

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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NETWORK APPLIANCE INC

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

(Mark One)

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

For the quarterly period ended October 26, 2007

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)

Delaware

*(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

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Number of shares outstanding of the registrant's common stock, \$0.001 par value, as of the latest practicable date.

Class
Common Stock

Outstanding at November 23, 2007
344,190,695

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TRADEMARKS

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PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements (Unaudited)

NETWORK APPLIANCE, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, - Unaudited)

	<u>October 26, 2007</u>	<u>April 27, 2007</u>
ASSETS		
Current Assets:		
Cash and cash equivalents	\$625,707	\$489,079
Short-term investments	357,370	819,702
Accounts receivable, net of allowances of \$2,314 at October 26, 2007, and \$2,572 at April 27, 2007	427,854	548,249
Inventories	62,690	54,880
Prepaid expenses and other assets	94,684	99,840
Short-term restricted cash and investments	84,034	118,312
Short-term deferred income taxes	116,324	110,741
Total current assets	1,768,663	2,240,803
Property and Equipment, Net	646,157	603,523
Goodwill	601,056	601,056
Intangible Assets, Net	69,321	83,009
Long-Term Restricted Cash and Investments	304,937	3,639
Long-Term Deferred Income Taxes and Other Assets	167,880	126,448
	<u>\$3,558,014</u>	<u>\$3,658,478</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Current portion of long-term debt	\$47,770	\$85,110
Accounts payable	119,099	144,112
Income taxes payable	9,962	53,371
Accrued compensation and related benefits	149,727	177,327
Other accrued liabilities	100,936	97,017
Deferred revenue	702,134	630,610
Total current liabilities	1,129,628	1,187,547
Long-Term Debt	250,000	-
Other Long-Term Obligations	74,105	9,487
Long-Term Deferred Revenue	516,445	472,423
	<u>1,970,178</u>	<u>1,669,457</u>
Stockholders' Equity:		
Common stock (425,673 shares at October 26, 2007, and 421,623 shares at April 27, 2007)	426	422
Additional paid-in capital	2,563,013	2,380,623
Treasury stock at cost (78,717 shares at October 26, 2007, and 54,593 shares at April 27, 2007)	(2,323,664)	(1,623,691)
Retained earnings	1,344,260	1,226,165
Accumulated other comprehensive income	3,801	5,502
Total stockholders' equity	1,587,836	1,989,021
	<u>\$3,558,014</u>	<u>\$3,658,478</u>

See accompanying notes to unaudited condensed consolidated financial statements.

NETWORK APPLIANCE, INC.

CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share amounts, - Unaudited)

	Three Months Ended		Six Months Ended	
	October 26, 2007	October 27, 2006	October 26, 2007	October 27, 2006
Revenues				
Product	\$541,392	\$481,284	\$1,004,725	\$946,895
Software entitlements and maintenance	117,134	82,253	225,061	157,083
Service	133,672	88,986	251,647	169,833
Total revenues	<u>792,198</u>	<u>652,523</u>	<u>1,481,433</u>	<u>1,273,811</u>
Cost of Revenues				
Cost of product	217,396	186,261	404,147	374,226
Cost of software entitlements and maintenance	1,914	2,456	3,998	4,748
Cost of service	88,883	62,499	172,086	120,460
Total cost of revenues	<u>308,193</u>	<u>251,216</u>	<u>580,231</u>	<u>499,434</u>
Gross margin	<u>484,005</u>	<u>401,307</u>	<u>901,202</u>	<u>774,377</u>
Operating Expenses:				
Sales and marketing	255,374	204,264	500,017	399,782
Research and development	108,964	90,360	215,520	179,038
General and administrative	39,507	35,217	80,956	67,613
Restructuring recoveries	-	-	-	(74)
Gain on sale of assets	-	(25,339)	-	(25,339)
Total operating expenses	<u>403,845</u>	<u>304,502</u>	<u>796,493</u>	<u>621,020</u>
Income from Operations	<u>80,160</u>	<u>96,805</u>	<u>104,709</u>	<u>153,357</u>
Other Income (Expenses), Net:				
Interest income	16,296	17,478	33,332	34,134
Interest expense	(1,410)	(5,170)	(2,492)	(9,042)
Net gain (loss) on investments	13,619	(2,000)	13,619	(2,000)
Other income, net	231	1,878	1,062	2,657
Total other income, net	<u>28,736</u>	<u>12,186</u>	<u>45,521</u>	<u>25,749</u>
Income Before Income Taxes	<u>108,896</u>	<u>108,991</u>	<u>150,230</u>	<u>179,106</u>
Provision for Income Taxes	<u>25,138</u>	<u>22,060</u>	<u>32,135</u>	<u>37,506</u>
Net Income	<u>\$83,758</u>	<u>\$86,931</u>	<u>\$118,095</u>	<u>\$141,600</u>
Net Income per Share:				
Basic	<u>\$0.24</u>	<u>\$0.23</u>	<u>\$0.33</u>	<u>\$0.38</u>
Diluted	<u>\$0.23</u>	<u>\$0.22</u>	<u>\$0.32</u>	<u>\$0.36</u>
Shares Used in Net Income per Share Calculations:				
Basic	<u>355,665</u>	<u>370,659</u>	<u>360,061</u>	<u>372,264</u>
Diluted	<u>365,458</u>	<u>388,226</u>	<u>371,544</u>	<u>389,773</u>

See accompanying notes to unaudited condensed consolidated financial statements.

NETWORK APPLIANCE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Six Months Ended	
	October 26, 2007	October 27, 2006
Cash Flows from Operating Activities:		
Net income	\$ 118,095	\$ 141,600
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	55,016	39,380
Amortization of intangible assets and patents	13,688	10,364
Stock-based compensation	78,781	85,445
Net loss (gain) on investments	(13,619)	2,000
Gain on sale of assets	-	(25,339)
Loss on disposal of equipment	245	302
Allowance for doubtful accounts	248	194
Deferred income taxes	(35,509)	(22,634)
Deferred rent	512	740
Income tax benefit from stock-based compensation	48,419	79,020
Excess tax benefit from stock-based compensation	(15,586)	(23,845)
Changes in assets and liabilities:		
Accounts receivable	165,708	50,353
Inventories	(7,703)	8,195
Prepaid expenses and other assets	(21,219)	(31,831)
Accounts payable	(40,177)	7,205
Income taxes payable	8,697	(44,085)
Accrued compensation and related benefits	(29,884)	(6,327)
Other accrued liabilities	(9,538)	(5,017)
Deferred revenue	112,397	137,682
Net cash provided by operating activities	<u>428,571</u>	<u>403,402</u>
Cash Flows from Investing Activities:		
Purchases of investments	(439,990)	(1,527,568)
Redemptions of investments	592,138	1,544,557
Redemptions of restricted investments	35,426	52,638
Change in restricted cash	(1,443)	405
Proceeds from sale of assets	-	23,914
Proceeds from sales of marketable securities	18,256	-
Proceeds from sales of nonmarketable securities	-	17
Purchases of property and equipment	(71,158)	(76,013)
Purchases of nonmarketable securities	(4,035)	(1,333)
Net cash provided by investing activities	<u>129,194</u>	<u>16,617</u>
Cash Flows from Financing Activities:		
Proceeds from sale of common stock related to employee stock transactions	66,067	92,460
Excess tax benefit from stock-based compensation	15,586	23,845
Proceeds from revolving credit facility	249,754	-
Repayment of debt	(37,340)	(106,572)
Tax withholding payments reimbursed by restricted stock	(5,202)	(4,323)
Repurchases of common stock	(699,973)	(363,908)
Net cash used in financing activities	<u>(411,108)</u>	<u>(358,498)</u>
Effect of Exchange Rate Changes on Cash and Cash Equivalents	(10,029)	561
Net Increase in Cash and Cash Equivalents	136,628	62,082
Cash and Cash Equivalents:		
Beginning of period	489,079	461,256
End of period	<u>\$625,707</u>	<u>\$523,338</u>
Noncash Investing and Financing Activities:		
Acquisition of property and equipment on account	\$25,494	\$5,243
Common stocks received from sale of assets	\$-	\$7,909
Supplemental Cash Flow Information:		
Income taxes paid	\$11,849	\$27,110
Income taxes refunded	\$1,340	\$1,945
Interest paid on debt	\$1,947	\$6,256

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except per share data, Unaudited)

1. The Company

Based in Sunnyvale, California, Network Appliance was incorporated in California in April 1992 and reincorporated in Delaware in November 2001. Network Appliance, Inc. is a supplier of enterprise storage and data management software and hardware products and services. Our solutions help global enterprises meet major information technology challenges such as managing storage growth, assuring secure and timely information access, protecting data, and controlling costs by providing innovative solutions that simplify the complexity associated with managing corporate data. Network Appliance™ solutions are the data management and storage foundation for many of the world's leading corporations and government agencies.

2. Condensed Consolidated Financial Statements

The accompanying interim unaudited condensed consolidated financial statements have been prepared by Network Appliance, Inc. without audit and reflect all adjustments, consisting only of normal recurring adjustments which are, in the opinion of management, necessary for a fair presentation of our financial position, results of operations, and cash flows for the interim periods presented. The statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("generally accepted accounting principles") for interim financial information and in accordance with the instructions to Form 10-Q and Article 10-01 of Regulation S-X. Accordingly, they do not include all information and footnotes required by generally accepted accounting principles for annual consolidated financial statements. These financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes included in our Annual Report on Form 10-K for the year ended April 27, 2007. The results of operations for the three- and six-month periods ended October 26, 2007, are not necessarily indicative of the operating results to be expected for the full fiscal year or future operating periods.

In the first quarter of fiscal 2008, we began to classify sales-related tax receivable balances from our customers within prepaid expenses and other current assets. These balances were included in accounts receivable, net, in previous periods (\$43,075 at April 27, 2007), and such amounts have been reclassified in the accompanying financial statements to conform to the current period classification. This reclassification had no effect on the reported amounts of net income or cash flow from operations for any period presented. In addition, we have chosen to use the term "software entitlements and maintenance" in our statements of income to describe the arrangements under which we provide our customers the right to receive unspecified software product upgrades and enhancements on a when-and-if-available basis, bug fixes, and patch releases; these were previously described as "software upgrade and maintenance arrangements."

We operate on a 52-week or 53-week year ending on the last Friday in April. The first six months of fiscal 2008 and 2007 were both 26-week fiscal periods.

3. Use of Estimates

The preparation of the condensed consolidated financial statements is in conformity with generally accepted accounting principles and requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Such estimates include, but are not limited to, revenue recognition and allowances; allowance for doubtful accounts; valuation of goodwill and intangibles; fair value of derivative instruments and related hedged items; accounting for income taxes; inventory write-down and contractual commitments; restructuring accruals; impairment losses on investments; fair value of options granted under our stock-based compensation plans; and loss contingencies. Actual results could differ from those estimates.

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

4. Stock-Based Compensation, Equity Incentive Programs and Stockholders' Equity

Stock-Based Compensation Expense

The stock-based compensation expenses included in the Condensed Consolidated Statement of Income for the three- and six-month periods ended October 26, 2007, and October 27, 2006, are as follows:

	Three Months Ended		Six Months Ended	
	October 26, 2007	October 27, 2006	October 26, 2007	October 27, 2006
Cost of product revenue	\$768	\$1,069	\$1,713	\$1,739
Cost of service revenue	2,606	2,489	5,277	5,123
Sales and marketing	17,135	18,715	34,626	37,432
Research and development	12,332	13,022	25,507	26,890
General and administrative	5,529	7,128	11,658	14,261
Total stock-based compensation expense before income taxes	38,370	42,423	78,781	85,445
Income taxes	(4,847)	(7,447)	(12,129)	(15,281)
Total stock-based compensation expense after income taxes	<u>\$33,523</u>	<u>\$34,976</u>	<u>\$66,652</u>	<u>\$70,164</u>

The following table summarizes stock-based compensation expense associated with each type of award:

	Three Months Ended		Six Months Ended	
	October 26, 2007	October 27, 2006	October 26, 2007	October 27, 2006
Employee stock options and awards	\$33,717	\$39,174	\$70,246	\$79,297
Employee stock purchase plan ("ESPP")	4,766	3,273	8,642	6,656
Amounts capitalized in inventory	(113)	(24)	(107)	(508)
Total stock-based compensation expense before income taxes	38,370	42,423	78,781	85,445
Income taxes	(4,847)	(7,447)	(12,129)	(15,281)
Total stock-based compensation expense after income taxes	<u>\$33,523</u>	<u>\$34,976</u>	<u>\$66,652</u>	<u>\$70,164</u>

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Valuation Assumptions

We estimated the fair value of stock options using the Black-Scholes model on the date of the grant. Assumptions used in the Black-Scholes valuation model were as follows:

	Stock Options		ESPP	
	Three Months Ended		Three Months Ended	
	October 26, 2007	October 27, 2006	October 26, 2007	October 27, 2006
Expected life in years(1)	4.0	4.0	0.5	0.5
Risk-free interest rate(2)	4.02% - 4.33%	4.67% - 4.79%	4.28%	5.06%
Volatility(3)	43% - 55%	36% - 38%	48%	37%
Expected dividend(4)	0%	0%	0%	0%

	Stock Options		ESPP	
	Six Months Ended		Six Months Ended	
	October 26, 2007	October 27, 2006	October 26, 2007	October 27, 2006
Expected life in years(1)	4.0	4.0	0.5	0.5
Risk-free interest rate(2)	4.02% - 5.02%	4.67% - 5.05%	4.62%	5.02%
Volatility(3)	33% - 55%	35% - 38%	42%	37%
Expected dividend(4)	0%	0%	0%	0%

- (1) The expected life of 4.0 years represented the period that our stock-option awards are expected to be outstanding and was determined based on historical experience on similar awards. The expected life of 0.5 years for the purchase plan was based on the term of the purchase period of the purchase plan.
- (2) The risk-free interest rate for the options was based upon U.S. Treasury bills with equivalent expected terms of our employee stock-option award. The risk-free interest rate for the purchase plan was based upon U.S. Treasury bills yield curve in effect at the time of grant for the expected term of the purchase period.
- (3) We used the implied volatility of traded options to estimate our stock price volatility.
- (4) The expected dividend was determined based on our history and expected dividend payouts.

We estimate our forfeiture rates based on historical voluntary termination behavior and recognized compensation expense only for those equity awards expected to vest.

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Stock Options

A summary of the combined activity under our stock option plans and agreements is as follows:

	Outstanding Options		Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
	Shares Available for Grant	Numbers of Shares			
Outstanding at April 27, 2007	22,862	65,043	\$29.28		
Additional shares reserved for plan	7,200	–	–		
Options granted	(5,360)	5,360	30.42		
Restricted stock units granted	(75)	75	–		
Options exercised	–	(3,151)	13.48		
Restricted stock units exercised	–	(218)	–		
Options forfeitures and cancellation	2,391	(2,391)	37.12		
Restricted stock units forfeitures and cancellation	66	(66)	–		
Options expired	(191)	–	–		
Outstanding at October 26, 2007	<u>26,893</u>	<u>64,652</u>	\$29.95		
Options vested and expected to vest as of October 26, 2007		60,953	\$30.43	5.29	\$388,641
Exercisable at October 26, 2007		40,614	\$29.33	4.54	\$352,629
RSUs vested and expected to vest as of October 26, 2007		1,088	\$–	1.66	\$34,262
Exercisable at October 26, 2007		–	\$–	–	\$–

The intrinsic value represents the difference between the exercise price of stock options and the market price of our stock on that day for all in-the-money options. The weighted-average fair value of options granted during the three- and six-month periods ended October 26, 2007 were \$11.18 and \$10.89, respectively. The weighted-average fair value of options granted during the three- and six-month periods ended October 27, 2006 were \$12.67 and \$11.80, respectively. The total intrinsic value of options exercised was \$23,168 and \$55,787 for the three- and six-month periods ended October 26, 2007, respectively, and \$90,948 and \$117,331 for the three- and six-month periods ended October 27, 2006, respectively. We received \$16,076 and \$42,470 from the exercise of stock options for the three- and six-month periods ended October 26, 2007, respectively, and received \$55,627 and \$74,947 from the exercise of stock options for the three- and six-month periods ended October 27, 2006, respectively.

The following table summarizes our nonvested shares (restricted stock awards) as of October 26, 2007:

	Number of Shares	Weighted- Average Grant-Date Fair Value
Nonvested at April 27, 2007	265	\$34.45
Awards granted	–	–
Awards vested	(25)	27.11
Awards canceled/expired/forfeited	(44)	35.24
Nonvested at October 26, 2007	<u>196</u>	<u>\$35.20</u>

Although nonvested shares are legally issued, they are considered contingently returnable shares subject to repurchase by the Company when employees terminate their employment. The total fair value of shares vested

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

during the three- and six-month periods ended October 26, 2007, was \$144 and \$774, respectively. There was \$6,728 of total unrecognized compensation as of October 26, 2007 related to restricted stock awards. The unrecognized compensation will be amortized on a straight-line basis over a weighted-average remaining period of 2.6 years.

Employee Stock Purchase Plan

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding at October 26, 2007	1,068	\$ 26.13	0.10	\$ 5,728
Vested and expected to vest at October 26, 2007	1,037	\$ 26.13	0.10	\$ 5,559

There were no employee stock purchases during the three-month periods ended October 26, 2007, and October 27, 2006. The total intrinsic value of employee stock purchases was \$5,044 and \$10,942 for the six-month periods ended October 26, 2007, and October 27, 2006, respectively. The compensation cost for options purchased under the ESPP plan was \$4,766 and \$8,642 for the three- and six month periods ended October 26, 2007, respectively, and \$3,273 and \$6,656 for the three- and six-month periods ended October 27, 2006, respectively. This compensation cost will be amortized on a straight-line basis over a weighted-average remaining period of approximately 0.10 years.

The following table shows the shares issued and their purchase price per share for the employee stock purchase plan for the six-month ESPP purchase period ended May 31, 2007:

	<u>Purchase Date</u>	<u>May 31, 2007</u>
Shares issued		891
Average purchase price per share		\$ 26.50

Stock Repurchase Program

Common stock repurchase activities for the three- and six-month periods ended October 26, 2007, and October 27, 2006, were as follows:

	<u>Three Months Ended</u>		<u>Six Months Ended</u>	
	<u>October 26, 2007</u>	<u>October 27, 2006</u>	<u>October 26, 2007</u>	<u>October 27, 2006</u>
Common stock repurchased	17,602	4,259	24,124	10,820
Cost of common stock repurchased	\$499,973	\$143,908	\$699,973	\$363,908
Average price per share	\$28.40	\$33.79	\$29.02	\$33.63

Since the inception of the stock repurchase program through October 26, 2007, we have purchased a total of 78,717 shares of our common stock at an average price of \$29.52 per share for an aggregate purchase price of \$2,323,664. At October 26, 2007, \$699,975 remained available for repurchases under the plan. The stock repurchase program may be suspended or discontinued at any time.

5. Credit Facility and Debt

On October 5, 2007, the Company entered into a secured credit agreement (the “Credit Agreement”) with JPMorgan Chase Bank, National Association, as administrative agent. The Credit Agreement provides for a revolving secured credit facility of up to \$250,000 with a term of five years. The proceeds of the term loan will be used for general corporate purposes, including stock repurchases and working capital needs. On October 10, 2007, \$250,000 was advanced to the Company and was recorded in the Long-Term Debt on the accompanying Condensed

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Consolidated Balance Sheets. The full amount is due on the maturity date of October 5, 2012. As of October 26, 2007, we have pledged \$299,510 of long-term restricted investments in connection with the Credit Agreement.

Interest for the Credit Agreement accrues at a floating rate based on the base rate in effect from time to time, plus a margin, which totaled 5.25% at October 26, 2007.

On March 31, 2006, Network Appliance Global LTD. (“Global”), a subsidiary of the Company, entered into a loan agreement (the “Loan Agreement”) with JPMorgan Chase Bank, National Association, as administrative agent. The Loan Agreement provides for a term loan available in two tranches, a tranche of \$220,000 (“Tranche A”) and a tranche of \$80,000 (“Tranche B”), for an aggregate borrowing of \$300,000. The proceeds of the term loan have been used to finance a dividend from Global to the Company under the American Jobs Creation Act. The Tranche A term loan, together with accrued and unpaid interest, is due in full on the maturity date of March 31, 2008. During the three- and six-month periods ended October 26, 2007, we made repayments of \$21,380 and \$37,340 on the term loan, respectively. As of October 26, 2007, Global have pledged \$81,313 of short-term restricted investments for the Tranche A term loan in connection with the Loan Agreement. The Tranche B term loan was fully repaid as of January 26, 2007. Loan repayments of \$47,770 are due in the remainder of fiscal 2008.

Interest for the Tranche A term loan accrues at a floating rate based on the base rate in effect from time to time, plus a margin, which totaled 5.26% at October 26, 2007.

As of October 26, 2007, Global and the Company were in compliance with all debt covenants as required by the Loan and Credit Agreements, respectively.

6. Short-Term Investments

The following is a summary of investments at October 26, 2007:

	<u>Amortized Cost</u>	<u>Gross Unrealized</u>		<u>Estimated Fair Value</u>
		<u>Gains</u>	<u>Losses</u>	
Corporate bonds	\$494,199	\$1,357	\$509	\$495,047
Corporate securities	14,889	–	5	14,884
Auction rate securities	65,139	–	–	65,139
U.S. government agencies	133,208	251	153	133,306
U.S. Treasuries	10,100	–	11	10,089
Municipal bonds	1,591	4	–	1,595
Certificate of deposits	2	–	–	2
Money market funds	33,015	–	–	33,015
Total debt and equity securities	752,143	1,612	678	753,077
Less cash equivalents	14,889	–	5	14,884
Less short-term restricted investments	81,524	–	211	81,313 (1)
Less long-term restricted investments	299,484	362	336	299,510(1)
Short-term investments	<u>\$356,246</u>	<u>\$1,250</u>	<u>\$126</u>	<u>\$357,370</u>

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

The following is a summary of investments at April 27, 2007:

	<u>Amortized Cost</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	<u>Estimated Fair Value</u>
Corporate bonds	\$544,334	\$398	\$1,484	\$543,248
Auction rate securities	114,415	–	–	114,415
Corporate securities	113,084	24	7	113,101
U.S. government agencies	218,492	12	753	217,751
U.S. Treasuries	10,097	–	112	9,985
Municipal bonds	3,769	–	11	3,758
Marketable equity securities	4,637	8,276	–	12,913
Money market funds	84,961	–	–	84,961
Total debt and equity securities	1,093,789	8,710	2,367	1,100,132
Less cash equivalents	164,347	23	–	164,370
Less short-term restricted investments	116,950	–	890	116,060 (2)
Short-term investments	<u>\$812,492</u>	<u>\$8,687</u>	<u>\$1,477</u>	<u>\$819,702</u>

- (1) As of October 26, 2007, we have pledged \$81,313 of short-term restricted investments for the Tranche A term loan as defined in the Loan Agreement, and \$299,510 of long-term restricted investments for the revolving credit facility (see Note 5). In addition, we have short-term and long-term restricted cash of \$2,721 and \$5,427, respectively, relating to our foreign rent, custom, and service performance guarantees. These combined amounts are presented as short-term and long-term restricted cash and investments in the accompanying Condensed Consolidated Balance Sheets as of October 26, 2007.
- (2) As of April 27, 2007, we have pledged \$116,060 of short-term restricted investments for the Tranche A term loan as defined in the Loan Agreement (see Note 5). In addition, we have short-term and long-term restricted cash of \$2,252 and \$3,639, respectively, relating to our foreign rent, custom, and service performance guarantees. These combined amounts are presented as short-term and long-term restricted cash and investments in the accompanying Condensed Consolidated Balance Sheets as of April 27, 2007.

On August 13, 2007, we sold 360 shares of common stock of Blue Coat and received net proceeds of \$18,256 and recorded \$13,619 realized gain. These shares of common stock in Blue Coat Systems, Inc. (“Blue Coat”) were received in connection with the sale of certain assets of NetCache® to Blue Coat on September 11, 2006.

We record net unrealized gains or losses on available-for-sale securities in stockholders’ equity. Realized gains or losses are reflected in income which have not been material for all years presented. The following table shows the gross unrealized losses and fair values of our investments, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position, at October 26, 2007:

	<u>Less than 12 Months</u>		<u>12 Months or Greater</u>		<u>Total</u>	
	<u>Fair Value</u>	<u>Unrealized Loss</u>	<u>Fair Value</u>	<u>Unrealized Loss</u>	<u>Fair Value</u>	<u>Unrealized Loss</u>
Corporate bonds	\$150,817	\$360	\$48,840	\$149	\$199,657	\$509
Corporate securities	14,884	5	–	–	14,884	5
U.S. government agencies	40,077	153	–	–	40,077	153
U.S. treasury	10,089	11	–	–	10,089	11
Municipal bonds	–	–	–	–	–	–
Total	<u>\$215,867</u>	<u>\$529</u>	<u>\$48,840</u>	<u>\$149</u>	<u>\$264,707</u>	<u>\$678</u>

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The unrealized losses on our investments in corporate bonds and U.S. government agencies were caused by interest rate increases. We believe that we will be able to collect all principal and interest amounts due to us at maturity given the high credit quality of these investments. Because the decline in market value is attributable to changes in interest rates and not credit quality, and because we have the ability and intent to hold those investments until a recovery of fair value, which may be maturity, we do not consider these investments to be other-than temporarily impaired at October 26, 2007.

7. Inventories

Inventories are stated at the lower of cost (first-in, first-out basis) or market. Inventories consist of the following:

	<u>October 26, 2007</u>	<u>April 27, 2007</u>
Purchased components	\$10,192	\$19,429
Work-in-process	9	5
Finished goods	52,489	35,446
	<u>\$62,690</u>	<u>\$54,880</u>

8. Goodwill and Intangible Assets

Under Statement of Financial Accounting Standards (“SFAS”) No. 142, “*Goodwill and Other Intangible Assets*,” goodwill attributable to each of our reporting units is required to be tested for impairment by comparing the fair value of each reporting unit with its carrying value. Our reporting units are the same as our operating units. Goodwill is reviewed annually for impairment (or more frequently if indicators of impairment arise). As of October 26, 2007, and April 27, 2007, respectively, there had been no impairment of goodwill and intangible assets.

Identified intangible assets are summarized as follows:

	<u>Amortization Period (Years)</u>	<u>October 26, 2007</u>			<u>April 27, 2007</u>		
		<u>Gross Assets</u>	<u>Accumulated Amortization</u>	<u>Net Assets</u>	<u>Gross Assets</u>	<u>Accumulated Amortization</u>	<u>Net Assets</u>
Identified Intangible Assets:							
Patents	5	\$10,040	\$(8,421)	\$1,619	\$10,040	\$(7,429)	\$2,611
Existing technology	4 - 5	113,625	(60,433)	53,192	113,625	(49,878)	63,747
Trademarks/tradenames	2 - 6	5,280	(2,101)	3,179	5,280	(1,651)	3,629
Customer Contracts/relationships	1.5 - 6	17,220	(5,889)	11,331	17,220	(4,398)	12,822
Covenants Not to Compete	1.5 - 2	9,510	(9,510)	-	9,510	(9,310)	200
Total Identified Intangible Assets, Net		<u>\$155,675</u>	<u>\$(86,354)</u>	<u>\$69,321</u>	<u>\$155,675</u>	<u>\$(72,666)</u>	<u>\$83,009</u>

Amortization expense for identified intangible assets is summarized below:

	<u>Three Months Ended</u>		<u>Six Months Ended</u>	
	<u>October 26, 2007</u>	<u>October 27, 2006</u>	<u>October 26, 2007</u>	<u>October 27, 2006</u>
Patents	\$496	\$496	\$991	\$991
Existing technology	5,278	3,866	10,555	7,731
Other identified intangibles	1,021	821	2,142	1,642
	<u>\$6,795</u>	<u>\$5,183</u>	<u>\$13,688</u>	<u>\$10,364</u>

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

Based on the identified intangible assets recorded at October 26, 2007, the future amortization expense of identified intangibles for the remainder of fiscal 2008 and the next four fiscal years and thereafter is as follows:

<u>Year Ending April,</u>	<u>Amount</u> <u>(In thousands)</u>
2008	\$13,488
2009	24,665
2010	19,694
2011	8,987
2012	1,633
Thereafter	854
Total	\$69,321

9. Fair Value of Financial Instruments

The carrying values of cash and cash equivalents and restricted cash and investments reported in the Condensed Consolidated Balance Sheets approximate their fair value. Our short-term investments and foreign exchange contracts are carried at fair value based on quoted market prices. Other investments in nonmarketable securities are included in other assets at October 26, 2007, and April 27, 2007, with total carrying value of \$12,917 and \$8,932, which approximate their fair values. The fair value of our debt also approximates its carrying value as of October 26, 2007, and April 27, 2007.

We do not use derivative financial instruments for speculative or trading purposes. We enter into forward foreign exchange and currency option contracts to hedge trade and intercompany receivables and payables as well as future sales and operating expenses against future movement in foreign exchange rates.

Foreign currency forward contracts obligate us to buy or sell foreign currencies at a specified future date. Option contracts give us the right to buy or sell foreign currencies and are exercised only when economically beneficial. As of October 26, 2007, we had \$389,533 of outstanding foreign exchange contracts (including \$18,090 of option contracts) that all had remaining maturities of five months or less. As of April 27, 2007, we had \$367,479 of outstanding foreign exchange contracts (including \$21,703 of option contracts). For the balance sheet hedges, these contracts are adjusted to fair value at the end of each month and are included in earnings. The premiums paid on the foreign currency option contracts are recognized as a reduction to other income when the contract is entered into. For cash flow hedges, the related gains or losses are included in other comprehensive income. Gains and losses on these foreign exchange contracts are offset by losses and gains on the underlying assets and liabilities. At October 26, 2007, and April 27, 2007, the estimated notional fair values of forward foreign exchange contracts were \$390,599 and \$368,807, respectively. The fair value of foreign exchange contracts is based on prevailing financial market information.

For the three-month period ended October 26, 2007, net gains generated by hedged assets and liabilities totaled \$4,579 were offset by losses on the related derivative instruments of \$4,443. For the six-month period ended October 26, 2007, net gains generated by hedged assets and liabilities totaled \$5,260 were offset by losses on the related derivative instruments of \$4,513. For the three-month period ended October 27, 2006, net gains generated by hedged assets and liabilities totaled \$565 and were offset by losses on the related derivative instruments of \$388. For the six-month period ended October 27, 2006, net gains generated by hedged assets and liabilities and related derivative instruments totaled \$544 and \$275, respectively.

10. Net Income per Share

During all periods presented, we had certain options outstanding, which could potentially dilute basic earnings per share in the future, but were excluded in the computation of diluted earnings per share in such periods, as their

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

effect would have been antidilutive. These certain options were antidilutive in the three- and six-month periods ended October 26, 2007, and October 27, 2006, as these options' exercise prices were above the average market prices in such periods. For the three-month periods ended October 26, 2007, and October 27, 2006, 38,130 and 23,493 shares of common stock options with a weighted average exercise price of \$39.64 and \$44.34, respectively, were excluded from the diluted net income per share computation. For the six-month periods ended October 26, 2007, and October 27, 2006, 34,747 and 24,234 shares of common stock options with a weighted average exercise price of \$40.92 and \$43.51, respectively, were excluded from the diluted net income per share computation.

As of October 26, 2007, our Board of Directors had authorized the repurchase of up to \$3,023,639 of common stock under the stock repurchase program. The repurchased shares were held as treasury stock and our outstanding shares used to calculate earnings per share had been reduced by the weighted number of repurchased shares. During the three- and six-month periods ended October 26, 2007, the repurchased shares reduced our basic and diluted net income per share by \$0.01 and \$0.01, respectively.

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

	<u>Three Months Ended</u>		<u>Six Months Ended</u>	
	<u>October 26, 2007</u>	<u>October 27, 2006</u>	<u>October 26, 2007</u>	<u>October 27, 2006</u>
Net Income (Numerator):				
Net income, basic and diluted	\$83,758	\$86,931	\$118,095	\$141,600
Shares (Denominator):				
Weighted average common shares outstanding	355,878	371,065	360,296	372,690
Weighted average common shares outstanding subject to repurchase	(213)	(406)	(235)	(426)
Shares used in basic computation	355,665	370,659	360,061	372,264
Weighted average common shares outstanding subject to repurchase	213	406	235	426
Common shares issuable upon exercise of stock options	9,580	17,161	11,248	17,083
Shares used in diluted computation	365,458	388,226	371,544	389,773
Net Income per Share:				
Basic	\$0.24	\$0.23	\$0.33	\$0.38
Diluted	\$0.23	\$0.22	\$0.32	\$0.36

Basic net income per share is computed by dividing income available to common stockholders by the weighted average number of common shares outstanding, excluding unvested restricted stock for that period. Diluted net income per share is computed giving effect to all dilutive potential shares that were outstanding during the period. Dilutive potential common shares consist of incremental common shares subject to repurchase, common shares issuable upon exercise of stock options, and restricted stock awards.

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

11. Comprehensive Income

The components of comprehensive income were as follows:

	Three Months Ended		Six Months Ended	
	October 26, 2007	October 27, 2006	October 26, 2007	October 27, 2006
Net income	\$83,758	\$86,931	\$118,095	\$141,600
Change in currency translation adjustment	751	235	1,199	886
Change in unrealized gain (loss) on available-for-sale investments, net of related tax effect	(5,706)	4,834	(4,660)	6,576
Change in unrealized gain (loss) on derivatives	(2,081)	(133)	1,760	835
Comprehensive income	<u>\$76,722</u>	<u>\$91,867</u>	<u>\$116,394</u>	<u>\$149,897</u>

The components of accumulated other comprehensive income were as follows:

	October 26, 2007	April 27, 2007
Accumulated translation adjustments	\$4,520	\$3,321
Accumulated unrealized gain (loss) on available-for-sale investments	809	5,469
Accumulated unrealized gain (loss) on derivatives	(1,528)	(3,288)
Total accumulated other comprehensive loss	<u>\$3,801</u>	<u>\$5,502</u>

12. Restructuring Charges

In fiscal 2002, as a result of unfavorable economic conditions and a reduction in information technology (“IT”) spending rates, we implemented two restructuring plans, which included reductions in our workforce and consolidations of our facilities. As of October 26, 2007, we have no outstanding balance in our restructuring liability for the first restructuring. The second restructuring related to the closure of an engineering facility and consolidation of resources to the Sunnyvale headquarters. In fiscal 2006, we implemented a third restructuring plan related to the move of our global services center operations from Sunnyvale to our new flagship support center at our Research Triangle Park facility in North Carolina. Of the reserve balance at October 26, 2007, \$542 was included in other accrued liabilities, and the remaining \$1,236 was classified as long-term obligations.

Our restructuring estimates are reviewed and revised periodically and may result in a substantial charge or reduction to restructuring expense should different conditions prevail than were anticipated in previous management estimates. Such estimates included various assumptions such as the time period over which the facilities will be vacant, expected sublease terms, and expected sublease rates. During the three and six-month periods ended October 26, 2007, we did not record any reduction or charges in the restructuring reserve.

	Total
Reserve balance at April 27, 2007	\$2,084
Cash payments	(153)
Reserve balance at July 27, 2007	\$1,931
Cash payments	(153)
Reserve balance at October 26, 2007	<u>\$1,778</u>

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

13. Commitments and Contingencies

The following summarizes our commitments and contingencies at October 26, 2007, and the effect such obligations may have on our future periods:

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>Thereafter</u>	<u>Total</u>
Contractual Obligations:							
Office operating lease payments(1)	\$12,333	\$23,456	\$20,145	\$16,442	\$12,274	\$ 30,005	\$114,655
Real estate lease payments(2)	894	5,995	9,645	9,645	9,645	162,975	198,799
Equipment operating lease payments(3)	6,585	11,732	6,216	738	1	–	25,272
Venture capital funding commitments(4)	147	281	269	256	22	–	975
Capital expenditures(5)	21,256	24,249	132	96	120	–	45,853
Communications and maintenance(6)	11,274	16,522	8,298	1,758	218	–	38,070
Total Contractual Cash Obligations	<u>\$52,489</u>	<u>\$82,235</u>	<u>\$44,705</u>	<u>\$28,935</u>	<u>\$22,280</u>	<u>\$ 192,980</u>	<u>\$423,624</u>
Other Commercial Commitments:							
Letters of credit(7)	<u>\$1,614</u>	<u>\$517</u>	<u>\$121</u>	<u>\$–</u>	<u>\$158</u>	<u>\$ 445</u>	<u>\$2,855</u>

For purposes of the above table, contractual obligations for the purchase of goods and services are defined as agreements that are enforceable, are legally binding on us, and subject us to penalties if we cancel the agreement. Some of the figures we include in this table are based on management’s estimates and assumptions about these obligations, including their duration, the possibility of renewal or termination, anticipated actions by management and third parties, and other factors. Because these estimates and assumptions are necessarily subjective, our actual future obligations may vary from those reflected in the table.

- (1) We lease sales offices and research and development facilities throughout the United States and internationally. These sales offices are leased under operating leases that expire on various dates through fiscal 2016. We are responsible for certain maintenance costs, taxes, and insurance under these leases. Substantially all lease agreements have fixed payment terms based on the passage of time. Some lease agreements provide us with the option to renew or terminate the lease. Our future operating lease obligations would change if we were to exercise these options and if we were to enter into additional operating lease agreements. Rent operating lease payments in the table exclude lease payments that are accrued as part of our fiscal 2002 restructurings and include only rent lease commitments that are over one year.
- (2) Included in the above contractual cash obligations pursuant to three financing arrangements with BNP Paribas LLC (“BNP”) are (a) lease commitments of \$894 in fiscal 2008; \$5,995 in fiscal 2009; \$9,645 in each of the fiscal years 2010, 2011, and 2012; \$8,752 in fiscal 2013; and \$5,898 in fiscal 2014, which are based on the LIBOR rate at October 26, 2007 plus a spread, for a term of five years, and (b) at the expiration or termination of the lease, a supplemental payment obligation equal to our minimum guarantee of \$148,325 in the event that we elect not to purchase or arrange for sale of the buildings.
- (3) Equipment operating leases include servers and IT equipment used in our engineering labs and data centers.
- (4) Venture capital funding commitments include a quarterly committed management fee based on a percentage of our committed funding to be payable through June 2011.
- (5) Capital expenditures include worldwide contractual commitments to purchase equipment and to construct building and leasehold improvements, which will be recorded as property and equipment.
- (6) We are required to pay based on a minimum volume under certain communication contracts with major telecommunication companies as well as maintenance contracts with multiple vendors. Such obligations will expire in November 2011.

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

- (7) The amounts outstanding under these letters of credit relate to workers' compensation, a customs guarantee, a corporate credit card program, and foreign rent guarantees.

As of October 26, 2007, we have commitments relating to two financing, construction, and leasing arrangements with BNP for office space to be located on land in Sunnyvale, California that we currently own. These arrangements require us to lease our land to BNP for a period of 50 years to construct approximately 380,000 square feet of office space costing up to \$113,500. After completion of construction, we will pay minimum lease payments, which vary based on the London Interbank Offered Rate ("LIBOR") plus a spread (5.53% at October 26, 2007) on the cost of the facilities. We expect to begin making lease payments on the completed buildings in January and December 2008 for terms of five years. We have the option to renew the leases for two consecutive five-year periods upon approval by BNP. Upon expiration (or upon any earlier termination) of the lease terms, we must elect one of the following options: We may (i) purchase the buildings from BNP for \$48,500 and \$65,000, respectively; (ii) if certain conditions are met, arrange for the sale of the buildings by BNP to a third party for an amount equal to at least \$41,225 and \$55,250, respectively, and be liable for any deficiency between the net proceeds received from the third party and such amounts; or (iii) pay BNP supplemental payments of \$41,225 and \$55,250, respectively, in which event we may recoup some or all of such payment by arranging for a sale of either or both buildings by BNP during the ensuing two-year period.

As of October 26, 2007, we have a commitment relating to a third financing, construction, and leasing arrangements with BNP for facility space to be located on land currently owned by us in Research Triangle Park, North Carolina. These arrangements require us to lease our land to BNP for a period of 99 years to construct approximately 120,000 square feet for a data center costing up to \$61,000. After completion of construction, we will pay minimum lease payments, which vary based on LIBOR plus a spread (5.53% at October 26, 2007) on the cost of the facility. We expect to begin making lease payments on the completed buildings in October 2008 for a term of five and half years. We have the option to renew the lease for two consecutive five-year periods upon approval by BNP. Upon expiration (or upon any earlier termination) of the lease term, we must elect one of the following options: We may (i) purchase the building from BNP for \$61,000; (ii) if certain conditions are met, arrange for the sale of the building by BNP to a third party for an amount equal to at least \$51,850, and be liable for any deficiency between the net proceeds received from the third party and \$51,850; or (iii) pay BNP a supplemental payment of \$51,850, in which event we may recoup some or all of such payment by arranging for the sale of the building by BNP during the ensuing two-year period.

All leases require us to maintain specified financial covenants with which we were in compliance as of October 26, 2007. Such specified financial covenants include a maximum ratio of Total Debt to Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") and a Minimum Unencumbered Cash and Short Term Investments.

As of October 26, 2007, the notional fair value of our foreign exchange forward and foreign currency option contracts totaled \$390,599. We do not believe that these derivatives present significant credit risks, because the counterparties to the derivatives consist of major financial institutions, and we manage the notional amount of contracts entered into with any one counterparty. We do not enter into derivative financial instruments for speculative or trading purposes. Other than the risk associated with the financial condition of the counterparties, our maximum exposure related to foreign currency forward and option contracts is limited to the premiums paid on purchased options.

We have both recourse and nonrecourse lease financing arrangements with third-party leasing companies through preexisting relationships with the customers. We sell our products directly to the leasing company, and the lease arrangement is made between our customer and the leasing company. Under the terms of recourse leases, which are generally three years or less, we remain liable for the aggregate unpaid remaining lease payments to the third-party leasing company in the event that any customers default. For these recourse arrangements, revenues on the sale of our product to the leasing company are deferred and recognized into income as payments to the leasing company come due. As of October 26, 2007, and April 27, 2007, the maximum recourse exposure under such leases

NETWORK APPLIANCE, INC.

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totaled approximately \$18,818 and \$10,262, respectively. Under the terms of the nonrecourse leases, we do not have any continuing obligations or liabilities. To date, we have not experienced significant losses under this lease financing program.

From time to time, we have committed to purchase various key components used in the manufacture of our products. We establish accruals for estimated losses on purchased components for which we believe it is probable that they will not be utilized in future operations. To the extent that such forecasts are not achieved, our commitments and associated accruals may change.

In addition, we are subject to various legal proceedings and claims which may arise in the normal course of business. While the outcome of these legal matters is currently not determinable, we do not believe that any current litigation or claims will have a material adverse effect on our business, cash flow, operating results, or financial condition.

We are currently undergoing federal income tax audits in the United States and several foreign tax jurisdictions. The rights to some of our intellectual property (“IP”) are owned by certain of our foreign subsidiaries, and payments are made between foreign and U.S. tax jurisdictions relating to the use of this IP in a qualified cost sharing arrangement. Recently, some other U.S. companies have had their foreign IP arrangements challenged as part of an IRS examination, which has resulted in material proposed assessments and/or pending litigation. Effective September 27, 2007, the Internal Revenue Service’s Large and Mid-Sized Business Division (“LMSB”) released a Coordinated Issues Paper (“CIP”) with respect to qualified cost sharing arrangements (“CSAs”). Specifically, this CIP provides guidance to IRS personnel concerning methods that may be applied to evaluate the arm’s length charge (buy-in payment) for internally developed (pre-existing) as well as acquisition-related intangible property that is made available to a qualified CSA. We have evaluated the IRS’s positions in this CIP and have concluded that it will not have a material adverse impact upon our consolidated financial position and the results of operations and cash flows. Furthermore, our management does not believe, based upon information currently known to us, that the final resolution of any of our audits will have a material adverse effect upon our consolidated financial position and the results of operations and cash flows. However, if upon the conclusion of these audits the ultimate determination of our taxes owed in any of these tax jurisdictions is for an amount in excess of the tax provision we have recorded or reserved for, our overall effective tax rate may be adversely impacted in the period of adjustment.

The General Services Administration (“GSA”) is currently auditing our records under the schedule contracts it had with us to verify our compliance with various contract provisions. If the audit determines that we did not comply with such provisions, we may be required to pay the GSA a potential settlement. The exact date for completion of the audit and the subsequent negotiation process is unknown and may not be concluded for some time. Our management does not believe, based upon information currently known to us, that the final resolution of our audit will have a material adverse effect upon our consolidated financial position and the results of operations and cash flows.

On September 5, 2007, we filed a patent infringement lawsuit in the Eastern District of Texas seeking compensatory damages and a permanent injunction against Sun Microsystems. On October 25, 2007, Sun Microsystems filed a counter claim against us in the Eastern District of Texas seeking compensatory damages and a permanent injunction. On October 29, 2007, Sun filed a second lawsuit against us in the Northern District of California asserting additional patents against us. The Texas court granted a joint motion to transfer the Texas lawsuit to the Northern District of California on November 26, 2007. We are unable at this time to determine the likely outcome of these various patent litigations. In addition, as we are unable to reasonably estimate the amount or range of any potential settlement, no accrual has been recorded as of October 26, 2007.

