

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 27, 2017

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 000-27130

NetApp, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0307520
(I.R.S. Employer
Identification No.)

**1395 Crossman Avenue,
Sunnyvale, California 94089**
(Address of principal executive offices, including zip code)

(408) 822-6000
(Registrant's telephone number, including area code)

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 has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

As of November 15, 2017, there were 266,791,791 shares of the registrant's common stock, \$0.001 par value, outstanding.

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TRADEMARKS

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Item 1. Condensed Consolidated Financial Statements (Unaudited)

NETAPP, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In millions, except par value)
(Unaudited)

	October 27, 2017	April 28, 2017
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 3,535	\$ 2,444
Short-term investments	2,430	2,477
Accounts receivable	584	731
Inventories	108	163
Other current assets	363	383
Total current assets	7,020	6,198
Property and equipment, net	795	799
Goodwill	1,739	1,684
Other intangible assets, net	120	131
Other non-current assets	634	681
Total assets	\$ 10,308	\$ 9,493
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 379	\$ 347
Accrued expenses	722	782
Commercial paper notes	718	500
Current portion of long-term debt	750	749
Short-term deferred revenue and financed unearned services revenue	1,645	1,744
Total current liabilities	4,214	4,122
Long-term debt	1,540	744
Other long-term liabilities	255	249
Long-term deferred revenue and financed unearned services revenue	1,522	1,598
Total liabilities	7,531	6,713
Commitments and contingencies (Note 16)		
Stockholders' equity:		
Common stock and additional paid-in capital, \$0.001 par value; 267 and 269 shares issued and outstanding as of October 27, 2017 and April 28, 2017, respectively	2,779	2,769
Retained earnings	17	40
Accumulated other comprehensive loss	(19)	(29)
Total stockholders' equity	2,777	2,780
Total liabilities and stockholders' equity	\$ 10,308	\$ 9,493

See accompanying notes to condensed consolidated financial statements.

NETAPP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In millions, except per share amounts)
(Unaudited)

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
Revenues:				
Product	\$ 807	\$ 710	\$ 1,530	\$ 1,370
Software maintenance	240	242	474	483
Hardware maintenance and other services	375	388	743	781
Net revenues	<u>1,422</u>	<u>1,340</u>	<u>2,747</u>	<u>2,634</u>
Cost of revenues:				
Cost of product	399	376	770	735
Cost of software maintenance	6	7	13	15
Cost of hardware maintenance and other services	115	128	228	258
Total cost of revenues	<u>520</u>	<u>511</u>	<u>1,011</u>	<u>1,008</u>
Gross profit	<u>902</u>	<u>829</u>	<u>1,736</u>	<u>1,626</u>
Operating expenses:				
Sales and marketing	420	418	845	847
Research and development	194	200	387	407
General and administrative	69	69	137	137
Total operating expenses	<u>683</u>	<u>687</u>	<u>1,369</u>	<u>1,391</u>
Income from operations	<u>219</u>	<u>142</u>	<u>367</u>	<u>235</u>
Other income (expense), net	6	—	11	(1)
Income before income taxes	<u>225</u>	<u>142</u>	<u>378</u>	<u>234</u>
Provision for income taxes	50	33	67	61
Net income	<u>\$ 175</u>	<u>\$ 109</u>	<u>\$ 311</u>	<u>\$ 173</u>
Net income per share:				
Basic	<u>\$ 0.65</u>	<u>\$ 0.39</u>	<u>\$ 1.15</u>	<u>\$ 0.62</u>
Diluted	<u>\$ 0.64</u>	<u>\$ 0.38</u>	<u>\$ 1.12</u>	<u>\$ 0.61</u>
Shares used in net income per share calculations:				
Basic	<u>269</u>	<u>278</u>	<u>270</u>	<u>278</u>
Diluted	<u>275</u>	<u>284</u>	<u>277</u>	<u>283</u>
Cash dividends declared per share	<u>\$ 0.20</u>	<u>\$ 0.19</u>	<u>\$ 0.40</u>	<u>\$ 0.38</u>

See accompanying notes to condensed consolidated financial statements.

NETAPP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In millions)
(Unaudited)

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
Net income	\$ 175	\$ 109	\$ 311	\$ 173
Other comprehensive income (loss):				
Foreign currency translation adjustments	(2)	(5)	8	(11)
Defined benefit obligations:				
Reclassification adjustments related to defined benefit obligations	(1)	1	(1)	1
Income tax effect	1	—	1	—
Unrealized gains (losses) on available-for-sale securities:				
Unrealized holding gains (losses) arising during the period	(4)	(5)	2	(2)
Unrealized gains (losses) on cash flow hedges:				
Unrealized holding gains arising during the period	—	—	—	3
Reclassification adjustments for gains included in net income	—	(1)	—	(1)
Other comprehensive income (loss)	<u>(6)</u>	<u>(10)</u>	<u>10</u>	<u>(10)</u>
Comprehensive income	<u>\$ 169</u>	<u>\$ 99</u>	<u>\$ 321</u>	<u>\$ 163</u>

See accompanying notes to condensed consolidated financial statements.

NETAPP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In millions)
(Unaudited)

	Six Months Ended	
	October 27, 2017	October 28, 2016
Cash flows from operating activities:		
Net income	\$ 311	\$ 173
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	102	117
Stock-based compensation	87	103
Deferred income taxes	44	28
Other items, net	(5)	(15)
Changes in assets and liabilities, net of acquisitions of businesses:		
Accounts receivable	149	264
Inventories	55	1
Other operating assets	38	49
Accounts payable	34	(13)
Accrued expenses	(68)	(138)
Deferred revenue and financed unearned services revenue	(183)	(179)
Other operating liabilities	—	(4)
Net cash provided by operating activities	<u>564</u>	<u>386</u>
Cash flows from investing activities:		
Purchases of investments	(609)	(795)
Maturities, sales and collections of investments	657	985
Purchases of property and equipment	(65)	(92)
Acquisitions of businesses, net of cash acquired	(75)	—
Other investing activities, net	5	(1)
Net cash provided by (used in) investing activities	<u>(87)</u>	<u>97</u>
Cash flows from financing activities:		
Proceeds from issuance of common stock under employee stock award plans	57	61
Payments for taxes related to net share settlement of stock awards	(60)	(36)
Repurchase of common stock	(300)	(292)
Proceeds from issuance of commercial paper notes, net	218	—
Issuance of long-term debt, net	795	—
Repayment of short-term loan	—	(850)
Dividends paid	(108)	(105)
Other financing activities, net	(1)	(3)
Net cash provided by (used in) financing activities	<u>601</u>	<u>(1,225)</u>
Effect of exchange rate changes on cash and cash equivalents	13	(13)
Net increase (decrease) in cash and cash equivalents	1,091	(755)
Cash and cash equivalents:		
Beginning of period	2,444	2,868
End of period	<u>\$ 3,535</u>	<u>\$ 2,113</u>

See accompanying notes to condensed consolidated financial statements.

NETAPP, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Description of Business and Significant Accounting Policies

NetApp, Inc. (we, us, or the Company) provides global organizations the ability to manage and share their data across on-premises, private and public clouds. Together with our partners, we provide a full range of enterprise-class software, systems and services solutions that customers use to modernize their infrastructures, build next generation data centers and harness the power of hybrid clouds.

Basis of Presentation and Preparation

Our fiscal year is reported on a 52- or 53-week year ending on the last Friday in April. An additional week is included in the first fiscal quarter approximately every six years to realign fiscal months with calendar months. Fiscal years 2018 and 2017, ending on April 27, 2018, and April 28, 2017, respectively, are each 52-week years, with 13 weeks in each of their quarters.

The accompanying unaudited condensed consolidated financial statements have been prepared by the Company, and reflect all adjustments, consisting only of normal recurring adjustments, that are, in the opinion of management, necessary for the fair presentation of our financial position, results of operations, comprehensive income 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 (GAAP) for interim financial information. Accordingly, these statements do not include all information and footnotes required by GAAP for annual consolidated financial statements, and should be read in conjunction with our audited consolidated financial statements as of and for the fiscal year ended April 28, 2017 contained in our Annual Report on Form 10-K. The results of operations for the three and six months ended October 27, 2017 are not necessarily indicative of the operating results to be expected for the full fiscal year or future operating periods.

The preparation of the condensed consolidated financial statements in conformity with GAAP 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 financial statements and the reported amounts of revenues and expenses during the reporting periods. Such estimates include, but are not limited to, revenue recognition, reserves and allowances; inventory valuation and purchase order accruals; valuation of goodwill and intangibles; restructuring reserves; product warranties; employee compensation and benefit accruals; stock-based compensation; loss contingencies; valuation of investment securities; income taxes and fair value measurements. Actual results could differ materially from those estimates.

There have been no significant changes in our significant accounting policies as of and for the six months ended October 27, 2017, as compared to the significant accounting policies described in our Annual Report on Form 10-K for the fiscal year ended April 28, 2017.

2. Recent Accounting Standards Not Yet Effective

Revenue from Contracts with Customers

In May 2014, the FASB issued an accounting standards update related to the recognition and reporting of revenue that establishes a comprehensive new revenue recognition model designed to depict the transfer of goods or services to a customer in an amount that reflects the consideration the entity expects to receive in exchange for those goods or services. The guidance allows for the use of either the full or modified retrospective transition method. We expect to adopt this new standard, as amended, on its effective date in the first quarter of fiscal 2019.

Preliminarily, we plan to adopt the standard using the full retrospective method to restate each prior reporting period presented. Our ability to adopt this standard using the full retrospective method is dependent upon system readiness, for both revenue and commissions, and the completion of the analysis of information necessary to restate prior period financial statements and disclosures. We are continuing to assess the impact of this standard on our financial position, results of operations and related disclosures and have not yet determined whether the effect will be material. We do not expect that the adoption of this standard will have a material impact on our operating cash flows. Additionally, as we continue to assess the new standard along with industry trends and additional interpretive guidance, we may adjust our implementation plan accordingly.

