

FORM PTO-1619A  
Expires 08/30/99  
OMB 0651-0027

U.S. Department of Commerce  
Patent and Trademark Office  
**PATENT**

**RECORDATION FORM COVER SHEET  
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**Submission Type**

**New**

**Resubmission (Non-Recordation)**  
Document ID# \_\_\_\_\_

**Correction of PTO Error**  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

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Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

**Conveyance Type**

**Assignment**       **Security Agreement**

**License**             **Change of Name**

**Merger**               **Other Bankruptcy Order**

**U.S. Government**  
(For Use ONLY by U.S. Government Agencies)

**Departmental File**       **Secret File**

**Conveying Party(ies)**

**Mark if additional names of conveying parties attached**      Execution Date  
Month Day Year

Name (line 1) First Pacific Networks, Inc.

09 01 98

Name (line 2) \_\_\_\_\_

**Second Party**

Name (line 1) \_\_\_\_\_

Execution Date  
Month Day Year

Name (line 2) \_\_\_\_\_

**Receiving Party**

**Mark if additional names of receiving parties attached**

Name (line 1) American Sterling Capital Corporation

**If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)**

Name (line 2) American Sterling Communications

Address (line 1) 9800 Muirlands Boulevard

Address (line 2) \_\_\_\_\_

Address (line 3) Irvine  
City

California/ US  
State/Country

92618  
Zip Code

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name \_\_\_\_\_

Address (line 1) \_\_\_\_\_

Address (line 2) \_\_\_\_\_

Address (line 3) \_\_\_\_\_

Address (line 4) \_\_\_\_\_

**FOR OFFICE USE ONLY**

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**PATENT**

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REEL: 010859 FRAME: 0726

FORM PTO-1619B  
Expires 08/30/99  
OMB 0651-0027

Page 2

U.S. Department of Commerce  
Patent and Trademark Office  
**PATENT**

**Correspondent Name and Address** Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages** Enter the total number of pages of the attached conveyance document including any attachments. #

**Application Number(s) or Patent Number(s)**  Mark if additional numbers attached  
Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor. Month Day Year

**Patent Cooperation Treaty (PCT)**

Enter PCT application number only if a U.S. Application Number has not been assigned.

PCT  PCT  PCT   
PCT  PCT  PCT

**Number of Properties** Enter the total number of properties involved. #

**Fee Amount** Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

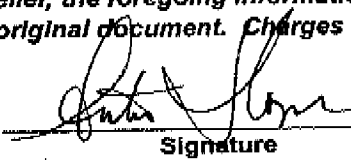
Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Anton J. Hopen  
Name of Person Signing

  
Signature

08/11/00  
Date

FORM PTO-1619C  
Expires 06/30/99  
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### RECORDATION FORM COVER SHEET CONTINUATION PATENTS ONLY

U.S. Department of Commerce  
Patent and Trademark Office  
**PATENT**

#### Conveying Party(ies)

Mark if additional names of conveying parties attached

Enter additional Conveying Parties

Execution Date  
Month Day Year

Name (line 1)

Name (line 2)

Execution Date  
Month Day Year

Name (line 1)

Name (line 2)

Execution Date  
Month Day Year

Name (line 1)

Name (line 2)

#### Receiving Party(ies)

Mark if additional names of receiving parties attached

Enter additional Receiving Party(ies)

Name (line 1)

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3)  City  State/Country  Zip Code

Name (line 1)

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

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Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

##### Patent Application Number(s)

##### Patent Number(s)

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SEP 2 1998

Attorneys for AMERICAN STERLING  
CAPITAL CORPORATION

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
San Jose Division

In re  
FIRST PACIFIC NETWORKS, INC.,  
  
Debtor.

CASE NO. 97-51077-ASW  
Chapter 11

Hearing:  
Date: September 2, 1998  
Time: 2:00 p.m.  
Place: 280 S. First Street, 3rd Floor  
San Jose, CA 95113

[Hearing continued from August 26, 1998]  
Judge: Honorable Arthur S. Weissbrodt

**ORDER AUTHORIZING SALE OF SUBSTANTIALLY ALL ASSETS OF  
FPN FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND  
ENCUMBRANCES**

ORDER AUTHORIZING SALE OF SUBSTANTIALLY ALL ASSETS OF  
FPN FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND  
ENCUMBRANCES - CASE NO. 97-51077-ASW

1 The Motion for Order Authorizing Sale of Substantially all Property of the Estate Free and  
2 Clear of Liens, Claims, Interests and Encumbrances (the "Sale Motion") filed by First Pacific  
3 Networks, Inc. ("FPN") came on for hearing in the above-referenced Court on September 2, 1998,  
4 before the Honorable Arthur S. Weissbrodt, United States Bankruptcy Judge, which hearing had been  
5 continued from August 26, 1998. Garrett L. Cecchini and Gerald F. Ellersdorfer of Kaufman &  
6 Logan, LLP appeared on behalf of FPN. Oscar Garza of Gibson, Dunn & Crutcher LLP appeared on  
7 behalf of the proposed purchaser American Sterling Capital Corporation ("ASC"). Craig Stuppi of  
8 Bronson, Bronson & McKinnon appeared on behalf of Entergy, Inc. John Walshe Murray appeared  
9 on behalf of Opolis Communications Incorporated ("Opolis"). Dale E. Fredricks appeared on behalf  
10 of Sangumon Properties Co. ("Sangumon") All other appearances were as reflected on the record.

11 Based upon all matters submitted to the Court for consideration and good cause  
12 appearing therefor, the Court now finds as follows:

- 13 1. Reasonable and adequate notice of the Sale Motion was given under the circumstances  
14 to all interested parties in compliance with sections 102 and 363 of the United States Bankruptcy  
15 Code, Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure and all applicable  
16 Local Bankruptcy Rules, as modified by this Court's order of August 6, 1998, and all other applicable  
17 notice requirements governing a notice of motion to sell assets free and clear of liens and  
18 encumbrances.
- 19 2. All requirements imposed by Section 363 of the United States Bankruptcy Code have  
20 been satisfied.
- 21 3. The potential overbids of the Opolis and Sangumon did not contain a cash deposit  
22 component or funding commitment, as of the date of the hearing on September 2, 1998, sufficient to  
23 determine that such bids were better than that offered by ASC.
- 24 4. With the exception of the Opolis and Sangumon, no other overbids were received in  
25 response to the Sale Motion, or the Sales Procedure Order.
- 26 5. There are no finders or brokers entitled to compensation as a result of the sale of FPN  
27 assets to ASC.