14. Income Taxes

In June 2006, the Financial Accounting Standards Board (“FASB”) issued FASB Interpretation (“FIN”) No. 48, *“Accounting for Uncertainty in Income Taxes – an Interpretation of FASB Statement No. 109,”* which clarifies the

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS No. 109, "Accounting for Income Taxes". This interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN No. 48 also provides guidance on derecognition of tax benefits, classification on the balance sheet, interest and penalties, accounting in interim periods, disclosure, and transition.

The total amount of unrecognized tax benefits upon the adoption of FIN No. 48, on April 28, 2007, was \$58,326. There was no cumulative effect from the adoption of FIN No. 48; however, certain amounts were reclassified among our consolidated balance sheet accounts as follows:

Retained earnings cumulative effect	\$-
Additional deferred tax assets	4,889
Reclass from current liability to long-term liability	53,437
Total increase in liability	<u>\$58,326</u>

The entire portion of the \$58,326 balance of unrecognized tax benefits at April 28, 2007, if recognized, would affect our effective tax rate.

We recognize accrued interest and penalties related to unrecognized tax benefits in the income tax provision. During the fiscal years ended 2005 through 2007, we recognized total accrued interest and penalties of approximately \$170 and have included this accrual in our FIN No. 48 disclosure balances.

We are subject to taxation in the United States, various states, and several foreign jurisdictions. Our federal income tax returns are currently being examined for the fiscal years 2003-2004. We are effectively subject to federal tax examination adjustments for tax years ending on or after fiscal year 2000, in that we have net operating loss carryforwards from these years that could be subject to adjustment, if and when utilized.

As we are in the early stages of the federal income tax return and foreign jurisdiction income tax audit process, at this time we can not make a determination as to whether or not recognition of any unrecognized tax benefits will occur within the next 12 months.

The tax years that remain subject to examination for our major tax jurisdictions are shown below:

Tax Years Subject to Examination for Major Tax Jurisdictions at October 26, 2007

2003 – 2007	United States – federal income tax
2002 – 2007	United States – state and local income tax
2003 – 2007	Australia
2004 – 2007	Germany
2005 – 2007	India
2006 – 2007	Japan
2000 – 2007	The Netherlands
2004 – 2007	United Kingdom

The above table excludes the net operating loss carryover risk identified above with respect to federal and state tax returns.

15. New Accounting Pronouncements

Effective April 28, 2007, we adopted FIN No. 48, "Accounting for Uncertainty in Income Taxes – an Interpretation of FASB Statement No. 109." FIN No. 48 prescribes a comprehensive model for how a company should recognize, measure, present, and disclose in its financial statements uncertain tax positions that we have

NETWORK APPLIANCE, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

taken or expect to take on a tax return (including a decision whether to file or not to file a return in a particular jurisdiction). FIN No. 48 is applicable to all uncertain tax positions for taxes accounted for under SFAS No. 109, *“Accounting for Income Taxes,”* and substantially changes the applicable accounting model. There was no cumulative effect from the adoption of FIN No. 48. As a result of the implementation of FIN No. 48, we recognize the tax liability for uncertain income tax positions on the income tax return based on the two-step process prescribed in the interpretation. The first step is to determine whether it is more likely than not that each income tax position would be sustained upon audit. The second step is to estimate and measure the tax benefit as the amount that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority. Estimating these amounts requires us to determine the probability of various possible outcomes. We evaluate these uncertain tax positions on a quarterly basis. See “Note 14, Income Taxes,” for further discussion.

In February 2007, the FASB issued SFAS No. 159, *“The Fair Value Option for Financial Assets and Financial Liabilities – Including an Amendment of FASB Statement No. 115.”* SFAS No. 159 allows measurement at fair value of eligible financial assets and liabilities that are not otherwise measured at fair value. If the fair value option for an eligible item is elected, unrealized gains and losses for that item shall be reported in current earnings at each subsequent reporting date. SFAS No. 159 also establishes presentation and disclosure requirements designed to draw comparison between the different measurement attributes the company elects for similar types of assets and liabilities. This statement is effective beginning the first quarter of fiscal 2009. We are currently evaluating the effect, if any, that the adoption of SFAS No. 159 will have on our consolidated financial statements.

In September 2006, the FASB issued SFAS No. 157, *“Fair Value Measurements.”* SFAS No. 157 provides a framework for measuring fair value, clarifies the definition of fair value, and expands disclosures regarding fair value measurements. SFAS No. 157 does not require any new fair value measurements and eliminates inconsistencies in guidance found in various prior accounting pronouncements. We are required to adopt SFAS No. 157 in the first quarter of fiscal 2009. We are currently evaluating the effect that the adoption of SFAS No. 157 will have on our consolidated results of operations and financial condition, but do not expect it to have a material impact.

16. Subsequent Events

On November 2, 2007, we entered into a senior unsecured credit agreement (the “Unsecured Credit Agreement”) with certain lenders and BNP Paribas, as syndication agent, and JPMorgan Chase Bank, National Association, as administrative agent. The Unsecured Credit Agreement provides for a revolving unsecured credit facility that is comprised of commitments from various lenders who agree to make revolving loans and swingline loans and issue letters of credit of up to an aggregate amount of \$250,000 with a term of five years from the effective date of November 2, 2007. As of December 4, 2007, no amount was outstanding under this facility. The proceeds of the loans may be used for our general corporate purposes, including stock repurchases and working capital needs.

On November 29, 2007, we entered into a \$90,425 financing and operating leasing arrangement with BNP Paribas LLC (“BNP”) for approximately 331,650 square feet of buildings located in Sunnyvale, California. We have agreed to lease the buildings from BNP for a term expiring in December 2012. The lease can be renewed for up to two consecutive periods of 5 years each upon approval by BNP. This lease arrangement requires us to pay minimum lease payments beginning on January 2, 2008, which may vary based on a floating effective rate.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and is subject to the safe harbor provisions set forth in the Exchange Act. Forward-looking statements usually contain the words "estimate," "intend," "plan," "predict," "seek," "may," "will," "should," "would," "anticipate," "expect," "believe," or similar expressions and variations or negatives of these words. In addition, any statements that refer to expectations, projections, or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. All forward-looking statements, including, but not limited to, (1) our belief that we are well positioned in the fastest growth segments of the storage market; (2) our intention to accelerate our revenue growth by investing in go-to-market partnerships; (3) our plan to continue to strengthen our relationships with server virtualization partnerships; (4) our plan to invest in the people, processes, and systems necessary to best optimize our revenue growth; (5) higher disk content associated with high-end and mid-range storage systems and its impact on our gross margin in the future; (6) our estimate of the impact that adopting SFAS No. 123R will have on our earnings per share; (7) our estimates of future amortization of patents, trademarks, trade names, customer contracts, and relationships; (8) our service margin may experience some variability; (9) our expectation to continue to selectively add sales capacity in an effort to expand domestic and international markets; (10) our expectation that our sales and marketing expenses will increase commensurate with future revenue growth; (11) our expectation to continuously support current and future product development and enhancement efforts and to incur corresponding charges; (12) our intention to continuously broaden our existing product offerings and introduce new products; (13) our belief that our research and development and general and administrative expenses will increase in absolute dollars for the remainder of fiscal 2008; (14) our estimates regarding future amortization of covenants not to compete; (15) the restructuring balance will be paid by fiscal 2011; (16) our expectation regarding changes in interest income; (17) our expectation that interest expense will increase; (18) period-to-period changes in foreign exchange gains or losses will continue to be impacted by hedging costs associated with our forward and option activities and forecast variance; (19) our expectation that cash provided by operating activities may fluctuate in future periods; (20) the possibility we may receive less cash from stock option exercises if stock option exercise patterns change; (21) our expectations regarding our contractual cash obligations and other commercial commitments at October 26, 2007, for future periods; (22) our expectation regarding the completion of construction of our buildings under the BNP leases and the estimates regarding future minimum lease payments under the lease term; (23) our belief that any current litigation and claims will not have a material adverse impact on our operating results; (24) our belief that the results of our GSA and income tax audits will not have a materially adverse effect on us (25) our expectation that capital expenditures will increase consistent with our business growth; (26) our expectation that our existing facilities and those currently being developed will be sufficient for our needs for at least the next two years and that our contractual commitments, and any required capital expenditures over the next few years, will be funded through cash from operations and existing cash and investments; (27) our expectation that we will incur higher capital expenditures in the near future; and (28) our belief that our cash and cash equivalents, short-term investments, and cash generated from operations will satisfy our working capital needs, capital expenditures, stock repurchases, contractual obligations, and other liquidity requirements associated with our operations through at least the next 12 months; (29) our expectation that our investment would not decline significantly caused by market interest rate changes are inherently uncertain as they are based on management's current expectations and assumptions concerning future events, and they are subject to numerous known and unknown risks and uncertainties. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof and are based upon information available to us at this time. These statements are not guarantees of future performance. We disclaim any obligation to update information in any forward-looking statement.

Second Quarter Fiscal 2008 Overview

Revenues for the second quarter of fiscal 2008 were \$792.2 million, reflecting an increase of 21.4% year over year and an increase of 14.9% sequentially over the previous quarter. The revenue growth was driven by strength in U.S. Federal and much of Europe and Asia, and partially offset by the continued sluggishness in U.S. commercial enterprise spending. The revenue increase year over year was attributable to increased software entitlements and maintenance, increased service revenue, and an expanded portfolio with new products and solutions for enterprise

customers. This increase was partially offset by lower-cost-per-megabyte disks, a decline in shipments, and lower average selling prices of our older generation products. Our storage solutions provide customers with higher utilization, simpler operations, and reduced costs, and those advantages enable us to continue to gain share in a more constrained spending environment.

While we reported solid results for the second quarter of fiscal 2008, we were not immune to macroeconomic conditions. We believe that we are well positioned in the fastest growth segments of the storage market to capitalize on an IT spending recovery. However, if any storage market trends and emerging standards on which we are basing our assumptions do not materialize as anticipated, and if there is reduced or no demand for our products, our expected revenue growth rate could be materially affected.

We continued to make progress in our partner ecosystem, with 62.4% of our business coming through indirect channels. We intend to accelerate our revenue growth by investing in go-to-market partnerships, specifically through our channel programs and initiatives. We will continue to develop more new accounts, offer more installation services opportunities, and broaden our vertical market coverage. We will continue to strengthen our strategic partnerships with server virtualization partners and leverage our Storage Grid architecture to enable customers to scale their server and storage infrastructures, reduce costs, maximize asset utilization and keep data highly available. At the same time, we will continue to manage our discretionary expenses and the rate of hiring to support our targeted business model. However, continued revenue growth depends on the introduction and market acceptance of our new products and solutions and continued market demand for our products. We will continue to invest in the people, processes, and systems necessary to best optimize our revenue growth and long-term profitability. However, we cannot assure you that such investments will achieve our financial objectives.

Second Quarter Fiscal 2008 Financial Performance

Our revenues for the three-month period ended October 26, 2007, were \$792.2 million, a 21.4% increase over the same period a year ago. Our revenues for the six-month period ended October 26, 2007, were \$1,481.4 million, a 16.3% increase over the same period a year ago. Our year-over-year revenue growth was driven by increases in service revenue, software entitlements and maintenance revenue, and product revenue.

Our overall gross margin decreased to 61.1% in the three-month period ended October 26, 2007, from 61.5% in the same period a year ago, but stayed flat at 60.8% for both the six-month periods ended October 26, 2007, and October 27, 2007. Our decrease in overall gross margin was primarily due to higher channel sales, partially offset by shift in revenue mix with higher margins associated with the increased revenue from software entitlements and maintenance and a higher add-on software mix and improved service margins.

In the first six months of fiscal 2008, we generated \$428.6 million of cash from operating activities as compared to \$403.4 million in the first six months of fiscal 2007. As of October 26, 2007, our cash, cash equivalents, and short-term investments decreased to \$983.1 million, compared to \$1,308.8 million as of April 27, 2007. This decrease was due primarily to \$700.0 million used to repurchase our common stock, partially offset by cash generated from operations. Our deferred revenue increased by 10.5% to \$1,218.6 million as of October 26, 2007, from \$1,103.0 million reported as of April 27, 2007, reflecting higher software entitlements and maintenance revenue and service maintenance contracts. Capital purchases of plant, property, and equipment for the first six months of fiscal 2008 and 2007 were \$71.2 million and \$76.0 million, respectively, reflecting continued worldwide capital investment to meet our business growth.

Critical Accounting Estimates and Policies

Our discussion and analysis of financial condition and results of operations are based upon our Consolidated Financial Statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of such statements requires us to make estimates and assumptions that affect the reported amounts of revenues and expenses during the reporting period and the reported amounts of assets and liabilities as of the date of the financial statements. Our estimates are based on historical experience and other assumptions that we consider to be appropriate in the circumstances. However, actual future results may vary from our estimates.

With the exception of the changes required by FASB Interpretation No. 48 (“FIN No. 48”) on Accounting for Income Taxes, there have been no significant changes during the three- and six-month periods ended October 26, 2007, to the items that we disclosed as our critical accounting policies and estimates in the Management’s Discussion and Analysis of Financial Condition and Results of Operations section of our Annual Report on Form 10-K for the year ended April 27, 2007.

Accounting for Income Taxes

The determination of our tax provision is subject to judgments and estimates due to the complexity of the tax law that we are subject to in several tax jurisdictions. Earnings derived from our international business are generally taxed at rates that are lower than U.S. rates, resulting in a lower effective tax rate than the U.S. statutory tax rate of 35.0%. The ability to maintain our current effective tax rate is contingent on existing tax laws in both the United States and the respective countries in which our international subsidiaries are located. Future changes in domestic or international tax laws could affect the continued realization of the tax benefits we are currently receiving. In addition, a decrease in the percentage of our total earnings from our international business or a change in the mix of international business among particular tax jurisdictions could increase our overall effective tax rate.

We account for income taxes in accordance with SFAS No. 109, “*Accounting for Income Taxes*.” SFAS No. 109 requires that deferred tax assets and liabilities be recognized for the effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. SFAS No. 109 also requires that deferred tax assets be reduced by a valuation allowance if it is more likely than not that some or all of the deferred tax asset will not be realized. We have provided a valuation allowance of \$21.0 million as of October 26, 2007 and April 27, 2007, on certain of our deferred tax assets.

We are currently undergoing federal income tax audits in the United States and several foreign tax jurisdictions. The rights to some of our intellectual property (“IP”) are owned by certain of our foreign subsidiaries, and payments are made between foreign and U.S. tax jurisdictions relating to the use of this IP in a qualified cost sharing arrangement. Recently, some other U.S. companies have had their foreign IP arrangements challenged as part of an IRS examination, which has resulted in material proposed assessments and/or pending litigation. Effective September 27, 2007, the Internal Revenue Service’s Large and Mid-Sized Business Division (“LMSB”) released a Coordinated Issues Paper (“CIP”) with respect to qualified cost sharing arrangements (“CSAs”). Specifically, this CIP provides guidance to IRS personnel concerning methods that may be applied to evaluate the arm’s length charge (buy-in payment) for internally developed (pre-existing) as well as acquisition-related intangible property that is made available to a qualified CSA. We have evaluated the IRS’s positions in this CIP and have concluded that it will not have a material adverse impact upon our consolidated financial position and the results of operations and cash flows. Furthermore, our management does not believe, based upon information currently known to us that the final resolution of any of our audits will have a material adverse effect upon our consolidated financial position and the results of operations and cash flows. However, if upon the conclusion of these audits the ultimate determination of our taxes owed in any of these tax jurisdictions is for an amount in excess of the tax provision we have recorded or reserved for, our overall effective tax rate may be adversely impacted in the period of adjustment.

On April 28, 2007, we adopted FIN No. 48, “*Accounting for Uncertainty in Income Taxes – an Interpretation of FASB Statement No. 109*.” FIN No. 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise’s financial statements in accordance with Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes (“SFAS 109”). This interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. As a result of the implementation of FIN No. 48, we recognize the tax liability for uncertain income tax positions on the income tax return based on the two-step process prescribed in the interpretation. The first step is to determine whether it is more likely than not that each income tax position would be sustained upon audit. The second step is to estimate and measure the tax benefit as the amount that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority. Estimating these amounts requires us to determine the probability of various possible outcomes. We evaluate these uncertain tax positions on a quarterly basis. This evaluation is based on the consideration of several factors, including changes in facts or circumstances, changes in applicable tax law, settlement of issues under audit, and new exposures. If we later determine that our

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exposure is lower or that the liability is not sufficient to cover our revised expectations, we adjust the liability and effect a related change in our tax provision during the period in which we make such determination.

New Accounting Standards

See Note 15 of the Condensed Consolidated Financial Statements for a full description of new accounting pronouncements, including the respective expected dates of adoption and effects on results of operations and financial condition.

Results of Operations

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

	<u>Three Months Ended</u>		<u>Six Months Ended</u>	
	<u>October 26, 2007</u>	<u>October 27, 2006</u>	<u>October 26, 2007</u>	<u>October 27, 2006</u>
Revenues:				
Product	68.3	% 73.8	% 67.8	% 74.4
Software entitlements and maintenance	14.8	12.6	15.2	12.3
Service	16.9	13.6	17.0	13.3
	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>
Cost of Revenues:				
Cost of product	27.5	28.5	27.3	29.3
Cost of software entitlements and maintenance	0.2	0.4	0.3	0.4
Cost of service	11.2	9.6	11.6	9.5
Gross Profit	<u>61.1</u>	<u>61.5</u>	<u>60.8</u>	<u>60.8</u>
Operating Expenses:				
Sales and marketing	32.2	31.4	33.7	31.4
Research and development	13.8	13.8	14.5	14.1
General and administrative	5.0	5.4	5.5	5.3
Restructuring charges (recoveries)	–	–	–	–
Gain on sale of assets	–	(3.9)	–	(2.0)
Total Operating Expenses	<u>51.0</u>	<u>46.7</u>	<u>53.7</u>	<u>48.8</u>
Income from Operations	10.1	14.8	7.1	12.0
Other Income (Expenses), Net:				
Interest income	2.1	2.7	2.3	2.7
Interest expense	(0.2)	(0.8)	(0.2)	(0.7)
Net gain (loss) on investments	1.7	(0.3)	0.9	(0.2)
Other income (expenses), net	–	0.3	0.1	0.2
Total Other Income, Net	<u>3.6</u>	<u>1.9</u>	<u>3.1</u>	<u>2.0</u>
Income Before Income Taxes	13.7	16.7	10.2	14.0
Provision for Income Taxes	3.1	3.4	2.2	2.9
Net Income	<u>10.6</u>	<u>13.3</u>	<u>8.0</u>	<u>11.1</u>

Discussion and Analysis of Results of Operations

Total Revenues – Total revenues increased by 21.4% to \$792.2 million for the three-month period ended October 26, 2007, from \$652.5 million for the three-month period ended October 27, 2006. Total revenues increased by 16.3% to \$1,481.4 million for the six-month period ended October 26, 2007, from \$1,273.8 million for the six-month period ended October 27, 2006.

Product Revenues – Product revenues increased by 12.5% to \$541.4 million for the three-month period ended October 26, 2007, from \$481.3 million for the three-month period ended October 27, 2006. Product revenues increased by 6.1% to \$1,004.7 million for the six-month period ended October 26, 2007, from \$946.9 million for the six-month period ended October 27, 2006.

Product revenues were impacted by the following factors:

Increased revenues from our current product portfolio. Product revenue increased \$60.1 million in the three-month period ended October 26, 2007, as compared to the same period a year ago, with a \$67.9 million increase due to higher unit volume, offset by \$7.8 million decrease due to price and configuration of existing products. Of the \$67.9 million volume increase, \$201.6 million revenue increase was due to new products, while offset by a \$133.7 million decrease in overall revenues associated with lower shipment volumes on existing products. Product revenue grew \$57.8 million for the six-month period ended October 26, 2007, as compared to the same period in the prior year, with an \$89.0 million increase due to unit volume and partially offset by a decrease of \$31.1 million due to price and configuration of existing products. Of the \$89.0 million volume increase, \$308.9 million revenue increase was due to new products, while offset by a \$219.9 million decrease in overall revenue associated with lower shipment volumes on existing products. Price changes, volumes, and product model mix can have an effect on changes in product revenues; the impact of these forces is significantly affected by the configuration of systems shipped.

Revenues of the FAS 3000 and FAS 6000 enterprise storage systems increased 28.9% and 78.9%, respectively, for the three-month period ended October 26, 2007, compared to the same period in the prior year, and increased 22.3% and 119.9%, respectively, for the six-month period ended October 26, 2007, compared to the same period in the prior year.

Our petabytes shipped increased 85.6% and 69.2% year over year for the three- and six-month periods ended October 26, 2007, respectively, to 137.8 petabytes, and 248.6 petabytes, respectively, due to increased penetration in primary and secondary storage, i.e., enterprise data centers, data protection, disaster recovery, archival, and compliance requirements. This increase in petabytes shipped was attributable to an increase in petabytes from 500-gigabyte ATA drives. ATA drives accounted for 59.7% and 58.4% of our total petabytes shipped in the three- and six-month periods ended October 26, 2007, respectively, compared to 52.1% and 53.2% in the three- and six-month periods ended October 27, 2006, respectively. Fibre Channel petabytes were up 48.2% and 45.4% for the three- and six-month periods ended October 26, 2007, respectively, to 38.2% and 40.3% of our total shipped.

Price declines per petabyte for our hardware products as disks are a significant component of our storage systems. As performance has improved on our devices, the related price we can charge per petabyte of storage has decreased as well.

Revenues from our older generation products declined by \$186.0 million and \$361.8 million in the three- and six-month periods ended October 26, 2007, respectively, compared to same periods a year ago. Revenue generated by FAS 900 series systems and NearStore® R200 systems decreased by 99.8% and 99.7%, respectively for the three-month period ended October 26, 2007, compared to the same period a year ago. Revenue generated by FAS 900 and R200 series systems decreased by 96.2% and 99.4%, respectively, for the six-month period ended October 26, 2007, compared to the same period a year ago. In addition, revenue also declined by \$31.3 million and \$15.8 million in the three- and six-month periods ended October 26, 2007, respectively, compared to the same periods in the prior year due to products that we no longer ship, including our NetCache products.

Increased sales through indirect channels in absolute dollars, including sales through our resellers, distributors, and OEM partners, represented 62.4% and 62.0% of total revenues for the three- and six-month periods ended October 26, 2007, respectively, and 58.9% and 57.3% of total revenues for the three- and six-month periods ended October 27, 2006, respectively.

Our systems are highly configurable to respond to customer requirements in the open systems storage markets that we serve. As a result, the wide variation in customized configuration can significantly impact revenue, cost of revenues, and gross margin performance. Price changes, volumes, and product model mix can have an effect on changes in product revenues; the impact on these forces is significantly affected by the configuration of systems shipped.

Software Entitlements and Maintenance Revenues – Software entitlements and maintenance revenues increased by 42.4% to \$117.1 million for the three-month period ended October 26, 2007, from \$82.3 million for the three-month period ended October 27, 2006. Software entitlements and maintenance revenues increased by 43.3% to \$225.1 million for the six-month period ended October 26, 2007, from \$157.1 million for the six-month period ended October 27, 2006. The year over year increases were due to a larger installed base of customers who have purchased or renewed software entitlements and maintenance. Software entitlements and maintenance revenues represented 14.8% and 15.2% of total revenues for the three- and six-month periods ended October 26, 2007, and 12.6% and 12.3% of total revenues for the three- and six-month periods ended October 27, 2006.

Service Revenues – Service revenues, which include hardware support, professional services, and educational services, increased by 50.2% to \$133.7 million for the three-month period ended October 26, 2007, from \$89.0 million in the three-month period ended October 27, 2006. Service revenues increased by 48.2% to \$251.6 million in the six-month period ended October 26, 2007, from \$169.8 million in the six-month period ended October 27, 2006.

The increase in absolute dollars was due to the following factors:

Professional service revenue increased by 58.8% in the three-month period ended October 26, 2007, compared to the same period a year ago, and increased by 54.2% in the six-month period ended October 26, 2007, compared to the same period a year ago. The increase was due to higher customers' demand for our professional services in connection with the integration of our solutions into their IT environment.

Service maintenance revenue increased by 50.2% and 47.8% in the three- and six-month periods ended October 26, 2007, compared to the same periods a year ago due to a growing installed base, resulting in new customer support contracts and renewals in addition to increased service contracts.

While it is an element of our strategy to expand and offer more comprehensive global enterprise support and service solutions, we cannot assure you that service revenue will grow at the current rate in the remainder of fiscal 2008 or beyond.

A large portion of our service revenues is deferred and, in most cases, recognized ratably over the service obligation periods, which are typically one to three years. Service revenues represented 16.9% and 17.0% of total revenues for the three- and six-month periods ended October 26, 2007, respectively, and 13.6% and 13.3% of total revenues for the three- and six-month periods ended October 27, 2006, respectively.

International Total Revenues – International total revenues (including U.S. exports) increased by 25.6% and 19.8% for the three- and six-month periods ended October 26, 2007, respectively, as compared to the same periods in fiscal 2007. Total revenues from Europe were \$237.7 million and \$456.2 million, or 30.0% and 30.8% of total revenues, respectively, for the three- and six-month periods ended October 26, 2007, compared to \$191.4 million and \$386.3, or 29.3% and 30.3% of total revenues, for the three- and six-month periods ended October 27, 2006. Total revenues from Asia were \$94.3 million and \$181.8 million, or 11.9% and 12.3% of total revenues, respectively, for the three- and six-month periods ended October 26, 2007, compared to \$72.9 million and \$146.1 million, or 11.2% and 11.5% of total revenues, respectively, for the three- and six-month periods ended October 27, 2006. The increase in international sales was primarily driven by the same factors outlined under the Total Revenue discussion, as compared to the same periods in the prior fiscal year. We cannot assure you that we will be able to maintain or increase international revenues in the remainder of fiscal 2008 or beyond.

Product Gross Margin – Product gross margin decreased to 59.8% for the three-month period ended October 26, 2007, from 61.3% for the same period a year ago. Product gross margin decreased to 59.8% for the six-month period ended October 26, 2007, from 60.5% for the same period a year ago.

Product gross margin was impacted by:

Sales price reductions due to competitive pricing pressure and selective pricing discounts

Increased sales through certain indirect channels, which may generate lower gross margins than our direct sales in certain geographic regions

Higher disk content with an expanded storage capacity for the higher-end storage systems, as resale of disk drives generates lower gross margins

Higher average selling prices for certain of our newer products

We expect that higher disk content associated with high-end and mid-range storage systems will negatively affect our gross margin in the future if not offset by increases in software revenue and new higher-margin products.

Stock-based compensation expense included in cost of product revenues was \$0.8 million and \$1.7 million for the three- and six-month periods ended October 26, 2007, respectively, compared to \$1.1 million and \$1.7 million for the three- and six-month periods ended October 27, 2006, respectively. Amortization of existing technology included in cost of product revenues was \$5.3 million and \$10.6 million for the three- and six-month periods ended October 26, 2007, respectively, and \$3.9 million and \$7.7 million for the three- and six-month periods ended October 27, 2006, respectively. Estimated future amortization of existing technology to cost of product revenues will be \$10.6 million for the remainder of fiscal 2008, \$20.4 million for fiscal year 2009, \$15.9 million for fiscal year 2010, \$6.3 million for fiscal year 2011, and none thereafter.

Software Entitlements and Maintenance Gross Margin – Software entitlements and maintenance gross margins increased to 98.4% for the three-month period ended October 26, 2007, from 97.0% for the three-month period ended October 27, 2006. Software entitlements and maintenance gross margins increased to 98.2% for the six-month period ended October 26, 2007, from 97.0% for the six-month period ended October 27, 2006. The improved software entitlements and maintenance gross margins year over year was due to increased software entitlements and maintenance revenue, a larger installed base renewals, upgrades and lower royalties costs associated with the NetCache products we no longer ship.

Service Gross Margin – Service gross margin increased to 33.5% for the three-month period ended October 26, 2007, as compared to 29.8% for the three-month period ended October 27, 2006. Service gross margin increased to 31.6% for the six-month period ended October 26, 2007, as compared to 29.1% in the same period in fiscal 2007. Cost of service revenue increased by 42.2% to \$88.9 million for the three-month period ended October 26, 2007, from \$62.5 million for the three-month period ended October 27, 2006. Cost of service revenue increased by 42.9% to \$172.1 million for the six-month period ended October 26, 2007, from \$120.5 million for the six-month period ended October 27, 2006. Stock-based compensation expense of \$2.6 million and \$5.3 million was included in the cost of service revenue for the three- and six-month periods ended October 26, 2007, respectively, and \$2.5 million and \$5.1 million was included in the cost of service revenue for the three- and six-month periods ended October 27, 2006, respectively.

The improvement in service gross margins year over year was primarily impacted by an increase in services revenues, improved productivity, partially offset by continued spending in our service infrastructure to support our customers. This spending included additional professional support engineers, increased support center activities, and global service partnership programs. Service gross margins will typically be impacted by factors such as timing of technical support service initiations and renewals and additional investments in our customer support infrastructure. In the remainder of fiscal 2008, we expect service margins to experience some variability over time as we continue to build out our service capability and capacity to support our growing customer base and new products.

Sales and Marketing – Sales and marketing expenses consist primarily of salaries, commissions, advertising and promotional expenses, stock-based compensation expense, and certain customer service and support costs. Sales and marketing expenses increased 25.0% to \$255.4 million for the three-month period ended October 26,

2007, from \$204.3 million for the same period ended October 27, 2006. These expenses as a percentage of revenue increased to 32.2% for the three-month period ended October 26, 2007, from 31.4% for the three-month period ended October 27, 2006. Sales and marketing expenses increased 25.1% to \$500.0 million for the six-month period ended October 26, 2007, from \$399.8 million for the same period a year ago. These expenses were 33.7% and 31.4% of total revenues for the six-month periods ended October 26, 2007, and October 27, 2006, respectively. The increase in absolute dollars was attributed to increased commission expenses resulting from increased revenues, higher performance-based payroll expenses due to higher headcount, higher partner program expenses, and the continued worldwide investment in our sales and global service organizations associated with selling complete enterprise solutions.

Stock compensation expense included in sales and marketing expenses for the three- and six-month periods ended October 26, 2007, was \$17.1 million and \$34.6 million, respectively, compared to stock compensation expense of \$18.7 million and \$37.4 million for the three- and six-month periods ended October 27, 2006, respectively. Amortization of trademarks/trade names and customer contracts/relationships included in sales and marketing expenses was \$1.0 million and \$0.6 million for the three-month periods ended October 26, 2007, and October 27, 2006, respectively and was \$1.9 million and \$1.2 million for the six-month periods ended October 26, 2007, and October 27, 2006, respectively. Based on identified intangibles related to our acquisitions recorded at October 26, 2007, estimated future amortization such as trademarks, and customer relationships included in sales and marketing expenses will be \$1.9 million for the remainder of fiscal 2008, \$3.8 million for fiscal 2009, \$3.6 million for fiscal 2010, \$2.7 million for fiscal 2011, \$1.6 million for fiscal 2012, and \$0.9 million thereafter.

We expect to continue to selectively add sales capacity in an effort to expand domestic and international markets, introduce new products, and establish and expand new distribution channels. We expect to increase our sales and marketing expenses commensurate with future revenue growth. We believe that our sales and marketing expenses will increase in absolute dollars for the remainder of fiscal 2008 due to increased headcount, sales- and marketing-related programs to support future revenue growth, and real estate lease payments, partially offset by cost control and reduction in discretionary spending efforts.

Research and Development – Research and development expenses consist primarily of salaries and benefits, stock-based compensation, prototype expenses, nonrecurring engineering charges, fees paid to outside consultants, and amortization of capitalized patents.

Research and development expenses increased 20.6% to \$109.0 million for the three- and six-month periods ended October 26, 2007, from \$90.4 million for the same period ended October 27, 2006. These expenses as a percentage of revenue were 13.8% for both three-month periods ended October 26, 2007, and October 27, 2006. Research and development expenses increased 20.4% to \$215.5 million for the six-month period ended October 26, 2007, from \$179.0 million for the same period ended October 27, 2006. These expenses represented 14.5% and 14.1% of total revenues for the first six months of fiscal 2008 and 2007, respectively. The increase in absolute dollars was primarily a result of increased headcount-related salaries and incentive compensation, ongoing support of current and future product development and enhancement efforts. For the second quarters and the first six-months of fiscal 2008 and 2007, no software development costs were capitalized.

Stock compensation expense included in research and development expenses for the three- and six-month periods ended October 26, 2007, was \$12.3 million and \$25.5 million, compared to stock compensation expense of \$13.0 million and \$26.9 million for the three- and six-month periods ended October 27, 2006. Included in research and development expenses is capitalized patents amortization of \$0.5 million and \$1.0 million for the three- and six-month periods ended October 26, 2007, respectively, as compared to \$0.5 million and \$1.0 million for the three- and six-month periods ended October 27, 2006. Based on capitalized patents recorded at October 26, 2007, estimated future capitalized patent amortization expenses for the remainder of fiscal 2008 will be \$1.0 million, \$0.5 million for fiscal year 2009, \$0.2 million in fiscal 2010, and none thereafter.

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 expect to continuously support current and future product development and enhancement efforts and to incur prototyping expenses and nonrecurring engineering

charges associated with the development of new products and technologies. We intend to continuously broaden our existing product offerings and to introduce new products that expand our solutions portfolio.

We believe that our research and development expenses will increase in absolute dollars for the remainder of fiscal 2008, primarily due to ongoing costs associated with the development of new products and technologies, headcount growth, real estate lease payments, and the operating impact of potential future acquisitions.

General and Administrative – General and administrative expenses increased 12.2% to \$39.5 million for the three-month period ended October 26, 2007, from \$35.2 million for the same period ended October 27, 2006. These expenses as a percentage of revenue decreased to 5.0% for the second quarter of fiscal 2008 from 5.4% for the same period in the prior year. General and administrative expenses increased 19.7% to \$81.0 million for the six-month period ended October 26, 2007, from \$67.6 million for the same period ended October 27, 2006. These expenses represented 5.5% and 5.3% of total revenues for the six-month periods ended October 26, 2007, and October 27, 2006, respectively. This increase in absolute dollars was primarily due to higher payroll expenses, increased headcount, higher expenses on prior acquisition-related costs, and increased professional and legal fees for general corporate matters.

We believe that our general and administrative expenses will increase in absolute dollars for the remainder of fiscal 2008 in order to support and enhance our existing infrastructure and real estate lease payments, partially offset by cost control and reduction in discretionary spending efforts. Stock compensation expense included in general and administrative expenses for the three- and six-month periods ended October 26, 2007, was \$5.5 million and \$11.7 million, compared to stock compensation expense of \$7.1 million and \$14.3 million for the three- and six-month periods ended October 27, 2006. Amortization of covenants not to compete included in general and administrative expenses was \$0.1 million and \$0.2 million for the three- and six-month periods ended October 26, 2007, respectively, as compared to \$0.2 million and \$0.5 million for the three- and six-month periods ended October 27, 2006, respectively. Based on identified intangibles related to our acquisitions recorded at October 26, 2007, there is no further future amortization of covenants not to compete relating to our acquisitions.

Restructuring Charges – In fiscal 2002, as a result of unfavorable economic conditions and a reduction in information technology (“IT”) spending rates, we implemented two restructuring plans, which included reductions in our workforce and consolidations of our facilities. As of October 26, 2007, we have no outstanding balance in our restructuring liability for the first restructuring. The second restructuring related to the closure of an engineering facility and consolidation of resources to the Sunnyvale headquarters. In fiscal 2006, we implemented a third restructuring plan related to the move of our global services center operations from Sunnyvale to our new flagship support center at our Research Triangle Park facility in North Carolina.

Our restructuring estimates are reviewed and revised periodically and may result in a substantial charge or reduction to restructuring expense should different conditions prevail than were anticipated in previous management estimates. Such estimates included various assumptions such as the time period over which the facilities will be vacant, expected sublease terms, and expected sublease rates. During the three- and six-month periods ended October 26, 2007, we did not record any reduction in restructuring reserve resulting from a change in the estimates of our third restructuring plan.

Of the reserve balance at October 26, 2007, \$0.5 million was included in other accrued liabilities, and the remaining \$1.2 million was classified as long-term obligations. The balance of the reserve relates to facilities and is expected to be paid by fiscal 2011.

The following analysis sets forth the significant components of the restructuring reserve at October 26, 2007 (in thousands):

	<u>Total</u>
Reserve balance at April 27, 2007	\$2,084
Cash payments	(153)
Reserve balance at July 27, 2007	\$1,931
Cash payments	(153)
Reserve balance at October 26, 2007	<u>\$1,778</u>

Gain on Sale of Assets – We recorded a gain of \$25.3 million for the three- and six-month periods ended October 27, 2006, as a result of the sale of certain of our assets to Blue Coat.

Operating Income – Operating income as a percentage of revenue decreased to 10.1% for the three-month period ended October 26, 2007, from 14.8% for the same period ended October 27, 2006. Operating income as a percentage of revenue decreased to 7.1% for the six-month period ended October 26, 2007, from 12.0% for the same period ended October 27, 2006. Operating income for the three- and six-month periods ended October 27, 2006, included a gain on sale of assets of \$25.3 million. Our operating expense levels are based in part on our expectations as to future revenue growth, and a significant percentage of our operating expenses is fixed and difficult to reduce within a short period of time. As a result, if revenue levels are below expectations or previously higher levels, our fixed expenses could adversely affect our operating income and cash flow until revenues increase or until such fixed expenses are reduced to a level commensurate with revenues. We cannot assure you that we will be able to maintain or increase revenues for the remainder of fiscal 2008 or beyond.

Interest Income – Interest income was \$16.3 million and \$33.3 million for the three- and six-month periods ended October 26, 2007, respectively, as compared to \$17.5 million and \$34.1 million for the three- and six-month periods ended October 27, 2006. The decrease in interest income was primarily driven by lower average interest rates on our investment portfolio and lower cash and investment balances. We expect period-to-period changes in interest income will continue to be impacted by the volatility of market interest rates, cash and investment balances, timing of our stock repurchases, capital expenditures and payments of our future contractual obligations.

Interest Expense – Interest expense was \$1.4 million and \$2.5 million for the three- and six-month periods ended October 26, 2007, respectively, as compared to \$5.2 million and \$9.0 million for the three- and six-month periods ended October 27, 2006. The decrease in fiscal 2008 was primarily due to lower debt balance at October 26, 2007, as compared to October 27, 2006. We expect interest expense to increase as a result of higher debt balances associated with the revolving secured and unsecured credit facilities (see Note 5 and Note 16).

Other Income – Other income was \$0.2 million and \$1.1 million for the three- and six-month periods ended October 26, 2007, respectively. Other income for the three-month period ended October 26, 2007, included net exchange gains from foreign currency of \$0.1 million and other income of \$0.1 million. Other income for the six-month period ended October 26, 2007, included net exchange gains from foreign currency of \$0.8 million and other income of \$0.3 million. Other income was \$1.9 million and \$2.7 million for the three- and six-month periods ended October 27, 2006. Other income for the second quarter of fiscal 2007 included net exchange gains from foreign currency of \$0.2 million and other income of \$1.7 million. Other income included net exchange gains from foreign currency of \$0.8 million and other income of \$1.9 million for the six-month period ended October 27, 2006. We believe that period-to-period changes in foreign exchange gains or losses will continue to be impacted by hedging costs associated with our forward and option activities and forecast variance.

Net Gain (Loss) on Investments – Net gain (loss) on investments included a gain of \$13.6 million related to the sale of shares of Blue Coat common stock for the three- and six-month periods ended October 26, 2007. Net gain (loss) on investments included an other-than-temporary write-down of \$2.0 million related to the impairment of our investment in a privately held company for the three- and six-month periods ended October 27, 2006.

Provision for Income Taxes – For the three- and six-month periods ended October 26, 2007, we applied to pretax income an annual effective tax rate before discrete reporting items of 18.3% and 18.2%, respectively. The decrease to the annual effective tax rate year over year is primarily attributable to a relative decrease in the tax impact of nondeductible stock compensation under SFAS No. 123R, brought about in part by our decision to cease granting incentive stock options. Since we have replaced the granting of incentive stock options with the granting of nonqualified stock options, this gives rise to the recognition of more deferred tax assets as SFAS No. 123R expense occurs. After taking into account the tax effect of discrete items reported, the effective tax rates applied to the pretax income for the three- and six-month periods ended October 26, 2007, were 23.1% and 21.4%, respectively. For the three- and six-month periods ended October 27, 2006, we applied an annual effective tax rate of 20.2% and 20.9%, respectively.

Our estimate of the effective tax rate is based on the application of existing tax laws to current projections of our annual consolidated income, including projections of the mix of income (loss) earned among our entities and tax jurisdictions in which they operate.

Liquidity and Capital Resources

The following sections discuss the effects of changes in our balance sheet and cash flow, contractual obligations and other commercial commitments, stock repurchase program, capital commitments, and other sources and uses of cash flow on our liquidity and capital resources.

Balance Sheet and Operating Cash Flows

As of October 26, 2007, as compared to April 27, 2007, our cash, cash equivalents, and short-term investments decreased by \$325.7 million to \$983.1 million. We derive our liquidity and capital resources primarily from our cash flow from operations and from working capital. Working capital decreased by \$414.2 million to \$639.0 million as of October 26, 2007, compared to \$1,053.3 million as of April 27, 2007 due to higher stock repurchase activities in the six-month period ended October 26, 2007.

During the six-month period ended October 26, 2007, we generated cash flows from operating activities of \$428.6 million, as compared with \$403.4 million in the same period in fiscal 2007. We recorded net income of \$118.1 million for the six-month period ended October 26, 2007, as compared to \$141.6 million for the same period a year ago. A summary of the significant changes in noncash adjustments affecting net income is as follows:

Stock-based compensation expense was \$78.8 million in the six-month period ended October 26, 2007, compared to \$85.4 million in the same period a year ago.

Depreciation expense was \$55.0 million and \$39.4 million in the six-month periods ended October 26, 2007, and October 27, 2006, respectively. The increase was due to continued capital expansion to meet our business growth.

Amortization of intangibles and patents was \$13.7 million and \$10.4 million in the six-month periods ended October 26, 2007, and October 27, 2006, respectively. The increase was attributed to the Topio acquisition.

Gain on sale of Blue Coat common shares was \$13.6 million in the six-month period ended October 26, 2007.

Gain on sale of certain assets to Blue Coat was \$25.3 million in the six-month period ended October 27, 2006.

An increase in net deferred tax assets of \$35.5 million in the six-month period ended October 26, 2007, compared to \$22.6 million in six-month period ended October 27, 2006, primarily due to an increase in book versus tax difference associated primarily with increases in deferred revenue and stock compensation tax benefits.

In addition to net income and noncash adjustments for the first six-months of fiscal 2008, the primary factors that impacted the period-to-period change in cash flows relating to operating activities included the following:

Decrease in accounts receivable of \$165.7 million in the first six-months of fiscal 2008 was due to stronger collection activities and more linear shipments. A decrease of \$50.4 million in accounts receivable in the first six months of fiscal 2007 was due to more linear shipments.

An increase in deferred revenues of \$112.4 million and \$137.7 million in the first six months of fiscal 2008 and 2007, respectively, was due to higher software entitlements and maintenance and service revenue and long-term service contracts, as well as renewals of existing maintenance agreements in the first six months of fiscal 2008 and fiscal 2007.

Increase in income taxes payable of \$8.7 million in the first six months of fiscal 2008 was attributed to the tax provision of \$32.1 million, tax refund of \$1.3 million, offset by \$12.9 million book-tax differences and stock compensation tax benefits, and \$11.8 million income tax payments. Income tax payable decreased

\$44.1 million in the first six months of fiscal 2007 due to tax provision of \$37.5 million and tax refund of \$1.9 million, partially offset by tax payments of \$27.1 million, which included an \$18.7 million federal income tax payment made for the fiscal year 2006 tax year relating to the income tax on foreign dividend repatriation and \$56.4 million book-tax differences and stock compensation tax benefits.

The above factors were partially offset by the effects of:

Accrued compensation and related benefits decreased by \$29.9 million and \$6.3 million in the first six-months of fiscal 2008 and 2007, respectively. The changes for both periods were due to payout of commission and performance-based payroll expenses accrued in the last quarter of each fiscal year and paid in the first six-months of each subsequent fiscal year.

Accounts payable decreased by \$40.2 million in the first six months of fiscal 2008 due to timing of payment activities. Accounts payable increased \$7.2 million in the first six months of fiscal 2007 due primarily to elevated purchasing activity required to support our business growth and facilities expansion projects.

We expect that cash provided by operating activities may fluctuate in future periods as a result of a number of factors, including fluctuations in our operating results, shipment linearity, accounts receivable collections, inventory management, and the timing of tax and other payments.

Cash Flows from Investing Activities

Capital expenditures for the six-month period ended October 26, 2007, were \$71.2 million as compared to \$76.0 million for the same period a year ago. We received net proceeds of \$152.1 million and \$17.0 million in the six-month period ended October 26, 2007, and October 27, 2006, respectively, for net purchases/redemptions of short-term investments. We redeemed \$35.4 million and \$52.6 million of restricted investments and its interest income pledged with JP Morgan Chase to repay the term loan with JP Morgan Chase in the six-month periods ended October 26, 2007 and October 27, 2006, respectively (see Note 5.) Investing activities in the six-month periods ended October 26, 2007, and October 27, 2006, also included new investments in privately held companies of \$4.0 million and \$1.3 million, respectively. In the second quarter of fiscal 2008, we received \$18.3 million from the sale of shares of Blue Coat common stock. In the second quarter of fiscal 2007, we received \$23.9 million in cash in connection with the sale of certain assets to Blue Coat.