We believe that the new standard will impact our following policies and disclosures:

- in arrangements containing software, revenue deferred for the undelivered elements will be based on a relative fair value allocation, generally resulting in more software arrangement revenue being recognized earlier;

- removal of the current limitation on contingent revenue for multiple element arrangements, such as that related to the delivery of additional items or meeting other specified performance conditions, may result in revenue being recognized earlier;
- estimation of variable consideration for arrangements with contract terms such as rights of return, potential penalties and acceptance clauses;
- required disclosures, including information about the transaction price allocated to remaining performance obligations and expected timing of revenue recognition; and
- accounting for deferred commissions, including costs that qualify for deferral and the amortization period.

We do not expect that the new standard will result in substantive changes in our deliverables or the amounts of revenue allocated between multiple deliverables, with the exception of the items discussed above.

Leases

In February 2016, the FASB issued an accounting standards update on financial reporting for leasing arrangements, including requiring lessees to recognize an operating lease with a term greater than one year on their balance sheets as a right-of-use asset and corresponding lease liability, measured at the present value of the lease payments. This new standard will be effective for us in our first quarter of fiscal 2020, although early adoption is permitted. Upon adoption, lessees must apply a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. We are currently in the assessment phase to determine the adoption methodology and are evaluating the impact of this new standard on our consolidated financial statements and disclosures. We expect that most of our operating lease commitments will be subject to the new standard and recognized as lease liabilities and right-of-use assets upon adoption, which will increase the total assets and total liabilities we report.

Credit Losses on Financial Instruments

In June 2016, the FASB issued an accounting standards update on the measurement of credit losses on financial instruments. The standard introduces a new model for measuring and recognizing credit losses on financial instruments, requiring financial assets measured at amortized cost basis to be presented at the net amount expected to be collected. It also requires that credit losses be recorded through an allowance for credit losses. This new standard will be effective for us in our first quarter of fiscal 2021, although early adoption is permitted. Upon adoption, companies must apply a modified retrospective transition approach through a cumulative-effect adjustment to retained earnings, though a prospective transition approach is required for debt securities for which an other-than-temporary impairment had been recognized before the effective date. Based on the composition of our investment portfolio, current market conditions, and historical credit loss activity, the adoption of this standard is not expected to have a material impact on our consolidated financial statements.

Income Taxes on Intra-Entity Transfers of Assets

In October 2016, the FASB issued an accounting standards update that requires entities to recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. This amends current GAAP which prohibits recognition of current and deferred income taxes for all types of intra-entity asset transfers until the asset has been sold to an outside party. This new standard will be effective for us in our first quarter of fiscal 2019, although early adoption is permitted. Upon adoption, companies must apply a modified retrospective transition approach through a cumulative-effect adjustment to retained earnings as of the beginning of the period of adoption. We are currently evaluating the impact of this new standard on our consolidated financial statements.

Derecognition of Non-Financial Assets

In February 2017, the FASB issued an accounting standards update that amends guidance on how entities account for the derecognition of a nonfinancial asset or an in substance nonfinancial asset that is not a business. The guidance allows for the use of either the full or modified retrospective transition method. This new standard will be effective for us in our first quarter of fiscal 2019, although early adoption is permitted. We are currently evaluating the impact of this new standard on our consolidated financial statements.

Although there are several other new accounting pronouncements issued or proposed by the FASB that we have adopted or will adopt, as applicable, we do not believe any of these accounting pronouncements has had or will have a material impact on our consolidated financial position, operating results or disclosures.

3. Statements of Cash Flows Additional Information

Non-cash investing activities and supplemental cash flow information are as follows (in millions):

	Six Months Ended	
	October 27, 2017	October 28, 2016
Non-cash Investing Activities:		
Capital expenditures incurred but not paid	\$ 17	\$ 35
Supplemental Cash Flow Information:		
Income taxes paid, net of refunds	\$ 28	\$ 70
Interest paid	\$ 24	\$ 23

4. Business Combinations

On August 4, 2017, we acquired all of the outstanding shares of Greencloud ehf., a privately-held provider of cloud management software based in Iceland, for \$51 million in cash, of which we preliminarily allocated \$10 million to developed technology, \$38 million to goodwill, and the remainder to other assets.

On June 15, 2017, we acquired all of the outstanding shares of Plexistor Ltd., a privately-held provider of software defined memory architecture based in Israel, for \$24 million in cash, of which we allocated \$6 million to developed technology, \$17 million to goodwill, and the remainder to other assets.

5. Goodwill and Purchased Intangible Assets, Net

Goodwill activity is summarized as follows (in millions):

Balance as of April 28, 2017	\$ 1,684
Additions	55
Balance as of October 27, 2017	<u>\$ 1,739</u>

Purchased intangible assets, net are summarized below (in millions):

	October 27, 2017			April 28, 2017		
	Gross Assets	Accumulated Amortization	Net Assets	Gross Assets	Accumulated Amortization	Net Assets
Developed technology	\$ 164	\$ (61)	\$ 103	\$ 148	\$ (44)	\$ 104
Customer contracts/relationships	43	(27)	16	43	(19)	24
Other purchased intangibles	9	(8)	1	9	(6)	3
Total purchased intangible assets	<u>\$ 216</u>	<u>\$ (96)</u>	<u>\$ 120</u>	<u>\$ 200</u>	<u>\$ (69)</u>	<u>\$ 131</u>

Amortization expense for purchased intangible assets is summarized below (in millions):

	Three Months Ended		Six Months Ended		Statements of Operations Classification
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016	
Developed technology	\$ 9	\$ 7	\$ 17	\$ 13	Cost of revenues
Customer contracts/relationships	4	3	8	7	Operating expenses
Other purchased intangibles	1	1	2	2	Operating expenses
Total	<u>\$ 14</u>	<u>\$ 11</u>	<u>\$ 27</u>	<u>\$ 22</u>	

As of October 27, 2017, future amortization expense related to purchased intangible assets is as follows (in millions):

Fiscal Year	Amount
Remainder of 2018	\$ 26
2019	47
2020	31
2021	16
Total	<u>\$ 120</u>

6. Balance Sheet Details

Cash and cash equivalents (in millions):

	October 27, 2017	April 28, 2017
Cash	\$ 3,111	\$ 2,275
Cash equivalents	424	169
Cash and cash equivalents	<u>\$ 3,535</u>	<u>\$ 2,444</u>

Inventories (in millions):

	October 27, 2017	April 28, 2017
Purchased components	\$ 32	\$ 28
Finished goods	76	135
Inventories	<u>\$ 108</u>	<u>\$ 163</u>

Property and equipment, net (in millions):

	October 27, 2017	April 28, 2017
Land	\$ 132	\$ 132
Buildings and improvements	633	612
Leasehold improvements	100	93
Computer, production, engineering and other equipment	749	741
Computer software	352	353
Furniture and fixtures	96	90
Construction-in-progress	13	26
	2,075	2,047
Accumulated depreciation and amortization	(1,280)	(1,248)
Property and equipment, net	<u>\$ 795</u>	<u>\$ 799</u>

We have classified certain land and buildings located in Sunnyvale, California previously reported as property and equipment as assets held-for-sale. The book value of these assets is \$118 million and is included in other current assets in the condensed consolidated balance sheets. On September 8, 2017, we entered into an agreement to sell these assets for a total of \$306 million, of which \$210 million is payable at the first closing and \$96 million is payable at the second closing. Each closing is subject to due diligence, certain termination rights and customary closing conditions, including, in the case of the second closing, local governmental approval of the subdivision of a land parcel. The first closing is expected to occur in the third quarter of fiscal 2018 and the second closing is expected to occur within the next twelve months.

Other non-current assets (in millions):

	October 27, 2017	April 28, 2017
Deferred tax assets	\$ 483	\$ 525
Other assets	151	156
Other non-current assets	<u>\$ 634</u>	<u>\$ 681</u>

Accrued expenses (in millions):

	October 27, 2017	April 28, 2017
Accrued compensation and benefits	\$ 291	\$ 340
Sale-leaseback financing obligations	130	130
Product warranty liabilities	29	33
Other current liabilities	272	279
Accrued expenses	<u>\$ 722</u>	<u>\$ 782</u>

Product warranty liabilities:

Equipment and software systems sales include a standard product warranty. The following tables summarize the activity related to product warranty liabilities and their balances as reported in our condensed consolidated balance sheets (in millions):

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
Balance at beginning of period	\$ 44	\$ 61	\$ 50	\$ 70
Expense accrued during the period	7	1	8	5
Warranty costs incurred	(7)	(8)	(14)	(21)
Balance at end of period	<u>\$ 44</u>	<u>\$ 54</u>	<u>\$ 44</u>	<u>\$ 54</u>

	October 27, 2017	April 28, 2017
Accrued expenses	\$ 29	\$ 33
Other long-term liabilities	15	17
Total warranty liabilities	<u>\$ 44</u>	<u>\$ 50</u>

Warranty expense accrued during the period includes amounts accrued for systems at the time of shipment, adjustments for changes in estimated costs for warranties on systems shipped in the period and changes in estimated costs for warranties on systems shipped in prior periods.

Deferred revenue and financed unearned services revenue (in millions):

	October 27, 2017	April 28, 2017
Deferred product revenue	\$ 123	\$ 124
Deferred services revenue	2,881	2,999
Financed unearned services revenue	163	219
Total	<u>\$ 3,167</u>	<u>\$ 3,342</u>

Reported as:	October 27, 2017	April 28, 2017
Short-term	\$ 1,645	\$ 1,744
Long-term	1,522	1,598
Total	<u>\$ 3,167</u>	<u>\$ 3,342</u>

Deferred product revenue represents unrecognized revenue related to undelivered product commitments and other product deliveries that have not met all revenue recognition criteria. Deferred services revenue represents customer payments made in advance for services, which include software and hardware maintenance contracts and other services. Financed unearned services revenue represents undelivered services for which cash has been received under certain third-party financing arrangements. See Note 16 for additional information related to these arrangements.