1 6. ASC's offer to purchase the assets of FPN was proposed in good faith and meets the  
2 requirements set forth in *In re Abbots Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149 (3rd Cir.  
3 1986), therefore, ASC is a "good faith purchaser" entitled to the protections afforded a purchaser  
4 pursuant to 11 U.S.C. § 363(m).

5 7. Neither FPN nor ASC engaged in any conduct which would allow the sale to be set  
6 aside pursuant to Section 365(n) of the United States Bankruptcy Code.

7 8. The terms and provisions of the Agreement between ASC and FPN are fair and  
8 reasonable, were negotiated at arm's length and under the circumstances of this Chapter 11 case.

9 9. ASC is a third party purchaser unrelated to FPN.

10 10. Based on the sound business judgment of FPN and pursuant to the *In re Lionel Corp.*,  
11 722 F.2d 1063 (2d Cir. 1983), the sale to ASC is in the best interests of creditors and represents a fair  
12 and reasonable offer under the circumstances of this Chapter 11 case.

13 **Based on the foregoing, the Court now orders as follows:**

14 1. The Sale Motion is granted and approved.

15 2. Subject only to the stay imposed by this order at paragraph 14, FPN is hereby authorized  
16 and directed to take any and all actions necessary or appropriate to complete the Agreement (attached  
17 hereto), including:

18 a. Consummate the proposed sale to ASC in accordance with the terms and  
19 conditions set forth in the Agreement (as that term is defined in the Sale Motion) including,  
20 without limitation, to convey to ASC the assets (the "Purchased Assets") which are the subject  
21 of the Agreement; and

22 b. Perform, consummate, implement and close fully the sale to ASC of the  
23 Purchased Assets together with all additional instruments and documents that may be  
24 reasonably necessary or desirable to implement the sale.

25 3. With the exception of liens and liabilities expressly and unequivocally assumed by ASC  
26 as stated in the Agreement (which include certain tax liabilities and the alleged obligations of FPN to  
27 Asset Recovery Group, LLC and which are subject to any defenses and claims held by FPN), upon  
28

1 the closing of the sale of the Purchased Assets to ASC or its assignee, the Purchased Assets shall be  
 2 transferred, sold and delivered to ASC free and clear of all encumbrances, obligations, liabilities,  
 3 contractual commitments and claims as defined in 11 U.S.C. § 101(5), to the fullest extent allowed by  
 4 law, including, without limitation, employee benefit obligations (including, without limitation, under  
 5 the Employee Retirement Income Security Act and the Comprehensive Omnibus Budget  
 6 Reconciliation Act), collective bargaining agreements, environmental liabilities, any security interest,  
 7 mortgage, lien, charge against or interest in property, adverse claim, claim of possession, license,  
 8 restriction of any kind, including, but not limited to, any restriction on the use, receipt of income or  
 9 other exercise of any attributes of ownership or any option to purchase, option, charge, retention  
 10 agreement which is intended as security or other matters (collectively, "Liens") of any person or entity  
 11 that encumber or relate to, or purport to encumber or relate to, the Purchased Assets.

12 4. Each and every term and provision of this Order shall be binding in all respects upon  
 13 FPN, FPN's bankruptcy estate, its creditors, its administrative claimants, all individuals or entities  
 14 holding an interest in FPN, all other entities and third parties, including, without limitation, any entity  
 15 purporting to hold a Lien against the Purchased Assets.

16 5. Except as otherwise expressly provided in the Agreement, effective upon the transfer of  
 17 the Purchased Assets to ASC, the Liens shall attach to the proceeds of the sale (the "Sale Proceeds")  
 18 with the same force, validity, priority and effect, if any, as the Liens formerly had against the  
 19 Purchased Assets, subject to FPN's ability to challenge the extent, validity, priority and effect of the  
 20 Liens.

21 6. This Order is and shall be effective as a determination that, upon transfer of the  
 22 Purchased Assets to ASC, all Liens existing as to the Purchased Assets conveyed to ASC have been  
 23 and hereby are terminated and declared to be unconditionally released, discharged and terminated,  
 24 and shall be binding upon and govern the acts of all entities, including, all filing agents, filing  
 25 officers, administrative agencies or units, governmental departments or units, secretaries of state,  
 26 federal, state and local officials and all other persons and entities who may be required by operation  
 27 of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any  
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1 documents or instruments, or who may be required to report or insure any title or state of title in or to  
 2 the Purchased Assets conveyed to ASC. All Liens of record as of the date of this Order, except as  
 3 otherwise provided in this order, shall be forthwith removed and stricken as against the Purchased  
 4 Assets. All entities described in this paragraph are authorized and specifically authorized to strike all  
 5 such recorded liens against the Purchased Assets from their records, official and otherwise.

6 7. If any person or entity which has filed statements or other documents or agreements  
 7 evidencing Liens on, or interests in, any of the Purchased Assets does not deliver to FPN or ASC  
 8 prior to the closing of the sale of the Purchased Assets to ASC, in proper form for filing and executed  
 9 by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and  
 10 easements, and any other documents necessary for the purpose of documenting the release of all Liens  
 11 which the person or entity has or may assert with respect to any of the Purchased Assets, FPN and/or  
 12 ASC are hereby authorized and directed to execute and file such statements, instruments, releases and  
 13 other documents on behalf of such persons or entity with respect to any of the Purchased Assets.

14 8. ASC as purchaser, and the transactions contemplated in the Agreement between FPN and  
 15 ASC as approved by this Order, shall receive the protections of 11 U.S.C. § 363(m).

16 9. Nothing contained in any order of any type or kind entered in this Chapter 11 case, or any  
 17 related proceeding, subsequent to entry of this Order, shall conflict with or derogate from the  
 18 provisions of the terms of this Order.

