and graphics prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including without limitation, discoloration caused by such installation or removal.

16.3. Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing, and no waiver shall affect any default other than the default specified in the waiver and then said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party.

16.4. Financial Statements. Tenant shall provide to any lender, purchaser or Landlord, within ten (10) days after request, a current, accurate, certified financial statement for Tenant and Tenant's business prepared under generally accepted accounting principles consistently applied and such other certified financial information or tax returns as may be reasonably required by Landlord, purchaser or any lender of either.

16.5. Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of the individual partners, directors, officers, shareholders, agents or employees of Landlord; and Tenant shall look solely to the Building for satisfaction of any liability and shall not look to other assets of Landlord nor seek recourse against the assets of the individual partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

16.6. Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to Landlord's Address and Tenant's Address, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

16.7. Brokerage Commission. Tenant warrants to Landlord that Tenant's sole contact with Landlord or with the Premises in connection with this transaction has been directly with Landlord, and that no broker or finder can properly claim a right to a commission or a finder's fee based upon contacts between the claimant and Tenant. Tenant and Landlord, respectively, shall each indemnify, defend by counsel acceptable to the other, protect and hold each other harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Premises and this Lease.

16.8. Authorization. Tenant shall furnish to Landlord, within ten (10) days after written request, evidence satisfactory to Landlord that the person who executed this Lease on behalf of Tenant was duly authorized to do so. Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

16.9. Holding Over; Surrender.

16.9.1. If Tenant holds over the Premises or any part thereof

after expiration or the earlier termination of the Term, such holding over shall constitute a month-to-month tenancy, at a rent equal to the Base Rent in effect immediately prior to such holding over plus one hundred percent (100%) thereof. This paragraph shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease. Without limiting the foregoing, if Tenant holds over the Premises or any part thereof after expiration or the earlier termination of the Term, Tenant shall indemnify, defend, protect and hold Landlord harmless from any and all claims (including claims of succeeding tenants), causes of action, expenses (including reasonable attorneys' fees), liabilities and lawsuits resulting from such a holdover.

16.9.2. Upon the termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

16.10. Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

16.11. Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition.

16.12. Addenda. The Addenda attached hereto, if any, and identified with this Lease and initialed by the parties hereto are incorporated herein by this reference as if fully set forth herein.

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IN WITNESS WHEREOF, the parties have executed this Lease as of the date set forth above.

"Landlord"

NETWORK APPLIANCE, INC.
a California corporation

By: _____
Its: _____

"Tenant"

TRW INC., an Ohio corporation

By: _____
Its: _____

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EXHIBIT A

PREMISES

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EXHIBIT B
ESTOPPEL CERTIFICATE

Re: Lease dated _____, 19__ ("Lease") by and
between _____ ("Landlord")
and _____ ("Tenant").

Gentlemen:

Reference is made to the above-described Lease in which the undersigned is the Tenant. We understand that you are entering into a transaction with the Landlord which relates to, among other things, this Lease; and we hereby, as a material inducement for you to enter into such transaction with Landlord, represent that:

1. A true and correct copy of the Lease is attached hereto as Exhibit 1.

2. There are no modifications, amendments, supplements, arrangements, side letters or understandings, oral or written, of any sort, modifying, amending, altering, supplementing or changing the terms of the Lease except as follows: .

3. The Lease is in full force and effect, and the Lease has been duly executed and delivered by, and is a binding obligation of, the Tenant as set forth therein.

4. The undersigned acknowledges (a) that rent on the Lease has been paid up to and including _____, 19__, (b) that monthly rent during the _____ (____) years of the term of the Lease is _____ Dollars (\$_____) per month and (c) that rent has not been paid for any period after _____, 19__, and shall not be paid for a period in excess of one (1) month in advance.

5. The improvements on the Premises are free from defects in design, materials and workmanship; and the improvements meet all governmental requirements, including, but not limited to, zoning and environmental requirements.

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6. The Lease is not in default, and Landlord has performed the obligations required to be performed by Landlord under the terms thereof through the date hereof.

Dated: _____, 19__

Very truly yours,

"Tenant"

_____, a

By: _____
Its: _____

SCHEDULE 1
HAZARDOUS MATERIALS

INDUSTRIAL LEASE
(1330 Geneva)

Effective Date: December ____, 1999

DEFINED TERMS

Landlord: NETWORK APPLIANCE, INC., a California corporation

Landlord's Address For Notice: 495 East Java Drive
Sunnyvale, California 94089
Attention: Mr. Thomas Bryant

Tenant: TRW INC., an Ohio corporation

Tenant's Address For Notice: TRW Inc.
12011 Sunset Hills Road
Reston, Virginia 20190
Attn: Ms. Marsha A. Klontz

And to:

TRW Electronic Systems
1330 Geneva Drive
P.O. Box 3510
Sunnyvale, California 94088-3510

Project: Certain parcels of land situated in Santa Clara County, California consisting of 27.848 acres of land described as APN #110-42.2.2.6.7.8, having addresses of 1345 and 1346 Crossman Avenue and 1330 and 1350 Geneva Drive in Sunnyvale, California

Building: 1330 Geneva, Sunnyvale, California

Premises: The Building, together with the Property

Property: That certain real property described in Exhibit A hereto Term: From the Commencement Date to June 30, 2002

Commencement Date: December ____, 1999

Base Rent Per Month: One Hundred Twenty-Three Thousand Four Hundred Twenty-Four and 90/100 Dollars (\$123,424.90)

Lease Year: Shall refer to each three hundred sixty-five (365) day period during the Term commencing on the Commencement Date and on each anniversary thereof.

Permitted Uses: General office purposes and no other uses shall be permitted without the prior written consent of Landlord.

EXHIBITS

- A - Premises
- B - Estoppel Certificate

The Defined Terms set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. Each reference in this Lease to any of the Defined Terms shall mean the respective information above and shall be construed to incorporate all of the terms provided under the particular Lease paragraph pertaining to such information. In the event of any conflict between the Defined Terms and the provisions of the Lease, the latter shall control.

LANDLORD (_____) AND TENANT (_____) AGREE.
 initial initial

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1. PREMISES.

1.1. Premises. Landlord hereby leases to Tenant the Premises as shown on Exhibit A attached hereto, but excluding any other portion of the Project.

1.2. Reserved Rights. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except in case of an emergency) and/or to undertake the following: inspect the Premises and/or the performance by Tenant of the terms and conditions hereof. Landlord acknowledges and agrees that any such activities by Landlord on the Premises shall be subject to any reasonable security precautions created by Tenant as a result of any classified work performed by Tenant in the Building on behalf of the United States Government.

1.3. As-Is. Tenant acknowledges that Tenant has owned and occupied the Premises for an extensive period of time prior to the Commencement Date of this Lease and, as such, is familiar with the physical condition thereof. Tenant recognizes that Landlord would not lease the Premises except on an "as-is" basis and that Landlord has made no representations of any kind in connection with improvements or physical conditions on, or bearing on, the use or condition of the Premises.

2. TERM. The Term of the Lease shall commence ("Commencement Date") on the Commencement Date and expire on June 30, 2002. Tenant has determined that the Premises are acceptable for Tenant's use; and acknowledges that Landlord has made no representations or warranties in connection with the physical condition of the Premises or Tenant's use of the same upon which Tenant has relied directly or indirectly for any purpose.

3. RENT.

3.1. Base Rent. Tenant shall pay to Landlord, at such address as Landlord shall from time to time designate in writing to Tenant for the payment of Rent, the Base Rent, without notice, demand, offset or deduction, on the first day of each calendar month. Upon the execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. If the Term commences (or ends) on a date other than the first (or last) day of a month, Tenant shall pay on the Commencement Date or first day of the last month a pro rata portion of Base Rent, prorated on a per diem basis with respect to the portion of the month within the Term. All sums other than Base Rent which Tenant is obligated to pay under this Lease shall be deemed to be additional rent due hereunder, whether or not such sums are designated "additional rent." The term "Rent" means the Base Rent and all additional rent payable hereunder.

3.2. Late Charge and Interest. The late payment of any Rent will cause

Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses and increased debt service. If Landlord has not received any installment of Rent within five (5) days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount, which is agreed to represent a reasonable estimate of the costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum ("Applicable Interest Rate") equal to the greater of (a) five percent (5%) per annum plus the then federal discount rate on advances to member banks in effect at the Federal Reserve Bank of San Francisco on the 25th day of the

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month preceding the date of this Lease or (b) ten percent (10%); provided, in no event shall the Applicable Interest Rate exceed the maximum interest rate permitted by law which may be charged under such circumstances. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment.

3.3. Net Lease. Tenant acknowledges that the Rent shall be absolutely net and carefree to the Landlord, except as set forth herein. Landlord shall not be responsible for any costs, charges, expenses or outlays of any nature or kind whatsoever arising from or relating to the Premises, except as provided for herein. Tenant shall pay all such charges, impositions, costs and expenses of every nature and kind to Landlord's complete exoneration.

4. UTILITIES. Tenant shall pay all charges for heat, water, gas, electricity and any other utilities used on the Premises directly to the utility provider. Landlord shall not be liable to Tenant for interruption in or curtailment of any utility service, nor shall any such interruption or curtailment constitute constructive eviction or grounds for rental abatement. In the event the Premises is not separately metered, Landlord shall have the option, subject to Landlord's review and the terms of this Lease, to cause the Premises to be separately metered at Tenant's cost and expense.

5. TAXES.

5.1. Real Property Taxes. Tenant shall pay any and all of the Real Property Taxes for the Premises to the relevant taxing authority on or before the date due. Tenant shall provide Landlord with written evidence of such payment of taxes concomitantly with the payment thereof.

5.2. Definition of Real Property Taxes. "Real Property Taxes" shall be the sum of the following: all real property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges, housing fund assessments, open space charges, childcare fees, school fees or any other assessments, levies, fees or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including fees "in-lieu" of any such tax or assessment) which are assessed, levied, charged, confirmed or imposed by any public authority upon the Project (or any real property comprising any portion thereof) or its operations, together with all taxes, assessments or other fees imposed by any public authority upon or measured by any Rent or other charges payable hereunder, including any gross income tax or excise tax levied by the local governmental authority, the federal government or any other governmental body with respect to receipt of such rental, or upon, with respect to or by reason of the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof, or upon this transaction or any document to which Tenant is a party creating or transferring an interest in the Premises, together with any tax imposed in substitution, partially or totally, of any tax previously included within the aforesaid definition or any additional tax the nature of which was previously included within the aforesaid definition, together with the costs and expenses (including attorneys fees) of challenging any of the foregoing or seeking the reduction in or abatement, redemption or return of any of the foregoing,

but only to the extent of any such reduction, abatement, redemption or return. Nothing contained in this Lease shall require Tenant to pay any franchise, corporate, estate or inheritance tax of Landlord, or any income, profits or revenue tax or charge upon the net income of Landlord.

5.3. Personal Property Taxes. Prior to delinquency, Tenant shall pay all taxes and assessments levied upon trade fixtures, alterations, additions, improvements, inventories and other personal property located and/or installed on the Property by Tenant; and Tenant shall provide Landlord copies of receipts for payment of all such taxes and assessments. To the extent any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced by Landlord.

6. INSURANCE.

6.1. Landlord. Landlord shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

6.1.1. Building. Insurance insuring the Building and the Landlord's interest in any betterments and improvements against fire and extended coverage (including "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as is required by any synthetic lender of Landlord with an interest in the Building at the time, together with rental value insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Tenant shall reimburse Landlord for the cost of such insurance for such period of time that is consistent with the Term of this Lease within ten (10) business days of receipt of request therefor, provided such request is accompanied by related invoices therefor.

6.2. Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance:

6.2.1. Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal and advertising injury coverage, with deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Tenant shall provide for restoration of the aggregate limit;

6.2.2. Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and insuring Tenant against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

6.2.3. Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Tenant in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers

endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000); and

6.2.4. Property Insurance. "All risk" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any personal property, fixtures and equipment, including electronic data processing equipment, of Tenant (and coverage for the full replacement cost thereof including business interruption of Tenant) ("Tenant's Property").

6.3. General.

6.3.1. Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least A (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

6.3.2. Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for all insurance required to be maintained by Tenant prior to the date of possession of the Premises. Tenant shall, at least ten (10) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after sixty (60) days prior written notice to the parties named as additional insureds in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least (10) days' notice has been given to Landlord). If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and cost resulting from said failure.

6.3.3. Additional Insureds. Landlord and any property management company of Landlord for the Premises shall be included as additional insureds, to the extent that the Tenant has an obligation under Section 6.4, under all of the policies required by Section 6.2.1. The policies required under Section 6.2.1 shall provide for severability of interest.

6.3.4. Primary Coverage. All insurance to be maintained by Tenant shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Landlord. The limits of insurance maintained by Tenant shall not limit Tenant's liability under this Lease.

6.3.5. Waiver of Subrogation. Landlord and Tenant each waives any right to recover against the other for claims for damages to its property covered by insurance. This provision is intended to waive fully, and for the benefit of Landlord and Tenant, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier.

6.4. Indemnity. Tenant shall indemnify, defend by counsel satisfactory to Landlord, and hold harmless Landlord from and against any and all claims arising from (i) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, the Building or elsewhere and (ii) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of

this Lease, arising from any negligence of Tenant or any of Tenant's agents, contractors or employees, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises or the Building arising from any cause; and Tenant hereby waives all claims in respect thereof against Landlord except to the extent such claims are caused by Landlord's gross negligence or willful misconduct.

6.5. Exemption of Landlord from Liability. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Premises or the Building, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises, the Building or from other sources or places, and regardless of whether the cause of such damage

or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the Building.

7. REPAIRS AND MAINTENANCE.

7.1. Tenant. Tenant shall keep and maintain any and all portions of the Premises and the Building, including structural portions thereof, floors and floor coverings, interior plumbing, HVAC and other building system equipment, electrical wiring, fixtures and equipment in good repair and in a clean and safe condition, and repair and/or replace any and all of the foregoing in a good and workmanlike manner. Without limiting the foregoing, Tenant shall, at Tenant's sole expense, (a) immediately replace all broken glass in the Premises with glass equal to or in excess of the specification and quality of the original glass; and (b) repair any area damaged by Tenant, Tenant's agents, employees, invitees and visitors, including any damage caused by any roof penetration, whether or not such roof penetration was approved by Landlord.

7.2. Landlord. Landlord shall have no obligation whatsoever to maintain any portion of the Building or Premises. Tenant waives any right to repair at the expense of Landlord under any applicable governmental laws, ordinances, statutes, orders or regulations now or hereafter in effect respecting the Premises.

8. ALTERATIONS.

8.1. Trade Fixtures; Alterations. Tenant may install necessary trade fixtures, equipment and furniture in the Building, provided that such items are installed and are removable without structural damage to the Building. Tenant shall not make, or allow to be made, any alterations or physical additions in, about or to the Premises that affect the structural aspects of the Building, the Building roof or Building foundation without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall reimburse Landlord for all costs which Landlord may incur in connection with granting approval to Tenant for any such alterations and additions, including any costs or expenses which Landlord may

incur in electing to have outside architects and engineers review said matters. If a Notice of Completion is required for such work, Tenant shall file it and provide Landlord with a copy. Tenant shall provide Landlord with a set of "as-built" drawings for any such work.

8.2. Damage; Removal. Tenant assumes the risk of damage to any of Tenant's fixtures, equipment, furniture or alterations. Tenant shall repair all damage to the Premises and/or Building caused by the installation or removal of such items. Upon the termination of this Lease, Tenant shall remove any or all alterations, additions, improvements and partitions made or installed by Tenant and restore the Premises to their condition existing prior to the construction of any such items; provided, however, Landlord may permit, upon written notice to Tenant (to the extent requested to do so by Tenant at the time notice thereof is given), any such items designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner and so as not to cause any damage to the Premises, the Building or the Project whatsoever.

8.3. Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) days prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Landlord may take such action as may be necessary to remove such lien and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon at the Applicable Interest Rate from the date of expenditure.

9. USE.

The Premises shall be used only for the Permitted Uses and for no other uses and otherwise consistent with any applicable governmental laws, ordinances, statutes, orders and regulations and any declaration of covenants, conditions and restrictions or any supplement thereto which has been recorded in any official or public records with respect to the Project or any portion thereof. Tenant shall comply with all applicable governmental laws, ordinances, and statutes applicable to the Premises or Building. Tenant shall not commit waste, overload the floors or structure of the Building, subject the Premises or the Project to any use which would damage the same or raise or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Tenant shall not use any parking spaces for the Project other than the parking spaces located on the Premises. Landlord shall not be responsible for non-compliance by any other tenant or occupant with any of the rules or regulations or any other terms or provisions of such tenant's or occupant's lease. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted.

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10. ENVIRONMENTAL MATTERS.

10.1. Hazardous Materials. Tenant shall not cause, or allow any of Tenant's employees, agents, customers, visitors, invitees, licensees, contractors, assignees or subtenants (collectively, "Tenant's Parties") to cause or permit, any Hazardous Materials to be brought upon, stored, manufactured, generated, blended, handled, recycled, treated, disposed or used on, under or about the Premises, the Building or the Project, except for routine office and janitorial supplies and the Hazardous Materials listed on Schedule 1 hereto in usual and customary quantities stored, used and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance, material, controlled substance, waste or combination thereof which is hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, wastes or combinations thereof which are listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, such properties or effects. As used herein, "Environmental Laws" means any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing which are applicable to Tenant or the Premises. Tenant and Tenant's Parties shall comply with all Environmental Laws and promptly notify Landlord of the presence of any Hazardous Materials, other than as permitted above, on the Premises or any violation of any Environmental Law. Landlord shall have the right to inspect the Premises and to conduct tests and investigations to determine whether Tenant is in compliance with the foregoing provisions. If such tests indicate the presence of any environmental condition, Tenant shall reimburse Landlord for the cost of conducting such tests. The phrase "environmental condition" shall mean any condition relating to any Hazardous Materials, including surface water, groundwater, drinking water supply, land, surface or subsurface strata or the ambient air and includes air, land and water pollutants, being present at the Property in violation of Environmental Laws or in a manner which, in the reasonable opinion of the Landlord's environmental consultant, is substantially likely to cause health problems for occupants of the Premises or a future violation of Environmental Law. In the event of any such environmental condition, Tenant shall promptly take any and all steps necessary to rectify the same or shall, at Tenant's election, reimburse Landlord, upon demand, for the cost to Landlord of performing rectifying work. Upon the expiration or earlier termination of this Lease, Tenant shall remove any and all Hazardous Materials on, under or about the Premises.

10.2. Indemnification. Tenant shall indemnify, protect, defend (by counsel acceptable to Landlord) and hold harmless Landlord and its partners, directors, officers, employees, shareholders, lenders, agents, contractors and

each of their respective successors and assigns (individually and collectively, "Indemnities") from and against any and all claims, judgments, causes of action, damages, penalties, fines, taxes, costs, liabilities, losses and expenses arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (a) Tenant and/or Tenant's Parties' breach of any prohibition or provision of the preceding section, or (b) the presence of Hazardous Materials on, under or about the Premises or other properties as a result (directly or indirectly) of Tenant's and/or Tenant's Parties' activities, or failure to act

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when legally required to do so in connection with the Premises. This indemnity shall include the cost of any required or necessary repair, cleanup or detoxification, and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease. The written consent by Landlord to the presence of Hazardous Materials on, under or about the Premises shall not excuse Tenant from Tenant's obligation of indemnification pursuant hereto. Tenant's obligations pursuant to the foregoing indemnity shall survive the termination of this Lease.

11. DAMAGE AND DESTRUCTION.

11.1. Casualty. If the Building should be damaged or destroyed by fire or other casualty, Tenant shall give immediate written notice to Landlord. Within thirty (30) days after receipt thereof, Landlord shall notify Tenant whether such repairs can reasonably be made: (1) within thirty (30) days; (2) in more than thirty (30) days but in less than ninety (90) days; or (3) in more than ninety (90) days from the date of such notice.

11.1.1. Less Than 30 Days. If the Building should be damaged only to such extent that rebuilding or repairs can be reasonably completed within thirty (30) days, this Lease shall not terminate and, provided that insurance proceeds are available to fully repair the damage, Landlord shall repair the Building, except that Landlord shall not be required to rebuild, repair or replace any alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of Tenant. The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and the Building are unfit for occupancy.

11.1.2. Greater Than 30 Days. If the Building should be damaged only to such extent that rebuilding or repairs can be reasonably completed in more than thirty (30) days but in less than ninety (90) days, then Landlord shall have the option of: (1) terminating the Lease effective upon the occurrence of such damage, in which event the Rent shall be abated from the date Tenant vacates the Building; or (2) electing to repair the Building, provided insurance proceeds are available to fully repair the damage (except that Landlord shall not be required to rebuild, repair or replace any part of the alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of Tenant). The Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and the Building is unfit for occupancy.

11.1.3. Greater Than 90 Days. If the Building should be so damaged that rebuilding or repairs cannot be completed within ninety (90) days, either Landlord or Tenant may terminate by giving written notice within ten (10) days after notice from Landlord regarding the time period of repair; and this Lease and the Rent shall be abated from the date Tenant vacates the Building. In the event that neither party elects to terminate this Lease, Landlord shall promptly commence and diligently prosecute to completion the repairs to the Building, provided insurance proceeds are available to fully repair the damage (except that Landlord shall not be required to rebuild, repair or replace any alterations, partitions, fixtures, additions and other improvements which may have been placed in, on or about the Building by or for the benefit of

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Tenant). During the time when Landlord is prosecuting such repairs to completion, the Rent payable hereunder shall be abated proportionately from the date Tenant vacates the Building only to the extent rental abatement insurance proceeds are received by Landlord and only during the period that the Building is unfit for occupancy.

11.2. Tenant's Fault. If any portion of the Building is damaged resulting from the fault, negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

11.3. Uninsured Casualty. In the event that any portion of the Building is damaged and is not fully covered by insurance proceeds received by Landlord or in the event that the holder of any indebtedness secured by the Premises requires that the insurance proceeds be applied to such indebtedness, then Tenant shall have the right to terminate this Lease by delivering written notice of termination to Landlord within thirty (30) days after the date of notice to Tenant of any such event. In the event that Tenant does not elect to terminate this Lease, Landlord shall have the right to terminate this Lease by delivering written notice to Tenant within thirty (30) days after such election by Tenant or Tenant's failure to elect, as applicable, whereupon all rights and obligations shall cease and terminate hereunder.

11.4. Waiver. With respect to any damage or destruction which Landlord is obligated to repair or may elect to repair, Tenant waives all rights to terminate this Lease pursuant to rights otherwise presently or hereafter accorded by law.

12. EMINENT DOMAIN.

12.1. Total Condemnation. If all of the Premises is condemned by eminent domain, inversely condemned or sold in lieu of condemnation for any public or quasi-public use or purpose ("Condemned"), this Lease shall terminate as of the date of title vesting in such proceeding and Rent shall be adjusted to the date of termination.

12.2. Partial Condemnation. If any portion of the Premises is Condemned and such partial condemnation renders the Premises unusable for Tenant's business, or if a substantial portion of the Building is Condemned, this Lease shall terminate as of the date of title vesting or order of immediate possession in such proceeding and Rent shall be adjusted to the date of termination. If such partial condemnation does not render the Premises unusable for the business of Tenant or less than a substantial portion of the Building is Condemned, Landlord shall promptly restore the Premises to the extent of any condemnation proceeds recovered by Landlord, excluding the portion thereof lost in such condemnation, and this Lease shall continue in full force and effect except that after the date of such title vesting Rent shall be adjusted, as reasonably determined by Landlord.

12.3. Award. If the Premises are wholly or partially Condemned, Landlord shall be entitled to the entire award paid for such condemnation, and Tenant waives any claim to any part of the award from Landlord or the condemning authority; provided that Tenant shall have the right to recover from the condemning authority such compensation as may be separately awarded

to Tenant in connection with costs in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment to a new location.

12.4. Temporary Condemnation. In the event of a temporary condemnation, this Lease shall remain in effect, Tenant shall continue to pay Rent and Tenant shall receive any award made for such condemnation. If a temporary condemnation remains in effect at the expiration or earlier termination of this Lease, Tenant shall pay Landlord the reasonable cost of performing any obligations required of Tenant with respect to the surrender of the Premises. If a temporary condemnation is for a period which extends beyond the Term, this Lease shall terminate as of the date of occupancy by the condemning authority and any such

award shall be distributed in accordance with the preceding section.

13. DEFAULT.

13.1. Events of Defaults. The occurrence of any of the following events shall, at Landlord's option, constitute an "Event of Default":

13.1.1. Vacation or abandonment of the Premises for a period of thirty (30) consecutive days, and Tenant waives any right to notice Tenant may have under applicable law;

13.1.2. Failure to pay Rent on the date when due, the failure continuing for a period of five (5) days after payment is due;

13.1.3. Failure to perform Tenant's covenants hereunder (except default in the payment of Rent); provided, if such default is susceptible of cure and Tenant has promptly commenced the cure of such default and is diligently prosecuting such cure to completion, then the same must remain uncured for thirty (30) days after written notice thereof from Landlord;

13.1.4. The making of a general assignment by Tenant for the benefit of creditors, the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing, the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold, Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due, any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets, Tenant taking any action toward the dissolution or winding up of Tenant's affairs, the cessation or suspension of Tenant's use of the Premises, or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold;

13.1.5. The making of any material misrepresentation or omission by Tenant in any materials delivered by or on behalf of Tenant to Landlord pursuant to this Lease; or

13.1.6. A default by Tenant beyond any applicable notice and cure period pursuant to the terms of any lease entered into between Landlord and Tenant for space in the Project.

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13.2. Remedies.

13.2.1. Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice, this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord.

13.2.1.1. Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or relet the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

13.2.1.2. Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent

that had been earned at the time of termination, (b) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant 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 Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (a) and (b) above, shall be computed at the greater of 10% per annum or 5% per annum plus the federal discount rate on advances to member banks in effect at the Federal Reserve Bank of San Francisco on the 25th day of the month preceding the date of this Lease, and as used in (c) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

13.2.2. Continuation. Even though an Event of Default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession; and Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may, during the period Tenant is in default, enter the Premises and relet the same, or any portion thereof, to third parties for Tenant's account and Tenant shall be liable to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises and like costs. Reletting may be for a period shorter or longer than the remaining Term. Tenant shall continue to pay the Rent on the date the same is due. No act by Landlord hereunder, including acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease, shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. In the event that Landlord elects to relet the

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Premises, the rent that Landlord receives from reletting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent and Additional Rent; second, all costs, including maintenance, incurred by Landlord in reletting; and, third, Base Rent and Tenant's Share of Increases under this Lease. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date Rent is due under this Lease, the rent received from the reletting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs, including maintenance, Landlord incurred in reletting that remain after applying the rent received from reletting as provided hereinabove. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the Applicable Interest Rate from the date of such expenditure.

13.3. Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

14. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or sublet, whether voluntarily or involuntarily or by operation of law, the Premises or any part thereof without Landlord's prior written approval, which shall not be unreasonably withheld. The merger of Tenant with any other entity or the transfer of any controlling or managing ownership or beneficial interest in Tenant shall constitute an assignment hereunder. If Tenant desires to assign this Lease or sublet any or all of the Building, Tenant shall give Landlord

written notice forty-five (45) days prior to the anticipated effective date of the assignment or sublease. Landlord shall then have a period of thirty (30) days following receipt of such notice and all related documents and agreements associated with the assignment or sublease, including without limitation, the financial statements of any proposed assignee or subtenant, to notify Tenant in writing that Landlord elects: (1) to permit Tenant to assign this Lease or sublet such space, subject however to Landlord's prior written approval of the proposed assignee or subtenant and of any related documents or agreements associated with the assignment or sublease received by Landlord hereunder or reasonably requested by Landlord; (2) to disapprove such proposed assignment or subletting or (3) to terminate this Lease as of the date specified in Landlord's notice thereof. If Landlord should fail to notify Tenant in writing of such election, Landlord shall be deemed to have elected option (2). This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void. If Tenant receives rent or other consideration for any such transfer in excess of the Rent, or in case of the sublease of a portion of the Premises, in excess of such Rent that is fairly allocable to such portion, after appropriate adjustments to assure that all other payments required hereunder are appropriately taken into account, Tenant shall pay Landlord one hundred percent (100%) of the

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difference between each such payment of rent or other consideration and the Rent required hereunder. Landlord may, without waiving any rights or remedies, collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of the preceding sentence. Tenant shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to the Lease by assignees of Tenant without notifying Tenant or any successor of Tenant and without obtaining their consent. No permitted transfer shall be effective until there has been delivered to Landlord a counterpart of the transfer instrument in which the transferee agrees to be and remain jointly and severally liable with Tenant for the payment of Rent pertaining to the space and for the performance of all the terms and provisions of this Lease relating thereto arising on or after the date of the transfer. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Premises, the Building or the Project.

15. ESTOPPEL, ATTORNMENT AND SUBORDINATION.

15.1. Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed (and acknowledged if required by any lender), in the form attached hereto as Exhibit B, to any proposed mortgagee, purchaser or Landlord. Tenant's failure to deliver said statement in such time period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (c) no more than one period's Base Rent has been paid in advance. Landlord reserves the right to substitute a different form of estoppel certificate upon the request of any proposed mortgagee or purchaser. If any financier should require that this Lease be amended (other than in the description of the Premises, the Term, the Permitted Use, the Rent or as will substantially, materially and adversely affect the rights of Tenant), Landlord shall give written notice thereof to Tenant, which notice shall be accompanied by a Lease supplement embodying such amendments. Tenant shall, within ten (10) days after the receipt of Landlord's notice, execute the tendered Lease supplement.

15.2. Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease; provided, however, Tenant's obligation to attorn to such purchaser shall be conditioned upon Tenant's receipt of a non-disturbance agreement.

15.3. Subordination. This Lease shall be subject and subordinate to all ground leases and the lien of all mortgages and deeds of trust which now or

hereafter affect the Premises or the Project or Landlord's interest therein, or on or against all such ground leases, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination. If requested, Tenant shall execute whatever documentation may be required to further effect the provisions of this paragraph.

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16. MISCELLANEOUS.

16.1. General.

16.1.1. Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Premises; and there are no agreements either oral or written other than as set forth herein.

16.1.2. Time of Essence. Time is of the essence of this Lease.

16.1.3. Attorneys' Fees. In any action which either party brings to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be a part of the judgment in said action.

16.1.4. Severable. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

16.1.5. Law. This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises are located.

16.1.6. No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this document shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

16.1.7. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, to the extent assignment is approved by Landlord, Tenant.

16.1.8. Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

16.1.9. Memorandum of Lease. Tenant shall not record this Lease or a short form memorandum hereof without Landlord's prior written consent.