7. Other income (expense), net

Other income (expense), net consists of the following (in millions):

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
Interest income	\$ 19	\$ 10	\$ 35	\$ 21
Interest expense	(17)	(12)	(30)	(27)
Other income, net	4	2	6	5
Total other income (expense), net	<u>\$ 6</u>	<u>\$ —</u>	<u>\$ 11</u>	<u>\$ (1)</u>

8. Financial Instruments and Fair Value Measurements

The accounting guidance for fair value measurements provides a framework for measuring fair value on either a recurring or nonrecurring basis, whereby the inputs used in valuation techniques are assigned a hierarchical level. The following are the three levels of inputs to measure fair value:

Level 1: Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2: Inputs that reflect quoted prices for identical assets or liabilities in less active markets; quoted prices for similar assets or liabilities in active markets; benchmark yields, reported trades, broker/dealer quotes, inputs other than quoted prices that are observable for the assets or liabilities; or inputs that are derived principally from or corroborated by observable market data by correlation or other means.

Level 3: Unobservable inputs that reflect our own assumptions incorporated in valuation techniques used to measure fair value. These assumptions are required to be consistent with market participant assumptions that are reasonably available.

We consider an active market to be one in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis, and consider an inactive market to be one in which there are infrequent or few transactions for the asset or liability, the prices are not current, or price quotations vary substantially either over time or among market makers. Where appropriate, our own or the counterparty's non-performance risk is considered in measuring the fair values of liabilities and assets, respectively.

Investments

The following is a summary of our investments (in millions):

	October 27, 2017				April 28, 2017			
	Cost or Amortized Cost	Gross Unrealized		Estimated Fair Value	Cost or Amortized Cost	Gross Unrealized		Estimated Fair Value
		Gains	Losses			Gains	Losses	
Corporate bonds	\$ 1,747	\$ 6	\$ (3)	\$ 1,750	\$ 1,535	\$ 3	\$ (2)	\$ 1,536
U.S. Treasury and government debt securities	474	—	(2)	472	629	1	(2)	628
Foreign government debt securities	21	—	—	21	21	—	—	21
Commercial paper	504	—	—	504	362	—	—	362
Certificates of deposit	107	—	—	107	99	—	—	99
Mutual funds	34	—	—	34	31	—	—	31
Total debt and equity securities	<u>\$ 2,887</u>	<u>\$ 6</u>	<u>\$ (5)</u>	<u>\$ 2,888</u>	<u>\$ 2,677</u>	<u>\$ 4</u>	<u>\$ (4)</u>	<u>\$ 2,677</u>

As of October 27, 2017 and April 28, 2017, gross unrealized losses related to individual securities were not significant.

The following table presents the contractual maturities of our debt investments as of October 27, 2017 (in millions):

	Amortized Cost	Fair Value
Due in one year or less	\$ 1,242	\$ 1,242
Due after one year through five years	1,187	1,186
Due after five years through ten years	419	421
Due after ten years	5	5
	<u>\$ 2,853</u>	<u>\$ 2,854</u>

Actual maturities may differ from the contractual maturities because borrowers may have the right to call or prepay certain obligations.

Fair Value of Financial Instruments

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis (in millions):

	October 27, 2017		
	Total	Fair Value Measurements at Reporting Date Using	
		Level 1	Level 2
Cash	\$ 3,111	\$ 3,111	\$ —
Corporate bonds	1,750	—	1,750
U.S. Treasury and government debt securities	472	191	281
Foreign government debt securities	21	—	21
Commercial paper	504	—	504
Certificates of deposit	107	—	107
Total cash, cash equivalents and short-term investments	<u>\$ 5,965</u>	<u>\$ 3,302</u>	<u>\$ 2,663</u>
Other items:			
Mutual funds (1)	\$ 7	\$ 7	\$ —
Mutual funds (2)	\$ 27	\$ 27	\$ —
Foreign currency exchange contracts assets (1)	\$ 8	\$ —	\$ 8
Foreign currency exchange contracts liabilities (3)	\$ (4)	\$ —	\$ (4)

- (1) Reported as other current assets in the condensed consolidated balance sheets
(2) Reported as other non-current assets in the condensed consolidated balance sheets
(3) Reported as accrued expenses in the condensed consolidated balance sheets

Our Level 2 debt instruments are held by a custodian who prices some of the investments using standard inputs in various asset price models or obtains investment prices from third-party pricing providers that incorporate standard inputs in various asset price models. These pricing providers utilize the most recent observable market information in pricing these securities or, if specific prices are not available for these securities, use other observable inputs like market transactions involving identical or comparable securities. We review Level 2 inputs and fair value for reasonableness and the values may be further validated by comparison to multiple independent pricing sources. In addition, we review third-party pricing provider models, key inputs and assumptions and understand the pricing processes at our third-party providers in determining the overall reasonableness of the fair value of our Level 2 debt instruments. As of October 27, 2017 and April 28, 2017, we have not made any adjustments to the prices obtained from our third-party pricing providers.

Fair Value of Debt

As of October 27, 2017 and April 28, 2017, the fair value of our long-term debt was approximately \$2,316 million and \$1,520 million, respectively. The fair value of our long-term debt was based on observable market prices in a less active market. The fair value of our commercial paper notes approximated their carrying value. All of our debt obligations are categorized as Level 2 instruments.

9. Financing Arrangements

Long-Term Debt

The following table summarizes information relating to our long-term debt, which we collectively refer to as our Senior Notes (in millions, except interest rates):

	October 27, 2017		April 28, 2017	
	Amount	Effective Interest Rate	Amount	Effective Interest Rate
2.00% Senior Notes Due December 2017	\$ 750	2.25%	\$ 750	2.25%
2.00% Senior Notes Due September 2019	400	2.32%	—	N/A
3.375% Senior Notes Due June 2021	500	3.54%	500	3.54%
3.25% Senior Notes Due December 2022	250	3.43%	250	3.43%
3.30% Senior Notes Due September 2024	400	3.42%	—	N/A
Total principal amount	2,300		1,500	
Unamortized discount and issuance costs	(10)		(7)	
Total senior notes	2,290		1,493	
Less: Current portion of long-term debt	(750)		(749)	
Total long-term debt	<u>\$ 1,540</u>		<u>\$ 744</u>	

Senior Notes

In September 2017, we issued \$400 million aggregate principal amount of 2.00% Senior Notes due on September 27, 2019 and \$400 million aggregate principal amount of 3.30% Senior Notes due on September 29, 2024. We received total proceeds of approximately \$795 million, net of discount and issuance costs, which will be used for general corporate purposes, including the repayment of our outstanding 2.00% Senior Notes due December 2017. Interest on these Senior Notes is payable semi-annually in March and September. Our 3.375% Senior Notes, 2.00% Senior Notes due December 2017 and 3.25% Senior Notes, with principal amounts of \$500 million, \$750 million and \$250 million, respectively, were issued in June 2014, December 2012 and December 2012, respectively. Interest on these Senior Notes is paid semi-annually in June and December. Our Senior Notes, which are unsecured, unsubordinated obligations, rank equally in right of payment with any existing and future senior unsecured indebtedness.

We may redeem the Senior Notes in whole or in part, at any time at our option at specified redemption prices. In addition, upon the occurrence of certain change of control triggering events, we may be required to repurchase the Senior Notes under specified terms. The Senior Notes also include covenants that limit our ability to incur debt secured by liens on assets or on shares of stock or indebtedness of our subsidiaries; to engage in certain sale and lease-back transactions; and to consolidate, merge or sell all or substantially all of our assets. As of October 27, 2017, we were in compliance with all covenants associated with the Senior Notes.

On October 4, 2017, we issued a notice to redeem all our 2.00% Senior Notes due December 2017. On November 3, 2017, the notes were extinguished through redemption for cash at an aggregate redemption price of \$751 million, plus accrued and unpaid interest.

As of October 27, 2017, our aggregate future principal debt maturities, including the 2.00% Senior Notes due December 2017, are as follows (in millions):

<u>Fiscal Year</u>	<u>Amount</u>
Remainder of 2018	\$ 750
2020	400
2022	500
Thereafter	650
Total	<u>\$ 2,300</u>

Commercial Paper Program and Credit Facility

We have a commercial paper program (the Program), under which we may issue unsecured commercial paper notes. Amounts available under the Program, as amended on July 17, 2017, may be borrowed, repaid and re-borrowed, with the aggregate face or principal amount of the notes outstanding under the Program at any time not to exceed \$1.0 billion. The maturities of the notes can vary, but may not exceed 397 days from the date of issue. The notes are sold under customary terms in the commercial paper market and may be issued at a discount from par or, alternatively, may be sold at par and bear interest at rates dictated by market conditions at the time of their issuance. The proceeds from the issuance of the notes are used for general corporate purposes. As of October 27, 2017, we had commercial paper notes outstanding with an aggregate principal amount of \$719 million, a weighted-average interest rate of 1.43% and maturities ranging from 13 days to 44 days. As of April 28, 2017, we had commercial paper notes outstanding with an aggregate principal amount of \$500 million, a weighted-average interest rate of 1.26% and maturities ranging from 7 days to 38 days.

In connection with the Program, we have a senior unsecured credit agreement with a syndicated group of lenders that expires on December 10, 2021. The credit agreement, as amended on July 17, 2017, provides a \$1.0 billion revolving unsecured credit facility, with a \$50 million letter of credit sub-facility, that serves as a back-up for the Program. Proceeds from the facility may also be used for general corporate purposes to the extent that the credit facility exceeds the outstanding debt issued under the Program. The credit agreement includes options that allow us to request an increase in the facility of up to an additional \$300 million and to extend its maturity date for two additional one-year periods, both subject to certain conditions. As of October 27, 2017 we were in compliance with all associated covenants in this agreement. No amounts were drawn against this facility during any of the periods presented.