19 10. The failure specifically to include any particular provisions of the Agreement in this  
 20 Order shall not diminish or impair the efficacy of such provision, it being the intent of the Court that  
 21 the Agreement, and each and every provisions, term, and condition thereof be, and therefore is,  
 22 authorized and approved in its entirety.

- 23 11. This Court retains jurisdiction to:
- 24 a. Interpret, implement and enforce the terms and provisions of this Order and the
  - 25 terms of the Agreement, all amendments thereto and any waivers and consents thereunder and
  - 26 of each of the agreements executed in connection therewith;
  - 27 b. Compel delivery of all the Purchased Assets to ASC;



1 c. Resolve any disputes arising under or related to the sale of the Purchased  
 2 Assets to ASC; and

3 d. Adjudicate all issues concerning alleged Liens and any other alleged interests  
 4 in and to the Purchased Assets or other proceeds of the sale, including the extent, validity,  
 5 enforceability, priority and nature of all such alleged Liens and any other alleged interests  
 6 relating to the proceeds of the sale.

7 12. Pursuant to Rule 58 of the Federal Rules of Civil Procedure, as made applicable herein  
 8 by Rule 9021 of the Federal Rules of Bankruptcy Procedure, this Order shall constitute an Order  
 9 approving the Notice of Motion and the Sale Motion.

10 13. This Order shall be effective immediately upon entry pursuant to Rules 7062 and 9014  
 11 of the Federal Rules of Bankruptcy Procedure; however, ASC may not consummate or close the  
 12 transaction contemplated by the Agreement through September 11, 1998.

13 14. A hearing is scheduled for September 11 at 9:00 am., in the above-captioned Court, to  
 14 determine if a valid bid, higher and better than that proposed by ASC and approved by this Order, has  
 15 been received and constitutes a valid overbid to ASC's original offer as approved by the order. All  
 16 potential higher and better bids must be delivered to FPN's counsel with copies to counsel for  
 17 Entergy, Inc. and ASC and received (via facsimile or personal service) by each no later than 10:00 am  
 18 on September 10, 1998.

19 **IT IS SO ORDERED.**

20 DATED: September 10, 1998

**ARTHUR S. WEISSBRODT**

---

ARTHUR S. WEISSBRODT  
 UNITED STATES BANKRUPTCY COURT

1 **Submitted By:**

2 **CRAIG H. MILLET**  
3 **OSCAR GARZA**  
4 **GIBSON, DUNN & CRUTCHER LLP**

5 By:   
6 **Oscar Garza**

7 **Attorneys for AMERICAN STERLING**  
8 **CAPITAL CORPORATION**

9 **Approved As To Form:**

10 **GARRETT L. CECCHINI**  
11 **GERALD F. ELLERSDORFER**  
12 **KAUFMAN & LOGAN, LLP**

13 By: Garrett L. Cecchini  
14 Gerald F. Ellersdorfer

15 **Attorneys for Debtor FIRST PACIFIC**  
16 **NETWORKS, INC.**

17 **CRAIG STUPPI**  
18 **BRONSON, BRONSON & MCKINNON**

19 By: Craig Stuppi

20 **Attorneys for ENTERGY, INC.**

21 **JOHN WALSH MURRAY**  
22 **MURRAY & MURRAY**

23 By: John Walshe Murray

24 **Attorneys for OPOLIS COMMUNICATIONS**  
25 **INCORPORATED**

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**Submitted By:**


**CRAIG H. MILLET  
OSCAR GARZA  
GIBSON, DUNN & CRUTCHER LLP**

By: \_\_\_\_\_  
Oscar Garza

**Attorneys for AMERICAN STERLING  
CAPITAL CORPORATION**

**Approved As To Form:**

**GARRETT L. CECCHINI  
GERALD F. ELLERSDORFER  
KAUFMAN & LOGAN, LLP**

By:   
Garrett L. Cecchini  
Gerald F. Ellersdorfer

**Attorneys for Debtor FIRST PACIFIC  
NETWORKS, INC.**

**CRAIG STUPPI  
BRONSON, BRONSON & MCKINNON**

By: \_\_\_\_\_  
Craig Stuppi

**Attorneys for ENTERGY, INC.**

**JOHN WALSH MURRAY  
MURRAY & MURRAY**

By: \_\_\_\_\_  
John Walsh Murray

**Attorneys for OPOLIS COMMUNICATIONS  
INCORPORATED**

CLASS# 440 06775+

**ORDER AUTHORIZING SALE OF SUBSTANTIALLY ALL ASSETS OF  
FPM FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND  
ENCUMBRANCES - CASE NO. 97-31677-ASW**  
Gibson, Dunn & Crutcher LLP

1 Submitted By:

2 CRAIG H. MILLET  
3 OSCAR GARZA  
4 GIBSON, DUNN & CRUTCHER LLP

5 By: \_\_\_\_\_  
6 Oscar Garza

7 Attorneys for AMERICAN STERLING  
8 CAPITAL CORPORATION

9 Approved As To Form:

10 GARRETT L. CECCHINI  
11 GERALD F. ELLERSDORFER  
12 KAUFMAN & LOGAN, LLP

13 By: \_\_\_\_\_  
14 Garrett L. Cecchini  
15 Gerald F. Ellersdorfer

16 Attorneys for Debtor FIRST PACIFIC  
17 NETWORKS, INC.

18 CRAIG STUPPI  
19 BRONSON, BRONSON & McKINNON

20 By: \_\_\_\_\_  
21 *Craig Stuppi*  
22 Craig Stuppi

23 Attorneys for ENTERGY, INC.

24 JOHN WALSH MURRAY  
25 MURRAY & MURRAY

26 By: \_\_\_\_\_  
27 John Walsh Murray

28 Attorneys for OPOLIS COMMUNICATIONS  
29 INCORPORATED

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31 ORDER AUTHORIZING SALE OF SUBSTANTIALLY ALL ASSETS OF  
32 FPN FIVE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND  
33 ENCUMBRANCES - CASE NO 97-4 WTT-ASW

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of September 1, 1998, is made and entered into by and between First Pacific Networks, Inc., a Delaware corporation ("Seller"), and American Sterling Capital Corporation, a California corporation ("Purchaser"), with reference to the following:

### RECITALS

A. Seller is the owner of numerous assets, including certain intellectual property used in interactive multi-modal data transmission.