16.1.10. Agency, Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease or any acts of the parties hereto shall be deemed to create any relationship other than the relationship of landlord and tenant.

16.1.11. Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

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16.2. Signs. All signs and graphics of every kind visible in or from public view or corridors, or the exterior of the Building or Premises shall be

subject to Landlord's prior written approval and shall be subject to any applicable governmental laws, ordinances, and regulations and in compliance with Landlord's signage program. Tenant shall remove all such signs and graphics prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including without limitation, discoloration caused by such installation or removal.

16.3. Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing, and no waiver shall affect any default other than the default specified in the waiver and then said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party.

16.4. Financial Statements. Tenant shall provide to any lender, purchaser or Landlord, within ten (10) days after request, a current, accurate, certified financial statement for Tenant and Tenant's business prepared under generally accepted accounting principles consistently applied and such other certified financial information or tax returns as may be reasonably required by Landlord, purchaser or any lender of either.

16.5. Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of the individual partners, directors, officers, shareholders, agents or employees of Landlord; and Tenant shall look solely to the Building for satisfaction of any liability and shall not look to other assets of Landlord nor seek recourse against the assets of the individual partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

16.6. Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to Landlord's Address and Tenant's Address, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

16.7. Brokerage Commission. Tenant warrants to Landlord that Tenant's sole contact with Landlord or with the Premises in connection with this transaction has been directly with Landlord, and that no broker or finder can properly claim a right to a commission or a finder's fee based upon contacts between the claimant and Tenant. Tenant and Landlord, respectively, shall each indemnify, defend by counsel acceptable to the other, protect and hold each other harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Premises and this Lease.

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16.8. Authorization. Tenant shall furnish to Landlord, within ten (10) days after written request, evidence satisfactory to Landlord that the person who executed this Lease on behalf of Tenant was duly authorized to do so. Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

16.9. Holding Over; Surrender.

16.9.1. If Tenant holds over the Premises or any part thereof after expiration or the earlier termination of the Term, such holding over shall constitute a month-to-month tenancy, at a rent equal to the Base Rent in effect immediately prior to such holding over plus one hundred percent (100%) thereof. This paragraph shall not be construed as Landlord's permission for Tenant to

hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease. Without limiting the foregoing, if Tenant holds over the Premises or any part thereof after expiration or the earlier termination of the Term, Tenant shall indemnify, defend, protect and hold Landlord harmless from any and all claims (including claims of succeeding tenants), causes of action, expenses (including reasonable attorneys' fees), liabilities and lawsuits resulting from such a holdover.

16.9.2. Upon the termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

16.10. Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

16.11. Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition.

16.12. Addenda. The Addenda attached hereto, if any, and identified with this Lease and initialed by the parties hereto are incorporated herein by this reference as if fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date set forth above.

"Landlord"

NETWORK APPLIANCE, INC.
a California corporation

By: _____
Its: _____

"Tenant"

TRW INC., an Ohio corporation

By: _____
Its: _____

EXHIBIT A
PREMISES

EXHIBIT B
ESTOPPEL CERTIFICATE

Re: Lease dated _____, 19__ ("Lease") by and
between _____ ("Landlord")
and _____ ("Tenant").

Gentlemen:

Reference is made to the above-described Lease in which the undersigned is the Tenant. We understand that you are entering into a transaction with the Landlord which relates to, among other things, this Lease; and we hereby, as a material inducement for you to enter into such transaction with Landlord, represent that:

1. A true and correct copy of the Lease is attached hereto as Exhibit 1.

2. There are no modifications, amendments, supplements, arrangements, side letters or understandings, oral or written, of any sort, modifying, amending, altering, supplementing or changing the terms of the Lease except as follows: .

3. The Lease is in full force and effect, and the Lease has been duly executed and delivered by, and is a binding obligation of, the Tenant as set forth therein.

4. The undersigned acknowledges (a) that rent on the Lease has been paid up to and including _____, 19__, (b) that monthly rent during the _____ (____) years of the term of the Lease is _____ Dollars (\$_____) per month and (c) that rent has not been paid for any period after _____, 19__, and shall not be paid for a period in excess of one (1) month in advance.

5. The improvements on the Premises are free from defects in design, materials and workmanship; and the improvements meet all governmental requirements, including, but not limited to, zoning and environmental requirements.

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6. The Lease is not in default, and Landlord has performed the obligations required to be performed by Landlord under the terms thereof through the date hereof.

Dated: _____, 19__

Very truly yours,

"Tenant"

_____, a

By: _____
Its: _____

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SCHEDULE 1
HAZARDOUS MATERIALS

ASSIGNMENT OF AGREEMENT OF SALE

This ASSIGNMENT OF AGREEMENT OF SALE ("Assignment") is entered into this ___ day of December, 1999 (the "Effective Date"), by and between NETWORK APPLIANCE, INC., a California corporation ("Assignor") and BNP LEASING CORPORATION, a Delaware corporation ("Assignee").

RECITALS

A. TRW Inc., an Ohio corporation, and ESL Incorporated, a California corporation (collectively, the "Seller"), as seller, and Assignor, as purchaser, are now parties to that certain Agreement of Sale dated November 16, 1999 (the "Agreement") for the purchase and sale of certain improved real property commonly known as 1345 and 1347 Crossman Avenue and 1330 and 1350 Geneva Avenue in Sunnyvale, California. The Agreement is attached hereto as Exhibit A.

B. Pursuant to the terms of the Agreement, Assignor may assign Assignor's rights and obligations under the Agreement to a financing entity in connection with a synthetic lease transaction without the need for Seller's prior written consent.

C. Assignor now desires to assign the Agreement to Assignee, and Assignee desires to accept the assignment of the Agreement and to assume Assignor's obligations under the Agreement for the purposes of a synthetic lease transaction.

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

1. ASSIGNMENT. As of the Effective Date, Assignor assigns and transfers to Assignee all of Assignor's rights, title and interest in and to the Agreement, and Assignee hereby accepts the assignment in accordance with the terms of this Assignment.

2. NO RELEASE. Notwithstanding anything to the contrary herein, Assignor shall remain liable for the terms and obligations relating to the "Purchaser" under the Agreement.

3. CHOICE OF LAW. This Assignment shall be construed and enforced in accordance with the laws of the State of California.

4. SUCCESSORS. This Assignment shall be binding on, and inure to the benefit of, the parties hereto, their successors in interest, and assigns.

5. COUNTERPARTS. This Assignment may be executed in one or more counterparts, each of which, when taken together, shall constitute one entire agreement.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first hereinabove written.

"Assignor"

NETWORK APPLIANCE, INC.,
a California corporation

By: _____
Name: _____

Title: _____

"Assignee"

BNP LEASING CORPORATION,
a Delaware corporation

By: _____

Name: Lloyd G. Cox
Title: Vice President

THIS AGREEMENT OF SALE (this "Agreement") is made as of this ____ day of November 1999, by and between TRW Inc., an Ohio corporation and ESL Incorporated, a California corporation ("Sellers") and Network Appliance Inc., a California corporation ("Purchaser") and/or its assignee.

RECITALS:

- A. Sellers are the owners of certain parcels of land situated in Santa Clara County, California consisting of 27.848 acres of land described as Santa Clara County, California APN #110-42.2.6.7.8 having civic addresses of 1345 and 1347 Crossman and 1330 and 1350 Geneva, Sunnyvale, California, ("the Property"), as more particularly shown and labeled on Exhibit "A". The Sellers' property is divided as follows: ESL Inc. offers approximately 8.11 acres, TRW Inc. offers approximately 19.738 acres.
- B. Sellers have agreed to sell to Purchaser and Purchaser has agreed to purchase from Sellers the Property, subject to and on the terms and conditions hereafter set forth. The Purchaser at some time in the future intends to demolish the buildings on the land.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties and of other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties intending to be legally bound agree as follows:

1. INCORPORATION BY REFERENCE

The recitals hereinabove set forth together with all exhibits and schedules attached to this Agreement are hereby incorporated by reference as if more fully set forth in the body of this Agreement.

2. THE PROPERTY

Sellers agree to sell, and Purchaser agrees to buy, the Property. As used in this Agreement, the term "Property" includes (i) the Land; (ii) all easements, hereditaments, and appurtenances presently belonging to or inuring to the benefit of or pertaining to the Land or to be created pursuant to this Agreement; (iii) all right, title and interest of Sellers in all transferable warranties, plans and specifications; (iv) all licenses, permits, certificates of occupancy issued to Seller by Federal, state or local municipal authorities relating to the use maintenance, occupancy or operation of the Property.

3. PURCHASE PRICE AND METHOD OF PAYMENT

The Purchase Price for the Property shall be Sixty Million Dollars, (\$60,000,000). The Purchase Price, (plus or minus prorations) shall be paid in the form of a wire transfer of good funds on the Date of Closing (as hereafter defined). The Purchaser at closing shall be entitled to a credit against the Purchase Price for the Deposit paid pursuant to Paragraph 4 of this Agreement. The purchase price for the ESL Incorporated property will be Seventeen Million, Four Hundred Seventy One Thousand, Two Hundred Thirty Dollars, (\$17,471,230.00) and the

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purchase price for the TRW Inc. property will be Forty Two Million, Five Hundred Twenty Eight Thousand, Seven Hundred Seventy Dollars, (\$42,528,770.00).

4. DEPOSIT

Within five (5) business days of the Effective Date of this Agreement (as hereafter defined in Paragraph 26 (k)) Purchaser shall deliver to First American Title - San Jose, CA. ("Escrow Agent/Title Company") a deposit in the

amount of Three Million Dollars (\$3,000,000) in the form of a check which shall be promptly deposited by Escrow Agent into a separately designated interest bearing escrow account at a federally insured banking institution located in the State of California. The Deposit and all interest earned thereon shall be non-refundable except as otherwise expressly provided in this Agreement. Interest on the Deposit shall accrue to the benefit of Purchaser or to Sellers in the event of a forfeiture of the Deposit, pursuant to the terms of this Agreement.

5. FEASIBILITY STUDY PERIOD

Purchaser shall have thirty (30) days after the later of: (i) the Effective Date hereof, or (ii) the date Seller provides Purchaser with copies of the documents described in Section 6 of this Agreement (the "Feasibility Period") to, at its option, cause engineering and/or feasibility studies to be conducted on said Property, in order to determine in Purchaser's sole discretion whether the Property is suitable for its intended purpose; provided, however, Seller and Purchaser agree that the Feasibility Period will end no later than 5:00pm on December 13, 1999. Purchaser shall have the right at its sole discretion within said Feasibility Period to terminate this Agreement by written notice to Sellers, and to forthwith receive a refund of its Deposit to Sellers with accrued interest thereon and all parties shall be relieved of further liability hereunder except for the indemnity obligations set forth below. During said Feasibility Period, consistent with security considerations, Purchaser and/or its agents shall have the right of access to the Property to conduct site, structural and environmental tests and/or mechanical inspections of the Property. Purchaser or its agents shall be entitled during normal business hours and with at least twenty-four (24) hours of advance notification to access the Property to insure proper inspection and completion of the feasibility studies hereunder. Purchaser shall give Sellers at least twenty-four (24) hours of advance notice of Purchaser's intended entry, including the name of Purchaser's consultants, if applicable, and a description of any tests and inspections to be performed on the Property. Sellers shall have the right to disapprove of Purchaser's consultants and/or the methods of the proposed tests and inspections, in which case Purchaser may propose alternative consultants and/or testing methods or terminate this Agreement; provided, however, Seller acknowledges that Purchaser may perform Phase II environmental testing on the Property. Purchaser shall provide Sellers with copies of any assessments, reports or test results obtained by Purchaser in connection with such tests and inspections. Until Escrow closes, Purchaser shall keep confidential any information regarding the Property contained in such reports and shall not disclose such information to any third party (other than consultants, attorneys, creditors, lenders, partners, members, officers, employees agents, accounts or exchange facilities engaged to review such reports) or agreed to by the parties hereto, except as required by law or court order. In the event this Agreement is terminated, Purchaser shall repair any damage resulting from such inspection. Purchaser agrees to indemnify and hold Sellers harmless from any loss, damage, cost or expense, including reasonable attorneys fees, occasioned by any acts of Purchaser or its agents

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while on the Property conducting any feasibility studies. The aforesaid indemnification shall survive closing or any earlier termination of this Agreement.

6. SELLERS' STUDIES AND EXAMINATION OF DOCUMENTS

Sellers shall deliver to Purchaser within five (5) days of the Effective Date of this Agreement copies of all material governmental reports, and notices, environmental reports, soil tests, building plans, surveys, engineering reports, leases and any other documents relating to the property in Seller's possession or under Seller's control.

At all reasonable times subsequent to ratification hereof and with reasonable advance notice, up to and including the Closing Date, Sellers shall (a) make available to Purchaser, its counsel, contractors, agents or employees for examination at all reasonable times all plans, surveys, documents and other writings with respect to the Property in Sellers' possession or control; (b) disclose and instruct its counsel and corporate officers and/or partners to disclose to Purchaser, its counsel and/or accountants all information pertaining

to the Property which may be requested by Purchaser in writing hereunder; (c) afford any and all representatives of Purchaser reasonable access to the Property upon at least twenty-four (24) hours in advance notice for the right to conduct a complete inspection thereof, provided however, Purchaser shall not be granted access to attorney-client privileged materials; and (d) Sellers shall promptly give to Purchaser copies of any written notices which Sellers receive relating to the Property.

7. LEASE-BACK AGREEMENT

Prior to the expiration of the feasibility period, Buyer agrees to enter into a lease agreement (the "Leases") with the Sellers for the buildings. The term of the Leases shall be

- A. 1345 Crossman - From close of escrow to December 31, 2000;
- B. 1330 Geneva - From close of escrow to June 30, 2002;
- C. 1347 Crossman - From close of escrow to June 30, 2001;
- D. 1350 Geneva - From close of escrow to June 30, 2002.

Rent for the leases shall be \$1.15/SF/Mo. All operating expenses associated with the property including but not limited to Real Estate taxes, landscape, parking lot maintenance, janitorial, general building maintenance and insurance will be paid for or performed by Sellers.

The lease agreement(s) will be based upon the lease attached as Exhibit "B". Seller and Purchaser will agree on the particulars of the lease within five (5) business days of the Effective Date.

8. TITLE

(a) As a condition to Closing, title to the Property at Closing shall be conveyed to Purchaser by grant deed subject only to the Permitted Exceptions (as hereinafter defined). The term "Permitted Exceptions" shall mean (i) the lien of real estate taxes not yet due and payable; (ii) all matters revealed in the Title Commitment obtained by Purchaser pursuant to subparagraph

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(b) hereof or of record as of such date (excluding mortgage, deeds of trust or other monetary liens encumbering the Property) and approved in writing by Purchaser; (iii) all matters disclosed by a survey which are approved by Purchaser, if any; (iv) all building, zoning, and other state, county or federal laws, codes and regulations (whether existing or proposed) affecting the Property; and (v) any title exception created directly or indirectly by any act or omission of Purchaser or its representatives, agents, employees or invitees.

(b) Purchaser shall promptly obtain from a reputable title insurance company of its choice licensed to do business in the State of California (the "Title Company") a commitment to issue an ALTA title policy covering the Property and the improvements thereon, if any, which may state that it is subject to any matters that are disclosed by a survey of the Property ordered by Purchaser (the "Title Commitment"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Purchaser shall have the right to object, in its sole and absolute discretion, to any exceptions contained in the Title Commitment by giving written notice to Sellers and the Company prior to the expiration of the Feasibility Period stating the matters to which Purchaser disapproves and the reasons therefore. If Purchaser fails timely to provide such written objection, then Purchaser shall conclusively be deemed to have disapproved all matters affecting title to the Property and this Agreement shall terminate and the Deposit, together with all interest thereon shall be promptly returned to Purchaser.

9. CLOSING

Provided Purchaser does not first terminate this Agreement pursuant to the provisions hereof, and the conditions precedent to Purchaser's obligation to close have been satisfied or waived by Purchaser, Sellers and Purchaser agree to proceed to full and final closing on the Property on a date selected by Purchaser and designated in writing to Sellers at least two (2) days in advance thereof which date shall occur no later than thirty (30) days after the end of the Feasibility Period (the "Closing Date" or "Date of Closing"). With respect

to all time periods herein contained, time shall be of the essence. In no event shall the Closing take place after December 17, 1999.

10. REPRESENTATIONS AND WARRANTIES

(a) Sellers represent and warrant to Purchaser as of the Effective Date hereof that:

- (i) Sellers are corporations duly organized, validly existing and in good standing under the laws of the state of their incorporation, are qualified to do business in and are in good standing in the State of California and have duly authorized the execution and performance of this Agreement and the transactions contemplated herein.
- (ii) The persons executing this Agreement on behalf of Sellers represent and warrant to Purchaser in their individual capacities that they have the authority to enter into this Agreement and to bind Sellers in accordance with its terms without obtaining any

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further approvals or consents.

- (iii) Sellers have the right, power and authority to execute this Agreement and all other instruments and documents contemplated hereby and to perform any and all acts necessary or desirable to consummate the transactions contemplated hereby. The entering into this Agreement does not, and the consummation of the acts contemplated by this Agreement shall not, violate any agreements, documents or instruments to which Sellers are a party or by which it is bound, or any law, governmental order or decree to which Sellers are subject.
- (iv) There are no tenants or other parties in possession of any part of the Property, nor are there other parties who have a right to possession of or title to any part of the Property, except as set forth in Exhibit "C".
- (v) There are no licenses or contracts of any nature (including broker or commission fee arrangements) affecting or relating to the Property, except as set forth in Exhibit "D".
- (vi) There are no actions, suits pending or threatened condemnation or similar proceeding affecting any part of the Property.
- (vii) There are no actions, suits, proceedings or claims affecting any part of the Property, or affecting Sellers with respect to the ownership, occupancy, use or operation of any part of the Property, pending or threatened in or before any court, agency, commission, or board.
- (viii) Sellers have received no written notice from appropriate governmental authorities regarding, and Sellers have no knowledge of, any violation of applicable environmental, health, fire, building, safety or planning or zoning laws or ordinances.
- (ix) No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or over action under Federal or State bankruptcy laws is pending or threatened against or contemplated by Sellers.
- (x) Sellers have never used the Property for storage,

handling, manufacturing, discharge or disposal of hazardous materials or for industrial purposes, except for the storage, handling and use of reasonable quantities of hazardous materials used in the research and development of hardware products in compliance with all applicable laws, nor does Sellers have actual knowledge of a release of hazardous materials by a third party.

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- (xi) Neither Sellers or any of the parties comprising Sellers are a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act, as amended "FIRPTA". Sellers are corporation(s) which maintain offices in the State of California, and will not disburse any proceeds due Sellers upon the Close of Escrow to an address outside the boundaries of the State of California, and will not use a financial intermediary (as defined in California Revenue and Taxation Code Section 18805(d)) for the receipt of proceeds from this transaction. At the time of closing the Sellers shall execute such instruments, certifications and/or affidavits as Purchaser or its title insurance company may deem necessary in order to comply with FIRPTA or other tax related disclosure and reporting requirements. Sellers' tax identification numbers set forth on the signature page of this Agreement are correct.

- (xii) Sellers have not received any notice, and have no actual knowledge, that the Property is in violation of any federal, state or local ordinance, law, rule, regulations order or requirement relating to Hazardous Materials. For purposes of this Agreement "Hazardous Materials" shall mean any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; any substance the presence of which on the Property is prohibited by any law similar to those set forth in this subparagraph, including the Clean Water Act (33 U.S.C. Sections 466 et seq.), ----- the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 et seq.), the Toxic ----- Substance Control Act (15 U.S.C. Sections 2601-1629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100-25600), and the Porter-Cologne Water Quality Control Act (California Health and Safety Code Sections 13000 et seq.); and any toxic or hazardous substances or ----- materials, whether products or wastes, including, without limitation, asbestos or PCBs. Hazardous Materials shall also include those asbestos-containing materials defined and described in Environmental Protection Agency Report No. 56/5085-024 (June, 1985) or any related successor report or other applicable government regulations defining or describing such asbestos-containing materials.

- (xiii) Except as set forth in Exhibit "E", at the Closing Date, there will

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be no outstanding contracts made by Sellers for the construction or repair of any Improvements to the Property that have not been fully paid for and Sellers shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property at Sellers' request prior to closing.

- (xiv) Prior to the Closing Date, Sellers shall not, without the prior written consent of Purchaser, enter into any contract with respect to the Property that will survive Closing.
- (xv) The existing insurance policies, or equivalent coverage, shall remain continuously in force through the Date of Closing.
- (xvi) Prior to the Closing Date, the Sellers: (i) shall not amend or terminate any agreement affecting to or relating to the Property without the prior written consent of Purchaser; (ii) shall maintain all insurance coverage carried by Sellers with respect to the Property as of the date hereof; (iii) shall continue to maintain the Property in substantially the same manner in which Seller is maintaining the Property as of the date hereof; (iv) shall not create or suffer to exist any easements, liens, deeds of trust or other security interests in the Property; and (v) shall pay before delinquency all taxes and assessments levied, imposed or assessed against the Property.
- (xvii) To Sellers knowledge the Property is connected to and serviced by adequate water, sewage disposal, gas, electricity and telephone facilities in accordance with all legal requirements, and to meet the requirements of normal usage thereof. All such utilities either enter the Property through adjoining public streets or, if they pass through an adjoining private parcel, they do so in accordance with valid public easements or valid and perpetual private easements; none of the easements, covenants or restrictions contained in any instruments of record affecting the Property has been violated; and the continued operation and maintenance of the Property for the purposes for which it is currently being operated and maintained will not constitute a violation thereof. To the best of the Sellers' knowledge, there are no assessments or contemplated assessments against the Property with respect to such utility services, any contemplated or intended public improvements or otherwise, except as disclosed by the public records of the county recorder's office of the county in which the Property is located.
- (xviii) To Sellers knowledge all due diligence materials and other information which Sellers have provided to Purchaser concerning the Property, is accurate and complete and does not contain any

untrue statement of material fact nor does it omit to state any material fact necessary to make the statements contained therein not misleading.

- (xix) To Sellers knowledge the Property, and each part thereof, is in good condition and repair and free from any defects which impair the Sellers' use of the Property, including without limitation, erosion, drainage or soil problems and physical or mechanical defects which impair the Sellers' use of the Property.

Without limitation of the foregoing, there are no defects or deficiencies which impair the Sellers' use of the Property in the heating, air conditioning, plumbing and other mechanical and electrical apparatus and appliances located on the Property, nor any defects which impair the Sellers' use of the Property in the roof, windows, exterior walls or structural components of the improvements on the Property, and there are no leaks in the roof or windows which impair the Sellers' use of the Property.

- (xx) Sellers are not in default of any of their obligations or liabilities pertaining to the Property; nor is there any state of facts or circumstances or condition or event which, after notice or lapse of time or both, would constitute or result in any such default.

Except as specifically set forth in this Agreement, Sellers disclaim the making of any representations or warranties, express or implied, regarding the Property or matters affecting the Property, including the physical condition of the Property; title to or the boundaries of the Property, pest control matters; soil condition, hazardous wastes, toxic substances or other environmental matters; compliance with building, health, safety, land use and zoning laws, regulations and orders; structural and other engineering characteristics; traffic patterns; leasing status; economic performance; value and all other information pertaining to the Property. Purchaser acknowledges and agrees that Purchaser enters into this Agreement with the intention of making and relying upon its own investigation and evaluation of the value of the Property and of its physical, environmental, economic and legal condition, and that any information and materials (including, without limitation, any pro forma operating statements, market analyses, demographic studies and the like) relating to the Property are provided without representation or warranty, express or implied, to Purchaser to facilitate Purchaser's timely review, study and evaluation of the Property and not as a substitute for Purchaser's own investigation and evaluation of the value of the Property and of its physical, environmental, economic and legal condition.

Purchaser acknowledges and agrees that, except to the extent, if any, specifically provided in this Agreement, no employee of Sellers, no agents of Sellers nor anyone acting or claiming to act on Sellers' behalf concerning the Property is authorized or empowered to make any representations or warranties on behalf of Sellers concerning the Property. Purchaser acknowledges and agrees that Purchaser will rely solely upon the advice of its own accounting, tax, legal, architectural, appraisal, engineering, environmental, property management and other

advisors.

Except for matters arising from or attributable to a material finding known to Sellers and not disclosed to Buyer, Purchaser is purchasing the Property in its "as is" condition on the Closing Date and will assume the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its inquiries and investigations. As used herein, "material" shall mean all substantive findings that would influence or tend to influence Buyer's decision to acquire the Property.

Notwithstanding anything to the contrary provided herein, Purchaser shall have no right to pursue any action against Sellers pursuant to this paragraph 10(a) as a result of any of Sellers' representations and warranties being untrue, inaccurate or incorrect if Purchaser had actual knowledge at the time of closing that such representation or warranty was untrue, inaccurate or incorrect at the time of closing and Purchaser nevertheless elected to purchase the Property and close escrow hereunder.

(b) Purchaser represents and warrants to Sellers as of the Effective Date hereof and as of the Closing Date that:

- (i) The execution and delivery of this Agreement by Purchaser and the consummation of the transactions contemplated hereby

will not result in the breach of any terms or conditions of, or constitute a default under any contract, agreement, commitment, indenture, mortgage, note, bond, license or other instrument or obligation to which Purchaser is now a party or by which the Purchaser may be bound or affected.

- (ii) Purchaser has taken all actions and steps necessary to permit its execution hereof and at Closing will have taken all necessary action to permit its performance of its obligations hereunder.
- (iii) This Agreement is legally binding upon and enforceable against Purchaser in accordance with its terms.
- (iv) Purchaser is a California corporation, duly organized, validly existing and in good standing under the law of the state of its incorporation, has qualified to do business in and is in good standing in the State of California and has duly authorized the execution and performance of this Agreement and the transactions contemplated herein.
- (v) The persons executing this Agreement on behalf of Purchaser represent and warrant to Sellers in their individual capacities that they have the authority to enter into this Agreement and to bind Purchaser in accordance with its terms without obtaining any further approvals or consents.
- (vi) Purchaser has the right, power and authority to execute this Agreement and all other instruments and documents contemplated hereby and to

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perform any and all acts necessary or desirable to consummate the transactions contemplated hereby. The entering into this Agreement does not, and the consummation of the acts contemplated by this Agreement shall not, violate any law, governmental regulation, order or decree to which Purchaser is subject.

11. COSTS AND PRORATIONS

(a) Utilities and real estate taxes shall be pro-rated as of the date leases terminate. To the extent practicable Sellers shall have all utility meters read to the date prior to termination and all applicable utilities shall be transferred into the name of Purchaser as of that date. The parties agree that items not susceptible to exact proration may be re prorated for a period of ninety (90) days following the lease terminations.

(b) Sellers shall pay the costs for a CLTA Title policy, the Santa Clara County documentary transfer tax and the escrow fees. All other costs and charges of the escrow for the sale not otherwise provided for in this Paragraph 11(b) or elsewhere in this Agreement shall be allocated in accordance with the closing customs for Santa Clara County, California.

12. DAMAGE, CONDEMNATION OR DESTRUCTION OF PROPERTY PENDING CLOSING

Risk of loss shall remain with Sellers until the recordation of the deed of conveyance. Sellers shall promptly notify Purchaser of any damage or destruction of all or any part of the Property or any condemnation or taking by eminent domain of any portions of the Property. In the event the damage or destruction exceeds Five Million and No/100 Dollars (\$5,000,000.00). Purchaser shall have the right to terminate this Agreement without liability on its part and receive a refund of the Deposit, together with accrued interest thereon by so notifying Sellers within fifteen (15) days of Sellers notification to Purchaser of said condemnation, damages or destruction. If Purchaser elects to proceed with Closing, Sellers shall assign to Purchaser all condemnation awards or insurance proceeds payable to Sellers on account of such condemnation, damage or destruction, together with any deductibles attributable thereto, and the Purchase Price shall be equitably abated to the extent the awards and/or proceeds together with any deductibles attributable thereto, are less than the

cost of repairing the Property incurred by Purchaser.

13. POSSESSION

Sellers agree to deliver possession of the Property to Purchaser free of all tenancies or occupancy except for the leases provided for in Paragraph 7.

14. DELIVERIES AT CLOSING

(a) At the Closing, Sellers shall deliver the following to Purchaser:

- (i) a Grant Deed dated as of the Closing Date conveying fee simple title to the Property to Purchaser, subject only to the Permitted

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Exceptions;

- (ii) to the extent available, plans and specifications for the Property;
- (iii) to the extent they are then in Sellers possession and not posted at the Property, all Permits issued for or with respect to the Property by governmental and quasi-governmental authorities having jurisdiction;
- (iv) an affidavit setting forth that all of the representations and warranties made by Sellers as set forth in Paragraph 10 (a) (i), (ii), (iii) (iv), (v), (vi), (vii), (viii), (ix), (xi), (xii), (xiii), xvii), (xviii), (xvix), and (xx) of this Agreement are correct as of the Closing Date;
- (v) a FIRPTA Affidavit;
- (vi) a California Withholding Exemption Certificate (Form 590RE) certifying that Sellers have a permanent place of business in California or are qualified to do business in California;
- (vii) any other documents required by this Agreement to be delivered by Sellers.
- (viii) leases based on the model in Exhibit B.
- (ix) an assignment document assigning all of Seller's interest in any intangible property.

(b) At the Closing, Purchaser shall deliver the following to Sellers:

- (i) the full Purchase Price by wire transfer as adjusted for apportionment's, and less any amounts otherwise properly deducted pursuant to this Agreement;
- (ii) any other documents required by this Agreement to be delivered by Purchaser including such certifications, resolutions, affidavits or other documents as are required to be satisfied with respect to Purchaser's authority to purchase the Property as contemplated under this Agreement;
- (iii) leases based on the model in Exhibit B.

15. CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS

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The obligation of Purchaser to purchase the Property and to perform the other covenants and obligations to be performed by it on the Closing Date shall be subject to the following conditions (all or any of which may be waived, in whole or in part, by Purchaser):

(a) Sellers shall have delivered all items required under this Agreement by Closing.

(b) The representations, warranties and covenants herein by Sellers shall be correct, complete and fully performed on and as of the Closing Date with the same force and effect, as though such representations, and warranties had been made on and as of such Closing Date.

(c) On the Closing Date, no part of the Property shall previously have been acquired, by authority of any governmental agency in the exercise of its power of eminent domain or by private purchase in lieu thereof, nor on the Closing Date shall there be written notice of any such imminent acquisition or purchase of a portion of the Property which is more than de minimus.

(d) On the Closing Date, the Title Company shall be committed to issue to Purchaser an ALTA title policy in the amount of the Purchase Price insuring Purchaser's fee title to the Property subject only to the Permitted Exceptions.

(e) No proceeding shall be pending to change, redesignate or redefine the zoning classification of the Property so as to restrict or prevent the present and continued use of the Property which was not previously known to or discoverable by Purchaser during the Feasibility Period.