Cash Flows from Financing Activities

We used \$411.1 million and \$358.5 million in the six-month periods ended October 26, 2007, and October 27, 2006, respectively, for net financing activities, which included repayment of debt, sales of common stock related to employee stock transactions, and common stock repurchases. We made repayments of \$37.4 million and \$106.6 million for our debt during the six-month periods ended October 26, 2007, and October 27, 2006, respectively. We repurchased 24.1 million and 10.8 million shares of common stock at a total of \$700.0 million and \$363.9 million during the six-month periods ended October 26, 2007, and October 27, 2006, respectively. Other financing activities provided \$66.1 million and \$92.5 million in the six-month periods ended October 26, 2007, and October 27, 2006, respectively, from sales of common stock related to employee stock option exercises and employee stock purchases. Tax benefits, related to tax deductions in excess of the stock-based compensation expense recognized, of \$15.6 million and \$23.8 million were presented as financing cash flows for the six-month periods ended October 26, 2007, and October 27, 2006, respectively, in accordance with SFAS No. 123R. During the six-month periods ended October 26, 2007, and October 27, 2006, we withheld shares with an aggregate value of \$5.2 million and \$4.3 million, respectively, in connection with the exercising of certain employees' restricted stock for purposes of satisfying those employees' federal, state, and local withholding tax obligations. The increase in the amounts withheld year over year was due to the release of restricted stock units assumed in connection with the Decru acquisition. During the six-month period ended October 26, 2007, we borrowed \$250.0 million through a revolving credit facility.

The change in cash flow from financing was primarily due to the effects of higher common stock repurchases, partially offset by proceeds from the issuance of common stock under employee equity programs compared to the same period in the prior year. Net proceeds from the issuance of common stock related to employee participation in

employee stock programs have historically been a significant component of our liquidity. The extent to which our employees participate in these programs generally increases or decreases based upon changes in the market price of our common stock. As a result, our cash flow resulting from the issuance of common stock related to employee participation in employee stock programs will vary.

Additionally, income tax benefit associated with dispositions of employee stock transactions has historically been another significant source of our liquidity. If stock option exercise patterns change, we may receive less cash from stock option exercises and may not receive the same level of tax benefits in the future, which could cause our cash payments for income taxes to increase. In addition, if our stock price declines, we may receive less tax benefits, which could also cause our income tax payments to increase.

Stock Repurchase Program

At October 26, 2007, \$700.0 million remained available for future repurchases under plans approved as of that date. The stock repurchase program may be suspended or discontinued at any time.

Credit Facility and Debt

In October 2007, we received proceeds from a secured credit agreement totaling \$250.0 million, due October 5, 2012, to finance general corporate purposes, including stock repurchases and working capital needs (“Credit Agreement”). (See Note 5 of the Condensed Consolidated Financial Statements.) No loan repayments under the Credit Agreement are due in the remainder of fiscal 2008. The obligations under the Credit Agreement are collateralized by certain investments with a value totaling \$299.5 million as of October 26, 2007. Interest on the loans under the Credit Agreement accrues at a floating rate based on a base rate in effect from time to time, plus a margin. The interest rate at October 26, 2007 was 5.25%. In accordance with the payment terms of the Credit Agreement, interest payments will be approximately \$6.6 million in the remainder of fiscal 2008. As of October 26, 2007, we were in compliance with the liquidity and leverage requirements of the Credit Agreement.

In March 2006, we received proceeds from a term loan agreement totaling \$300.0 million to finance a dividend under the Jobs Act (“Loan Agreement”). (See Note 5 of the Condensed Consolidated Financial Statements.) Loan repayments under the Loan Agreement of \$47.8 million are due in the remainder of fiscal 2008. The obligations under the Loan Agreement are collateralized by certain investments with a value totaling \$81.3 million as of October 26, 2007. Interest on the loans under the Loan Agreement accrues at a floating rate based on the base rate in effect from time to time, plus margin. The interest rate at October 26, 2007 was 5.26%. In accordance with the payment terms of the Loan Agreement, interest payments will be approximately \$0.8 million in the remainder of fiscal 2008. As of October 26, 2007, we were in compliance with the liquidity and leverage ratio as required by the Loan Agreement with the lenders.

Contractual Obligations

The following summarizes our contractual obligations at October 26, 2007, and the effect such obligations are expected to have on our liquidity and cash flow in future periods, (in thousands):

<u>Contractual Obligations:</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>Thereafter</u>	<u>Total</u>
Office operating lease payments(1)	\$12,333	\$23,456	\$20,145	\$16,442	\$12,274	\$30,005	\$114,655
Real estates lease payments(2)	894	5,995	9,645	9,645	9,645	162,975	198,799
Equipment operating lease payments	6,585	11,732	6,216	738	1	–	25,272
Venture capital funding commitments(3)	147	281	269	256	22	–	975
Purchase commitment(4)	–	–	–	–	–	–	–
Capital Expenditures(5)	21,256	24,249	132	96	120	–	45,853
Communications & Maintenance(6)	11,274	16,522	8,298	1,758	218	–	38,070
Restructuring Charges(7)	274	576	598	330	–	–	1,778
Long-term Debt(8)	55,145	13,125	13,125	13,125	13,125	254,375	362,020
Total Contractual Cash Obligations	<u>\$107,908</u>	<u>\$95,936</u>	<u>\$58,428</u>	<u>\$42,390</u>	<u>\$35,405</u>	<u>\$447,355</u>	<u>\$787,422</u>

For purposes of the above table, contractual obligations for the purchase of goods and services are defined as agreements that are enforceable, are legally binding on us, and subject us to penalties if we cancel the agreement. Some of the figures we include in this table are based on management’s estimates and assumptions about these obligations, including their duration, the possibility of renewal or termination, anticipated actions by management and third parties, and other factors. Because these estimates and assumptions are necessarily subjective, our actual future obligations may vary from those reflected in the table.

<u>Other Commercial Commitments:</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>Thereafter</u>	<u>Total</u>
Letters of credit(7)	\$ <u>1,614</u>	<u>\$517</u>	<u>\$121</u>	<u>\$–</u>	<u>\$158</u>	\$ <u>445</u>	\$ <u>2,855</u>

- (1) We enter into operating leases in the normal course of business. We lease sales offices, research and development facilities, and other property and equipment under operating leases throughout the United States and internationally, which expire on various dates through fiscal year 2016. Substantially all lease agreements have fixed payment terms based on the passage of time and contain payment escalation clauses. Some lease agreements provide us with the option to renew or terminate the lease. Our future operating lease obligations would change if we were to exercise these options and if we were to enter into additional operating lease agreements. Facilities operating lease payments exclude the leases impacted by the restructurings described in Note 12. The amounts for the leases impacted by the restructurings are included in subparagraph (7) below. The net increase in the office operating lease (1) payments was primarily due to several domestic lease extensions during the second quarter of fiscal 2008.
- (2) Included in the above contractual cash obligations pursuant to three financing arrangements with BNP Paribas LLC (“BNP”) are (a) lease commitments of \$0.9 million in fiscal 2008; \$6.0 million in fiscal 2009; \$9.6 million in each of the fiscal years 2010, 2011, and 2012; \$8.8 million in fiscal 2013; and \$5.9 million in fiscal 2014; which are based on the LIBOR rate at October 26, 2007 plus a spread, for a term of five years, and (b) at the expiration or termination of the lease, a supplemental payment obligation equal to our minimum guarantee of \$148.3 million in the event that we elect not to purchase (2) or arrange for sale of the buildings. See Note 13.
- (3) Equipment operating leases include servers and IT equipment used in our engineering labs and data centers.
- (4) Venture capital funding commitments include a quarterly committed management fee based on a percentage of our committed funding to be payable through June 2011.

- (5) Capital expenditures include worldwide contractual commitments to purchase equipment and to construct building and leasehold improvements, which will be (5) recorded as property and equipment.
- (6) We are required to pay based on a minimum volume under certain communication contracts with major telecommunication companies as well as maintenance (6) contracts with multiple vendors. Such obligations will expire in November 2011.
- (7) These amounts are included on our Consolidated Balance Sheets under Long-Term Obligations and Other Accrued Liabilities, which is comprised of committed (7) lease payments and operating expenses net of committed and estimated sublease income.
- (8) Included in these amounts are the JP Morgan Chase loan (see Note 5) on our Consolidated Balance Sheets under Current Portion of Long-Term Debt. This amount also includes estimated interest payments of \$0.8 million for the remainder of fiscal 2008. The decrease from April 27, 2007, represented a loan repayment of \$37.3 million, plus interest of \$1.9 million for the first six months of fiscal 2008. In addition, included in these amounts are the \$250.0 million secured credit agreement entered into with JP Morgan Chase. Estimated interest payments for the credit agreement is \$63.4 million for the (8) remainder of fiscal 2008 through fiscal 2013.
- (9) The amounts outstanding under these letters of credit relate to workers' compensation, a customs guarantee, a corporate credit card program, and a (9) foreign rent guarantee.

As discussed in Note 14 of the Notes to the Consolidated Financial Statements, we adopted the provisions of FIN No. 48. At October 26, 2007, we have a liability of \$63.4 million, for which we are unable to make a reasonably reliable estimate when cash settlement with a taxing authority will occur. Accordingly, this amount has been excluded from the table above.

As of October 26, 2007, we have commitments relating to two financing, construction, and leasing arrangements with BNP for office space to be located on land in Sunnyvale, California that we currently own. These arrangements require us to lease our land to BNP for a period of 50 years to construct approximately 380,000 square feet of office space costing up to \$113.5 million. After completion of construction, we will pay minimum lease payments, which vary based on the London Interbank Offered Rate ("LIBOR") plus a spread (5.53% at October 26, 2007) on the cost of the facilities. We expect to begin making lease payments on the completed buildings in January and December 2008 for terms of five years. We have the option to renew the leases for two consecutive five-year periods upon approval by BNP. Upon expiration (or upon any earlier termination) of the lease terms, we must elect one of the following options: We may (i) purchase the buildings from BNP for \$48.5 million and \$65.0 million, respectively; (ii) if certain conditions are met, arrange for the sale of the buildings by BNP to a third party for an amount equal to at least \$41.2 million and \$55.3 million, respectively, and be liable for any deficiency between the net proceeds received from the third party and such amounts; or (iii) pay BNP supplemental payments of \$41.2 million and \$55.3 million, respectively, in which event we may recoup some or all of such payment by arranging for a sale of either or both buildings by BNP during the ensuing two-year period.

As of October 26, 2007, we have a commitment relating to a third financing, construction, and leasing arrangements with BNP for facility space to be located on land currently owned by us in Research Triangle Park, North Carolina. These arrangements require us to lease our land to BNP for a period of 99 years to construct approximately 120,000 square feet for a data center costing up to \$61.0 million. After completion of construction, we will pay minimum lease payments, which vary based on LIBOR plus a spread (5.53% at October 26, 2007) on the cost of the facility. We expect to begin making lease payments on the completed buildings in October 2008 for a term of five and half years. We have the option to renew the lease for two consecutive five-year periods upon approval by BNP. Upon expiration (or upon any earlier termination) of the lease term, we must elect one of the following options: We may (i) purchase the building from BNP for \$61.0 million; (ii) if certain conditions are met, arrange for the sale of the building by BNP to a third party for an amount equal to at least \$51.9 million, and be liable for any deficiency between the net proceeds received from the third party and \$51.9 million; or (iii) pay BNP a supplemental payment of \$51.9 million, in which event we may recoup some or all of such payment by arranging for the sale of the building by BNP during the ensuing two-year period.

All leases also require us to maintain specified financial covenants with which we were in compliance as of October 26, 2007. Such specified financial covenants include a maximum ratio of Total Debt to Earnings Before

Interest, Taxes, Depreciation and Amortization (“EBITDA”), and a Minimum Unencumbered Cash and Short Term Investments.

As of October 26, 2007, the notional fair value of our foreign exchange forward and foreign currency option contracts totaled \$390.6 million. We do not believe that these derivatives present significant credit risks, because the counterparties to the derivatives consist of major financial institutions, and we manage the notional amount of contracts entered into with any one counterparty. We do not enter into derivative financial instruments for speculative or trading purposes. Other than the risk associated with the financial condition of the counterparties, our maximum exposure related to foreign currency forward and option contracts is limited to the premiums paid on purchased options.

On September 5, 2007, we filed a patent infringement lawsuit in the Eastern District of Texas seeking compensatory damages and a permanent injunction against Sun Microsystems. On October 25, 2007, Sun Microsystems filed a counter claim against us in the Eastern District of Texas seeking compensatory damages and a permanent injunction. On October 29, 2007, Sun filed a second lawsuit against us in the Northern District of California asserting additional patents against us. The Texas court granted a joint motion to transfer the Texas lawsuit to the Northern District of California on November 26, 2007. We are unable at this time to determine the likely outcome of these various patent litigations. In addition, as we are unable to reasonably estimate the amount or range of the potential settlement, no accrual has been recorded as of October 26, 2007.

In addition, we are subject to various legal proceedings and claims which may arise in the normal course of business. While the outcome of these legal matters is currently not determinable, we do not believe that any current litigation or claims will have a material adverse effect on our business, cash flow, operating results, or financial condition.

Capital Expenditure Requirements

We expect capital expenditures to increase in the future consistent with the growth in our business, as we continue to invest in people, land, buildings, capital equipment, and enhancements to our worldwide infrastructure. We expect that our existing facilities and those being developed in Sunnyvale, California; RTP, North Carolina; and worldwide are adequate for our requirements over at least the next two years and that additional space will be available as needed. We expect to finance these construction projects, including our commitments under facilities and equipment operating leases, and any required capital expenditures over the next few years through cash from operations and existing cash, cash equivalents, and investments.

Off-Balance Sheet Arrangements

As of October 26, 2007, our financial guarantees of \$2.9 million that were not recorded on our balance sheet consisted of standby letters of credit related to workers’ compensation, a customs guarantee, a corporate credit card program, and guarantees for foreign rental obligations.

As of October 26, 2007, the notional fair value of our foreign exchange forward and foreign currency option contracts totaled \$390.6 million. We do not believe that these derivatives present significant credit risks, because the counterparties to the derivatives consist of major financial institutions, and we manage the notional amount of contracts entered into with any one counterparty. We do not enter into derivative financial instruments for speculative or trading purposes. Other than the risk associated with the financial condition of the counterparties, our maximum exposure related to foreign currency forward and option contracts is limited to the premiums paid.

We have entered into indemnification agreements with third parties in the ordinary course of business. Generally, these indemnification agreements require us to reimburse losses suffered by the third party due to various events, such as lawsuits arising from patent or copyright infringement. These indemnification obligations are considered off-balance sheet arrangements in accordance with FASB Interpretation 45, of FIN No. 45, “*Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others.*”

We have commitments related to two lease arrangements with BNP for approximately 380,000 square feet of office space to be located on land we currently own in Sunnyvale, California. We also have a third commitment

related to a lease arrangement with BNP for approximately 120,000 square feet of data center to be located on land that we currently own in Research Triangle Park, North Carolina (as further described above under “Contractual Obligations”). We have evaluated our accounting for these leases under the provisions of FIN No. 46R and have determined the following:

BNP is a leasing company for BNP Paribas in the United States. BNP is not a “special purpose entity” organized for the sole purpose of facilitating the lease to us. The obligation to absorb expected losses and receive expected residual returns rests with the parent, BNP Paribas. Therefore, we are not the primary beneficiary of BNP as we do not absorb the majority of BNP’s expected losses or expected residual returns; and

BNP has represented in the Closing Agreement (filed as Exhibit 10.40) that the fair value of the property leased to us by BNP is less than half of the total of the fair values of all assets of BNP, excluding any assets of BNP held within a silo. Further, the property leased to Network Appliance is not held within a silo. The definition of “held within a silo” means that BNP has obtained funds equal to or in excess of 95% of the fair value of the leased asset to acquire or maintain its investment in such asset through nonrecourse financing or other contractual arrangements, the effect of which is to leave such asset (or proceeds thereof) as the only significant asset of BNP at risk for the repayment of such funds.

Accordingly, under the current FIN No. 46R standard, we are not required to consolidate either the leasing entity or the specific assets that we lease under the BNP lease. Our future minimum lease payments under these real estates leases will amount to a total of \$198.8 million reported under our Note 13, “Commitments and Contingencies.”

Liquidity and Capital Resource Requirements

Key factors affecting our cash flows include our ability to effectively manage our working capital, in particular, accounts receivable and inventories and future demand for our products and related pricing. We expect to incur higher capital expenditures in the near future to expand our operations. We will from time to time acquire products and businesses complementary to our business. In the future, we may continue to repurchase our common stock, which would reduce cash, cash equivalents, and/or short-term investments available to fund future operations and meet other liquidity requirements. Based on past performance and current expectations, we believe that our cash and cash equivalents, short-term investments, cash generated from operations, and credit facilities will satisfy our working capital needs, capital expenditures, stock repurchases, contractual obligations, and other liquidity requirements associated with our operations for at least the next twelve months. However, should we need to investigate other financing alternatives, we cannot be certain that additional financing will be available on satisfactory terms.

Item 3. *Quantitative and Qualitative Disclosures About Market Risk*

We are exposed to market risk related to fluctuations in interest rates, market prices, and 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 Risk and Market Interest Risk

Interest and Investment Income – As of October 26, 2007, we had available-for-sale investments of \$738.2 million, which included restricted investments in connection with our debt and credit facility. Our investment portfolio primarily consists of investments with original maturities at the date of purchase of greater than three months, which are classified as available-for-sale. These investments, consisting primarily of corporate bonds, corporate securities, government, municipal debt securities, and auction-rate securities are subject to interest rate and interest income risk and will decrease in value if market interest rates increase. A hypothetical 10 percent increase in market interest rates from levels at October 26, 2007, would cause the fair value of these available-for-sale investments to decline by approximately \$3.8 million. 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. We do not use derivative financial instruments in our investment portfolio.

Our investment policy is to limit the amount of credit exposure through diversification and investment in highly rated securities. We further mitigate concentrations of credit risk in our investments by limiting our investments in the debt securities of a single issuer and by diversifying risk across geographies and type of issuer. We have not experienced any material losses on our available-for-sale investments.

Lease Commitments – As of October 26, 2007, we have two arrangements with BNP to lease our land for a period of 50 years to construct approximately 380,000 square feet of office space and a parking structure costing up to \$113.5 million. We also have a third arrangement with BNP to lease our land for a period of 99 years to construct approximately 120,000 square feet of data center costing up to \$61.0 million. After completion of construction, we will pay minimum lease payments which vary based on London Interbank Offered Rate (“LIBOR”) plus a spread. We expect to pay lease payments on the first lease on January 2008 for a term of five years, the second lease on December 2008 for a term of five years, and the third lease on October 2008 for a term of five years. We have the option to renew all three leases for two consecutive five-year periods upon approval by BNP. A hypothetical 10 percent increase in market interest rates from levels at October 26, 2007, would increase our total lease payments under the initial five-year term by approximately \$4.5 million. We do not currently hedge against market interest rate increases. As additional cash flow generated from operations is invested at current market rates, it will offer a natural hedge against interest rate risk from our lease commitments in the event of a significant change in market interest rate.

Debt Obligation – We have an outstanding variable rate term loan totaling \$47.8 million as of October 26, 2007. Under terms of these arrangements, we expect to make interest payments at LIBOR plus a spread. A hypothetical 10 percent increase in market interest rates from levels at October 26, 2007, would increase our total interest payments by approximately \$0.2 million. We also have an outstanding secured credit facility totaling \$250.0 million as of October 26, 2007. Under terms of these arrangements, we expect to make interest payments at LIBOR plus a spread. A hypothetical 10 percent increase in market interest rates from levels at October 26, 2007, would increase our total interest payments by approximately \$6.4 million. We do not currently use derivatives to manage interest rate risk. As additional cash flow generated from operations is invested at current market rates, it will offer a natural hedge against interest rate risk from our debt in the event of a significant change in market interest rate.

Nonmarketable Securities – We have from time to time made cash investments in companies with distinctive technologies that are potentially strategically important to us. Our investments in nonmarketable securities would be negatively affected by an adverse change in equity market prices, although the impact cannot be directly quantified. Such a change, or any negative change in the financial performance or prospects of the companies whose nonmarketable securities we own, would harm the ability of these companies to raise additional capital and the likelihood of our being able to realize any gains or return of our investments through liquidity events such as initial public offerings, acquisitions, and private sales. These types of investments involve a high degree of risk, and there can be no assurance that any company we invest in will grow or be successful. We do not currently engage in any hedging activities to reduce or eliminate equity price risk with respect to such nonmarketable investment. Accordingly, we could lose all or part of this investment if there is an adverse change in the market price of the company we invest in. Our investments in nonmarketable securities had a carrying amount of \$12.9 million as of October 26, 2007, and \$8.9 million as of April 27, 2007. If we determine that an other-than-temporary decline in fair value exists for a nonmarketable equity security, we write down the investment to its fair value and record the related write-down as an investment loss in our Consolidated Statements of Income.

Foreign Currency Exchange Rate Risk and Foreign Exchange Forward Contracts

We hedge risks associated with foreign currency transactions to minimize the impact of changes in foreign currency exchange rates on earnings. We utilize forward and option contracts to hedge against the short-term impact of foreign currency fluctuations on certain assets and liabilities denominated in foreign currencies. All balance sheet hedges are marked to market through earnings every period. We also use foreign exchange forward contracts to hedge foreign currency forecasted transactions related to certain sales and operating expenses. These derivatives are

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designated as cash flow hedges under SFAS No. 133. For cash flow hedges outstanding at October 26, 2007, the gains or losses were included in other comprehensive income.

We do not enter into foreign exchange contracts for speculative or trading purposes. In entering into forward and option foreign exchange contracts, we have assumed the risk that might arise from the possible inability of counterparties to meet the terms of their contracts. We attempt to limit our exposure to credit risk by executing foreign exchange contracts with creditworthy multinational commercial banks. All contracts have a maturity of less than one year.

The following table provides information about our foreign exchange forward and currency option contracts outstanding on October 26, 2007 (in thousands):

Currency	Buy/Sell	Foreign Currency Amount	Notional Contract Value in USD	Notional Fair Value in USD
Forward Contracts:				
EUR	Sell	156,860	\$225,096	\$225,902
GBP	Sell	35,079	\$71,817	\$71,922
CAD	Sell	16,570	\$17,228	\$17,228
Other	Sell	N/A	\$18,556	\$18,557
AUD	Buy	29,923	\$27,347	\$27,346
Other	Buy	N/A	\$11,399	\$11,400
Option Contracts:				
EUR	Sell	10,000	\$14,398	\$14,521
GBP	Sell	1,800	\$3,692	\$3,723

Item 4. Controls and Procedures

Disclosure controls are controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act, such as this Quarterly Report, is recorded, processed, summarized, and reported within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms. Disclosure controls and procedures are also designed to ensure that such information is accumulated and communicated to our management, including the CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, as of October 26, 2007, the end of the fiscal period covered by this quarterly report (the "Evaluation Date"). Based on this evaluation, our principal executive officer and principal financial officer concluded as of the Evaluation Date that our disclosure controls and procedures were effective such that the information relating to Network Appliance, including our consolidated subsidiaries, required to be disclosed in our Securities and Exchange Commission ("SEC") reports (i) is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and (ii) is accumulated and communicated to Network Appliance management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

There was no change in our internal control over financial reporting that occurred during the period covered by this Quarterly Report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. *Legal Proceedings*

On September 5, 2007, we filed a patent infringement lawsuit in the Eastern District of Texas seeking compensatory damages and a permanent injunction against Sun Microsystems. On October 25, 2007, Sun Microsystems filed a counter claim against us in the Eastern District of Texas seeking compensatory damages and a permanent injunction. On October 29, 2007, Sun filed a second lawsuit against us in the Northern District of California asserting additional patents against us. The Texas court granted a joint motion to transfer the Texas lawsuit to the Northern District of California on November 26, 2007. We are unable at this time to determine the likely outcome of these various patent litigations. In addition, as we are unable to reasonably estimate the amount or range of the potential settlement, no accrual has been recorded as of October 26, 2007.

Item 1A. *Risk Factors*

The following risk factors and other information included in this Form 10-Q should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we presently deem less significant may also impair our business operations. If any of the following risks actually occurs, our business, operating results, and financial condition could be materially adversely affected.

Factors beyond our control could cause our quarterly results to fluctuate, which could adversely impact our common stock price.

We believe that period-to-period comparisons of our results of operations 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, but are not limited to, the following:

- Changes in general economic conditions and specific economic conditions in the computer, storage, and networking industries
- General decrease in global corporate spending on information technology leading to a decline in demand for our products
- A shift in federal government spending patterns
- The possible effects of terrorist activity and international conflicts, which could lead to business interruptions and difficulty in forecasting
- The level of competition in our target product markets
- Our reliance on a limited number of suppliers due to industry consolidation, which could subject us to periodic supply-and-demand, price rigidity, and quality issues with our components
- The size, timing, and cancellation of significant orders
- Product configuration and mix
- The extent to which our customers renew their service and maintenance contracts with us
- Market acceptance of new products and product enhancements
- Announcements, introductions, and transitions of new products by us or our competitors
- Deferrals of customer orders in anticipation of new products or product enhancements introduced by us or our competitors
- Changes in our pricing in response to competitive pricing actions
- Our ability to develop, introduce, and market new products and enhancements in a timely manner

Supply constraints

Technological changes in our target product markets

The levels of expenditure on research and development and sales and marketing programs

Our ability to achieve targeted cost reductions

Excess or inadequate facilities

Disruptions resulting from new systems and processes as we continue to enhance and adapt our system infrastructure to accommodate future growth

Future accounting pronouncements and changes in accounting policies

Seasonality

In addition, sales for any future quarter may vary and accordingly be different from what we forecast. We manufacture products based on a combination of specific order requirements and forecasts of our customer demands. Products are typically shipped within one to four weeks following receipt of an order. In certain circumstances, customers may cancel or reschedule orders without penalty. Product sales are also difficult to forecast because the storage and data management market is rapidly evolving, and our sales cycle varies substantially from customer to customer.

We derive a majority of our revenue in any given quarter from orders booked in the same quarter. Bookings typically follow intraquarter seasonality patterns weighted toward the back end of the quarter. If we do not achieve bookings in the latter part of a quarter consistent with our quarterly financial targets, our financial results will be adversely impacted. If revenues do not meet our expectations, our operating profit may be negatively impacted because portions of our expenses are fixed and difficult to reduce in a short period of time. If our revenues are lower than expected, our fixed expenses could adversely affect our net income and cash flow until revenues increase or until such fixed expenses are reduced to a level commensurate with revenues.

Due to all of the foregoing factors, it is possible that in one or more future quarters our results may fall below our forecasts and the expectations of public market analysts and investors. In such event, the trading price of our common stock would likely decrease.

We cannot assure you that our OEM relationship with IBM will generate significant revenue.

In April 2005, we announced a strategic partner relationship with IBM. As part of the relationship, we entered into an original equipment manufacturing (“OEM”) agreement that enables IBM to sell IBM branded solutions based on Network Appliance unified solutions, including NearStore and the NetApp® V-Series systems, as well as associated software offerings. While this agreement is an element of our strategy to expand our reach into more customers and countries, we do not have an exclusive relationship with IBM, and there is no minimum commitment for any given period of time; therefore we cannot assure you that this relationship will contribute any revenue in future years. In addition, we have no control over the products that IBM selects to sell, or its release schedule and timing of those products; nor do we control its pricing. In the event that sales through IBM will increase, we may experience distribution channel conflicts between our direct sales force and IBM or among our channel partners. If we fail to minimize channel conflicts, our operating results and financial condition could be harmed. In addition, since this agreement is relatively new, we do not have a history upon which to base our analysis of its future success.

Currently we do not and cannot assure you that this OEM relationship will generate significant revenue or that this strategic partnership will continue to be in effect for any specific period of time.

If we are unable to maintain our existing relationships and develop new relationships with major strategic partners, our revenue may be impacted negatively.

An element of our strategy to increase revenue is to strategically partner with major third-party software and hardware vendors that integrate our products into their products and also comarket our products with these vendors. We have significant partner relationships with database, business application, and backup management companies,

including Microsoft, Oracle, SAP, and Symantec. A number of these strategic partners are industry leaders that offer us expanded access to segments of the storage market. There is intense competition for attractive strategic partners, and even if we can establish strategic relationships with these partners, we cannot assure you that these partnerships will generate significant revenue or that the partnerships will continue to be in effect for any specific period of time.

We intend to continue to establish and maintain business relationships with technology companies to accelerate the development and marketing of our storage solutions. To the extent that we are unsuccessful in developing new relationships and maintaining our existing relationships, our future revenue and operating results could be impacted negatively. In addition, the loss of a strategic partner could have a material adverse effect on our revenue and earnings.

We cannot assure you that we are able to maintain existing resellers and attract new resellers and that channel conflicts will not materially adversely affect our channel relationships. In addition, we do not have exclusive relationships with our resellers and accordingly there is a risk that those resellers may give higher priority to products of other suppliers, which could materially adversely affect our operating results.

We market and sell our storage solutions directly through our worldwide sales force and indirectly through channels such as value-added resellers (“VAR”), systems integrators, distributors, OEMs, and strategic business partners, and we derive a significant portion of our revenue from these indirect channel partners. In the six-month period ended October 26, 2007, our indirect channels accounted for 62.0% of our consolidated revenues.

However, in order for us to maintain our current revenue sources and grow our revenue as we have forecasted, we must effectively manage our relationships with these indirect channel partners. To do so, we must attract and retain a sufficient number of qualified channel partners to successfully market our products. However, because we also sell our products directly to customers through our sales force, on occasion we compete with our indirect channels for sales of our products to our end customers, competition that could result in conflicts with these indirect channel partners and make it harder for us to attract and retain these indirect channel partners. At the same time, our indirect channel partners may offer products that are competitive to ours. In addition, because our reseller partners generally offer products from several different companies, including products of our competitors, these resellers may give higher priority to the marketing, sales, and support of our competitors’ products than ours. If we fail to effectively manage our relationships with these indirect channel partners to minimize channel conflict and continue to evaluate and meet our indirect sales partners’ needs with respect to our products, we will not be able to maintain or increase our revenue as we have forecasted, which would have a materially adverse affect on our business, financial condition, and results of operations. Additionally, if we do not manage distribution of our products and services and support effectively, or if our resellers’ financial conditions or operations weaken, our revenues and gross margins could be adversely affected.

The U.S. government has contributed to our revenue growth and has become an important customer for us.

The U.S. government has become an important customer for the storage market and for us; however, government demand is unpredictable, and there is no guarantee of future revenue growth from the U.S. government. Government agencies are subject to budgetary processes and expenditure constraints that could lead to delays or decreased capital expenditures in IT spending on infrastructures. If the government or individual agencies within the government reduce or shift their capital spending pattern, our financial results may be harmed. We cannot assure you that revenue from the U.S. government will continue to grow in the future.

The General Services Administration (“GSA”) is currently auditing our records under the schedule contracts it had with us to verify our compliance with various contract provisions. If the audit determines that we did not comply with such provisions, we may be required to pay the GSA a potential settlement. The exact date for completion of the audit and the subsequent negotiation process is unknown and may not be concluded for some time. Our management does not believe, based upon information currently known to us, that the final resolution of our audit will have a material adverse effect upon our consolidated financial position and the results of operations and cash flows.

The marketplace for our common stock has fluctuated significantly in the past and will likely continue to do so in the future.

The market price for our common stock has experienced substantial volatility in the past, and several factors could cause the price to fluctuate substantially in the future. These factors include but are not limited to:

Fluctuations in our operating results

Variations between our operating results and either the guidance we have furnished to the public or the published expectations of securities analysts

Fluctuations in the valuation of companies perceived by investors to be comparable to us

Changes in analysts' recommendations or projections

Inquiries by the SEC, NASDAQ, law enforcement, or other regulatory bodies

Economic developments in the storage and data management market as a whole

International conflicts and acts of terrorism

Announcements of new products, applications, or product enhancements by us or our competitors

Changes in our relationships with our suppliers, customers, and channel and strategic partners

General market conditions

In addition, the stock market has experienced volatility that has particularly affected the market prices of equity securities of many technology companies. Additionally, certain macroeconomic factors such as changes in interest rates, the market climate for the technology sector, and levels of corporate spending on information technology could also have an impact on the trading price of our stock. As a result, the market price of our common stock may fluctuate significantly in the future, and any broad market decline, as well as our own operating results, may materially and adversely affect the market price of our common stock.

Macroeconomic conditions and an IT spending slowdown in the United States as well as variations in our expected operating performance may continue to cause volatility in our stock price. We are unable to predict changes in general economic conditions and when global IT spending rates will be affected. Furthermore, if there are future reductions in either domestic or international IT spending rates, or if IT spending rates do not increase, our revenues, operating results, and stock price may continue to be adversely affected.

Our forecasts of our revenues and earnings outlook may be inaccurate and could materially and adversely impact our business or our planned results of operations.

Our revenues are difficult to forecast. We use a "pipeline" system, a common industry practice, to forecast revenues and trends in our business. Sales personnel monitor the status of potential business and estimate when a customer will make a purchase decision, the dollar amount of the sale and the products or services to be sold. These estimates are aggregated periodically to generate a sales pipeline. Our pipeline estimates may prove to be unreliable either in a particular quarter or over a longer period of time, in part because the "conversion rate" of the pipeline into contracts varies from customer to customer, can be difficult to estimate, and requires management judgment. Small deviations from our forecasted conversion rate may result in inaccurate plans and budgets and materially adversely impact our business or our planned results of operations. In particular, a slowdown in IT spending or weak economic conditions or evolving technology generally can reduce the conversion rate in a particular quarter as our customers' purchasing decisions are delayed, reduced in amount, or cancelled. Moreover, even after contracts have been executed, extensive analysis is required before the timing of revenue recognition can be reliably determined; this delay reflects both the complexity of the revenue recognition rules applicable to software and the effect that the multiple element arrangements and other terms and conditions can have when these rules are applied.

If we are unable to develop and introduce new products and respond to technological change, if our new products do not achieve market acceptance, or if we fail to manage the transition between our new and old products, or if we cannot provide the level of service and support for our new products, our operating results could be materially and adversely affected.

Our future growth depends upon the successful development and introduction of new hardware and software products. Due to the complexity of storage subsystems and storage security appliances and the difficulty in gauging the engineering effort required to produce new products, such products are subject to significant technical risks. However, our new products may not achieve market acceptance. Additional product introductions in future periods may also impact our sales of existing products. In addition, our new products must respond to technological changes and evolving industry standards. If we are unable, for technological or other reasons, to develop and introduce new products in a timely manner in response to changing market conditions or customer requirements, or if such products do not achieve market acceptance, our operating results could be materially and adversely affected.

As new or enhanced products are introduced, we must successfully manage the transition from older products in order to minimize disruption in customers' ordering patterns, avoid excessive levels of older product inventories, and ensure that enough supplies of new products can be delivered to meet customers' demands.

As we enter into new or emerging markets, we will likely increase demands on our service and support operations and may be exposed to additional competition. We may not be able to provide products, service, and support to effectively compete for these market opportunities. Further, provision of greater levels of services from us may result in a delay in the timing of revenue recognition.

Our gross margins may vary based on the configuration of our product and service solutions, and such variation may make it more difficult to forecast our earnings.

We derive a significant portion of our sales from the resale of disk drives as components of our storage systems, and the resale market for hard disk drives is highly competitive and subject to intense pricing pressures. Our sales of disk drives generate lower gross margin percentages than those of our storage systems. As a result, as we sell more highly configured systems with greater disk drive content, overall gross margin percentages may be negatively affected.

Our gross margins have been and may continue to be affected by a variety of other factors, including:

Demand for storage and data management products

Discount levels and price competition

Direct versus indirect and OEM sales

Product and add-on software mix

The mix of services as a percentage of revenue

The mix and average selling prices of products

The mix of disk content

New product introductions and enhancements

Excess inventory purchase commitments as a result of changes in demand forecasts and possible product and software defects as we transition our products

The cost of components, manufacturing labor, and quality

Changes in service gross margins may result from various factors such as continued investments in our customer support infrastructure and changes in the mix between technical support services and professional services, as well as the timing of technical support service contract initiations and renewals.

An increase in competition could materially and adversely affect our operating results.

The storage markets are intensely competitive and are characterized by rapidly changing technology. In the storage market, our primary and nearline storage system products and our associated storage software portfolio compete primarily with storage system products and data management software from EMC, HDS, HP, IBM, and Sun/StorageTek. We also see Dell, Inc. as a competitor in the storage marketplace, primarily through its business partnership with EMC, allowing Dell to resell EMC storage hardware and software products. We have also historically encountered less-frequent competition from companies including LSI Logic. In the secondary storage market, which includes the disk-to-disk backup, compliance, and business continuity segments, our solutions compete primarily against products from EMC and Sun/StorageTek. Our NearStore VTL appliances also compete with traditional tape backup solutions in the broader data backup/recovery space. Additionally, a number of small, new companies are currently attempting to enter the storage systems and data management software markets and the near-line and NearStore VTL storage markets, some of which may become significant competitors in the future.

There has been a trend toward industry consolidation in our markets for several years. We expect this trend to continue as companies attempt to strengthen or hold their market positions in an evolving industry and as companies are acquired or are unable to continue operations. We believe that industry consolidation may result in stronger competitors that are better able to compete as sole-source vendors for customers. In addition, current and potential competitors have established or may establish cooperative relationships among themselves or with third parties. Accordingly, it is possible that new competitors or alliances among competitors may emerge and rapidly acquire significant market share. We cannot assure you that we will be able to compete successfully against current or future competitors. Competitive pressures we face could materially and adversely affect our operating results.

We rely on a limited number of suppliers, and any disruption or termination of these supply arrangements could delay shipment of our products and could materially and adversely affect our operating results.

We rely on a limited number of suppliers for components such as disk drives, computer boards, and microprocessors utilized in the assembly of our products. In recent years, rapid industry consolidation has led to fewer component suppliers, which could subject us to periodic supply constraints and price rigidity.

Our reliance on a limited number of suppliers involves several risks, including:

- A potential inability to obtain an adequate supply of required components because we do not have long-term supply commitments
- Supplier capacity constraints
- Price increases
- Timely delivery
- Component quality

Component quality risk is particularly significant with respect to our suppliers of disk drives. In order to meet product performance requirements, we must obtain disk drives of extremely high quality and capacity. In addition, there are periodic supply-and-demand issues for disk drives, microprocessors, and semiconductor memory components, which could result in component shortages, selective supply allocations, and increased prices of such components. We cannot assure you that we will be able to obtain our full requirements of such components in the future or that prices of such components will not increase. In addition, problems with respect to yield and quality of such components and timeliness of deliveries could occur. Disruption or termination of the supply of these components could delay shipments of our products and could materially and adversely affect our operating results. Such delays could also damage relationships with current and prospective customers and suppliers.

In addition, we license certain technology and software from third parties that are incorporated into our products. If we are unable to obtain or license the technology and software on a timely basis, we will not be able to deliver products to our customers in a timely manner.

The loss of any contract manufacturers or the failure to accurately forecast demand for our products or successfully manage our relationships with our contract manufacturers could negatively impact our ability to manufacture and sell our products.

We currently rely on several contract manufacturers to manufacture our products. Our reliance on our third-party contract manufacturers reduces our control over the manufacturing process, exposing us to risks, including reduced control over quality assurance, production costs, and product supply. If we should fail to effectively manage our relationships with our contract manufacturers, or if our contract manufacturers experience delays, disruptions, capacity constraints, or quality control problems in their manufacturing operations, our ability to ship products to our customers could be impaired, and our competitive position and reputation could be harmed. Qualifying a new contract manufacturer and commencing volume production are expensive and time-consuming. If we are required to change contract manufacturers or assume internal manufacturing operations, we may lose revenue and damage our customer relationships. If we inaccurately forecast demand for our products, we may have excess or inadequate inventory or incur cancellation charges or penalties, which could adversely impact our operating results. As of October 26, 2007, we have no purchase commitment under these agreements.

We intend to regularly introduce new products and product enhancements, which will require us to rapidly achieve volume production by coordinating with our contract manufacturers and suppliers. We may need to increase our material purchases, contract manufacturing capacity, and quality functions to meet anticipated demand. The inability of our contract manufacturers to provide us with adequate supplies of high-quality products or the inability to obtain raw materials, could cause a delay in our ability to fulfill orders.

Our future financial performance depends on growth in the storage and data management markets. If these markets do not continue to grow at the rates at which we forecast growth, our operating results will be materially and adversely impacted.

All of our products address the storage and data management markets. Accordingly, our future financial performance will depend in large part on continued growth in the storage and data management markets and on our ability to adapt to emerging standards in these markets. We cannot assure you that the markets for storage and data management will continue to grow or that emerging standards in these markets will not adversely affect the growth of UNIX®, Windows®, and the World Wide Web server markets upon which we depend.

For example, we provide our open access data retention solutions to customers within the financial services, healthcare, pharmaceuticals, and government market segments, industries that are subject to various evolving governmental regulations with respect to data access, reliability, and permanence (such as Rule 17(a)(4) of the Securities Exchange Act of 1934, as amended) in the United States and in the other countries in which we operate. If our products do not meet and continue to comply with these evolving governmental regulations in this regard, customers in these market and geographical segments will not purchase our products, and therefore we will not be able to expand our product offerings in these market and geographical segments at the rates for which we have forecast.

We are also exposed to unfavorable economic and market conditions and the uncertain geopolitical environment.

Our operating results may be adversely affected by unfavorable economic and market conditions and the uncertain geopolitical environment. A reduction in demand for storage and data management caused by weakening economic conditions and decreases in corporate spending will result in decreased revenues and lower revenue growth rates. The network storage market growth declined significantly beginning in the third quarter of fiscal 2001 through fiscal 2003, causing both our revenues and operating results to decline. If the storage and data management markets grow more slowly than anticipated, or if emerging standards other than those adopted by us become increasingly accepted by these markets, our operating results could be materially and adversely affected.

Turmoil in the geopolitical environment in many parts of the world, including terrorist activities and military actions, and changes in energy costs may continue to put pressure on global economic conditions. If the economic and market conditions in the United States and globally do not improve, or if they deteriorate, we may experience material impacts on our business, operating results, and financial condition.

Our effective tax rate may increase or fluctuate, which could increase our income tax expense and reduce our net income.

Our effective tax rate could be adversely affected by several factors, many of which are outside of our control, including:

Earnings being lower than anticipated in countries where we are taxed at lower rates as compared to the U.S. statutory tax rate

Material differences between forecasted and actual tax rates as a result of a shift in the mix of pretax profits and losses by tax jurisdiction, our ability to use tax credits, or effective tax rates by tax jurisdiction different than our estimates

Changing tax laws, accounting standards, including SFAS No. 123R and FIN No. 48, regulations, and interpretations in multiple tax jurisdictions in which we operate, as well as the requirements of certain tax rulings

An increase in expenses not deductible for tax purposes, including certain stock-based compensation expense, write-offs of acquired in-process research and development, and impairment of goodwill

The tax effects of purchase accounting for acquisitions and restructuring charges that may cause fluctuations between reporting periods

Changes in the valuation of our deferred tax assets and liabilities

Changes in tax laws or the interpretation of such tax laws

Tax assessments or any related tax interest or penalties, could significantly affect our income tax expense for the period in which the settlements take place

A change in our decision to indefinitely reinvest foreign earnings

The price of our common stock could decline to the extent that our financial results are materially affected by an adverse change in our effective tax rate. We are currently undergoing federal income tax audits in the United States and several foreign tax jurisdictions. The rights to some of our intellectual property (“IP”) are owned by certain of our foreign subsidiaries, and payments are made between U.S. and foreign tax jurisdictions relating to the use of this IP in a qualified cost sharing arrangement. Recently, some other U.S. companies have had their foreign IP arrangements challenged as part of an IRS examination, which has resulted in material proposed assessments and/or pending litigation. Our management does not believe, based upon information currently known to us that the final resolution of any of our audits will have a material adverse effect upon our consolidated financial position and the results of operations and cash flows. If the ultimate determination of our taxes owed in any of these tax jurisdictions is for an amount in excess of the tax provision we have recorded or reserved for, our operating results, cash flows, and financial condition could be adversely affected.

We may face increased risks and uncertainties related to our current or future acquisitions and nonmarketable securities, and these investments may not achieve our objectives.

As part of our strategy, we are continuously evaluating opportunities to buy other businesses or technologies that would complement our current products, expand the breadth of our markets, or enhance our technical capabilities. We may engage in future acquisitions that dilute our stockholders’ investments and cause us to use cash, to incur debt, or to assume contingent liabilities.

Acquisitions of companies entail numerous risks, and we may not be able to successfully integrate acquired operations and products or to realize anticipated synergies, economies of scale, or other value. Integration risks and issues may include, but are not limited to, key personnel retention and assimilation, management distraction, technical development, and unexpected costs and liabilities, including goodwill impairment charges. In addition, we may be unable to recover strategic investments in development stage entities. Any such problems could have a material adverse effect on our business, financial condition, and results of operation.