Sale-leaseback Transactions

In fiscal 2016, we entered into a sale-leaseback arrangement of certain of our land and buildings, under which we leased back certain of our properties rent free over lease terms ending at various dates ranging from March 31, 2017 to December 31, 2017, unless terminated early by us. Due to the existence of a prohibited form of continuing involvement, these properties did not qualify for sale-leaseback accounting and as a result they have been accounted for as financing transactions under lease accounting standards. Under the financing method, until such time as the related leases are terminated, the assets will remain on our condensed consolidated balance sheets and proceeds received by us from these transactions are reported as financing obligations. As of October 27, 2017, the balance of the remaining financing obligations, which relate to properties whose leases we expect to terminate in December 2017, was

\$130 million. At the end of the leaseback period, or when our continuing involvement under the leaseback agreement ends, this transaction will be reported as a non-cash sale and extinguishment of financing obligations, and the difference between the then net book value of the properties and the unamortized balance of the financing obligations will be recognized as a gain.

10. Stockholders' Equity

Equity Incentive Awards

As of October 27, 2017, we have certain equity incentive awards (awards) outstanding, which include stock options, restricted stock units (RSUs), including time-based RSUs and performance-based RSUs (PBRsUs), and Employee Stock Purchase Plan (ESPP) awards.

Stock Options

The following table summarizes information related to our stock options (in millions, except exercise price and contractual term):

	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding as of April 28, 2017	4	\$ 35.76		
Exercised	(1)	\$ 24.14		
Outstanding as of October 27, 2017	3	\$ 37.30	2.77	\$ 29
Exercisable as of October 27, 2017	3	\$ 40.97	2.14	\$ 16

The aggregate intrinsic value represents the pre-tax difference between the exercise price of stock options and the quoted market price of our stock on that day for all in-the-money options.

Additional information related to our stock options is summarized below (in millions):

	Six Months Ended	
	October 27, 2017	October 28, 2016
Intrinsic value of exercises	\$ 11	\$ 11
Proceeds received from exercises	\$ 15	\$ 20
Fair value of options vested	\$ 5	\$ 9

Restricted Stock Units

In the six months ended October 27, 2017, we granted PBRsUs to certain of our executives. Each PBRsU has performance-based vesting criteria such that the PBRsU cliff-vests at the end of either an approximate two year or three year performance period, which began on the date specified in the grant agreement and ends the last day of the second or third fiscal year, respectively, following the grant date. The number of shares of common stock that will be issued to settle the PBRsUs at the end of the applicable performance and service period will range from 0% to 200% of a target number of shares originally granted, and will depend upon our Total Stockholder Return (TSR) as compared to an index TSR (each expressed as a growth rate percentage) calculated as of the applicable period end date. The fair values of the PBRsUs were fixed at grant date using a Monte Carlo simulation model and the related aggregate compensation cost of \$20 million is being recognized over the shorter of the remaining applicable performance or service periods.

The following table summarizes information related to our RSUs, including PBRsUs, (in millions, except fair value):

	Number of Shares	Weighted-Average Grant Date Fair Value
Outstanding as of April 28, 2017	11	\$ 28.81
Granted	4	\$ 38.61
Vested	(4)	\$ 31.29
Forfeited	(1)	\$ 28.30
Outstanding as of October 27, 2017	10	\$ 31.73

We primarily use the net share settlement approach upon vesting, where a portion of the shares are withheld as settlement of employee withholding taxes, which decreases the shares issued to the employee by a corresponding value. The number and value of the shares netted for employee taxes are summarized in the table below (in millions):

	Six Months Ended	
	October 27, 2017	October 28, 2016
Shares withheld for taxes	2	1
Fair value of shares withheld	\$ 60	\$ 36

Employee Stock Purchase Plan

The following table summarizes activity related to the purchase rights issued under the ESPP (in millions):

	Six Months Ended	
	October 27, 2017	October 28, 2016
Shares issued under the ESPP	2	2
Proceeds from issuance of shares	\$ 42	\$ 42

Stock-Based Compensation Expense

Stock-based compensation expense is included in the condensed consolidated statements of operations as follows (in millions):

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
Cost of product revenues	\$ 1	\$ 1	\$ 2	\$ 2
Cost of hardware maintenance and other services revenues	2	3	5	7
Sales and marketing	16	21	37	44
Research and development	12	17	27	32
General and administrative	8	9	16	18
Total stock-based compensation expense	\$ 39	\$ 51	\$ 87	\$ 103
Income tax benefit for stock-based compensation	\$ 9	\$ 11	\$ 18	\$ 20

As of October 27, 2017, total unrecognized compensation expense related to our equity awards was \$269 million, which is expected to be recognized on a straight-line basis over a weighted-average remaining service period of 2.3 years.

Stock Repurchase Program

Our Board of Directors has authorized the repurchase of up to \$9.6 billion of our common stock. Under this program, which we may suspend or discontinue at any time, we may purchase shares of our outstanding common stock through open market and privately negotiated transactions at prices deemed appropriate by our management.

The following table summarizes activity related to this program for the six months ended October 27, 2017 (in millions, except per share amounts):

Number of shares repurchased	7
Average price per share	\$ 41.80
Aggregate purchase price	\$ 300
Remaining authorization at end of period	\$ 494

The aggregate purchase price of our stock repurchases for the six months ended October 27, 2017 consisted of \$300 million of open market purchases, of which \$74 million and \$226 million were allocated to additional paid-in capital and retained earnings, respectively.

Since the May 13, 2003 inception of our stock repurchase program through October 27, 2017, we repurchased a total of 276 million shares of our common stock at an average price of \$33.07 per share, for an aggregate purchase price of \$9.1 billion.

Dividends

The following is a summary of our activities related to dividends on our common stock (in millions, except per share amounts):

	Six Months Ended	
	October 27, 2017	October 28, 2016
Dividends per share declared	\$ 0.40	\$ 0.38
Dividend payments allocated to additional paid-in capital	\$ —	\$ 76
Dividend payments allocated to retained earnings	\$ 108	\$ 29

On November 15, 2017, we declared a cash dividend of \$0.20 per share of common stock, payable on January 24, 2018 to holders of record as of the close of business on January 5, 2018. The timing and amount of future dividends will depend on market conditions, corporate business and financial considerations and regulatory requirements. All dividends declared have been determined by us to be legally authorized under the laws of the state in which we are incorporated.

Retained Earnings

A reconciliation of retained earnings is as follows (in millions):

Balance as of April 28, 2017	\$ 40
Net income	311
Repurchases of common stock	(226)
Dividends	(108)
Balance as of October 27, 2017	\$ 17

Accumulated Other Comprehensive Income (Loss)

Changes in accumulated other comprehensive income (loss) by component, net of tax, are summarized below (in millions):

	Foreign Currency Translation Adjustments	Unrealized Gains (Losses) on Available- for-Sale Securities	Total
Balance as of April 28, 2017	\$ (29)	\$ —	\$ (29)
Other comprehensive income, net of tax	8	2	10
Balance as of October 27, 2017	\$ (21)	\$ 2	\$ (19)

The amounts reclassified out of accumulated other comprehensive income (loss) are as follows (in millions):

	Three Months Ended		Six Months Ended		Statements of Operations Classification
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016	
	Amounts Reclassified from AOCI		Amounts Reclassified from AOCI		
Recognized (gains) losses on defined benefit obligations	\$ (1)	\$ 1	\$ (1)	\$ 1	Operating expenses
Realized gains on cash flow hedges	—	(1)	—	(1)	Net revenues
Total reclassifications	\$ (1)	\$ —	\$ (1)	\$ —	

11. Derivatives and Hedging Activities

We use derivative instruments to manage exposures to foreign currency risk. Our primary objective in holding derivatives is to reduce the volatility of earnings and cash flows associated with changes in foreign currency exchange rates. The maximum length of time over which forecasted foreign currency denominated revenues are hedged is six months. The program is not designated for trading or speculative purposes. Our derivatives expose us to credit risk to the extent that the counterparties may be unable to meet the terms of the agreement. We seek to mitigate such risk by limiting our counterparties to major financial institutions. In addition, the potential risk of loss with any one counterparty resulting from this type of credit risk is monitored on an ongoing basis. We also have in place master netting arrangements to mitigate the credit risk of our counterparties and to potentially reduce our losses due to counterparty nonperformance. We present our derivative instruments as net amounts in our condensed consolidated balance sheets. The gross and net fair value amounts of such instruments were not material as of October 27, 2017 or April 28, 2017. We did not recognize any gains or losses in earnings due to hedge ineffectiveness for any period presented. All contracts have a maturity of less than six months.

The notional amount of our outstanding U.S. dollar equivalent foreign currency exchange forward contracts consisted of the following (in millions):

	October 27, 2017	April 28, 2017
Balance Sheet Contracts		
Forward contracts sold	\$ 136	\$ 165
Forward contracts purchased	\$ 248	\$ 257

As of October 27, 2017 and April 28, 2017, there were no instruments designated as cash flow hedges outstanding.

The effect of cash flow hedges recognized in net revenues is presented in the condensed consolidated statements of comprehensive income and in Note 10 – Stockholders' Equity.

The effect of derivative instruments not designated as hedging instruments recognized in other income (expense), net on our condensed consolidated statements of operations was as follows (in millions):

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
	Gain Recognized into Income		Gain (Loss) Recognized into Income	
Foreign currency exchange contracts	\$ 1	\$ 2	\$ (1)	\$ 6

12. Restructuring Charges

Management has previously approved several restructuring actions to streamline our business, eliminate costs and redirect resources to our highest return activities, including the March 2016 Plan and the November 2016 Plan, under which we reduced our global workforce by approximately 11%, and 6%, respectively. We completed all workforce related activities under these plans as of the end of fiscal 2017. Charges related to our restructuring plans consisted primarily of employee severance-related costs. The remaining balance as of October 27, 2017 principally relates to lease obligations and will be paid over their remaining terms.

Activities related to our restructuring plans are summarized as follows (in millions):

	Six Months Ended October 27, 2017		Six Months Ended October 28, 2016	
	November 2016 Plan		March 2016 Plan	
Balance at beginning of period	\$ 13	\$ 45	\$ 45	\$ 45
Cash payments	(5)	(5)	(5)	(42)
Balance at end of period	\$ 8	\$ 3	\$ 3	\$ 3

13. Income Taxes

Our effective tax rates for the periods presented were as follows:

	Six Months Ended	
	October 27, 2017	October 28, 2016
Effective tax rates	17.7%	26.1%

Our effective tax rates reflect the impact of a significant amount of our earnings, primarily income from our European operations which are headquartered in the Netherlands, being taxed in foreign jurisdictions at rates below the U.S. statutory tax rate. The differences in effective tax rates for the six months ended October 27, 2017 and October 28, 2016 were primarily a result of differences in discrete impacts related to stock-based compensation and differences in year-to-date profits before tax.