(f) The Sellers shall have performed all of the covenants and agreements herein that the Sellers are required to perform on or before the Close of Escrow.

(g) Buyer's inspection and approval of a survey of the Property.

Upon failure of any of the conditions set forth in this Paragraph, Purchaser may, at its option, terminate this Agreement (whereupon the Deposit and any interest thereon will be returned to Purchaser), waive such failure or, if such failure constitutes a breach of this Agreement, pursue such remedies as are available to Purchaser under Paragraph 18 of this Agreement.

16. NOTICES

Any notice required or permitted to be given under this Agreement shall be sent by hand delivery, certified mail, return receipt requested or by Emery Air Freight, Airborne Express, Federal Express, or other reputable overnight air courier service, in either case addressed to the parties as follows.

If to Sellers: TRW Inc.
12011 Sunset Hills Road
Reston, Virginia 20190

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Marsha A. Klontz, Esquire
Telephone: 703-345-7070
Fax: 703-345-7075

And to: Mr. Bill Gibbs
TRW Electromagnetic Systems
1330 Geneva Drive
P.O. Box 3510
Sunnyvale, CA 94088-3510
Telephone: (408) 743-6020
Fax: (408) 743-4259

If to Buyer: Network Appliance Inc.
c/o Thom Bryant

or in each case to such other address as any party hereto may from time to time designate to the other parties hereto by notice given pursuant to this Paragraph.

17. BROKERAGE

Seller shall be responsible for any commission payable to its agents and Purchaser will be responsible for any commission payable to its agents. Sellers and Purchaser represent and warrant each to the other that such party has had no contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein, except for CPS, the Commercial Property Services Company and WWM, Weber Wood Medinger. If any other broker or finder makes a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes its claim shall be responsible for said commission and shall indemnify and save harmless the other from and against all liabilities and expenses (including without limitation, counsel fees and disbursements in defending against such liabilities), which may accrue by reason of, on account of, or growing out of or resulting from breach by such party of such warranty and representation. This indemnification shall survive closing or any earlier termination of this Agreement.

18. TERMINATION, DEFAULT AND REMEDIES

(a) If (i) any of the representations and warranties made by the Sellers in Paragraph 10 shall be inaccurate or incorrect, (ii) the Sellers shall fail to perform any of the material covenants or agreements to be performed by it under this Agreement on or before the Date of Closing or (iii) the Purchaser shall be relieved of its obligations under this Agreement by operation of Paragraph 15 then, in any such event, the Purchaser shall have the right to terminate this Agreement by giving written notice to the Sellers and the Escrow Agent. The Escrow Agent

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shall return the Deposit together with accrued interest to the Purchaser, and neither party shall have any further liability to the other under this Agreement. If the Purchaser would have the right to terminate this Agreement by reason of an event described in clauses (i) or (ii), above, the Purchaser, in lieu of terminating this Agreement, shall have the right to pursue the remedy of specific performance. Purchaser hereby waives any right to seek monetary damages for any incidental or consequential damages allegedly caused by Sellers breach of this Agreement, except for Purchaser's reasonable out-of-pocket costs associated with the negotiation of this Agreement and the performance of Purchaser's due diligence review of the Property. In any event, Purchaser shall not be required to waive any rights to seek monetary damages for any breach of this Agreement by Sellers if the remedy of specific performance is not available or meaningful due to the actions of Sellers..

(b) IN THE EVENT THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF PURCHASER, SELLERS SHALL BE ENTITLED TO RETAIN THE DEPOSIT, TOGETHER WITH ANY INTEREST EARNED THEREON, AS LIQUIDATED DAMAGES AS ITS SOLE REMEDY IF THIS AGREEMENT IS TERMINATED AS A RESULT OF SUCH DEFAULT. THE PARTIES HAVE AGREED THAT SELLERS' ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY PURCHASER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT OF THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLERS' DAMAGES AND AS SELLERS' EXCLUSIVE REMEDY AGAINST PURCHASER, AT LAW OR IN EQUITY, IN THE EVENT THAT THIS TRANSACTION DOES NOT CLOSE DUE TO A DEFAULT UNDER THIS AGREEMENT ON THE PART OF PURCHASER. THE FOREGOING PROVISIONS SHALL NOT, HOWEVER, LIMIT IN ANY WAY SELLERS' ENFORCEMENT OF THE INDEMNITIES PROVIDED IN PARAGRAPHS 5 AND 17 WHICH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

INITIALS: Sellers: _____ Purchaser: _____

19. OBLIGATIONS OF SELLERS PENDING CLOSING

(a) Between the Effective Date hereof and the Closing Date, Sellers will cause the Property to be maintained in its present order and condition, normal wear and tear excepted. Sellers' further covenants to keep in full force and effect until Closing casualty insurance insuring the Property for its full replacement cost. In the event of damage or destruction as set forth in Paragraph 12 of this Agreement the provisions of Paragraph 12 will apply.

(b) Sellers shall notify Purchaser promptly, and Purchaser shall notify Sellers promptly, if either receives notice of any occurrence prior to the Closing Date which would make its representations, warranties or covenants contained herein not true in any material respect.

(c) Through the Closing Date, Sellers will maintain the existing insurance policies, or equivalent coverage, with the same limits of coverage now carried with respect to

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the Property.

(d) Sellers shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Property for any fiscal period in which the closing is to occur or any subsequent fiscal period without the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed. Real estate tax refunds and credits received after the Closing Date which are attributable to the fiscal tax year during which the Closing Date occurs shall be apportioned between Sellers and Purchaser after deducting the expenses of collection thereof, which obligation shall survive the closing.

20. SURVIVAL

Each of the representations, warranties, covenants or other obligations set forth in this Agreement shall survive the Closing Date but shall fully cease and expire with respect to any claims not raised by the aggrieved party, by written notice to the other, within eighteen (18) months after the Closing Date.

21. LAND SALES DISCLOSURE ACT

Sellers and Buyer intend that this sale of land comply with the exemption requirements of the Interstate Land Sales Full Disclosure act, as stated in 15 U.S.C. 1702(a)(8) and confirm that the conditions set forth in such section are met.

22. MUTUAL COVENANTS

Absent an express statement to the contrary, wherever any consent or approval of a party is required hereunder, such party shall not unreasonably withhold such consent or approval.

23. REDEVELOPMENT COOPERATION

Sellers' shall provide reasonable cooperation to Purchaser in connection with Purchaser's efforts to obtain governmental, quasi-governmental and third-party approvals, as Purchaser may deem appropriate to enable Purchaser to develop the Property, construct improvements thereon and operate its business from the Property; provided, however that Purchaser shall reimburse any reasonable cost of Sellers' cooperation, to the extent such cost has previously been approved in writing by Purchaser.

24. CONFIDENTIALITY

Except for disclosures as may be required by law or court order, or disclosures to the parties' creditors, lenders, partners, members, officers, employees, agents, consultants, attorneys, accountants and exchange facilities, or disclosures agreed to by the parties hereto in writing Sellers and Purchaser agree that they shall keep in confidence this Agreement and each and every term

and provision hereof, including, without limitation, the Purchase Price.

25. MISCELLANEOUS PROVISIONS

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(a) Binding Effect. This Agreement shall, be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representative, successors and assigns.

(b) Waiver, Modification. Failure by Purchaser or Sellers to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof.

(c) Assignment. This Agreement may not be assigned by either Purchaser or Seller without the prior written consent of the other party. Notwithstanding the foregoing, Purchaser may assign this Agreement to an entity in connection with a synthetic lease transaction without the need for the prior consent of the Sellers.

(d) Governing Law. This Agreement shall be governed by and construed under the laws of the State of California.

(e) Headings. The paragraph headings are herein used for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth or the scope of any paragraph.

(f) Counterparts. This Agreement may be executed in two or more counterpart originals; each counterpart original shall be for all purposes considered an original of this Agreement.

(g) Partial Invalidity. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect; and it is the intention of all the parties hereto that if any provision of this Agreement capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

(h) Time. With respect to all time periods contained in this Agreement, it is expressly understood that time shall be of the essence.

(i) Holidays, etc. Whenever the last day for the performance of any act required by either Sellers or Purchaser under this Agreement shall fall upon a Saturday, Sunday, or legal holiday, the date for the performance of any such act shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday.

(j) Counsel Fees. If any action is brought by either party against the other party including, without limitation, any action with respect to the receipt of the Deposit as liquidated damages pursuant to Paragraph 18(b), the prevailing party shall be entitled to recover from the other party reasonable attorney's fees, costs and expense incurred in connection with the prosecution or defense of such action.

(k) Effective Date. The Effective Date of this Agreement shall be the date

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that a fully ratified original of this Agreement is executed and delivered to Purchaser.

(l) No Third-Party Beneficiary Rights. Purchaser and Sellers agree that this Agreement has been entered into solely for the benefit of Purchaser and Sellers and no other person or entity, it being the intention of Purchaser

and Sellers that no person or entity not a party to this Agreement shall have any right or standing to (a) bring any action against Purchaser or Sellers based on this Agreement or (b) assume that any provision of this Agreement will be enforced or remain unmodified or unwaived, or (c) assert that it or he is or should be or was intended to be a beneficiary under any provision of this Agreement.

(m) Exculpation. In the enforcement of its rights hereunder Sellers agree not to seek or obtain a money judgment or exercise any other right or remedy against any member, shareholder, officer, director or employee of Purchaser or any member of Purchaser and shall look solely to the Purchaser and the Deposit hereunder for the enforcement of all of its rights and remedies hereunder. In the enforcement of its rights hereunder Purchaser agrees not to seek or obtain a money judgment or exercise any other right or remedy against any member, shareholder, officer, director or employee of Sellers and shall look solely to Sellers for the enforcement of all rights and remedies hereunder.

(n) Further Assurance. In addition to the obligations performed under this Agreement by Sellers at Closing, Sellers and Purchaser shall perform, from time to time, such other acts, and shall execute, acknowledge and/or deliver such other instruments, documents and other materials as Purchaser or its counsel or Escrow Agent reasonably may request in order to consummate the transactions provided for in this Agreement and to vest title to the Property in Purchaser.

WITNESS the following signature

SELLERS: TRW Inc.

By: _____
Printed Name: _____
Title: _____
Date: _____
Tax ID No.: 34-0575430

SELLERS: ESL Inc.

By: _____
Printed Name: _____
Title: _____

Date: _____
Tax ID No.: 94-1566685

PURCHASER: Network Appliance, Inc.

By: _____
Printed Name: _____
Title: _____
Date: _____

Tax ID No. :

CLOSING CERTIFICATE
(PHASE IV)

AND

AGREEMENT

BETWEEN

NETWORK APPLIANCE, INC.,
("NAI")

AND

BNP LEASING CORPORATION
("BNPLC")

DECEMBER ____, 1999

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CLOSING CERTIFICATE AND AGREEMENT

This CLOSING CERTIFICATE AND AGREEMENT (this "AGREEMENT"), by and between NETWORK APPLIANCE, INC., a California corporation ("NAI"), and BNP LEASING CORPORATION, a Delaware corporation ("BNPLC"), is made and dated as of December ____, 1999 (the "EFFECTIVE DATE").

RECITALS

A. Contemporaneously with the execution of this Agreement, BNPLC and NAI are executing a Common Definitions and Provisions Agreement (Phase IV - Improvements) (the "IMPROVEMENTS CDPA"), and a Common Definitions and Provisions Agreement (Phase IV - Land) (the "LAND CDPA"), each dated as of the Effective Date, which are each incorporated into and made a part of this Agreement for all purposes. Capitalized terms defined in the Improvements CDPA and used but not otherwise defined herein are intended in this Agreement to have the respective meanings ascribed to them in the Improvements CDPA. Any capitalized terms defined in the Land CDPA and used but not otherwise defined herein or in the Improvements CDPA are intended in this Agreement to have the respective meanings ascribed to them in the Land CDPA. As used in this Agreement, "PROPERTY" is intended to mean, collectively, the Property as defined in the Improvements CDPA and the Property as defined in the Land CDPA; "IMPROVEMENT DOCUMENTS" is intended to mean, collectively, the Operative Documents as defined in the Improvements CDPA; "LAND DOCUMENTS" is intended to mean the Operative Documents as defined in the Land CDPA; "OPERATIVE DOCUMENTS" is intended to mean the Improvement Documents and the Land Documents, collectively; "IMPROVEMENTS LEASE" is intended to mean the Lease as defined in the Improvements CDPA; "LEASES" is intended to mean the Improvements Lease and the Lease as defined in the Land CDPA, collectively; "PURCHASE AGREEMENTS" is intended to mean the Purchase Agreement as defined in the Improvements CDPA and the Purchase Agreement as defined in the Land CDPA, collectively; and "DESIGNATED SALE DATE" is intended to mean the earlier of the Designated Sale Date as defined in the Improvements CDPA or the Designated Sale Date as defined in the Land CDPA.

B. As a condition to its execution of other Operative Documents, BNPLC requires the representations, warranties and covenants of NAI set out below. At the request of NAI and to facilitate the transactions contemplated in the other Operative Documents, BNPLC is acquiring the Land described in Exhibit A attached hereto from Seller and any interest of Seller in any existing Improvements thereon, subject to the Permitted Encumbrances described in Exhibit B attached hereto and with the understanding that development and use of such Land may be subject to or benefitted by the Development Documents described in Exhibit C attached hereto (if any).

C. As a condition to its execution of other Operative Documents, NAI requires the representations and covenants of BNPLC set out below.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

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

(A) Condition of the Property. The Land as described in Exhibit A is the same as the land shown on the plat included as part of the survey titled "ALTA/ACSM LAND TITLE SURVEY FOR NETWORK APPLIANCE, 1345 CROSSMAN AVENUE, 1347 CROSSMAN AVENUE, 1330 GENEVA DRIVE, AND 1350

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GENEVA DRIVE" made by Kier & Wright, Licensed Land Surveyor, dated December 2, 1999, as Job No. 97208-16, which survey was delivered to BNPLC at the request of NAI, and except as shown on the survey there are to the best of NAI's knowledge no easements or encroachments visible or apparent from an inspection of the Land. No significant encroachment of building Improvements exist across the boundaries of the Land described in Exhibit A, and no significant building Improvements that presently exist on the Land may be disturbed by reason of the exercise of easement or other rights created by any of the Permitted Encumbrances. Adequate provision has been made for the Land and the Property to be served by electric, gas, storm and sanitary sewers, sanitary water supply, telephone and other utilities required for the use thereof. All streets, alleys and easements necessary to serve the Land and Improvements contemplated by the Improvements Lease have been completed and are serviceable. To the best of NAI's knowledge, no extraordinary circumstances (including any use of the Land as a habitat for endangered species) exists that would materially and adversely affect the use of any Improvements for their intended purposes or other reasonable future development of the Land. NAI is not aware of any latent or patent material defects or deficiencies in the Property that, either individually or in the aggregate, could materially and adversely affect the use or occupancy of the Property or the construction or use of Improvements as permitted by the Improvements Lease or could reasonably be anticipated to endanger life or limb. No part of the Land is within a flood plain as designated by any governmental authority.

(B) Title to the Property. The deed that Seller is executing in favor of BNPLC pursuant to the Existing Contract shall vest in BNPLC good and marketable title to the Land and Improvements, subject only to the Permitted Encumbrances, the Development Documents and any Liens Removable by BNPLC. NAI 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 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.

(C) Title Insurance. Without limiting NAI's obligations under the preceding subparagraph, contemporaneously with the execution of this Agreement NAI shall provide to BNPLC a title insurance policy (or binder committing the applicable title insurer to issue a title insurance policy, without the payment of further premiums) in the amount of no less than \$62,000,000, in form and substance satisfactory to BNPLC, written by one or more title insurance companies satisfactory to BNPLC and insuring BNPLC's fee estate in the Land and Improvements.

(D) Environmental Representations. To the knowledge of NAI except as otherwise disclosed in the Environmental Report: (i) no Hazardous Substances Activity has occurred prior to the Effective Date; (ii) no owner or operator of the Property has reported or been required to report any release of any Hazardous Substances on or from the Property pursuant to any Environmental Law; and (iii) no owner or operator of the Property has received from any federal, state or local governmental authority any warning, citation, notice of violation or other communication regarding a suspected or known release or discharge of Hazardous Substances on or from the Property or regarding a suspected or known violation of Environmental Laws concerning the Property. Further, NAI represents that to its knowledge, the Environmental Report taken as a whole is not misleading or inaccurate in any material respect.

(E) Cooperation by NAI and its Affiliates. If neither NAI nor an Applicable Purchaser purchases the Property pursuant to the Purchase Agreements on the Designated Sale Date, then after the Designated Sale Date:

(1) if a use of the Property by BNPLC or any removal or modification of Improvements proposed by BNPLC would violate any Permitted Encumbrance, Development Document or Applicable Law unless NAI 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

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NAI shall, to the extent it can without violating Applicable Law, 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 NAI or any of its Affiliates or of the City of Sunnyvale or any other Person to a transfer of any interest in the Property by BNPLC or its successors or assigns, NAI 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; and

(3) NAI's obligations under this subparagraph 1(E) shall be binding upon any successor or assign of NAI with respect to the Land and other properties encumbered by the Permitted Encumbrances or subject to the Development Documents.

2 OTHER REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGMENTS OF NAI. NAI represents, warrants, covenants and acknowledges as follows:

(A) No Default or Violation of Other Agreements. The execution, delivery and performance by NAI of this Agreement and the other Operative Documents do not and will not constitute a breach or default under any other material agreement or contract to which NAI is a party or by which NAI is bound or which affects the Property, and do not violate or contravene any law, order, decree, rule or regulation to which NAI is subject, and such execution, delivery and performance by NAI will not result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, NAI's property pursuant to the provisions of any such other material agreement.

(B) No Suits. Other than as previously disclosed in NAI's most recent 10-K filings with the Securities and Exchange Commission (copies of which have been delivered to BNPLC), there are no judicial or administrative actions, suits, proceedings or investigations pending or, to NAI's knowledge, threatened that will adversely affect the Property or the validity or enforceability or priority of this Agreement or any other Operative Document, and NAI is not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental or regulatory authority that could materially and adversely affect the use, occupancy or operation of the Property for the purposes contemplated in the Leases. No condemnation or other like proceedings are pending or, to NAI's knowledge, threatened against the Property.

(C) Enforceability. The execution, delivery and performance of each of the Operative Documents by NAI are duly authorized, are not in contravention of or

conflict with any term or provision of NAI's articles of incorporation or bylaws and do not, to NAI's knowledge, conflict with any Applicable Laws or require the consent or approval of any governmental body or other regulatory authority that has not heretofore been obtained; provided, some consents or approvals which are readily obtainable and which are required for NAI's performance under the Operative Documents may not have been heretofore obtained, but NAI shall obtain such consents or approvals as required in connection with its performance of the Operative Documents. Each of the Operative Documents are valid, binding and legally enforceable obligations of NAI except as such enforcement is affected by bankruptcy, insolvency and similar laws affecting the rights of creditors, generally, and equitable principles of general application.

(D) Solvency. NAI is not "insolvent" on the date hereof (that is, the sum of NAI's absolute and contingent liabilities - including the obligations of NAI under this Agreement and the other Operative Documents - does not exceed the fair market value of NAI's assets) and has no outstanding liens, suits, garnishments or court actions which could render NAI insolvent or bankrupt. NAI's capital is adequate for the businesses in which NAI is engaged and intends to be engaged. NAI has not incurred (whether hereby or otherwise), nor does NAI intend to

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incur or believe that it will incur, debts which will be beyond its ability to pay as such debts mature. There has not been filed by or, to NAI's knowledge, against NAI a petition in bankruptcy or a petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, custodian or liquidator with respect to NAI or any significant portion of NAI's property, reorganization, arrangement, rearrangement, composition, extension, liquidation or dissolution or similar relief under the federal Bankruptcy Code or any state law. The financial statements and all financial data heretofore delivered to BNPLC relating to NAI are true, correct and complete in all material respects. No material adverse change has occurred in the financial position of NAI as reflected in NAI's financial statements covering the most recent fiscal period for which NAI's financial statements have been published.

(E) Organization. NAI is duly incorporated and legally existing under the laws of the State of California. NAI has all requisite corporate power and has procured or will procure on a timely basis all governmental certificates of authority, licenses, permits, qualifications and similar documentation required to fulfill its obligations under this Agreement and the other Operative Documents. Further, NAI has the corporate power and adequate authority, rights and franchises to own NAI's property and to carry on NAI's business as now conducted and is duly qualified and in good standing in each state in which the character of NAI's business makes such qualification necessary (including the State of California) or, if it is not so qualified in a state other than California, such failure does not have a material adverse effect on the properties, assets, operations or businesses of NAI and its Subsidiaries, taken as a whole.

(F) Existence. So long as any of the Operative Documents continue in force, NAI shall continuously maintain its existence and its qualification to do business in the State of California.

(G) Not a Foreign Person. NAI is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Code (i.e. NAI is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(H) Investment Company Act. NAI is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(I) ERISA. NAI is not and will not become an "employee benefit plan" (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA. The assets of NAI do not and will not in the future constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. NAI is not and will not become a "governmental plan" within the meaning of Section 3(32) of ERISA. Transactions by or with NAI are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans. Each Plan and, to the knowledge of NAI, any Multiemployer Plan, is in

compliance with, and has been administered in compliance with, the applicable provisions of ERISA, the Code and any other applicable Federal or state law in all respects, the failure to comply with which would have a material adverse effect upon the properties, assets, operations or businesses of NAI and its Subsidiaries taken as a whole. As of the date hereof no event or condition is occurring or exists which would require a notice from NAI under subparagraph 15(c) (vi) of the Leases.

(J) Use of Proceeds. In no event shall the funds advanced to NAI pursuant to the Operative Documents be used directly or indirectly for personal, family, household or agricultural purposes or for the purpose, whether immediate, incidental or ultimate, of purchasing, acquiring or carrying any "margin stock" or any "margin securities" (as such terms are defined respectively in Regulation U and Regulation G promulgated by the Board of Governors of the Federal Reserve System) or to extend credit to others directly or indirectly for the purpose of purchasing or carrying any such margin stock or margin securities. NAI represents and warrants that NAI is not engaged principally, or as one of NAI's important activities, in the business of extending credit to others for the purpose of purchasing or carrying such margin stock or margin securities.

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(K) Omissions. None of NAI's representations or warranties contained in this Agreement or any other Operative Document or any other document, certificate or written statement furnished to BNPLC by or on behalf of NAI contains any untrue statement of a material fact or omits a material fact necessary in order to make the statements contained herein or therein (when taken in their entireties) not misleading.

(L) Y2000 Issues. As necessary to avoid any material adverse impact upon any activity significant to the business of NAI and its Subsidiaries, taken as whole, and as necessary to insure the full and prompt compliance with and performance of NAI's obligations under the Operative Documents, on or before June 30, 1999, the software and other processing capabilities of NAI and its Subsidiaries shall have the ability to correctly interpret and manipulate all data (in whatever form, including printed form, screen displays, financial records, calculations and loan-related data) so as to avoid errors in processing that may otherwise occur because of the inability of the software or other processing capabilities to recognize accurately the year 2000 or subsequent dates.

(M) Further Assurances. NAI shall, on request of BNPLC, (i) execute, acknowledge, deliver and record or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Agreement or any other Operative Document and to subject to this Agreement or any other Operative Document any property intended by the terms hereof or thereof to be covered hereby or thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (ii) execute, acknowledge, deliver, procure and record or file any document or instrument deemed advisable by BNPLC to protect its rights in and to the Property against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of BNPLC to enable BNPLC to comply with the requirements or requests of any agency or authority having jurisdiction over it.

Without limiting the forgoing, NAI shall cooperate with BNPLC as reasonably required to allow BNPLC to induce banks not affiliated with BNPLC to become Participants. Such cooperation will include the payment of fees ("UPFRONT SYNDICATION FEES") as provided under the heading "Upfront Fees for the Participants" in the letter from BNPLC to NAI dated October 20, 1999. Such cooperation will also include the execution of one or more modification agreements proposed by BNPLC to any of the Operative Documents, which agreements may change the Spread, Unsecured Spread, Commitment Fee Rate or may limit NAI's right to designate a new Collateral Percentage under Section 3.1 of the Pledge Agreement or may otherwise modify terms and conditions of the Operative Documents as requested by a prospective Participant; provided, however, that the form and substance of any such modification agreements is approved by NAI (which approval will not be unreasonably withheld); and, provided further, that NAI will have no obligation to join with BNPLC in executing any such modification agreement to satisfy a prospective Participant after the earlier of (1) the date

that is one hundred twenty days after the Effective Date, or (2) the date upon which other banks not affiliated with BNPLC have become Participants with aggregate Percentages under (and as defined in) the Participation Agreement of no less than eighty percent (80%).

(N) No Implied Representations or Promises by BNPLC. BNPLC AND BNPLC'S AGENTS HAVE MADE NO REPRESENTATIONS OR PROMISES WITH RESPECT TO THE PROPERTY EXCEPT AS EXPRESSLY SET FORTH IN THE OTHER OPERATIVE DOCUMENTS, AND NO RIGHTS, EASEMENTS OR LICENSES ARE BEING ACQUIRED BY NAI BY IMPLICATION OR OTHERWISE EXCEPT AS EXPRESSLY SET FORTH IN THE OTHER OPERATIVE DOCUMENTS.

3 LIMITED COVENANTS AND REPRESENTATIONS BY BNPLC.

(A) Cooperation of BNPLC to Facilitate Use. So long as the Leases remain in force and NAI remains in possession of the Property, BNPLC shall take any action reasonably requested by NAI to facilitate the use of the Property permitted by the Leases; provided, however, that:

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(1) This subparagraph 3(A) shall not impose upon BNPLC the obligation to take any action that can be taken by NAI, NAI's Affiliates or anyone else other than BNPLC as the owner of the Property.

(2) BNPLC shall not be required by this subparagraph 3(A) to make any payment to another Person unless BNPLC shall first have received funds from NAI, in excess of any other amounts due from NAI under any of the Operative Documents, sufficient to make the payment.

(3) BNPLC shall have no obligations whatsoever under this subparagraph 3(A) at any time after an Event of Default shall have occurred and be continuing.

(4) NAI must request any action to be taken by BNPLC pursuant to this subparagraph 3(A), and such request must be specific and in writing, if required by BNPLC at the time the request is made. A suggested form for such a request is attached as Exhibit D.

(5) No action may be required of BNPLC pursuant to this subparagraph 3(A) that could constitute a violation of any Applicable Laws or compromise or constitute a waiver of BNPLC's rights under other provisions of this Agreement or any of the other Operative Documents or that for any other reason is reasonably objectionable to BNPLC.

The actions BNPLC shall take pursuant to this subparagraph 3(A) if reasonably requested by NAI will include, subject to the conditions listed in the proviso above, executing or consenting to, or exercising or assisting NAI to exercise rights under any (I) grant of easements, licenses, rights of way, and other rights in the nature of easements encumbering the Land or the Improvements, (II) release or termination of easements, licenses, rights of way or other rights in the nature of easements which are for the benefit of the Land or Improvements or any portion thereof, (III) dedication or transfer of portions of the Land not improved with a building, for road, highway or other public purposes, (IV) agreements (other than with NAI or its Affiliates) for the use and maintenance of common areas, for reciprocal rights of parking, ingress and egress and amendments to any covenants and restrictions affecting the Land or any portion thereof, (V) documents required to create or administer a governmental special benefit district or assessment district for public improvements and collection of special assessments, (VI) instruments necessary or desirable for the exercise or enforcement of rights or performance of obligations under any Permitted Encumbrance or any contract, permit, license, franchise or other right included within the term "Property" (including, without limitation, under the Development Documents), (VII) modifications of Permitted Encumbrances or Development Documents, (VIII) [intentionally deleted], (IX) confirmations of NAI's rights under any particular provisions of the Operative Documents which NAI may wish to provide to a third party or (X) execution or filing of a tract or parcel map subdividing the Land into lots or parcels or to adjust boundary lines of the Land to facilitate construction thereon or on adjacent land which NAI leases from BNPLC. However, the determination of whether any such action is reasonably requested or reasonably objectionable to BNPLC may depend in whole or in part upon the extent to which the requested action shall result in a lien to secure payment or performance obligations against BNPLC's

interest in the Property, shall cause a decrease in the value of the Property to less than forty-five percent (45%) of Stipulated Loss Value after any Qualified Prepayments that may result from such action are taken into account, or shall impose upon BNPLC any present or future obligations greater than the obligations BNPLC is willing to accept in reliance on the indemnifications provided by NAI under the Operative Documents.

Any Losses incurred by BNPLC because of any action taken pursuant to this subparagraph 3(A) shall be covered by the indemnifications set forth in subparagraph 5(c) of the Leases. Further, for purposes of such indemnification, any action taken by BNPLC will be deemed to have been made at the request of NAI if made pursuant to any request of counsel to or any officer of NAI (or with their knowledge, and without their objection) in connection with the execution or administration of the Leases or the other Operative Documents.

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(B) Actions Permitted by NAI Without BNPLC's Consent. No refusal by BNPLC to execute or join in the execution of any agreement, application or other document requested by NAI pursuant to the preceding subparagraph 3(A) shall preclude NAI from itself executing such agreement, application or other document; provided, that in doing so NAI is not purporting to act for BNPLC and does not thereby create or expand any obligations or restrictions that encumber BNPLC's title to the Property. Further, subject to the other terms and conditions of the Leases and other Operative Documents, NAI shall be entitled to do any of the following in NAI's own name and to the exclusion of BNPLC without any notice to or consent of BNPLC, provided, that (i) the Leases remain in force, (ii) NAI remains in possession of the Property, (iii) no Event of Default has occurred and is continuing, and (iv) NAI is not purporting to act for BNPLC and does not thereby create or expand any obligations or restrictions that encumber BNPLC's title to the Property:

(1) perform obligations arising under and exercise and enforce the rights of NAI or the owner of the Property under the Development Documents and Permitted Encumbrances;

(2) perform obligations arising under and exercise and enforce the rights of NAI or the owner of the Property with respect to any other contracts or documents (such as building permits) included within the Personal Property;

(3) recover and retain any monetary damages or other benefit inuring to NAI or the owner of the Property through the enforcement of any rights, contracts or other documents included within the Personal Property (including the Development Documents and Permitted Encumbrances); provided, that to the extent any such monetary damages may become payable as compensation for an adverse impact on value of the Property, the rights of BNPLC and NAI hereunder with respect to the collection and application of such monetary damages shall be the same as for condemnation proceeds payable because of a taking of all or any part of the Property; and

(4) without limiting the foregoing, as tenant under the Improvements Lease, (i) collect and retain all rents paid under the Premises Leases; (ii) recover and retain any monetary damages or other benefit inuring to NAI or the owner of the Real Property through the enforcement of any rights under the Premises Leases (provided that this subsection (ii) shall not apply to any damages or benefits that are required by the terms of the Lease to be paid over to BNPLC); (iii) cancel or accept the surrender of any space under any Premises Lease; and (iv) enforce any guaranties or other collateral provided by Lessees under the Premises Leases and retain the proceeds thereof.