On occasion, we invest in nonmarketable securities of private companies. As of October 26, 2007, the carrying value of our investments in nonmarketable securities totaled \$12.9 million. Investments in nonmarketable securities are inherently risky, and some of these companies are likely to fail. Their success (or lack thereof) is dependent on these companies' product development, market acceptance, operational efficiency, and other key business success factors. In addition, depending on these companies' future prospects, they may not be able to raise additional funds when needed, or they may receive lower valuations, with less favorable investment terms than in previous financings, and our investments in them would likely become impaired.

Risks inherent in our international operations could have a material adverse effect on our operating results.

We conduct business internationally. For the six-month period ended October 26, 2007, 43.1% of our total revenues was from international customers (including U.S. exports). Accordingly, our future operating results could be materially and 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, government spending patterns, and acts of terrorism and international conflicts.

Because a significant portion of our business is conducted outside the United States, we face exposure to adverse movements in foreign currency exchange rates. These exposures may change over time as business practices evolve, and they could have a material adverse impact on our financial results and cash flows. 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. Conversely, lowering our price in local currency may result in lower U.S.-based revenue. A decrease in the value of the U.S. dollar relative to foreign currencies could increase the cost of local operating expenses. Additionally, we have exposures to emerging market currencies, which can have extreme currency volatility. We utilize forward and option contracts to hedge our foreign currency exposure associated with certain assets and liabilities as well as anticipated foreign currency cash flows. All balance sheet hedges are marked to market through earnings every quarter, while gains and losses on cash flow hedges are recorded in other comprehensive income until forecasted transactions occur, at which time such realized gains and losses are recognized in earnings. These hedges attempt to reduce, but do not always entirely eliminate, the impact of currency exchange movements. Factors that could have an impact on the effectiveness of our hedging program include the accuracy of forecasts and the volatility of foreign currency markets. There can be no assurance that such hedging strategies will be successful and that currency exchange rate fluctuations will not have a material adverse effect on our operating results.

Additional risks inherent in our international business activities generally include, among others, longer accounts receivable payment cycles and difficulties in managing international operations. Such factors could materially and adversely affect our future international sales and consequently our operating results.

We receive significant tax benefits from sales to our non-U.S. customers. These benefits are contingent upon existing tax regulations in the United States and in the countries in which our international operations are located. Future changes in domestic or international tax regulations could adversely affect our ability to continue to realize these tax benefits. Our effective tax rate could also be adversely affected by different and evolving interpretations of existing law or regulations. Potentially adverse tax consequences could negatively impact the operating and financial results from international operations. International operations currently benefit from a tax ruling concluded in the Netherlands.

Our operating results have not been significantly affected by seasonality in the past. In the future, as we expand our presence internationally, we may experience more seasonality in the sale of our products. For example, sales to European customers tend to be weaker in the summer months, which is our first fiscal quarter.

We cannot assure you that we will be able to maintain or increase international market demand for our products.

If we fail to manage our expanding business effectively, our operating results could be materially and adversely affected.

Our future operating results depend to a large extent on management's ability to successfully manage expansion and growth, including but not limited to expanding international operations, forecasting revenues, addressing new markets, controlling expenses, implementing and enhancing infrastructure, investing in people, facilities and capital equipment, and managing our assets. An unexpected decline in the growth rate of revenues without a corresponding and timely reduction in expense growth or a failure to manage other aspects of growth could materially and adversely affect our operating results.

In addition, continued expansion could strain our current management, financial, manufacturing, and other systems and may require us to implement and improve those systems. If we experience any problems with any improvement or expansion of these systems, procedures, or controls, or if these systems, procedures, or controls are not designed, implemented, or improved in a cost-effective and timely manner, our operations may be materially and adversely affected. In addition, any failure to implement, improve, and expand such systems, procedures, and controls in a timely and efficient manner could harm our growth strategy and materially and adversely affect our financial condition and ability to achieve our business objectives.

As we continue to grow our business, we are likely to incur costs earlier than some of the anticipated benefits, which could harm our operating results. A significant percentage of our expenses is fixed, which could materially and adversely affect our net income.

We are increasing our investment in engineering, sales, service support, and other functions to grow our business. We are likely to recognize the costs associated with these increased investments earlier than some of the anticipated benefits, and the return on these investments may be lower, or may develop more slowly, than we expect, which could harm our business.

Our expense levels are based in part on our expectations as to future sales, and a significant percentage of our expenses is fixed. As a result, if sales levels are below expectations or previously higher levels, net income will be disproportionately affected in a material and adverse manner.

We depend on the ability of our personnel, raw materials, equipment, and products to move reasonably unimpeded around the world. Our business could be materially and adversely affected as a result of a natural disaster, terrorist acts, or other catastrophic events.

Any political, military, world health, or other issue that hinders this movement or restricts the import or export of materials could lead to significant business disruptions. Furthermore, any strike, economic failure, or other material disruption caused by fire, floods, hurricanes, power loss, power shortages, telecommunications failures, break-ins, and similar events could also adversely affect our ability to conduct business. If such disruptions result in cancellations of customer orders or contribute to a general decrease in economic activity or corporate spending on information technology, or directly impact our marketing, manufacturing, financial, and logistics functions, our results of operations and financial condition could be materially adversely affected. In addition, our headquarters are located in Northern California, an area susceptible to earthquakes. If any significant disaster were to occur, our ability to operate our business could be impaired.

We depend on attracting and retaining qualified technical and sales personnel. If we are unable to attract and retain such personnel, our operating results could be materially and adversely impacted.

Our continued success depends, in part, on our ability to identify, attract, motivate, and retain qualified technical and sales personnel. Because our future success is dependent on our ability to continue to enhance and introduce new products, we are particularly dependent on our ability to identify, attract, motivate, and retain qualified engineers with the requisite education, background, and industry experience. Competition for qualified engineers, particularly in Silicon Valley, can be intense. The loss of the services of a significant number of our engineers or salespeople could be disruptive to our development efforts or business relationships and could materially and adversely affect our operating results.

Undetected software errors, hardware errors, or failures found in new products may result in loss of or delay in market acceptance of our products, which could increase our costs and reduce our revenues. Product quality problems could lead to reduced revenue, gross margins, and net income.

Our products may contain undetected software errors, hardware errors, or failures when first introduced or as new versions are released. Despite testing by us and by current and potential customers, errors may not be found in new products until after commencement of commercial shipments, resulting in loss of or delay in market acceptance, which could materially and adversely affect our operating results.

If we fail to remedy a product defect, we may experience a failure of a product line, temporary or permanent withdrawal from a product or market, damage to our reputation, inventory costs, or product reengineering expenses, any of which could have a material impact on our revenue, margins, and net income.

In addition, we may be subject to losses that may result or are alleged to result from defects in our products, which could subject us to claims for damages, including consequential damages. Based on our historical experience, we believe that the risk of exposure to product liability claims is currently low. However, should we experience increased exposure to product liability claims, our business could be adversely impacted.

We are exposed to various risks related to legal proceedings or claims and protection of intellectual property rights, which could adversely affect our operating results.

We are a party to lawsuits in the normal course of our business. Litigation can be expensive, lengthy, and disruptive to normal business operations. Moreover, the results of complex legal proceedings are difficult to predict. An unfavorable resolution of a particular lawsuit could have a material adverse effect on our business, operating results, or financial condition.

If we are unable to protect our intellectual property, we may be subject to increased competition that could materially and adversely affect our operating results. Our success depends significantly upon our proprietary technology. We rely on a combination of copyright and trademark laws, trade secrets, confidentiality procedures, contractual provisions, and patents to protect our proprietary rights. We seek to protect our software, documentation, and other written materials under trade secret, copyright, and patent laws, which afford only limited protection. Some U.S. trademarks and some U.S.-registered trademarks are registered internationally as well. We will continue to evaluate the registration of additional trademarks as appropriate. We generally enter into confidentiality agreements with our employees and with our resellers, strategic partners, and customers. We currently have multiple U.S. and international patent applications pending and multiple U.S. patents issued. The pending applications may not be approved, and if patents are issued, such patents may be challenged. If such challenges are brought, the patents may be invalidated. We cannot assure you that we will develop proprietary products or technologies that are patentable, that any issued patent will provide us with any competitive advantages or will not be challenged by third parties, or that the patents of others will not materially and adversely affect our ability to do business.

Litigation may be necessary to protect our proprietary technology. Any such litigation may be time consuming and costly. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our products or to obtain and use information that we regard as proprietary. In addition, the laws of some foreign countries do not protect proprietary rights to as great an extent as do the laws of the United States. We cannot assure you that our means of protecting our proprietary rights will be adequate or that our competitors will not independently develop similar technology, duplicate our products, or design around patents issued to us or other intellectual property rights of ours.

We are subject to intellectual property infringement claims. We may, from time to time, receive claims that we are infringing third parties' intellectual property rights. Third parties may in the future claim infringement by us with respect to current or future products, patents, trademarks, or other proprietary rights. We expect that companies in the appliance market will increasingly be subject to infringement claims as the number of products and competitors in our industry segment grows and the functionality of products in different industry segments overlaps. Any such claims could be time consuming, result in costly litigation, cause product shipment delays, require us to redesign our products, or require us to enter into royalty or licensing agreements, any of which could materially and

adversely affect our operating results. Such royalty or licensing agreements, if required, may not be available on terms acceptable to us or at all.

Our business is subject to increasingly complex corporate governance, public disclosure, accounting, and tax requirements that have increased both our costs and the risk of noncompliance.

Because our common stock is publicly traded, we are subject to certain rules and regulations of federal, state, and financial market exchange entities charged with the protection of investors and the oversight of companies whose securities are publicly traded. These entities, including the Public Company Accounting Oversight Board, the SEC, and NASDAQ, have implemented new requirements and regulations and continue developing additional regulations and requirements in response to recent corporate scandals and laws enacted by Congress, most notably the Sarbanes-Oxley Act of 2002. Our efforts to comply with these new regulations have resulted in, and are likely to continue resulting in, increased general and administrative expenses and diversion of management time and attention from revenue-generating activities to compliance activities.

We have recently completed our evaluation of our internal controls over financial reporting as required by Section 404 of the Sarbanes-Oxley Act of 2002. Although our assessment, testing, and evaluation resulted in our conclusion that as of April 27, 2007, our internal controls over financial reporting were effective, we cannot predict the outcome of our testing in future periods. If our internal controls are ineffective in future periods, our business and reputation could be harmed. We may incur additional expenses and commitment of management's time in connection with further evaluations, either of which could materially increase our operating expenses and accordingly reduce our net income.

Because new and modified laws, regulations, and standards are subject to varying interpretations in many cases due to their lack of specificity, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This evolution may result in continuing uncertainty regarding compliance matters and additional costs necessitated by ongoing revisions to our disclosure and governance practices.

Our ability to forecast earnings is limited by the impact of new accounting requirements such as SFAS No. 123R.

The Financial Accounting Standards Board requires companies to recognize the fair value of stock options and other share-based payment compensation to employees as compensation expense in the statement of income. Option pricing models require the input of highly subjective assumptions, including the expected stock price volatility, expected life, and forfeiture rate. We have chosen to base our estimate of future volatility using the implied volatility of traded options to purchase the Company's common stock as permitted by SAB No. 107. As of April 29, 2006, the contractual life of our stock options was shortened to seven years from ten years for options issued on or after this date, and to the extent that the shorter life changes employees' exercise behavior, it may change the expected term of an option going forward. SFAS No. 123R requires us to use estimated forfeitures, and therefore the adoption of SFAS No. 123R could have a material impact on the timing of and, based on the accuracy of estimates of future actual forfeitures, the amount of stock-based compensation expense. Given the unpredictable nature of the "Black Scholes" variables and other management assumptions such as number of options to be granted, underlying strike price, and associated income tax impacts, it is very difficult to estimate stock-based compensation expense for any given quarter or year. Any changes in these highly subjective assumptions may significantly impact our ability to make accurate forecasts of future earnings and volatility of our stock price. If another party asserts that the fair value of our employee stock options is misstated, securities class action litigation could be brought against us, or the market price of our common stock could decline, or both could occur. As a result, we could incur significant losses, and our operating results may be below our expectations and those of investors and stock market analysts.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

The table below sets forth information with respect to common repurchases by Network Appliance, Inc. for the second quarter of fiscal 2008:

Period	Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of the Repurchase Program(1)	Approximate Dollar Value of Shares That May Yet be Purchased Under the Repurchase Program(2)
July 28, 2007 - August 24, 2007	7,656,931	\$29.39	68,771,916	\$974,948,323
August 25, 2007 - September 21, 2007	2,775,000	\$27.02	71,546,916	\$899,975,313
September 22, 2007 - October 26, 2007	7,170,360	\$27.89	78,717,276	\$699,975,313
Total	<u>17,602,291</u>	\$28.40	78,717,276	\$699,975,313

- (1) This amount represented total number of shares purchased under our publicly announced repurchase programs since inception.
- (2) On May 13, 2003, our Board of Directors had authorized a stock repurchase program. As of October 26, 2007, our Board of Directors had authorized the repurchase of up to \$3,023,638,730 of common stock under this program. During the three-month period ended October 26, 2007, we repurchased 17,602,291 shares of our common stock at a weighted-average price of \$28.40 per share for an aggregate purchase price of \$499,973,010. As of October 26, 2007, we had repurchased 78,717,276 shares of our common stock at a weighted-average price of \$29.52 per share for an aggregate purchase price of \$2,323,663,519 since inception of the stock repurchase program, and the remaining authorized amount for stock repurchases under this program was \$699,975,313 with no termination date.

Item 3. Defaults upon Senior Securities

None

Item 4. Submission of Matters to a Vote of Security Holders

On September 19, 2007, we held our 2007 Annual Meeting of Stockholders. Voting results are summarized below:

Proposal I – To elect the following individuals to serve as members of the Board of Directors for the ensuing year or until their respective successors are duly elected and qualified:

Name	Votes For	Abstain
Daniel J. Warmenhoven	312,916,224	12,169,272
Donald T. Valentine	312,534,861	12,550,635
Jeffrey R. Allen	312,812,970	12,272,526
Carol A. Bartz	310,486,917	14,598,579
Alan L. Earhart	314,904,816	10,180,680
Edward Kozel	313,826,086	11,259,410
Mark Leslie	315,348,594	9,736,902
Nicholas G. Moore	314,825,931	10,259,565
George T. Shaheen	315,404,207	9,681,289
Robert T. Wall	311,037,351	14,048,145

Proposal II – To approve various amendments to the Company’s 1999 Stock Option Plan (1999 Plan).

Votes For	Against	Abstain	Brokers Non Vote
160,875,951	117,150,174	2,008,945	45,050,426

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Proposal III – To approve an amendment to the Company' s 1999 Stock Option Plan (1999 Plan) to increase the share reserve by an additional 7,200,000 shares of Common Stock.

<u>Votes For</u>	<u>Against</u>	<u>Abstain</u>	<u>Brokers Non Vote</u>
153,140,813	124,886,231	2,008,027	45,050,425

Proposal IV – To approve an amendment to the Company' s Employee Stock Purchase Plan (Purchase Plan) to increase the share reserve under the Purchase Plan by an additional 1,600,000 shares of Common Stock.

<u>Votes For</u>	<u>Against</u>	<u>Abstain</u>	<u>Brokers Non Vote</u>
256,061,048	22,098,298	1,875,724	45,050,426

Proposal V – To approve an amendment to Executive Compensation Plan for the incentive compensation payouts.

<u>Votes For</u>	<u>Against</u>	<u>Abstain</u>	<u>Brokers Non Vote</u>
272,906,152	5,225,980	1,903,248	45,050,116

Proposal VI – To ratify the appointment of Deloitte & Touche LLP as independent auditors of the Company for the fiscal year ending April 25, 2008.

<u>Votes For</u>	<u>Against</u>	<u>Abstain</u>
318,581,757	4,440,859	2,062,880

Item 5. Other Information

The information required by this item is incorporated by reference from our Proxy Statement for the 2007 Annual Meeting of Shareholders.

Item 6. Exhibits

<u>Exhibit No</u>	<u>Description</u>
2 .1(7)	Agreement and Plan of Merger of Network Appliance, Inc. (a Delaware corporation) and Network Appliance, Inc. (a California corporation).
2 .2(10)	Agreement and Plan of Merger dated as of November 3, 2003, by and among Network Appliance, Inc., Nagano Sub, Inc., and Spinnaker Networks, Inc.
2 .3(10)	Amendment to Merger Agreement, dated as of February 9, 2004, by and among Network Appliance, Inc., Nagano Sub, Inc., and Spinnaker Networks, Inc.
2 .4(16)	Agreement and Plan of Merger and Reorganization, dated as of June 15, 2005, by and among Network Appliance Inc., Dolphin Acquisition Corp, and Decru, Inc.
3 .1(7)	Certificate of Incorporation of the Company.
3 .2(7)	Bylaws of the Company.
3 .3(18)	Certificate of Amendment to the Bylaws of the Company.
4 .1(7)	Reference is made to Exhibits 3.1 and 3.2.
10.1(29)*	The Company' s Amended and Restated Employee Stock Purchase Plan.
10.2(8)*	The Company' s Amended and Restated 1995 Stock Incentive Plan.
10.3(2)	The Company' s Special Non-Officer Stock Option Plan.
10.4(29)*	The Company' s Amended and Restated 1999 Stock Incentive Plan.
10.5†(3)	OEM Distribution and License Agreement, dated October 27, 1998, by and between Dell Products L.P. and the Company.
10.6(4)	OEM Distribution and License Agreement, dated November 6, 1998, by and between Fujitsu Limited and the Company.
10.15†(6)	Patent Cross License Agreement dated December 11, 2000, by and between Intel Corporation and the Company.
10.16(1)*	Form of Indemnification Agreement entered into between the Company and its directors and officers.
10.17(9)	Short Form Termination of Operative Documents, dated April 24, 2002, by and between BNP Leasing Corporation and the Company.
10.18(11)*	Spinnaker Networks, Inc. 2000 Stock Plan.
10.19(14)*	Alacritus, Inc. 2005 Stock Plan.
10.20(13)*	The Company' s Fiscal Year 2005 Incentive Compensation Plan.
10.21(15)*	The Company' s Deferred Compensation Plan.
10.22(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1995 Stock Option Plan.
10.23(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1995 Stock Option Plan (Chairman of the Board or any Board Committee Chairperson).
10.24(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1995 Stock Option Plan (Restricted Stock Agreement).
10.25(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (Restricted Stock Unit Agreement).
10.26(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan.
10.27(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (Change of Control).
10.28(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (China).
10.29(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (Non-Employee Director Automatic Stock Option – Annual).
10.30(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (Non-Employee Director Automatic Stock Option – Initial).
10.31(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (France).

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<u>Exhibit No</u>	<u>Description</u>
10.32(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (India).
10.33(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (United Kingdom).
10.34(19)	Form of Stock Option Grant Notice and Option Agreement under the Decru, Inc. Amended and Restated 2001 Equity Incentive Plan and the 2001 Equity Incentive Plan filed under Attachment II.
10.35(19)	Form of Stock Option Grant Notice and Option Agreement under the Decru, Inc. 2001 Equity Incentive Plan and the 2001 Equity Incentive Plan filed under Attachment II.
10.36(19)	Form of Early Exercise Stock Purchase Agreement under the Decru, Inc. 2001 Equity Incentive Plan.
10.37(19)	Form of Restricted Stock Bonus Grant Notice and Agreement under the Decru, Inc. 2001 Equity Incentive Plan.
10.38(20)	Asset Purchase Agreement dated June 20, 2003, by and between Auspex Systems, Inc. and the Company.
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31.2	Certification of the Chief Financial Officer pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
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†	Specified portions of this agreement have been omitted and have been filed separately with the Commission pursuant to a request for confidential treatment.
*	Identifies management plan or compensatory plan or arrangement.

SIGNATURE

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

NETWORK APPLIANCE, INC.
(Registrant)

/s/ STEVEN J. GOMO

Steven J. Gomo
*Executive Vice President of Finance and
Chief Financial Officer*

Date: December 4, 2007

EXHIBIT INDEX

<u>Exhibit No</u>	<u>Description</u>
2 .1(7)	Agreement and Plan of Merger of Network Appliance, Inc. (a Delaware corporation) and Network Appliance, Inc. (a California corporation).
2 .2(10)	Agreement and Plan of Merger dated as of November 3, 2003, by and among Network Appliance, Inc., Nagano Sub, Inc., and Spinnaker Networks, Inc.
2 .3(10)	Amendment to Merger Agreement, dated as of February 9, 2004, by and among Network Appliance, Inc., Nagano Sub, Inc., and Spinnaker Networks, Inc.
2 .4(16)	Agreement and Plan of Merger and Reorganization, dated as of June 15, 2005, by and among Network Appliance Inc., Dolphin Acquisition Corp, and Decru, Inc.
3 .1(7)	Certificate of Incorporation of the Company.
3 .2(7)	Bylaws of the Company.
3 .3(18)	Certificate of Amendment to the Bylaws of the Company.
4 .1(7)	Reference is made to Exhibits 3.1 and 3.2.
10.1(29)*	The Company' s Amended and Restated Employee Stock Purchase Plan.
10.2(8)*	The Company' s Amended and Restated 1995 Stock Incentive Plan.
10.3(2)	The Company' s Special Non-Officer Stock Option Plan.
10.4(29)*	The Company' s Amended and Restated 1999 Stock Incentive Plan.
10.5†(3)	OEM Distribution and License Agreement, dated October 27, 1998, by and between Dell Products L.P. and the Company.
10.6(4)	OEM Distribution and License Agreement, dated November 6, 1998, by and between Fujitsu Limited and the Company.
10.15†(6)	Patent Cross License Agreement dated December 11, 2000, by and between Intel Corporation and the Company.
10.16(1)*	Form of Indemnification Agreement entered into between the Company and its directors and officers.
10.17(9)	Short Form Termination of Operative Documents, dated April 24, 2002, by and between BNP Leasing Corporation and the Company.
10.18(11)*	Spinnaker Networks, Inc. 2000 Stock Plan.
10.19(14)*	Alacritus, Inc. 2005 Stock Plan.
10.20(13)*	The Company' s Fiscal Year 2005 Incentive Compensation Plan.
10.21(15)*	The Company' s Deferred Compensation Plan.
10.22(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1995 Stock Option Plan.
10.23(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1995 Stock Option Plan (Chairman of the Board or any Board Committee Chairperson).
10.24(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1995 Stock Option Plan (Restricted Stock Agreement).
10.25(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (Restricted Stock Unit Agreement).
10.26(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan.
10.27(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (Change of Control).
10.28(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (China).
10.29(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (Non-Employee Director Automatic Stock Option – Annual).
10.30(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (Non-Employee Director Automatic Stock Option – Initial).
10.31(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (France).
10.32(23)	Form of Stock Option Agreement approved for use under the Company' s amended and restated 1999 Stock Option Plan (India).

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10.35(19)	Form of Stock Option Grant Notice and Option Agreement under the Decru, Inc. 2001 Equity Incentive Plan and the 2001 Equity Incentive Plan filed under Attachment II.
10.36(19)	Form of Early Exercise Stock Purchase Agreement under the Decru, Inc. 2001 Equity Incentive Plan.
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† Specified portions of this agreement have been omitted and have been filed separately with the Commission pursuant to a request for confidential treatment.

* Identifies management plan or compensatory plan or arrangement.

Network Appliance, Inc.
495 East Java Drive
Sunnyvale, California 94089
Telephone (408) 822-6000

Ladies and Gentlemen:

This master confirmation (“**Master Confirmation**”) dated as of August 13, 2007, is intended to supplement the terms and provisions of certain transactions (each, a “**Transaction**”) entered into from time to time between Bank of America, N.A. (“**Seller**”) and Network Appliance, Inc., a Delaware corporation (“**Purchaser**”). This Master Confirmation, taken alone, is neither a commitment by either party to enter into any Transaction nor evidence of a Transaction. The terms of any particular Transaction shall be set forth in a Supplemental Confirmation in the form of **Exhibit A** hereto, which references this Master Confirmation (the “**Supplemental Confirmation**”). This Master Confirmation and each Supplemental Confirmation together shall constitute a “Master Confirmation” as referred to in the Agreement specified below.

This Master Confirmation and each Supplemental Confirmation evidence a complete binding agreement between the Purchaser and Seller as to the subject matter and terms of each Transaction to which this Master Confirmation and the related Supplemental Confirmation relate and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

This Master Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if the Seller and the Purchaser had executed an agreement in such form (but without any Schedule except for the election of the laws of the State of New York as the governing law) on the Execution Date set forth on any Supplemental Confirmation. The parties hereby agree that no Transaction other than the Transaction to which this Master Confirmation relates shall be governed by the Agreement.

All provisions contained or incorporated by reference in the Agreement shall govern this Master Confirmation and each Supplemental Confirmation relating to a Transaction except as expressly modified herein or in the related Supplemental Confirmation. If, in relation to any Transaction to which this Master Confirmation and related Supplemental Confirmation relate, there is any inconsistency between the Agreement, this Master Confirmation and any Supplemental Confirmation, the following will prevail for purposes of such Transaction in the order of precedence indicated: (i) such Supplemental Confirmation; (ii) this Master Confirmation; and (iii) the Agreement.

ARTICLE 1
Definitions

Section 1.01 *Definitions*. As used in this Master Confirmation, the following terms shall have the following meanings:

“**10b-18 VWAP**” means, (A) for any Trading Day described in clause (x) of the definition of Trading Day hereunder, the volume-weighted average price at which the Common Stock trades as reported in the composite transactions for the principal United States securities exchange on which such Common Stock is then listed (or, if applicable, the Successor Exchange on which the Common Stock has been listed in accordance with Section 7.01(c)), on such Trading Day, excluding (i) trades that do not settle regular way, (ii) opening (regular way) reported trades in the consolidated system on such Trading Day, (iii) trades that occur in the last ten minutes before the scheduled close of trading on the Exchange on such Trading Day and ten minutes before the scheduled close of the primary trading in the market where the trade is effected, and (iv) trades on such Trading Day that do not satisfy the requirements of Rule 10b-18(b)(3), as determined in good faith by the Calculation Agent, or (B) for any Trading Day that is described in clause (y) of the definition of Trading Day hereunder, an amount determined in good faith by the Calculation Agent as 10b-18 VWAP. The Purchaser acknowledges that the Seller may refer to the Bloomberg Page “NTAP UQ <Equity> AQR SEC” (or any successor thereto), in its reasonable judgment, for such Trading Day to determine the 10b-18 VWAP.

“**Additional Termination Event**” has the meaning set forth in Section 7.01(a).

“**Agreement**” has the meaning set forth in the third paragraph of this Master Confirmation.

“**Affected Party**” has the meaning set forth in Section 14 of the Agreement.

“**Affected Transaction**” has the meaning set forth in Section 14 of the Agreement.

“**Affiliated Purchaser**” means any “affiliated purchaser” (as such term is defined in Rule 10b-18) of the Purchaser.

“**Alternative Termination Delivery Unit**” means (i) in the case of a Termination Event (other than a Merger Event or Nationalization) or Event of Default (as defined in the Agreement), one share of Common Stock and (ii) in the case of a Merger Event or Nationalization, a unit consisting of the number or amount of each type of property received by a holder of one share of Common Stock in such Merger Event or Nationalization; provided that if such Merger Event involves a choice of consideration to be received by holders of the Common Stock, an Alternative Termination Delivery Unit shall be deemed to include the amount of cash received by a holder who had elected to receive the maximum possible amount of cash as consideration for his shares.

“**Averaging Period**” means the period of consecutive Trading Days from and including the first Trading Day following the Hedging Completion Date to and including the Valuation Completion Date.

“**Bankruptcy Code**” has the meaning set forth in Section 9.07.

“**Business Day**” means any day on which the Exchange is open for trading.

“**Calculation Agent**” means Bank of America, N.A.

“**Common Stock**” has the meaning set forth in Section 2.01.

“**Communications Procedures**” has the meaning set forth in Annex A hereto.

“**Contract Period**” means the period commencing on and including the Execution Date and ending on and including the date all payments or deliveries of shares of Common Stock pursuant to Article 3 or Section 7.03 have been made.

“**Default Notice Day**” has the meaning set forth in Section 7.02(a).

“**De-Listing**” has the meaning set forth in Section 7.01(c).

“**Disrupted Day**” means a Scheduled Trading Day during the Contract Period that, as a result of the definition of Trading Day (whether because of a suspension of transactions pursuant to Section 4.02 of this Master Confirmation or otherwise), is not a Trading Day.

“**Early Termination Date**” has the meaning set forth in Section 14 of the Agreement.

“**Event of Default**” has the meaning set forth in Section 14 of the Agreement.

“**Exchange**” means the NASDAQ National Market.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Execution Date**” has the meaning set forth in Section 2.01.

“**Expiration Date**” means the first Scheduled Trading Day following the number of days following the Hedging Period as set forth on the applicable Supplemental Confirmation under the heading “Number of Days in Averaging Period” (the “**Scheduled Expiration Date**”); *provided, however*, if any Scheduled Trading Day during the Contract Period is a Disrupted Day, then the Expiration Date shall be extended by one Scheduled Trading Day for each such Disrupted Day; *provided, further*, if more than eight Scheduled Trading Days during the Contract Period are Disrupted Days, then on the eighth Scheduled Trading Day following the Scheduled Expiration Date, if a Valuation Completion Date has not yet occurred, an Additional Termination Event shall occur in respect of which the Purchaser is the sole Affected Party and a Transaction is the sole Affected Transaction.

“**Hedging Completion Date**” means the Trading Day on which the Seller completes the establishment of its initial hedge position with respect to a Transaction.

“**Hedging Price**” means the volume weighted average of the per share prices at which the Seller (or an affiliate of the Seller) purchases shares of Common Stock during the Hedging Period to establish Seller’s initial hedge position with respect to a Transaction.

“**Hedging Period**” has the meaning set forth in Section 2.04(a).

“**Indemnified Person**” has the meaning set forth in Section 9.02.

“**Indemnifying Party**” has the meaning set forth in Section 9.02.

“**Initial Payment Date**” means the first Business Day immediately following the Execution Date.

“**Master Confirmation**” has the meaning set forth in the first paragraph of this letter agreement.

“**Merger Event**” has the meaning set forth in Section 7.01(d).

“**Minimum Delivery Number**” means the number of shares of Common Stock, rounded down to the nearest integer, equal to (A) the Purchase Price divided by (B) the Upside Threshold.

“**Nationalization**” has the meaning set forth in Section 7.01(e).

“**Obligations**” has the meaning set forth in Section 9.02.

“**Purchase Price**” has the meaning set forth in Section 2.01.

“**Purchaser**” has the meaning set forth in the first paragraph of this Master Confirmation.

“**Regulation M**” means Regulation M under the Exchange Act.

“**Rule 10b-18**” means Rule 10b-18 promulgated under the Exchange Act (or any successor rule thereto).

“**Scheduled Trading Day**” means any day on which each national securities exchange on which any securities of the Purchaser are traded is scheduled to be open for trading for their respective regular trading sessions.

“**SEC**” means the Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Seller**” has the meaning set forth in the first paragraph hereto.

“**Seller Termination Share Purchase Period**” has the meaning set forth in Section 7.03.

“**Share De-listing Event**” has the meaning set forth in Section 7.01(c).

“**Successor Exchange**” has the meaning set forth in Section 7.01(c).

“**Supplemental Confirmation**” has the meaning set forth in the first paragraph of this Master Agreement.

“**Termination Amount**” has the meaning set forth in Section 7.02(a).

“**Termination Event**” has the meaning set forth in Section 14 of the Agreement.

“**Termination Price**” means the value of an Alternative Termination Delivery Unit to the Seller, as determined by the Calculation Agent.

“**Trading Day**” means (x) any Scheduled Trading Day (i) during which trading of any securities of the Purchaser on any national securities exchange has not been suspended, (ii) during which there has not been, in the Seller’s reasonable judgment, a material limitation in the trading of Common Stock or any options contract or futures contract related to the Common Stock, and (iii) during which there has been no suspension pursuant to Section 4.02 of this Master Confirmation, or (y) any day that,

notwithstanding the occurrence of events contemplated in clauses (i), (ii) and (iii) of this definition, the Calculation Agent determines to be a Trading Day.

“**Transaction**” has the meaning set forth in the first paragraph of this Master Confirmation.

“**Upside Threshold**” means, subject to the proviso contained in Section 2.04(b), such percent of the Hedging Price as set forth in the applicable Supplemental Confirmation under the heading “Upside Threshold Percent.”

“**Upside Threshold Percent**” shall mean the percent set forth in the applicable Supplemental Confirmation under the heading “Upside Threshold Percent.”

“**Valuation Completion Date**” means the Trading Day, during the period commencing on the tenth (10th) Business Day following the Hedging Completion Date and ending on and including the Expiration Date, specified as such by the Seller, in its sole judgment, by delivering a notice designating such Trading Day as a Valuation Completion Date by the close of business on the Business Day immediately following such Business Day; *provided, however*, that if the Seller fails to validly designate the Valuation Completion Date prior to the Expiration Date, the Valuation Completion Date shall be the Expiration Date.

“**Valuation Number**” has the meaning set forth in Section 3.01(b) of this Master Confirmation.

“**Valuation Price Adjustment Amount**” shall mean the dollar amount set forth on the applicable Supplemental Confirmation representing the discount from the average of the 10b-18 VWAPs for all Trading Days in the Averaging Period.

“**VWAP Termination Price**” shall be the price per share set forth on the applicable Supplemental Confirmation under the heading “VWAP Termination Price.”

ARTICLE 2 purchase of the stock

Section 2.01 *Purchase of the Stock*. Subject to the terms and conditions of this Master Confirmation, the Purchaser agrees to purchase from the Seller, and the Seller agrees to sell to the Purchaser, on such date as set forth on the applicable Supplemental Confirmation under the heading “Execution Date” or on such other Business Day as the Purchaser and the Seller shall otherwise agree (the “**Execution Date**”), a number of shares of the Purchaser’s common stock, par value \$0.001 per share (“**Common Stock**”), for an aggregate purchase price equal to such dollar amount as set forth on the applicable Supplemental Confirmation under the heading “Purchase Price” (the “**Purchase Price**”). The number of shares of Common Stock purchased by the Purchaser hereunder shall be determined in accordance with the terms of this Master Confirmation.

Section 2.02 *Initial Payments*. On the Initial Payment Date, the Purchaser shall pay an amount equal to the Purchase Price to the Seller.

Section 2.03 *Conditions to Seller’s Obligations*. The Seller’s obligations under this Agreement are subject to the conditions that (a) the representations and warranties made by the Purchaser in this Agreement shall be true and correct as of the date hereof and the Initial Payment and (b) the Seller shall have received an opinion of the counsel for the Purchaser, as of the date of this Master Confirmation, substantially to the effect set forth in **Exhibit D**.

Section 2.04 *Hedging Period*. (a) On each Trading Day beginning on the first Trading Day immediately following the Initial Payment Date and ending on the Hedging Completion Date, an affiliate of the Seller shall effect, for the account of the Seller, purchases of shares of Common Stock to establish Seller's initial position to hedge the Seller's price and market risk in connection with a Transaction (the period of consecutive Trading Days on which such purchases for a Transaction are effected being collectively referred to as the "**Hedging Period**" for a Transaction).

(b) At the conclusion of the Hedging Period, based on the amounts and prices at which an affiliate of the Seller effects purchases of shares of Common Stock during the Hedging Period to establish Seller's initial hedge position in connection with a Transaction, the Calculation Agent shall determine the Hedging Price, the Upside Threshold and the Minimum Delivery Number for a Transaction.

(c) On the first Business Day following the Hedging Completion Date, in addition to satisfying its obligations under Section 3.01(a), the Seller shall deliver to the Purchaser a pricing supplement to the applicable Supplemental Confirmation, substantially in the form of **Exhibit B** attached hereto, setting forth the Hedging Price, the Upside Threshold, the Minimum Delivery Number and the first day of the Averaging Period for such Transaction.

ARTICLE 3 Share Deliveries

Section 3.01 *Delivery of Shares*. (a) On the first Business Day immediately following the Hedging Completion Date, the Seller shall deliver to the Purchaser the number of shares of Common Stock equal to the Minimum Delivery Number.

(b) On the third Business Day immediately following the Valuation Completion Date, the Seller shall deliver to the Purchaser the number of shares of Common Stock equal to (i) the number of shares of Common Stock, rounded down to the nearest integer, equal to (x) the Purchase Price divided by (y) the average of the 10b-18 VWAPs for all Trading Days in the Averaging Period minus the dollar amount set forth on the applicable Supplemental Confirmation under the heading "Valuation Price Adjustment Amount." (collectively, the "**Valuation Number**"), minus (ii) the Minimum Delivery Number; *provided, however*, that if the Valuation Number is less than the Minimum Delivery Number, the Valuation Number shall be equal to such Minimum Delivery Number.

(c) Delivery pursuant to this Article 3 shall be effected in accordance with the Seller's customary procedures.

ARTICLE 4 Market Transactions

Section 4.01 *Transactions by the Seller*. (a) The parties agree and acknowledge that:

(i) During the Hedging Period, the Averaging Period and any Seller Termination Share Purchase Period, the Seller (or its agent or affiliate) may effect transactions in shares of Common Stock in connection with this Master Confirmation. The timing of such transactions by the Seller, the price paid or received per share of Common Stock pursuant to such transactions and the manner in which such transactions are made, including without limitation whether such transactions are made on any securities exchange or privately, shall be within the sole judgment of the Seller; provided that the Seller shall use good faith efforts to make all purchases of

Common Stock in a manner that would comply with the limitations set forth in clauses (b)(2), (b)(3), (b)(4) and (c) of Rule 10b-18 as if such rule were applicable to such purchases.

(ii) The Purchaser shall, at least one day prior to the first day of the Hedging Period, the Averaging Period or the Seller Termination Share Purchase Period, notify the Seller of the total number of shares of Common Stock purchased in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception set forth in Rule 10b-18(b)(4) by or for the Purchaser or any of its Affiliated Purchasers during each of the four calendar weeks preceding such day and during the calendar week in which such day occurs (“**Rule 10b-18 purchase**” and “**blocks**” each being used as defined in Rule 10b-18), which notice shall be substantially in the form set forth as **Exhibit C** hereto.

(b) The Purchaser acknowledges and agrees that (i) all transactions effected pursuant to Section 4.01 hereunder shall be made in the Seller’s sole judgment and for the Seller’s own account and (ii) the Purchaser does not have, and shall not attempt to exercise, any influence over how, when or whether to effect such transactions, including, without limitation, the price paid or received per share of Common Stock pursuant to such transactions whether such transactions are made on any securities exchange or privately. It is the intent of the Seller and the Purchaser that all Transactions comply with the requirements of Rule 10b5-1(c) of the Exchange Act and that this Master Confirmation and any Supplemental Confirmation shall be interpreted to comply with the requirements of Rule 10b5-1(c) (1)(i)(B) and the Seller shall take no action that results in the Transaction not so complying with such requirements.

(c) Notwithstanding anything to the contrary in this Master Confirmation or any Supplemental Confirmation, the Purchaser acknowledges and agrees that, on any day, the Seller shall not be obligated to deliver or receive any shares of Common Stock to or from the Purchaser and the Purchaser shall not be entitled to receive any shares of Common Stock from the Seller on such day, to the extent (but only to the extent) that after such transactions the Seller’s ultimate parent entity would directly or indirectly beneficially own (as such term is defined for purposes of Section 13(d) of the Exchange Act) at any time on such day in excess of 4.99% of the outstanding shares of Common Stock. Any purported receipt or delivery of shares of Common Stock shall be void and have no effect to the extent (but only to the extent) that after any receipt or delivery of such shares of Common Stock the Seller’s ultimate parent entity would directly or indirectly so beneficially own in excess of 4.99% of the outstanding shares of Common Stock. If, on any day, any delivery or receipt of shares of Common Stock by the Seller is not effected, in whole or in part, as a result of this provision, the Seller’s and Purchaser’s respective obligations to make or accept such receipt or delivery shall not be extinguished and such receipt or delivery shall be effected over time as promptly as the Seller determines, in the reasonable determination of the Seller, that after such receipt or delivery its ultimate parent entity would not directly or indirectly beneficially own in excess of 4.99% of the outstanding shares of Common Stock.

Section 4.02 *Suspension of Transactions in Common Stock*. (a) If the Seller, in its sole judgment, reasonably determines that it is appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by the Seller) for the Seller to refrain from effecting transactions in Common Stock on any Business Day during the Contract Period or to effect such transactions on such Business Day at a volume lower than that otherwise effected by the Seller hereunder, the Seller (or its agent or affiliate) shall not effect transactions in shares of Common Stock with respect to any Transaction on such day or effect such transactions at a volume reasonably determined by the Seller in its sole judgment; provided that if the Seller decides to effect any transaction hereunder at such lower volume, the Calculation Agent shall be entitled to make appropriate adjustments to the term of such Transaction under Section 8.02 to reflect the effect of such diminished volume. The Seller shall

notify the Purchaser of the exercise of the Seller's rights pursuant to this Section 4.02(a) upon such exercise and shall subsequently notify the Purchaser on the day the Seller believes that the Seller may resume purchasing or selling or purchasing at the volume level anticipated at the outset of such Transaction, as applicable, Common Stock. The Seller shall not be obligated to communicate to the Purchaser the reason for the Seller's exercise of its rights pursuant to this Section 4.02(a).

(b) The Purchaser agrees that, during the Contract Period, neither the Purchaser nor any of its affiliates or agents shall make any distribution (as defined in Regulation M) of Common Stock, or any security for which the Common Stock is a reference security (as defined in Regulation M) or take any other action that would, in the view of the Seller, preclude purchases by the Seller of the Common Stock or cause the Seller to violate any law, rule or regulation with respect to such purchases.

Section 4.03 *Purchases of Common Stock by the Purchaser*. Without the prior written consent of the Seller, the Purchaser shall not, and shall cause its affiliates and affiliated purchasers (each as defined in Rule 10b-18) not to, directly or indirectly (including, without limitation, by means of a derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any shares of Common Stock (or equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable for shares of Common Stock during the Contract Period.

ARTICLE 5

Representations, Warranties And Agreements

Section 5.01 *Repeated Representations, Warranties and Agreements of the Purchaser*. The Purchaser represents and warrants to, and agrees with, the Seller, (i) on the date hereof, (ii) on any Execution Date and (iii) on any date on which the Purchaser elects to receive any delivery or payment pursuant to this Master Confirmation or any Supplemental Confirmation, that:

(a) **Disclosure; Compliance with Laws**. The reports and other documents filed by the Purchaser with the SEC pursuant to the Exchange Act when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading. The Purchaser is not in possession of any material nonpublic information regarding the Purchaser or the Common Stock.

(b) **Rule 10b5-1**. The Purchaser acknowledges that (i) the Purchaser does not have, and shall not attempt to exercise, any influence over how, when or whether to effect purchases of Common Stock by the Seller (or its agent or affiliate) in connection with this Master Confirmation or any Supplemental Confirmation and (ii) the Purchaser is entering into the Agreement, this Master Confirmation and any Supplemental Confirmation in good faith and not as part of a plan or scheme to evade compliance with federal securities laws including, without limitation, Rule 10b-5 promulgated under the Exchange Act. The Purchaser also acknowledges and agrees that any amendment, modification, waiver or termination of this Master Confirmation or any Supplemental Confirmation must be effected in accordance with the requirements for the amendment or termination of a "plan" as defined in Rule 10b5-1(c) under the Exchange Act. Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act, and no amendment, modification or waiver shall be made at any time at which the Purchaser or any officer or director of the Purchaser is aware of any material nonpublic information regarding the Purchaser or the Common Stock.

(c) **No Facilitation of Distribution.** The Purchaser is not entering into this Master Confirmation or any Supplemental Confirmation to facilitate a distribution of the Common Stock (or any security convertible into or exchangeable for Common Stock) or in connection with a future issuance of securities.

(d) **No Manipulation.** The Purchaser is not entering into this Master Confirmation or any Supplemental Confirmation to create actual or apparent trading activity in the Common Stock (or any security convertible into or exchangeable for Common Stock) or to manipulate the price of the Common Stock (or any security convertible into or exchangeable for Common Stock).

(e) **Regulation M.** The Purchaser is not engaged in a distribution, as such term is used in Regulation M, that would preclude purchases by the Purchaser or the Seller of the Common Stock or cause the Seller to violate any law, rule or regulation with respect to such purchases.

(f) **Board Authorization.** The Purchaser is entering into this Master Confirmation and any Supplemental Confirmation in connection with its share repurchase program, which was approved by its board of directors and publicly disclosed, solely for the purposes stated in such board resolution and public disclosure. There is no internal policy of the Purchaser, whether written or oral, that would prohibit the Purchaser from entering into any aspect of the Transactions contemplated hereby or thereby, including, but not limited to, the purchases of shares of Common Stock to be made pursuant hereto or thereto.

(g) **Due Authorization and Good Standing.** The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. This Master Confirmation has been duly authorized, executed and delivered by the Purchaser and (assuming due authorization, execution and delivery thereof by the Seller) constitutes a valid and legally binding obligation of the Purchaser. The Purchaser has all corporate power to enter into this Master Confirmation and any Supplemental Confirmation and to consummate the transactions contemplated hereby and thereby and to purchase the Common Stock in accordance with the terms hereof and thereof.

(h) **Certain Transactions.** There has not been any public announcement (as defined in Rule 165(f) under the Securities Act) of any merger, acquisition, or similar transaction involving a recapitalization relating to the Purchaser that would fall within the scope of Rule 10b-18(a)(13)(iv).