B. On February 10, 1997, Seller filed a petition pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California, San Jose Division (the "Bankruptcy Court"), Case No. 97-51077 ASW (the "Bankruptcy Case"). Since that time Seller has been operating as debtor and debtor in possession.

C. In an effort to reorganize, Seller desires to sell substantially all of its assets to fully realize the value of its assets for the benefit of its creditors.

D. Purchaser wishes to purchase from Seller, and Seller wishes to sell to Purchaser, substantially all of the assets and properties owned or used by Seller for the purchase price and upon the terms and conditions hereinafter set forth.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants set forth herein, the parties hereby agree as follows:

#### 1. SALE OF ASSETS.

1.1 Assets to be Transferred. Subject to the terms and conditions set forth in this Agreement, Seller hereby sells, conveys, transfers, assigns and delivers to Purchaser, and Purchaser hereby purchases from Seller free and clear of all liens, claims, interests and encumbrances, all of Seller's right, title and interest in and to all of the assets of Seller (the "Assets"), except as provided in Section 1.2 below, wherever located, whether or not identified or disclosed on Seller's books and records, including without limitation:

(a) All intellectual property, copyrights, patents, inventions, software, source code, devices and discoveries (collectively, the "Intellectual Property") of Seller;

(b) Seller's right, title and interest (i) as lessee under those equipment, personal property and intangible property leases, rental agreements, licenses, contracts, agreements and similar arrangements described on Schedule 1.1(b)-A to this Agreement and incorporated herein by this reference (collectively, the "Leases"), and (ii) as a party to those other contracts, leases, orders, purchase orders, licenses, contracts, agreements and

similar arrangements described on Schedule 1.1(b)-B (collectively, the "Contracts" and together with the Leases, the "Leases and Contracts");

(c) All personal property of Seller, including all test equipment, computer equipment, equipment used in the development of the Intellectual Property, existing cable converter devices and/or work in progress with relation to such computer devices, documentation relating thereto, contractual rights, telephone systems, furniture, vehicles, machinery, equipment, tools, spare parts, computers, fixtures and furnishings (collectively, the "Personal Property"). As used in this Agreement, the Personal Property shall not include the Inventory which is separately described below. The Personal Property shall also expressly exclude any equipment or other tangible property held by Seller pursuant to a lease, rental agreement, contract, license or similar arrangement where Purchaser does not assume the underlying lease, agreement, contract, license or similar arrangement relating to such personal property at the Closing;

(d) All intangible personal property owned or held by Seller, but only to the extent of Seller's interest and to the extent transferable, together with all books, records and like items pertaining to the Seller's business, including, without limitation, any interest in the goodwill of the Seller's business, trademarks, trade names, service marks, catalogues, customer lists and files and other data bases, correspondence with present or prospective customers and suppliers, advertising materials, software programs, employment records and any confidential information or other documentation (including, without limitation, all operator and user manuals, training materials, guides, listings, specifications, other materials for use in conjunction with, or related to the Assets) that has been reduced to writing relating to or arising out of the Seller's business and, all choses in action, including any claim relating to the Loan And Security Agreement dated January 15, 1998 between Seller and Asset Recovery Group, LLC, a Colorado limited liability company (collectively, the "Intangible Property"). As used in this Agreement, Intangible Property shall in all events exclude, (i) any materials containing privileged communications or information about employees, disclosure of which would violate an employee's reasonable expectation of privacy, and (ii) any software or other item of intangible property held by Seller pursuant to a license or other Contract where Purchaser does not assume the underlying Contract relating to such intangible personal property at the Closing;

(e) All stock or other equity interests held by Seller in any third party;

(f) All supplies, goods, materials, work in process, inventory and stock in trade owned by Seller (collectively, the "Inventory");

(g) All rights of Seller under express or implied warranties from the suppliers of Seller with respect to the Personal Property;

(h) All non-executory contracts and contractual rights, relating to the enforcement of proprietary rights and confidentiality provisions, including, but not limited to all non-executory contracts with customers; and

(i) Except as specifically provided in Section 1.2, all other assets and properties of Seller which exist on the Closing Date whether tangible or intangible, real or personal which are used in the Seller's business, excluding Seller's rights under any Contract which is not assigned to Purchaser at the Closing.

**1.2 Excluded Assets.** It is agreed that the following assets hereby are and shall be excluded from the Assets to be sold hereunder:

- Agreement;
- (a) Those items excluded as identified in Schedule 1.2(a) to this Agreement;
  - (b) Seller's cash on hand;
  - (c) Accounts receivable;
  - (d) Return of deposit due from Seller's Landlord;
  - (e) All preference or avoidance actions arising under Sections 544, 547, 548, 549 and 550 of the United States Bankruptcy Code; and
  - (f) Any lease, rental agreement, contract, license or similar arrangement not identified on Schedule 1.1(b)-A & B to this Agreement which, but not listing them therein, Purchaser elects not to have assumed by Seller and assigned to Purchaser.

**1.3 Instruments of Transfer.** The sale, assignment, transfer, conveyance and delivery of the Property to Purchaser shall be made by assignments, bills of sale, and other instruments of assignment, transfer and conveyance provided for in Section 4 below and such other instruments as may reasonably be requested by Purchaser and which do not increase in any material way the burdens imposed by this Agreement upon Seller.

## **2. ASSUMPTION OF LIABILITIES.**

**2.1 Liabilities to be Assumed.** As a material part of the consideration for the purchase and sale of the Assets, effective as of the Closing Date, Purchaser shall assume, perform, discharge and pay when due the following obligations and liabilities of Seller:

(a) Unless excluded pursuant to Section 1.2(a) above, Purchaser shall pay all liabilities of Seller accruing under execution Leases and Contracts on and after the Closing Date which are actually assurances by Seller and assigned to Purchaser; Purchaser shall pay all cure amounts owing under the Leases and Contracts as of the Closing Date which the Bankruptcy Court may order to be paid as a condition to Seller's assumption and assignment to Purchaser of the Leases and Contracts;

(b) All taxes represented by valid and enforceable tax liens encumbering the Assets securing pre and post-petition taxes, not to exceed \$80,000.00;

(c) Seller's liability, if any, under the Loan And Security Agreement dated January 15, 1998 between Seller and Asset Recovery Group, LLC, a Colorado limited liability company, and

(d) Purchaser shall negotiate with Entergy Enterprises, Inc. to cause the withdrawal of their unsecured claim in approximate amount of \$7,000,000.00.