(C) Waiver of Landlord's Liens. BNPLC waives any security interest, statutory landlord's lien or other interest BNPLC may have in or against computer equipment and other tangible personal property placed on the Land from time to time that NAI or its Affiliates own or lease from other lessors; provided, however, that BNPLC does not waive its interest in or rights with respect to equipment or other property included within the "Property" as described in Paragraph 7 of the Improvements Lease. Although computer equipment or other tangible personal property may be "bolted down" or otherwise firmly affixed to Improvements, it shall not by reason thereof become part of the Improvements if it can be removed without causing structural or other material

damage to the Improvements and without rendering HVAC or other major building systems inoperative and if it does not otherwise constitute "Property" as provided in Paragraph 7 of the Improvements Lease.

(D) Estoppel Letter. Upon thirty days written request by NAI at any time and from time to time prior to the Designated Sale Date, BNPLC shall provide 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), certifying the dates to which the rents payable by NAI under the Leases has been paid, stating whether BNPLC is aware of any default by NAI that may exist under the

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Leases and confirming BNPLC's agreements concerning landlord's liens and other matters set forth in subparagraph 3(C). It being intended that any such statement by BNPLC may be relied upon by anyone with whom NAI may intend to enter into an agreement for construction of the Improvements or other significant agreements concerning the Property.

(E) Limited Representations by BNPLC Concerning Accounting Matters. BNPLC is not expected or required to represent or warrant that the Leases or the Purchase Agreements will qualify for any particular accounting treatment under GAAP. However, to permit NAI to determine for itself the appropriate accounting for the Leases and the Purchase Agreements, BNPLC does represent to NAI the following as of the Effective Date:

(1) Equity capital invested in BNPLC is greater than three percent (3%) of the aggregate of all lease funding amounts (including participations) of BNPLC. Such equity capital investments constitute equity in legal form and are reflected as shareholders' equity in the financial statements and accounting records of BNPLC.

(2) BNPLC is one hundred percent (100%) owned by French American Bank Corporation, which is one hundred percent (100%) owned by BNPLC's Parent.

(3) BNPLC leases properties of substantial value to more than fifteen tenants.

(4) All parties to whom BNPLC has any material obligations known to BNPLC are (and are expected to be) Affiliates of BNPLC's Parent, Participants, or participants with BNPLC in other leasing deals or loans made by BNPLC, or other tenants or borrowers in such other leasing deals or loans.

(5) BNPLC has substantial assets in addition to the Property, assets which BNPLC believes to have a value far in excess of the value of the Property.

(6) Other than any Funding Advances provided from time to time by Participants under the Participation Agreement, BNPLC expects to obtain all Funding Advances from Banque Nationale de Paris or other Affiliates of BNPLC, and to the extent that Banque Nationale de Paris or such other Affiliates themselves borrow or accept bank deposits to obtain the funds needed to provide such Funding Advances, the obligation to repay such funds shall not be limited, by agreement or corporate structure, to payments collected from NAI or otherwise recovered from the Property.

(7) BNPLC has not obtained residual value insurance or a residual value guarantee from any third party to ensure the recovery of its investment in the Property.

(8) BNPLC does not intend to take any action during the terms of the Leases that would change, or anticipate any change in, any of the facts listed above in this subparagraph.

NAI shall have the right to ask BNPLC questions from time to time concerning BNPLC's financial condition, concerning matters relevant to the proper accounting treatment of the Leases on NAI's financial statements and accounting records (including the amount of BNPLC's equity capital as a percentage of the aggregate of all lease funding amounts [including participations] by BNPLC) or

concerning BNPLC's ability to perform under the Leases or the Purchase Agreements, to which questions BNPLC shall promptly respond. Such response, however, may be limited to a statement that BNPLC will not provide requested information; provided, however, BNPLC must notify NAI in writing if at any time during the terms of the Leases BNPLC ceases to be 100% owned, directly or indirectly, by Banque Nationale de Paris, or if at any time during the terms of the Leases BNPLC believes it could not represent that the statements in clauses (1), (5) and (7) above continue to be accurate, whether because of a

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change in the capital structure of BNPLC, a purchase of residual value insurance with respect to the Property or otherwise.

(F) Other Limited Representations by BNPLC. BNPLC represents that:

(1) No Default or Violation. The execution, delivery and performance by BNPLC of this Agreement and the other Operative Documents do not and will not constitute a breach or default under any material contract or agreement to which BNPLC is a party or by which BNPLC is bound and do not, to the knowledge of BNPLC, violate or contravene any law, order, decree, rule or regulation to which BNPLC is subject. (As used in this subparagraph 3(F), "BNPLC'S KNOWLEDGE" means the present actual knowledge of Lloyd Cox, the current officer of BNPLC having primary responsibility for the negotiation of the Operative Documents.)

(2) No Suits. There are no judicial or administrative actions, suits, proceedings or investigations pending or, to BNPLC's knowledge, threatened against BNPLC that are reasonably likely to affect BNPLC's interest in the Property or the validity, enforceability or priority of the Leases or the Purchase Agreements, and BNPLC is not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental or regulatory authority that could materially and adversely affect the business or assets of BNPLC or its interest in the Property.

(3) Enforceability. The execution, delivery and performance of each of the Operative Documents by BNPLC are duly authorized, are not in contravention of or conflict with any term or provision of BNPLC's articles of incorporation or bylaws and do not, to BNPLC's knowledge, require the consent or approval of any governmental body or other regulatory authority that has not heretofore been obtained or conflict with any Applicable Laws. Each of the Operative Documents are valid, binding and legally enforceable obligations of BNPLC except as such enforcement is affected by bankruptcy, insolvency and similar laws affecting the rights of creditors, generally, and equitable principles of general application; provided, BNPLC makes no representation or warranty that conditions imposed by zoning ordinances or other state or local Applicable Laws to the purchase, ownership, lease or operation of the Property have been satisfied.

(4) Organization. BNPLC is duly incorporated and legally existing under the laws of Delaware and is duly qualified to do business in the State of California. BNPLC has or will obtain on a timely basis, at NAI's expense to the extent so provided in the Leases, all requisite power and all governmental certificates of authority, licenses, permits, qualifications and other documentation necessary to own and lease the Property and to perform its obligations under the Operative Documents.

(5) Existence. So long as NAI continues to have rights under the Leases or Purchase Agreements, BNPLC shall continuously maintain its existence and, to the extent required to comply with its obligations under the Operative Documents, its qualification to do business in the State of California.

(6) Not a Foreign Person. BNPLC is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Code (i.e., BNPLC is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(7) Bankruptcy. BNPLC's capital is adequate for the businesses in which BNPLC is engaged and intends to be engaged. BNPLC has not incurred (whether hereby or otherwise), nor does BNPLC intend to incur or believe

that it will incur, debts which will be beyond its ability to pay as such debts mature. There has not been filed by or, to BNPLC's knowledge, against BNPLC a petition in bankruptcy or

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a petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, custodian or liquidator with respect to BNPLC or any significant portion of BNPLC's property, reorganization, arrangement, rearrangement, composition, extension, liquidation or dissolution or similar relief under the federal Bankruptcy Code or any state law.

4 OBLIGATIONS OF NAI UNDER OTHER OPERATIVE DOCUMENTS NOT LIMITED BY THIS AGREEMENT. Nothing contained in this Agreement 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, those established by this Agreement.

5 OBLIGATIONS OF NAI HEREUNDER NOT LIMITED BY OTHER OPERATIVE DOCUMENTS. Recognizing that but for this Agreement (including the representations of NAI set forth in Paragraphs 1 and 2) BNPLC would not acquire the Property or enter into the other Operative Documents, NAI agrees that BNPLC's rights for any breach of this Agreement (including a breach of such representations) shall not be limited by any provision of the other Operative Documents that would limit NAI's liability thereunder, including any provision therein that would limit NAI's liability in the event of a termination of the Leases or of any of NAI's rights or obligations under the Purchase Agreements.

[The signature pages follow.]

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IN WITNESS WHEREOF, this Closing Certificate and Agreement is hereby executed in multiple originals as of the Effective Date above set forth.

"NAI"

NETWORK APPLIANCE, INC.

By: _____

Name (print): _____

Title: _____

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[Continuation of signature pages to Closing Certificate and Agreement dated to be effective December ____, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: _____

Lloyd G. Cox, 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:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75~8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14~51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75~08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14~51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

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TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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EXHIBIT B

PERMITTED ENCUMBRANCES

TRACT 1 and 2:

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. LIMITATIONS, covenants, conditions, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded December 23, 1971 in Book 9640, page 443, Official Records.

Assignments and Assumption, executed by Moffett Park Associates, a partnership to Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

4. AGREEMENT on the terms and conditions contained therein,
 - For : Waiver of Construction Credits
 - Between : Moffett Park Associates
 - And : None Shown
 - Recorded : September 28, 1976 in Book C307, page 346, Official Records.
5. EASEMENT for the purposes stated herein and incidents thereto
 - Purpose : Construction, reconstruction, operation, repair, maintenance, replacement, relocation and enlargement of Public Utilities
 - Granted to : The City of Sunnyvale, a municipal corporation
 - Recorded : November 16, 1976 in Book C414, page 105, Official Records
 - Affects : as follows:

Being a portion of Parcel B as shown on that certain Parcel Map recorded August 28, 1974 in Book of Maps, at page 20, Santa Clara County Records; a strip of land 10 feet in width, measured at right angles lying Northerly and Easterly of and contiguous to the following described line; beginning at the intersection of the Westerly line of Crossman Road, 90 feet in width, with the Northerly line of Parcel A as shown on said Map; thence North 75~ 7' 58" West along said Northerly line of Parcel A 450.13 feet; thence leaving said Northerly line, North 30~ 7' 48" West 210.69 feet; thence North 75~ 8' 27" West 391.04 feet to a point on the Easterly line of the proposed Geneva Drive, 60 feet wide, said point being the terminus of said easement.

6. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

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TRACT 3:

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 Easement
 - In favor of : City of Sunnyvale
 - Recorded : October 9, 1964 in Book 6695, page 430, Official Records

Affects : Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

4. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 450, Official Records
Affects : Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
5. 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.

6. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities
Granted to : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 105, Official Records
Affects : Southerly 10 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
7. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap,

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familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

8. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

(a) The fact that a chain link fence extends across the southerly boundary of said land.

TRACT 4:

9. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
10. 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.
11. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 90, Official Records
Affects : Westerly 5 feet, as shown on a survey plat entitled

ALTA/ACSM Land Title Survey for: Network Appliance,
1345 Crossman Avenue, dated December 2, 1999, prepared by
Kier & Wright, Job No. 97208-16.

12. EASEMENT recorded on that certain Map for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
Recorded : July 7, 1994 in Book 657 of Maps, page 9, Official Records
Affects : Westerly 10 feet, as shown on a survey plat entitled
ALTA/ACSM Land Title Survey for: Network Appliance,
1345 Crossman Avenue, dated December 2, 1999, prepared by
Kier & Wright, Job No. 97208-16.
13. 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.

14. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC

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3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

TRACT 5:

15. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
16. 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.
17. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 430, Official Records
Affects : The Northeasterly and Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
18. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 450, Official Records
Affects : The Northeasterly and Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
19. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Sidewalk and sign easement
Recorded : July 7, 1994, in Book 657 of Maps, page 9, Official Records

Affects : The Northerly 2 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

20. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

21. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
Recorded : October 7, 1998, in Book 708 of Maps, pages 51-52, Official Records
Affects : The Northerly 15 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

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EXHIBIT C

DEVELOPMENT DOCUMENTS

-NONE-

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EXHIBIT D

NOTICE OF REQUEST FOR ACTION BY BNPLC

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

Re: Closing Certificate and Agreement dated as of December ____, 1999, between Network Appliance, Inc. and BNP Leasing Corporation

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Closing Certificate and Agreement referenced above. Pursuant to subparagraph 3(A) of the Closing Certificate and Agreement, NAI requests the following of BNPLC:

[INSERT HERE A SPECIFIC DESCRIPTION OF THE ACTION REQUESTED - E.G., "PLEASE EXECUTE THE ENCLOSED APPLICATION FOR BUILDING PERMIT REQUIRED BY THE CITY OF SUNNYVALE IN CONNECTION WITH CONSTRUCTION OF CERTAIN IMPROVEMENTS WHICH ARE PART OF THE INITIAL CONSTRUCTION PROJECT."]

PLEASE NOTE: SUBPARAGRAPH 3(A) OF THE CLOSING CERTIFICATE OBLIGATES BNPLC NOT TO UNREASONABLY REFUSE TO COMPLY WITH THE FOREGOING REQUEST, SUBJECT TO TERMS AND CONDITIONS SET FORTH IN THAT SUBPARAGRAPH. NAI HEREBY CERTIFIES TO BNPLC THAT AFTER CAREFUL CONSIDERATION NAI BELIEVES THAT ALL SUCH TERMS AND CONDITIONS ARE SATISFIED IN THE CASE OF THE FOREGOING REQUEST, AND NAI HEREBY RATIFIES AND CONFIRMS ITS OBLIGATION TO INDEMNIFY BNPLC AGAINST ANY LOSSES BNPLC MAY INCUR OR SUFFER BECAUSE OF ITS COMPLIANCE WITH SUCH REQUEST AS PROVIDED IN SUBPARAGRAPH 5(c) OF THE LEASE.

NAI respectfully requests that BNPLC respond to this notice as soon as

reasonably possible.

Executed this _____ day of _____, 19____.

NETWORK APPLIANCE, INC.

Name: _____

Title: _____

LEASE AGREEMENT
(PHASE IV - LAND)

BETWEEN

BNP LEASING CORPORATION
("BNPLC")

AND

NETWORK APPLIANCE, INC.
("NAI")

DECEMBER ____, 1999
(SUNNYVALE, CALIFORNIA)

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EXHIBITS AND SCHEDULES

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Exhibit B.....Insurance Requirements
Exhibit C.....LIBOR Period Election Form
Schedule 1.....Financial Covenants and Other Requirements

LEASE AGREEMENT
(PHASE IV - LAND)

This LEASE AGREEMENT (PHASE IV - 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 DECEMBER __, 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 IV - Land) executed by BNPLC and NAI contemporaneously with this Land Lease. By this reference, the Common Definitions and Provisions Agreement (Phase IV - 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 A, 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 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) 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 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 (including the right to receive rents under and to otherwise enforce the Premises Leases) 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 Premises Leases and all other 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 January, 2005, 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 IV - 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.

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(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 IV - 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) 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 (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).

Nothing in this subparagraph will prevent a tenant under a Premises Lease executed by NAI, as Landlord, prior to or concurrently with the Effective Date, from using the space covered thereby for purposes expressly authorized by the terms and conditions of such Premises Lease.

(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.

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) Amount Payable On the Base Rent Commencement Date. The Base Rent payable for each day (including the Effective Date) prior to but not including the Base Rent Commencement Date shall be equal to (a) the sum of (1) the per annum interest rate, as determined by BNPLC, at which BNPLC can borrow funds overnight from BNPLC's Parent on that day, plus (2) the Unsecured Spread, multiplied by

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(b) the Initial Funding Advance, divided by (c) 360. All such Base Rent shall become due on the Base Rent Commencement Date.

(ii) 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.

(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 IV - 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)(iii)a).

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

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

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

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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:

$$\$20,000,000 \times .30\% \times 30/360 = \$5,000$$

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

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

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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:

$$\begin{aligned} & \$20,000,000 \times \{(40\% \times .30\%) + ([1 - 40\%] \times [6\% + 1.50\%])\} \\ & \times 30/360 = \$77,000 \end{aligned}$$

(vi) Base Rent Formula for Periods During Which The Collateral Percentage is Zero. Each installment of Base Rent payable for any Base Rent Period during which the Collateral Percentage is zero shall equal:

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

- 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 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 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

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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 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

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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 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.

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(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 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

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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 Premises Leases, (F) the breach by NAI of this Land Lease or any other document executed by NAI in connection herewith, (G) any failure of the Property or NAI itself to comply with Applicable Laws, (H) Permitted Encumbrances, (I) Hazardous Substance Activities, including those occurring prior to Effective Date, (J) any obligations under the Existing Contract 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 Property, whether such costs and expenses are incurred at the time

of execution of this Land Lease or at any time during the Term.

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(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 IV - 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 costs paid by BNPLC with the proceeds of the Initial Funding Advance as part of the Transaction Expenses.

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

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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.

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.

(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

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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.

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(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 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.

(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

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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 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 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 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 a Base Rent Date, BNPLC may deduct Breakage Costs incurred in connection with any Qualified Prepayment from the Remaining Proceeds or other amounts available for

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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.

(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 by fire or other casualty or less than all or substantially all of the Property is taken by condemnation, NAI must:

(i) 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

(ii) 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

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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, 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.

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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. NAI shall not, without the prior consent of BNPLC, make material new Improvements or alter Improvements in any material respect. Without limiting the foregoing, NAI will notify BNPLC before making any significant alterations to the Improvements.

The parties acknowledge that NAI has proposed to BNPLC that additional Improvements be constructed on the Land in the future, and BNPLC has consented thereto, provided that (1) no Event of Default has occurred and is continuing, and (b) BNPLC is satisfied, in its sole discretion, that (i) the location, configuration, architectural style, and manner and type of construction of such additional Improvements shall not reduce the value of the Improvements taken as a whole and will otherwise be constructed in accordance with the requirements of this Lease, and (ii) such additional Improvements will comply with all Applicable Laws.

(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 Premises 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 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

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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);

(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

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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.

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 (I) any sublease of space within Improvements expressly permitted by the Other Lease Agreement and (II) subject to subparagraph 14.(c) below, this provision shall not be construed to prohibit any Premises Lease described in the Other Common Definitions and Provisions Agreement or any transfer or sublease by a lessee thereunder which is authorized by the Premises Lease.

(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.

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(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.

(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,

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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 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.

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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 IV - 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:

(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

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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

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

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

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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 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.

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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.

[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 December ____, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: _____

Name: _____

Title: _____

[Continuation of signature pages to Lease Agreement dated to be effective December ____, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: _____

Lloyd G. Cox, 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:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75 [Degrees] 8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence

South 14 [Degrees] 51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75 [Degrees] 08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14 [Degrees] 51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

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TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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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 \$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 VI or better.
- (3) Required Endorsements: CGL Insurance must be endorsed to provide or include:
 - (a) in any policy containing a general aggregate limit, ISO form amendment "Aggregate Limits of Insurance Per Location" CG 2504 1185 or equivalent substitute form;
 - (c) a waiver of subrogation, using ISO form CG 2404 1093 or equivalent substitute form (and under the commercial umbrella, if any), in favor of "BNP Leasing Corporation and other Interested Parties (as defined in the Common Definitions and Provisions Agreement (Phase IV - Land) between Network Appliance, Inc. and BNP Leasing Corporation dated December ___, 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

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Agreement (Phase IV - Land) between Network Appliance, Inc. and BNP Leasing Corporation dated December ___, 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

Banque Nationale de Paris, San Francisco
180 Montgomery Street
San Francisco, California 94104
Attention: George Fung

Re: Lease Agreement (Phase IV - Improvements) and Lease Agreement (Phase IV - Land), both dated as of December ____, 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 IV - Improvements) (the "IMPROVEMENTS LEASE") dated to be effective as of December __, 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 IV - 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 IV - 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 IV - 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

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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.

"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)

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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.

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

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(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:

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;

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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.

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COMMON DEFINITIONS AND PROVISIONS AGREEMENT
(PHASE IV - LAND)

BETWEEN

BNP LEASING CORPORATION

AND

NETWORK APPLIANCE, INC.

DATED AS OF DECEMBER ____, 1999

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COMMON DEFINITIONS AND PROVISIONS AGREEMENT
(PHASE IV - LAND)

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

RECITALS

Contemporaneously with the execution of this Common Definitions and Provisions Agreement (Phase IV - 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 IV - 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.

"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.

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"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 3.(a) of the Land Lease.

"BASE RENT COMMENCEMENT DATE" shall mean the earlier of (1) the first Business Day of January, 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:

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.

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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 January, 2000 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 March, 2000.

"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.

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

Common Definitions and Provisions Agreement (Phase IV - Land) - Page 3

"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 December __, 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 (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

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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 IV - LAND)" means this Agreement, which is incorporated by reference into each of the other Operative Documents.

"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 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.

Common Definitions and Provisions Agreement (Phase IV - Land) - Page 5

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"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.

"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 January, 2005; or

(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) [intentionally deleted]

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(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 December ____, 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.

"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.

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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 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 Environmental Site Assessment for 1330-1350 Geneva and 1345-1347 Crossman Avenue, Sunnyvale, California, dated November 1999 by Romig Consulting Engineers.

"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 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

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Proceeds are paid to NAI pursuant to Paragraph 10 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 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

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applicable tax rates (e.g., a disallowance of deductions that would otherwise be available against payments described in clause (A) of this definition), then for purposes of the Operative Documents, the term "Excluded Taxes" will not include the increase in such taxes attributable to the change.

"EXISTING CONTRACT" means the Agreement of Sale covering the Land between NAI and Seller, dated November 16, 1999.

"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.

"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

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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 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

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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 IV - Land) dated as of DECEMBER ____, 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 C 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) 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

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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.

"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.

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"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 IV - Land).

"OTHER COMMON DEFINITIONS AND PROVISIONS AGREEMENT" means the Common Definitions and Provisions Agreement (Phase IV - 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 IV - 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 IV - 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 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

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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) the Premises Leases, (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 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.

"PERMITTED HAZARDOUS SUBSTANCES" means Hazardous Substances used and reasonably required 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.

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"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 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 IV - 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.

"PREMISES LEASES" means the four subleases of space within the Improvements, each between NAI, as landlord, and TRW Inc., as tenant, executed of even date herewith, and any subleases or other transfers under and permitted by the terms of any such leases.

"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 described 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 Contract, 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 IV - Land) dated as of December __, 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 seventeen percent (17%).

"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, collectively, TRW Inc., an Ohio corporation, and ESL Incorporated, a California corporation.

"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 February, 2000, the Unsecured Spread will be the amount indicated for Level III in the pricing grid below plus basis points;

(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

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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 (Phase IV)

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

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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
San Francisco, California 94104
Attention: George Fung
Telecopy: (415) 956-4230

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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 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

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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 IV - 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 IV - Land) - Page 24

IN WITNESS WHEREOF, NAI and BNPLC have caused this Common Definitions and Provisions Agreement (Phase IV - Land) to be executed as of December ____, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: _____

Name: _____

Title: _____

[Continuation of signature pages to Common Definitions and Provisions Agreement (Phase IV - Land) dated to be effective December ____, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: _____

Lloyd G. Cox, Vice President

=====

LEASE AGREEMENT
(PHASE IV - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION
("BNPLC")

AND

NETWORK APPLIANCE, INC.
("NAI")

DECEMBER ____, 1999
(SUNNYVALE, CALIFORNIA)

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LEASE AGREEMENT
(PHASE IV - IMPROVEMENTS)

This LEASE AGREEMENT (PHASE IV- 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 December __, 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 IV - Improvements) executed by BNPLC and NAI contemporaneously with this Improvements Lease. By this reference, the Common Definitions and Provisions Agreement (Phase IV - 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 the Improvements and any appurtenances thereto from Seller contemporaneously with the execution of this Improvements Lease.

In anticipation of BNPLC's acquisition of the Improvements under the Existing Contract, BNPLC and NAI have reached agreement as to the terms and conditions upon which BNPLC is willing to lease the Improvements to NAI, 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 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 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 the right to receive rents under and to otherwise enforce the Premises Leases) 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 Premises Leases and all other 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 January, 2005, 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 IV - 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:

(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.

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(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 IV - 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; and (C) 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) [intentionally deleted];

(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 (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).

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Nothing in this subparagraph will prevent a tenant under a Premises Lease executed by NAI, as Landlord, prior to or concurrently with the Effective Date, from using the space covered thereby for purposes expressly authorized by the terms and conditions of such Premises Lease.

(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 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 for each day (including the Effective Date) prior to but not including the Base Rent Commencement Date shall be equal to (a) the sum of (1) the per annum interest rate, as determined by BNPLC, at which BNPLC can borrow funds overnight from BNPLC's Parent on that day, plus (2) the Unsecured Spread, multiplied by (b) the Initial Funding Advance, divided by (c) 360. All such Base Rent shall become due on the Base Rent Commencement Date.

(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 IV - 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).

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

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

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

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

Assume, only for the purpose of illustration: that the Collateral Percentage for a hypothetical Base Rent Period is one hundred percent (100%); that prior to the first day of such Base Rent Period 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:

- 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:

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- (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 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:

- 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 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:

$$\$20,000,000 \times (6\% + 1.50\%) \times 30/360 = \$125,000$$

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(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 October 20, 1999 from BNPLC to NAI.

(f) [intentionally deleted].

(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 October 20, 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 October 20, 1999 from BNPLC to NAI.

(h) [Intentionally deleted.]

(i) [Intentionally deleted.]

(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 5.(d) below, it is the intention of BNPLC and NAI that Base Rent, the Arrangement Fees, the Upfront Syndication Fees, Administrative Agency 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.

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

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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

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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

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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 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 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

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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 Premises Leases; (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 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 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.

(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,

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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.

(vi) 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 IV - 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 Stipulated Loss Value, and the Break Even Price (as applicable) or to collect Base Rent, a Supplemental Payment and other amounts, the calculation of which depends upon the Stipulated Loss Value, and 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 costs paid by BNPLC with the proceeds of the Initial Funding Advance as part of the Transaction Expenses.

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.

6. INTENTIONALLY DELETED.

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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 other funds for which NAI has received or hereafter receives reimbursement from the Initial Funding Advance, 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 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

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(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 10, and (iii) BNPLC may settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance (provided, that if any such claim is for less than \$500,000, and if 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 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.

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(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 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 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 10, BNPLC shall hold and maintain such Remaining Proceeds as

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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 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 a 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.

(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, if 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.

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 any construction upon or 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, 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. Without limiting the foregoing, NAI will notify BNPLC before making any significant alterations to the Improvements.

The parties acknowledge that NAI has proposed to BNPLC that additional Improvements be constructed on the Land in the future, and BNPLC has consented thereto, provided that (1) no Event of Default has occurred and is continuing, and (b) BNPLC is satisfied, in its sole discretion, that (i) the location, configuration, architectural style, and manner and type of construction of such additional Improvements shall not reduce the value of the Improvements taken as a whole and will otherwise be constructed in accordance with the requirements of this Lease, and (ii) such additional Improvements will comply with all Applicable Laws.

(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 Premises 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 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;

(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, (I) this provision shall not be construed to prohibit any Premises Lease described in the Common Definitions and Provisions Agreement (Phase IV - Improvements) or any transfer or sublease by a lessee thereunder which is authorized by the Premises Leases, and (II) 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 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

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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, 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

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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 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 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 IV - 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

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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.

(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

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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.

(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

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subparagraph 18.(a) at least sixty days prior to exercising the remedies. The condition precedent is intended to provide NAI with an opportunity to exercise the Purchase Option or NAI's Initial Remarketing Rights and Obligations before losing possession of the Property pursuant to subparagraph 18.(a). The condition precedent is not, however, intended to extend any period for curing an Event of Default. Accordingly, if an Event of Default has occurred, and regardless of whether any Event of Default is then continuing, BNPLC may proceed immediately to exercise remedies provided in subparagraph 18.(a) at any time after the earlier of (i) sixty days after BNPLC has given such a notice to NAI, (ii) any date upon which NAI relinquishes possession of the Property, or (iii) any termination of the Purchase Option and NAI's Initial Remarketing Rights and Obligations.

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

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

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

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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 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 December ____, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By:

Name: -----

Title: -----

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[Continuation of signature pages to Lease Agreement dated to be effective December ____, 1999]

"BNPLC"

BNP LEASING CORPORATION

By:

Lloyd G. Cox, 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:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75~8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14~51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75~08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14~51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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 \$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 VI or better.
- (3) Required Endorsements: CGL Insurance must be endorsed to provide or include:
 - (a) in any policy containing a general aggregate limit, ISO form amendment "Aggregate Limits of Insurance Per Location" CG 2504 1185 or equivalent substitute form;
 - (c) a waiver of subrogation, using ISO form CG 2404 1093 or equivalent substitute form (and under the commercial umbrella, if any), in favor of "BNP Leasing Corporation and other Interested Parties (as defined in the Common Definitions and Provisions Agreement (Phase IV - Improvements) between Network Appliance, Inc. and BNP Leasing Corporation dated December ___, 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 IV - Improvements) between Network Appliance, Inc. and BNP Leasing Corporation dated December ___, 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) 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 (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 IV - Improvements) between Network Appliance, Inc. and BNP Leasing Corporation dated December ____, 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
- (d) that BNPLC must be notified at least thirty days prior to any cancellation, nonrenewal or reduction of insurance coverage.

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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

Banque Nationale de Paris, San Francisco
180 Montgomery Street
San Francisco, California 94104
Attention: George Fung

Re: Lease Agreement (Phase IV - Improvements) and Lease Agreement (Phase IV - Land), both dated as of December ____, 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: _____

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[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 IV - Improvements) (the "IMPROVEMENTS LEASE") dated to be effective as of December __, 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 IV - 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 IV - 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 IV - 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

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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.

"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)

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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.

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:

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

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.

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.

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COMMON DEFINITIONS AND PROVISIONS AGREEMENT
(PHASE IV - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION

AND

NETWORK APPLIANCE, INC.

DATED AS OF DECEMBER ____, 1999

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COMMON DEFINITIONS AND PROVISIONS AGREEMENT
(PHASE IV - IMPROVEMENTS)

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

RECITALS

Contemporaneously with the execution of this Common Definitions and Provisions Agreement (Phase IV - 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), and the Purchase Agreement (as defined below), all of which concern the Property (as defined below). Each of the Closing Certificate, the Improvements Lease and the Purchase Agreement (together with this Common Definitions and Provisions Agreement (Phase IV - 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 IV - 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:

"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 3.(d) of the Improvements Lease.

"ADMINISTRATIVE AGENCY FEE" shall have the meaning assigned to it in subparagraph 3.(g) of the Improvements Lease.

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"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.

"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.

"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 3.(a) of the Improvements Lease.

"BASE RENT COMMENCEMENT DATE" means the first Business Day of January, 2000.

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"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 January, 2000 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 March, 2000.

"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

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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 Base Rent Period; or

(2) [intentionally deleted];

(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.