As of October 27, 2017, we had \$222 million of gross unrecognized tax benefits, of which \$157 million has been recorded in other long-term liabilities. Unrecognized tax benefits of \$163 million, including penalties, interest and indirect benefits, would affect our provision for income taxes if recognized.

We are currently undergoing federal income tax audits in the United States (U.S.) and several foreign tax jurisdictions. Transfer pricing calculations are key issues under audits in various jurisdictions, and are often subject to dispute and appeals. The IRS has concluded the examination of our tax returns for our fiscal years through 2010. The IRS commenced the examination of our federal income tax returns for our fiscal years 2012 and 2013 in August 2016.

On September 17, 2010, the Danish Tax Authorities issued a decision concluding that distributions declared in 2005 and 2006 from our Danish subsidiary were subject to Danish at-source dividend withholding tax. We do not believe that our Danish subsidiary is liable for withholding tax and filed an appeal with the Danish Tax Tribunal to that effect. On December 19, 2011, the Danish Tax Tribunal issued a ruling that our Danish subsidiary was not liable for Danish withholding tax. The Danish tax examination agency appealed to the Danish High Court in March 2012. In February 2016, the Danish High Court referred the case to the Court of Justice of the European Union where it was heard before the court in October 2017. We expect the court to issue their opinion and judgment by the end of fiscal 2018.

We continue to monitor the progress of ongoing discussions with tax authorities and the impact, if any, of the expected expiration of the statute of limitations in various taxing jurisdictions.

14. Net Income per Share

The following is a calculation of basic and diluted net income per share (in millions, except per share amounts):

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
Numerator:				
Net income	\$ 175	\$ 109	\$ 311	\$ 173
Denominator:				
Shares used in basic computation	269	278	270	278
Dilutive impact of employee equity award plans	6	6	7	5
Shares used in diluted computation	275	284	277	283
Net Income per Share:				
Basic	\$ 0.65	\$ 0.39	\$ 1.15	\$ 0.62
Diluted	\$ 0.64	\$ 0.38	\$ 1.12	\$ 0.61

Potential shares from outstanding employee equity awards totaling 1 million and 5 million for the three months ended October 27, 2017 and October 28, 2016, respectively, and 2 million and 10 million for the six months ended October 27, 2017 and October 28, 2016, respectively, were excluded from the diluted net income per share calculations as their inclusion would have been anti-dilutive.

15. Segment, Geographic, and Significant Customer Information

We operate in one industry segment: the design, manufacturing, marketing, and technical support of high-performance storage and data management solutions. We conduct business globally, and our sales and support activities are managed on a geographic basis. Our management reviews financial information presented on a consolidated basis, accompanied by disaggregated information it receives from our internal management system about revenues by geographic region, based on the location from which the customer relationship is managed, for purposes of allocating resources and evaluating financial performance. We do not allocate costs of revenues, research and development, sales and marketing, or general and administrative expenses to our geographic regions in this internal management reporting because management does not review operations or operating results, or make planning decisions, below the consolidated entity level.

Summarized revenues by geographic region based on information from our internal management system and utilized by our Chief Executive Officer, who is considered our Chief Operating Decision Maker, is as follows (in millions):

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
United States, Canada and Latin America (Americas)	\$ 796	\$ 768	\$ 1,522	\$ 1,504
Europe, Middle East and Africa (EMEA)	431	396	832	783
Asia Pacific (APAC)	195	176	393	347
Net revenues	\$ 1,422	\$ 1,340	\$ 2,747	\$ 2,634

Americas revenues consist of sales to Americas commercial and U.S. public sector markets. Sales to customers inside the U.S. were \$726 million and \$697 million during the three months ended October 27, 2017 and October 28, 2016, respectively, and were \$1,376 million and \$1,363 million during the six months ended October 27, 2017 and October 28, 2016, respectively.

The majority of our assets, excluding cash, cash equivalents, short-term investments and accounts receivable, were attributable to our domestic operations. The following table presents cash, cash equivalents and short-term investments held in the U.S. and internationally in various foreign subsidiaries (in millions):

	October 27, 2017	April 28, 2017
U.S.	\$ 941	\$ 425
International	5,024	4,496
Total	\$ 5,965	\$ 4,921

With the exception of property and equipment, we do not identify or allocate our long-lived assets by geographic area. The following table presents property and equipment information for geographic areas based on the physical location of the assets (in millions):

	October 27, 2017	April 28, 2017
U.S.	\$ 595	\$ 593
International	200	206
Total	\$ 795	\$ 799

The following customers, each of which is a distributor, accounted for 10% or more of our net revenues:

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
Arrow Electronics, Inc.	22%	23%	23%	21%
Tech Data Corporation (previously presented as Avnet, Inc.)	19%	20%	20%	20%

The following customers accounted for 10% or more of accounts receivable:

	October 27, 2017	April 28, 2017
Arrow Electronics, Inc.	14%	15%
Tech Data Corporation (previously presented as Avnet, Inc.)	15%	14%

16. Commitments and Contingencies

Operating Leases

We lease various equipment, vehicles and office space in the U.S. and internationally. Future annual minimum lease payments under non-cancelable operating leases with an initial term in excess of one year totaled \$203 million as of October 27, 2017.

Purchase Orders and Other Commitments

In the ordinary course of business, we make commitments to third-party contract manufacturers to manage manufacturer lead times and meet product forecasts, and to other parties to purchase various key components used in the manufacture of our products. A significant portion of our reported purchase commitments arising from these agreements consists of firm, non-cancelable, and unconditional commitments. As of October 27, 2017, we had \$347 million in non-cancelable purchase commitments for inventory. We record a liability for firm, non-cancelable and unconditional purchase commitments for quantities in excess of our future demand forecasts consistent with the valuation of our excess and obsolete inventory. As of October 27, 2017 and April 28, 2017, such liability amounted to \$10 million and is included in accrued expenses in our condensed consolidated balance sheets. To the extent that such forecasts are not achieved, our commitments and associated accruals may change.

In addition to inventory commitments with contract manufacturers and component suppliers, we have open purchase orders and contractual obligations associated with our ordinary course of business for which we have not yet received goods or services. As of October 27, 2017, we had \$31 million in construction related obligations and \$199 million in other purchase obligations.

Financing Guarantees

While most of our arrangements for sales include short-term payment terms, from time to time we provide long-term financing to creditworthy customers. We have generally sold receivables financed through these arrangements on a non-recourse basis to third party financing institutions within 10 days of the contracts' dates of execution, and we classify the proceeds from these sales as cash flows from operating activities in our condensed consolidated statements of cash flows. We account for the sales of these receivables as "true sales" as defined in the accounting standards on transfers of financial assets, as we are considered to have surrendered control of these financing receivables. Provided all other revenue recognition criteria have been met, we recognize product revenues for these arrangements, net of any payment discounts from financing transactions, upon product acceptance. We sold \$66 million and \$108 million of receivables during the six months ended October 27, 2017 and October 28, 2016, respectively.

In addition, we enter into arrangements with leasing companies for the sale of our hardware systems products. These leasing companies, in turn, lease our products to end-users. The leasing companies generally have no recourse to us in the event of default by the end-user and we recognize revenue upon delivery to the end-user customer, if all other revenue recognition criteria have been met.

Some of the leasing arrangements described above have been financed on a recourse basis through third-party financing institutions. 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 companies in the event of end-user customer default. These arrangements are generally collateralized by a security interest in the underlying assets. Where we provide a guarantee for recourse leases, we defer revenues subject to the industry-specific software revenue recognition guidance and recognize revenues for non-software deliverables in accordance with our multiple deliverable revenue arrangement policy. In connection with certain recourse financing arrangements, we receive advance payments associated with undelivered elements that are subject to customer refund rights. We defer revenue associated with these advance payments until the related refund rights expire and we perform the services. As of October 27, 2017 and April 28, 2017, the aggregate amount by which such contingencies exceeded the associated liabilities was not significant. To date, we have not experienced significant losses under our lease financing programs or other financing arrangements.

We have entered into service contracts with certain of our end-user customers that are supported by third-party financing arrangements. If a service contract is terminated as a result of our non-performance under the contract or our failure to comply with the terms of the financing arrangement, we could, under certain circumstances, be required to acquire certain assets related to the service contract or to pay the aggregate unpaid financing payments under such arrangements. As of October 27, 2017, we have not been required to make any payments under these arrangements, and we believe the likelihood of having to acquire a material amount of assets or make payments under these arrangements is remote. The portion of the financial arrangement that represents unearned services revenue is included in deferred revenue and financed unearned services revenue in our condensed consolidated balance sheets.

Legal Contingencies

When a loss is considered probable and reasonably estimable, we record a liability in the amount of our best estimate for the ultimate loss. However, the likelihood of a loss with respect to a particular contingency is often difficult to predict, and determining a meaningful estimate of the loss or a range of loss may not be practicable based on the information available and the potential effect of future events and decisions by third parties that will determine the ultimate resolution of the contingency.

We are subject to various legal proceedings and claims that arise in the normal course of business. We may, from time to time, receive claims that we are infringing third parties' intellectual property rights, including claims for alleged patent infringement brought by non-practicing entities. We are involved in active patent litigations brought by non-practicing entities. We believe we have strong arguments that our products do not infringe and/or the asserted patents are invalid, and we intend to vigorously defend against the plaintiffs' claims. However, there is no guarantee that we will prevail at trial and if a jury were to find that our products infringe, we could be required to pay significant monetary damages, and may cause product shipment delays, require us to redesign our products, or require us to enter into royalty or licensing agreements.