(i) **Solvency.** The assets of the Purchaser at their fair valuation exceed the liabilities of the Purchaser, including contingent liabilities; the capital of the Purchaser is adequate to conduct the business of the Purchaser and the Purchaser has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature.

(j) **Required Filings.** The Purchaser has made, and will use its best efforts to make, all filings required to be made by it with the SEC, any securities exchange or any other regulatory body with respect to the Transactions contemplated hereby.

(k) **No Conflict.** The execution and delivery by the Purchaser of, and the performance by the Purchaser of its obligations under, this Master Confirmation and any Supplemental Confirmation, as applicable, and the consummation of the transactions herein or therein contemplated do not conflict with or violate (i) any provision of the certificate of incorporation, by-laws or other constitutive documents of the Purchaser, (ii) any statute or order, rule, regulation or judgment of any court or governmental agency or body having jurisdiction over the Purchaser or any of its subsidiaries or any of

their respective assets or (iii) any contractual restriction binding on or affecting the Purchaser or any of its subsidiaries or any of its assets.

(l) **Consents.** All governmental and other consents that are required to have been obtained by the Purchaser with respect to performance, execution and delivery of this Master Confirmation or any Supplemental Confirmation, as applicable, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

(m) **Investment Company Act.** The Purchaser is not and, after giving effect to the transactions contemplated in this Master Confirmation or any Supplemental Confirmation, as applicable, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(n) **Commodity Exchange Act.** The Purchaser is an “eligible contract participant,” as such term is defined in Section 1(a)(12) of the Commodity Exchange Act, as amended.

Section 5.02 *Additional Representations, Warranties and Agreements.* The Purchaser and the Seller represent and warrant to, and agree with, each other that:

(a) **Exempt Transaction.** Each party acknowledges that all Transactions pursuant to this Master Confirmation or any Supplemental Confirmation are intended to be exempt from registration under the Securities, by virtue of Section 4(2) thereof and the provisions of Regulation D promulgated thereunder (“**Regulation D**”). Accordingly, each party represents and warrants to the other that (i) it has the financial ability to bear the economic risk of its investment in each Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined under Regulation D, (iii) it will purchase each Transaction for investment and not with a view to the distribution or resale thereof in a manner that would violate the Securities Act, and (iv) the disposition of each Transaction is restricted under this Master Confirmation, the Securities Act and state securities laws.

(b) **Agency.** Each party acknowledges that Banc of America Securities LLC (“**BAS**”), an affiliate of the Seller may from time to time act as agent on behalf of the Seller in effecting this Master Confirmation and any Supplemental Confirmation. Each party acknowledges that BAS shall have no liability to either party under this Master Confirmation or any Supplemental Confirmation. BAS is authorized to act as agent for the Seller.

(c) **Non-Reliance.** Each party has entered into this Master Confirmation solely in reliance on its own judgment. Neither party has any fiduciary obligation to the other party relating to this Master Confirmation nor any Transactions contemplated hereby. In addition, neither party has held itself out as advising, or has held out any of its employees or agents as having the authority to advise, the other party as to whether or not the other party should enter into this Master Confirmation nor any Transactions contemplated hereby, any subsequent actions relating to this Master Confirmation or any other matters relating to this Master Confirmation. Neither party shall have any responsibility or liability whatsoever in respect of any advice of this nature given, or views expressed, by it or any such persons to the other party relating to Master Confirmation nor any Transactions contemplated hereby, whether or not such advice is given or such views are expressed at the request of the other party. The Purchaser has conducted its own analysis of the legal, accounting, tax and other implications of this Master Confirmation and the Transactions contemplated hereby and consulted such advisors, accountants and counsel as it has deemed necessary.

Section 5.03 *Representations and Warranties of the Seller*. The Seller represents and warrants to the Purchaser that:

(a) **Due Authorization**. This Master Confirmation has been duly authorized, executed and delivered by the Seller and (assuming due authorization, execution and delivery thereof by the Purchaser) constitutes a valid and legally binding obligation of the Seller. The Seller has all corporate power to enter into this Master Confirmation and any Supplemental Confirmation, as applicable, and to consummate the transactions contemplated hereby and to deliver the Common Stock in accordance with the terms hereof or thereof.

(b) **Right to Transfer**. The Seller will, on the first Business Day immediately following the Hedging Completion Date, have the free and unqualified right to transfer the Number of Shares of Common Stock to be delivered by the Seller pursuant to Section 2.01(a) hereof, free and clear of any security interest, mortgage, pledge, lien, charge, claim, equity or encumbrance of any kind.

ARTICLE 6 Additional Covenants

Section 6.01 *Purchaser's Further Assurances*. The Purchaser hereby agrees with the Seller that the Purchaser shall cooperate with the Seller, and execute and deliver, or use its best efforts to cause to be executed and delivered, all such other instruments, and to obtain all consents, approvals or authorizations of any person, and take all such other actions as the Seller may reasonably request from time to time, consistent with the terms of this Master Confirmation, in order to effectuate the purposes of this Master Confirmation and the Transactions contemplated hereby.

Section 6.02 *Purchaser's Hedging Transactions*. The Purchaser hereby agrees with the Seller that the Purchaser shall not, during the Contract Period, enter into or alter any corresponding or hedging transaction or position with respect to the Common Stock (including, without limitation, with respect to any securities convertible or exchangeable into the Common Stock) and agrees not to alter or deviate from the terms of this Master Confirmation.

Section 6.03 *No Communications*. The Purchaser hereby agrees with the Seller that the Purchaser shall not, directly or indirectly, communicate any information relating to the Common Stock or a Transaction (including any notices required by Section 6.04) to any employee of the Seller, other than as set forth in the Communications Procedures attached as **Annex A** hereto.

Section 6.04 *Notice of Certain Transactions*. If at any time during the Contract Period, the Purchaser makes, or expects to be made, or has made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any merger, acquisition, or similar transaction involving a recapitalization relating to the Purchaser (other than any such transaction in which the consideration consists solely of cash and there is no valuation period, or as to which the completion of such transaction or the completion of the vote by target shareholders has occurred), then the Purchaser shall (i) notify the Seller prior to the opening of trading in the Common Stock on any day on which the Purchaser makes, or expects to be made, or has made any such public announcement, (ii) notify the Seller promptly following any such announcement (or, if later, prior to the opening of trading in the Common Stock on the first day of any Seller Termination Share Payment Period) that such announcement has been made and (iii) promptly deliver to the Seller following the making of any such announcement (or, if later, prior to the opening of trading in the Common Stock on the first day of any Seller Termination Share Payment Period), a certificate indicating (A) the Purchaser's average daily Rule 10b-18 purchases (as defined in Rule 10b-18) during the three full calendar months preceding the date of such announcement and (B) the

Purchaser's block purchases (as defined in Rule 10b-18) effected pursuant to paragraph (b)(4) of Rule 10b-18 during the three full calendar months preceding the date of such announcement. In addition, the Purchaser shall promptly notify the Seller of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Accordingly, the Company acknowledges that its actions in relation to any such announcement or transaction must comply with the standards set forth in Section 6.03.

ARTICLE 7 Termination

Section 7.01 *Additional Termination Events*. (a) An Additional Termination Event shall occur in respect of which the Purchaser is the sole Affected Party and a Transaction is the sole Affected Transaction if, on any day, the Seller reasonably determines, in its sole judgment, that it is unable to establish, re-establish or maintain in an economically efficient manner any hedging transactions reasonably necessary in the normal course of such party's business of hedging the price and market risk of entering into and performing under a Transaction, due to market illiquidity, illegality, lack of availability of hedging transaction market participants or any other factor.

(b) An Additional Termination Event shall occur in respect of which the Purchaser is the sole Affected Party and a Transaction is the sole Affected Transaction if (i) a Share De-listing Event occurs; (ii) a Merger Event occurs; (iii) a Nationalization occurs, (iv) any event described in Section 8.02 occurs with respect to which, the Calculation Agent determines in its sole judgment, that it is impracticable to effect any adjustment contemplated by Section 8.02 in order to preserve the fair value of the Transaction to the Seller, (v) the 10b-18 VWAP on any Trading Day following the Execution Date shall have been less than such dollar amount set forth on the applicable Supplemental Confirmation under the heading "**VWAP Termination Price**" (subject to adjustment under Section 8.02) or (vi) an event described in paragraph III of **Annex A** occurs.

(c) A "**Share De-listing Event**" means that at any time during the Contract Period, the Common Stock ceases to be listed, traded or publicly quoted on the Exchange for any reason (other than a Merger Event, a "**De-Listing**") and are not immediately re-listed, traded or quoted as of the date of such de-listing, on another U.S. national securities exchange or a U.S. automated interdealer quotation system (a "**Successor Exchange**"), provided that it shall not constitute an Additional Termination Event if the Common Stock is immediately re-listed on a Successor Exchange upon its De-Listing from the Exchange, and the Successor Exchange shall be deemed to be the Exchange for all purposes. In addition, in such event, the Seller shall make any commercially reasonable adjustments it deems necessary to the terms of the Transaction.

(d) A "**Merger Event**" means the public announcement, including any public announcement as defined in Rule 165(f) of the Securities Act (by the Purchaser or otherwise) at any time during the Contract Period of any (i) planned recapitalization, reclassification or change of the Common Stock that will, if consummated, result in a transfer of more than 20% of the outstanding shares of Common Stock, (ii) planned consolidation, amalgamation, merger or similar transaction of the Purchaser with or into another entity (other than a consolidation, amalgamation or merger in which the Purchaser will be the continuing entity and which does not result in any such recapitalization, reclassification or change of more than 20% of such shares outstanding), (iii) other takeover offer for the shares of Common Stock that is aimed at resulting in a transfer of more than 20% of such shares of Common Stock (other than such shares owned or controlled by the offeror) or (iv) irrevocable commitment to any of the foregoing.

(e) A “**Nationalization**” means that all or substantially all of the outstanding shares of Common Stock or assets of the Purchaser are nationalized, expropriated or are otherwise required to be transferred to any governmental agency, authority or entity.

Section 7.02 *Consequences of Additional Termination Events.* (a) In the event of the occurrence or effective designation of an Early Termination Date under the Agreement, in lieu of payment of the amount payable in respect of a Transaction pursuant to Sections 6(d) and 6(e) of the Agreement (the “**Termination Amount**”), the Seller shall be obligated to deliver to the Purchaser the Alternative Termination Delivery Units pursuant to Section 7.03, unless the Purchaser elects cash settlement (which election shall be binding), as set forth in Section 7.02(b), and notifies the Seller of such election by delivery of written notice to the Seller on the Business Day immediately following the Purchaser’s receipt of a notice (as required by Section 6(d) of the Agreement following the designation of an Early Termination Date in respect of such Transaction or in respect of all transactions under the Agreement) setting forth the amounts payable by the Seller with respect to such Early Termination Date (the date of such delivery, the “**Default Notice Day**”); provided that the Purchaser’s election to receive the Alternative Termination Delivery Units pursuant to Section 7.03 shall not be valid and cash settlement shall apply if the representations and warranties made by the Purchaser to the Seller in Section 5.01 are not true and correct as of the date the Seller makes such election, as if made on such date.

(b) If cash settlement applies in respect of an Early Termination Date, Section 6 of the Agreement shall apply.

Section 7.03 *Alternative Termination Settlement.* Subject to Section 7.02(a), unless the Purchaser elects cash settlement pursuant to Section 7.02(b), (i) the Seller shall, beginning on the first Trading Day following the Default Notice Day and ending when the Seller shall have satisfied its obligations under this clause (the “**Seller Termination Share Purchase Period**”), purchase (subject to the provisions of Section 4.01 and Section 4.02 hereof) a number of Alternative Termination Delivery Units equal to (A) the Termination Amount divided by (B) the Termination Price; and (ii) the Seller shall deliver such Alternative Termination Delivery Units to the Purchaser on the settlement dates relating to such purchases.

Section 7.04 *Notice of Default.* If an Event of Default occurs in respect of the Purchaser, the Purchaser will, promptly upon becoming aware of it, notify the Seller specifying the nature of such Event of Default.

ARTICLE 8 Adjustments

Section 8.01 *Reserved.*

Section 8.02 *Dilution Adjustments.* If (x) any corporate event occurs involving the Purchaser or the Common Stock (including, without limitation, any cash dividends, a spin-off, a stock split, stock or other dividend or distribution, reorganization, rights offering or recapitalization or any other event having a dilutive or concentrative effect on the Common Stock), or (y) as a result of the definition of Trading Day (whether because of a suspension of transactions pursuant to Section 4.02 or otherwise), any day that would otherwise be a Trading Day during the Contract Period is not a Trading Day or on such Trading Day, pursuant to Section 4.02, the Seller effects transactions with respect to shares of Common Stock at a volume lower than originally anticipated with respect to a Transaction or (z) as a result of market conditions, the Seller incurs additional costs in connection with maintaining its hedge position with respect to a Transaction (including, without limitation, the insufficient availability of stock lenders willing

and able to lend shares of Common Stock with a borrow cost not significantly greater than the cost as of the date hereof and otherwise on terms consistent with those as of the date hereof), then in any such case, the Calculation Agent shall make corresponding adjustments with respect to any one or more of the Upside Threshold, the Minimum Delivery Number and any other variable or term relevant to the terms of the Transaction, as the Calculation Agent determines appropriate to preserve the fair value of the Transaction to the Seller, and shall determine the effective date of such adjustment. For the avoidance of doubt, notwithstanding any such adjustment by the Calculation Agent, nothing in this Section 8.02 shall result in Purchaser making any payment to the Seller or delivering any shares of Common Stock to the Seller in connection therewith.

ARTICLE 9 miscellaneous

Section 9.01 *Successors and Assigns*. All covenants and agreements in this Master Confirmation or any Supplemental Confirmation made by or on behalf of either of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not.

Section 9.02 *Purchaser Indemnification*. The Purchaser (the “**Indemnifying Party**”) agrees to indemnify and hold harmless the Seller and its officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses, claims, damages and liabilities, joint or several (collectively, “**Obligations**”), to which an Indemnified Person may become subject arising out of or in connection with this Master Confirmation or any Supplemental Confirmation or any claim, litigation, investigation or proceeding relating thereto, regardless of whether any of such Indemnified Person is a party thereto, and to reimburse, within 30 days, upon written request, each such Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparation for, providing evidence for or defending any of the foregoing, *provided, however*, that the Indemnifying Party shall not have any liability to any Indemnified Person to the extent that such Obligations (i) are finally determined by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnified Person (and in such case, such Indemnified Person shall promptly return to the Indemnifying Party any amounts previously expended by the Indemnifying Party hereunder) or (ii) are trading losses incurred by the Seller as part of its purchases or sales of shares of Common Stock pursuant to this Master Confirmation or any Supplemental Confirmation (unless the Purchaser has breached any agreement, term or covenant herein).

Section 9.03 *Assignment and Transfer*. Notwithstanding the Agreement, the Seller may assign any of its rights or duties hereunder to any one or more of its affiliates without the prior written consent of the Purchaser. Notwithstanding any other provision in this Master Confirmation or any Supplemental Confirmation to the contrary requiring or allowing Seller to purchase, sell, receive or deliver any shares of Common Stock or other securities to or from the Purchaser, Seller may designate any of its affiliates to purchase, sell, receive or deliver such shares of Common Stock or other securities and otherwise to perform the Seller’ s obligations in respect of a Transaction and any such designee may assume such obligations. The Seller shall be discharged of its obligations to the Purchaser to the extent of any such performance.

Section 9.04 *Calculation Agent*. All determinations made by the Calculation Agent shall be made in good faith and in a commercially reasonable manner. Following any calculation by the Calculation Agent hereunder, upon a prior written request by the Purchaser, the Calculation Agent will provide to the Purchaser by e-mail to the e-mail address provided by the Purchaser in such a prior written

request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such calculation.

Section 9.05 *Confidentiality*. The Seller and the Purchaser hereby agree not to issue any press release, articles, advertising, publicity or other matter relating to this Master Confirmation, any Supplemental Confirmation or any Transaction or mentioning or implying the name of the parties hereto or thereto or the subject matter hereof or thereto, except as may be required by law, and then only after providing the other party with an opportunity to review and comment thereon. Notwithstanding the foregoing, there is no limitation on (i) disclosure of the tax treatment or any fact that may be relevant to understanding the purported or claimed Federal income tax treatment of any Transaction or (ii) the filing of this Master Confirmation or any Supplemental Confirmation by the Purchaser with the SEC. The foregoing does not constitute an authorization to disclose the identity of any existing or future party to a Transaction or their representatives or, except relating to any disclosure of the tax structure or tax treatment, any specific pricing terms or commercial or financial information. The Purchaser hereby agrees to use reasonable efforts to seek confidential treatment under Rule 406 of the Securities Act for any pricing terms contained in any Supplemental Confirmation filed by the Purchaser with the SEC.

Section 9.06 *Unenforceability and Invalidity*. To the extent permitted by law, the unenforceability or invalidity of any provision or provisions of this Master Confirmation or any Supplemental Confirmation shall not render any other provision or provisions herein or therein contained unenforceable or invalid.

Section 9.07 *Securities Contract*. The parties hereto agree and acknowledge as of the date hereof that (i) the Seller is a “financial institution” within the meaning of Section 101(22) of Title 11 of the United States Code (the “**Bankruptcy Code**”) and (ii) this Master Confirmation and any Supplemental Confirmation shall be deemed a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, entitled to the protection of Sections 362(b)(6) and 555 of the Bankruptcy Code.

Section 9.08 *No Collateral, Netting or Setoff*. Notwithstanding any provision of the Agreement, or any other agreement between the parties, to the contrary, the obligations of the Purchaser hereunder are not secured by any collateral. Obligations under a Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Master Confirmation or any Supplemental Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under such Transaction, whether arising under the Agreement, this Master Confirmation, any Supplemental Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment.

Section 9.09 *Notices*. Unless otherwise specified herein, any notice, the delivery of which is expressly provided for in this Master Confirmation or any Supplemental Confirmation, may be made by telephone, to be confirmed in writing to the address below. Changes to the information below must be made in writing.

- (a) If to the Purchaser:
Network Appliance, Inc.
7301 Kit Creek Road
P.O. Box 13917

Research Triangle Park, NC 27709
Attn: Ingemar Lanevi, VP and Corporate Treasurer
Telephone: 919-476-5750
Facsimile:

(b) If to the Seller:
Bank of America, N.A.
c/o Banc of America Securities LLC
9 West 57th Street, 40th Floor
Attn: John Servidio, VP and Counsel
Telephone No: 212-847-6527
Facsimile No: 212-230-8610

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Master Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,

BANK OF AMERICA, N.A.

By: /s/ Christopher A. Hutmaker

Name: Christopher A. Hutmaker

Title: Principal

Confirmed as of the date first
above written:

NETWORK APPLIANCE, INC.

By: /s/ Ingemar Lanevi

Name: Ingemar Lanevi

Title: Vice President and Corporate Treasurer

COMMUNICATIONS PROCEDURES

August 13, 2007

I. Introduction

Network Appliance, Inc., a Delaware corporation (“**Counterparty**”) and Bank of America, N.A. (“**BofA**”) have adopted these communications procedures (the “**Communications Procedures**”) in connection with entering into the Master Confirmation (the “**Master Confirmation**”) dated as of August 13, 2007 between BofA and Counterparty relating to the sale by BofA to Counterparty of common stock, par value \$0.001 per share, or security entitlements in respect thereof (the “**Common Stock**”) of the Counterparty. These Communications Procedures supplement, form part of, and are subject to the Master Confirmation.

II. Communications Rules

1. From the date hereof until the end of the Contract Period, neither Counterparty, nor any Employee of Counterparty, nor any Designee of Counterparty shall (a) engage in any Program Related Communication with any Personnel, other than any of the Permitted Contact, or (b) in any event disclose any Material Non-Public Information to any Personnel, other than any of the Permitted Contacts, and

2. Subject to the preceding provision, the Counterparty, any Employee of Counterparty and any Designee of Counterparty may at any time engage in any Non-Program Related Communication.

III. Termination

If, in the sole judgment of any Personnel or any affiliate or Employee of BofA participating in any Communication with Counterparty or any Designee of Counterparty, such Communication would not be permitted by these Communications Procedures, such Personnel or such affiliate or Employee of BofA shall immediately terminate such Communication. In such case, or if such Personnel or such affiliate or Employee of BofA determines following completion of any Communication with Counterparty, or any Designee of Counterparty, that such Communication was not permitted by these Communications Procedures, such Personnel or such affiliate or Employee of BofA shall promptly consult with his or her supervisors and with counsel for BofA regarding such Communication. If, in the reasonable judgment of BofA’s counsel following such consultation, there is more than an insignificant risk that such Communication could materially jeopardize the availability of the affirmative defenses provided in Rule 10b5-1 under the 1934 Act with respect to any ongoing or contemplated activities of BofA or its affiliates in respect of the Master Confirmation, it shall be an Additional Termination Event with respect to the Master Confirmation.

IV. Definitions

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Master Confirmation. As used herein, the following words and phrases shall have the following meanings:

“**Communication**” means any contact or communication (whether written, electronic, oral or otherwise) between Counterparty, any Employee of Counterparty or one or more Designees of Counterparty, on the one hand, and BofA or any of its affiliates or Employees, on the other hand.

“**Designee**” means a person designated, in writing or orally, by Counterparty to communicate with BofA on behalf of Counterparty.

“**Employee**” means, with respect to any entity, any owner, principal, officer, director, employee or other agent or representative of such entity, and any affiliate of any of such owner, principal, officer, director, employee, agent or representative.

“**Material Non-Public Information**” means information relating to the Counterparty or the Common Stock that (a) has not been widely disseminated by wire service, in one or more newspapers of general circulation, by communication from the Counterparty to its shareholders or in a press release, or contained in a public filing made by the Counterparty with the Securities and Exchange Commission and (b) a reasonable investor might consider to be of importance in making an investment decision to buy, sell or hold shares of Common Stock. For the avoidance of doubt and solely by way of illustration, information should be presumed “**material**” if it relates to such matters as dividend increases or decreases, earnings estimates, changes in previously released earnings estimates, significant expansion or curtailment of operations, a significant increase or decline of orders, significant merger or acquisition proposals or agreements, significant new products or discoveries, extraordinary borrowing, major litigation, liquidity problems, extraordinary management developments, purchase or sale of substantial assets and similar matters.

“**Non-Program Related Communication**” means any Communication other than a Program Related Communication.

“**Permitted Contact**” David Moran, Christopher Hutmaker, Michael Voris, Chip Gibbs, Jake Mendelsohn, William Brett, Nicholas Rudd, Vishal Gandhi and Mark Valentino and any of the persons designated from time to time in writing by a Permitted Contact.

“**Personnel**” means Dmitry Genkin, Francois Lu, Yuri Mulman and Bernard Chriqui; provided that BofA may amend the list of Personnel by delivering a revised list of Personnel to Counterparty.

“**Program Related Communication**” means any Communication the subject matter of which relates to the Master Confirmation or any Transaction under the Master Confirmation or any activities of Agent (or any of its affiliates) in respect of the Master Confirmation or any Transaction under the Master Confirmation.



SECURED CREDIT AGREEMENT

dated as of
October 5, 2007

among

NETWORK APPLIANCE, INC., as the Borrower

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
as Administrative Agent

J.P. MORGAN SECURITIES INC.,
as Sole Bookrunner and Sole Lead Arranger

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- Exhibit C – List of Closing Documents
- Exhibit D – Form of Subsidiary Guaranty
- Exhibit E – Form of Pledge Agreement
- Exhibit F-1 – Form of Tri-Party Control Agreement
- Exhibit F-2 – Form of Safekeeping Control Agreement
- Exhibit G – Margin Requirements
- Exhibit H – Form of Compliance Certificate
- Exhibit I – Form of Increasing Lender Supplement
- Exhibit J – Form of Augmenting Lender Supplement

SECURED CREDIT AGREEMENT (this "Agreement") dated as of October 5, 2007 among NETWORK APPLIANCE, INC., the LENDERS from time to time party hereto, and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Administrative Agent.

The parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, refers to a Loan, or the Loans comprising such Borrowing, bearing interest at a rate determined by reference to the Alternate Base Rate.

"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means JPMorgan Chase Bank, National Association, in its capacity as administrative agent for the Lenders hereunder.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Aggregate Commitment" means the aggregate of the Commitments of all of the Lenders, as reduced or increased from time to time pursuant to the terms and conditions hereof. As of the Effective Date, the Aggregate Commitment is \$250,000,000.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Applicable Percentage" means, with respect to any Lender, the percentage of the total Commitments represented by such Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

"Approved Fund" has the meaning assigned to such term in Section 9.04.

"Assignment and Assumption" means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section

9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Augmenting Lender” has the meaning assigned to such term in Section 2.20.

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments in accordance with the terms of this Agreement.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means Network Appliance, Inc. a Delaware corporation.

“Borrowing” means Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03.

“Burdensome Restrictions” means any consensual encumbrance or restriction of the type described in clause (a) or (b) of Section 6.06 (without giving effect to any exceptions described in clauses (i) through (v) of such Section 6.06).

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), of Equity Interests representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by directors so nominated; or (c) the Borrower ceasing to own, directly or indirectly, 100% of the issued and outstanding Equity Interests of each Subsidiary Guarantor except in accordance with Section 6.03.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or the holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means all assets upon which a security interest or Lien is from time to time granted to the Administrative Agent, for the benefit of the relevant Holders of Secured Obligations, under any of the Collateral Documents or under any of the other Loan Documents.

“Collateral Documents” means the Pledge Agreement, the Control Agreements, and all agreements, instruments and documents executed in connection with this Agreement pursuant to which the Administrative Agent is granted a security interest in the Collateral, including, without limitation, all security agreements, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements and all other written matter whether heretofore, now, or hereafter executed by or on behalf of the Borrower or any of its Subsidiaries and delivered to the Administrative Agent or any of the Lenders in connection with this Agreement, together with all agreements and documents referred to therein or contemplated thereby.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Credit Exposure hereunder, as such commitment may be (a) reduced or terminated from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable.

“Consolidated Debt for Borrowed Money” means at any time (1) the sum, without duplication, of (a) items that, in accordance with GAAP, would be classified as indebtedness on the consolidated balance sheet of Borrower and its Subsidiaries and (b) the capitalized portion of any synthetic leases minus (2) the then aggregate outstanding principal amount of Indebtedness under this Agreement and under that certain Loan Agreement dated as of March 31, 2006 by and among Network Appliance Global Ltd. and JPMorgan Chase Bank, National Association as initial lender and as administrative agent.

“Consolidated EBITDA” means, with reference to any period, the sum of the following: (a) Consolidated Net Income for such period, *plus* (b) without duplication and to the extent deducted from revenues in determining such Consolidated Net Income, the sum of (i) Consolidated Interest Expense for such period, (ii) expense for taxes paid or accrued during such period, (iii) all amounts attributable to depreciation, (iv) amortization during such period, (v) extraordinary non-cash charges incurred other than in the ordinary course of business during such period, (vi) nonrecurring extraordinary non-cash restructuring charges, and (vii) share-based non-cash compensation expense *minus* without duplication and to the extent included in determining such Consolidated Net Income, (c) interest income, (d) extraordinary non-cash gains realized other than in the ordinary course of business and (e) any cash payments made during such period in respect of the item described in clause (vii) above subsequent to the fiscal quarter in which the relevant share-based non-cash compensation expense was incurred, all calculated for the Borrower and its Subsidiaries in accordance with GAAP on a consolidated basis. For the purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each, a “Reference Period”), (i) if at any time during such Reference Period the Borrower or any Subsidiary shall have made any Material Disposition, the Consolidated EBITDA for such Reference Period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Material Disposition for such Reference Period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such Reference Period, and (ii) if during such Reference Period the Borrower or any Subsidiary shall have made a Material Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving pro forma

effect thereto as if such Material Acquisition occurred on the first day of such Reference Period. As used in this definition, “Material Acquisition” means any acquisition of property or series of related acquisitions of property that (a) constitutes (i) assets comprising all or substantially all or any significant portion of a business or operating unit of a business, or (ii) all or substantially all of the common stock or other Equity Interests of a Person, and (b) involves the payment of consideration by the Borrower and its Subsidiaries in excess of \$50,000,000; and “Material Disposition” means any sale, transfer or disposition of property or series of related sales, transfers, or dispositions of property that yields gross proceeds to the Borrower or any of its Subsidiaries in excess of \$50,000,000.

“Consolidated Interest Expense” means, with reference to any period, the interest expense (including without limitation interest expense under Capital Lease Obligations that is treated as interest in accordance with GAAP) of the Borrower and its Subsidiaries calculated on a consolidated basis for such period with respect to (a) all outstanding Indebtedness of the Borrower and its Subsidiaries allocable to such period in accordance with GAAP and (b) Swap Agreements (including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers acceptance financing and net costs under interest rate Swap Agreements to the extent such net costs are allocable to such period in accordance with GAAP).

“Consolidated Net Income” means, with reference to any period, the net income (or loss) of the Borrower and its Subsidiaries calculated in accordance with GAAP on a consolidated basis (without duplication) for such period.

“Consolidated Total Assets” means, as of the date of any determination thereof, total assets of the Borrower and its Subsidiaries calculated in accordance with GAAP on a consolidated basis as of such date.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Control Agreements” means (i) the Tri Party Control Agreement of even date herewith in the form of Exhibit F-1 by and among the Borrower, the Administrative Agent and J.P. Morgan Securities Inc. (as amended, restated, supplemented or otherwise modified from time to time) and (ii) the Safekeeping Control Agreement of even date herewith in the form of Exhibit F-2 by and among the Borrower, the Administrative Agent and JPMorgan Chase Bank, National Association (as amended, restated, supplemented or otherwise modified from time to time).

“Credit Event” means a Borrowing.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Determination Date” shall mean (i) so long as no Event of Default has occurred and is continuing, the last Business Day of each successive two week period, beginning on October 5, 2007 and (ii) if an Event of Default has occurred and is continuing, any date as the Administrative Agent may elect in its sole discretion.

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06 to the Disclosure Letter.

“Disclosure Letter” means the disclosure letter from the Borrower dated as of the date hereof, as amended or supplemented from time to time by the Borrower with the written consent of the Administrative Agent, delivered to the Administrative Agent for the benefit of the Lenders.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is incorporated or organized under the laws of the United States of America, any state thereof or in the District of Columbia.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions or notices issued or promulgated by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to employee health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of the Borrower or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning

the imposition upon the Borrower or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to such Loan, or the Loans comprising such Borrowing, bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income, franchise or similar taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.19(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure to comply with Section 2.17(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.17(a).

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“Financials” means the annual or quarterly financial statements, and accompanying certificates and other documents, of the Borrower and its Subsidiaries required to be delivered pursuant to Section 5.01(a) or 5.01(b).

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than the United States of America or any political subdivision thereof. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, friable asbestos, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Holders of Secured Obligations” means the holders of the Secured Obligations from time to time and shall include (i) each Lender in respect of its Loans, (ii) the Administrative Agent and the Lenders in respect of all other present and future obligations and liabilities of the Borrower and each Subsidiary of every type and description arising under or in connection with this Agreement or any other Loan Document, (iii) each indemnified party under Section 9.03 in respect of the obligations and liabilities of the Borrower to such Person hereunder and under the other Loan Documents, and (iv) their respective successors and (in the case of a Lender, permitted) transferees and assigns.

“Increasing Lender” has the meaning assigned to such term in Section 2.20.

“Incremental Term Loan” has the meaning assigned to such term in Section 2.20.

“Incremental Term Loan Amendment” has the meaning assigned to such term in Section 2.20.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are paid or payable, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) the Net Mark-to Market Exposure of all Swap Obligations of such Person, and (l) any other Off-Balance Sheet Liability. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means Taxes other than (i) Excluded Taxes and (ii) Other Taxes.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.08.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and the Maturity Date, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period and the Maturity Date.

“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect, or such other period as is requested by the Borrower and is acceptable to each Lender; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a Lender hereunder pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Leverage Ratio” means the ratio, determined as of the end of each fiscal quarter of the Borrower, of Consolidated Debt for Borrowed Money as of the end of such fiscal quarter to Consolidated EBITDA for the period of 4 consecutive fiscal quarters ending with the end of such fiscal quarter.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Reuters BBA Libor Rates Page 3750 (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to deposits in Dollars in the London interbank market) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, as the rate for deposits in Dollars with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which deposits in Dollars of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or other security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or

any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Liquid Investments” means unrestricted cash and other unrestricted Permitted Investments reasonably satisfactory to the Administrative Agent.

“Liquidity” means, with respect to the Borrower and its Subsidiaries as of any date of determination, the sum of all unrestricted cash and unrestricted Permitted Investments which are not subject to any Lien (other than Liens under the Collateral Documents and as permitted under Section 6.02(e)) and which would be included on the consolidated balance sheet of the Borrower and such Subsidiaries in accordance with GAAP as of such date of determination.

“Loan Documents” means this Agreement, the Subsidiary Guaranty, the Collateral Documents, any promissory notes executed and delivered pursuant to Section 2.10(e) and any and all other instruments and documents executed and delivered in connection with any of the foregoing.

“Loan Parties” means, collectively, the Borrower and the Subsidiary Guarantors.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries taken as a whole, or (b) the ability of the Borrower or any other Loan Party to perform any of its obligations under this Agreement or any other Loan Document or (c) the rights of or benefits available to the Lenders under this Agreement or any other Loan Document.

“Material Indebtedness” means Indebtedness (other than the Loans), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$50,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Subsidiary” means each Subsidiary (a) which, as of the most recent fiscal quarter of the Borrower, for the period covering the then most recently ended fiscal year and the portion of the then current fiscal year ending at the end of such fiscal quarter, for which financial statements have been delivered pursuant to Section 5.01, contributed greater than five percent (5%) of the Borrower’s Consolidated EBITDA for such period or (b) which contributed greater than five percent (5%) of the Borrower’s Consolidated Total Assets as of such date.

“Maturity Date” means October 5, 2012.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Mark-to-Market Exposure” of a Person means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from each Swap Agreement transaction. “Unrealized losses” means the fair market value of the cost to such Person of

replacing such transaction as of the date of determination (assuming such transaction were to be terminated as of that date), and “unrealized profits” means the fair market value of the gain to such Person of replacing such transaction as of the date of determination (assuming such transaction was to be terminated as of that date).

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person that is related to retained credit risk, or (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person.

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” has the meaning set forth in Section 9.04.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Encumbrances” means:

(a) Liens imposed by law for Taxes or other governmental charges that are not yet due or are being contested in compliance with Section 5.04;

(b) carriers’ , warehousemen’ s, mechanics’ , materialmen’ s, repairmen’ s, landlord’ s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than sixty (60) days or are being contested in compliance with Section 5.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere in any material respect with the ordinary conduct of business of the Borrower or any Subsidiary;

(g) leases or subleases granted to other Persons and not interfering in any material respect with the business of the lessor or sublessor;

(h) Liens arising from precautionary Uniform Commercial Code filings or similar filings relating to operating leases;

- (i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (j) Liens on insurance proceeds securing the premium of financed insurance proceeds;
- (k) Liens on cash collateral to secure letters of credit, bank guarantees and banker' s acceptances and Swap Agreements;
- (l) licenses of intellectual property in the ordinary course of business;
- (m) any interest or title of a lessor or sublessor under any lease of real property or personal property; and
- (n) other Liens on assets (excluding Collateral) securing Indebtedness or other obligations not prohibited hereunder in an aggregate amount not to exceed \$50,000,000 at any time outstanding;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Investments" means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 365 days from the date of acquisition thereof and having, at such date of acquisition, a rating of "A-2" (or better) from S&P or "P-2" (or better) from Moody' s;
- (c) investments in certificates of deposit, banker' s acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof or any other country which has a combined capital and surplus and undivided profits of not less than \$500,000,000;
- (d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;
- (e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, as amended, to the extent such money market fund is governed thereby, (ii) are rated AA by S&P and Aa by Moody' s and (iii) have portfolio assets of at least \$5,000,000,000;
- (f) investments described in Exhibit G, with a valuation percentage of greater than 0%; and
- (g) investments made pursuant to a cash management investment policy approved by the board of directors of the Person making such investment and as in effect on the Effective Date, as

such policy may be amended or otherwise modified from time to time with the written consent of the Administrative Agent.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Pledge Agreement” means the Pledge Agreement of even date herewith in the form of Exhibit E and executed by the Borrower in favor of the Administrative Agent (as amended, restated, supplemented or otherwise modified from time to time).

“Prime Rate” means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, National Association as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Register” has the meaning set forth in Section 9.04.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Relevant Permitted Liens” means Liens permitted under clauses (a) through (m) of the definition of Permitted Encumbrances and clause (e) of Section 6.02.

“Required Lenders” means, at any time, Lenders having Revolving Credit Exposures and unused Commitments representing more than 50% of the sum of the total Revolving Credit Exposures and unused Commitments at such time.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans.

“Revolving Loan” means a Loan made pursuant to Section 2.01.

“S&P” means Standard & Poor’s.

“Sale and Leaseback Transaction” means any sale or other transfer of assets or property by any Person with the intent to lease any such asset or property as lessee.

“Secured Obligations” means all indebtedness (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Borrower and its Subsidiaries to any of the Lenders and the Administrative Agent, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans or other instruments at any time evidencing any thereof.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject, with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subordinated Indebtedness” means any Indebtedness of the Borrower or any Subsidiary the payment of which is subordinated to payment of the obligations under the Loan Documents to the written satisfaction of the Administrative Agent.

“Subordinated Indebtedness Documents” means any document, agreement or instrument evidencing any Subordinated Indebtedness or entered into in connection with any Subordinated Indebtedness.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Subsidiary Guarantor” means each Material Subsidiary that is a Domestic Subsidiary. The Subsidiary Guarantors on the Effective Date are identified as such in Schedule 3.01 to the Disclosure Letter.

“Subsidiary Guaranty” means that certain Guaranty dated as of the Effective Date in the form of Exhibit D (including any and all supplements thereto) and executed by each Subsidiary Guarantor, and any other guaranty agreements as are requested by the Administrative Agent and its counsel, in each case as amended, restated, supplemented or otherwise modified from time to time.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

“Swap Obligations” of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including

all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any such Swap Agreement transaction.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

“Transactions” means the execution, delivery and performance by the applicable Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans and the use of the proceeds thereof.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Eurodollar Loan”). Borrowings also may be classified and referred to by Type.

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits to this Agreement and Schedules to the Disclosure Letter and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

ARTICLE II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower in Dollars from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Revolving Credit Exposure exceeding such Lender's Commitment or (b) the sum of the total Revolving Credit Exposures exceeding the total Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02. Loans and Borrowings. (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Aggregate Commitment. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of fifteen (15) Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing as a Eurodollar Loan if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or teletype to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”; and

(v) the location and number of the Borrower’s account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing.

SECTION 2.04. Intentionally Omitted.

SECTION 2.05. Intentionally Omitted.

SECTION 2.06. Intentionally Omitted.

SECTION 2.07. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained with the Administrative Agent in New York City and designated by the Borrower in the applicable Borrowing Request.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender’s Loan included in such Borrowing.

SECTION 2.08. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section (an “Interest Election Request”), the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower. Notwithstanding any contrary provision herein, this Section shall not be construed to permit the Borrower to elect an Interest Period for Eurodollar Loans that does not comply with Section 2.02(d).

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “Interest Period”.

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’ s duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender’ s portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing with an Interest Period of one month’ s duration unless such Interest Period would end after the Maturity Date, in which event such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued beyond its then current Interest Period as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. Termination and Reduction of Commitments. (a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$25,000,000 and not less than \$25,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the sum of the Revolving Credit Exposures would exceed the Aggregate Commitment.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.10. Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be, absent manifest error, prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.11. Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing without premium or penalty (but subject to Section 2.16) in whole or in part, subject to prior notice in accordance with paragraph (c) of this Section.

(b) If as of any Determination Date, and for any reason, the aggregate outstanding principal amount of the Revolving Credit Exposures exceeds the value (on a margin-adjusted basis based on the requirements described on Exhibit G, as amended, restated, supplemented or otherwise modified from time to time by the Administrative Agent with the consent of the Borrower) of Liquid Investments of the Borrower maintained with the Administrative Agent (or an Affiliate thereof) and pledged to the Administrative Agent for the benefit of the relevant Holders of Secured Obligations pursuant to the Collateral Documents (the “Pledged Investments”), then the Borrower shall, within five (5) Business Days of the determination of such excess, make a mandatory prepayment of the Secured Obligations or pledge additional Liquid Investments of the Borrower pursuant to Collateral Documents, in each case in an amount equal to such excess. Notwithstanding the foregoing, so long as no Default has occurred and is then continuing and at the Borrower’s option, the Administrative Agent shall hold any such prepayment to be applied to Eurodollar Loans in escrow (either (x) in an account under the sole dominion and control of the Administrative Agent or (y) in an account maintained with the Administrative Agent or an Affiliate thereof and in respect of which the Borrower has executed and delivered the Pledge Agreement and the Control Agreements or other Collateral Documents in form and substance reasonably satisfactory to the Administrative Agent) for the benefit of the Holders of Secured Obligations and shall release such amounts upon the expiration of the Interest Periods applicable to any such Eurodollar Loans being prepaid (it being understood and agreed that interest shall continue to accrue on the Secured Obligations until such time as such prepayments are released from escrow and applied to reduce the Secured Obligations); provided, however, that upon the occurrence of a Default, such escrowed amounts may be applied to Eurodollar Loans without regard to the expiration of any Interest Period and the Borrower shall make all payments under Section 3.4 resulting therefrom.

(c) The Borrower shall notify the Administrative Agent by telephone (confirmed by email to claudia.kech@jpmchase.com or such other email addresses as are specified by the Administrative Agent to the Borrower from time to time) of any prepayment hereunder (other than a mandatory prepayment in accordance with paragraph (b) of this Section) (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in such prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13.

SECTION 2.12. Fees. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at 0.05% on the average daily amount of the unused portion of the Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which such Commitment terminates; provided that, if such Lender continues to have any Revolving Credit Exposure after its Commitment terminates, then such

commitment fee shall continue to accrue on the daily amount of such Lender's Revolving Credit Exposure from and including the date on which its Commitment terminates to but excluding the date on which such Lender ceases to have any Revolving Credit Exposure. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof; provided that any commitment fees accruing after the date on which the Commitments terminate shall be payable on demand. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees, the Commitment of each Lender shall be deemed used to the extent of the Revolving Credit Exposure of such Lender.

(b) Intentionally Omitted.

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, in the case of commitment fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13. Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus 0.125%.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.15. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on any Lender or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth in reasonable detail the calculation of the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any applicable prepayment pursuant to Section 2.11), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(b) and is revoked in accordance therewith) or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth in reasonable detail the calculation of any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

SECTION 2.17. Taxes. (a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes imposed on or incurred by the Administrative Agent or a Lender to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent and each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties,

interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the calculation of the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate.

(f) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.17 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

SECTION 2.18. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 3:00 p.m., New York City time on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York 10017 and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) Any proceeds of Collateral received by the Administrative Agent (i) not constituting a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, such funds shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements under the Loan Documents, including amounts then due under the Loan Documents to the Administrative Agent from the Borrower or any other Loan Party, second, to pay any fees or expense reimbursements then due under the Loan Documents to the Lenders from the Borrower or any other Loan Party, third, to pay interest then due and payable on the relevant Loans secured by such Collateral ratably, fourth, to prepay principal on the relevant Loans secured by such Collateral ratably (with amounts applied to the relevant Loans applied to installments of such Loans in inverse order of maturity), and fifth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by any Loan Party. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(d) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal or interest on any of its Revolving Loans or resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the

date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it pursuant to 2.06(d) or (e), 2.07(b), 2.18(e) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under the Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.20. Expansion Option. The Borrower may from time to time elect to increase the Commitments or enter into one or more tranches of term loans (each an "Incremental Term Loan"), in each case in minimum increments of \$50,000,000 so long as, after giving effect thereto, the aggregate amount of such increases and all such Incremental Term Loans does not exceed \$250,000,000. The Borrower may arrange for any such increase or tranche to be provided by one or more Lenders (each Lender so agreeing to an increase in its Commitment, or to participate in such Incremental Term Loans, an "Increasing Lender"), or by one or more new banks, financial institutions or other entities (each such new bank, financial institution or other entity, an "Augmenting Lender"), to increase their existing Commitments, or to participate in such Incremental Term Loans, or extend Commitments, as the case may be; provided that (i) each Augmenting Lender, shall be subject to the approval of the Borrower and the Administrative Agent and (ii) (x) in the case of an Increasing Lender, the Borrower and such

Increasing Lender execute an agreement substantially in the form of Exhibit I hereto, and (y) in the case of an Augmenting Lender, the Borrower and such Augmenting Lender execute an agreement substantially in the form of Exhibit J hereto. Increases and new Commitments and Incremental Term Loans created pursuant to this Section 2.20 shall become effective on the date agreed by the Borrower, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders and the Administrative Agent shall notify each Lender thereof. Notwithstanding the foregoing, no increase in the Commitments (or in the Commitment of any Lender) or tranche of Incremental Term Loans shall become effective under this paragraph unless, (i) on the proposed date of the effectiveness of such increase or Incremental Term Loans, (A) the conditions set forth in paragraphs (a) and (b) of Section 4.02 shall be satisfied or waived by the Required Lenders and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Borrower and (B) the Borrower shall be in compliance (on a pro forma basis reasonably acceptable to the Administrative Agent) with the covenants contained in Section 6.07 and (ii) the Administrative Agent shall have received documents consistent with those delivered on the Effective Date as to the corporate power and authority of the Borrower to borrow hereunder after giving effect to such increase. On the effective date of any increase in the Commitments or any Incremental Term Loans being made, (i) each relevant Increasing Lender and Augmenting Lender shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its Applicable Percentage of such outstanding Revolving Loans, and (ii) except in the case of any Incremental Term Loans, the Borrower shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase in the Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Eurocurrency Loan, shall be subject to indemnification by the Borrower pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. The Incremental Term Loans (a) shall rank pari passu in right of payment with the Revolving Loans, (b) shall not mature earlier than the Maturity Date (but may have amortization prior to such date) and (c) shall be treated substantially the same as (and in any event no more favorably than) the Revolving Loans; provided that (i) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the Maturity Date may provide for material additional or different financial or other covenants or prepayment requirements applicable only during periods after the Maturity Date and (ii) the Incremental Term Loans may be priced differently than the Revolving Loans. Incremental Term Loans may be made hereunder pursuant to an amendment (an "Incremental Term Loan Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Augmenting Lender participating in such tranche, if any, and the Administrative Agent. The Incremental Term Loan Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.20.