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"CLOSING CERTIFICATE" means the Closing Certificate and Agreement dated as of December ____, 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 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.

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

"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 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.

"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 January, 2005; or
- (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) [intentionally deleted];

(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 December ____, 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.

"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, 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 Environmental Site Assessment for 1330-1350 Geneva and 1345-1347 Crossman Avenue, Sunnyvale, California, dated November 1999 by Romig Consulting Engineers.

"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 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.

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"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 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.(k) 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 Agreement of Sale covering the Land between NAI and Seller, dated November 16, 1999.

"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.

"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 additional advances (if any) to NAI.

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"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 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.

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"IMPROVEMENTS LEASE" means the Lease Agreement (Phase IV - Improvements") dated as of December __, 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 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 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.

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

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"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 Funding Advances during any 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).

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"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 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 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 Improvements Lease, the Purchase Agreement, the Pledge Agreement and this Common Definitions and Provisions Agreement (Phase IV - Improvements).

"OTHER COMMON DEFINITIONS AND PROVISIONS AGREEMENT" means the Common Definitions and Provisions Agreement (Phase IV - Land), dated as of December ___, 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 IV - Land), dated as of December ___, 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 IV - Land), dated December ___, 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 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.

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

"PERIOD" means a Base Rent Period.

"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) the

Premises Leases, (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 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 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 IV - 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.

"PREMISES LEASES" means the four subleases of space within the Improvements, each between NAI, as landlord, and TRW Inc., as tenant, executed of even date herewith, and any subleases or other transfers under and permitted by the terms of any such leases.

"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. The fee interest in the Land itself will not be included in the Property. Any rights, titles and interests acquired by BNPLC under the Existing Contract, to the extent not covered by the Improvements 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.

"PURCHASE AGREEMENT" means the Purchase Agreement (Phase IV - Improvements) dated as of December _____, 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 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) 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.

"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

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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 seventeen percent (17%).

"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, collectively, TRW Inc., an Ohio corporation, and ESL Incorporated, a California corporation.

"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, the Arrangement Fee, the Upfront Syndication Fees, or Administrative Agency 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 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 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 February, 2000, the Unsecured Spread will be the amount indicated for Level III in the pricing grid below plus 100 basis points;

(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.

"UPFRONT SYNDICATION FEES" shall have the meaning assigned to it in subparagraph 2(M) of the Closing Certificate and 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.

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 Sunnyside Synthetic Improvements Lease (Phase IV)

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) [intentionally deleted];

(iv) All notices, demands, approvals, consents and other communications to be made under any Operative Document to or by the parties thereto must, to be effective for purpose of such Operative Document, be in writing. Notices, demands and other communications required or permitted under any Operative Document are to be sent to the addresses set forth below (or in the case of communications to Participants, at the addresses set forth in Schedule 1 to the Participation Agreement) and shall be given by any of the following means: (A) personal service, with proof of delivery or attempted delivery retained; (B) electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by United States first class mail, return receipt requested); or (C) registered or certified first class mail, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice or other communication sent pursuant to clause (A) or (B) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, and, if sent pursuant to clause (C) shall be deemed received five days following deposit in the mail.

Address of BNPLC:

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

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) 956-4230

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 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.

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5 ENTIRE AND ONLY AGREEMENTS. The Operative Documents supersede any prior negotiations and agreements between BNPLC, Agent and NAI concerning the Property or the Collateral, and no amendment or modification of any Operative Document shall be binding or valid unless expressed in a writing executed by all parties to such Operative Document.

6 BINDING EFFECT. Except to the extent, if any, expressly provided to the contrary in any Operative Document with respect to assignments thereof, all of the covenants, agreements, terms and conditions to be observed and performed by the parties to the Operative Documents shall be applicable to and binding upon their respective successors and, to the extent assignment is permitted thereunder, their respective assigns.

7 TIME IS OF THE ESSENCE. Time is of the essence as to all obligations of NAI and BNPLC and all notices required of NAI and BNPLC under the Operative Documents.

8 GOVERNING LAW. Each Operative Document shall be governed by and construed in accordance with the laws of the State of California without regard to conflict or choice of laws (subject, however, in the case of the Pledge

Agreement to any contrary provisions of the "UCC," as defined in the Pledge Agreement).

9 PARAGRAPH HEADINGS. The paragraph and section headings contained in the Operative Documents are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several provisions thereof.

10 NEGOTIATED DOCUMENTS. All the parties to each Operative Document and their counsel have reviewed and revised or requested revisions to such Operative Document, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of any Operative Documents or any amendments thereof.

11 TERMS NOT EXPRESSLY DEFINED IN AN OPERATIVE DOCUMENT. As used in any Operative Document, a capitalized term that is not defined therein or in this Common Definitions and Provisions Agreement (Phase IV - 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

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subdivision unless expressly so limited. The phrases "this Paragraph", "this subparagraph", "this Section", "this subsection" and similar phrases used in any operative document refer only to the Paragraph, subparagraph, Section, subsection or other subdivision described in which the phrase occurs. As used in the Operative Documents the word "or" is not exclusive. As used in the Operative Documents, the words "include", "including" and similar terms shall be construed as if followed by "without limitation to".

13 EXECUTION IN COUNTERPARTS. To facilitate execution, each Operative Document may be executed in as many identical counterparts as may be required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts, taken together, shall collectively constitute a single instrument. It shall not be necessary in making proof of any Operative Document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

14 NOT A PARTNERSHIP, ETC. NOTHING IN ANY OPERATIVE DOCUMENT IS INTENDED TO CREATE ANY PARTNERSHIP, JOINT VENTURE, OR OTHER JOINT ENTERPRISE BETWEEN BNPLC AND NAI. NEITHER THE EXECUTION OF ANY OPERATIVE DOCUMENT NOR THE ADMINISTRATION THEREOF OR OTHER DOCUMENTS REFERENCED HEREIN BY BNPLC, NOR ANY OTHER RIGHT, DUTY OR OBLIGATION OF BNPLC UNDER OR PURSUANT TO ANY OPERATIVE

DOCUMENT IS INTENDED TO BE OR TO CREATE ANY FIDUCIARY OBLIGATIONS OF BNPLC TO NAI.

[The signature pages follows.]

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IN WITNESS WHEREOF, NAI and BNPLC have caused this Common Definitions and Provisions Agreement (Phase IV - Improvements) to be executed as of December ____, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By:

Name: _____
Title: _____

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[Continuation of signature pages to Common Definitions and Provisions Agreement (Phase IV - Improvements) dated to be effective December ____, 1999]

"BNPLC"

BNP LEASING CORPORATION

By:

Lloyd G. Cox, Vice President

PURCHASE AGREEMENT
(PHASE IV - LAND)

BETWEEN

BNP LEASING CORPORATION

("BNPLC")

AND

NETWORK APPLIANCE, INC.

("NAI")

DECEMBER ____, 1999

(SUNNYVALE, CALIFORNIA)

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Exhibits and Schedules

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Exhibit E.....	Secretary's Certificate
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This PURCHASE AGREEMENT (PHASE IV - 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 December __, 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 IV - Land) executed by BNPLC and NAI contemporaneously with this Agreement. By this reference, the Common Definitions and Provisions Agreement (Phase IV - 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 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 IV - 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 4 below:

(1) NAI shall have the right (the "PURCHASE OPTION") to purchase or cause an Affiliate of NAI to purchase the Property and BNPLC's interest in Escrowed Proceeds, if any, on the Designated Sale Date for a cash price equal to the Break Even Price (as defined below).

(2) If neither NAI nor an Affiliate of NAI purchases the Property and BNPLC's interest in any Escrowed Proceeds on the Designated Sale Date as provided in the preceding subparagraph 1(A)(1), then NAI shall have the following rights and obligations (collectively, "NAI'S INITIAL REMARKETING RIGHTS AND OBLIGATIONS"):

(a) First, NAI shall have the right (but not the obligation) to cause an Applicable Purchaser who is not an Affiliate of NAI to purchase the Property and BNPLC's interest in any

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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 IV - 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

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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.

(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 IV - 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 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 1(A) and to pay any damages to NAI caused by a breach of such obligations, including any such breach caused by a rejection or termination of this Agreement in any bankruptcy or insolvency proceeding instituted by or against BNPLC, as debtor, BNPLC does hereby grant to NAI a lien and security interest against all rights, title and interests of BNPLC from time to time in and to the Land 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 in the manner permitted by the Land 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.

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 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 IV - 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 3, BNPLC may cure such refusal at any time before thirty days after receipt of a demand for such cure from NAI.

4. SURVIVAL AND TERMINATION OF THE RIGHTS AND OBLIGATIONS OF NAI AND BNPLC.

(A) Status of this Agreement Generally. Except as expressly provided herein, this Agreement shall not terminate; nor shall NAI have any right to terminate this Agreement; nor shall NAI be entitled to any reduction of the Break Even Price, any Deficiency, the Maximum Remarketing Obligation, any Supplemental Payment or the Minimum Extended Remarketing Price hereunder; nor shall the obligations of NAI to BNPLC under Paragraph 1 be affected, by reason of (i) any damage to or the destruction of all or any part of the Property from whatever cause (though it is understood that NAI will receive any remaining Escrowed Proceeds yet to be applied as provided in the Land 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 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.

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(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.

(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.

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 December ____, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By:

Name: -----

Title: -----

[Continuation of signature pages to Purchase Agreement (Phase IV - Land) dated to be effective December ____, 1999.]

"BNPLC"

BNP LEASING CORPORATION

By:

Lloyd G. Cox, 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:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75[degrees]8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14[degrees]51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75[degrees]08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14[degrees]51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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: _____

persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

EXHIBIT B-1 - PAGE 3

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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.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75[degrees]8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14[degrees]51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75[degrees]08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14[degrees]51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the

office of the recorder of the County of

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Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65
TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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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 IV - Land) incorporated by reference into the Lease Agreement (Phase IV - 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:

TRACT 1 and 2:

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. LIMITATIONS, covenants, conditions, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded December 23, 1971 in Book 9640, page 443, Official Records.

Assignments and Assumption, executed by Moffett Park Associates, a partnership to Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

4. AGREEMENT on the terms and conditions contained therein,
For : Waiver of Construction Credits
Between : Moffett Park Associates
And : None Shown
Recorded : September 28, 1976 in Book C307, page 346, Official Records.

5. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Construction, reconstruction, operation, repair, maintenance, replacement, relocation and enlargement of Public Utilities
Granted to : The City of Sunnyvale, a municipal corporation
Recorded : November 16, 1976 in Book C414, page 105, Official Records
Affects : as follows:

Being a portion of Parcel B as shown on that certain Parcel Map recorded August 28, 1974 in Book of Maps, at page 20, Santa Clara County Records; a strip of land 10 feet in width, measured at right angles lying Northerly and Easterly of and contiguous to the following described line; beginning at the

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intersection of the Westerly line of Crossman Road, 90 feet in width, with the Northerly line of Parcel A as shown on said Map; thence North 75[degrees]7'58" West along said Northerly line of Parcel A 450.13 feet; thence leaving said Northerly line, North 30[degrees]7'48" West 210.69 feet; thence North 75[degrees]8'27" West 391.04 feet to a point on the Easterly line of the proposed Geneva Drive, 60 feet wide, said point being the terminus of said easement.

6. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

TRACT 3:

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 Easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 430, Official Records
Affects : Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
4. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 450, Official Records
Affects : Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
5. 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.

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6. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities
Granted to : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 105, Official Records
Affects : Southerly 10 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
7. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.
8. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

(a) The fact that a chain link fence extends across the southerly boundary of said land.

TRACT 4:

9. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
10. 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.
11. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 90, Official Records
Affects : Westerly 5 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
12. EASEMENT recorded on that certain Map for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
Recorded : July 7, 1994 in Book 657 of Maps, page 9, Official Records
Affects : Westerly 10 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
13. 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.

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ASSIGNMENT AND ASSUMPTION of the rights, powers, duties, obligations, and reservations of Moffett Park Associates, in favor of The Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

14. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

TRACT 5:

15. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
16. 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.
17. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 430, Official Records
Affects : The Northeasterly and Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
18. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 450, Official Records
Affects : The Northeasterly and Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
19. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Sidewalk and sign easement
Recorded : July 7, 1994, in Book 657 of Maps, page 9, Official Records
Affects : The Northerly 2 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
20. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

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21. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
Recorded : October 7, 1998, in Book 708 of Maps, pages 51-52,
Official Records
Affects : The Northerly 15 feet, as shown on a survey plat
entitled ALTA/ACSM Land Title Survey for: Network
Appliance, 1345 Crossman Avenue, dated December 2, 1999,
prepared by Kier & Wright, Job No. 97208-16.

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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

[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:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75[degrees]8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14[degrees]51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75[degrees]08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14[degrees]51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of

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Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

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 IV - Land) incorporated by reference into the Lease Agreement (Phase IV - 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:

TRACT 1 and 2:

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. LIMITATIONS, covenants, conditions, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded December 23, 1971 in Book 9640, page 443, Official Records.

Assignments and Assumption, executed by Moffett Park Associates, a partnership to Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

4. AGREEMENT on the terms and conditions contained therein,
For : Waiver of Construction Credits
Between : Moffett Park Associates
And : None Shown
Recorded : September 28, 1976 in Book C307, page 346, Official Records.
5. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Construction, reconstruction, operation, repair, maintenance, replacement, relocation and enlargement of Public Utilities
Granted to : The City of Sunnyvale, a municipal corporation
Recorded : November 16, 1976 in Book C414, page 105, Official Records
Affects : as follows:

Being a portion of Parcel B as shown on that certain Parcel Map recorded August 28, 1974 in Book of Maps, at page 20, Santa Clara County Records; a strip of land 10 feet in width, measured at right angles lying Northerly and Easterly of and contiguous to the following described line; beginning at the

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intersection of the Westerly line of Crossman Road, 90 feet in width, with the Northerly line of Parcel A as shown on said Map; thence North 75[degrees]7'58" West along said Northerly line of Parcel A 450.13 feet; thence leaving said Northerly line, North 30[degrees]7'48" West 210.69 feet; thence North 75[degrees]8'27" West 391.04 feet to a point on the Easterly line of the proposed Geneva Drive, 60 feet wide, said point being the terminus of said easement.

6. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

TRACT 3:

22. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
23. 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.
24. EASEMENT for the purposes stated herein and incidents thereto
 Purpose : Slope Easement
 In favor of : City of Sunnyvale
 Recorded : October 9, 1964 in Book 6695, page 430, Official Records
 Affects : Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
25. EASEMENT for the purposes stated herein and incidents thereto
 Purpose : Public utilities easement
 In favor of : City of Sunnyvale
 Recorded : October 9, 1964 in Book 6695, page 450, Official Records
 Affects : Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
26. 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.

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27. EASEMENT for the purposes stated herein and incidents thereto
 Purpose : Public utilities
 Granted to : City of Sunnyvale
 Recorded : November 16, 1976 in Book C414, page 105, Official Records
 Affects : Southerly 10 feet, as shown on a survey plat entitled

ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

28. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.
29. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

(a) The fact that a chain link fence extends across the southerly boundary of said land.

TRACT 4:

30. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
31. 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.
32. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 90, Official Records
Affects : Westerly 5 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
33. EASEMENT recorded on that certain Map for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
Recorded : July 7, 1994 in Book 657 of Maps, page 9, Official Records
Affects : Westerly 10 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
34. 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.

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ASSIGNMENT AND ASSUMPTION of the rights, powers, duties, obligations, and reservations of Moffett Park Associates, in favor of The Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

35. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms,

but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

TRACT 5:

36. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.
37. 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.
38. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 430, Official Records
Affects : The Northeasterly and Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
39. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 450, Official Records
Affects : The Northeasterly and Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
40. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Sidewalk and sign easement
Recorded : July 7, 1994, in Book 657 of Maps, page 9, Official Records
Affects : The Northerly 2 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
41. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

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42. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
Recorded : October 7, 1998, in Book 708 of Maps, pages 51-52, Official Records
Affects : The Northerly 15 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

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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 IV - Land) dated as of December ____, 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 IV - 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

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assigns to BNPLC for the term of this Ground Lease (and thereafter, if BNPLC purchases the Real Property from Lessor pursuant to the Repurchase Option described in Paragraph 12) 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 4(B), 6(B) or 6(C)] 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 7 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:

10. 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.

11. 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

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any default under this Ground Lease by BNPLC.

12. 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.

13. 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 12).

(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.

14. 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

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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.

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.

15. 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

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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.

16. 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.

17. 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

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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 has 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,

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confirmation of the foregoing in any statement provided to a Leasehold Mortgagee or prospective Leasehold Mortgagee pursuant to Paragraph 11.

18. 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 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.

19. 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.

20. 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

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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.

21. OPTION TO REPURCHASE. Subject to the terms and conditions set forth in Annex 5, BNPLC (and any assignee of BNPLC's entire interest in the GL Property, but not any subtenant or assignee of a lesser interest) shall have the option (the "REPURCHASE OPTION") to purchase Lessor's interest in the GL Property. To secure BNPLC's right to recover any damages caused by a breach of the Repurchase Option or other provisions of this Ground Lease by Lessor, including any such breach caused by a rejection or termination of this Ground Lease in any bankruptcy or insolvency proceeding instituted by or against Lessor, as debtor, Lessor does hereby grant to BNPLC a lien and security interest against the Land and against all rights, title and interests of Lessor from time to time in and to the GL Property.

[The signature pages follow.]

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:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75[degrees]8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14[degrees]51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75[degrees]08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14[degrees]51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July

7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

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Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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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

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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.

(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.

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(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

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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.

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EXHIBIT C

BILL OF SALE AND ASSIGNMENT

Reference is made to: (1) that certain Purchase Agreement (Phase IV - Land) between BNP Leasing Corporation ("ASSIGNOR") and Network Appliance, Inc., dated as of December __, 1999, (the "PURCHASE AGREEMENT") and (2) that certain Lease Agreement (Phase IV - Land) between Assignor, as landlord, and Network Appliance, Inc., as tenant, dated as of December __, 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 IV - 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.

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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: _____

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 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:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75~8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14~51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75~08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14~51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of

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Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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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 IV - Land) incorporated by reference into the Purchase Agreement (Phase IV-Land) between BNPLC and Network Appliance, Inc. dated December __, 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 -----
-----	-----	-----
-----	-----	-----

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 IV - Land) (herein called the "Purchase Agreement") dated as of December ____, 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:

PURCHASE AGREEMENT
(PHASE IV - IMPROVEMENTS)

BETWEEN

BNP LEASING CORPORATION

("BNPLC")

AND

NETWORK APPLIANCE, INC.

("NAI")

DECEMBER ____, 1999

(SUNNYVALE, CALIFORNIA)

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PURCHASE AGREEMENT
(PHASE IV - IMPROVEMENTS)

This PURCHASE AGREEMENT (PHASE IV - 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 December __, 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 IV - Improvements) executed by BNPLC and NAI contemporaneously with this Agreement. By this reference, the Common Definitions and Provisions Agreement (Phase IV - 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 A, BNPLC is acquiring the Land and any appurtenances thereto and the existing Improvements thereon from Seller contemporaneously with the execution of this Agreement. Pursuant to the Lease Agreement (Phase IV - Improvements) executed by BNPLC and NAI contemporaneously with this Agreement (the "IMPROVEMENTS LEASE"), BNPLC 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 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 4 below:

(1) NAI shall have the right (the "PURCHASE OPTION") to purchase or cause an Affiliate of NAI to purchase the Property and BNPLC's interest in Escrowed Proceeds, if any, on the Designated Sale Date for a cash price equal to the Break Even Price (as defined below).

(2) If neither NAI nor an Affiliate of NAI purchases the Property and BNPLC's interest in any Escrowed Proceeds on the Designated Sale Date as provided in the preceding subparagraph 1(A)(1), then NAI shall have the following rights and obligations (collectively, "NAI'S INITIAL REMARKETING RIGHTS AND OBLIGATIONS"):

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(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 IV - 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 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.

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(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.

(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 IV - 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.

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

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"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.

(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 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

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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.

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

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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 IV - 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

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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 3, BNPLC may cure such refusal at any time before thirty days after receipt of a demand for such cure from NAI.

4. SURVIVAL AND TERMINATION OF THE RIGHTS AND OBLIGATIONS OF NAI AND BNPLC.

(A) Status of this Agreement Generally. Except as expressly provided herein, this Agreement shall not terminate; nor shall NAI have any right to terminate this Agreement; nor shall NAI be entitled to any reduction of the Break Even Price, any Deficiency, the Maximum Remarketing Obligation, any Supplemental Payment or the Minimum Extended Remarketing Price hereunder; nor shall the obligations of NAI to BNPLC under Paragraph 1 be affected, by reason of (i) any damage to or the destruction of all or any part of the Property from whatever cause (though it is understood that NAI will receive any remaining Escrowed Proceeds yet to be applied as provided in the 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) [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 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, 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.

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

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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 December ____, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: _____

Name: _____

Title: _____

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[Continuation of signature pages to Purchase Agreement (Phase IV - Improvements) dated to be effective December __, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: _____

Lloyd G. Cox, 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:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described

property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75(degree)8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14(degree)51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75(degree)08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14(degree)51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

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TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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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, 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 form 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 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.

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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:

Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75(degree)8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14(degree)51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75(degree)08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14(degree)51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of

EXHIBIT B-1 - PAGE 4

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Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

EXHIBIT B-1 - PAGE 5

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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 IV - Improvements) incorporated by reference into the Lease Agreement (Phase IV - 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:

TRACT 1 and 2:

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. LIMITATIONS, covenants, conditions, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded December 23, 1971 in Book 9640, page 443, Official Records.

Assignments and Assumption, executed by Moffett Park Associates, a partnership to Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

4. AGREEMENT on the terms and conditions contained therein,
For : Waiver of Construction Credits
Between : Moffett Park Associates
And : None Shown
Recorded : September 28, 1976 in Book C307, page 346, Official Records.
5. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Construction, reconstruction, operation, repair, maintenance, replacement, relocation and enlargement of Public Utilities
Granted to : The City of Sunnyvale, a municipal corporation
Recorded : November 16, 1976 in Book C414, page 105, Official Records
Affects : as follows:

Being a portion of Parcel B as shown on that certain Parcel Map recorded August 28, 1974 in Book of Maps, at page 20, Santa Clara County Records; a strip of land 10 feet in width, measured at right angles lying Northerly and Easterly of and contiguous to the following described line; beginning at the

EXHIBIT B-1 - PAGE 6

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intersection of the Westerly line of Crossman Road, 90 feet in width, with the Northerly line of Parcel A as shown on said Map; thence North 75(degree) 7' 58" West along said Northerly line of Parcel A 450.13 feet; thence leaving said Northerly line, North 30(degree) 7' 48" West 210.69 feet; thence North 75(degree) 8' 27" West 391.04 feet to a point on the Easterly line of the proposed Geneva Drive, 60 feet wide, said point being the terminus of said easement.

6. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

TRACT 3:

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 Easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 430, Official Records
Affects : Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
4. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 450, Official Records
Affects : Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
5. 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.

EXHIBIT B-1 - PAGE 7

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6. EASEMENT for the purposes stated herein and incidents thereto
Purpose : Public utilities
Granted to : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 105, Official Records
Affects : Southerly 10 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.
7. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a

preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

8. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

(a) The fact that a chain link fence extends across the southerly boundary of said land.

TRACT 4:

9. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.

10. 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.

11. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 90, Official Records
Affects : Westerly 5 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

12. EASEMENT recorded on that certain Map for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
Recorded : July 7, 1994 in Book 657 of Maps, page 9, Official Records
Affects : Westerly 10 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

13. 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.

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ASSIGNMENT AND ASSUMPTION of the rights, powers, duties, obligations, and reservations of Moffett Park Associates, in favor of The Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

14. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion,

sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

TRACT 5:

15. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.

16. 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.

17. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 430, Official Records
Affects : The Northeasterly and Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

18. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 450, Official Records
Affects : The Northeasterly and Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

19. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Sidewalk and sign easement
Recorded : July 7, 1994, in Book 657 Maps, page 9, Official Records
Affects : The Northerly 2 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

20. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

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21. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
Recorded : October 7, 1998, in Book 708 of Maps, pages 51-52, Official Records
Affects : The Northerly 15 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

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 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.

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.]

Legal Description

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75(degree)8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14(degree)51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75(degree)08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14(degree)51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

EXHIBIT B-2 - PAGE 4

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Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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 IV - Improvements) incorporated by reference into the Lease Agreement (Phase IV - 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:

TRACT 1 and 2:

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. LIMITATIONS, covenants, conditions, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded December 23, 1971 in Book 9640, page 443, Official Records.

Assignments and Assumption, executed by Moffett Park Associates, a partnership to Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

4. AGREEMENT on the terms and conditions contained therein,

For : Waiver of Construction Credits
Between : Moffett Park Associates
And : None Shown

Recorded : September 28, 1976 in Book C307, page 346, Official Records.

5. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Construction, reconstruction, operation, repair, maintenance, replacement, relocation and enlargement of Public Utilities
Granted to : The City of Sunnyvale, a municipal corporation
Recorded : November 16, 1976 in Book C414, page 105, Official Records
Affects : as follows:

Being a portion of Parcel B as shown on that certain Parcel Map recorded August 28, 1974 in Book of Maps, at page 20, Santa Clara County Records; a strip of land 10 feet in width, measured at right angles lying Northerly and Easterly of and contiguous to the following described line; beginning at the

intersection of the Westerly line of Crossman Road, 90 feet in width, with the Northerly line of Parcel A as shown on said Map; thence North 75(degree) 7' 58" West along said Northerly line of Parcel A 450.13 feet; thence leaving said Northerly line, North 30(degree) 7' 48" West 210.69 feet; thence North 75(degree) 8' 27" West 391.04 feet to a point on the Easterly line of the proposed Geneva Drive, 60 feet wide, said point being the terminus of said easement.

6. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

TRACT 3:

22. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.

23. 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.

24. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Slope Easement
 In favor of : City of Sunnyvale
 Recorded : October 9, 1964 in Book 6695, page 430, Official Records
 Affects : Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

25. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
 In favor of : City of Sunnyvale
 Recorded : October 9, 1964 in Book 6695, page 450, Official Records
 Affects : Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

26. 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.

27. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities
Granted to : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 105, Official
Records
Affects : Southerly 10 feet, as shown on a survey plat entitled
ALTA/ACSM Land Title
Survey for: Network Appliance, 1345 Crossman Avenue,
dated December 2, 1999, prepared by Kier & Wright,
Job No. 97208-16.

28. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

29. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

(a) The fact that a chain link fence extends across the southerly boundary of said land.

TRACT 4:

30. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.

31. 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.

32. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 90, Official
Records
Affects : Westerly 5 feet, as shown on a survey plat entitled
ALTA/ACSM Land Title
Survey for: Network Appliance, 1345 Crossman Avenue,
dated December 2, 1999, prepared by Kier & Wright,
Job No. 97208-16.

33. EASEMENT recorded on that certain Map for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
Recorded : July 7, 1994 in Book 657 of Maps, page 9, Official
Records
Affects : Westerly 10 feet, as shown on a survey plat entitled
ALTA/ACSM Land Title
Survey for: Network Appliance, 1345 Crossman Avenue,
dated December 2, 1999, prepared by Kier & Wright,
Job No. 97208-16.

34. 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.

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ASSIGNMENT AND ASSUMPTION of the rights, powers, duties, obligations, and reservations of Moffett Park Associates, in favor of The Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

35. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

TRACT 5:

36. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.

37. 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.

38. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 430, Official Records
Affects : The Northeasterly and Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

39. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 450, Official Records
Affects : The Northeasterly and Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

40. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Sidewalk and sign easement
Recorded : July 7, 1994, in Book 657 of Maps, page 9, Official Records
Affects : The Northerly 2 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

41. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

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42. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
Recorded : October 7, 1998, in Book 708 of Maps, pages 51-52, Official Records
Affects : The Northerly 15 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

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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.

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:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75[degrees]8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14[degrees]51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75[degrees]08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14[degrees]51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

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APN: 110-32-7
ARB: 110-3-x65

TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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 IV - Improvements) incorporated by reference into the Lease Agreement (Phase IV - 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:

TRACT 1 and 2:

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. LIMITATIONS, covenants, conditions, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded December 23, 1971 in Book 9640, page 443, Official Records.

Assignments and Assumption, executed by Moffett Park Associates, a partnership to Prudential Insurance Company of America, recorded February 8, 1977 in Book C583, page 685, Official Records.

4. AGREEMENT on the terms and conditions contained therein,

For : Waiver of Construction Credits
Between : Moffett Park Associates
And : None Shown
Recorded : September 28, 1976 in Book C307, page 346, Official Records.

5. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Construction, reconstruction, operation, repair, maintenance, replacement, relocation and enlargement of Public Utilities
Granted to : The City of Sunnyvale, a municipal corporation
Recorded : November 16, 1976 in Book C414, page 105, Official Records
Affects : as follows:

Being a portion of Parcel B as shown on that certain Parcel Map recorded August 28, 1974 in Book of Maps, at page 20, Santa Clara County Records; a strip of land 10 feet in width, measured at right angles lying Northerly and Easterly of and contiguous to the following described line; beginning at the

intersection of the Westerly line of Crossman Road, 90 feet in width, with the Northerly line of Parcel A as shown on said Map; thence North 75[degrees]7'58" West along said Northerly line of Parcel A 450.13 feet; thence leaving said Northerly line, North 30[degrees]7'48" West 210.69 feet; thence North 75[degrees]8'27" West 391.04 feet to a point on the Easterly line of the proposed Geneva Drive, 60 feet wide, said point being the terminus of said easement.

6. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

TRACT 3:

43. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.

44. 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.

45. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Slope Easement
 In favor of : City of Sunnyvale
 Recorded : October 9, 1964 in Book 6695, page 430, Official Records
 Affects : Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

46. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
 In favor of : City of Sunnyvale
 Recorded : October 9, 1964 in Book 6695, page 450, Official Records
 Affects : Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

47. 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.

48. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities
 Granted to : City of Sunnyvale

Recorded : November 16, 1976 in Book C414, page 105, Official
Records
Affects : Southerly 10 feet, as shown on a survey plat entitled
ALTA/ACSM Land Title
Survey for: Network Appliance, 1345 Crossman Avenue,
dated December 2, 1999, prepared by Kier & Wright, Job
No. 97208-16.

49. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

50. 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 ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

(a) The fact that a chain link fence extends across the southerly boundary of said land.

TRACT 4:

51. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.

52. 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.

53. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : November 16, 1976 in Book C414, page 90, Official
Records
Affects : Westerly 5 feet, as shown on a survey plat entitled
ALTA/ACSM Land Title
Survey for: Network Appliance, 1345 Crossman Avenue,
dated December 2, 1999, prepared by Kier & Wright, Job
No. 97208-16.