2.2 Excluded Liabilities. Except to the extent expressly assumed by Purchaser pursuant to Section 2.1 above, Purchaser shall not assume or be liable or responsible for any liabilities or obligations of Seller.

### 3. PURCHASE PRICE, PAYMENT AND RELATED MATTERS.

3.1 Purchase Price. The total purchase price for the Assets (as hereinafter defined) shall be an initial cash payment of Two Hundred Ninety-Two Thousand Three Hundred Dollars (\$292,300) (the "Initial Payment") plus the Continuing Payments (as defined in Section 3.2 below) (collectively, the "Purchase Price"). Seller acknowledges that Purchaser has prior to the date hereof advanced to Seller the sum of \$268,000 against the Initial Payment. Purchaser shall receive a credit of \$268,000 against the total Purchase Price. Concurrently with the execution and delivery of this Agreement, Purchaser shall pay to Seller, by means of a certified or cashiers' check, an amount equal to Twenty-Four Thousand Three Hundred Dollars (\$24,300) in full settlement of the Initial Payment. Pursuant to Section 2.1 above, Purchaser shall also pay all cure amounts owing under the Leases and Contracts as of the Closing Date which the Bankruptcy Court may order to be paid as a condition to Seller's assumption and assignment to Purchaser of the Leases and Contracts.

3.2 Continuing Payments. In addition to the Initial Payment, Purchaser shall make future payments to Seller on a quarterly basis equal to three percent (3%) of the proceeds of net sales of products or services by Purchaser utilizing the Intellectual Property acquired from Seller. Purchaser shall also pay to Seller 3% of all other moneys received from any third party and/or licensee, including license fees, royalties, use fees, service fees, or other moneys received by Purchaser on account of the third parties' sales of products or services utilizing the Intellectual Property (the "Continuing Payments"). The Continuing Payments shall continue for a period of five years from the date hereof or until a total of \$5 million has been paid (excluding the Initial Payment), whichever occurs first. For purposes of this Agreement, "Net Sales of Products" shall mean an amount equal to all sales of products utilizing the Intellectual Property by Purchaser, less sales returns and allowances. Seller and Purchaser agree that the Continuing Payments shall be based upon calendar quarters and the payment from Purchaser to Seller shall be due and payable not later than forty-five (45) days after the end of each calendar quarter for the immediately preceding calendar quarter. Proceeds of Net Sales and other moneys shall be deemed received when actually received by Purchaser and not when the sale is made. The first such Continuing Payment shall be prorated for the period from (and including) the date hereof to September 30, 1998. In the event that the Continuing Payments continue for the full five (5) years, the final such payment shall be prorated for the period from July 1, 2003 to (but not including) the date that is the five-year anniversary of this Agreement.



#### **4. CLOSING TRANSACTIONS.**

**4.1 Closing Conference.** The Closing of the transactions provided for herein (the "Closing") shall take place at the offices of Gibson, Dunn & Crutcher LLP, 4 Park Plaza, Irvine, California 92614.

**4.2 Closing Date.** The Closing shall be held on the later of (i) eleven (11) days after entry of the Sale Approval Order (as defined in Section 8.3, below) or (ii) the first business day after all conditions to Closing have been satisfied or waived (the "Closing Date"), or such other date as the parties may mutually agree, but in no event later than September 15, 1998 (the "Outside Date"). In the event the conditions to Closing have not been satisfied or waived by the Outside Date, then any party who is not in default hereunder may terminate this Agreement. Until this Agreement is either terminated or the parties have agreed upon an extended Closing Date, the parties shall diligently continue to work to satisfy all conditions to Closing and the transaction contemplated herein shall close as soon as such conditions are satisfied or waived.

**4.3 Seller's Deliveries to Purchaser at Closing.** On the Closing Date, Seller shall make the following deliveries to Purchaser:

**4.3.1** An Assignment and Assumption of Leases substantially in form and content mutually satisfactory to Seller and Purchaser, duly executed by Seller, pursuant to which Seller assigns the Leases and Contracts (the "Assignments of Leases and Contracts").

**4.3.2** A bill of sale, duly executed by Seller, in form and content mutually satisfactory to Seller and Purchaser pursuant to which Seller transfers the Personal Property and the Inventory to Purchaser (the "Bill of Sale").

**4.3.3** A counterpart assignment of the Intangible Property, duly executed by Seller, in form and content mutually satisfactory to Seller and Purchaser, pursuant to which Seller assigns to Purchaser its interest, if any, in and to the Intangible Property to Purchaser (the "Assignment of Intangible Property").

**4.3.4** A counterpart assignment of the Intellectual Property, duly executed by Seller, in form and content mutually satisfactory to Seller and Purchaser, pursuant to which Seller assigns to Purchaser its interest, if any, in and to the Intellectual Property to Purchaser (the "Assignment of Intellectual Property").

**4.3.5** Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Seller to Purchaser at the Closing or such other documents as Purchaser may reasonably request.

**4.4 Purchaser's Deliveries to Seller at Closing.** On the Closing Date, Purchaser shall make or cause the following deliveries to Seller:

**4.4.1** That portion of the Purchase Price to be delivered by Purchaser directly to Seller at the Closing under Section 2.1.

4.4.2 A counterpart of the Assignment of Leases and Contracts, duly executed by Purchaser.

4.4.3 A counterpart of the Assignment of Intangible Property, duly executed by Purchaser.

4.4.4 A counterpart of the Assignment of Intellectual Property, duly executed by Purchaser.

4.4.5 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Purchaser to Seller at the Closing or such other documents as Purchaser may reasonably request.

4.5 Sales, Use and Other Taxes. Any sales, purchases, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Property is located, or any subdivision of any such state, which may be payable by reason of the sale of the Property under this Agreement or the transactions contemplated herein shall be borne by the Purchaser.