Although management at present believes that the ultimate outcome of these proceedings, individually and in the aggregate, will not materially harm our financial position, results of operations, cash flows, or overall trends, legal proceedings are subject to inherent uncertainties, and unfavorable rulings or other events could occur. Unfavorable resolutions could include significant monetary damages. In addition, in matters for which injunctive relief or other conduct remedies are sought, unfavorable resolutions could include an injunction or other order prohibiting us from selling one or more products at all or in particular ways or requiring other remedies. An unfavorable outcome may result in a material adverse impact on our business, results of operations, financial position, and overall trends. No accrual has been recorded as of October 27, 2017 related to such matters as they are not probable and reasonably estimable.

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

This section and other parts of this Form 10-Q contain forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995, that involve risks and uncertainties. Forward-looking statements provide current expectations of future events based on certain assumptions and include any statement that does not directly relate to any historical or current fact. Forward-looking statements also can be identified by words such as “future,” “anticipates,” “believes,” “estimates,” “expects,” “intends,” “will,” “would,” “could,” “can,” “may,” and similar terms. Forward-looking statements are not guarantees of future performance and the actual results of NetApp, Inc. (“we,” “us,” or the “Company”) may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part II, Item 1A of this Form 10-Q under the heading “Risk Factors,” which are incorporated herein by reference. The following discussion should be read in conjunction with our fiscal year 2017 Form 10-K and the condensed consolidated financial statements and notes thereto included elsewhere in this Form 10-Q. We assume no obligation to revise or update any forward-looking statements for any reason, except as required by law.

Overview

Our Company

We are the data authority for hybrid cloud environments. We provide a full range of hybrid cloud data services that simplify management of applications and data across cloud and on-premises environments to accelerate digital transformations. Together with our partners, we empower global organizations to unleash the full potential of their data to expand customer touchpoints, foster greater innovation, and optimize their operations.

Our Data Fabric approach simplifies and integrates data management across cloud and on-premises to accelerate digital transformation, enabling our customers to manage, secure and protect their data from on-premises to public to hybrid clouds, all at the scale needed to accommodate the exponential data growth of the digital world. It delivers consistent and integrated data management services and applications for data visibility and insights, data access and control, and data protection and security.

We focus on delivering an exceptional customer experience to become their preferred data partner. Our products and solutions portfolio empowers customers to harness the power of the hybrid cloud, build a next-generation data center, and modernize storage through data management. We will continue to extend our cloud integration and hybrid cloud leadership by expanding our product offerings and services to match customer needs across the cloud and on-premises.

Our unified scale-out fabric-attached storage (FAS) platform is designed to meet the demanding requirements of shared infrastructures and cloud environments. Our FAS storage platform uses the NetApp Data ONTAP storage operating system to deliver integrated data protection, comprehensive data management, and built-in efficiency software for virtualized, shared infrastructures, cloud computing, and mixed workload business applications. Our E-Series high-performance storage area network platform is designed to meet demanding performance and capacity requirements of dedicated workloads, while retaining simplicity and an optimized price to performance ratio. Our SolidFire All-Flash Arrays deliver fully automated agility and guaranteed application performance at web scale so customers can achieve the next-generation data center.

Flash plays a key role in customers' digital transformation efforts as they seek to gain advantage through greater speed, responsiveness and value from key business applications, while lowering total cost of ownership. All-flash array technology is the de facto choice for primary application workloads as customers seek performance and economic benefits by replacing hard disk installations. With our all-flash array portfolio, including our AFF-Series, EF-Series and SolidFire SF-Series products, we enable customers to modernize storage and data management to boost performance in their traditional data centers, while mapping out their move to a hybrid cloud.

Our hybrid flash storage serves customers who want the option to deploy the speed of flash storage where they need it while using more affordable hard disk drives to address capacity requirements. Our hybrid arrays include the FAS series of unified storage systems and the E-Series of block storage offerings.

We group our products by "Strategic" and "Mature" solutions. Strategic solutions include Clustered ONTAP, branded E-Series, SolidFire, AltaVault and optional add-on software products. Mature solutions include 7-mode OnTap, add-on hardware and related operating system (OS) software and original equipment manufacturers (OEM) products. Both our Mature and Strategic product lines include a mix of disk, hybrid and all flash storage media.

In addition to our products, we provide a variety of services including software maintenance, hardware maintenance and other services including professional services, global support solutions, and customer education and training to help customers most effectively manage their data.

Financial Results and Key Performance Metrics Overview

The following table provides an overview of some of our key financial metrics (in millions, except per share amounts, percentages and cash conversion cycle):

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
Net revenues	\$ 1,422	\$ 1,340	\$ 2,747	\$ 2,634
Gross profit	\$ 902	\$ 829	\$ 1,736	\$ 1,626
Gross profit margin percentage	63%	62%	63%	62%
Income from operations	\$ 219	\$ 142	\$ 367	\$ 235
Income from operations as a percentage of net revenues	15%	11%	13%	9%
Net income	\$ 175	\$ 109	\$ 311	\$ 173
Diluted net income per share	\$ 0.64	\$ 0.38	\$ 1.12	\$ 0.61
Operating cash flows	\$ 314	\$ 158	\$ 564	\$ 386
			October 27, 2017	April 28, 2017
Deferred revenue and financed unearned services revenue		\$	3,167	\$ 3,342
Cash conversion cycle (days)			(10)	15

Stock Repurchase Program and Dividend Activity

During the first six months of fiscal 2018, we repurchased 7 million shares of our common stock at an average price of \$41.80 per share, for an aggregate of \$300 million. We also declared cash dividends of an aggregate of \$0.40 per share in that period, for which we paid an aggregate of \$108 million.

Senior Notes Issuances and Redemption

In September 2017, we issued \$400 million aggregate principal amount of 2.00% Senior Notes due on September 27, 2019 and \$400 million aggregate principal amount of 3.30% Senior Notes due on September 29, 2024. The net proceeds will be used for general corporate purposes, including the repayment of our \$750 million aggregate principal amount of 2.00% Senior Notes due December 2017.

On October 4, 2017, we issued a notice to redeem all our 2.00% Senior Notes due December 2017. On November 3, 2017, in the third quarter of fiscal 2018, the notes were extinguished through redemption for cash at an aggregate redemption price of \$751 million, plus accrued and unpaid interest.

Critical Accounting Policies and Estimates

Our condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, which require management to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, net revenues and expenses, and the disclosure of contingent assets and liabilities. Our estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. We believe that the accounting estimates employed and the resulting balances are reasonable; however, actual results may differ from these estimates and such differences may be material.

The summary of our significant accounting policies is included under Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations of our fiscal 2017 Form 10-K. An accounting policy is deemed to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, if different estimates reasonably could have been used, or if changes in the estimate that are reasonably possible could materially impact the financial statements. There have been no material changes to the critical accounting policies and estimates as filed in such report.

New Accounting Standards

See Note 2 – Recent Accounting Standards Not Yet Effective of the Notes to Condensed Consolidated Financial Statements for a full description of new accounting pronouncements, including the respective expected dates of adoption and effects on our financial statements.

Results of Operations

Our fiscal year is reported as a 52- or 53-week year that ends on the last Friday in April. Fiscal years 2018 and 2017, ending April 27, 2018 and April 28, 2017, are each 52-week years, with 13 weeks in each of their quarters. Unless otherwise stated, references to particular years, quarters, months and periods refer to the Company's fiscal years ended in April and the associated quarters, months and periods of those fiscal years.

The following table sets forth certain Condensed Consolidated Statements of Operations data as a percentage of net revenues for the periods indicated:

	<u>Three Months Ended</u>		<u>Six Months Ended</u>	
	<u>October 27, 2017</u>	<u>October 28, 2016</u>	<u>October 27, 2017</u>	<u>October 28, 2016</u>
Revenues:				
Product	57 %	53 %	56 %	52 %
Software maintenance	17	18	17	18
Hardware maintenance and other services	26	29	27	30
Net revenues	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
Cost of revenues:				
Cost of product	28	28	28	28
Cost of software maintenance	—	1	—	1
Cost of hardware maintenance and other services	8	10	8	10
Gross profit	<u>63</u>	<u>62</u>	<u>63</u>	<u>62</u>
Operating expenses:				
Sales and marketing	30	31	31	32
Research and development	14	15	14	15
General and administrative	5	5	5	5
Total operating expenses	<u>48</u>	<u>51</u>	<u>50</u>	<u>53</u>
Income from operations	15	11	13	9
Other income (expense), net	—	—	—	—
Income before income taxes	16	11	14	9
Provision for income taxes	4	2	2	2
Net income	<u>12 %</u>	<u>8 %</u>	<u>11 %</u>	<u>7 %</u>

Percentages may not add due to rounding

Discussion and Analysis of Results of Operations

Overview

Net revenues for the second quarter and first six months of fiscal 2018 were \$1,422 million and \$2,747 million, respectively, reflecting an increase of \$82 million, or 6%, and \$113 million, or 4%, respectively, compared to the corresponding periods of the prior year, reflecting higher product revenues, partially offset by lower hardware maintenance and other services revenues.

Gross profit as a percentage of net revenues for the second quarter and the first six months of fiscal 2018 increased by one and a half percentage points compared to the corresponding periods in fiscal 2017, reflecting higher margins on product revenues, partially offset by lower margins on software maintenance and hardware maintenance and other services revenues. Gross profit margins on product revenues increased three and a half percentage points in the second quarter of fiscal 2018 and three percentage points in the first six months of fiscal 2018 compared to the corresponding periods of fiscal 2017, primarily due to an increase in average selling price (ASP).

Sales and marketing, research and development, and general and administrative expenses for the second quarter and the first six months of fiscal 2018 totaled \$683 million, or 48% of net revenues and \$1,369 million, or 50% of net revenues, respectively, representing a decrease of three percentage points compared to the corresponding periods of fiscal 2017, primarily due to higher net revenues in the current year periods coupled with lower average headcount as a result of our restructuring plans and other cost reduction initiatives.