54. EASEMENT recorded on that certain Map for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
Recorded : July 7, 1994 in Book 657 of Maps, page 9, Official
Records
Affects : Westerly 10 feet, as shown on a survey plat entitled
ALTA/ACSM Land Title
Survey for: Network Appliance, 1345 Crossman Avenue,
dated December 2, 1999, prepared by Kier & Wright, Job
No. 97208-16.

55. 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.

56. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

TRACT 5:

57. TAXES for the fiscal year 1999-2000, a lien not yet due or payable.

58. 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.

59. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Slope Easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 430, Official Records
Affects : The Northeasterly and Easterly 18 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

60. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
In favor of : City of Sunnyvale
Recorded : October 9, 1964 in Book 6695, page 450, Official Records
Affects : The Northeasterly and Easterly 7 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

61. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Sidewalk and sign easement
Recorded : July 7, 1994, in Book 657 of Maps, page 9, Official Records
Affects : The Northerly 2 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier & Wright, Job No. 97208-16.

62. LIMITATIONS, covenants, restrictions, reservations, exceptions or terms, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), contained in the document recorded February 5, 1980 in Book F122, page 460, Official Records.

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63. EASEMENT for the purposes stated herein and incidents thereto

Purpose : Public utilities easement
Recorded : October 7, 1998, in Book 708 of Maps, pages 51-52, Official Records
Affects : The Northerly 15 feet, as shown on a survey plat entitled ALTA/ACSM Land Title Survey for: Network Appliance, 1345 Crossman Avenue, dated December 2, 1999, prepared by Kier &

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EXHIBIT C

BILL OF SALE AND ASSIGNMENT

Reference is made to: (1) that certain Purchase Agreement (Phase IV - Improvements) between BNP Leasing Corporation ("ASSIGNOR") and Network Appliance, Inc., dated as of December __, 1999, (the "PURCHASE AGREEMENT") and (2) that certain Lease Agreement (Phase IV - Improvements) between Assignor, as landlord, and Network Appliance, Inc., as tenant, dated as of December __, 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 IV - 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: (1) any goods, equipment, furnishings, furniture, chattels and tangible personal property of whatever nature that are located on the Property and all renewals or replacements of or substitutions for any of the foregoing; (ii) the rights of Assignor, existing at the time of the execution of the 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

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.]

The real property located in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

TRACT 1:

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map lying within the City of Sunnyvale, being a resubdivision of a portion of Parcel B, as shown upon that certain Parcel Map recorded in Book 345 of Maps, at page 20, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 17, 1976, in Book 383 of Maps, at page 35.

TRACT 2:

Together with an easement for vehicles parking over the following described property:

A 7-foot strip of land for parking easement purposes over a portion of Parcel A, as said Parcel A is shown on that certain Parcel Map filed for record on November 10, 1974 in Book 292 of Maps, at page 41, records of said County, and being more particularly described as follows:

Commencing at the Northeast corner of said Parcel A; thence North 75[degrees]8'27" West 500.00 feet along the Northeasterly line of said Parcel A; thence South 14[degrees]51'33" West 7.00 feet; thence parallel to Northeasterly line of said Parcel A, South 75[degrees]08'27" East 500.00 feet to the Southeast line of said Parcel A, North 14[degrees]51'33" East 7.00 feet to the point of beginning.

APN: 110-32-002
ARB: 110-3-65.02

TRACT 3:

Parcel 1, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-6
ARB: 110-3-x65

TRACT 4:

Parcel 2, as shown on that certain Parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on July 7, 1994, in Book 657 of Parcel Maps, Page 9.

APN: 110-32-7
ARB: 110-3-x65

TRACT 5:

Parcel 2, as shown on that certain parcel Map which filed for record in the office of the recorder of the County of Santa Clara, State of California on October 7, 1998, in Book 708 of Parcel Maps, Pages 51 and 52.

APN: 110-32-12
ARB: 110-03-65.11

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 IV - Improvements) incorporated by reference into the Purchase Agreement (Phase IV- Improvements) between BNPLC and Network Appliance, Inc. dated December ___, 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
_____	_____	_____
_____	_____	_____

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 IV - Improvements) (herein called the "Purchase Agreement") dated as of December ____, 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: _____

PLEDGE AGREEMENT
(PHASE IV - LAND)

AMONG

BNP LEASING CORPORATION
("BNPLC")

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

NETWORK APPLIANCE, INC.
("NAI")

AND

PARTICIPANTS AS DESCRIBED HEREIN

DECEMBER ____, 1999

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PLEDGE AGREEMENT
(PHASE IV - LAND)

This PLEDGE AGREEMENT (PHASE IV - LAND) (this "AGREEMENT") is made as of December ___, 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 IV - Land) dated as of the Effective Date (the "COMMON DEFINITIONS AND PROVISIONS AGREEMENT (PHASE IV - LAND)"); and (ii) a Purchase Agreement (Phase IV - 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 IV - Land)), in consideration of the rights granted to NAI by the Purchase Agreement.

B. Pursuant to a Participation Agreement dated as of December ___, 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 IV - 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 IV - Land) and not otherwise defined herein shall have the same meanings herein as set forth in the Common Definitions and Provisions Agreement (Phase IV - 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 Part III of Schedule 1.

"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.

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"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;

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(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.

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"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.)

"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.

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"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 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

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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 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

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commence on or after the first Business Day of January, 2002, 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 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; or

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.

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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

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substitute to satisfy the requirements set forth in Section 4.1. Pending the designation of the substitute and the satisfaction by it of the requirements set forth in Section 4.1, Agent may withdraw Collateral held by the Disqualified Deposit Taker and deposit such Collateral with other Deposit Takers, subject to Section 5.3 below.

Section 4.5 Voluntary Substitution of Deposit Takers. With the written approval of Agent, which approval will not be unreasonably withheld, BNPLC or any Participant may at any time designate for itself a new Deposit Taker (in replacement of any prior Deposit Taker acting for it hereunder); provided, the Person so designated has satisfied the requirements set forth in Section 4.1; and, provided further, unless the designation of a new Deposit Taker is required by Section 4.4 to replace a Disqualified Deposit Taker, at the time of the replacement such Person must be an Initially Qualified Deposit Taker.

Section 4.6 Delivery of Notice of Security Interest by NAI and Agent. To the extent required for the designation of a new Deposit Taker by BNPLC or any Participant pursuant to Section 4.5, or to permit the substitution or replacement of a Deposit Taker for BNPLC or any Participant as provided in Sections 4.4 and 4.5, NAI and Agent shall promptly execute and deliver any properly completed Notice of Security Interest requested by BNPLC or the applicable Participant.

Section 4.7 Constructive Possession of Collateral. The possession by a Deposit Taker of any deposit accounts, money, instruments, chattel paper or other property constituting Collateral or evidencing Collateral shall be deemed to be possession by Agent or a person designated by Agent, for purposes of perfecting the security interest granted to Agent hereunder pursuant to the UCC or other Applicable Law; and notifications to a Deposit Taker by other Persons holding any such property, and Acknowledgments, receipts or confirmations from any such Persons delivered to a Deposit Taker, shall be deemed notifications to, or Acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of such Deposit Taker for the benefit of Agent for the purposes of perfecting such security interests under Applicable Law.

Section 4.8 Attempted Setoff by Deposit Takers. By delivery of a Deposit Taker's Acknowledgment and Agreement, each Deposit Taker shall be required to agree not to setoff or attempt a setoff, WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF AGENT, Secured Obligations owed to it against any Collateral held by it from time to time. Further, by delivery of a Deposit Taker's Acknowledgment and Agreement, each Deposit Taker shall be required to agree not to setoff or attempt a setoff, WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF BOTH NAI AND AGENT, obligations owed to it other than Secured Obligations against any Collateral held by it from time to time. Any Deposit Taker for BNPLC or a Participant shall not be permitted by BNPLC or the applicable Participant, as the case may be, to violate such agreements. However, NAI acknowledges and agrees (without limiting its right to recover damages from a Deposit Taker that violates such agreements) that Agent shall not be responsible for, or be deemed to have taken any action against NAI because of, any Deposit Taker's violation of such agreements; and, neither BNPLC nor any Participant shall be responsible for, or be deemed to have taken any action against NAI because of, any violation of such agreements by a Deposit Taker for another party.

Section 4.9 Deposit Taker Losses. Agent shall not be responsible for any Deposit Taker Losses. However, Deposit Taker Losses with respect to a Deposit

Taker for a particular Participant shall reduce the amount of BNPLC's Corresponding Obligations to Participants which are payable to such Participant as provided in Section 2.2 of the Participation Agreement. Further, when Deposit Taker Losses with respect to a Deposit Taker for a particular Participant are incurred in excess of the payments of Secured Obligations that such Participant would then have been entitled to receive under the Participation Agreement but for such Deposit Taker Losses, such Participant must immediately pay the excess to Agent

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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

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.

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:

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 IV - 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.

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.

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

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:

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(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

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 BNPLIC; 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 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

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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 IV - 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 IV - 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.

[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 December ___, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: _____

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[Continuation of signature pages to Pledge Agreement (Phase IV - Land) dated to be effective December ___, 1999.]

"BNPLC"

BNP LEASING CORPORATION

By: _____

[Continuation of signature pages to Pledge Agreement (Phase IV - Land) dated to be effective December __, 1999.]

"AGENT"

BANQUE NATIONALE DE PARIS

By:

Name:

Title:

"PARTICIPANT"

BANQUE NATIONALE DE PARIS

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 IV - Land) dated December __,
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 IV - 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

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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 IV - Land) (the "PLEDGE AGREEMENT") dated December ____, 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 IV - Land) (the "PLEDGE AGREEMENT")
dated December ___, 1999 among Network Appliance, Inc., BNP
Leasing Corporation, Banque Nationale de Paris and any other
financial institutions which are from time to time Participants
under such Pledge Agreement and Banque Nationale de Paris,
acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned
to them in the Pledge Agreement referenced above. This letter constitutes notice
to you, as Agent under the Pledge Agreement, that pursuant to Section 3.1 of the
Pledge Agreement, NAI elects to change the Collateral Percentage to:

_____ percent (___%),

on the following Base Rent Date:

_____, _____

NAI expects that multiplying the new Collateral Percentage specified above
against Stipulated Loss Value of:

_____ Dollars (\$_____),

will result in an expected new Minimum Collateral Value of:

_____ Dollars (\$_____).

[NOTE: THE NEXT PARAGRAPH WILL BE INCLUDED ONLY IN A NOTICE OF AN INCREASE IN
THE COLLATERAL PERCENTAGE, BECAUSE OF WHICH NAI WILL BE REQUIRED TO DELIVER
ADDITIONAL CASH COLLATERAL TO SATISFY THE MINIMUM COLLATERAL VALUE REQUIREMENTS
IN SECTION 5.1 OF THE PLEDGE AGREEMENT:

Because of the increase in the Collateral Percentage which will result from this
notice and the corresponding increase in the Minimum Collateral Value, NAI will
deliver additional Cash Collateral to you as required by Section 5.1 of the
Pledge Agreement no later than 12:00 noon (San Francisco time) on the Base Rent
Date specified above, in the amount of:

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_____ Dollars (\$_____).]

To assure you that NAI has satisfied the conditions to its right to change the
Collateral Percentage as provided in this notice, and to induce you to rely upon
this notice in discharging your responsibilities under the Pledge Agreement, NAI

certifies to you that:

1. NAI is giving this notice to you, BNPLC and the Participants at least ten Business Days prior to the Base Rent Date specified above, and such Base Rent Date is the commencement of a Base Rent Period.

2. No Event of Default or other event or circumstance that would, pursuant to Section 3.2 of the Pledge Agreement, preclude NAI from designating the new Collateral Percentage above has occurred and is continuing, and NAI does not anticipate that on the Base Rent Date specified above there will have occurred and be continuing any such Event of Default or other event or circumstance.

3. No Mandatory Collateral Period shall be in effect as of the effective date specified above.

NOTE: YOU SHALL BE ENTITLED TO DISREGARD THIS NOTICE IF THE STATEMENTS ABOVE ARE NOT CORRECT. HOWEVER, WE ASK THAT YOU NOTIFY NAI IMMEDIATELY IF FOR ANY REASON YOU BELIEVE THIS NOTICE IS DEFECTIVE.

Network Appliance, Inc.

By:

Name:

Title:

[cc BNPLC and all Participants]

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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 IV - Land) (the "PLEDGE AGREEMENT") dated December __, 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: _____

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"NAI"

Network Appliance, Inc.

By:

Name: _____

Title: _____

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ACKNOWLEDGMENT AND AGREEMENT
OF DEPOSIT TAKER

Deposit Taker hereby acknowledges receipt of, and consents to, the above notice, acknowledges that it will hold the Collateral for Agent and as Agent's bailee, agrees to comply with the authorizations and directions set forth above and represents to and agrees with NAI and Agent as follows:

(a) Deposit Taker is a commercial bank, organized under the laws of the United States of America or a state thereof or under the laws of another country which is doing business in the United States of America. Deposit Taker is authorized to maintain deposit accounts for others through the Account Offices specified in the above notice, and Deposit Taker will not move the accounts described in the above notice to other offices without the prior written authorization of Agent and NAI.

(b) Deposit Taker has a combined capital, surplus and undivided profits of at least \$500,000,000.

(c) The information set forth above regarding the Account(s) is accurate. Such Account(s) is (are) currently open and Deposit Taker has no prior notice of any other pledge, security interest, Lien, adverse claim or interest in such Account(s).

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

(f) Deposit Taker shall not (i) allow the withdrawal of funds

from any Account by any Person other than Agent, or (ii) WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF AGENT, setoff or attempt to setoff any Secured Obligations owed to Deposit Taker against any Collateral held from time to time by Deposit Taker, or (iii) WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF BOTH NAI AND AGENT, setoff or attempt to setoff any obligations owed to Deposit Taker other than Secured Obligations, against any Collateral held from time to time by Deposit Taker.

[_____]

By:

Name: _____

Title: _____

[Date]

ATTACHMENT 5
TO PLEDGE AGREEMENT

EXAMPLES OF CALCULATIONS REQUIRED
TO AVOID A COLLATERAL IMBALANCE

The examples below are provided to illustrate the calculations required for allocations of Cash Collateral in a manner that will avoid a Collateral Imbalance. The examples are not intended to reflect actual numbers under this Agreement or actual Percentages of BNPLC or any of the Participants; nor are the examples intended to provide a formula for the allocations that would be appropriate in every case. The examples also reflect adjustments that would be appropriate if the Collateral Percentage were adjusted from time to time from and after the Base Rent Commencement Date, although this Agreement provides that such percentage is not to increase above zero until the second anniversary of the Effective Date (expected to be well after the Base Rent Commencement Date), except in a Mandatory Collateral Period, during which such percentage would be 100%.

EXAMPLE NO. 1

Assumptions:

1. Two Participants ("Participant A" and "Participant B") are parties to the Participation Agreement with BNPLC. Participant A's Percentage is 50% and Participant B's Percentage is 45%, leaving BNPLC with a Percentage of 5%.
2. On the Base Rent Commencement Date, Funding Advances (including those to cover Carrying Costs under the 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

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EXAMPLE NO. 2

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

- Effective as of the first Base Rent Date, NAI increased its Collateral Percentage from 60% to 80%, raising the Minimum Collateral Value to \$9,600,000. Because of such increase, NAI also delivered an additional \$2,400,000 as Cash Collateral to Agent on the first Base Rent Date, bringing the total of all Cash Collateral delivered by NAI to \$9,600,000 as required by Section 5.1 of this Agreement.
- Also effective as of the first Base Rent Date, a new Participant approved by NAI ("Participant C") became a party to this Agreement and the Participation Agreement, taking a Percentage of 20%. Simultaneously, Participant A and Participant B entered into supplements to the Participation Agreement which reduced their Percentages to 40% and 35%, respectively.

Allocation of Cash Collateral Required: To avoid a Collateral Imbalance under these assumptions, Agent would be required to allocate the Cash Collateral as required to leave the Deposit Takers for BNPLC and the Participants with the following amounts:

A.	BNPLC's Deposit Taker (5% of Minimum Collateral Value)	480,000
B.	Participant A's Deposit Taker (40% of Minimum Collateral Value)	3,840,000
C.	Participant B's Deposit Taker (35% of Minimum Collateral Value)	3,360,000
D.	Participant C's Deposit Taker (20% of Minimum Collateral Value)	1,920,000

	TOTAL	\$9,600,000

Thus, to prevent a Collateral Imbalance, Agent would have to allocate the \$2,400,000 of additional Cash Collateral it received on the first Base Rent Date as follows:

A.	BNPLC's Deposit Taker (\$480,000 less \$360,000 already on deposit)	\$ 120,000
B.	Participant A's Deposit Taker (\$3,840,000 less \$3,600,000 already on deposit)	240,000
C.	Participant B's Deposit Taker (\$3,360,000 less \$3,240,000 already on deposit)	120,000
D.	Participant C's Deposit Taker (\$1,920,000 less \$0 already on deposit)	1,920,000

	TOTAL	\$2,400,000

EXAMPLE NO. 3

Assumptions: Assume the same facts as in Example No. 2, except that:

- 1. Instead of increasing its Collateral Percentage from 60% to 80%, NAI increased its Collateral Percentage to 70% on the first Base Rent Date, raising the Minimum Collateral Value to \$8,400,000. Because of such increase, NAI delivered an additional \$1,200,000 as additional Cash Collateral to Agent on the first Base Rent Date, bringing the total of all Cash Collateral delivered by NAI to \$8,400,000 as required by Section 5.1 of this Agreement.

Allocation of Cash Collateral Required: To avoid a Collateral Imbalance under these assumptions, Agent would be required to allocate the Cash Collateral as required to leave the Deposit Takers for BNPLC and the Participants with the following amounts:

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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

[_____, ____]

Re: Pledge Agreement (Phase IV - Land) dated December ____, 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 IV - 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 IV - 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 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 IV - Land) dated December __, 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 IV - 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 IV - 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]

[Phase IV - Land]

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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 IV - Land) dated December __, 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 IV - 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 IV - 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]

[Phase IV - Land]

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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 IV - Land) dated December __, 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 IV - 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 IV - 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]

[Phase IV - Land]

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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 IV - Land) dated December __, 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 IV - 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 IV - 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 presentation of the Certificates of Deposit seven days before Cash Collateral is to be withdrawn from the Accounts they evidence. Accordingly, you must present Certificates of Deposit to the Deposit Taker for BNPLC seven days prior to the withdrawal of Cash Collateral required by this notice. For your convenience, we have attached a letter as Annex 1 to this notice that you might execute and send to the Deposit Taker for BNPLC to advise it of your intent to withdraw and of your presentment of Certificates of Deposit as required in connection therewith. The attached letter also sets forth the amount NAI believes you must withdraw to comply with Section 6.3 of the Pledge Agreement.

Network Appliance, Inc.

By: _____
Name: _____
Title: _____

[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 IV - Land) dated December ____, 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 IV - 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 IV - 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]

[Phase IV - Land]

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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 IV - Land) dated December ___, 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 IV - 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 IV - 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

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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]

[Phase IV - Land]

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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 IV - Land) dated December __, 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 IV - 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 IV - 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]

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Schedule 1

FINANCIAL COVENANTS

This Schedule 1 is attached to and made a part of (a) the Lease Agreement (Phase IV - Improvements) (the "IMPROVEMENTS LEASE") dated to be effective as of December __, 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 IV - 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 IV - 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 IV - 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

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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.

"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

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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.

PART II - FINANCIAL COVENANTS

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

[Phase IV - Land]

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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.

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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

[Phase IV - Land]

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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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PLEDGE AGREEMENT
(PHASE IV - IMPROVEMENTS)

AMONG

BNP LEASING CORPORATION
("BNPLC")

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

NETWORK APPLIANCE, INC.
("NAI")

AND

PARTICIPANTS AS DESCRIBED HEREIN

DECEMBER ____, 1999

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PLEDGE AGREEMENT
(PHASE IV - IMPROVEMENTS)

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

[Phase IV - Improvements]

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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 Part III of Schedule 1.

"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.

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"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 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;

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(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.

[Phase IV - Improvements]

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"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, 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.

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"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 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

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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 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, 2002, or (B) the next following Base Rent Period

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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 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; or

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.

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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

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the satisfaction by it of the requirements set forth in Section 4.1, Agent may withdraw Collateral held by the Disqualified Deposit Taker and deposit such Collateral with other Deposit Takers, subject to Section 5.3 below.

Section 4.5 Voluntary Substitution of Deposit Takers. With the written approval of Agent, which approval will not be unreasonably withheld, BNPLC or any Participant may at any time designate for itself a new Deposit Taker (in replacement of any prior Deposit Taker acting for it hereunder); provided, the Person so designated has satisfied the requirements set forth in Section 4.1; and, provided further, unless the designation of a new Deposit Taker is required by Section 4.4 to replace a Disqualified Deposit Taker, at the time of the replacement such Person must be an Initially Qualified Deposit Taker.

Section 4.6 Delivery of Notice of Security Interest by NAI and Agent. To the extent required for the designation of a new Deposit Taker by BNPLC or any Participant pursuant to Section 4.5, or to permit the substitution or replacement of a Deposit Taker for BNPLC or any Participant as provided in Sections 4.4 and 4.5, NAI and Agent shall promptly execute and deliver any properly completed Notice of Security Interest requested by BNPLC or the applicable Participant.

Section 4.7 Constructive Possession of Collateral. The possession by a Deposit Taker of any deposit accounts, money, instruments, chattel paper or other property constituting Collateral or evidencing Collateral shall be deemed to be possession by Agent or a person designated by Agent, for purposes of perfecting the security interest granted to Agent hereunder pursuant to the UCC or other Applicable Law; and notifications to a Deposit Taker by other Persons holding any such property, and Acknowledgments, receipts or confirmations from any such Persons delivered to a Deposit Taker, shall be deemed notifications to, or Acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of such Deposit Taker for the benefit of Agent for the purposes of perfecting such security interests under Applicable Law.

Section 4.8 Attempted Setoff by Deposit Takers. By delivery of a Deposit Taker's Acknowledgment and Agreement, each Deposit Taker shall be required to agree not to setoff or attempt a setoff, WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF AGENT, Secured Obligations owed to it against any Collateral held by it from time to time. Further, by delivery of a Deposit Taker's Acknowledgment and Agreement, each Deposit Taker shall be required to agree not to setoff or attempt a setoff, WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF BOTH NAI AND AGENT, obligations owed to it other than Secured Obligations against any Collateral held by it from time to time. Any Deposit Taker for BNPLC or a Participant shall not be permitted by BNPLC or the applicable Participant, as the case may be, to violate such agreements. However, NAI acknowledges and agrees (without limiting its right to recover damages from a Deposit Taker that violates such agreements) that Agent shall not be responsible for, or be deemed to have taken any action against NAI because of, any Deposit Taker's violation of such agreements; and, neither BNPLC nor any Participant shall be responsible for, or be deemed to have taken any action against NAI because of, any violation of such agreements by a Deposit Taker for another party.

Section 4.9 Deposit Taker Losses. Agent shall not be responsible for any Deposit Taker Losses. However, Deposit Taker Losses with respect to a Deposit Taker for a particular Participant shall reduce the amount of BNPLC's Corresponding Obligations to Participants which are payable to such Participant as provided in Section 2.2 of the Participation Agreement. Further, when Deposit Taker Losses with respect to a Deposit Taker for a particular Participant are incurred in excess of the payments of Secured Obligations that such Participant would then have been entitled to receive under the Participation Agreement but for such Deposit Taker Losses, such Participant must immediately pay the excess to Agent

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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.

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.

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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.

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

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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:

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 IV - Improvements) or at another address in California specified in a notice that NAI has given to Agent as required by Section 7.2.4.

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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.

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

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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.

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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.

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 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:

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(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

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

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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

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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

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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 IV - 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 IV - 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 December ____, 1999.

"NAI"

NETWORK APPLIANCE, INC.

By: _____

Name: _____

Title: _____

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[Continuation of signature pages to Pledge Agreement (Phase IV - Improvements) dated to be effective December ____, 1999]

"BNPLC"

BNP LEASING CORPORATION

By: _____

Lloyd G. Cox, Vice President

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[Continuation of signature pages to Pledge Agreement (Phase IV - Improvements) dated to be effective December ____, 1999]

"AGENT"

BANQUE NATIONALE DE PARIS

By: _____

Name: _____
Title: _____

"PARTICIPANT"

BANQUE NATIONALE DE PARIS

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 IV - Improvements) dated December ____, 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 IV - 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 IV - Improvements) (the "PLEDGE AGREEMENT") dated December ____, 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 IV - Improvements) (the "PLEDGE AGREEMENT") dated December ____, 1999 among Network Appliance, Inc., BNP Leasing Corporation, Banque Nationale de Paris and any other financial institutions which are from time to time Participants under such Pledge Agreement and Banque Nationale de Paris, acting in its capacity as agent for BNPLC and the Participants

Gentlemen:

Capitalized terms used in this letter are intended to have the meanings assigned to them in the Pledge Agreement referenced above. This letter constitutes notice to you, as Agent under the Pledge Agreement, that pursuant to Section 3.1 of the Pledge Agreement, NAI elects to change the Collateral Percentage to:

_____ percent (___%),

on the following Base Rent Date:

_____, ____

NAI expects that multiplying the new Collateral Percentage specified above against Stipulated Loss Value of:

_____ Dollars (\$_____),

will result in an expected new Minimum Collateral Value of:

_____ Dollars (\$_____).

[NOTE: THE NEXT PARAGRAPH WILL BE INCLUDED ONLY IN A NOTICE OF AN INCREASE IN THE COLLATERAL PERCENTAGE, BECAUSE OF WHICH NAI WILL BE REQUIRED TO DELIVER ADDITIONAL CASH COLLATERAL TO SATISFY THE MINIMUM COLLATERAL VALUE REQUIREMENTS IN SECTION 5.1 OF THE PLEDGE AGREEMENT:

Because of the increase in the Collateral Percentage which will result from this notice and the corresponding increase in the Minimum Collateral Value, NAI will deliver additional Cash Collateral to you as required by Section 5.1 of the Pledge Agreement no later than 12:00 noon (San Francisco time) on the Base Rent Date specified above, in the amount of:

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_____ Dollars (\$_____).]

To assure you that NAI has satisfied the conditions to its right to change the Collateral Percentage as provided in this notice, and to induce you to rely upon this notice in discharging your responsibilities under the Pledge Agreement, NAI certifies to you that:

1. NAI is giving this notice to you, BNPLC and the Participants at least ten Business Days prior to the Base Rent Date specified above, and such Base Rent Date is the commencement of a Base Rent Period.

2. No Event of Default or other event or circumstance that would, pursuant to Section 3.2 of the Pledge Agreement, preclude NAI from designating the new Collateral Percentage above has occurred and is continuing, and NAI does not anticipate that on the Base Rent Date specified above there will have occurred and be continuing any such Event of Default or other event or circumstance.

3. No Mandatory Collateral Period shall be in effect as of the effective date specified above.

NOTE: YOU SHALL BE ENTITLED TO DISREGARD THIS NOTICE IF THE STATEMENTS ABOVE ARE NOT CORRECT. HOWEVER, WE ASK THAT YOU NOTIFY NAI IMMEDIATELY IF FOR ANY REASON YOU BELIEVE THIS NOTICE IS DEFECTIVE.

Network Appliance, Inc.

By:

Name:

Title:

[cc BNPLC and all Participants]

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 IV - Improvements) (the "PLEDGE AGREEMENT") dated December ____, 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;

(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: _____

"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).

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

(f) Deposit Taker shall not (i) allow the withdrawal of funds from any Account by any Person other than Agent, or (ii) WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF AGENT, setoff or attempt to setoff any Secured Obligations owed to Deposit Taker against any Collateral held from time to time by Deposit Taker, or (iii) WITHOUT IN EACH CASE FIRST OBTAINING THE PRIOR WRITTEN AUTHORIZATION OF BOTH NAI AND AGENT, setoff or attempt to setoff any obligations owed to Deposit Taker other than Secured Obligations, against any Collateral held from time to time by Deposit Taker.

[_____]

By: _____

Name: _____

Title: _____

[Date]

ATTACHMENT 5
TO PLEDGE AGREEMENT

EXAMPLES OF CALCULATIONS REQUIRED
TO AVOID A COLLATERAL IMBALANCE

The examples below are provided to illustrate the calculations required for allocations of Cash Collateral in a manner that will avoid a Collateral Imbalance. The examples are not intended to reflect actual numbers under this Agreement or actual Percentages of BNPLC or any of the Participants; nor are the examples intended to provide a formula for the allocations that would be appropriate in every case. The examples also reflect adjustments that would be appropriate if the Collateral Percentage were adjusted from time to time from and after the Base Rent Commencement Date, although this Agreement provides that such percentage is not to increase above zero until the second anniversary of the Effective Date (expected to be well after the Base Rent Commencement Date), except in a Mandatory Collateral Period, during which such percentage would be 100%.

EXAMPLE NO. 1

Assumptions:

1. Two Participants ("Participant A" and "Participant B") are parties to the Participation Agreement with BNPLC. Participant A's Percentage is 50% and Participant B's Percentage is 45%, leaving BNPLC with a Percentage of 5%.
2. On the Base Rent Commencement Date, Funding Advances (including those to cover Carrying Costs under the 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

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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:

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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. ENPLC'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 IV - Improvements) dated December __, 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 IV - 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 IV - 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 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 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]

[Phase IV - Improvements]

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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 IV - Improvements) dated December ____, 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 IV - 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 IV - 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]

[Phase IV - Improvements]

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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 IV - Improvements) dated December ____, 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 IV - 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 IV - 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 IV - Improvements) dated December ____,
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 IV - 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 IV - 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]

[Phase IV - Improvements]

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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 IV - Improvements) dated December ____, 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 IV - 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 IV - 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]

[_____, ____]

[Name of the Deposit Taker for BNPLC]
[Address of such Deposit Taker]

Re: Pledge Agreement (Phase IV - Improvements) dated December ____,
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 IV - 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 IV - 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]

[Phase IV - Improvements]

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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 IV - Improvements) dated December ____,
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 IV - 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 IV - 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

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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 IV - Improvements) dated December ____, 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 IV - 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 IV - 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]

[Phase IV - Improvements] -3-

Schedule 1

Financial Covenants and Negative Covenants

This Schedule 1 is attached to and made a part of (a) the Lease Agreement (Phase IV - Improvements) (the "IMPROVEMENTS LEASE") dated to be effective as of December ____, 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 IV - 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 IV - 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 IV - 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 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

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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.

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

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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.

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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

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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.