4.7 Possession. Right to possession of the Assets shall transfer to Purchaser on the Closing Date. Seller shall transfer and deliver to Purchaser on the Closing Date such keys, passwords, codes, lock and safe combinations and other similar items as Purchaser shall require to obtain immediate and full possession and control of the Assets, and shall also make available to Purchaser at their then existing locations the originals of all documents in Seller's possession that are required to be transferred to Purchaser by this Agreement.

## 5. CONDITIONS PRECEDENT TO CLOSING.

5.1 Conditions to Seller's Obligations. Seller's obligation to make the deliveries required of Seller at the Closing Date shall be subject to the satisfaction or waiver by Seller of each of the following conditions.

5.1.1 All of the representations and warranties of Purchaser contained herein shall be true and correct as of the date when made and shall be deemed to be made again as of the Closing Date and shall be true and correct in all material respects at and as of such time.

5.1.2 Purchaser shall have executed and delivered to Seller the Assignment of Leases and Contracts.

5.1.3 Purchaser shall have delivered, or shall be prepared to deliver at the Closing, all cash and other documents required of Purchaser to be delivered at the Closing.

5.1.4 Purchaser shall have delivered to Seller appropriate evidence of all necessary corporate action by Purchaser in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by

Purchaser's directors approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Purchaser of this Agreement; and (ii) a certificate as to the incumbency of officers of Purchaser executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

5.1.5 Purchaser shall have performed or tendered performance in all material respects of the covenants on Purchaser's part to be performed which, by their terms, are intended to be performed before the Closing.

5.2 Conditions to Purchaser's Obligations. Purchaser's obligation to make the deliveries required of Purchaser at the Closing Date shall be subject to the satisfaction or waiver by Purchaser of each of the following conditions:

5.2.1 Seller shall have performed or tendered performance in all material respects of the covenants on Seller's part to be performed which, by their terms, are intended to be performed before the Closing.

5.2.2 All representations and warranties of Seller contained herein shall be true and correct as of the date when made and shall be deemed to be made again as of the Closing Date and shall be true and correct in all material respects at and as of such time.

5.2.3 Seller shall have executed and be prepared to deliver to Seller the Assignment of Leases.

5.2.4 Seller shall have delivered, or shall be prepared to deliver at the Closing, all other documents required of Seller to be delivered at the Closing.

5.2.5 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

5.2.6 The Bankruptcy Court shall have entered the Sale Approval Order in accordance with Section 8.3 below and the Sale Approval Order shall not have been stayed as of the Closing Date.

5.2.7 Seller shall have provided all notices required under applicable bankruptcy law and to such parties as Seller may reasonably request.

5.2.8 The Property shall constitute all of the assets and contract rights necessary to conduct in all material respects the Seller's business as it was conducted pre-petition and Purchaser shall have entered into such agreement with Entergy Enterprises, Inc. a Louisiana corporation ("Entergy") allowing Purchaser use, to Purchaser's

satisfaction, of all of Seller's Intellectual Property, including Intellectual Property licensed to Entergy; provided, however, that Purchaser shall use reasonable efforts to obtain such agreement from Entergy before the hearing on the Sale Motion, as hereinafter defined.

**5.3 Termination.** If any of the above conditions to the obligations of a party is neither satisfied nor waived on or before the date by which the condition is required to be satisfied or, if no such date is specified, on or before the Outside Date, either party may terminate this Agreement by delivering to the other party written notice of termination. Any waiver of a condition shall be effective only if such waiver is stated in writing and signed by the waiving party; provided, however, that the consent of a party to the Closing shall constitute a waiver by such party of any conditions to Closing not satisfied as of the Closing Date.

**6. SELLER'S REPRESENTATIONS AND WARRANTIES.**

Seller hereby makes the following representations and warranties to Purchaser:

**6.1 Validity of Agreement.** Subject only to the obtaining of the Sale Approval Order, this Agreement constitutes the valid and binding obligation of Seller enforceable in accordance with its terms.

**6.2 Organization, Standing and Power.** Subject to the applicable provisions of bankruptcy law, Seller has all requisite corporate power and authority to own, lease and operate its properties, to carry on its business as now being conducted and, subject to Seller's obtaining the Sale Approval Order, to execute, deliver and perform this Agreement and all writings relating hereto.

**6.3 Authorization of Seller.** Subject only to the obtaining of the Sale Approval Order, the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Seller do not and will not: (i) conflict with or result in a breach of the articles of incorporation or the by-laws of Seller, (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Seller is a party or by which Seller or its assets or properties may be bound.

**6.4 Title to Property.** Seller has good and marketable title to the Assets.

**6.5 Material Contracts.** Schedule 6.5 attached hereto contains an identification of contracts and agreements necessary to the conduct of Seller's business on an ongoing basis.

**6.6 Tax Liens.** Liens asserted against Seller's property on account of unpaid pre and post-petition taxes of any kind do not exceed \$80,000.00.

**7. PURCHASER'S WARRANTIES AND REPRESENTATIONS.**

In addition to the representations and warranties contained elsewhere in this Agreement, Purchaser hereby makes the following representations and warranties to Seller:

**7.1 Validity of Agreement.** All action on the part of Purchaser necessary for the authorization, execution, delivery and performance of this Agreement by Purchaser, including, but not limited to the performance of Purchaser's obligations hereunder, has been taken. This Agreement, when executed and delivered by Purchaser, shall constitute the valid and binding obligation of Purchaser enforceable in accordance with its terms.

**7.2 Organization, Standing and Power.** Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California. Purchaser has all requisite corporate power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto.

**7.3 Authorization of Purchaser.** The execution, delivery and performance of this Agreement and all writings relating hereto by Purchaser have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Purchaser do not and will not, (i) conflict with or result in a breach of the articles of incorporation or by-laws of Purchaser, (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority, or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Purchaser is a party or by which Purchaser or its assets or properties may be bound.

## **8. CONDUCT AND TRANSACTION PRIOR TO CLOSING.**

**8.1 Access to Records and Properties of Seller.** From and after the date of this Agreement through the Closing Date, Seller shall afford to Purchaser's officers, independent public accountants, counsel, lenders, consultants and other representatives, free and full access at all reasonable times to the Assets and all records pertaining to the Assets or the Seller's business. Purchaser, however, shall not be entitled to access to any materials containing privileged communications or information about employees, disclosure of which might violate an employee's reasonable expectation of privacy.