Net Revenues (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Net revenues	\$ 1,422	\$ 1,340	6%	\$ 2,747	\$ 2,634	4%

The increase in net revenues for the second quarter and first six months of fiscal 2018 compared to the corresponding periods of fiscal 2017 was primarily due to an increase in product revenues of \$97 million and \$160 million, respectively, partially offset by a decrease in hardware maintenance and other services revenues of \$13 million and \$38 million, respectively. Product revenues as a percentage of net revenues increased four percentage points in the second quarter and first six months of fiscal 2018 compared to the corresponding periods of fiscal 2017.

The following customers, each of which is a distributor, accounted for 10% or more of net revenues:

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
Arrow Electronics, Inc.	22%	23%	23%	21%
Tech Data Corporation (previously presented as Avnet, Inc.)	19%	20%	20%	20%

Product Revenues (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Product revenues	\$ 807	\$ 710	14%	\$ 1,530	\$ 1,370	12%

Product revenues are derived through the sale of our strategic and mature solutions, and consist of sales of configured systems, which are bundled hardware and software products, as well as add-on flash, disk and/or hybrid storage and related OS, original equipment manufacturer (OEM) products and add-on hardware and software.

Product revenues from strategic solutions represented 69% of product revenues in the second quarter and first six months of fiscal 2018, compared to 64% and 63% in the corresponding periods of the prior year. Product revenues from mature solutions represented 31% of product revenues in the second quarter and first six months of fiscal 2018, compared to 36% and 37% in the corresponding periods of the prior year.

Total product revenues from strategic solutions totaled \$557 million in the second quarter of fiscal 2018 reflecting a 23% increase from \$452 million in the second quarter of fiscal 2017. This increase was primarily due to a 9% increase in unit volume of Clustered ONTAP systems and an increase in ASP driven by sales of our All-Flash FAS products. Total product revenue from mature solutions totaled \$250 million in the second quarter of fiscal 2018 reflecting a 3% decrease from \$258 million in the second quarter of fiscal 2017. This decrease was primarily due to a 64% decrease in unit volume of 7-mode systems reflecting the movement of customer demand from older products to our newer products, and an 8% decrease in OEM revenues, partially offset by a 10% increase in add-on hardware, storage and related OS revenues.

Total product revenues from strategic solutions totaled \$1,057 million in the first six months of fiscal 2018 reflecting a 22% increase from \$863 million in the first six months of fiscal 2017. This increase was primarily due to a 9% increase in unit volume of Clustered ONTAP systems and an increase in ASP driven by sales of our All-Flash FAS products. Total product revenue from mature solutions totaled \$473 million in the first six months of fiscal 2018 reflecting a 7% decrease from \$507 million in the first six months of fiscal 2017. This decrease was primarily due to a 63% decrease in unit volume of 7-mode systems, and a 17% decrease in OEM revenues, partially offset by a 10% increase in add-on hardware, storage and related OS revenues.

Software Maintenance Revenues (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Software maintenance revenues	\$ 240	\$ 242	(1)%	\$ 474	\$ 483	(2)%

Software maintenance revenues are associated with contracts which entitle customers to receive unspecified product upgrades and enhancements on a when-and-if-available basis, bug fixes and patch releases, as well as internet and telephone access to technical support personnel located in our global support centers.

The fluctuations in software maintenance revenues reflect fluctuations in the aggregate contract value of the installed base under software maintenance contracts, which is recognized as revenue ratably over the terms of the underlying contracts.

Hardware Maintenance and Other Services Revenues (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Hardware maintenance and other services revenues	\$ 375	\$ 388	(3)%	\$ 743	\$ 781	(5)%

Hardware maintenance and other services revenues include hardware maintenance, professional services, and educational and training services revenues.

Hardware maintenance contract revenues were \$306 million and \$604 million for the second quarter and first six months of fiscal 2018, respectively, compared to \$316 million and \$639 million for the corresponding periods of the prior year. The decreases in the current year were primarily due to lower contract renewal rates, and a decline in ASP on executed contracts.

Professional services and educational and training services revenues were \$69 million and \$139 million for the second quarter and first six months of fiscal 2018, respectively, compared to \$72 million and \$142 million for the corresponding periods of the prior year.

Revenues by Geographic Area:

	Three Months Ended		Six Months Ended	
	October 27, 2017	October 28, 2016	October 27, 2017	October 28, 2016
United States, Canada and Latin America (Americas)	56%	57%	55%	57%
Europe, Middle East and Africa (EMEA)	30%	30%	30%	30%
Asia Pacific (APAC)	14%	13%	14%	13%

Percentages may not add due to rounding

Americas revenues consist of sales to Americas commercial and U.S. public sector markets. Our percentage of net revenues from the Americas decreased in the second quarter and first six months of fiscal 2018 compared to the corresponding periods of fiscal 2017 due to a decrease in revenues from the Americas commercial market.

Cost of Revenues

Our cost of revenues consists of three elements: (1) cost of product revenues, which includes the costs of manufacturing and shipping our storage products, amortization of purchased intangible assets, inventory write-downs, and warranty costs, (2) cost of software maintenance, which includes the costs of providing software maintenance and third-party royalty costs and (3) cost of hardware maintenance and other services revenues, which includes costs associated with providing support activities for hardware maintenance, global support partnership programs, professional services and educational and training services.

Cost of Product Revenues (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Cost of product revenues	\$ 399	\$ 376	6%	\$ 770	\$ 735	5%

The changes in cost of product revenues consisted of the following (in percentage points of the total change):

	Three Months Ended Fiscal 2018 to Fiscal 2017 Percentage Change Points	Six Months Ended Fiscal 2018 to Fiscal 2017 Percentage Change Points
Materials costs	5	3
Excess and obsolete inventory	—	1
Other	1	1
Total change	6	5

Cost of product revenues represented 49% and 50% of product revenues for the second quarter and first six months of fiscal 2018, respectively, compared to 53% and 54% for the second quarter and first six months of fiscal 2017, respectively. Materials costs represented 91% and 90% of product costs for the second quarter and first six months of fiscal 2018, respectively, compared to 92% and 91% in the second quarter and first six months of fiscal 2017, respectively.

Materials costs increased \$18 million and \$20 million in the second quarter and first six months of fiscal 2018, respectively, compared to the corresponding periods of the prior year, primarily due to higher overall unit volume.

Average unit materials costs for Clustered ONTAP systems were relatively consistent in the second quarter and first six months of fiscal 2018 compared to the corresponding periods of the prior year.

An increase in ASP for strategic systems resulted in higher margins for strategic products in the second quarter and first six months of fiscal 2018 compared to the second quarter and first six months of fiscal 2017. Average unit materials costs for 7-mode systems were relatively consistent across all periods, while ASP increased slightly, resulting in slightly higher margins for mature products in the second quarter and first six months of fiscal 2018.

Cost of product revenues in the first six months of fiscal 2018 compared to the first six months of fiscal 2017 were unfavorably impacted by a \$7 million increase in charges for excess and obsolete inventory, primarily as a result of our transition to new product platforms.

Cost of Software Maintenance Revenues (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Cost of software maintenance revenues	\$ 6	\$ 7	(14)%	\$ 13	\$ 15	(13)%

Cost of software maintenance revenues was relatively flat in the second quarter and first six months of fiscal 2018 compared to the corresponding periods of fiscal 2017 and represented 3% of software maintenance revenues for all periods presented.

Cost of Hardware Maintenance and Other Services Revenues (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Cost of hardware maintenance and other services revenues	\$ 115	\$ 128	(10)%	\$ 228	\$ 258	(12)%

Cost of hardware maintenance and other services revenues decreased \$13 million, or 10%, for the second quarter of fiscal 2018 compared to the second quarter of fiscal 2017, and decreased \$30 million, or 12%, for the first six months of fiscal 2018 compared to the first six months of fiscal 2017, primarily due to the favorable impact of cost savings initiatives. Costs represented 31% of hardware maintenance and other services revenues in the second quarter and first six months of fiscal 2018, compared to 33% in the second quarter and first six months of fiscal 2017.

Operating Expenses

Sales and Marketing, Research and Development and General and Administrative Expenses

Compensation costs represent the largest component of operating expenses. Included in compensation costs are salaries, benefits, other compensation-related costs, stock-based compensation expense and employee incentive compensation plan costs.

Total compensation costs included in operating expenses decreased by \$13 million, or 3% in the second quarter of fiscal 2018 compared to the corresponding period in the prior year primarily due to lower salaries, benefits and stock-based compensation expenses, reflecting a 3% decrease in average headcount as a result of cost reduction initiatives, partially offset by higher incentive compensation expense, reflecting stronger operating performance against goals.

Total compensation costs included in operating expenses decreased by \$32 million, or 4% in the first six months of fiscal 2018 compared to the corresponding period in the prior year primarily due to lower salaries, benefits and stock-based compensation expenses, reflecting a 5% decrease in average headcount as a result of cost reduction initiatives, partially offset by higher incentive compensation expense, reflecting stronger operating performance against goals.

Sales and Marketing (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Sales and marketing expenses	\$ 420	\$ 418	—%	\$ 845	\$ 847	—%

Sales and marketing expenses consist primarily of compensation costs, commissions, outside services, allocated facilities and information technology (IT) costs, advertising and marketing promotional expense and travel and entertainment expense. The changes in sales and marketing expenses consisted of the following:

	Three Months Ended Fiscal 2018 to Fiscal 2017 Percentage Change Points	Six Months Ended Fiscal 2018 to Fiscal 2017 Percentage Change Points
Commissions	1	—
Advertising and marketing promotional expense	1	2
Facilities and IT support costs	(1)	(1)
Other	(1)	(1)
Total change	—	—

Compensation costs and average headcount were relatively flat for the second quarter and first six months of fiscal 2018 compared to the corresponding periods of the prior year. The increase in advertising and marketing promotional expense was primarily due to higher spending levels on marketing activities for new products in the second quarter and the first six months of fiscal 2018. Facilities and IT support costs decreased during the second quarter and the first six months of fiscal 2018 from the corresponding periods in the prior year primarily due to cost containment efforts and certain internal-use software becoming fully amortized by the end of fiscal 2017.