[Phase IV - Improvements]

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\$62,000,000
 PARTICIPATION AGREEMENT
 PHASE IV

BETWEEN

BNP LEASING CORPORATION
 ("BNPLC")

AND

BANQUE NATIONALE DE PARIS,
 (A "PARTICIPANT")

EFFECTIVE AS OF DECEMBER ____, 1999

(NETWORK APPLIANCE, INC. - PHASE IV)
 (SUNNYVALE, SANTA CLARA COUNTY, CALIFORNIA PROPERTY)

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Exhibits and Schedules

Schedule 1.....	Names and Addresses of Participants
Exhibit A.....	Participation Agreement Supplement Form

PARTICIPATION AGREEMENT

This Agreement (this "AGREEMENT") is made as of December ____, 1999, by and between BNP LEASING CORPORATION ("BNPLC"), a Delaware corporation, and the Participants (as defined below).

RECITALS:

A. BNPLC and Network Appliance, Inc. ("NAI") have entered into the following agreements, each dated as of December ____, 1999, relating to the Improvements: a Lease Agreement (Phase IV - Improvements) (the "PHASE IV IMPROVEMENTS LEASE"); a Purchase Agreement (Phase IV - Improvements) (the "PHASE IV IMPROVEMENTS PURCHASE AGREEMENT"); a Common Definitions and Provisions Agreement (Phase IV - Improvements) (the "PHASE IV IMPROVEMENTS CDPA"); and a Closing Certificate and Agreement (the "CLOSING CERTIFICATE"). Also, BNPLC, NAI, the Participants and Banque Nationale de Paris, in its capacity as agent for BNPLC and the Participants (in such capacity, "AGENT") have entered into a Pledge Agreement (Phase IV - Improvements) dated as of December ____, 1999 (the "PHASE IV IMPROVEMENTS PLEDGE AGREEMENT").

B. BNPLC and NAI have also entered into the following agreements, each dated as of December ____, 1999, relating to the Land: a Lease Agreement (Phase IV - Land) (the "PHASE IV LAND LEASE"); a Purchase Agreement (Phase IV - Land) (the "PHASE IV LAND PURCHASE AGREEMENT"); a Common Definitions and Provisions Agreement (Phase IV - Land) (the "PHASE IV LAND CDPA"); and the Closing Certificate. Also, BNPLC, NAI, the Participants and Agent have entered into a Pledge Agreement (Phase IV - Land) dated as of December ____, 1999 (the "PHASE IV LAND PLEDGE AGREEMENT").

C. By this Agreement, the parties desire to evidence the Participants' agreement to participate with BNPLC in certain of the risks and rewards to BNPLC of the aforementioned agreements, which participation is to be accomplished through the exchange of promises to make payments computed by reference to the sums paid or received by BNPLC from time to time with respect to the aforementioned agreements, all as more particularly provided below.

AGREEMENTS

NOW, THEREFORE, BNPLC and the Participants hereby agree as follows:

1.0 DEFINITIONS. As used herein, capitalized terms defined above shall have the meanings assigned to them above; capitalized terms that are defined in one, but not both, of the Phase IV Improvements CDPA and the Phase IV Land CDPA and that are used but not defined herein shall have the respective meanings assigned to them in the Phase IV Improvements CDPA or Phase IV Land CDPA, as applicable; capitalized terms that are defined in both of the Phase IV Improvements CDPA and the Phase IV Land CDPA and that are used but not defined herein shall have the respective meanings assigned to them in the Phase IV Improvements CDPA and the Phase IV Land CDPA (provided, if the meaning assigned to any such capitalized term in the Phase IV Improvements CDPA is different than the meaning assigned to it in the Phase IV Land CDPA, the term will be construed broadly for purposes of this Agreement to include anything that would fall within one or both of the definitions of the term in the Phase IV Improvements CDPA and the Phase IV Land CDPA); and, the following capitalized terms shall have the following meanings:

1.1. "BANK SPECIFIC CHARGES" means payments made to BNPLC by or on behalf of NAI for the account of a Participant or any other Interested Party under subparagraph 5(c) (i) or 5(c) (ii) of the Leases or

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as Upfront Syndication Fees. Bank Specific Charges include, for example, payments made to compensate a Participant for an increase in costs related to advances made by the Participant hereunder and attributable to a Banking Rules Change after the Effective Date.

1.2. "COMMON DEFINITIONS AND PROVISIONS AGREEMENTS" means the Phase IV Improvements CDPA and the Phase IV Land CDPA.

1.3. "CRITICAL EVENT" means any of the following:

1.3.1. any failure by NAI to purchase BNPLC's interest in the Property or to cause an Applicable Purchaser to purchase BNPLC's interest in the Property when required under the Purchase Agreements; or

1.3.2. any failure by NAI to pay Base Rent which continues for 10 days.

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

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

1.6. "DIRECT PAYMENTS", like the phrase "Direct Payments to Participants" under the Purchase Agreements, 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 Agreements at the direction of and for NAI by Agent from all or any part of the Collateral described therein.

1.7. "DISTRIBUTABLE PAYMENT" means any payment ACTUALLY RECEIVED by BNPLC under the Leases or other Operative Documents as (or in satisfaction of NAI's obligations for) any of the following or interest on past due amounts thereof: Base Rent; Qualified Prepayments; Bank Specific Charges; a Supplemental Payment; or Net Sales Proceeds.

1.8. "LATE PAYMENT RATE" means (a) for each day (other than as set forth in clause (b) of this sentence) the Fed Funds Rate or (b) for the purpose of computing interest on past due payments for each day following the fifth day

after such payments first became due, a rate of two percent (2%) per annum in excess of the Prime Rate then in effect; provided, the Late Payment Rate shall not, notwithstanding anything to the contrary herein contained, exceed the maximum rate of interest permitted by applicable law.

1.9. "LEASES" means the Phase IV Improvements Lease and the Phase IV Land Lease.

1.10. "MAJORITY" means, at the time any determination thereof is required, any of the Participants and BNPLC, the aggregate Percentages of which equal or exceed sixty-seven percent (67%) of the Percentages of BNPLC and of all the Participants then entitled to vote under Section 6.1.

1.11. "NET CASH FLOW" means payments made to BNPLC under the Leases or other Operative Documents as (or in satisfaction of NAI's obligations for) Base Rent, Qualified Prepayments, any Supplemental Payment or any interest on past due Base Rent, Qualified Prepayments or a Supplemental Payment.

1.12. "NET SALES PROCEEDS" means payments made to BNPLC under the Purchase Agreements as (or in satisfaction of NAI's or an Applicable Purchaser's obligations for) the purchase price for BNPLC's interest in Property or in Escrowed Proceeds; but less and excluding (x) any such payments applied by

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BNPLC to pay, or received by BNPLC as reimbursement for, bona fide costs of a sale under the Purchase Agreements, and (y) any excess sales proceeds received from an Applicable Purchaser that BNPLC is required by Paragraph 1(A)(2)(b) or 2(D) of the Purchase Agreements to pay over to NAI. Further, if BNPLC does not sell the Property to NAI or an Applicable Purchaser pursuant to the Purchase Agreements, then "NET SALES PROCEEDS" shall also include the excess, if any, of:

1.12.1. all rents and sales, condemnation and insurance proceeds ACTUALLY RECEIVED by BNPLC (other than sales proceeds paid or to be paid by BNPLC to NAI pursuant to Paragraph 2(D) of the Purchase Agreements) from any sale or lease after the Designated Sale Date of any interest in, or because of any subsequent taking or damage to, the Property; over

1.12.2. the sum of (i) all costs of collecting the rents and proceeds described in the preceding clause 1.12.1, plus (ii) all ad valorem taxes, insurance premiums and other Losses of every kind suffered or incurred by BNPLC with respect to the ownership, operation or maintenance of the Property.

However, for purposes of computing any excess described in the preceding sentence, costs described in clause 1.12.2 shall not include BNPLC's general overhead costs or any Protective Advances for which the Participants have already paid BNPLC their respective Percentages thereof as required by Section 3.3.

1.13. "OPERATIVE DOCUMENTS" means all of Operative Documents under and as defined in the Phase IV Improvements CDPA and Operative Documents under and as defined in the Phase IV Land CDPA. The term Operative Documents includes the Phase IV Improvements Lease, the Phase IV Improvements Purchase Agreement, the Phase IV Improvements Pledge Agreement, the Phase IV Improvements CDPA, the Closing Certificate, the Phase IV Land Lease, the Phase IV Land Purchase Agreement, the Phase IV Land Pledge Agreement, and the Phase IV Land CDPA.

1.14. "PARTICIPANTS" means Banque Nationale de Paris and any other financial institutions which may hereafter become parties to (i) this Agreement (by joining with BNPLC in completing and executing a Participation Agreement Supplement) and (ii) the Pledge Agreements, in each case pursuant to a Permitted Transfer.

1.15. "PARTICIPATION AGREEMENT SUPPLEMENT" means a Participation Agreement Supplement in substantially the form attached hereto as Exhibit A, completed and executed by BNPLC and a Participant, adding the Participant as a party to this Agreement, changing a Participant's Percentage or removing a Participant as a party to this Agreement.

1.16. "PARTICIPATION AMOUNT" of BNPLC or any Participant means the outstanding balance from time to time of the total investment made by BNPLC under the Operative Documents or by the applicable Participant hereunder. The

Participation Amount of BNPLC and each Participant will be comparable to its share of the outstanding principal balance that would be due from NAI from time to time if BNPLC had made a loan (and the Participants had participated in the loan) to NAI for NAI's acquisition of the Land and the Improvements as provided in the Operative Documents, instead of BNPLC's having acquired the Property itself and having leased the same to NAI as provided in the Operative Documents. Absent a failure by any Participant to make a payment required by Section 3.2 or some other unexpected contingency, it is expected that (a) the Participation Amounts of BNPLC and the Participants will always be in proportion to their respective Percentages set forth in SCHEDULE 1, and (b) the total Participation Amounts of BNPLC and all Participants during the Term of the Leases shall equal the Stipulated Loss Value computed from time to time under the Leases.

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1.17. "PERCENTAGE" of each Participant means, subject to change as provided in Section 4.1 and to change by a Participation Agreement Supplement, the percentage designated as the Participant's "Percentage" in SCHEDULE 1. "PERCENTAGE" of BNPLC means a percentage that, at the time a determination of such Percentage is required hereunder, is equal to 100% less the sum of the Percentages of all the Participants.

1.18. "PLEDGE AGREEMENTS" means the Phase IV Improvements Pledge Agreement and the Phase IV Land Pledge Agreement.

1.19. "PROPERTY" means all real and personal property covered from time to time by the Phase IV Improvements Lease and the Phase IV Land Lease.

1.20. "PROTECTIVE ADVANCES" shall mean any payments (including payments to attorneys, accountants, experts and other advisors) made by or on behalf of BNPLC at any time or from time to time because of, arising out of or related to, in whole or in part: (1) the Property or the protection, preservation, operation or ownership thereof; (2) any of the Operative Documents or the transactions contemplated therein; or (3) BNPLC's status as a party to any of the Operative Documents or anything done by BNPLC to enforce the obligations of NAI under the Operative Documents (whether done upon BNPLC's own initiative or upon the direction of the Majority). Protective Advances will include any and all payments made by or on behalf of BNPLC for which NAI is obligated to indemnify or reimburse BNPLC by Paragraph 5(c) of the Leases.

1.21. "PURCHASE AGREEMENTS" means the Phase IV Improvements Purchase Agreement and, from and the Phase IV Land Purchase Agreement.

2.0 PAYMENTS FROM BNPLC TO EACH PARTICIPANT.

2.1. Payments Computed by Reference to Net Cash Flow and Net Sales Proceeds. Upon the ACTUAL RECEIPT of any Net Cash Flow, Net Sales Proceeds or interest thereon, BNPLC will pay each Participant an amount equal to such Participant's Percentage times such Net Cash Flow, Net Sales Proceeds or interest, as the case may be.

2.2. Payments Computed by Reference to Bank Specific Charges. If BNPLC ACTUALLY RECEIVES any Bank Specific Charges (or interest thereon) for the account of a particular Participant, then BNPLC promises to promptly make a payment to such Participant equal to such Bank Specific Charges (or interest thereon). If requested by any Participant, BNPLC shall make a demand upon NAI for payment of any Bank Specific Charges due for the account of such Participant.

2.3. [Intentionally deleted]

2.4. [Intentionally deleted]

2.5. Timing; Manner of Payment. Each payment required of BNPLC by this Article 2 shall be made prior to 12:00 noon, San Francisco time, on the same day that BNPLC actually receives the corresponding Distributable Payment (in good funds), if BNPLC's receipt of the corresponding Distributable Payment occurs prior to 12:00 noon, San Francisco time; if, however, BNPLC's receipt of the Distributable Payment (in good funds) occurs on any day after 12:00 noon, San Francisco time, the payments required from BNPLC to the Participants shall not be due until 12:00 noon, San Francisco time, on the next Business Day. All payments from BNPLC to the Participants shall be by transfer of federal funds

pursuant to the wiring instructions set forth in SCHEDULE 1. Each payment owing to a Participant by BNPLC shall bear interest from the date it is due until it is paid by BNPLC at the Late Payment Rate

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calculated on the basis of a 360-day year. Any payment by BNPLC to a Participant after the time of day specified herein for such payment shall be deemed not paid until the next following Business Day for purposes of this Agreement.

2.6. Meaning of Actually Received. As used herein with respect to payments, "actually received" and words of like effect shall include not only payments made directly from NAI or any Applicable Purchaser, but also amounts paid by others on NAI's behalf, amounts realized by way of setoff, amounts realized upon the disposition of collateral under the Pledge Agreement and any other documents that may be given from time to time to secure NAI's obligations under Leases or Purchase Agreements (net of the costs of disposition and further net of any amounts that must be returned to NAI or any third party having an interest in such collateral), and the fair market value of any property or services accepted in lieu of a cash payment (though it is understood that nothing herein contained shall require BNPLC to accept property or services in lieu of a cash payment required by the Operative Documents and that BNPLC will not agree to accept property or services in lieu of any cash Distributable Payment without the Participants' prior written consent). Such phrase shall not, however, include amounts received by BNPLC from any of the Participants or from any affiliate of BNPLC unless the context otherwise indicates. In the event of any reduction in Net Sales Proceeds "actually received" by BNPLC (as described in the preceding sentences) because of a reduction in the Break Even Price attributable to any Direct Payments or Deposit Taker Losses, BNPLC will be deemed for purposes of this Agreement to have received additional Net Sales Proceeds from NAI equal to such reduction. In such event, however, BNPLC will be entitled to a credit against the payments that would otherwise be required to any Participant hereunder equal to the aggregate amount, if any, of (1) Direct Payments which are ACTUALLY RECEIVED by such Participant, and (2) Deposit Taker Losses with respect to any Deposit Taker for such Participant.

3.0 PAYMENTS FROM THE PARTICIPANTS TO BNPLC.

3.1. Initial Funding Advance. Each of the original Participants joining in the execution of this Agreement promises to pay to BNPLC an initial payment as set forth below such Participant's name on SCHEDULE 1, equal to the Participant's Percentage times the sum of the Initial Funding Advances under and as defined in the Leases. BNPLC shall have no obligation hereunder to any of the original Participants that fails to pay such initial payment. Such initial payment shall be due no later than 12:00 noon, San Francisco time, on the date hereof.

3.2. [Intentionally deleted].

3.3. Protective Advances.

3.3.1. General. If NAI fails to pay or reimburse any Protective Advance to BNPLC within ten days after BNPLC makes a demand or request therefor, BNPLC may notify the Participants of such failure. Promptly after receipt of any such notice, each Participant shall pay to BNPLC an amount equal to such Participant's Percentage times the Protective Advance described in the notice, EVEN IF THE PROTECTIVE ADVANCE WOULD NOT HAVE BEEN PAID BUT FOR ANY ACTUAL OR ALLEGED NEGLIGENCE OF BNPLC OR ITS AFFILIATES OR REPRESENTATIVES AND EVEN IF THE PROTECTIVE ADVANCE WOULD NOT HAVE BEEN PAID BUT FOR ANY ENVIRONMENTAL LOSSES OR OTHER MATTERS OR CIRCUMSTANCES FOR WHICH BNPLC MAY BE STRICTLY LIABLE. After any Participant has paid its respective Percentage times the Protective Advance to BNPLC, BNPLC shall be obligated to pay to such Participant an amount equal to its Adjusted Percentage (as defined below) times any subsequent Excess Reimbursement (as defined below) or interest thereon ACTUALLY RECEIVED by BNPLC from NAI for the Protective Advance. As used in this Agreement the "ADJUSTED

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PERCENTAGE" of any Participant shall equal (i) such Participant's Percentage, divided by (ii) the sum of BNPLC's Percentage and the Percentages of all Participants who have paid BNPLC their respective shares of the Protective Advance at issue. As used in this Agreement, the term "EXCESS REIMBURSEMENT" shall mean, for the Protective Advance at issue, amounts reimbursed or paid by NAI to or on behalf of BNPLC on account of such Protective Advance in excess of (i) such Protective Advance, times (ii) the Percentages of any Participants that have not paid BNPLC their respective Percentages of such Protective Advance.

3.3.2. Exceptions. Notwithstanding the foregoing, no Participant shall be required to make any payment pursuant to this Section 3.3 related to a Protective Advance that (1) consists of a payment of Excluded Taxes, or (2) is paid only because of a transfer or assignment by BNPLC of its right to receive Distributable Payments or its rights and interests in and to the Property, the Operative Documents or this Agreement to BNPLC's Affiliates. Further, nothing in this Section 3.3 shall be construed to require a payment by a Participant for that portion or percentage, if any, of a Protective Advance required only because of (and attributed by any applicable principles of comparative fault to): (a) conduct of BNPLC or a Representative of BNPLC that has been determined to constitute gross negligence or wilful misconduct in or as a necessary element of a final judgment rendered against BNPLC or such Representative by a court with jurisdiction to make such determination; (b) any representation made by BNPLC in the Operative Documents that is false in any material respect and that BNPLC knew was false at the time of BNPLC's execution of the Operative Documents; or (c) Liens Removable by BNPLC. As used in this Agreement, "gross negligence" of BNPLC shall not include any negligent failure of BNPLC to act when the duty to act would not have been imposed but for BNPLC's status as owner of the Property or as a party to the Operative Documents.

3.4. Method of Payment. All payments made by the Participants to BNPLC shall be made by transfer of federal funds to BNPLC pursuant to the wiring instructions for BNPLC set forth on SCHEDULE 1. Each payment owing to BNPLC by any Participant shall be payable to BNPLC on the date specified herein or, if not specified, on demand and shall bear interest from the date due until the date paid by the Participant at the Late Payment Rate calculated on the basis of a 360-day year. Any payment by a Participant to BNPLC after the time of day specified herein for such payment shall be deemed not paid until the next following Business Day for purposes of this Agreement.

4.0 OTHER ADJUSTMENTS, DEDUCTIONS AND INVESTMENTS.

4.1. [Intentionally deleted]

4.2. Setoff. In the event that one party to this Agreement has failed to pay to a second party hereto any amount when due hereunder, the second party may deduct such amount and interest thereon at the Late Payment Rate from any payments due from it under this Agreement to the first party. Without limitation, BNPLC may setoff amounts owed to it by any Defaulting Participant against any termination fee payable to such Defaulting Participant pursuant to Section 6.4 below if BNPLC shall elect to reduce such Defaulting Participant's Percentage to zero as provided in Section 6.4.

4.3. [Intentionally deleted]

4.4. Sharing of Payments. Each Participant agrees that if for any reason it shall obtain a payment made by or for NAI that reduces any Distributable Payment, and if such payment will cause such Participant to receive more than it would have received had such payment been made instead to BNPLC and generated the payments by BNPLC contemplated in this Agreement, then (1) such Participant shall promptly purchase interests in the rights of other parties to this Agreement as necessary to cause BNPLC

and all Participants to share payments as they otherwise would have done under this Agreement, and (2) such other adjustments shall be made from time to time as shall be equitable to ensure that BNPLC and all Participants share all payments of (or that operate to reduce) Distributable Payments as they otherwise would have done under this Agreement. If, however, the payment received by the

purchasing Participant or any part thereof is later recovered from the purchasing Participant, the purchase provided for in this Section shall be rescinded, and the price paid by the purchasing Participant to other parties shall be repaid by them to the purchasing Participant to the extent of such recovery. Also, if the purchasing Participant is required by court order to pay interest on the payment so recovered, then amounts repaid to the purchasing Participant by the other parties will be repaid with interest, computed in the same manner as the interest required by the court order. Nothing in this Section shall in any way affect the right of BNPLC or any Participant to obtain payment (whether by exercise of rights of banker's lien, set-off or counterclaim or otherwise) of indebtedness or obligations other than those established by this Agreement or any of the Operative Documents.

4.5. Withholding Taxes. BNPLC may deduct any United States withholding tax required on payments to a Participant hereunder from such payments, and the Participant shall reimburse BNPLC for any such taxes BNPLC is required to pay and that BNPLC has not deducted. If BNPLC is uncertain whether United States withholding tax is required, BNPLC may, after notice to the applicable Participant, deduct the withholding tax except during any period when BNPLC is excused from such withholding because of the Participant's delivery to BNPLC of (i) a statement in duplicate conforming to the requirements of United States Treasury Regulation Section 1.1441-5(b) or (ii) two duly completed copies of Internal Revenue Service Form W-8BEN or any successor form thereto ("FORM W-8BEN") relating to the Participant and claiming complete exemption from withholding tax on all amounts to be received by the Participant pursuant to this Agreement or (iii) a valid United States Internal Revenue Service Form W-8EC1 or any successor form thereto ("FORM W-8EC1") relating to the Participant and claiming complete exemption from withholding tax on all amounts to be received by the Participant pursuant to this Agreement. Any Participant shall, if requested by BNPLC, deliver to BNPLC subsequent statements with respect to such Treasury Regulation or two additional copies of Form W-8BEN or Form W-8EC1, or the applicable replacement forms, on or before the date that any prior such delivered statements or forms expire or become obsolete. If any such statement or form delivered by a Participant to BNPLC becomes invalid or inapplicable as to such Participant, such Participant shall promptly inform BNPLC. The obligations of each Participant pursuant to this Section 4.5 shall survive the termination of this Agreement.

4.6. Order of Application. For purposes of this Agreement, BNPLC shall be entitled, but not required, to apply any payments received from NAI under the Operative Documents to satisfy (1) NAI's obligation to pay or reimburse Protective Advances (and interest thereon), if any, and (2) costs incurred by BNPLC because of any sale under the Purchase Agreements, before applying such payments to satisfy NAI's other obligations, regardless of how NAI may have designated such payments.

4.7. Investments Pending Dispute Resolution; Overnight Investments. Whenever BNPLC in good faith determines that it does not have all information needed to determine how payments to the Participants must be made on account of any Distributable Payments, or whenever BNPLC in good faith determines that there is any dispute among the Participants about payments which must be made on account of Distributable Payments, BNPLC may choose to defer the payments to Participants which are the subject of such missing information or dispute. However, to minimize any such deferral, BNPLC shall attempt diligently to obtain any missing information needed to determine how payments to the Participants must be made. Also, pending any such deferral, or if BNPLC is otherwise required to invest funds pending distribution to the Participants, BNPLC shall endeavor to invest the payments at issue. In addition, if BNPLC receives any Distributable Payment after 12:00 noon, San Francisco time, on any day and will not make payments to Participants in connection therewith until the next Business Day pursuant to Section 2.5,

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then BNPLC shall endeavor to invest such payments overnight; provided that BNPLC shall have no liability to the Participants if BNPLC is unable to make such investments. Investments by BNPLC shall be in the overnight federal funds market pending distribution, and the interest earned on each dollar of principal so invested shall be paid to the Person entitled to receive such dollar of principal when the principal is paid to such Person.

5.0 NATURE OF THIS AGREEMENT.

5.1. No Conveyance. THIS AGREEMENT IS INTENDED TO CREATE CONTRACTUAL RIGHTS IN FAVOR OF EACH PARTICIPANT TO RECEIVE PAYMENTS FROM BNPLC, BUT IT IS NOT INTENDED TO CONVEY OR ASSIGN TO THE PARTICIPANTS ANY INTEREST IN THE PROPERTY OR IN THE OPERATIVE DOCUMENTS OR IN THE PAYMENTS TO BE MADE TO BNPLC THEREUNDER. IN NO EVENT SHALL ANY PARTICIPANT EXERCISE OR ATTEMPT TO EXERCISE ANY RIGHT OR REMEDY OF BNPLC UNDER THE OPERATIVE DOCUMENTS. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO GRANT TO THE PARTICIPANTS ANY RIGHT TO ENFORCE NAI'S OBLIGATIONS UNDER THE OPERATIVE DOCUMENTS OR TO COLLECT DIRECTLY FROM NAI ANY PAYMENTS DUE FROM NAI THEREUNDER. ALTHOUGH BNPLC'S OBLIGATIONS FOR PAYMENTS TO THE PARTICIPANTS HEREUNDER SHALL BE COMPUTED BY REFERENCE TO FUNDS ACTUALLY RECEIVED AS DISTRIBUTABLE PAYMENTS, THIS AGREEMENT SHALL NOT BE CONSTRUED AS AN ASSIGNMENT OF DISTRIBUTABLE PAYMENTS THEMSELVES OR ANY INTEREST THEREIN, IT BEING UNDERSTOOD THAT (WITHOUT LIMITING OR EXPANDING THE DOLLAR AMOUNT OF SUCH OBLIGATIONS) BNPLC MAY SATISFY SUCH OBLIGATIONS FROM OTHER FUNDS AVAILABLE TO IT, THEREBY RESERVING DISTRIBUTABLE PAYMENTS FOR PAYMENT TO OTHER CREDITORS OR FOR OTHER PURPOSES, AS BNPLC SHALL DETERMINE IN ITS SOLE DISCRETION.

5.2. Not a Partnership, Etc. NEITHER THE EXECUTION OF THIS AGREEMENT, NOR THE SHARING OF RISKS AND REWARDS UNDER THE OPERATIVE DOCUMENTS, NOR ANY AGREEMENT TO SHARE IN PROFITS OR LOSSES ARISING AS A RESULT OF THE TRANSACTIONS CONTEMPLATED THEREBY, IS INTENDED TO BE OR TO CREATE, AND THE FOREGOING SHALL BE CONSTRUED NOT TO BE OR TO CREATE ANY PARTNERSHIP, JOINT VENTURE, OR OTHER JOINT ENTERPRISE BETWEEN BNPLC AND ANY PARTICIPANT. NEITHER THE EXECUTION OF THIS AGREEMENT NOR THE MANAGEMENT AND ADMINISTRATION OF THE OPERATIVE DOCUMENTS AND THE RELATED DOCUMENTS BY BNPLC, NOR ANY OTHER RIGHT, DUTY OR OBLIGATION OF BNPLC UNDER OR PURSUANT TO THIS AGREEMENT IS INTENDED TO BE OR TO CREATE ANY FIDUCIARY RELATIONSHIP BETWEEN BNPLC AND ANY PARTICIPANT.

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6.0 AMENDMENTS; WAIVERS; EXERCISE OF RIGHTS AND REMEDIES AGAINST NAI.

6.1. Limitations. Subject to Section 6.3, but notwithstanding anything else to the contrary in this Agreement:

6.1.1. BNPLC shall not:

6.1.1.1. without the prior written consent of the Participants, execute any waiver, modification or amendment of the Operative Documents that would: (1) increase the amounts the Participants may be required to pay to BNPLC hereunder; or (2) reduce or postpone (or reasonably be expected to reduce or postpone) any payments that any Participant would, but for such modification or amendment, be expected to receive from BNPLC hereunder (including any extension of the Term of the Leases); (3) excuse or diminish NAI's obligations to provide Collateral under the Pledge Agreements during any "Mandatory Collateral Period" (as described in Part III of Schedule 1 attached to the Leases); or (4) except as otherwise expressly permitted by the Operative Documents, release BNPLC's interest in all or a substantial part of the Property or release any security interest in Collateral pledged under the Pledge Agreements; or

6.1.1.2. without the prior written consent of a Majority, execute any other waiver, modification or amendment of the Operative Documents, except a waiver, modification or amendment that NAI requests pursuant to express provisions of the Operative Documents and that BNPLC believes in good faith it must execute to satisfy the requirements of the Operative Documents; or

6.1.1.3. over the written objection of a Majority, affirmatively elect a Voluntary Retention of the Property pursuant to subparagraph 1(A)(2)(a) of the Purchase Agreements.

However, this subsection 6.1.1 shall not limit BNPLC's right to forebear from exercising rights against NAI to the extent BNPLC shall determine in good faith that such forbearance is appropriate and is permitted by the following subsections in this Section 6.1. Upon the direction of the Majority, BNPLC shall execute any waiver, modification or amendment of the Operative Documents requested by NAI; provided, that: (A) the waiver, modification or amendment is not prohibited by the forgoing provisions of this Agreement, (B) the waiver, modification or amendment does not (1)

increase the amount BNPLC may be required to pay to NAI or anyone else, or (2) reduce or postpone (and cannot reasonably be expected to reduce or postpone) any payments that BNPLC would, but for such modification or amendment, be expected to receive, or (3) release BNPLC's interest in all or a substantial part of the Property; and (C) BNPLC is not excused from executing the waiver, modification or amendment by Section 6.3.

6.1.2. BNPLC will, with reasonable promptness, provide the Participants with copies of all default notices it sends or receives under the Operative Documents and notify the Participants of any Event of Default under the Leases or Critical Event of which BNPLC is actually aware and of any other matters known to BNPLC which, in BNPLC's reasonable judgment, are likely to materially affect the payments any Participant will be required to make or be entitled to receive under this Agreement, but BNPLC will not in any event be liable to any Participant for BNPLC's failure to do so unless such failure constitutes gross negligence or wilful misconduct on the part of BNPLC.

6.1.3. Before taking possession of the Property because of any breach by NAI of the Operative Documents, filing any lawsuit against NAI, exercising foreclosure or offset rights against the

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Collateral under the Pledge Agreements, or exercising termination rights provided in subparagraph 1(c) of the Leases or subparagraph 4(B) of the Purchase Agreements, or if requested in writing by any Participant at any time when a Critical Event has occurred and is continuing, BNPLC shall call a meeting with the Participants to discuss what action by BNPLC, if any, is appropriate under the Operative Documents and what direction, if any, a Majority may give to BNPLC. Such meeting shall be scheduled during regular business hours in the offices of Banque Nationale de Paris, San Francisco, or another appropriate location in San Francisco, California, not earlier than five and not later than twenty Business Days after BNPLC's receipt of the written request from any Participant. BNPLC shall attempt in good faith and with reasonable diligence to comply with the direction of a Majority if, when a Critical Event or an Event of Default have occurred and be continuing, a Majority shall direct BNPLC in writing to do any one or more of the following, as applicable under the circumstances: (a) send any default notices required before a Critical Event can become an Event of Default, (b) bring a lawsuit against NAI to enforce the Operative Documents, or (c) exercise termination rights provided in subparagraph 1(c) of the Leases or subparagraph 4(B) of the Purchase Agreements. However, if BNPLC is not a member of the Majority voting pursuant to this subsection 6.1.3 in favor of any such action, then BNPLC may require that it first receive the written agreement (in form reasonably acceptable to BNPLC) of the members of the Majority so voting to indemnify BNPLC from and against all costs, liabilities and claims that may be incurred by or asserted against BNPLC because of the action the Majority directs BNPLC to take. In no event shall any Participant instigate any suit or other action directly against NAI with respect to the Operative Documents or the Property, even if the Participant would, but for this Agreement, be entitled to do so as a party or third party beneficiary under the Operative Documents or otherwise.