**8.2 Preservation of Seller's Assets.** Unless Purchaser otherwise consents, during the period prior to the Closing Date, Seller shall preserve intact its current business and its relationships with persons having dealings with it.

### **8.3 Bankruptcy Court Approval of Sale.**

Seller shall no later than Monday, August 10, 1998, make a motion (the "Sale Motion") for an order (the "Sale Approval Order") from the Bankruptcy Court (which order shall be in form and substance acceptable to Purchaser) which:

(i) approves the sale of the Assets to Purchaser on the terms and conditions set forth in this Agreement and authorizes Seller to proceed with this transaction;

(ii) includes a specific finding that Purchaser is a good faith purchaser of the Assets;

(iii) states that the sale of the Assets to Purchaser shall be free and clear of all liens, claims, interests and encumbrances whatsoever, and

(iv) contains the following findings of fact and conclusions of law by the Bankruptcy Court in form and substance satisfactory to Purchaser establishing that:

(a) the notice of sale, assignment and transfer of the Assets free and clear of liens, and the parties who were served with copies of this notice, was in compliance with Bankruptcy Code Sections 102 and 363 and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006, 9014 and any other provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or any local bankruptcy rules governing the sale of the Assets free and clear of liens and the assignment of executory contracts and leases, if any;

(b) upon the closing of the sale of the Assets to Purchaser, except as to the alleged claims of Asset Recovery Group LLC and valid and enforceable tax liens encumbering the Assets, the Property shall be transferred, sold and delivered to Purchaser free and clear of all encumbrances, obligations, liabilities, contractual commitments, claims, including, without limitation, ERISA and employee benefit obligations, collective bargaining agreements, environmental liabilities, any security interest, mortgage, lien, charge against or interest in property, adverse claim, claim of possession, license, restriction of any kind, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership or any option to purchase, option, charge, retention agreement which is intended as security or other matters (collectively, "Liens") of any person or entity that encumber or relate to, or purport to encumber or relate to, the Property, except as specifically provided in this Agreement;

(c) all requirements imposed by Bankruptcy Code Section 363 and applicable case law for the sale of assets free and clear of Liens have been satisfied;

(d) Purchaser is a purchaser in "good faith" of the Assets pursuant to Bankruptcy Code Section 363(m);

(e) Purchaser and Seller did not engage in any conduct which would allow this Agreement to be set aside pursuant to Bankruptcy Code Section 363(n);

(f) any other provisions of the Bankruptcy Code governing the sale of assets free and clear of Liens have been satisfied;

(g) the transactions consummated pursuant to this Agreement are entitled to the protections of Section 363(m) of the Bankruptcy Code;

(h) the transfers made pursuant to this Agreement are made under the Bankruptcy Code and not subject to any taxes under applicable laws other than applicable California sales tax, if any, and

(i) the terms and provisions of this Agreement are fair and reasonable.

Moreover, the order approving the sale shall state as follows:

(aa) This Order is and shall be effective as a determination that, upon transfer of the Assets to Purchaser, all Liens existing as to the Assets conveyed to Purchaser have been and hereby are terminated and declared to be unconditionally released and discharged and shall be binding upon and govern the acts of all entities, including, all filing agents, filing officers, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets conveyed to Purchaser. All Liens of record as of the date of this Order, except as otherwise provided in this order, shall be forthwith removed and stricken as against the Assets. All such entities described in paragraph (bb) immediately below are authorized and specifically directed to strike all such recorded Liens against the Assets from their records, official and otherwise.

(bb) If any person or entity which has filed statements or other documents or agreements evidencing Liens on, or interests in, any of the Assets does not deliver to Purchaser prior to the closing of the sale of the Assets to Purchaser, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens and easements, and any other documents necessary for the purpose of documenting the release of all Liens which the person or entity has or may assert with respect to any of the Assets, Purchaser is hereby

full economic potential of the Intellectual Property. After closing, Purchaser will expend the necessary capital to conduct further evaluation, development, testing and marketing of the Intellectual Property and products utilizing the Intellectual Property and to determine their full economic viability. Although Purchaser intends to develop the Intellectual Property as part of a long term viable business, Purchaser makes no representation or warranty that it will remain in business or that it will not cease development of the Intellectual Property or the sales of products utilizing the Intellectual Property if, at any time, Purchaser determines in its sole discretion that further development is unwise, imprudent or otherwise uneconomic. Accordingly, even though Purchaser has developed a business plan and projections which indicates significant potential and potential marketability of products utilizing intellectual property, the parties hereto acknowledge that there is no assurance that there will, in fact, be a return based upon the Continuing Payments to be paid as provided herein, or that the Continuing Payments will continue for the full five (5) years as set forth in paragraph 3.2 above.

**10.4 Notices.** All notices, requests and other communications hereunder shall be in writing and shall be delivered by personal service, or sent by telecopy or mailed first class, postage prepaid, by certified mail, return receipt requested, in all cases, addressed to:

(a) if to Purchaser:

American Sterling Corporation  
9800 Muirlands Blvd.  
Irvine, CA 92718  
Attention: Michael D. Thompson  
Telecopier: (949) 457-9215

with a copy to:

Gibson, Dunn & Crutcher LLP  
4 Park Plaza, Suite 1800  
Irvine, California 92614  
Attention: Mark W. Shurtleff, Esq.  
Telecopier: (949) 451-4220

(b) if to Seller:

First Pacific Networks Inc.  
871 Fox Lane  
San Jose, CA 95131  
Attention: James R. Hirschy  
Telecopier: (408) 943-7696



with a copy to:

Kaufman & Logan LLP  
111 Pine Street, Suite 1300  
San Francisco, CA 94111  
Attention: Garrett L. Cecchini  
Telecopier: (415) 391-4639

In the case of service by mail, service shall be deemed complete at the earlier of (a) the expiration of the fifth (5th) business day after the date of mailing, or (b) the date of delivery as shown by the return receipt. In the case of telecopy, service shall be deemed complete upon sending, and a copy of the notice shall be sent by registered or certified mail, in the manner set forth above, within twenty four (24) hours after being originally sent by telecopy. In the case of personal service, delivery shall be deemed complete on the date of actual delivery. Either party hereto may from time to time by notice in writing served as set forth above designate a different address or a different or additional person to which all such notices or communications thereafter are to be given.