SECTION 2.21. Senior Debt. The Borrower hereby designates all Secured Obligations now or hereinafter incurred or otherwise outstanding, and agrees that the Secured Obligations shall at all times constitute, senior indebtedness and designated senior indebtedness, or terms of similar import, which are entitled to the benefits of the subordination provisions of all Subordinated Indebtedness.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers; Subsidiaries. Each of the Borrower and its Subsidiaries is duly incorporated or organized, validly existing and in good standing (to the extent such concept applies to such entity) under the laws of the jurisdiction of its incorporation or organization, as the case may be, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required. Schedule 3.01 to the Disclosure Letter (as supplemented from time to time) identifies each Subsidiary, if such Subsidiary is a Material Subsidiary that is a Domestic Subsidiary, the jurisdiction of its incorporation or organization, as the case may be, the percentage of issued and outstanding shares of each class in its capital or other equity interests owned by the Borrower and the other Subsidiaries and, if such percentage is not 100% (excluding directors' qualifying shares as required by law), a description of each class issued and outstanding. All of the outstanding shares in its capital and other equity interests of each Subsidiary are validly issued and outstanding and fully paid and nonassessable and all such shares and other equity interests indicated on Schedule 3.01 to the Disclosure Letter as owned by the Borrower or another Subsidiary are owned, beneficially, legally and/or of record, by the Borrower or any Subsidiary free and clear of all Liens other than Permitted Encumbrances. Except as indicated on Schedule 3.01 to the Disclosure Letter, there are no outstanding commitments or other obligations of the Borrower or any Subsidiary to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class in its capital or other equity interests of the Borrower or any Subsidiary.

SECTION 3.02. Authorization; Enforceability. The Transactions are within each Loan Party's corporate or other powers and have been duly authorized by all necessary corporate and, if required, stockholder or shareholder action. The Loan Documents to which each Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any Loan Party or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, material agreement or other material instrument binding upon the Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries; other than Liens created pursuant to the Collateral Documents.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended April 27, 2007 reported on by Deloitte & Touche LLP, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended July 27, 2007, certified by its chief financial officer. Such financial

statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since April 27, 2007, there has been no material adverse change in the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries, taken as a whole.

SECTION 3.05. Properties and Insurance. (a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes. The Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. There are no Liens on any of the real or personal properties of the Borrower or any Subsidiary except for Liens permitted by Section 6.02.

(b) Each of the Borrower and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and, to the Borrower's knowledge, the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06. Litigation, Labor Matters and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) There are no labor controversies pending against or, to the knowledge of the Borrower, threatened against the Borrower or any of its Subsidiaries (i) which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement or the Transactions.

(c) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, none of the Borrower or any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(d) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements; No Burdensome Restrictions. Each of the Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any Subsidiary is party or subject to any law, regulation, rule or order, or any obligation under any agreement or instrument, that has had, or could reasonably be expected to result in, a Material Adverse Effect. The Borrower is not subject to any Burdensome Restrictions except Burdensome Restrictions permitted by reference to Section 6.06.

SECTION 3.08. Investment Company Status. Neither the Borrower nor any of its Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.09. Taxes. Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11. Disclosure. To the extent not previously disclosed pursuant to the Borrower’ s filings with the Securities and Exchange Commission on or prior to the Effective Date, the Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Affiliates is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the written reports, financial statements, certificates or other written information furnished by or on behalf of the Borrower or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or, when taken together with the Borrower’ s filings with the Securities and Exchange Commission, omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information or results, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 3.12. Federal Reserve Regulations. No part of the proceeds of any Loan have been used or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. Following the application of the proceeds of each Borrowing, not more than 25% of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 6.02 or Section 6.03 or subject to any restriction contained in any Loan Document will be “margin stock” within the meaning of Regulation U.

SECTION 3.13. No Default. No Default has occurred and is continuing.

ARTICLE IV

Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from (i) each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) each initial Subsidiary Guarantor either (A) a counterpart of the Subsidiary Guaranty signed on behalf of such Subsidiary Guarantor or (B) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of the Subsidiary Guaranty) that such Subsidiary Guarantor has signed a counterpart of the Subsidiary Guaranty.

(b) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Wilson Sonsini Goodrich & Rosati, P.C., counsel for the Loan Parties, substantially in the form of Exhibit B, and covering such other matters relating to the Loan Parties, the Loan Documents or the Transactions as the Administrative Agent shall reasonably request. The Borrower hereby requests such counsel to deliver such opinion.

(c) The Lenders shall have received (i) satisfactory audited consolidated financial statements of the Borrower for the two most recent fiscal years ended prior to the Effective Date as to which such financial statements are available, (ii) satisfactory unaudited interim consolidated financial statements of the Borrower for each quarterly period ended subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph as to which such financial statements are publicly available and (iii) satisfactory financial statement projections through and including the Borrower's 2012 fiscal year, together with such information as the Administrative Agent and the Lenders shall reasonably request (including, without limitation, a detailed description of the assumptions used in preparing such projections).

(d) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the incorporation or organization, existence and good standing of the initial Loan Parties, the authorization of the Transactions and any other legal matters relating to such Loan Parties, the Loan Documents or the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel and as further described in the list of closing documents attached as Exhibit C.

(e) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the Chief Executive Officer or a Financial Officer, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02.

(f) The Administrative Agent shall have received evidence reasonably satisfactory to it that all governmental and third party approvals necessary or, in the discretion of the Administrative Agent, advisable in connection with the Transactions and the continuing operations of the Borrower and its Subsidiaries have been obtained and are in full force and effect.

(g) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects on and as of the date of such Borrowing, except to the extent such representation and warranty specifically refers to an earlier date, in which case it shall be true and correct in all material respects as of such earlier date.

(b) At the time of and immediately after giving effect to such Borrowing, no Default shall have occurred and be continuing.

Each Borrowing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE V

Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within ninety (90) days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized international standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its

consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a compliance certificate of a Financial Officer of the Borrower in the form of Exhibit H hereto (i) certifying as to whether a Default has occurred and is continuing and, if a Default has occurred and is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.07 and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be; and

(e) promptly following any request therefor, such other information regarding the operations, business affairs, assets and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request.

Reports or financial information required to be delivered pursuant to Sections 5.01(a) or 5.01(b) (to the extent any such financial statements, reports, proxy statements or other materials are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so, shall be deemed to have been delivered on the date on which Borrower posts such report or provides a link thereto on its website on the internet; provided that Borrower shall provide paper copies to the Administrative Agent of the compliance certificates required by Section 5.01(c). Notwithstanding the foregoing, the Borrower shall deliver paper copies of any financial statement referred to in Section 5.01 to the Administrative Agent if the Administrative Agent requests the Borrower to furnish such paper copies until written notice to cease delivering such paper copies is given by the Administrative Agent.

SECTION 5.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against the Borrower or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect; and

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; and

(d) any other development that results in a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Existence; Conduct of Business. The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05. Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 5.06. Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made in all material respects and sufficient to prepare financial statements in accordance with GAAP. The Borrower will, and will cause each of its Material Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested. Notwithstanding the foregoing, neither the Borrower nor its Subsidiaries shall be required to disclose or discuss, or permit the inspection, examination or making of extracts of any document, book, record or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent, such Lender or their representatives is then prohibited by applicable law or any agreement binding on Borrower or its Subsidiaries or (iii) is protected from disclosure by the attorney-client privilege or the attorney work product privilege.

SECTION 5.07. Compliance with Laws and Contractual Obligations. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority (including without limitation Environmental Laws), and all agreements and other contractual instruments, applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08. Use of Proceeds. The proceeds of the Loans will be used only to finance the working capital needs, and for general corporate purposes, of the Borrower and its Subsidiaries in the ordinary course of business. No part of the proceeds of any Loan will be used,

whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. Following the application of the proceeds of each Borrowing, not more than 25% of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 6.02 or Section 6.03 or subject to any restriction contained in any Loan Document will be “margin stock” within the meaning of Regulation U.

SECTION 5.09. Subsidiary Guaranty. As promptly as possible but in any event within thirty (30) days (or such later date as may be agreed upon by the Administrative Agent) after any Domestic Subsidiary qualifies as, or is designated by the Borrower or the Administrative Agent as, a Subsidiary Guarantor pursuant to the definitions of “Material Subsidiary” and “Subsidiary Guarantor”, the Borrower shall provide the Administrative Agent with written notice thereof setting forth information in reasonable detail describing the material assets of such Person and shall cause each such Subsidiary which also qualifies as a Subsidiary Guarantor to deliver to the Administrative Agent a joinder to the Subsidiary Guaranty (in the form contemplated thereby) pursuant to which such Subsidiary agrees to be bound by the terms and provisions of thereof, such Subsidiary Guaranty to be accompanied by appropriate corporate resolutions, other corporate documentation and legal opinions in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

SECTION 5.10. Collateral. The Borrower will cause Liquid Investments of the Borrower in an aggregate amount of not less than the then outstanding principal amount of the Revolving Credit Exposures (on a margin-adjusted basis based on the requirements described on Exhibit G, as amended, restated supplemented or otherwise modified from time to time by the Administrative Agent with the consent of the Borrower) to be subject at all times (subject to the 5-Business Day period for mandatory prepayment set forth in Section 2.11(b)) to first priority, perfected Liens (subject only to Relevant Permitted Liens) in favor of the Administrative Agent for the benefit of the relevant Holders of Secured Obligations to secure the Secured Obligations in accordance with the terms and conditions of the Collateral Documents and to take all such actions reasonably requested by the Administrative Agent in connection therewith.

ARTICLE VI

Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Subsidiary Indebtedness. The Borrower will not permit any Subsidiary to create, incur, assume or permit to exist any Indebtedness, except:

- (a) the Secured Obligations and any other Indebtedness created under the Loan Documents;
- (b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 to the Disclosure Letter and extensions, renewals and replacements of any such Indebtedness that do not increase the then outstanding principal amount thereof;
- (c) Indebtedness of (i) any Subsidiary to any Loan Party and (ii) any Subsidiary that is not a Loan Party to any other Subsidiary that is not a Loan Party;

(d) Guarantees by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary;

(e) Indebtedness of any Subsidiary incurred to finance the acquisition, construction or improvements of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets (and additions, accessions, parts, improvement and attachments thereto and the proceeds thereof) prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the then outstanding principal amount thereof; provided that such Indebtedness is incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement; and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;

(f) Indebtedness of any Person that becomes a Subsidiary after the date hereof; provided that such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;

(g) Indebtedness of any Subsidiary as an account party in respect of letters of credit, bank guarantees and bankers' acceptances;

(h) Indebtedness in respect of Swap Agreements permitted under Section 6.04;

(i) Indebtedness of Subsidiaries which are not Loan Parties in an aggregate principal amount not exceeding 5% of Consolidated Total Assets at any time outstanding; and

(j) other Indebtedness of any Subsidiary which is a Loan Party so long as, at the time of the incurrence thereof and after giving effect thereto (on a pro forma basis), the Borrower is in pro forma compliance with the maximum Leverage Ratio permitted under Section 6.07(a).

SECTION 6.02. Liens. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it (and for purposes hereof, any capital stock issued by the Borrower which is held by the Borrower as treasury stock shall not be deemed to be property or an asset of the Borrower and shall not be subject to this Section 6.02), or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02 to the Disclosure Letter; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or

assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) Liens on fixed or capital assets (and additions, accessions, parts, improvements and attachments thereto and the proceeds thereof) acquired, constructed or improved by the Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness not otherwise prohibited under this Agreement, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within one hundred twenty (120) days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Subsidiary;

(e) customary bankers' Liens and rights of setoff arising by operation of law or contract and incurred on deposits made in the ordinary course of business or on deposit or securities accounts;

(f) assignments of the right to receive income effected (i) as a part of the sale of a Subsidiary or a business unit or (ii) for factoring in the ordinary course of business;

(g) Liens on any cash earnest money deposit made by the Borrower or any Subsidiary in connection with any letter of intent or acquisition agreement that is not prohibited by this Agreement;

(h) customary Liens granted in favor a trustee to secure fees and other amounts owing to such trustee under an indenture or other agreement pursuant to Indebtedness not otherwise prohibited under this Agreement; and

(i) Liens created under the Collateral Documents.

SECTION 6.03. Fundamental Changes and Asset Sales.

(a) The Borrower will not, and will not permit any Subsidiary to, merge into, consolidate with, or otherwise be acquired by, any other Person, or sell, transfer, lease or otherwise dispose (including pursuant to a Sale and Leaseback Transaction) of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or here-after acquired, and for purposes hereof, any capital stock issued by the Borrower which is held by the Borrower as treasury stock shall not be deemed to be property or an asset of the Borrower and shall not be subject to this Section 6.03), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Subsidiary may merge into a Loan Party in a transaction in which the surviving entity is such Loan Party (provided that any such merger involving the Borrower must result in the Borrower as the surviving entity), (ii) any wholly owned Subsidiary may merge into or consolidate with any wholly owned Subsidiary in a transaction in which the surviving entity is a wholly owned Subsidiary and no Person other than the Borrower or a wholly owned Subsidiary receives any consideration, provided that if any such merger described in this clause (ii) shall involve a Loan Party, the surviving entity of such merger shall be a Loan Party, (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to a Loan Party or any wholly owned Subsidiary pursuant to a transaction not otherwise prohibited under this Agreement, (iv) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or

dissolution is in the best interests of the Borrower, (v) the Borrower may merge with any other Person so long as the Borrower is the surviving entity, (vi) any Subsidiary may merge with any other Person so long as the surviving entity is, in the case of a Subsidiary Guarantor, the Subsidiary Guarantor, and in all other cases, a wholly owned Subsidiary and (vii) any Subsidiary other than a Subsidiary Guarantor may merge into, and Borrower or any Subsidiary may dispose of assets to, any other Person so long as Borrower delivers a certificate to the Administrative Agent demonstrating pro forma compliance with Section 6.07 after giving effect to such transaction.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto.

(c) The Borrower will not, and will not permit any of its Subsidiaries to, change its fiscal year to end on a day other than as such fiscal year end is currently determined or change the Borrower's method of determining fiscal quarters.

SECTION 6.04. Speculative Swap Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests or Subordinated Indebtedness of the Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

SECTION 6.05. Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly owned Subsidiaries not involving any other Affiliate, (c) to enter into indemnification arrangements with or to pay customary fees and reimburse out-of-pocket expenses of directors or (d) as set forth on the Disclosure Letter.

SECTION 6.06. Restrictive Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law, by any Loan Document, by any document relating to the Borrower's unsecured syndicated revolving credit facility from certain lenders and JPMorgan Chase Bank, National Association as administrative agent, or by any document relating to the Borrower's synthetic lease facilities, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.06 to the Disclosure Letter (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of assets or of a Subsidiary pending such sale, provided such restrictions and conditions apply only to such assets or such Subsidiary that are to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured

Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases, licenses, joint venture agreements and other agreements entered into in the ordinary course of business restricting the assignment thereof.

SECTION 6.07. Financial Covenants.

(a) Maximum Leverage Ratio. The Borrower will not permit the Leverage Ratio to be greater than 3.0 to 1.0.

(b) Minimum Liquidity. The Borrower and its Subsidiaries on a consolidated basis shall maintain, at all times, Liquidity of not less than \$300,000,000.

ARTICLE VII

Events of Default

If any of the following events (“Events of Default”) shall occur:

(a) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any written representation or warranty made or deemed made by or on behalf of any Loan Party in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any written report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) (i) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to the Borrower’s existence), 5.08, 5.09 or 5.10 or in Article VI or (ii) any Loan Document shall for any reason not be or shall cease to be in full force and effect or is declared to be null and void, or the Borrower or any Subsidiary takes any action for the purpose of terminating, repudiating or rescinding any Loan Document or any of its obligations thereunder or any Lien in favor of the Administrative Agent under the Loan Documents shall not have the priority contemplated by the Loan Documents, subject to Relevant Permitted Liens;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clause (a), (b) or (d) of this Article) and such failure shall continue unremedied for a period of thirty (30) days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of the Required Lenders);

(f) the Borrower or any Subsidiary shall fail to make any payment of principal or interest in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace period;

(g) with respect to any Material Indebtedness, any event or condition occurs that results in such Material Indebtedness becoming due prior to its scheduled maturity (other than by regularly scheduled redemptions or by conversion of any convertible debt instrument pursuant to its terms unless such redemption or conversion results from a default thereunder or an event of the type that constitutes an Event of Default) or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Material Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$50,000,000 (to the extent not covered by a creditworthy insurer), shall be rendered against the Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor holding a judgment in excess of \$50,000,000 to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the reasonable opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; or

(m) a Change in Control shall occur;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Secured Obligations accrued under the Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Secured Obligations accrued under the Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the Uniform Commercial Code (as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests under any of the Collateral Documents).

ARTICLE VIII

The Administrative Agent

Each of the Lenders hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross

negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral or (vi) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for one or more of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate,

continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder.

None of the Lenders, if any, identified in this Agreement as a Syndication Agent or Co-Documentation Agent shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to the relevant Lenders in their respective capacities as Syndication Agent or Co-Documentation Agents, as applicable, as it makes with respect to the Administrative Agent in the preceding paragraph.

Except with respect to the exercise of setoff rights of any Lender, in accordance with Section 9.08, the proceeds of which are applied in accordance with this Agreement, each Lender agrees that it will not take any action, nor institute any actions or proceedings, against the Borrower or with respect to any Loan Document, without the prior written consent of the Required Lenders or, as may be provided in this Agreement or the other Loan Documents, with the consent of the Administrative Agent.

The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

In its capacity, the Administrative Agent is a "representative" of the Holders of Secured Obligations within the meaning of the term "secured party" as defined in the New York Uniform Commercial Code. Each Lender authorizes the Administrative Agent to enter into each of the Collateral Documents to which it is a party and to take all action contemplated by such documents. Each Lender agrees that no Holder of Secured Obligations (other than the Administrative Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Administrative Agent for the benefit of the relevant Holders of Secured Obligations upon the terms of the Collateral Documents. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the relevant Holders of Secured Obligations any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the relevant Holders of Secured Obligations. The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Commitments and payment and satisfaction of all of the Secured Obligations (other than contingent indemnity obligations) at any time arising under or in respect of this Agreement or the Loan Documents or the transactions contemplated hereby or thereby; (ii) as permitted by, but only in accordance with, the terms of the applicable Loan Document; or (iii) if approved, authorized or ratified in writing by the Required Lenders, unless such release is required to be approved by all of the Lenders hereunder. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant hereto. Upon any sale or transfer of assets constituting Collateral which is permitted pursuant to the terms of any Loan Document, or consented to in writing by the Required Lenders or all of the Lenders, as applicable, and upon at least five Business Days' prior written request by the Borrower to the Administrative Agent, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Administrative Agent for the benefit of the relevant Holders of Secured Obligations herein or pursuant hereto upon the Collateral that was sold or transferred;

provided, however, that (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent's opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Secured Obligations or any Liens upon (or obligations of the Borrower or any Subsidiary in respect of) all interests retained by the Borrower or any Subsidiary, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral.

The Administrative Agent is hereby authorized by the Lenders and their affiliated Holders of Secured Obligations to execute and deliver any documents necessary or appropriate to create and perfect the rights of pledge for the benefit of the relevant Holders of Secured Obligations.

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at 7301 Kit Creek Road, P.O. Box 13917 Research Triangle Park, North Carolina 27709, Attention of Ingemar Lanevi, Vice President, Corporate Treasurer (Telecopy No. (408) 822-4412), with a copy to 495 East Java Drive, Sunnyvale, California 94089, Attention of Christopher Afarian (Telecopy No. (408) 822-4455);

(ii) if to the Administrative Agent, to JPMorgan Chase Bank, National Association, 10 South Dearborn, 7th Floor, Chicago, Illinois 60603, Attention of Claudia Kech (Telecopy No. (312) 385-7096), with a copy to JPMorgan Chase Bank, National Association, 560 Mission Street, 18th Floor, San Francisco, California 94105, Attention of Alex McKindra (Telecopy No. (415) 315-8483) and JPMorgan Chase Bank, National Association, 277 Park Avenue, 16th Floor, New York, New York 10172, Attention of Anthony Galea (Telecopy No. (866) 682-7113); and

(iii) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender, (ii) reduce the principal amount of any Loan Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby, (iv) change Section 2.18 (c) or (d) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender or (vi) release all or substantially all of the Subsidiary Guarantors from their respective obligations under the Subsidiary Guaranty or release all or substantially all of the Collateral, without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, or any Lender, including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent, or any Lender, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) The Borrower shall indemnify the Administrative Agent, and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with,

or as a result of (i) the execution or delivery of any Loan Document or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability of the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory to the extent any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, the Loan Documents or any agreement or instrument contemplated thereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b)(i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of (A) the Administrative Agent and (B) so long as no Event of Default has occurred and is continuing or the assignment is to a Person other than a Lender, an Affiliate of a Lender or an Approved Fund, the Borrower.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless the Administrative Agent otherwise consents;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its affiliates, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the term "Approved Fund" has the following meaning:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the

terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(d) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.15 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 2.17 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.17(e) and (f) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in

connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the Secured Obligations now or hereafter existing held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Immunity. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan

Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent, the and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a need to know basis to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its

advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or any agreement contemplated by clause (f) of this Section or (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower, any Subsidiary or their respective business, other than any such information that is available to the Administrative Agent, or any Lender on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER AND ITS AFFILIATES, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES) AND ITS SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

SECTION 9.13. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

NETWORK APPLIANCE, INC.,
as the Borrower

By /s/ Ingemar Lanevi

Name: Ingemar Lanevi

Title: VP and Corporate Treasurer

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, individually as a Lender and as
Administrative Agent

By /s/ Anthony Galea

Name: Anthony Galea

Title: Vice President

Signature Page to Secured Credit Agreement
Network Appliance, Inc.
October 2007

SCHEDULE 2.01
COMMITMENTS

<u>LENDER</u>	<u>COMMITMENT</u>
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION	\$ 250,000,000
TOTAL COMMITMENTS	\$ 250,000,000

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____
[and is an Affiliate/Approved Fund of [identify Lender]¹]
3. Borrower(s): Network Appliance, Inc.
4. Administrative Agent: JPMorgan Chase Bank, National Association, as the administrative agent under the Credit Agreement
5. Credit Agreement: The Secured Credit Agreement dated as of October 5, 2007 among Network Appliance, Inc., the Lenders parties thereto and JPMorgan Chase Bank, National Association, as Administrative Agent
6. Assigned Interest: _____

¹ Select as applicable.

Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/Loans ²
\$	\$	%
\$	\$	%
\$	\$	%

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Title:

Consented to and Accepted:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION,
as Administrative Agent

By: _____
Title:

[Consented to:]³

NETWORK APPLIANCE, INC.

By: _____
Title:

² Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

³ To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

[]¹

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, 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 Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment

¹ Describe Credit Agreement at option of Administrative Agent.

and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT B
OPINION OF COUNSEL FOR THE LOAN PARTIES
[ATTACHED]

EXHIBIT C
LIST OF CLOSING DOCUMENTS
NETWORK APPLIANCE, INC.
SECURED CREDIT FACILITY

October 5, 2007

LIST OF CLOSING DOCUMENTS¹

A. LOAN DOCUMENTS

1. Secured Credit Agreement (the "Credit Agreement") by and among Network Appliance, Inc., a Delaware corporation (the "Borrower"), the institutions from time to time parties thereto as Lenders (the "Lenders") and JPMorgan Chase Bank, National Association, in its capacity as Administrative Agent for itself and the other Lenders (the "Administrative Agent"), evidencing a cash secured revolving credit facility to the Borrower from the Lenders in an initial aggregate principal amount of \$250,000,000.

EXHIBITS

- Exhibit A – Form of Assignment and Assumption
- Exhibit B – Form of Opinion of Loan Parties' Counsel
- Exhibit C – List of Closing Documents
- Exhibit D – Form of Subsidiary Guaranty
- Exhibit E – Form of Pledge Agreement
- Exhibit F-1 – Form of Tri-Party Control Agreement
- Exhibit F-2 – Form of Safekeeping Control Agreement
- Exhibit G – Margin Requirements
- Exhibit H – Form of Compliance Certificate
- Exhibit I – Form of Increasing Lender Supplement
- Exhibit J – Form of Augmenting Lender Supplement

2. Disclosure Letter executed by the Borrower in favor of the Administrative Agent and the Lenders.
3. Notes executed by the Borrower in favor of each of the Lenders, if any, which has requested a note pursuant to Section 2.10(e) of the Credit Agreement.
4. Pledge Agreement executed by the Borrower in favor of the Administrative Agent.
5. Tri-Party Control Agreement executed by the Borrower, the Administrative Agent and J.P. Morgan Securities Inc.

¹ Each capitalized term used herein and not defined herein shall have the meaning assigned to such term in the above-defined Credit Agreement. Items appearing in **bold** and *italics* shall be prepared and/or provided by the Borrower and/or Borrower's counsel

6. Safekeeping Control Agreement executed by the Borrower, the Administrative Agent and JPMorgan Chase Bank, National Association

B. CORPORATE DOCUMENTS

7. *Certificate of a Director, Secretary or Assistant Secretary or other duly appointed and authorized officer of the Borrower certifying (i) that there have been no changes in the Certificate of Incorporation or other charter document of the Borrower, as attached thereto and as certified as of a recent date by the Secretary of State (or analogous governmental entity) of the jurisdiction of its incorporation or organization, since the date of the certification thereof by such secretary of state, (ii) the By-Laws or other applicable organizational document, as attached thereto, of the Borrower as in effect on the date of such certification, (iii) resolutions of the Board of Directors or other governing body of the Borrower authorizing the execution, delivery and performance of each Loan Document to which it is a party, and (iv) the names and true signatures of the incumbent officers of the Borrower authorized to sign the Loan Documents to which it is a party and authorized to request a Borrowing under the Credit Agreement.*
8. *Good Standing Certificate for the Borrower from the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization.*

C. OPINIONS

9. *Opinion of Wilson Sonsini Goodrich & Rosati, P.C., counsel for the Borrower.*

D. CLOSING CERTIFICATES AND MISCELLANEOUS

10. *A Certificate signed by a Financial Officer certifying the following: (i) all of the representations and warranties of the Borrower set forth in the Credit Agreement are true and correct and (ii) no Default has occurred and is then continuing.*

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EXHIBIT D
FORM OF SUBSIDIARY GUARANTY
GUARANTY

THIS GUARANTY (as amended, restated, supplemented or otherwise modified from time to time, this "Guaranty") is made as of [____], 2007, by and among each of the undersigned (the "Initial Guarantors" and along with any additional Subsidiaries of the Borrower which become parties to this Guaranty by executing a supplement hereto in the form attached as Annex I, the "Guarantors") in favor of the Administrative Agent, for the ratable benefit of the Holders of Guaranteed Obligations (as defined below), under the Credit Agreement referred to below.

WITNESSETH

WHEREAS, NETWORK APPLIANCE, INC., a Delaware corporation (the "Borrower"), the institutions from time to time parties thereto as lenders (the "Lenders"), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, in its capacity as contractual representative (the "Administrative Agent"), have entered into a certain Secured Credit Agreement dated as of October 5, 2007 (as the same may be amended, modified, supplemented and/or restated, and as in effect from time to time, the "Credit Agreement"), providing, subject to the terms and conditions thereof, for extensions of credit and other financial accommodations to be made by the Lenders to the Borrower;

WHEREAS, it is a condition precedent to the extensions of credit by the Lenders under the Credit Agreement that each of the Guarantors (constituting all of the Subsidiaries of the Borrower required to execute this Guaranty pursuant to Section 5.09 of the Credit Agreement) execute and deliver this Guaranty, whereby each of the Guarantors shall guarantee the payment when due of all Secured Obligations; and

WHEREAS, in consideration of the direct and indirect financial and other support that the Borrower has provided, and such direct and indirect financial and other support as the Borrower may in the future provide, to the Guarantors, and in order to induce the Lenders and the Administrative Agent to enter into the Credit Agreement, each of the Guarantors is willing to guarantee the Secured Obligations of the Borrower;

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

SECTION 1. Definitions. Terms defined in the Credit Agreement and not otherwise defined herein have, as used herein, the respective meanings provided for therein.

SECTION 2. Representations, Warranties and Covenants. Each of the Guarantors represents and warrants (which representations and warranties shall be deemed to have been renewed at the time of the making, conversion or continuation of any Loan that:

(A) It is a corporation, partnership or limited liability company duly and properly incorporated or organized, as the case may be, validly existing and (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation, organization or formation and has all requisite authority to conduct its business in each

jurisdiction in which its business is conducted, except to the extent that the failure to have such authority could not reasonably be expected to have a Material Adverse Effect.

(B) It (to the extent applicable) has the requisite power and authority and legal right to execute and deliver this Guaranty and to perform its obligations hereunder. The execution and delivery by each Guarantor of this Guaranty and the performance by each of its obligations hereunder have been duly authorized by proper proceedings, and this Guaranty constitutes a legal, valid and binding obligation of such Guarantor, respectively, enforceable against such Guarantor, respectively, in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(C) Neither the execution and delivery by it of this Guaranty, nor the consummation by it of the transactions herein contemplated, nor compliance by it with the provisions hereof will (i) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on it or its articles or certificate of incorporation (or equivalent charter documents), limited liability company or partnership agreement, certificate of partnership, articles or certificate of organization, by-laws, or operating agreement or other management agreement, as the case may be, or the provisions of any indenture, material instrument or material agreement to which the Borrower or any of its Subsidiaries is a party or is subject, or by which it, or its property, is bound, or (ii) conflict with, or constitute a default under, or result in, or require, the creation or imposition of any Lien in, of or on its property pursuant to the terms of, any such indenture, material instrument or material agreement (other than any Loan Document). No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority, or any subdivision thereof, which has not been obtained by it, is required to be obtained by it in connection with the execution, delivery and performance by it of, or the legality, validity, binding effect or enforceability against it of, this Guaranty.

In addition to the foregoing, each of the Guarantors covenants that, so long as any Lender has any Commitment outstanding under the Credit Agreement or any amount payable under the Credit Agreement or any other Guaranteed Obligations (as defined below) shall remain unpaid, it will, and, if necessary, will enable the Borrower to, fully comply with those covenants and agreements of the Borrower applicable to such Guarantor set forth in the Credit Agreement.

SECTION 3. The Guaranty. Each of the Guarantors hereby unconditionally guarantees, jointly with the other Guarantors and severally, the full and punctual payment and performance when due (whether at stated maturity, upon acceleration or otherwise) of the Secured Obligations, including, without limitation, (i) the principal of and interest on each Loan made to the Borrower pursuant to the Credit Agreement, (ii) all other amounts payable by the Borrower or any of its Subsidiaries under the Credit Agreement and the other Loan Documents and (iii) the punctual and faithful performance, keeping, observance, and fulfillment by the Borrower of all of the agreements, conditions, covenants, and obligations of the Borrower contained in the Loan Documents (all of the foregoing being referred to collectively as the "Guaranteed Obligations" and the holders from time to time of the Guaranteed Obligations being referred to collectively as the "Holders of Guaranteed Obligations"). Upon (x) the failure by the Borrower or any of its Affiliates, as applicable, to pay punctually any such amount or perform such obligation, and (y) such failure continuing beyond any applicable grace or notice and cure period, each of the Guarantors agrees that it shall forthwith on demand pay such amount or perform such obligation at the place and in the manner specified in the Credit Agreement or the relevant Loan Document, as the case may be. Each of the Guarantors hereby agrees that this Guaranty is an absolute, irrevocable and unconditional guaranty of payment and is not a guaranty of collection.

SECTION 4. Guaranty Unconditional. The obligations of each of the Guarantors hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(A) any extension, renewal, settlement, indulgence, compromise, waiver or release of or with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations, whether (in any such case) by operation of law or otherwise, or any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations;

(B) any modification or amendment of or supplement to the Credit Agreement or any other Loan Document, including, without limitation, any such amendment which may increase the amount of, or the interest rates applicable to, any of the Secured Obligations guaranteed hereby;

(C) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any collateral securing the Guaranteed Obligations or any part thereof, any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof, or any nonperfection or invalidity of any direct or indirect security for the Guaranteed Obligations;

(D) any change in the corporate, partnership or other existence, structure or ownership of the Borrower or any other guarantor of any of the Guaranteed Obligations, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower or any other guarantor of the Guaranteed Obligations, or any of their respective assets or any resulting release or discharge of any obligation of the Borrower or any other guarantor of any of the Guaranteed Obligations;

(E) the existence of any claim, setoff or other rights which the Guarantors may have at any time against the Borrower, any other guarantor of any of the Guaranteed Obligations, the Administrative Agent, any Holder of Guaranteed Obligations or any other Person, whether in connection herewith or in connection with any unrelated transactions; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(F) the enforceability or validity of the Guaranteed Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto or with respect to any collateral securing the Guaranteed Obligations or any part thereof, or any other invalidity or unenforceability relating to or against the Borrower or any other guarantor of any of the Guaranteed Obligations, for any reason related to the Credit Agreement, any other Loan Document, or any provision of applicable law, decree, order or regulation of any jurisdiction purporting to prohibit the payment by the Borrower or any other guarantor of the Guaranteed Obligations, of any of the Guaranteed Obligations or otherwise affecting any term of any of the Guaranteed Obligations;

(G) the failure of the Administrative Agent to take any steps to perfect and maintain any security interest in, or to preserve any rights to, any security or collateral for the Guaranteed Obligations, if any;

(H) the election by, or on behalf of, any one or more of the Holders of Guaranteed Obligations, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (the “Bankruptcy Code”), of the application of Section 1111(b)(2) of the Bankruptcy Code;

(I) any borrowing or grant of a security interest by the Borrower, as debtor-in-possession, under Section 364 of the Bankruptcy Code;

(J) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims of the Holders of Guaranteed Obligations or the Administrative Agent for repayment of all or any part of the Guaranteed Obligations;

(K) the failure of any other guarantor to sign or become party to this Guaranty or any amendment, change, or reaffirmation hereof by or with any other guarantor; or

(L) any other act or omission to act or delay of any kind by the Borrower, any other guarantor of the Guaranteed Obligations, the Administrative Agent, any Holder of Guaranteed Obligations or any other Person or any other circumstance whatsoever which might, but for the provisions of this Section 4, constitute a legal or equitable discharge of any Guarantor’s obligations hereunder except as provided in Section 5.

SECTION 5. Discharge Only Upon Payment In Full: Reinstatement In Certain Circumstances. Each of the Guarantors’ obligations hereunder shall remain in full force and effect until all Guaranteed Obligations (other than contingent indemnity obligations) shall have been paid in full in cash and the Commitments shall have terminated or expired. If at any time any payment of the principal of or interest on any Loan, any Reimbursement Obligation or any other amount payable by the Borrower or any other party under the Credit Agreement or any other Loan Document is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, each of the Guarantors’ obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time. The parties hereto acknowledge and agree that each of the Guaranteed Obligations shall be due and payable in the same currency as such Guaranteed Obligation is denominated, but if currency control or exchange regulations are imposed in the country which issues such currency with the result that such currency (the “Original Currency”) no longer exists or the relevant Guarantor is not able to make payment in such Original Currency, then all payments to be made by such Guarantor hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Amount (as of the date of payment) of such payment due, it being the intention of the parties hereto that each Guarantor takes all risks of the imposition of any such currency control or exchange regulations. As used herein, “Dollar Amount” of any currency means the equivalent in such currency of such amount of dollars, most recently calculated by the Administrative Agent on the basis of the arithmetical mean of the buy and sell spot rates of exchange of the Administrative Agent for such currency on the London market.

SECTION 6. General Waivers; Additional Waivers.

(A) General Waivers. Each of the Guarantors irrevocably waives acceptance hereof, presentment, demand or action on delinquency, protest, the benefit of any statutes of limitations and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against the Borrower, any other guarantor of the Guaranteed Obligations, or any other Person.

(B) Additional Waivers. Notwithstanding anything herein to the contrary, each of the Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives:

(i) any right it may have to revoke this Guaranty as to future indebtedness under the Loan Documents;

(ii) (a) notice of acceptance hereof; (b) notice of any loans or other financial accommodations made or extended under the Loan Documents or the creation or existence of any Guaranteed Obligations; (c) notice of the amount of the Guaranteed Obligations, subject, however, to each Guarantor's right to make inquiry of Administrative Agent and Holders of Guaranteed Obligations to ascertain the amount of the Guaranteed Obligations at any reasonable time; (d) notice of any adverse change in the financial condition of the Borrower or of any other fact that might increase such Guarantor's risk hereunder; (e) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents; (f) notice of any Default or Event of Default; and (g) all other notices (except if such notice is specifically required to be given to such Guarantor hereunder or under the Loan Documents) and demands to which each Guarantor might otherwise be entitled;

(iii) its right, if any, to require the Administrative Agent and the other Holders of Guaranteed Obligations to institute suit against, or to exhaust any rights and remedies which the Administrative Agent and the other Holders of Guaranteed Obligations has or may have against, the other Guarantors or any third party, or against any Collateral provided by the other Guarantors, or any third party; and each Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and indefeasibly paid) of the other Guarantors or by reason of the cessation from any cause whatsoever of the liability of the other Guarantors in respect thereof;

(iv) (a) any rights to assert against the Administrative Agent and the other Holders of Guaranteed Obligations any defense (legal or equitable), set-off, counterclaim, or claim which such Guarantor may now or at any time hereafter have against the other Guarantors or any other party liable to the Administrative Agent and the other Holders of Guaranteed Obligations; (b) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Guaranteed Obligations or any security therefor; (c) any defense such Guarantor has to performance hereunder, and any right such Guarantor has to be exonerated, arising by reason of: the impairment or suspension of the Administrative Agent's and the other Holders of Guaranteed Obligations' rights or remedies against the other Guarantors; the alteration by the Administrative Agent and the other Holders of Guaranteed Obligations of the Guaranteed Obligations; any discharge of the other Guarantors' obligations to the Administrative Agent and the other Holders of Guaranteed Obligations by operation of law as a result of the Administrative Agent's and the other Holders of Guaranteed Obligations' intervention or omission; or the acceptance by the Administrative Agent and the other Holders of Guaranteed Obligations of anything in partial satisfaction of the Guaranteed Obligations; and (d) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Guarantor's liability hereunder; and

(v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Administrative Agent and the other Holders of Guaranteed Obligations; or (b) any election by the Administrative Agent and the other Holders of Guaranteed Obligations under Section 1111(b) of Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect (or any successor statute), to limit the amount of, or any collateral securing, its claim against the Guarantors.

SECTION 7. Subordination of Subrogation; Subordination of Intercompany Indebtedness.

(A) Subordination of Subrogation. Until the Guaranteed Obligations (other than contingent indemnity obligations) have been indefeasibly paid in full in cash, the Guarantors (i) shall have no right of subrogation with respect to such Guaranteed Obligations and (ii) waive any right to enforce any remedy which the Holders of Guaranteed Obligations or the Administrative Agent now have or may hereafter have against the Borrower, any endorser or any guarantor of all or any part of the Guaranteed Obligations or any other Person, and, until the Guaranteed Obligations (other than contingent indemnity obligations) have been indefeasibly paid in cash, the Guarantors waive any benefit of, and any right to participate in, any security or collateral given to the Holders of Guaranteed Obligations and the Administrative Agent to secure the payment or performance of all or any part of the Guaranteed Obligations or any other liability of the Borrower to the Holders of Guaranteed Obligations. Should any Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights, each Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off that such Guarantor may have to the indefeasible payment in full in cash of the Guaranteed Obligations (other than contingent indemnity obligations) and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until the Guaranteed Obligations (other than contingent indemnity obligations) are indefeasibly paid in full in cash. Each Guarantor acknowledges and agrees that this subordination is intended to benefit the Administrative Agent and the other Holders of Guaranteed Obligations and shall not limit or otherwise affect such Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Administrative Agent, the other Holders of Guaranteed Obligations and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 7(A).

(B) Subordination of Intercompany Indebtedness. Each Guarantor agrees that any and all claims of such Guarantor against the Borrower or any other Guarantor hereunder (each an "Obligor") with respect to any "Intercompany Indebtedness" (as hereinafter defined), any endorser, obligor or any other guarantor of all or any part of the Guaranteed Obligations, or against any of its properties shall be subordinate and subject in right of payment to the prior payment, in full and in cash, of all Guaranteed Obligations (other than contingent indemnity obligations); provided that, as long as no Event of Default has occurred and is continuing, such Guarantor may receive payments of principal and interest from any Obligor with respect to Intercompany Indebtedness. Notwithstanding any right of any Guarantor to ask, demand, sue for, take or receive any payment from any Obligor, all rights, liens and security interests of such Guarantor, whether now or hereafter arising and howsoever existing, in any assets of any other Obligor shall be and are subordinated to the rights of the Holders of Guaranteed Obligations and the Administrative Agent in those assets. No Guarantor shall have any right to possession of any such asset or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until all of the Guaranteed Obligations (other than contingent indemnity obligations) shall have been fully paid and satisfied (in cash) and all financing arrangements pursuant to any Loan Document have been terminated. If all or any part of the assets of any Obligor, or the proceeds

thereof, are subject to any distribution, division or application to the creditors of such Obligor, whether partial or complete, voluntary or involuntary, and whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding, or if the business of any such Obligor is dissolved or if substantially all of the assets of any such Obligor are sold, then, and in any such event (such events being herein referred to as an “Insolvency Event”), any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any indebtedness of any Obligor to any Guarantor (“Intercompany Indebtedness”) shall be paid or delivered directly to the Administrative Agent for application on any of the Guaranteed Obligations, due or to become due, until such Guaranteed Obligations (other than contingent indemnity obligations) shall have first been fully paid and satisfied (in cash). Should any payment, distribution, security or instrument or proceeds thereof be received by the applicable Guarantor upon or with respect to the Intercompany Indebtedness after any Insolvency Event and prior to the satisfaction of all of the Guaranteed Obligations (other than contingent indemnity obligations) and the termination of all financing arrangements pursuant to any Loan Document among the Borrower and the Holders of Guaranteed Obligations, such Guarantor shall receive and hold the same in trust, as trustee, for the benefit of the Holders of Guaranteed Obligations and shall forthwith deliver the same to the Administrative Agent, for the benefit of the Holders of Guaranteed Obligations, in precisely the form received (except for the endorsement or assignment of the Guarantor where necessary), for application to any of the Guaranteed Obligations, due or not due, and, until so delivered, the same shall be held in trust by the Guarantor as the property of the Holders of Guaranteed Obligations. If any such Guarantor fails to make any such endorsement or assignment to the Administrative Agent, the Administrative Agent or any of its officers or employees is irrevocably authorized to make the same. Each Guarantor agrees that until the Guaranteed Obligations (other than the contingent indemnity obligations) have been paid in full (in cash) and satisfied and all financing arrangements pursuant to any Loan Document among the Borrower and the Holders of Guaranteed Obligations have been terminated, except as otherwise permitted by the Credit Agreement, no Guarantor will assign or transfer to any Person (other than the Administrative Agent) any claim any such Guarantor has or may have against any Obligor.

SECTION 8. Contribution with Respect to Guaranteed Obligations.

(A) To the extent that any Guarantor shall make a payment under this Guaranty (a “Guarantor Payment”) which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations (other than contingent indemnity obligations) satisfied by such Guarantor Payment in the same proportion as such Guarantor’s “Allocable Amount” (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guaranteed Obligations (other than contingent indemnity obligations) and termination of the Credit Agreement, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(B) As of any date of determination, the “Allocable Amount” of any Guarantor shall be equal to the maximum amount of the claim which could then be recovered from such Guarantor under this Guaranty without rendering such claim voidable or avoidable under Section 548 of

Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(C) This Section 8 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 8 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Guaranty.

(D) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

(E) The rights of the indemnifying Guarantors against other Guarantors under this Section 8 shall be exercisable upon the full and indefeasible payment of the Guaranteed Obligations (other than contingent indemnity obligations) in cash and the termination of the Credit Agreement.

SECTION 9. Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Borrower under the Credit Agreement or any other Loan Document is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of the Credit Agreement or any other Loan Document shall nonetheless be payable by each of the Guarantors hereunder forthwith on demand by the Administrative Agent.