6.1.4. In the event NAI or an Applicable Purchaser fails to purchase the Property on the Designated Sale Date when required to do so pursuant to the Purchase Agreements, BNPLC shall, unless the Participants shall otherwise agree in writing, bring suit against NAI to enforce the Operative Documents in such form as shall be recommended by reputable counsel no later than sixty days after the expiration of any applicable cure or grace period given NAI by the express terms of the Purchase Agreements, and thereafter BNPLC shall prosecute the suit with reasonable diligence in accordance with the advice of reputable counsel. If BNPLC acquires the interests of NAI in any of the Property as a result of such suit or otherwise, BNPLC shall thereafter proceed with reasonable diligence to sell the Property in a commercially reasonable manner to one or more bona fide third party purchasers and shall in any event have consummated the sale of the entire Property (through a single sale of the entire property or a series of sales of parts) within five years following the date BNPLC recovers possession of the Property at the best price or prices BNPLC believes are reasonably attainable within such time. Further, after the

Designated Sale Date and prior to BNPLC's sale of the entire Property, BNPLC shall retain a property management company experienced in the area where the Property is located to manage the operation of the Property and pursue the leasing of any completed improvements which are part of the Property. BNPLC shall not retain an Affiliate of BNPLC to act as the property manager except under a bona fide, arms-length management contract containing commercially reasonable terms. Further, after the Designated Sale Date and until BNPLC sells the Property, BNPLC shall (i) endeavor in good faith to maintain, or shall obtain the agreement of one or more tenants to maintain, the Property in good order and repair, (ii) procure and maintain casualty insurance against risks customarily insured against by owners of comparable properties, in amounts sufficient to eliminate the effects of coinsurance, (iii) keep and allow the Participants to review accurate books and records covering the operation of the Property, and (iv) pay prior to delinquency all taxes and assessments lawfully levied against the Property.

Notwithstanding the foregoing, any Participants that have failed to fund any amount due hereunder, and that have not corrected such failure within five Business Days after being notified thereof, shall have no

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voting or consent rights under this Section 6.1 and no rights to require BNPLC to call a meeting pursuant to subsection 6.1.3 until such failure is corrected.

6.2. General. Subject to the limitations set forth in Section 6.1:

6.2.1. BNPLC shall have the exclusive right to take any action and to exercise any available powers, rights and remedies to enforce the obligations of NAI under the Operative Documents, or to refrain from taking any such action or exercising any such power, right or remedy.

6.2.2. BNPLC shall be entitled to (i) give any consent, waiver or approval requested by NAI with respect to any construction or other approval contemplated in the Leases or (ii) waive or consent to any adverse title claims affecting the Property, provided that, in either case, BNPLC believes in good faith that such action will not have a material adverse effect upon NAI's obligations or ability to make the payments required under the Operative Documents or upon the rights and remedies, taken as whole, of BNPLC under the Operative Documents or of the Participants' hereunder.

6.3. Conflicts and Purchase Agreements Defaults. Notwithstanding anything to the contrary herein contained, BNPLC shall be entitled, even over the objection of any Participant or the Majority, (A) to take any action recommended in writing by reputable counsel and believed in good faith by BNPLC to be required of BNPLC by the Operative Documents or any law, rule or regulation to which BNPLC is subject, (B) to refrain from taking any action if BNPLC believes in good faith that the action is prohibited by the Operative Documents or any law, rule or regulation to which BNPLC is subject, and if reputable counsel recommends in writing that BNPLC refrain from taking the action, and (C) after notice to the Participants, to bring and prosecute a suit against NAI in the form recommended by and in accordance with advice of reputable counsel at any time when a breach of the Operative Documents by NAI shall have put BNPLC (or any of its officers or employees) at risk of criminal prosecution or significant liability to third parties or at any time after NAI or an Applicable Purchaser fails to purchase the Property on the Designated Sale Date pursuant to the Purchase Agreements. (If, however, BNPLC takes any action or refrains from taking any action over the objection of a Majority pursuant to the preceding sentence, BNPLC must provide the Majority a written explanation (including a copy of a supporting written recommendation of counsel) of the basis for BNPLC's conclusion that taking the action, or refraining from taking the action, is permitted by the preceding sentence.) Further, nothing herein contained shall be construed to require BNPLC to agree to modify the Operative Documents or to take any action or refrain from taking any action in any manner that could increase BNPLC's liability to NAI or others, that could reduce or postpone payments to which BNPLC is entitled thereunder, or that could reduce the scope and coverage of the indemnities provided for BNPLC's benefit therein.

6.4. Refusal to Give Consents; Failure to Fund; Failure of a Deposit Taker to Satisfy Minimum Ratings. If any Participant declines to consent to any

amendment, modification, waiver, release or consent for which the Participant's consent is requested or required by reason of this Agreement, or if any Participant fails to pay any amount owed by it hereunder, or if the Deposit Taker for any Participant shall cease to be a Qualified Deposit Taker (as defined in the Pledge Agreement), BNPLC shall have the right, but not the obligation and without limiting any other remedy of BNPLC, to reduce such Participant's Percentage to zero and to terminate such Participant's rights to receive any further payments under Article 2 of this Agreement by paying to such Participant a termination fee equal to the total amount it would be entitled to receive from BNPLC hereunder if the date of such payment were the Designated Sale Date and on such date NAI had itself purchased BNPLC's interest in the Property pursuant to and in accordance with the Purchase Agreements. No Participant's rights to receive payments equal to such Participant's Adjusted Percentage of any Excess Reimbursement of a Protective Advance or interest thereon as provided in Section 3.3 shall be impaired or affected by any termination contemplated in this Section 6.4; accordingly,

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BNPLC shall not, as a condition to such a termination, be required to reimburse a Participant for any payments the Participant has made in connection with Protective Advances pursuant to Section 3.3.

7.0 REQUIRED REPAYMENTS. Each Participant shall repay to BNPLC, upon written request or demand by BNPLC (i) any sums paid by BNPLC to such Participant under this Agreement from, or that were computed by reference to, any Distributable Payment or other amounts which BNPLC shall be required to return or pay over to another party, whether pursuant to any bankruptcy or insolvency law or proceeding or otherwise and (ii) any interest or other amount that BNPLC is also required to pay to another party with respect to such sums. Such repayment by a Participant shall not constitute a release of such Participant's right to receive payments from BNPLC hereunder upon BNPLC's receipt of any such Distributable Payment or other amount (or any interest thereon) that BNPLC may later recover.

8.0 NAI INFORMATION; INDEPENDENT ANALYSIS. Prior to the execution of this Agreement, BNPLC has provided to the Participants copies of the executed Operative Documents and of various certificates, legal opinions and other documents delivered to BNPLC by or on behalf of NAI with the Operative Documents. In the future, BNPLC shall provide (A) to all Participants copies of all amendments of the Operative Documents and certificates and legal opinions, if any, delivered by or on behalf of NAI in connection therewith, and (B) to any Participant, as reasonably required to comply with a specific, reasonable written request for information made by the Participant, copies of other information readily available to BNPLC concerning NAI or Guarantor and the transactions contemplated in the Operative Documents. However, BNPLC shall not be liable for its failure to provide the Participants any of the foregoing documents unless such failure constitutes gross negligence or wilful misconduct on BNPLC's part. Each Participant has entered into this Agreement without reliance upon representations made outside this Agreement by BNPLC or by any Affiliate, agent or attorney of BNPLC and only after independently reviewing such documents, independently making such inspections, independently consulting with counsel and independently collecting and verifying such information, as the Participant determined to be necessary or appropriate. Without limiting the foregoing, each Participant has independently reviewed the Operative Documents and independently made such inquiries and investigations of NAI and the Property as the Participant determined to be necessary or appropriate before executing this Agreement.

9.0 PERFORMANCE THROUGH REPRESENTATIVES. BNPLC may perform any of its duties hereunder by or through officers, directors, employees, attorneys or agents (collectively, "REPRESENTATIVES"), and BNPLC and its Representatives shall be entitled to rely, and shall be fully protected in relying, upon any communication or document believed by it or them to be genuine and correct and to have been signed or made by the proper Person and, with respect to legal matters, upon the opinion of counsel selected by BNPLC. The Participants acknowledge that Banque Nationale de Paris shall be entitled to act as agent for BNPLC with respect to the administration of this Agreement, and to the extent it does so, it shall be a Representative of BNPLC hereunder.

10.0 DUTY OF CARE. NEITHER BNPLC NOR ANY OF ITS REPRESENTATIVES SHALL BE LIABLE OR RESPONSIBLE TO ANY PARTICIPANT OR ANY OTHER PERSON FOR ANY ACTION TAKEN OR

OMITTED TO BE TAKEN BY BNPLC OR ANY OF ITS REPRESENTATIVES UNDER THIS AGREEMENT OR THE OPERATIVE DOCUMENTS OR OTHERWISE (EVEN IF NEGLIGENT OR RELATED TO A MATTER FOR WHICH BNPLC OR ANY OF ITS REPRESENTATIVES MAY OTHERWISE BE STRICTLY LIABLE); provided, this provision will not excuse BNPLC from liability for failing to make timely payments required of BNPLC to the Participants by the express provisions of Article 2 or Section 3.3 or from liability for actions taken or omitted to be taken by BNPLC which constitute gross negligence or wilful misconduct. Without limiting the generality of the foregoing, BNPLC (1) 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

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taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (2) makes no warranty or representation to the Participants except as provided in Article 12 and shall not be responsible to the Participants for any statements, warranties or representations made in or in connection with the Operative Documents; (3) shall not have any duty to the Participants to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of the Operative Documents or to inspect the Property or the books and records of NAI; (4) shall not be responsible to the Participants for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of the Operative Documents or any instrument or document furnished in connection therewith; (5) may rely upon the representations and warranties of NAI and the Participants in exercising its powers hereunder unless BNPLC shall have actual knowledge that such representations and warranties are untrue; and (6) shall incur no liability under or in respect of the Operative 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.

11.0 REPRESENTATIONS BY EACH PARTICIPANT. Each Participant represents that as of the date it became a party to this Agreement:

11.1. Nature of this Agreement. It is the type of financial institution set forth under its name in SCHEDULE 1, or in the Participation Agreement Schedule which made it a party to this Agreement, and it is entering into this Agreement for its own account in respect of a commercial transaction made in ordinary course of its business and not with a view to or in connection with any subparticipation, sale or distribution to any Person (other than its Affiliates). Such Participant does not consider the acceptance of the risk participation hereunder to constitute the "purchase" or "sale" of a "security" within the meaning of any federal or state securities statute or law, or any rule or regulations under any of the foregoing.

11.2. No Default or Violation. To such Participant's knowledge, the execution, delivery and performance of this Agreement do not and will not contravene, result in a breach of or constitute a default under any material contract or agreement to which the Participant is a party or by which the Participant is bound and do not violate or contravene any law, order, decree, rule or regulation to which the Participant is subject.

11.3. No Suits. To such Participant's knowledge, there are no judicial or administrative actions, suits or proceedings involving the validity, enforceability or priority of this Agreement and no such suits or proceedings are threatened.

11.4. Organization. Such Participant is duly incorporated and legally existing under the laws of jurisdiction indicated in SCHEDULE 1 or in the Participation Agreement Schedule which made it a party to this Agreement. Such Participant has all requisite power and all material governmental certificates of authority, licenses, permits, qualifications and other documentation necessary to perform its obligations under this Agreement.

11.5. Enforceability. This Agreement constitutes a legal, valid and binding obligation of such Participant, enforceable in accordance with its terms, subject to bankruptcy and other laws affecting creditors' rights generally and general equitable principles. The execution and delivery of, and performance under, this Agreement are within such Participant's powers and have been duly authorized by all requisite action and are not in contravention of the powers of

the charter or other corporate papers of the Participant.

11.6. No Funding With Plan Assets. Such Participant has not and will not provide advances required by this Participant from the assets of any employee benefit plan (or its related trust).

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12.0 REPRESENTATIONS BY BNPLC. BNPLC represents to each Participant, as of the date such Participant became a party to this Agreement, that:

12.1. No Default or Violation. To BNPLC's knowledge, its execution, delivery and performance of this Agreement and the Operative Documents do not contravene, result in a breach of or constitute a default under any material contract or agreement to which BNPLC is a party or by which BNPLC is bound and do not violate or contravene any law, order, decree, rule or regulation to which BNPLC is subject.

12.2. No Suits. To BNPLC's knowledge, there are no judicial or administrative actions, suits or proceedings involving the validity, enforceability or priority of this Agreement and no such suits or proceedings are threatened.

12.3. Organization. BNPLC is duly incorporated and legally existing under the laws of Delaware and is duly qualified to do business in the State of California. BNPLC has all requisite power and all material governmental certificates of authority, licenses, permits, qualifications and other documentation necessary to perform its obligations under this Agreement. BNPLC has obtained or will obtain, at NAI's expense pursuant to the provisions of the Leases, all requisite power and all material governmental certificates of authority, licenses, permits, qualifications and other documentation necessary to own and lease the Property and to perform its obligations under the Operative Documents.

12.4. Enforceability. This Agreement and the Operative Documents constitute legal, valid and binding obligations of BNPLC, enforceable in accordance with their respective terms, subject to bankruptcy and other laws affecting creditors' rights generally and general equitable principles. BNPLC's execution and delivery of, and performance under, this Agreement and the Operative Documents are within BNPLC's powers and have been duly authorized by all requisite action and are not in contravention of the powers of the charter, by-laws or other corporate papers of BNPLC; provided, BNPLC makes no representation or warranty that conditions imposed by any state or local Applicable Laws to the purchase, ownership, lease or operation of the Property have been satisfied.

12.5. Liens Removable by BNPLC. BNPLC shall not create or permit any Liens Removable by BNPLC not claimed by, through or under any of the Participants (other than BNPLC's Affiliates), without NAI's consent.

12.6. BNPLC's Status as a Subsidiary of a Bank Holding Company. As of the effective date of this Agreement, BNPLC is a "subsidiary" of a "bank holding company" (as those terms are defined in Chapter 17 of Title 12 of the United States Code).

13.0 ASSIGNMENTS.

13.1. By the Participants Generally. Except as expressly provided below, no Participant shall assign or attempt to assign any interest in or rights under this Agreement without the prior written consent of BNPLC, which consent shall not be unreasonably withheld so long as the Participant requesting the approval is not in default hereunder; provided, this provision shall not prevent a Participant from transferring its rights hereunder to its Affiliates or to any other Participants who are already parties to this Agreement. Notwithstanding any permitted assignment by a Participant, if the assignment is to any Person that does not qualify as a "Participant" for purposes of the Leases itself (which, as more particularly provided in the definition of Participant in the Common Definitions and Provisions Agreements, may require the written approval of such Person by NAI), then such Participant's obligations under this Agreement shall remain unchanged, such Participant shall remain primarily responsible for the performance of its obligations hereunder, and BNPLC may continue to deal solely and directly with such

Participant in connection with all rights and obligations under this Agreement. In the event, however, of a permitted assignment by a Participant to a Person that does qualify as a "Participant" for purposes of the Leases itself, accomplished by the execution of appropriate Participation Agreement Supplements as herein provided, the assigning Participant shall not be liable for any failure by the assignee to fulfill the obligations assumed hereunder by the assignee by reason of such assignment.

13.2. By BNPLC. Except as expressly provided herein, BNPLC shall not assign or attempt to assign any rights under or interest in the Operative Documents or this Agreement or any interest in the Property without the Participants' prior written consent, which consent shall not be unreasonably withheld. By a Participation Agreement Supplement, BNPLC may, without the prior written consent of any other Participant, assign participations in the Operative Documents or the payments required to BNPLC thereunder to any then existing Participant and to other financial institutions or Affiliates of financial institutions approved by NAI; provided, that the assignment of participations by BNPLC shall not reduce the Percentage of BNPLC (or any Affiliate of BNPLC that may become the owner of BNPLC's interest in the Property) to less than three percent (3%). In addition, BNPLC may assign its right to receive Distributable Payments and its rights and interests in and to the Property, the Operative Documents and this Agreement to Affiliates of BNPLC that do not become Participants; provided, however, that BNPLC's obligations under this Agreement shall remain unchanged, BNPLC shall remain primarily responsible for the performance of its obligations hereunder, and all Distributable Payments received by any such Affiliates as assignee of BNPLC shall, for purposes of computing payments required to any Participant hereunder, be considered as received by BNPLC. In addition, BNPLC shall be permitted to transfer any rights or interests as BNPLC shall believe in good faith to be necessary to satisfy the Operative Documents or Applicable Laws.

13.3. Execution of Participation Agreement Supplements. Promptly after the execution of a Participation Agreement Supplement by BNPLC and any Participant, BNPLC will provide a copy thereof to all other Participants, but the other Participants need not join in or approve the Participation Agreement Supplement for it to be effective.

13.4. Regulation A. Notwithstanding Sections 13.1 or 13.2, a Participant may assign and pledge all or any portion of its rights under this Agreement to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circulars issued by such Federal Reserve Bank.

13.5. Costs. Each Participant shall pay all costs incurred by BNPLC in connection with any permitted assignment by or through such Participant, including, but not limited to, reasonable fees and disbursements of its counsel, and any transfer taxes or other taxes assessed because of such assignment which NAI is not required to pay under the Leases.

14.0 GOVERNING LAW; SUBMISSION TO PROCESS; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE DEEMED A CONTRACT MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA AND THE LAWS OF THE UNITED STATES OF AMERICA, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS. EACH OF BNPLC AND THE PARTICIPANTS HEREBY IRREVOCABLY SUBMITS ITSELF TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND THE FEDERAL COURTS SITTING IN SAN FRANCISCO, CALIFORNIA, AND AGREES AND CONSENTS THAT SERVICE OF PROCESS MAY BE MADE UPON IT IN ANY LEGAL PROCEEDING RELATING TO THIS AGREEMENT BY ANY MEANS ALLOWED UNDER CALIFORNIA OR FEDERAL LAW. EACH OF BNPLC AND THE PARTICIPANTS HEREBY WAIVES AND AGREES NOT TO

ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, THAT ANY SUCH PROCEEDING WHICH IS BROUGHT IN A COURT IN SAN FRANCISCO, CALIFORNIA IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE THEREOF IS IMPROPER. EACH OF BNPLC AND THE PARTICIPANTS, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A

JURY TRIAL OF ANY DISPUTE RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

15.0 TERMINATION. This Agreement shall terminate on the first date on which all obligations of NAI under the Operative Documents shall have been indefeasibly paid or otherwise satisfied or excused, BNPLC shall have ceased to have any rights in the Property and each party hereto shall have fully performed its obligations hereunder to the other parties hereto. The agreements of BNPLC and the Participants in Section 3.3 (which concerns payments by Participants of their respective Percentages of Protective Advances) shall survive the termination of this Agreement. Following any sale of the Property by BNPLC pursuant to the Purchase Agreements and the payment to any Participant of all amounts payable to such Participant hereunder (including, without limitation, such Participant's Percentage of all Net Sales Proceeds payable by NAI and any Applicable Purchaser on the Designated Sale Date), such Participant will execute and deliver such a quitclaim and release (in recordable form) to NAI or any Applicable Purchaser.

16.0 MISCELLANEOUS.

16.1. Reliance by Others. None of the provisions of this Agreement shall inure to the benefit of any Person other than the Participants and BNPLC and BNPLC's Representatives; consequently, no Person other than the Participants and BNPLC shall be entitled to rely upon or raise as a defense, in any manner whatsoever, the failure of any Participant or BNPLC to comply with the provisions of this Agreement. None of the Participants nor BNPLC shall incur any liability to any other Person for any act of omission of another.

Notwithstanding the foregoing, however, NAI shall be a third party beneficiary of the representations of each Participant in Section 11, of the limitations upon each Participant's right to assign in Section 13.1, of each Participant's agreements concerning choice of law and other matters in Section 14, and of each Participant's agreement to provided a release and quitclaim of the Property pursuant to the last sentence of Section 15. As a third party beneficiary of the obligations of the Participants specified in the preceding sentence, NAI shall have standing to bring a claim against any Participant in NAI's own name if that Participant breaches such obligations. Further, BNPLC may assign to NAI any claims it may have against a Participant because of the Participant's breach of any of the provisions referenced in this paragraph or because of any adverse title claim made against the Property by, through or under the Participant.

16.2. Waivers, Etc. No delay or omission by any party to exercise any right under this Agreement shall impair any such right, nor shall it be construed to be a waiver thereof. No waiver of any single breach or default under this Agreement shall be deemed a waiver of any other breach or default. Any waiver, consent, or approval under this Agreement must be in writing to be effective.

16.3. Severability. The illegality or unenforceability of any provision of this Agreement shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement.

16.4. Notices. All notices, demands, approvals, consents and other communications to be made hereunder to or by the parties hereto must, to be effective for purpose of this Agreement, be in writing. Notices, demands and other communications required or permitted hereunder are to be sent to the

addresses set forth in Schedule 1 to this 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 (C) hereof shall be deemed received (whether or not actually received) upon first attempted delivery at the proper notice address on any Business Day between 9:00 A.M. and 5:00 P.M., and any notice or other communication sent pursuant to clause (B) hereof shall be deemed received upon dispatch by electronic means.

16.5. Construction. Words of any gender used in this Agreement 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 herein to Articles, Sections, subsections or other subdivisions shall refer to the corresponding Articles, Sections, subsections or subdivisions of this Agreement, unless specific reference is made to another document or instrument. References herein to any Schedule or Exhibit shall refer to the corresponding Schedule or Exhibit attached hereto, which shall be made a part hereof by such reference. All capitalized terms used in this Agreement 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 herein or therein 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 herein shall be construed in accordance with GAAP. The words "THIS AGREEMENT", "HEREIN", "HEREOF", "HEREBY", "HEREUNDER" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The phrases "THIS ARTICLE" and "THIS SECTION" and "THIS SUBSECTION" and similar phrases used herein refer only to the Articles, Sections or subsections hereof in which the phrase occurs. As used herein the word "OR" is not exclusive. As used herein the words "INCLUDE", "INCLUDING" and similar terms shall be construed as if followed by "without limitation to".

16.6. Headings. The Article and Section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several provisions hereof.

16.7. Entire Agreement. This Agreement (a) embodies the entire agreement between the parties, supersedes all prior agreements and understandings between the parties, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed by an authorized representative of each party to be bound by such amendment, and (b) has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement or certificate; but, in making proof of this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by each party thereto.

16.8. Further Assurances. Subject to any restriction in the Operative Documents, each of BNPLC and the Participants will promptly execute and deliver all further instruments and documents and take all further action as any of them may reasonably request in order to evidence the agreements made hereunder and otherwise to effect the purposes of this Agreement.

16.9. Impairment of Operative Documents. Nothing herein contained (including the provisions governing the application of payments in Section 4.6 and the provisions authorizing assignments by BNPLC in Section 13.2) shall impair or modify NAI's rights under the Operative Documents.

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16.10. Books and Records. BNPLC shall keep accurate books and records in which full, true and correct entries shall be promptly made as to all payments made and received concerning the Property and will permit all such books and records (excluding any information that would otherwise be protected by BNPLC's attorney client privilege) to be inspected and copied by the Participants and their duly accredited representatives at all times during reasonable business hours after five Business Days advance notice. This Section shall not be construed as requiring BNPLC to regularly maintain separate books and records relating exclusively to the Property; provided, however, that upon reasonable request, BNPLC shall, at the requesting Participant's expense, construct or abstract from its regularly maintained books and records information required by this Section relating to the Property.

16.11. Definition of Knowledge. Representations and warranties made in this Agreement but limited to the "knowledge" of BNPLC or any Participant, as the case may be, shall be limited to the present actual knowledge of the officers or other employees of such party primarily responsible for reviewing and negotiating this Agreement. Also, as used herein with respect to the existence of any facts or circumstances after the date of this Agreement, "knowledge" of

BNPLC or a Participant, as the case may be, shall be limited to the present actual knowledge at the time in question of the officers or other employees of such party primarily responsible for administering this Agreement. However, none of the officers or employees of any party to this Agreement shall be personally liable for any representations or warranties made herein or for taking or failing to take any action required hereby.

16.12. Attorneys' Fees. If any party to this Agreement commences any legal action or other proceeding against another party hereto to enforce any of the terms of this Agreement, or because of any breach of the other party or dispute hereunder, the successful or prevailing party shall be entitled to recover from the nonprevailing 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 any 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.

[The signature pages follow.]

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IN WITNESS WHEREOF, BNPLC and the Participants whose signatures appear below have caused this Participation Agreement to be executed by their respective, duly authorized representatives, as of the date first above written.

"BNPLC"

BNP LEASING CORPORATION

By: _____

Lloyd G. Cox, Vice President

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[Continuation of signature pages to Participation Agreement effective as of December ____, 1999]

"PARTICIPANT"

BANQUE NATIONALE DE PARIS

By: _____

Name: _____

Title: _____

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SCHEDULE 1 - Page 1

A. BNPLC: BNP LEASING CORPORATION,
a Delaware corporation

1. Amount Retained: \$1,860,000

2. Initial Percentage: 3%

3. Address for Notices:

BNP Leasing Corporation
12201 Merit Drive
Suite 860
Dallas, Texas 75251

Attention: Lloyd G. Cox

Telephone: (972) 788-9191
Facsimile: (972) 788-9140

4. Payment Instructions:

Federal Reserve Bank of New York
ABA 026007689 Banque Nationale de Paris
/BNP/ BNP San Francisco
/AC/
/Ref/ Network Appliance/Sunnyvale Synthetic Leases/Phase IV

5. Operations Contact:

BNP Leasing Corporation
12201 Merit Drive
Suite 860
Dallas, Texas 75251

Attention: Lloyd G. Cox

Telephone: (972) 788-9191
Facsimile: (972) 788-9140

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SCHEDULE 1 - Page 2

B. Participant: BANQUE NATIONALE DE PARIS,
a banking corporation organized under the laws
of France

1. Amount of Participation: \$60,140,000

2. Percentage: 97%

3. Address for Notices:

Banque Nationale de Paris, San Francisco
180 Montgomery Street
San Francisco, CA 94104

Attention: Rafael Lumanlan or Gavin Holles

Telephone: (415) 956-0707
Facsimile: (415) 296-8954

4. Payment Instructions:

Federal Reserve Bank of New York
ABA 026007689 Banque Nationale de Paris
/BNP/ BNP San Francisco
/AC/
/Ref/ Network Appliance/Sunnyvale Synthetic Leases/Phase IV

5. Operations Contact:

George Fung
Banque Nationale de Paris
180 Montgomery Street
San Francisco, CA 94104

Telephone: (415) 956-0707
Facsimile: (415) 956-4230

6. "Initial Payment" Due from Participant to BNPLC: An amount equal to ninety-seven percent (97%) of initial funding advanced under the Leases.

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EXHIBIT A

SUPPLEMENT TO PARTICIPATION AGREEMENT

[_____ , ____]

BNP Leasing Corporation

Reference is made to the Participation Agreement dated as of December ____, 1999 (as heretofore amended, the "PARTICIPATION AGREEMENT") between BNP Leasing Corporation ("BNPLC"), Banque Nationale de Paris and other financial institutions which are from time to time Participants under and as defined in such Participation Agreement (collectively, the "PARTICIPANTS"). Unless otherwise defined herein, all capitalized terms used in this Supplement have the respective meanings given to those terms in the Participation Agreement.

[NOTE: THE NEXT TWO PARAGRAPHS, AND THE ADDENDUM TO SCHEDULE 1 ATTACHED TO THIS EXHIBIT, WILL BE INCLUDED ONLY AS PART OF A SUPPLEMENT THAT ADDS A NEW PARTICIPANT UNDER THE PARTICIPATION AGREEMENT:

The undersigned hereby certifies to BNPLC that the undersigned has become a party to the Pledge Agreements by executing a supplement as provided therein, and that NAI has approved of the undersigned as a party to the Pledge Agreements by executing and returning that supplement.

The undersigned, by executing and delivering this Supplement to BNPLC, hereby agrees to become a party to the Participation Agreement as a Participant and agrees to be bound by all of the terms thereof applicable to Participants. The undersigned hereby agrees that its Percentage under the Participation Agreement shall be _____ percent (____%), effective as of the date of this letter. Contemporaneously with the execution of this letter, the undersigned is paying to BNPLC the sum of \$_____ in consideration of the rights it is acquiring as a Participant under the Participation Agreement with the foregoing Percentages.

Schedule 1 attached to the Participation Agreement is amended by the addition of an Addendum (concerning the undersigned) in the form attached to this Supplement.]

[NOTE: THE NEXT PARAGRAPH WILL BE INCLUDED ONLY IN A SUPPLEMENT THAT REDUCES AN EXISTING PARTICIPANT'S PERCENTAGE UNDER THE PARTICIPATION AGREEMENT:

In consideration of the payment of \$_____ to the undersigned, the receipt and sufficiency of which is hereby acknowledged by the undersigned, the undersigned hereby agrees that its Percentage under the Participation Agreement is reduced to _____ percent (____%), effective as of the date of this letter.]

[NOTE: THE NEXT PARAGRAPH WILL BE INCLUDED ONLY IN A SUPPLEMENT THAT INCREASES AN EXISTING PARTICIPANT'S PERCENTAGE UNDER THE PARTICIPATION AGREEMENT:

The undersigned hereby agrees that its Percentage under the Participation Agreement is increased to _____ percent (____%), effective as of the date of this letter. Contemporaneously with the execution of this letter, the undersigned is paying BNPLC the sum of \$_____ in consideration of such increase.]

IN WITNESS WHEREOF, the undersigned has executed this Supplement as of the day and year indicated above.

[NAME]

By: _____

Printed Name:

Title:

Accepted and agreed:

BNP LEASING CORPORATION

By: _____

Printed Name:

Title:

ADDENDUM TO SCHEDULE 1

Participant:

- 1. Amount of Participation: \$
- 2. Percentage: ____%
- 3. Address for Notices:

Attention:

Telephone:

Facsimile:

- 4. Payment Instructions:

Bank:

Account:

Account No.:

ABA No.:

Reference:

- 5. Operations Contact:

Attention:

Telephone:

Facsimile:

Exhibit A - Page 3

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