**10.5 Entire Agreement.** This instrument and the documents to be executed pursuant hereto contain the entire agreement between the parties relating to the sale of the Assets. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

**10.6 Modification.** This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the parties hereto.

**10.7 Closing Date.** All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

**10.8 Severability.** Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive except that, if Purchaser cannot acquire and Seller cannot assign, after using diligent efforts, Purchaser may terminate this Agreement, and it shall be of no further force and effect, unless Purchaser agrees in writing to the contrary.

**10.9 Captions.** All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

**10.10 Further Assurances.** Each party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by any other party hereto for the purpose of giving effect to the transactions contemplated herein or the intentions of the parties with respect thereto.

**10.11 Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**10.12 No Broker.** The parties represent that no person has acted on behalf of it, or has assisted it in or brought about the negotiation of this Agreement as agent, finder, broker or other representative. Neither party has agreed to pay to any person any fee or commission in the nature of a finder's, broker's or originator's fee or commission in connection with this Agreement, and the parties agree to indemnify the other and hold each other harmless from and against any claims asserted against the other party for any broker's, finder's or originator's fees, commissions or other compensation in connection with this Agreement by any person acting or asserting to have acted on the indemnifying party's behalf.

**10.13 Payment of Fees and Expenses.** Each party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of the Agreement and the transaction described herein.

**10.14 Investigations and Survival.** The respective representations, warranties, covenants and agreements of Seller and Purchaser herein, or in any certificates or other documents delivered prior to or at the Closing, shall not be deemed waived or otherwise affected by any investigation made by any party hereto nor shall they be affected by the Closing.

**10.15 Assignments.** This Agreement shall not be assigned by either party hereto without the prior written consent of the other party hereto.

**10.16 Binding Effect.** Subject to the provisions of Section 10.15 above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.

**10.17 Applicable Law.** This Agreement shall be governed by and construed in accordance with the internal laws of California.

**10.18 Good Faith.** All parties hereto agree to do all acts and execute all documents required to carry out the terms of this Agreement and to act in good faith with respect to the terms and conditions contained herein before and after Closing.

**10.19 Construction.** In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.

**10.20 Counterparts.** This Agreement may be signed in counterparts. The parties further agree that this Agreement may be executed by the exchange of facsimile signature

pages provided that by doing so the parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

**10.21 Time is of the Essence.** Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

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

**"PURCHASER"**

**AMERICAN STERLING CAPITAL CORPORATION,**  
a California corporation

By: Michael D. Thompson  
Michael D. Thompson  
President

**"SELLER"**

**FIRST PACIFIC NETWORKS, INC.,**  
a Delaware corporation

By: James R. Hirsch  
Name: JAMES R. HIRSCH  
Its: PRESIDENT

CASE 1:2014

**SCHEDULE 1.1(b)-A**

1. **Agreement for the Lease of Non-regulated Telecommunications Equipment dated January 14, 1994 by and between Pacific Bell and First Pacific Networks, Inc.**
2. **The Master Equipment Lease Agreement (No. 100810) dated April 21, 1994 with Master Equipment Schedules Numbers 1 to 20 by and between Telogy, Inc. and First Pacific Networks, Inc.\***
3. **The Master Equipment Lease Agreement with Master Equipment Lease Agreement Schedules Nos. 001-009 by and between AT&T Capital Services Corporation and First Pacific Networks, Inc.\***
4. **The Smart Business Lease dated December 22, 1995 by and between Pitney Bowes Credit Corporation and First Pacific Networks, Inc.**

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\* Subject to coming to an agreement with the nondebtor executory contract holder regarding the extent of property covered by the lease and the proper "cure" amount.

**SCHEDULE 1.1(b)-B**

1. The Agreement dated November 5, 1993 by and between First Pacific Networks, Inc. and Bachelor Enlisted Quarters located at the Naval Amphibious Base, San Diego, California.
2. The Software License Agreement dated October 5, 1993 by and between Epilogue Technology Corporation and First Pacific Networks, Inc.
3. The OEM Program License Agreement dated April 21, 1993 by and between LIR Corporation and First Pacific Networks, Inc.
4. The standard Software License Agreement in connection with "shrink-wrapped" Electronic Design Automation software acquired from PADS, Inc. by First Pacific Networks, Inc.
5. The standard License Agreement in connection with accounting software acquired from FourthShift by First Pacific Networks, Inc.
6. The standard License Agreement in connection with bug tracking software acquired from Scopis by First Pacific Networks, Inc.
7. The standard License Agreement in connection with compiler software acquired from Oasis by First Pacific Networks, Inc.
8. The Source Code Software License Agreement and OEM Derivative Product Distribution Agreement by and between LYNX REAL-TIME SYSTEMS, INC. and First Pacific Networks, Inc. dated as of December 30, 1993.
9. All rights to the technology that FPN acquired from Wavelengths Lasers, Inc. in connection with the Series A Preferred Stock Purchase Agreement dated November 17, 1989 and the License Agreement dated October 15, 1989, amended July 2, 1990.
10. All rights pursuant to any and all license agreements entered into between FPN and Broadband Systems Research, Inc.
11. All rights pursuant to any and all license agreements, if any, regarding M TOS (operating systems for VTU).
12. The standard License Agreement in connection with the Microsoft Windows 3.1 held by First Pacific Networks, Inc.
13. The standard License Agreement in connection with the Novell programs held by First Pacific Networks, Inc.

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PATENT

REEL: 010859 FRAME: 0754

**SCHEDULE 1.2(a)**

**Excluded Assets**

1. Stock of FPN's wholly-owned subsidiaries.
2. Stock held by FPN in FPN Japan, a Kabushiki Kaisha.

00635

PATENT  
REEL: 010859 FRAME: 0755

**SCHEDULE 6.5**

1. All contracts and agreements identified on Schedules 1.1(b)-A&B attached to this Agreement and as identified on FPN's Schedules and Statement of Affairs filed in connection with FPN's Chapter 11 bankruptcy petition.

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