SECTION 10. Notices. All notices, requests and other communications to any party hereunder shall be given in the manner prescribed in Article IX of the Credit Agreement with respect to the Administrative Agent at its notice address therein and with respect to any Guarantor, in care of the Borrower at the address of the Borrower set forth in the Credit Agreement or such other address or telecopy number as such party may hereafter specify for such purpose by notice to the Administrative Agent in accordance with the provisions of such Article IX.

SECTION 11. No Waivers. No failure or delay by the Administrative Agent or any other Holder of Guaranteed Obligations in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Guaranty, the Credit Agreement and the other Loan Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 12. Successors and Assigns. This Guaranty is for the benefit of the Administrative Agent and the other Holders of Guaranteed Obligations and their respective successors and permitted assigns; provided, that no Guarantor shall have any right to assign its rights or obligations hereunder without the consent of the Required Lenders, and any such assignment in violation of this Section 12 shall be null and void; and in the event of an assignment of any amounts payable under the Credit Agreement or the other Loan Documents in accordance with the respective terms thereof, the rights hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty shall be binding upon each of the Guarantors and their respective successors and assigns.

SECTION 13. Changes in Writing. Other than in connection with the addition of additional Subsidiaries, which become parties hereto by executing a supplement hereto in the form attached as Annex I, neither this Guaranty nor any provision hereof may be changed, waived, discharged

or terminated orally, but only in writing signed by each of the Guarantors and the Administrative Agent with the consent of the Required Lenders under the Credit Agreement.

SECTION 14. GOVERNING LAW. THIS GUARANTY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

SECTION 15. CONSENT TO JURISDICTION; SERVICE OF PROCESS; JURY TRIAL; IMMUNITY.

(A) CONSENT TO JURISDICTION. EACH GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN THE CITY OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY AND EACH GUARANTOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY GUARANTOR IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY ANY GUARANTOR AGAINST THE ADMINISTRATIVE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE ADMINISTRATIVE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS GUARANTY OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN THE CITY OF NEW YORK.

(B) WAIVER OF JURY TRIAL. EACH GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER AND FURTHER WAIVES ANY RIGHT TO INTERPOSE ANY COUNTERCLAIM (OTHER THAN ANY COMPULSORY COUNTERCLAIM) RELATED TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY IN SUCH ACTION.

(C) TO THE EXTENT THAT ANY GUARANTOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER FROM SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OF A JUDGMENT, EXECUTION OR OTHERWISE), EACH GUARANTOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS GUARANTY.

SECTION 16. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guaranty.

SECTION 17. Taxes, Expenses of Enforcement, etc.

(A) Taxes.

(i) All payments by any Guarantor to or for the account of any Lender, the Administrative Agent or any other Holder of Guaranteed Obligations hereunder or under any promissory note shall be made free and clear of and without deduction for any and all Taxes (other than Excluded Taxes). If any Guarantor shall be required by law to deduct any Taxes (other than Excluded Taxes) from or in respect of any sum payable hereunder to any Lender, the Administrative Agent or any other Holder of Guaranteed Obligations, (a) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 17(A)) such Lender, the Administrative Agent or any other Holder of Guaranteed Obligations (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (b) such Guarantor shall make such deductions, (c) such Guarantor shall pay the full amount deducted to the relevant authority in accordance with applicable law and (d) such Guarantor shall furnish to the Administrative Agent the original copy of a receipt evidencing payment thereof within thirty (30) days after such payment is made.

(ii) In addition, the Guarantors hereby agree to pay any present or future stamp or documentary taxes and any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or under any promissory note or from the execution or delivery of, or otherwise with respect to, this Guaranty or any promissory note (“Other Taxes”).

(iii) The Guarantors hereby agree to indemnify the Administrative Agent, each Lender and any other Holder of Guaranteed Obligations for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed on amounts payable under this Section 17(A)) paid by the Administrative Agent, such Lender or such other Holder of Guaranteed Obligations and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. Payments due under this indemnification shall be made within thirty (30) days of the date the Administrative Agent, such Lender or such other Holder of Guaranteed Obligations makes demand therefor.

(iv) By accepting the benefits hereof, each Foreign Lender agrees that it will comply with Section 2.17(e) of the Credit Agreement.

(B) Expenses of Enforcement, Etc. Subject to the terms of the Credit Agreement, after the occurrence and during the continuance of an Event of Default under the Credit Agreement, the Lenders shall have the right at any time to direct the Administrative Agent to commence enforcement proceedings with respect to the Guaranteed Obligations. The Guarantors agree to reimburse the Administrative Agent and the other Holders of Guaranteed Obligations for any reasonable costs and out-of-pocket expenses (including reasonable attorneys’ fees and time charges of attorneys for the Administrative Agent and the other Holders of Guaranteed Obligations, which attorneys may be employees of the Administrative Agent or the other Holders of Guaranteed Obligations) paid or incurred by the Administrative Agent or any other Holder of Guaranteed Obligations in connection with the collection and enforcement of amounts due under the Loan Documents, including without limitation this Guaranty. The Administrative Agent agrees to distribute payments received from any of the Guarantors hereunder to the other Holders of Guaranteed Obligations on a pro rata basis for application in accordance with the terms of the Credit Agreement.

SECTION 18. Setoff. At any time after all or any part of the Guaranteed Obligations have become due and payable (by acceleration or otherwise), each Holder of Guaranteed Obligations (including the Administrative Agent) may, without notice to any Guarantor and regardless of the acceptance of any security or collateral for the payment hereof, appropriate and apply in accordance with the terms of the Credit Agreement toward the payment of all or any part of the Guaranteed Obligations (i) any indebtedness due or to become due from such Holder of Guaranteed Obligations or the Administrative Agent to any Guarantor, and (ii) any moneys, credits or other property belonging to any Guarantor, at any time held by or coming into the possession of such Holder of Guaranteed Obligations (including the Administrative Agent) or any of their respective affiliates.

SECTION 19. Financial Information. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower and any and all endorsers and/or other Guarantors of all or any part of the Guaranteed Obligations, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, that diligent inquiry would reveal, and each Guarantor hereby agrees that none of the Holders of Guaranteed Obligations (including the Administrative Agent) shall have any duty to advise such Guarantor of information known to any of them regarding such condition or any such circumstances. In the event any Holder of Guaranteed Obligations (including the Administrative Agent), in its sole discretion, undertakes at any time or from time to time to provide any such information to a Guarantor, such Holder of Guaranteed Obligations (including the Administrative Agent) shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which such Holder of Guaranteed Obligations (including the Administrative Agent), pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to such Guarantor.

SECTION 20. Severability. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 21. Merger. This Guaranty represents the final agreement of each of the Guarantors with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Guarantor and any Holder of Guaranteed Obligations (including the Administrative Agent).

SECTION 22. Headings. Section headings in this Guaranty are for convenience of reference only and shall not govern the interpretation of any provision of this Guaranty.

SECTION 23. Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from any Guarantor hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent's main New York City office on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of each Guarantor in respect of any sum due hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by any Holder of Guaranteed Obligations (including the Administrative Agent), as the case may be, of any sum adjudged to be so due in such other currency such Holder of Guaranteed Obligations (including the Administrative Agent), as the case may be, may in accordance with normal, reasonable banking

procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Holder of Guaranteed Obligations (including the Administrative Agent), as the case may be, in the specified currency, each Guarantor agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Holder of Guaranteed Obligations (including the Administrative Agent), as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to any Holder of Guaranteed Obligations (including the Administrative Agent), as the case may be, in the specified currency and (b) amounts shared with other Holders of Guaranteed Obligations as a result of allocations of such excess as a disproportionate payment to such other Holder of Guaranteed Obligations under Section 2.18 of the Credit Agreement, such Holder of Guaranteed Obligations (including the Administrative Agent), as the case may be, agrees, by accepting the benefits hereof, to remit such excess to such Guarantor.

Remainder of Page Intentionally Blank.

IN WITNESS WHEREOF, each of the Initial Guarantors has caused this Guaranty to be duly executed by its authorized officer as of the day and year first above written.

[INITIAL GUARANTORS TO COME]

By: _____
Name:
Title:

Acknowledged and Agreed
as of the date first written above:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____
Name:
Title:

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ANNEX I TO GUARANTY

Reference is hereby made to the Guaranty (the "Guaranty") made as of [____], 2007 by and among [INITIAL GUARANTORS TO COME] (the "Initial Guarantors") and along with any additional Subsidiaries of the Borrower, which become parties thereto and together with the undersigned, the "Guarantors") in favor of the Administrative Agent, for the ratable benefit of the Holders of Guaranteed Obligations, under the Credit Agreement. Capitalized terms used herein and not defined herein shall have the meanings given to them in the Guaranty. By its execution below, the undersigned [NAME OF NEW GUARANTOR], a [corporation] [partnership] [limited liability company], agrees to become, and does hereby become, a Guarantor under the Guaranty and agrees to be bound by such Guaranty as if originally a party thereto. By its execution below, the undersigned represents and warrants as to itself that all of the representations and warranties contained in Section 2 of the Guaranty are true and correct in all respects as of the date hereof.

IN WITNESS WHEREOF, [NAME OF NEW GUARANTOR], a [corporation] [partnership] [limited liability company] has executed and delivered this Annex I counterpart to the Guaranty as of this _____ day of _____, 20__.

[NAME OF NEW GUARANTOR]

By: _____
Its:

EXHIBIT E

FORM OF PLEDGE AGREEMENT



PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT (this "Agreement") is made as of October 5, 2007, by NETWORK APPLIANCE, INC, a Delaware corporation (the "undersigned" or the "Borrower"), in favor of the Administrative Agent, for the ratable benefit of the Holders of Secured Obligations, under the Credit Agreement referred to below. Terms defined in the Credit Agreement (as hereinafter defined) and not otherwise defined herein have, as used herein, the respective meanings provided for therein.

WITNESSETH

WHEREAS, the Borrower, the institutions from time to time parties thereto as lenders (the "Lenders"), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, individually and in its capacity as contractual representative (the "Administrative Agent") for itself and the other Lenders, have entered into a certain Secured Credit Agreement dated as of October 5, 2007 (as the same may be amended, modified, supplemented and/or restated, and as in effect from time to time, the "Credit Agreement"), providing, subject to the terms and conditions thereof, for extensions of credit and other financial accommodations to be made by the Lenders to the Borrower;

WHEREAS, it is a condition precedent to the extension of credit by the Lenders under the Credit Agreement that the undersigned execute and deliver this Agreement as security for certain of its obligations under the Credit Agreement; and

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

In consideration of one of more loans, or other financial accommodations extended by the Lenders (including the Administrative Agent in its individual capacity), the undersigned and the Administrative Agent agree as follows:

1. Definitions.

"Account Assets" means all Deposits, Securities, securities entitlements and any other assets held in trust, or in any custody, subcustody, safekeeping, investment management accounts, or other accounts of the undersigned with the Administrative Agent or any other custodian, trustee or Clearing System or held by any Intermediary (all of which shall be considered "financial assets" under the UCC).

“Clearing System” means the Depository Trust Company (“DTC”) and such other clearing or safekeeping system that may from time to time be used in connection with transactions relating to or the custody of any Securities, and any depository for any of the foregoing.

“Collateral” means: (i) the Deposits, Securities and Account Assets (as defined below) that are listed on Exhibit A; (ii) all additions to, and proceeds, renewals, investments, reinvestments and substitutions of, the foregoing, whether or not listed on Exhibit A; (iii) all certificates, receipts and other instruments evidencing any of the foregoing.

“Deposits” means the deposits of the undersigned with the Administrative Agent (whether or not held in trust, or in any custody, subcustody, safekeeping, investment management accounts, or other accounts of the undersigned with the Administrative Agent).

“Liabilities” means all Secured Obligations, whether now existing or hereafter incurred or acquired, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, primary or secondary, sole, joint, several or joint and several, secured or unsecured, arising by operation of law or otherwise arising in connection with the Collateral, this Agreement or any other Liability Document and all related costs and expenses incurred by the Administrative Agent.

“Liability Document” means any Loan Document or any other instrument, agreement or document evidencing, governing or delivered in connection with the Liabilities.

“Securities” means the stocks, bonds and other instruments and securities, whether or not held in trust or in any custody, subcustody, safekeeping, investment management accounts or other accounts of the undersigned with the Administrative Agent or any other custodian, trustee or Clearing System or held by any party as a financial intermediary or securities intermediary (the “Intermediary”).

“UCC” means the Uniform Commercial Code in effect in the State of New York. Unless the context otherwise requires, all terms used in this Agreement which are defined in the UCC will have the meanings stated in the UCC.

2. Grant of Security Interest.

As security for the payment of all the Liabilities, the undersigned pledges to the Administrative Agent and grants to the Administrative Agent, in each case for the ratable benefit of the Holders of Secured Obligations in respect of the Liabilities, a security interest in and a right of setoff against, the Collateral.

3. Agreements of the Undersigned and Rights of the Administrative Agent.

The undersigned agrees as follows and irrevocably authorizes, upon the occurrence and during the continuance of an Event of Default (as defined in Section 7 below), the Administrative Agent to exercise the rights listed below, at its option, for its own benefit, either in its own name or in the name of the undersigned, and appoints the Administrative Agent as its attorney-in-fact to take all action permitted under this Agreement.

(a) **Deposits:** The Administrative Agent may: (i) renew the Deposits on terms and for periods the Administrative Agent deems appropriate; (ii) demand, collect, and receive payment of any monies or proceeds due or to become due under the Deposits; (iii) execute any instruments required for the withdrawal or repayment of the Deposits; (iv) in all respects deal with the Deposits as the owner.

(b) **Securities:** The Administrative Agent may: (i) transfer to the account of the Administrative Agent any Securities whether in the possession of, or registered in the name of, any Clearing System or held otherwise; (ii) transfer to the account of the Administrative Agent with any Federal Reserve Administrative Agent any Securities held in book entry form with any such Federal Reserve Administrative Agent; and (iii) transfer to the name of the Administrative Agent or its nominee any Securities registered in the name of the undersigned and held by the Administrative Agent and complete and deliver any necessary stock powers or other transfer instruments.

The undersigned grants to the Administrative Agent an irrevocable proxy to vote any and all Securities and give consents, waivers and ratifications in connection with those Securities after the occurrence and during the continuance of an Event of Default.

All payments, distributions and dividends in securities, property or cash shall be paid directly to and, at the discretion of the Administrative Agent, retained by the Administrative Agent and held by it, until applied as provided in this Agreement, as additional Collateral.

(c) **General:** The Administrative Agent may, in its name, or in the name of the undersigned: (i) execute and file financing statements under the UCC or any other filings or notices necessary or desirable to create, perfect or preserve its security interest, all without notice (except as required by applicable law and not waivable) and without liability except to account for property actually received by it and (ii) after the occurrence and during the continuance of an Event of Default (x) demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable with respect to, any item of the Collateral (but shall be under no obligation to do so); (y) make any notification (to the issuer of any certificate or Security, or otherwise, including giving any notice of exclusive control to the Intermediary) or take any other action in connection with the perfection or preservation of its security interest or any enforcement of remedies, and retain any documents evidencing the title of the undersigned to any item of the Collateral; (iv) issue entitlement orders with respect to any of the Collateral to any Intermediary without the consent of the undersigned.

The undersigned agrees that it will not file or permit to be filed any financing or like statement with respect to the Collateral in which the Administrative Agent is not named as the sole secured party, consent or be a party to any securities account control agreement or other similar agreement with any Intermediary (an "Account Control Agreement") to which the Administrative Agent is not also a party or sell, assign, or otherwise dispose of, grant any option with respect to, or pledge, or otherwise encumber the Collateral. At the reasonable request of the Administrative Agent the undersigned agrees to do all other things which the Administrative Agent may deem necessary or advisable in order to perfect and preserve the security interest and to give effect to the rights granted to the Administrative Agent under this Agreement or enable the Administrative Agent to comply with any applicable laws or regulations. Notwithstanding the foregoing, subject to compliance with any mandatory legal requirements placed upon it to the contrary, the Administrative Agent does not assume any duty with respect to the Collateral and is not required to take any action to collect, preserve or protect its or the undersigned's rights in any item of the Collateral. The undersigned releases the Administrative Agent and agrees to hold the Administrative Agent harmless from any claims, causes of action and demands at any time arising with respect to this Agreement, the use or disposition of any item of the Collateral or any action taken or omitted to be taken by the Administrative Agent with respect thereto, subject to Administrative Agent's compliance with such mandatory legal requirements and other than claims, causes of action and demands arising from the gross negligence or willful misconduct of Administrative Agent.

The rights granted to the Administrative Agent pursuant to this Agreement are in addition to the rights granted to the Administrative Agent in any custody, investment management, trust, Account Control

Agreement or similar agreement. In case of conflict between the provisions of this Agreement and of any other such agreement, the provisions of this Agreement will prevail.

4. Application. Upon the maturity of each item of Collateral or the receipt by Borrower of any interest on Deposits and Securities and cash dividends on Securities, the Borrower hereby directs the Administrative Agent to deposit or maintain such amounts in the Money Market Fund listed on Exhibit A hereto as additional Collateral unless otherwise directed by the Borrower in accordance with Section 5.

5. Value, Supplements, Withdrawals and Substitutions of the Collateral.

(a) The undersigned agrees that at all times the aggregate value of the Collateral may not be less than the amount required under Section 5.10 of the Credit Agreement, subject to the grace period set forth therein. The undersigned will supplement the Collateral to the extent necessary to ensure compliance with this provision.

(b) To the extent the aggregate value of the Collateral exceeds the amount required under Section 5.10 of the Credit Agreement (including due to any reduction in the Commitments), Borrower shall be permitted to withdraw Account Assets to the extent of such excess. In addition to the foregoing, the Borrower shall be permitted at any time to withdraw Account Assets for the purpose of substitution of Collateral of equal or greater value or to reinvest Account Assets in any other assets constituting Collateral which are pledged pursuant to Collateral Documents. To facilitate the foregoing, Administrative Agent agrees to give any instructions that may be necessary in accordance with the terms of any Control Agreement to permit such withdrawal.

6. Currency Conversion.

For calculation purposes, any currency in which the Collateral is denominated (the "Collateral Currency") will be converted into the currency of the Liabilities (the "Liability Currency") at the spot rate of exchange for the purchase of the Liability Currency with the Collateral Currency quoted by the Administrative Agent at such place as the Administrative Agent deems appropriate (or, if no such rate is quoted on any relevant date, estimated by the Administrative Agent on the basis of the Administrative Agent's last quoted spot rate) or another prevailing rate that the Administrative Agent reasonably deems more appropriate.

7. Representations and Warranties.

The undersigned represents and warrants: (a) the undersigned is the sole owner of the Collateral; (b) the Collateral is free of all encumbrances except for the security interest in favor of the Administrative Agent created by this Agreement or any other Loan Document and except for Relevant Permitted Liens; (c) no authorizations, consents or approvals and no notice to or filing with any governmental authority or regulatory body is required for the execution and delivery of this Agreement; (d) the execution, delivery and performance of this Agreement will not violate any provisions of applicable law, regulation or order and will not result in the breach of, or constitute a default, or require any consent under, any material agreement, instrument or document to which the undersigned is a party or by which it or any of its property may be bound; (e) the Securities are not subject to any restrictions or limitations relating to a holding period, manner of sale, volume limitation, public information or notice requirements; and (f) it is duly organized and validly existing under the laws of the jurisdiction of its organization, it has full power and authority to execute, deliver and perform this Agreement, the execution, delivery and performance have been duly authorized, will not conflict with any provisions of its governing instruments and the Agreement is a legal, valid and binding obligation of the undersigned, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights

generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

8. Event of Default.

If an Event of Default under the Credit Agreement (an “Event of Default”) shall occur and be continuing, then, the Administrative Agent will be entitled to exercise any of the rights and remedies under this Agreement.

9. Remedies.

The Administrative Agent will have the rights and remedies under the UCC and the other rights granted to the Administrative Agent under this Agreement, and, without limiting the foregoing, but subject to the occurrence and continuance of an Event of Default, without notice or demand, to sell, redeem, offset, setoff, debit, charge or otherwise dispose of or liquidate into cash any such Collateral and/or to apply it or the proceeds thereof to repay any of the Liabilities in accordance with Section 2.18 of the Credit Agreement (regardless of whether any such Liabilities are contingent, unliquidated or unmaturing or whether the Administrative Agent has any other recourse to the undersigned or any other Loan Party or any other collateral or assets). The Administrative Agent may exercise its rights without regard to any premium or penalty from liquidation of any Collateral and without regard to the undersigned’s basis or holding period for any Collateral.

In connection with the exercise of its remedies, the Administrative Agent may sell in the Borough of Manhattan, New York City, or elsewhere, in one or more sales or parcels, at the price as the Administrative Agent deems best, for cash or on credit or for other property, for immediate or future delivery, any item of the Collateral, at any broker’s board or at public or private sale, in any reasonable manner permissible under the UCC (except that, to the extent permissible under the UCC, the undersigned waives any requirements of the UCC) and the Administrative Agent or anyone else may be the purchaser of the Collateral and hold it free from any claim or right including, without limitation, any equity of redemption of the undersigned, which right the undersigned expressly waives. The Administrative Agent may in its sole discretion elect to conduct any sale (and related offers) of any Collateral in such a manner as to avoid the need for registration or qualification thereof under any Federal or state securities laws, that such conduct may include restrictions (including as to potential purchasers) and other requirements (such as purchaser representations) which may result in prices or other terms less favorable than those which might have been obtained through a public sale not subject to such restrictions and requirements and that any offer and sale so conducted shall be deemed to have been made in a commercially reasonable manner.

In connection with the exercise of its remedies, the Administrative Agent may also, in its sole discretion: (i) convert any part of the Collateral Currency into the Liability Currency; (ii) hold any monies or proceeds representing the Collateral in a cash collateral account in the Liability Currency or other currency that the Administrative Agent reasonably selects; (iii) invest such monies or proceeds on behalf of the undersigned; and (iv) apply any portion of the Collateral, first, to all costs and expenses of the Administrative Agent, second, to the payment of interest on the Liabilities and any fees or commissions to which the Administrative Agent may be entitled, third, to the payment of principal of the Liabilities, whether or not then due, and fourth, to the undersigned.

The undersigned will pay to the Administrative Agent all expenses (including reasonable attorneys’ fees and legal expenses incurred by the Administrative Agent and the allocated costs of its in-house counsel) in connection with the exercise of any of the Administrative Agent’s rights or obligations under this Agreement or the Liability Documents. The undersigned will take any action reasonably requested by the

Administrative Agent to allow it to sell or dispose of the Collateral. Notwithstanding that the Administrative Agent may continue to hold Collateral and regardless of the value of the Collateral, the undersigned will remain liable for the payment in full of any unpaid balance of the Liabilities.

10. Termination or Release.

Upon the payment in full in cash of the Liabilities (other than contingent indemnity obligations) and termination of the Commitments under the Credit Agreement, the security interest in all Collateral created under this Agreement shall terminate and all rights of the Administrative Agent and the other Lenders to the Collateral shall revert to the Borrower. Upon any such termination, the Administrative Agent will, at the Borrower's expense, execute and deliver to Borrower such documents as Borrower shall reasonably request to evidence such termination.

Upon any withdrawal by Borrower of any Collateral that is permitted under Section 5(b) of this Agreement, the security interest in such Collateral shall be automatically released. Upon any such termination, the Administrative Agent will, at the Borrower's expense, execute and deliver to Borrower such documents as Borrower shall reasonably request to evidence such release.

11. Jurisdiction.

The undersigned consents to the non-exclusive jurisdiction of the State and Federal courts sitting in the City of New York and agrees that suit may be brought against the undersigned in those courts or in any other jurisdiction where the undersigned or any of its assets may be found, and the undersigned irrevocably submits to the jurisdiction of those courts. The undersigned consents to the service of process by mailing copies of process to the Borrower at its most recent mailing address in the records of the Administrative Agent. The undersigned further agrees that any action or proceeding brought against the Administrative Agent may be brought only in a New York State or United States Federal court sitting in New York County. To the extent that the Borrower may be or become entitled to claim for itself or its property any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations hereunder or under the other Liability Documents.

The undersigned agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit or proceeding in such state and hereby waives any defense on the basis of an inconvenient forum. Nothing herein shall affect the right of the Administrative Agent to serve legal process in any other manner permitted by law or affect the right of the Administrative Agent to bring any action or proceeding against the undersigned or its property in the courts of any other jurisdiction.

12. Waiver of Jury Trial.

THE UNDERSIGNED AND THE BANK EACH WAIVE ANY RIGHT TO JURY TRIAL.

13. Notices.

Unless otherwise agreed in writing, notices may be given to the Administrative Agent and the undersigned in accordance with Section 9.01 of the Credit Agreement.

14. Miscellaneous.

(a) The Administrative Agent may assign any of the Collateral and any of its interests in this Agreement (and may assign the Liabilities to any party) in accordance with the Credit Agreement and will be fully discharged from all responsibility as to the assigned Collateral. That assignee will have all the obligations, powers and rights of the Administrative Agent hereunder, but only as to the assigned Collateral.

(b) No amendment or waiver of any provision of this Agreement nor consent to any departure by the undersigned will be effective unless it is in writing and signed by the undersigned and the Administrative Agent and will be effective only in that specific instance and for that specific purpose. No failure on the part of the Administrative Agent to exercise, and no delay in exercising, any right will operate as a waiver or preclude any other or further exercise or the exercise of any other right.

(c) The rights and remedies in this Agreement are cumulative and not exclusive of any rights and remedies which the Administrative Agent may have under law or under other agreements or arrangements with the undersigned or any other Loan Party.

(d) The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement is not valid or enforceable in whole or in part in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability without in any manner affecting the validity or enforceability in any other jurisdiction or the remaining provisions of this Agreement.

(e) The term "undersigned" will include the heirs, executors, administrators, assigns and successors of the undersigned.

(f) The undersigned hereby waives presentment, notice of dishonor and protest of all instruments included in or evidencing the Liabilities or the Collateral and any other notices and demands, whether or not relating to those instruments.

(g) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

NETWORK APPLIANCE, INC.

By: _____
Name:
Title:

Address for notices:

Telecopier:

Telephone:

ACCEPTED:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

as Administrative Agent

By: _____

Name:

Title:

Address for notices to the
Administrative Agent:

JPMorgan Chase Bank, National Association

Attn:

Telecopier:

Telephone:

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DESCRIPTION OF THE COLLATERAL

1. Deposits

Type of Deposit (CD, TD, etc.)	Location (NY, IBF-NY, etc.)	Contract or Certificate No.	Issue or Opening Date	Maturity Date	Principal Amount
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None

2. Stocks, Bonds and Other Instruments and Securities

Nature of Security or Obligation		Name of Issuer		Number of Units	Face Amount (if Applicable)	Certificate Number
Cusip	Issuer	Cpn	Yld	Value	Maturity	Quantity
3128X5Z84	FREDDIE MAC	5.400	4.891	4/17/ 2007	10/17/ 2007	\$ 5,000,000.00
3136F6FZ7	Fannie Mae	3.820	3.820	10/18/ 2004	10/18/ 2007	\$ 1,500,000.00
31331XVN9	FED FARM CREDIT	5.250	5.236	4/23/ 2007	10/23/ 2007	\$ 5,000,000.00
31331SBN2	Federal Farm Credit Bank	3.500	3.500	10/26/ 2004	10/26/ 2007	\$ 1,000,000.00
3136F64B2	FNMA Clbl Not Called (O)	4.280	4.280	4/29/ 2005	10/26/ 2007	\$ 1,000,000.00
05565UAA7	BP Canada Finance	3.375	3.947	6/15/ 2005	10/31/ 2007	\$ 1,000,000.00
31331SMB6	FFCB Clbl Not Called (O)	3.700	3.700	2/2/ 2005	11/2/ 2007	\$ 2,000,000.00
31359MB36	FNMA Clbl Not Called (O)	4.250	4.250	5/2/ 2005	11/2/ 2007	\$ 1,000,000.00
3133XCJS3	Fannie Mae	4.300	4.300	8/9/ 2005	11/9/ 2007	\$ 2,000,000.00
3136F6JP5	Fannie Mae	3.490	3.490	11/9/ 2004	11/9/ 2007	\$ 1,000,000.00
59018YNZ0	Merrill Lynch	4.000	3.983	2/24/ 2005	11/15/ 2007	\$ 1,500,000.00
02635PSA2	Amer Genl Fin	4.500	5.340	5/30/ 2006	11/15/ 2007	\$ 5,000,000.00
59018YNZ0	Merrill Lynch	4.000	5.200	9/25/ 2006	11/15/ 2007	\$ 3,000,000.00
33900QBE3	Fleet Boston	4.200	4.370	8/9/ 2005	11/30/ 2007	\$ 1,505,000.00
949746CK5	WELLS FARGO SF	5.250	4.283	7/14/ 2005	12/1/ 2007	\$ 1,500,000.00
36962GVW1	General Electric Credit Corp	6.500	4.499	7/20/ 2005	12/10/ 2007	\$ 1,210,000.00
36962GVW1	General Electric Credit Corp	6.500	4.329	7/1/ 2005	12/10/ 2007	\$ 1,500,000.00
3136F7AQ0	FNMA Clbl Not Called (O)	4.000	4.000	6/14/ 2005	12/14/ 2007	\$ 1,000,000.00
073902BG2	Bear Sterns	6.750	4.541	3/11/ 2005	12/15/ 2007	\$ 1,000,000.00

590188HX9	Merrill Lynch	6.560	5.491	9/1/ 2006	12/16/ 2007	\$ 3,000,000.00
590188HX9	Merrill Lynch	6.560	5.250	4/7/ 2006	12/16/ 2007	\$ 1,000,000.00
065913AE5	Bank Boston	6.500	5.425	9/20/ 2006	12/19/ 2007	\$ 1,500,000.00
172967DB4	Citigroup Inc	4.200	5.301	8/11/ 2006	12/20/ 2007	\$ 2,500,000.00
3128X4DF5	Freddie Mac	4.200	4.200	6/28/ 2005	12/28/ 2007	\$ 1,500,000.00
3133XCBC6	Federal Home Loan Bank	4.140	4.140	6/28/ 2005	12/28/ 2007	\$ 2,000,000.00
3133XC4Z3	Federal Home Loan Bank	4.125	4.125	7/6/ 2005	1/4/ 2008	\$ 2,000,000.00
3133XABC0	FHLB Clbl 10/11/07 (Q)	4.500	4.005	1/11/ 2005	1/11/ 2008	\$ 2,800,000.00
22541LAF0	Credit Suisse	4.625	3.996	2/1/ 2005	1/15/ 2008	\$ 1,500,000.00
36962GZZ0	General Electric Credit Corp	4.250	4.215	5/11/ 2005	1/15/ 2008	\$ 1,000,000.00
38141GCS1	Goldman Sachs	4.125	4.168	6/15/ 2005	1/15/ 2008	\$ 1,000,000.00
38141GCS1	Goldman Sachs	4.125	5.300	6/9/ 2006	1/15/ 2008	\$ 3,000,000.00
524908FD7	Lehman Brothers	4.000	4.187	6/22/ 2005	1/22/ 2008	\$ 1,000,000.00
31331SML4	FFCB Clbl Not Called (O)	3.790	3.790	1/28/ 2005	1/28/ 2008	\$ 2,000,000.00

Cusip	Issuer	Cpn	Yld	Value	Maturity	Quantity
06406MAW8	Bank of New York Inc	3.800	4.372	8/9/ 2005	2/1/ 2008	\$ 2,000,000.00
172967BS9	Citicorp	3.500	4.064	7/7/ 2005	2/1/ 2008	\$ 2,000,000.00
172967BS9	Citicorp	3.500	5.309	8/4/ 2006	2/1/ 2008	\$ 2,095,000.00
31359MXP3	Fannie Mae	3.875	3.875	2/1/ 2005	2/1/ 2008	\$ 1,500,000.00
90331VAW2	US Bancorp	6.500	5.471	8/11/ 2006	2/1/ 2008	\$ 3,629,000.00
3136F6UH0	FNMA Clbl 11/1/07 (Q)	4.000	4.000	2/1/ 2005	2/1/ 2008	\$ 1,500,000.00
3136F6VY2	Fannie Mae	4.000	4.000	2/8/ 2005	2/8/ 2008	\$ 1,500,000.00
339030AG3	Fleet Boston	3.850	4.212	3/15/ 2005	2/15/ 2008	\$ 2,000,000.00
339030AG3	Fleet Finl Group	3.850	5.060	10/4/ 2006	2/15/ 2008	\$ 2,000,000.00
524909AY4	Lehman Bros Inc	6.625	5.250	4/18/ 2006	2/15/ 2008	\$ 1,000,000.00
79549BGP6	Salomon Sb Hldgs	6.500	5.550	7/17/ 2006	2/15/ 2008	\$ 1,500,000.00
79549BGP6	Salomon Sb Hldgs	6.500	4.150	5/11/ 2005	2/15/ 2008	\$ 2,000,000.00
3136F6YQ6	Fannie Mae	4.000	4.000	2/22/ 2005	2/22/ 2008	\$ 2,000,000.00
36962GP57	General Electric Credit Corp	4.125	5.178	1/3/ 2007	3/4/ 2008	\$ 1,158,000.00
36962GP57	General Electric Credit Corp	4.125	5.018	12/13/ 2006	3/4/ 2008	\$ 3,500,000.00
3136F7JZ1	FNMA Clbl Not Called (Q)	4.750	4.750	9/7/ 2005	3/7/ 2008	\$ 1,000,000.00
949746JQ5	WELLS FARGO BANK INTL NY	4.125	4.177	3/11/ 2005	3/10/ 2008	\$ 2,000,000.00
949746JQ5	WELLS FARGO BANK INTL NY	4.125	5.178	1/3/ 2007	3/10/ 2008	\$ 2,500,000.00
949746JQ5	WELLS FARGO & CO	4.125	5.750	4/20/ 2006	3/10/ 2008	\$ 5,000,000.00
949746JQ5	WELLS FARGO & CO	4.125	5.750	4/25/ 2006	3/10/ 2008	\$ 5,000,000.00
02666QWG4	American Honda Finance	4.250	5.127	10/4/ 2006	3/11/ 2008	\$ 3,000,000.00
91159HGG9	US Bancorp	3.125	5.078	12/21/ 2006	3/15/ 2008	\$ 2,100,000.00
338915AJ0	Fleet Finl Group	6.500	5.261	1/26/ 2007	3/15/ 2008	\$ 2,440,000.00
3133XB3T0	Federal Home Loan Bank	4.160	4.160	3/28/ 2005	3/28/ 2008	\$ 1,500,000.00
337358BK0	WACHOVIA BANK NA, NEW YORK	6.400	4.639	7/18/ 2005	4/1/ 2008	\$ 1,500,000.00
066050CU7	Bankamerica Corp	6.250	5.185	4/30/ 2007	4/1/ 2008	\$ 2,000,000.00
524909AZ1	Lehman Brothers	6.500	4.643	7/20/ 2005	4/15/ 2008	\$ 1,000,000.00
06606HD87	Bankboston Na	6.375	5.240	4/18/ 2006	4/15/ 2008	\$ 1,465,000.00

59018YQU8	Merrill Lynch	3.700	4.928	12/11/ 2006	4/21/ 2008	\$ 3,030,000.00
59018YQU8	Merrill Lynch	3.700	5.172	4/26/ 2007	4/21/ 2008	\$ 2,000,000.00
8447HACE2	Southtrust Bank	3.125	4.270	7/21/ 2005	5/15/ 2008	\$ 2,000,000.00
338915AL5	FLEETBOSTON FINL CORP	6.375	5.561	6/13/ 2006	5/15/ 2008	\$ 5,000,000.00
74433KCR6	PRUDENTIAL FUNDING LLC	6.600	5.867	5/16/ 2006	5/15/ 2008	\$ 4,000,000.00
634902HQ6	Natl City Bk Oh	3.300	5.071	3/23/ 2007	5/15/ 2008	\$ 1,000,000.00
634902HQ6	Natl City Bk Oh	3.300	5.490	7/31/ 2006	5/15/ 2008	\$ 1,745,000.00
634902HQ6	Natl City Bk Oh	3.300	5.070	3/22/ 2007	5/15/ 2008	\$ 2,000,000.00
8447HACE2	Southtrust Bk Na	3.125	5.200	4/24/ 2006	5/15/ 2008	\$ 1,000,000.00
025818EM3	AMER EXPRESS CREDIT	3.000	5.389	4/20/ 2006	5/16/ 2008	\$ 4,000,000.00
257661AF5	Donaldson Lufkin	6.500	5.290	5/2/ 2006	6/1/ 2008	\$ 1,028,000.00
31359MD59	FNMA Clbl Not Called (O)	4.125	4.125	6/16/ 2005	6/16/ 2008	\$ 1,000,000.00
441812FY5	Household Intl	6.400	5.200	5/3/ 2007	6/17/ 2008	\$ 2,000,000.00
3133XLAG8	FED HOME LN BANK	5.450	5.022	6/18/ 2007	6/18/ 2008	\$ 4,000,000.00
073902CC0	Bear Sterns	2.875	4.393	7/26/ 2005	7/2/ 2008	\$ 1,000,000.00
59018YRN3	Merrill Lynch	3.125	5.200	4/21/ 2006	7/15/ 2008	\$ 1,000,000.00
59018YRN3	Merrill Lynch	3.125	5.200	4/21/ 2006	7/15/ 2008	\$ 1,000,000.00
90331VAZ5	Us Bank Na	6.300	5.060	10/6/ 2006	7/15/ 2008	\$ 1,885,000.00
31331SR39	Federal Farm Credit Bank	4.440	4.440	7/18/ 2005	7/18/ 2008	\$ 1,500,000.00
31359MF32	FNMA Clbl Not Called (O)	5.000	5.230	5/3/ 2006	7/25/ 2008	\$ 1,000,000.00
31359MYF4	Fannie Mae	4.400	4.400	7/28/ 2005	7/28/ 2008	\$ 1,500,000.00
3136F7GA9	FNMA Clbl Not Called (Q)	4.750	4.750	7/28/ 2005	7/28/ 2008	\$ 2,000,000.00
06423AAN3	BANK ONE CORP	6.000	5.528	4/16/ 2007	8/1/ 2008	\$ 5,000,000.00
31359MYM9	Fannie Mae	4.500	4.500	8/4/ 2005	8/4/ 2008	\$ 1,500,000.00
524908JA9	Lehman Brothers	3.500	5.488	6/21/ 2006	8/7/ 2008	\$ 1,085,000.00
524908JA9	Lehman Brothers	3.500	5.308	8/16/ 2006	8/7/ 2008	\$ 3,000,000.00
524908JA9	Lehman Bros Hldg	3.500	5.110	3/23/ 2007	8/7/ 2008	\$ 3,000,000.00
524908JA9	Lehman Bros Hldg	3.500	5.150	4/25/ 2007	8/7/ 2008	\$ 5,000,000.00
90331HKW2	US Bancorp	4.400	5.171	1/17/ 2007	8/15/ 2008	\$ 2,394,000.00
92976FAS2	WACHOVIA BANK NA, NEW YORK	4.375	5.223	4/27/ 2006	8/15/ 2008	\$ 4,675,000.00

Cusip	Issuer	Cpn	Yld	Value	Maturity	Quantity
92976FAS2	Wachovia Bank Na	4.375	5.040	10/3/ 2006	8/15/ 2008	\$ 2,000,000.00
949746JB8	Wells Fargo & Co	4.000	5.140	9/25/ 2006	8/15/ 2008	\$ 5,000,000.00
3128X4HA2	Freddie Mac	4.625	4.625	8/22/ 2005	8/22/ 2008	\$ 1,500,000.00
173034GU7	Citicorp	7.250	5.370	8/11/ 2006	9/1/ 2008	\$ 1,000,000.00
173034GU7	Citicorp	7.250	5.500	6/19/ 2006	9/1/ 2008	\$ 1,500,000.00
459745FK6	INTL LEASE FINANCE CORP	4.350	5.760	4/20/ 2006	9/15/ 2008	\$ 5,100,000.00
3133XGVX9	FHLB Cibl 9/19/07 (O)	5.250	5.250	9/27/ 2006	9/19/ 2008	\$ 3,000,000.00
4041A0AG3	HBOS PLC	3.750	5.235	4/20/ 2006	9/30/ 2008	\$ 5,000,000.00
931142BU6	WAL-MART STORES	3.375	5.191	5/12/ 2006	10/1/ 2008	\$ 7,000,000.00
3136F73A3	FNMA Cibl 10/10/07 (O)	5.300	5.196	10/10/ 2006	10/10/ 2008	\$ 5,000,000.00
590188JK5	Merrill Lynch	6.375	5.491	8/4/ 2006	10/15/ 2008	\$ 3,500,000.00
52517PC58	Lehman Brothers	5.450	5.418	6/5/ 2006	10/22/ 2008	\$ 5,350,000.00
59018YWG2	Merrill Lynch	4.831	5.180	9/6/ 2006	10/27/ 2008	\$ 2,000,000.00
59018YWG2	Merrill Lynch	4.831	5.380	8/2/ 2006	10/27/ 2008	\$ 2,500,000.00
125577AP1	CIT GROUP INC	3.875	7.833	6/11/ 2007	11/3/ 2008	\$ 2,000,000.00
17303MJC4	Citicorp	6.375	5.457	8/28/ 2006	11/15/ 2008	\$ 3,000,000.00
17303MJC4	Citicorp	6.375	5.200	9/22/ 2006	11/15/ 2008	\$ 3,120,000.00
17303MJC4	Citicorp	6.375	5.250	8/31/ 2006	11/15/ 2008	\$ 5,000,000.00
33738MAC5	First Union Natl	5.800	4.950	3/30/ 2007	12/1/ 2008	\$ 3,000,000.00
33738MAC5	First Union Natl	5.800	4.950	4/4/ 2007	12/1/ 2008	\$ 3,000,000.00
717818W46	Philadelphia Indl-B	4.940	4.939	12/14/ 2006	12/1/ 2008	\$ 1,560,000.00
892332AH0	TOYOTA MTR CRED	5.500	5.201	6/19/ 2006	12/15/ 2008	\$ 5,000,000.00
441812KF0	Household Fin Co	4.125	5.210	5/8/ 2007	12/15/ 2008	\$ 2,000,000.00
05565UAB5	BP Canada Finance	3.625	4.988	10/12/ 2006	1/15/ 2009	\$ 1,500,000.00
64952WAB9	New York Life Global Fdg	3.875	5.346	5/22/ 2006	1/15/ 2009	\$ 3,000,000.00
16161ABK3	Chase Manhat Crp	6.500	4.970	3/29/ 2007	1/15/ 2009	\$ 3,000,000.00
38143UAA9	Goldman Sachs	3.875	4.951	3/20/ 2007	1/15/ 2009	\$ 2,578,000.00
319455BU4	First Chicago	6.375	4.960	3/30/ 2007	1/30/ 2009	\$ 5,000,000.00

760719AM6	HSBC	9.700	6.214	4/11/ 2006	2/1/ 2009	\$ 3,000,000.00
441812GE8	HOUSEHOLD FINANCE CORP	5.875	5.345	4/28/ 2006	2/1/ 2009	\$ 3,000,000.00
90331HHZ9	US Bancorp	3.750	5.152	10/17/ 2006	2/6/ 2009	\$ 3,500,000.00
36962GN83	Gen Elec Cap Crp	4.000	4.900	10/2/ 2006	2/17/ 2009	\$ 3,040,000.00

3. All Assets Held or To Be Held in the Following Custody or Subcustody Accounts, Safekeeping Accounts, Investment Management Accounts and/or other account with Intermediary:

Type of Account	Account Number	Entity/Location
Securities Account	678970	J.P. Morgan Securities Inc.
Securities Custody Account	893004211	JPMorgan Chase Bank, National Association

EXHIBIT F-1

FORM OF TRI-PARTY CONTROL AGREEMENT

TRI-PARTY CONTROL AGREEMENT

(**"Control Agreement"**)

Date: October 5, 2007

Re: Pledge of Collateral described in attached Pledge Agreement (the "**Pledge**")

The undersigned ("**Debtor**") has granted to JPMORGAN CHASE BANK, National Association, as Administrative Agent ("**Secured Party**") a security interest in Collateral held in account number 678970 (such account or any successor accounts, collectively, the "**Securities Account**") to secure indebtedness owing to Secured Party in connection with that certain Secured Credit Agreement dated as of October 5, 2007 by and among the Debtor, the Lenders party thereto and the Secured Party (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). J.P. MORGAN SECURITIES INC. ("**Securities Intermediary**") represents to Secured Party as follows: (a) The Collateral described in the Pledge is a complete and accurate statement of the Securities Account and all of the listed Collateral has been endorsed to Securities Intermediary or in blank. (b) The Securities Account and the rights of Debtor in the account are valid and legally binding obligations of the Securities Intermediary. (c) On the date of this Control Agreement, Securities Intermediary does not know of any claim to or interest in the Securities Account other than the interests of Debtor and Secured Party.

Debtor irrevocably directs Securities Intermediary to make all notations in Security Intermediary's records pertaining to the Securities Account that are necessary or appropriate to reflect the above Pledge, to move Collateral from the existing Securities Account to establish a new Securities Account, with a new account number, for the purpose of holding the Collateral, if need be, and to style the Securities Account to read:

"JPMORGAN CHASE BANK, NATIONAL ASSOCIATION – Collateral Account for Network Appliance, Inc."

or any abbreviations made by Securities Intermediary for operational purposes.

Debtor irrevocably instructs Securities Intermediary to follow only instructions received from the Secured Party, furnished in writing, without further consent of Debtor concerning (1) the payment or reinvestment of dividends or distributions and (2) the redemption, transfer, sale or any other disposition or transaction concerning the Collateral or the income and principal proceeds, substitutions and reinvestment of Collateral. However, until further notice from Secured Party, (i) Debtor may receive all income, including dividends and interest (but not stock splits, stock dividends, cash equity distributions, liquidating distributions or other non cash principal disbursements) from either Securities Intermediary or Secured Party, and (ii) Debtor may originate trading instructions to the Securities Intermediary to make substitutions for and additions to the Collateral, all of which are Collateral to be held in the Securities Account subject to the Pledge in favor of Secured Party. Without the prior written consent of Secured Party, no withdrawal of Collateral from the Securities Account by Debtor will be permitted under any circumstances, except for prepayments required under the Credit Agreement and (if permitted by this Control Agreement and then only until further notice by Secured Party) distributions of income or substitution of new Collateral of equal or greater value. Any additional securities delivered to the Securities Account and noted on Security Intermediary's records to reflect the Pledge will be subject to the Pledge without any further documentation. Any distribution privileges granted to Debtor may be revoked in writing solely by Secured Party if an Event of Default (as defined in the Credit Agreement) has occurred and is continuing.

Debtor also irrevocably authorizes and directs Securities Intermediary to send all notices, statements and all other communications concerning the Collateral or the Securities Account, in addition to Debtor, to the following address or any other address Secured Party may specify in writing:

Attn: Alex McKindra
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
560 Mission Street
18th Floor
San Francisco, California 94105
Telecopy No. (415) 315-8483

Secured Party may exercise its rights under the Pledge, this Control Agreement or other loan documents without any further consent of Debtor or any other person. Securities Intermediary is directed to follow all of Secured Party's instructions without investigating the reason for any action taken by the Secured Party or the existence of any default. Secured Party's signature alone will be sufficient authority for the exercise of any rights by Secured Party and a receipt from Secured Party alone will be a full release and discharge for Securities Intermediary. Except as otherwise permitted above with respect to distributions of income to Debtor, checks for all or any part of the Collateral will be payable only to the order of Secured Party if, when and in such amounts as may be requested by Secured Party.

Neither Securities Intermediary nor any of its respective partners, trustees, officers, employees or affiliates will breach any duty to Debtor if it complies in good faith with the instructions contained in this Control Agreement or fails to comply with any contrary or inconsistent instructions that may

subsequently be issued by the Debtor. The Debtor further holds harmless and indemnifies each of them against any claim, loss, cost or expense arising out of any actions or omissions taken by any person in reliance on or compliance with the instructions and authorizations contained in this Control Agreement except for any claim, loss, cost or expense arising from such person' s gross negligence or willful misconduct. The instructions contained in this Control Agreement may be revoked and the terms of this Control Agreement may be amended by Debtor only if Securities Intermediary receives (i) Secured Party' s written consent to the revocation or amendment, or (ii) Secured Party' s written notification that the Pledge has been terminated. The rights and powers granted to Secured Party in this Control Agreement are powers coupled with an interest and will neither be affected by the bankruptcy of Debtor nor by the lapse of time.

Securities Intermediary agrees to hold the Collateral and the Securities Account (including any free credit balances) for and on behalf of the Secured Party and as bailee in possession for Secured Party. Securities Intermediary subordinates any liens, claims or rights it may have against the Securities Account or any Collateral carried in the Securities Account in favor of Secured Party except for its standard commission or fee and any unsettled trades. Securities Intermediary will not agree to comply with any third party orders or instructions concerning the Securities Account without the prior written consent of Secured Party.

All items of income including dividends, interest and other income, gain, expense and loss recognized in the Securities Account must be reported by Securities Intermediary or Secured Party in the name and tax identification number of Debtor.

This Control Agreement benefits the Secured Party and its successors and assigns and is binding on Debtor and Securities Intermediary and their respective successors and assigns. This Control Agreement is governed by, and construed in accordance with, the laws of the State of New York, which shall also be deemed to be Securities Intermediary' s jurisdiction. This Control Agreement is intended to be "an agreement" within the meaning of Section 8-110(e) of the New York Uniform Commercial Code.

[Signature Page Follows]

This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

There are no unwritten oral agreements between the parties.

DEBTOR:

NETWORK APPLIANCE, INC.

By: _____
Title: _____

SECURED PARTY: JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

By: _____
Title: _____

ACCEPTED AND AGREED TO BY SECURITIES INTERMEDIARY:

J.P. MORGAN SECURITIES INC.

By: _____
Print Name: _____
Title: _____

3

EXHIBIT F-2
FORM OF SAFEKEEPING CONTROL AGREEMENT
SAFEKEEPING ACCOUNT CONTROL AGREEMENT

October 5, 2007

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as administrative agent under the Credit Agreement defined below (the "Secured Party"); NETWORK APPLIANCE, INC. (the "Customer"); and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (the "Bank") hereby agree as follows:

PREAMBLE

1. The Bank has established at the request of the Customer a securities custody account number 893004211 in the name of Customer (the "Account").
2. The Customer has entered into a Secured Credit Agreement dated as of October 5, 2007 with the Secured Party and certain lenders from time to time party thereto (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement").
3. The Customer has granted the Secured Party a security interest in the Account pursuant to agreement.

- The Secured Party and the Customer and the Bank, at the request of the Secured Party and the Customer, are entering into this Agreement to provide for the control of the Account and to perfect the security interest of Secured Party in the Account. It is understood that the Bank
4. has no responsibility with respect to the validity or perfection of the security interest otherwise than to act in accordance with the terms of this Agreement.

DEFINITIONS

As used herein the following terms shall have the following meanings:

"**Entitlement Holder**" shall mean a person identified in the records of the Bank as the person having a Security Entitlement against the Bank.

"**Entitlement Order**" shall mean a notification communicated to the Bank directing transfer or redemption of a Financial Asset which the Entitlement Holder has a Security Entitlement.

"**Financial Assets**" shall mean any securities and other property held in the Account, but does not include any cash credit balance that may be maintained in the Account.

"**Pledged Assets**" shall mean any Financial Assets and any cash credit balance which may be maintained in the Account.

"**Security Entitlement**" shall mean the rights and property interest of an Entitlement Holder with respect to a Financial Asset specified in Part 5 of Article 8 of the New York Uniform Commercial Code (the "UCC").

TERMS

Section 1. The Account. Exhibit A attached hereto is a complete and accurate statement of the Pledged Assets currently maintained in the Account. Exhibit A does not reflect any Financial Assets which are registered in the name of the Customer, payable to the Customer's order, or specifically endorsed to the Customer, which have not been endorsed to the Bank or in blank. To the Bank's knowledge, the Security Entitlements arising out of the Financial Assets carried in the Account are valid and legally binding obligations of the Bank, and except for the claims and interest of the Secured Party and the Customer in the Account (subject to any claim in favor of the Bank permitted under Section 2 hereof), the Bank has not been notified in writing of any claim to or interest in the Account.

Section 2. Priority of Lien. The Bank hereby acknowledges the security interest granted to the Secured Party by the Customer. The Bank hereby waives and releases all liens, encumbrances, claims and rights of setoff it may have against the Account or any Pledged Assets carried in the Account, except that the Bank shall retain a lien on any Pledged Assets in the Account for the payment of its fees and for the payment of any Pledged Assets credited to the Account for which payment or reimbursement to the Bank has not been made or received. The Bank will not agree with any third party to comply with Entitlement Orders concerning the Account originated by such third party without the prior written consent of the Secured Party and the Customer.

Section 3. Control. The Bank will comply with Entitlement Orders and other directions originated by the Secured Party concerning the Account without further consent by the Customer. (Exhibit B attached hereto contains the names of persons authorized to give to the Bank Entitlement Orders and other directives regarding the Pledged Assets on behalf of the Secured Party.) Except as otherwise provided by Section 2 above and 4 below, the Bank shall comply with Entitlement Orders and other directions concerning Pledged Assets held in the Account at the direction of the Customer or its authorized representatives, until such time as the Secured Party delivers a written notice to the Bank in the form annexed hereto as Exhibit C, that the Secured Party is thereby exercising exclusive control over the Account (such notice may be referred to herein as the “Notice of Exclusive Control”). After the Bank receives the Notice of Exclusive Control, it will promptly cease complying with Entitlement Orders or other directions concerning the Account originated by the Customer or its representatives.

Section 4. Payment of Income; Voting Rights; Withdrawals. Unless the Bank has received a Notice of Exclusive Control, the Bank shall (a) without further action by the Customer or Secured Party, (i) remit or make available to the Customer all interest, dividends and other income on the Financial Assets in the Account, and (ii) pursuant to the terms of the Account agreement with the Customer, send to the Customer any proxies and other voting rights and corporate actions received by the Bank in respect of the Pledged Assets and follow any instructions and directions from the Customer in respect of such proxies and rights, and (b) comply with each Entitlement Order and other directive received from the Customer.

Section 5. Statements, Confirmations and Notices of Adverse Claims. The Bank will send or make available by electronic means copies of all statements and confirmations concerning the Account to each of the Customer and the Secured Party, at the address set forth in the heading of this Agreement or such other address or location as instructed by the Customer and the Secured Party. If any person notifies the Bank of its assertion of any lien, encumbrance or adverse claim against the Account or in any Financial Asset contained therein, the Bank will promptly notify the Secured Party and the Customer thereof.

Section 6. Responsibility of the Bank. The Bank shall have no responsibility or liability to the Secured Party for executing settlements of Financial Assets held in the Account at the direction of the Customer or its authorized representatives, or complying with Entitlement Orders or other directions concerning the Account from the Customer or its authorized representatives, which are received by the Bank before the Bank has received, and had a reasonable opportunity to comply with, a Notice of Exclusive Control. The Bank shall have no responsibility or liability to the Customer for complying with a Notice of Exclusive Control or complying with Entitlement Orders or other directives concerning the Account originated by the Secured Party. The Bank shall have no duty to investigate or make any determination as to whether a default exists under any agreement between the Customer and the Secured Party and shall comply with a Notice of Exclusive Control even if it believes that no such default exists. This Agreement does not create any obligation or duty for the Bank other than those expressly set forth herein.

Section 7. Standard of Care. Notwithstanding any provision contained herein or in any other document or instrument to the contrary, neither the Bank nor any of its officers, employees or agents shall be liable for (i) following the instruction of the Secured Party and (ii) in all other respects, shall not be liable for any action taken or not taken by it (or them) under or in connection with this Agreement, except for the Bank’s (or their) own gross negligence or willful misconduct. In no event shall the Bank be liable for indirect, special or consequential damages of any kind whatsoever (including lost profits and lost business opportunity) even if it is advised of the possibility of such damages and regardless of the form of action in which any such damages may be claimed. Without limiting the foregoing, and notwithstanding any provision to the contrary elsewhere, the Bank and its officers, employees and agents.:

- shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement, and no implied duties,
- a. responsibilities or obligations shall be read into this Agreement against the Bank; without limiting the foregoing, the Bank shall have no duty to preserve, exercise or enforce rights in the Pledged Assets (against prior parties or otherwise);
 - b. may in any instance where the Bank determines that it lacks or is uncertain as to its authority to take or refrain from taking certain action, or as to the requirements of this Agreement under any circumstance before it, delay or refrain from taking action unless and until it has received instructions from the Secured Party or advice from legal counsel (or other appropriate advisor), as the case may be;
 - c. so long as it and they shall have acted (or refrained from acting) in good faith, shall not be liable for any error of judgment in any action taken, suffered or omitted by, or for any act done or step taken, suffered or omitted by, or for any mistake of fact or law, unless such action constitutes gross negligence or willful misconduct on its (or their) part;
 - d. may consult with legal counsel selected by it (or other experts for the Secured Party or the Customer), and shall not be liable for any action taken or not taken by it or them in good faith in accordance with the advice of such experts;
 - e. will not be responsible to the Secured Party for any statement, warranty or representation made by any party other than the Bank in connection with this Agreement;
 - f. will have no duty to ascertain or inquire as to the performance or observance by the Customer of any of the terms, conditions or covenants of any security agreement with the Secured Party;

- will not be responsible to the Secured Party or the Customer for the due execution, legality, validity, enforceability, genuineness,
- g. effectiveness or sufficiency of this Agreement, (provided, however, that the Bank warrants below that the Bank has legal capacity to enter into this Agreement);
 - h. will not incur any liability by acting or not acting in reliance upon any notice, consent, certificate, statement or other instrument or writing believed by it or them to be genuine and signed or sent by the proper party or parties;
 - i. will not incur liability for any notice, consent, certificate, statement, wire instruction, telecopy, or other writing which is delayed, canceled or changed without the actual knowledge of the Bank;
 - j. shall not be deemed to have or be charged with notice or knowledge of any fact or matter unless a written notice thereof has been received by the Bank at the address and to the person designated in (or as subsequently designated pursuant to) this Agreement;
- shall not be obligated or required by any provision of this Agreement to expend or risk the Bank's own funds, or to take any action (including but not limited to the institution or defense of legal proceedings) which in its or their judgment may cause it or them to incur or
- k. suffer any expense or liability; provided, however, if the Bank elects to take any such action it shall be entitled to security or indemnity for the payment of the costs, expenses (including but not limited to attorneys' fees) and liabilities which may be incurred therein or thereby, satisfactory to the Bank;
 - l. shall not incur any liability for acts or omissions of any domestic or foreign depository or book-entry system for the central handling of Financial Assets or any domestic or foreign custodian or subcustodian; and
 - m. shall not be responsible for the title, validity or genuineness of any Financial Asset in or delivered into the Account.

Section 8. Indemnification of the Bank.

(a) The Customer and the Secured Party, jointly and severally, agree to indemnify and hold the Bank and its directors, officers, agents and employees (collectively the "Indemnitees") harmless from and against any and all claims, liabilities, losses, damages, fines, penalties, and expenses, including out-of-pocket and incidental expenses and legal fees (collectively "Losses") that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them for following any Entitlement Orders, instructions or other directions upon which the Bank is authorized to rely pursuant to the terms of this Agreement.

(b) In addition to and not in limitation of paragraph (a) immediately above, the Customer and the Secured Party also jointly and severally agree to indemnify and hold the Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them in connection with or arising out of the Bank's performance under this Agreement, provided the Indemnitees have not acted with gross negligence or engaged in willful misconduct.

(c) The foregoing indemnifications shall survive any termination of this Agreement

Section 9. Compliance with Legal Process and Judicial Orders. If any Pledged Assets subject to this Agreement are at any time attached or levied upon, or in case the transfer, delivery, redemption or withdrawal of any such Pledged Assets shall be stayed or enjoined, or in the case of any other legal process or judicial order affecting such Pledged Assets, the Bank is authorized to comply with any such order in any matter as the Bank or its legal counsel reasonably deems appropriate. If the Bank complies with any process, order, writ, judgment or decree relating to the Pledged Assets subject to this Agreement, then the Bank shall not be liable to the Customer or the Secured Party or to any other person or entity even if such order or process is subsequently modified, vacated or otherwise determined to have been without legal force or effect.

Section 10. Force Majeure. The Bank shall not be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, nationalization, expropriation, currency restrictions, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters.

Section 11. Representations. The Customer represents and warrants that (i) it is duly incorporated or organized and is validly existing in good standing in its jurisdiction of incorporation or organization, (ii) the execution, delivery and performance of this Agreement and all documents and instruments to be delivered hereunder or thereunder has been duly authorized by the Customer, (iii) the person executing this Agreement on its behalf has been duly authorized to act on its behalf, (iv) this Agreement constitutes its legal, valid, binding and enforceable agreement, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law, and (v) its entry into this Agreement will not violate any agreement, law, rule or regulation by which it is bound or by which any of its assets are affected.

Section 12. Customer Agreement. In the event of a conflict between this Agreement and any other agreement between the Bank and the Customer relating to the Account, the terms of this Agreement will prevail, and in all other respects the terms of the other agreement relating to the Account shall apply with respect to any matters not covered by this Agreement. Regardless of any provision in any such agreement, the

State of New York shall be deemed to be the Bank' s location for the purposes of this Agreement and the perfection and priority of the Secured Party' s security interest in the Account.

Section 13. Termination. The rights and powers granted herein to the Secured Party have been granted in order to perfect its security interest in the Account, are powers coupled with an interest and will neither be affected by the bankruptcy of the Customer nor by the lapse of time. The obligations

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of the Bank under this Agreement shall continue in effect (i) until the security interest of the Secured Party in the Account has been terminated and the Secured Party has notified the Bank of such termination in writing, or (ii) this Agreement is terminated. Any of the parties may terminate this Agreement upon 30 days' prior written notice to both of the other parties hereto; provided, however, that any Pledged Assets which have not been released by the Secured Party at or prior to the time of termination shall be transferred to a substitute bank designated by the Customer and acceptable to the Secured Party. The provisions of Sections 7 and 8 shall survive the termination of this Agreement.

Section 14. Entire Agreement. This Agreement and the exhibits hereto and the agreements and instruments required to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof and supersede and discharge all prior agreements (written or oral) and negotiations and all contemporaneous oral agreements concerning such subject matter and negotiations. There are no oral conditions precedent to the effectiveness of this Agreement.

Section 15. Amendments. No amendment, modification or termination of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by the party to be charged.

Section 16. Severability. If any term or provision set forth in this Agreement shall be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances, other than those to which it is held invalid or unenforceable, shall be construed in all respects as if such invalid or unenforceable term or provision were omitted.

Section 17. Successors. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 18. Rules of Construction. In this Agreement, words in the singular number include the plural, and in the plural include the singular; words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender and the word "or" is disjunctive but not exclusive. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit or describe the scope or intent of the provisions of this Agreement.

Section 19. Notices. Any notice, request, entitlement Order or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means (acceptable to the Bank, if to the Bank) and electronic confirmation of error free receipt is received, or after being sent by certified or registered United States mail, return receipt requested, postage prepaid:

If to the Bank:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
14201 North Dallas Parkway, 9th Floor
Dallas, Texas 75254
Attention: Richard Synrod/Prudence Ferdinand
Telephone: (469) 477-8224
Telecopier: (877) 537-1236

If to the Customer:

Network Appliance, Inc.
7301 Kit Creek Road
Research Triangle Park, North Carolina 27709
Attention: Ingemar Lanevi
Telephone: (408) 822-6000
Telecopier: (408) 822-4412

If to the Secured Party:

JPMorgan Chase Bank, National Association
560 Mission Street, 18th Floor
San Francisco, California 94105
Attention: Alex McKindra
Telephone: (415) 315-8223
Telecopier: (415) 315-8483

Section 20. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

Section 21. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to laws as to conflicts of laws, and shall be binding on the parties hereto and their respective successors and assigns.

Section 22. Fees. The Customer shall pay to the Bank the compensation agreed upon in writing from time to time and any other includable expenses incurred in connection herewith.

Section 23. Consent to Jurisdiction and Service. The Secured Party and the Customer each hereby absolutely and irrevocably consents and submits to the jurisdiction of the courts of the State of New York and of any Federal court located in the County and State of New York in connection with any actions or proceedings brought against the Secured Party or the Customer by the Bank or by the Secured Party or the Customer against the Bank and arising out of or relating to this Agreement. Each party hereto hereby irrevocably waives any objection on the grounds of venue, forum non conveniens, or any similar grounds, and irrevocably consents to service of process by mail or in any other manner permitted by New York law, and irrevocably waives its right to any jury trial.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date set forth above.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, as Administrative Agent

By: _____
Name: _____
Title: _____

NETWORK APPLIANCE, INC.

By: _____
Name: _____
Title: _____

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: _____
Name: _____
Title: _____

EXHIBIT A

Cusip	Issuer	Cpn	Yld	Value	Maturity	Quantity
3128X5Z84	FREDDIE MAC	5.400	4.891	4/17/ 2007	10/17/ 2007	\$ 5,000,000.00
3136F6FZ7	Fannie Mae	3.820	3.820	10/18/ 2004	10/18/ 2007	\$ 1,500,000.00
31331XVN9	FED FARM CREDIT	5.250	5.236	4/23/ 2007	10/23/ 2007	\$ 5,000,000.00
31331SBN2	Federal Farm Credit Bank	3.500	3.500	10/26/ 2004	10/26/ 2007	\$ 1,000,000.00
3136F64B2	FNMA Clbl Not Called (O)	4.280	4.280	4/29/ 2005	10/26/ 2007	\$ 1,000,000.00
05565UAA7	BP Canada Finance	3.375	3.947	6/15/ 2005	10/31/ 2007	\$ 1,000,000.00
31331SMB6	FFCB Clbl Not Called (O)	3.700	3.700	2/2/ 2005	11/2/ 2007	\$ 2,000,000.00
31359MB36	FNMA Clbl Not Called (O)	4.250	4.250	5/2/ 2005	11/2/ 2007	\$ 1,000,000.00
3133XCJS3	Fannie Mae	4.300	4.300	8/9/ 2005	11/9/ 2007	\$ 2,000,000.00
3136F6JP5	Fannie Mae	3.490	3.490	11/9/ 2004	11/9/ 2007	\$ 1,000,000.00
59018YNZ0	Merrill Lynch	4.000	3.983	2/24/ 2005	11/15/ 2007	\$ 1,500,000.00
02635PSA2	Amer Genl Fin	4.500	5.340	5/30/ 2006	11/15/ 2007	\$ 5,000,000.00
59018YNZ0	Merrill Lynch	4.000	5.200	9/25/ 2006	11/15/ 2007	\$ 3,000,000.00
33900QBE3	Fleet Boston	4.200	4.370	8/9/ 2005	11/30/ 2007	\$ 1,505,000.00
949746CK5	WELLS FARGO SF	5.250	4.283	7/14/ 2005	12/1/ 2007	\$ 1,500,000.00
36962GVW1	General Electric Credit Corp	6.500	4.499	7/20/ 2005	12/10/ 2007	\$ 1,210,000.00
36962GVW1	General Electric Credit Corp	6.500	4.329	7/1/ 2005	12/10/ 2007	\$ 1,500,000.00
3136F7AQ0	FNMA Clbl Not Called (O)	4.000	4.000	6/14/ 2005	12/14/ 2007	\$ 1,000,000.00
073902BG2	Bear Sterns	6.750	4.541	3/11/ 2005	12/15/ 2007	\$ 1,000,000.00
590188HX9	Merrill Lynch	6.560	5.491	9/1/ 2006	12/16/ 2007	\$ 3,000,000.00
590188HX9	Merrill Lynch	6.560	5.250	4/7/ 2006	12/16/ 2007	\$ 1,000,000.00
065913AE5	Bank Boston	6.500	5.425	9/20/ 2006	12/19/ 2007	\$ 1,500,000.00
172967DB4	Citigroup Inc	4.200	5.301	8/11/ 2006	12/20/ 2007	\$ 2,500,000.00
3128X4DF5	Freddie Mac	4.200	4.200	6/28/ 2005	12/28/ 2007	\$ 1,500,000.00
3133XCBC6	Federal Home Loan Bank	4.140	4.140	6/28/ 2005	12/28/ 2007	\$ 2,000,000.00
3133XC4Z3	Federal Home Loan Bank	4.125	4.125	7/6/ 2005	1/4/ 2008	\$ 2,000,000.00
3133XABC0	FHLB Clbl 10/11/07 (Q)	4.500	4.005	1/11/ 2005	1/11/ 2008	\$ 2,800,000.00

22541LAF0	Credit Suisse	4.625	3.996	2/1/ 2005	1/15/ 2008	\$ 1,500,000.00
36962GZZ0	General Electric Credit Corp	4.250	4.215	5/11/ 2005	1/15/ 2008	\$ 1,000,000.00
38141GCS1	Goldman Sachs	4.125	4.168	6/15/ 2005	1/15/ 2008	\$ 1,000,000.00
38141GCS1	Goldman Sachs	4.125	5.300	6/9/ 2006	1/15/ 2008	\$ 3,000,000.00
524908FD7	Lehman Brothers	4.000	4.187	6/22/ 2005	1/22/ 2008	\$ 1,000,000.00
31331SML4	FFCB Clbl Not Called (O)	3.790	3.790	1/28/ 2005	1/28/ 2008	\$ 2,000,000.00
06406MAW8	Bank of New York Inc	3.800	4.372	8/9/ 2005	2/1/ 2008	\$ 2,000,000.00
172967BS9	Citicorp	3.500	4.064	7/7/ 2005	2/1/ 2008	\$ 2,000,000.00
172967BS9	Citicorp	3.500	5.309	8/4/ 2006	2/1/ 2008	\$ 2,095,000.00
31359MXP3	Fannie Mae	3.875	3.875	2/1/ 2005	2/1/ 2008	\$ 1,500,000.00
90331VAW2	US Bancorp	6.500	5.471	8/11/ 2006	2/1/ 2008	\$ 3,629,000.00
3136F6UH0	FNMA Clbl 11/1/07 (Q)	4.000	4.000	2/1/ 2005	2/1/ 2008	\$ 1,500,000.00
3136F6VY2	Fannie Mae	4.000	4.000	2/8/ 2005	2/8/ 2008	\$ 1,500,000.00
339030AG3	Fleet Boston	3.850	4.212	3/15/ 2005	2/15/ 2008	\$ 2,000,000.00
339030AG3	Fleet Finl Group	3.850	5.060	10/4/ 2006	2/15/ 2008	\$ 2,000,000.00
524909AY4	Lehman Bros Inc	6.625	5.250	4/18/ 2006	2/15/ 2008	\$ 1,000,000.00
79549BGP6	Salomon Sb Hldgs	6.500	5.550	7/17/ 2006	2/15/ 2008	\$ 1,500,000.00
79549BGP6	Salomon Sb Hldgs	6.500	4.150	5/11/ 2005	2/15/ 2008	\$ 2,000,000.00
3136F6YQ6	Fannie Mae	4.000	4.000	2/22/ 2005	2/22/ 2008	\$ 2,000,000.00
36962GP57	General Electric Credit Corp	4.125	5.178	1/3/ 2007	3/4/ 2008	\$ 1,158,000.00
36962GP57	General Electric Credit Corp	4.125	5.018	12/13/ 2006	3/4/ 2008	\$ 3,500,000.00
3136F7JZ1	FNMA Clbl Not Called (Q)	4.750	4.750	9/7/ 2005	3/7/ 2008	\$ 1,000,000.00
949746JQ5	WELLS FARGO BANK INTL NY	4.125	4.177	3/11/ 2005	3/10/ 2008	\$ 2,000,000.00
949746JQ5	WELLS FARGO BANK INTL NY	4.125	5.178	1/3/ 2007	3/10/ 2008	\$ 2,500,000.00
949746JQ5	WELLS FARGO & CO	4.125	5.750	4/20/ 2006	3/10/ 2008	\$ 5,000,000.00
949746JQ5	WELLS FARGO & CO	4.125	5.750	4/25/ 2006	3/10/ 2008	\$ 5,000,000.00

Cusip	Issuer	Cpn	Yld	Value	Maturity	Quantity
02666QWG4	American Honda Finance	4.250	5.127	10/4/ 2006	3/11/ 2008	\$ 3,000,000.00
91159HGG9	US Bancorp	3.125	5.078	12/21/ 2006	3/15/ 2008	\$ 2,100,000.00
338915AJ0	Fleet Finl Group	6.500	5.261	1/26/ 2007	3/15/ 2008	\$ 2,440,000.00
3133XB3T0	Federal Home Loan Bank	4.160	4.160	3/28/ 2005	3/28/ 2008	\$ 1,500,000.00
337358BK0	WACHOVIA BANK NA, NEW YORK	6.400	4.639	7/18/ 2005	4/1/ 2008	\$ 1,500,000.00
066050CU7	Bankamerica Corp	6.250	5.185	4/30/ 2007	4/1/ 2008	\$ 2,000,000.00
524909AZ1	Lehman Brothers	6.500	4.643	7/20/ 2005	4/15/ 2008	\$ 1,000,000.00
06606HD87	Bankboston Na	6.375	5.240	4/18/ 2006	4/15/ 2008	\$ 1,465,000.00
59018YQU8	Merrill Lynch	3.700	4.928	12/11/ 2006	4/21/ 2008	\$ 3,030,000.00
59018YQU8	Merrill Lynch	3.700	5.172	4/26/ 2007	4/21/ 2008	\$ 2,000,000.00
8447HACE2	Southtrust Bank	3.125	4.270	7/21/ 2005	5/15/ 2008	\$ 2,000,000.00
338915AL5	FLEETBOSTON FINL CORP	6.375	5.561	6/13/ 2006	5/15/ 2008	\$ 5,000,000.00
74433KCR6	PRUDENTIAL FUNDING LLC	6.600	5.867	5/16/ 2006	5/15/ 2008	\$ 4,000,000.00
634902HQ6	Natl City Bk Oh	3.300	5.071	3/23/ 2007	5/15/ 2008	\$ 1,000,000.00
634902HQ6	Natl City Bk Oh	3.300	5.490	7/31/ 2006	5/15/ 2008	\$ 1,745,000.00
634902HQ6	Natl City Bk Oh	3.300	5.070	3/22/ 2007	5/15/ 2008	\$ 2,000,000.00
8447HACE2	Southtrust Bk Na	3.125	5.200	4/24/ 2006	5/15/ 2008	\$ 1,000,000.00
025818EM3	AMER EXPRESS CREDIT	3.000	5.389	4/20/ 2006	5/16/ 2008	\$ 4,000,000.00
257661AF5	Donaldson Lufkin	6.500	5.290	5/2/ 2006	6/1/ 2008	\$ 1,028,000.00
31359MD59	FNMA Clbl Not Called (O)	4.125	4.125	6/16/ 2005	6/16/ 2008	\$ 1,000,000.00
441812FY5	Household Intl	6.400	5.200	5/3/ 2007	6/17/ 2008	\$ 2,000,000.00
3133XLAG8	FED HOME LN BANK	5.450	5.022	6/18/ 2007	6/18/ 2008	\$ 4,000,000.00
073902CC0	Bear Sterns	2.875	4.393	7/26/ 2005	7/2/ 2008	\$ 1,000,000.00
59018YRN3	Merrill Lynch	3.125	5.200	4/21/ 2006	7/15/ 2008	\$ 1,000,000.00
59018YRN3	Merrill Lynch	3.125	5.200	4/21/ 2006	7/15/ 2008	\$ 1,000,000.00
90331VAZ5	Us Bank Na	6.300	5.060	10/6/ 2006	7/15/ 2008	\$ 1,885,000.00
31331SR39	Federal Farm Credit Bank	4.440	4.440	7/18/ 2005	7/18/ 2008	\$ 1,500,000.00
31359MF32	FNMA Clbl Not Called (O)	5.000	5.230	5/3/ 2006	7/25/ 2008	\$ 1,000,000.00

31359MYF4	Fannie Mae	4.400	4.400	7/28/ 2005	7/28/ 2008	\$ 1,500,000.00
3136F7GA9	FNMA Clbl Not Called (Q)	4.750	4.750	7/28/ 2005	7/28/ 2008	\$ 2,000,000.00
06423AAN3	BANK ONE CORP	6.000	5.528	4/16/ 2007	8/1/ 2008	\$ 5,000,000.00
31359MYM9	Fannie Mae	4.500	4.500	8/4/ 2005	8/4/ 2008	\$ 1,500,000.00
524908JA9	Lehman Brothers	3.500	5.488	6/21/ 2006	8/7/ 2008	\$ 1,085,000.00
524908JA9	Lehman Brothers	3.500	5.308	8/16/ 2006	8/7/ 2008	\$ 3,000,000.00
524908JA9	Lehman Bros Hldg	3.500	5.110	3/23/ 2007	8/7/ 2008	\$ 3,000,000.00
524908JA9	Lehman Bros Hldg	3.500	5.150	4/25/ 2007	8/7/ 2008	\$ 5,000,000.00
90331HKW2	US Bancorp	4.400	5.171	1/17/ 2007	8/15/ 2008	\$ 2,394,000.00
92976FAS2	WACHOVIA BANK NA, NEW YORK	4.375	5.223	4/27/ 2006	8/15/ 2008	\$ 4,675,000.00
92976FAS2	Wachovia Bank Na	4.375	5.040	10/3/ 2006	8/15/ 2008	\$ 2,000,000.00
949746JB8	Wells Fargo & Co	4.000	5.140	9/25/ 2006	8/15/ 2008	\$ 5,000,000.00
3128X4HA2	Freddie Mac	4.625	4.625	8/22/ 2005	8/22/ 2008	\$ 1,500,000.00
173034GU7	Citicorp	7.250	5.370	8/11/ 2006	9/1/ 2008	\$ 1,000,000.00
173034GU7	Citicorp	7.250	5.500	6/19/ 2006	9/1/ 2008	\$ 1,500,000.00
459745FK6	INTL LEASE FINANCE CORP	4.350	5.760	4/20/ 2006	9/15/ 2008	\$ 5,100,000.00
3133XGVX9	FHLB Clbl 9/19/07 (O)	5.250	5.250	9/27/ 2006	9/19/ 2008	\$ 3,000,000.00
4041A0AG3	HBOS PLC	3.750	5.235	4/20/ 2006	9/30/ 2008	\$ 5,000,000.00
931142BU6	WAL-MART STORES	3.375	5.191	5/12/ 2006	10/1/ 2008	\$ 7,000,000.00
3136F73A3	FNMA Clbl 10/10/07 (O)	5.300	5.196	10/10/ 2006	10/10/ 2008	\$ 5,000,000.00
590188JK5	Merrill Lynch	6.375	5.491	8/4/ 2006	10/15/ 2008	\$ 3,500,000.00
52517PC58	Lehman Brothers	5.450	5.418	6/5/ 2006	10/22/ 2008	\$ 5,350,000.00
59018YWG2	Merrill Lynch	4.831	5.180	9/6/ 2006	10/27/ 2008	\$ 2,000,000.00
59018YWG2	Merrill Lynch	4.831	5.380	8/2/ 2006	10/27/ 2008	\$ 2,500,000.00
125577AP1	CIT GROUP INC	3.875	7.833	6/11/ 2007	11/3/ 2008	\$ 2,000,000.00
17303MJC4	Citicorp	6.375	5.457	8/28/ 2006	11/15/ 2008	\$ 3,000,000.00
17303MJC4	Citicorp	6.375	5.200	9/22/ 2006	11/15/ 2008	\$ 3,120,000.00
17303MJC4	Citicorp	6.375	5.250	8/31/ 2006	11/15/ 2008	\$ 5,000,000.00
33738MAC5	First Union Natl	5.800	4.950	3/30/ 2007	12/1/ 2008	\$ 3,000,000.00
33738MAC5	First Union Natl	5.800	4.950	4/4/ 2007	12/1/ 2008	\$ 3,000,000.00

717818W46	Philadelphia Indl-B	4.940	4.939	12/14/ 2006	12/1/ 2008	\$ 1,560,000.00
892332AH0	TOYOTA MTR CRED	5.500	5.201	6/19/ 2006	12/15/ 2008	\$ 5,000,000.00

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Cusip	Issuer	Cpn	Yld	Value	Maturity	Quantity
441812KF0	Household Fin Co	4.125	5.210	5/8/ 2007	12/15/ 2008	\$ 2,000,000.00
05565UAB5	BP Canada Finance	3.625	4.988	10/12/ 2006	1/15/ 2009	\$ 1,500,000.00
64952WAB9	New York Life Global Fdg	3.875	5.346	5/22/ 2006	1/15/ 2009	\$ 3,000,000.00
16161ABK3	Chase Manhat Crp	6.500	4.970	3/29/ 2007	1/15/ 2009	\$ 3,000,000.00
38143UAA9	Goldman Sachs	3.875	4.951	3/20/ 2007	1/15/ 2009	\$ 2,578,000.00
319455BU4	First Chicago	6.375	4.960	3/30/ 2007	1/30/ 2009	\$ 5,000,000.00
760719AM6	HSBC	9.700	6.214	4/11/ 2006	2/1/ 2009	\$ 3,000,000.00
441812GE8	HOUSEHOLD FINANCE CORP	5.875	5.345	4/28/ 2006	2/1/ 2009	\$ 3,000,000.00
90331HHZ9	US Bancorp	3.750	5.152	10/17/ 2006	2/6/ 2009	\$ 3,500,000.00
36962GN83	Gen Elec Cap Crp	4.000	4.900	10/2/ 2006	2/17/ 2009	\$ 3,040,000.00

EXHIBIT B

Anthony Galea

Anne Biancardi

Stephen Price

David Gibbs

Alex McKindra

and any other officer or employee of the Secured Party

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EXHIBIT C

[to be placed on Secured Party' s Letterhead]

NOTICE OF EXCLUSIVE CONTROL

_____ 20__

JPMorgan Chase Bank, National Association

[Address] _____

Attention: _____

Re: Safekeeping Account Control Agreement dated as of October 5, 2007 (the "Agreement") among JPMorgan Chase Bank, National Association, as Administrative Agent, as Secured Party, Network Appliance, Inc., as Customer, and JPMorgan Chase Bank, National Association, as Bank, relating to Securities Account No. 893004211

Ladies and Gentlemen:

This constitutes the Notice of Exclusive Control referred to in the above referenced Agreement.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, as Administrative Agent

By: _____

Name:

Title:

EXHIBIT G
MARGIN REQUIREMENTS

Type of Security	Remaining Maturity/ S&P/ Moody' s Rating	Valuation Percentage	Ratio Level
JPMorgan Certificates of Deposit (Must be through JPMorgan)		100%	1.00x
US Treasury Treasuries	Less than 1 year	99%	1.01x
	More than 1 year less than 5 years	98%	1.02x
	More than 5 years less than 10 years	97%	1.03x
	Over 10 years	96%	1.04x
US Agency Securities	Less than 1 year	99%	1.01x
	More than 1 year less than 5 years	98%	1.02x
	More than 5 years less than 10 years	97%	1.03x
	Over 10 years less than 30 years	96%	1.04x
USD Commercial Paper	A1/P1 Less than or equal to 270 days	95%	1.05x
Money Market Funds (Must be through JPMorgan)	US Gov' t	95%	1.05x
	Treasury Plus	95%	1.05x
	Cash Management	90%	1.11x
	100% US Treasury	95%	1.05x
	Federal Money Market	95%	1.05x
Medium Term Notes, Corporate Bonds, Corporate Debentures, Floating Rate Notes, and Auction Rate Securities	AAA	95%	1.05x
	AA	93%	1.08x
	A (with Maturity less than 3 months)	90%	1.11x
	A (with Maturity more than 3 months)	80%	1.25x
Other (Bankers Acceptances, Eurodollar deposits, Time Deposits, Repurchase Agreements, Sovereign & Supranational Issuers)		0%	NM

EXHIBIT H
FORM OF COMPLIANCE CERTIFICATE

To: The Lenders parties to the
Credit Agreement Described Below

This Compliance Certificate is furnished pursuant to that certain Secured Credit Agreement dated as of October 5, 2007 (as amended, modified, renewed or extended from time to time, the "Agreement") among Network Appliance, Inc. (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, National Association, as Administrative Agent for the Lenders. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected _____ of the Borrower;

I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower and its Subsidiaries during the accounting period covered by the attached financial statements [**for quarterly financial statements add:** and such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied (except as set forth below), subject to normal year-end audit adjustments and the absence of footnotes];

3. Except as set forth below, the examinations described in paragraph 2 did not disclose, and I have no knowledge of (i) the existence of any condition or event which constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate or (ii) any change in GAAP or in the application thereof that has occurred since the date of the audited financial statements referred to in Section 3.04 of the Agreement; and

4. Schedule I attached hereto sets forth financial data and computations evidencing the Borrower's compliance with Section 6.07 of the Agreement, all of which data and computations are true, complete and correct.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, (i) the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event or (ii) the change in GAAP or the application thereof and the effect of such change on the attached financial statements:

The foregoing certifications, together with the computations set forth in Schedule I hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this ____ day of ____, ____.

NETWORK APPLIANCE, INC.

By: _____
Name: _____
Title: _____

SCHEDULE I

Compliance as of _____, _____ with
Provisions of _____ and _____ of
the Agreement

EXHIBIT I

FORM OF INCREASING LENDER SUPPLEMENT

INCREASING LENDER SUPPLEMENT, dated _____, 20__ (this "Supplement"), by and among each of the signatories hereto, to the Secured Credit Agreement, dated as of October 5, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Network Appliance, Inc. (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, National Association, as administrative agent (in such capacity, the "Administrative Agent").

WITNESSETH

WHEREAS, pursuant to Section 2.20 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the aggregate Commitments and/or one or more tranches of Incremental Term Loans under the Credit Agreement by requesting one or more Lenders to increase the amount of its Commitment and/or to participate in such a tranche;

WHEREAS, the Borrower has given notice to the Administrative Agent of its intention to [increase the aggregate Commitments] [and] [enter into a tranche of Incremental Term Loans] pursuant to such Section 2.20; and

WHEREAS, pursuant to Section 2.20 of the Credit Agreement, the undersigned Increasing Lender now desires to [increase the amount of its Commitment] [and] [participate in a tranche of Incremental Term Loans] under the Credit Agreement by executing and delivering to the Borrower and the Administrative Agent this Supplement;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Increasing Lender agrees, subject to the terms and conditions of the Credit Agreement, that on the date of this Supplement it shall [have its Commitment increased by \$[_____]], thereby making the aggregate amount of its total Commitments equal to \$[_____]] [and] [participate in a tranche of Incremental Term Loans with a commitment amount equal to \$[_____]] with respect thereto].
2. The Borrower hereby represents and warrants that no Default or Event of Default has occurred and is continuing on and as of the date hereof.
3. Terms defined in the Credit Agreement shall have their defined meanings when used herein.
4. This Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.
5. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF INCREASING LENDER]

By: _____
Name:
Title:

Accepted and agreed to as of the date first written above:

NETWORK APPLIANCE, INC.

By: _____
Name:
Title:

Acknowledged as of the date first written above:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION as Administrative Agent

By: _____
Name:
Title:

EXHIBIT J

FORM OF AUGMENTING LENDER SUPPLEMENT

AUGMENTING LENDER SUPPLEMENT, dated _____, 20__ (this "Supplement"), to the Secured Credit Agreement, dated as of October 5, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Network Appliance, Inc. (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, National Association, as administrative agent (in such capacity, the "Administrative Agent").

WITNESSETH

WHEREAS, the Credit Agreement provides in Section 2.20 thereof that any bank, financial institution or other entity may [extend Commitments] [and] [participate in tranches of Incremental Term Loans] under the Credit Agreement subject to the approval of the Borrower and the Administrative Agent, by executing and delivering to the Borrower and the Administrative Agent a supplement to the Credit Agreement in substantially the form of this Supplement; and

WHEREAS, the undersigned Augmenting Lender was not an original party to the Agreement but now desires to become a party thereto;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Augmenting Lender agrees to be bound by the provisions of the Credit Agreement and agrees that it shall, on the date of this Supplement, become a Lender for all purposes of the Credit Agreement to the same extent as if originally a party thereto, with a [Commitment with respect to Revolving Loans of \$[_____]] [and] [a commitment with respect to Incremental Term Loans of \$[_____]].

2. The undersigned Augmenting Lender (a) represents and warrants that it is legally authorized to enter into this Supplement; (b) confirms that it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and has reviewed such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Supplement; (c) agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender 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 Credit Agreement or any other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

3. The undersigned' s address for notices for the purposes of the Credit Agreement is as follows:

[_____]

4. The Borrower hereby represents and warrants that no Default or Event of Default has occurred and is continuing on and as of the date hereof.

5. Terms defined in the Credit Agreement shall have their defined meanings when used herein.

6. This Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

7. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF AUGMENTING LENDER]

By: _____
Name:
Title:

Accepted and agreed to as of the date first written above:

NETWORK APPLIANCE, INC.

By: _____
Name:
Title:

Acknowledged as of the date first written above:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION
as Administrative Agent

By: _____
Name:
Title:

**CERTIFICATION PURSUANT TO SECTION 302(a)
OF THE SARBANES-OXLEY ACT OF 2002**

I, Daniel J. Warmenhoven, certify that:

1) I have reviewed this quarterly report on Form 10-Q of Network Appliance, Inc.;

2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ DANIEL J. WARMENHOVEN

Daniel J. Warmenhoven
Chief Executive Officer

Date: December 4, 2007

**CERTIFICATION PURSUANT TO SECTION 302(a)
OF THE SARBANES-OXLEY ACT OF 2002**

I, Steven J. Gomo, certify that:

1) I have reviewed this quarterly report on Form 10-Q of Network Appliance, Inc.;

Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to
2) make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as
4) defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial
5) reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ STEVEN J. GOMO

Steven J. Gomo

*Executive Vice President of Finance and Chief
Financial Officer*

Date: December 4, 2007

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Daniel J. Warmenhoven, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Network Appliance, Inc., on Form 10-Q for the quarterly period ended October 26, 2007 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Network Appliance, Inc.

/s/ DANIEL J. WARMENHOVEN

Daniel J. Warmenhoven
Chief Executive Officer

Date: December 4, 2007

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Steven J. Gomo, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Network Appliance, Inc., on Form 10-Q for the quarterly period ended October 26, 2007 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Network Appliance, Inc.

/s/ STEVEN J. GOMO

Steven J. Gomo
*Executive Vice President of Finance and Chief
Financial Officer*

Date: December 4, 2007