Research and Development (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Research and development expenses	\$ 194	\$ 200	(3)%	\$ 387	\$ 407	(5)%

Research and development expenses consist primarily of compensation costs, allocated facilities and IT costs, depreciation, equipment and software-related costs, prototypes, non-recurring engineering charges and other outside services costs. Changes in research and development expense consisted of the following:

	Three Months Ended Fiscal 2018 to Fiscal 2017 Percentage Change Points	Six Months Ended Fiscal 2018 to Fiscal 2017 Percentage Change Points
Compensation costs	(3)	(4)
Depreciation	(1)	(1)
Facilities and IT support costs	(1)	(1)
Other	2	1
Total change	(3)	(5)

Compensation costs for the second quarter and the first six months of fiscal 2018 were favorably impacted by lower salaries, benefits and stock-based compensation expenses compared to the corresponding periods of the prior year due to a decrease in average headcount of 4% and 7%, respectively, partially offset by higher incentive compensation expense. Depreciation expense decreased primarily due to certain equipment becoming fully depreciated by the end of fiscal 2017, and facilities and IT support costs decreased primarily due to cost containment efforts.

General and Administrative (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
General and administrative expenses	\$ 69	\$ 69	—%	\$ 137	\$ 137	—%

General and administrative expenses consist primarily of compensation costs, professional and corporate legal fees, outside services and allocated facilities and IT support costs. Changes in general and administrative expense consisted of the following:

	Three Months Ended Fiscal 2018 to Fiscal 2017 Percentage Change Points	Six Months Ended Fiscal 2018 to Fiscal 2017 Percentage Change Points
Compensation costs	(7)	(8)
Professional and legal fees and outside services	4	4
Facilities and IT support costs	2	3
Other	1	1
Total change	—	—

Compensation costs for the second quarter and the first six months of fiscal 2018 were favorably impacted by lower salaries, benefits and stock-based compensation expenses compared to the corresponding periods of fiscal 2017 due to a decrease in average headcount of 12% and 13%, respectively, partially offset by higher incentive compensation expense. The increase in professional and legal fees and outside services expense in the second quarter and first six months of fiscal 2018 was primarily due to higher spending levels on projects and outside services, while the increase in facilities and IT support costs was primarily due to an increase in spending on IT projects.

Other Income (Expense), Net (in millions, except percentages)

The components of other income (expense), net were as follows:

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Interest income	\$ 19	\$ 10	90%	\$ 35	\$ 21	67%
Interest expense	(17)	(12)	42%	(30)	(27)	11%
Other income, net	4	2	100%	6	5	20%
Total	<u>\$ 6</u>	<u>\$ —</u>	NM	<u>\$ 11</u>	<u>\$ (1)</u>	NM

NM - Not Meaningful

Interest income increased in the second quarter and the first six months of fiscal 2018 compared to the corresponding periods of the prior year, primarily due to a shift in our investment portfolio to higher-yielding investments.

Interest expense increased in the second quarter and the first six months of fiscal 2018 primarily as a result of our commercial paper program, which began in the third quarter of fiscal 2017, and the issuance of \$800 million aggregate principal amount of Senior Notes in September 2017.

Provision for Income Taxes (in millions, except percentages):

	Three Months Ended			Six Months Ended		
	October 27, 2017	October 28, 2016	% Change	October 27, 2017	October 28, 2016	% Change
Provision for income taxes	\$ 50	\$ 33	52%	\$ 67	\$ 61	10%

Our effective tax rate for the second quarter of fiscal 2018 was 22.2% compared to an effective tax rate of 23.2% for the second quarter of fiscal 2017. Our effective tax rate for the first six months of fiscal 2018 was 17.7% compared to an effective tax rate of 26.1% for the corresponding period of fiscal 2017. Our effective tax rates reflect the impact of a significant amount of our earnings, primarily income from our European operations which are headquartered in the Netherlands, being taxed in foreign jurisdictions at rates below the U.S. statutory tax rate. Our effective tax rate decreased for the second quarter and first six months of fiscal 2018 compared to the corresponding periods in the prior year, primarily as a result of differences in discrete impacts related to stock-based compensation and differences in the respective periods' income before taxes.

As of October 27, 2017, we had \$222 million of gross unrecognized tax benefits, of which \$157 million has been recorded in other long-term liabilities. Unrecognized tax benefits of \$163 million, including penalties, interest and indirect benefits, would affect our provision for income taxes if recognized.

We continue to monitor the progress of ongoing discussions with tax authorities and the impact, if any, of the expected expiration of the statute of limitations in various taxing jurisdictions.

Liquidity, Capital Resources and Cash Requirements

(In millions, except percentages)	October 27, 2017	April 28, 2017
Cash, cash equivalents and short-term investments	\$ 5,965	\$ 4,921
Principal amount of debt	\$ 3,019	\$ 2,000
Debt as a percentage of stockholders' equity	109%	72%

The following is a summary of our cash flow activities:

(In millions)	Six Months Ended	
	October 27, 2017	October 28, 2016
Net cash provided by operating activities	\$ 564	\$ 386
Net cash provided by (used in) investing activities	(87)	97
Net cash provided by (used in) financing activities	601	(1,225)
Effect of exchange rate changes on cash and cash equivalents	13	(13)
Net increase (decrease) in cash and cash equivalents	\$ 1,091	\$ (755)

Cash Flows

As of October 27, 2017, our cash, cash equivalents and short-term investments were \$6.0 billion, an increase of \$1.0 billion from April 28, 2017. The increase was primarily due to \$795 million of net proceeds from the issuance of long-term debt, \$218 million in proceeds from the issuance of commercial paper notes, net of repayments, and \$564 million of cash provided by operating activities, partially offset by \$300 million paid for the repurchase of our common stock and \$108 million used for the payment of dividends. Working capital increased by \$730 million to \$2.8 billion as of October 27, 2017 compared to April 28, 2017 primarily due to an increase in cash and cash equivalents that was largely attributable to the issuance of long-term debt in September 2017, partially offset by a decrease in accounts receivable and an increase in the balance of outstanding commercial paper notes.

Cash Conversion Cycle

The following table presents the components of our cash conversion cycle:

(In days)	Three Months Ended		
	October 27, 2017	April 28, 2017	October 28, 2016
Days sales outstanding (1)	37	45	37
Days inventory outstanding (2)	19	26	17
Days payables outstanding (3)	(66)	(56)	(45)
Cash conversion cycle (4)	(10)	15	9

Days may not add due to rounding

- (1) Days sales outstanding, referred to as DSO, calculates the average collection period of our receivables. DSO is based on ending accounts receivable and net revenue for each period. DSO is calculated by dividing accounts receivable by average net revenue per day for the current quarter (91 days for each of the quarters presented above). The decrease in DSO for the second quarter of fiscal 2018 compared to the fourth quarter of fiscal 2017 was due to seasonal patterns of shipping linearity.
- (2) Days inventory outstanding, referred to as DIO, measures the average number of days from procurement to sale of our products. DIO is based on ending inventory and cost of revenues for each period. DIO is calculated by dividing ending inventory by average cost of revenues per day for the current quarter. DIO for the second quarter of fiscal 2018 decreased compared to the fourth quarter of fiscal 2017 due to lower levels of purchased components, primarily solid state drives, on hand at the end of the current quarter.
- (3) Days payables outstanding, referred to as DPO, calculates the average number of days our payables remain outstanding before payment. DPO is based on ending accounts payable and cost of revenues for each period. DPO is calculated by dividing accounts payable by average cost of revenues per day for the current quarter. DPO for the second quarter of fiscal 2018 increased compared to the fourth and second quarters of fiscal 2017, primarily as a result of improved vendor payables management and an extension of payment terms with our suppliers.
- (4) The cash conversion cycle is the sum of DSO and DIO less DPO. Items which may cause the cash conversion cycle in a particular period to differ include, but are not limited to, changes in business mix, changes in payment terms (including extended payment terms from suppliers), the extent of shipment linearity, seasonal trends and the timing of revenue recognition and inventory purchases within the period.

Cash Flows from Operating Activities

During the first six months of fiscal 2018, we generated cash from operating activities of \$564 million, reflecting net income of \$311 million, adjusted by non-cash depreciation and amortization of \$102 million and stock-based compensation of \$87 million, compared to \$386 million of cash generated from operating activities during the first six months of fiscal 2017.

Changes in assets and liabilities in the first six months of fiscal 2018 included the following:

- *Accounts receivable* decreased \$149 million, primarily due to lower seasonal invoicing levels in the second quarter of fiscal 2018 compared to the fourth quarter of fiscal 2017.
- *Deferred revenue and financed unearned services revenue* decreased \$183 million, primarily due to a decrease in deferred software and hardware maintenance contract revenues reflecting lower contract renewal rates and a decline in ASP on executed contracts.

We expect that cash provided by operating activities may materially fluctuate in future periods due to a number of factors, including fluctuations in our operating results, shipment linearity, accounts receivable collections performance, inventory and supply chain management, vendor payment initiatives, tax benefits or charges from stock-based compensation, and the timing and amount of compensation and other payments.

Cash Flows from Investing Activities

During the first six months of fiscal 2018, we generated \$48 million from maturities and sales of investments, net of purchases, and paid \$65 million for capital expenditures compared to \$190 million and \$92 million, respectively, during the first six months of fiscal 2017. We also paid \$75 million to acquire two privately-held companies in the first six months of fiscal 2018.

Cash Flows from Financing Activities

During the first six months of fiscal 2018, we generated \$795 million in cash from the issuance of long-term debt, \$218 million in cash from issuances of commercial paper notes, net of repayments, and used \$300 million for the repurchase of 7 million shares of our common stock and \$108 million for the payment of dividends, compared to \$850 million used to repay our short-term loan, \$292 million used for the repurchase of common stock and \$105 million for the payment of dividends during the first six months of fiscal 2017.

Key factors that could affect our cash flows include changes in our revenue mix and profitability, our ability to effectively manage our working capital, in particular, accounts receivable, accounts payable and inventories, the timing and amount of stock repurchases and payment of cash dividends, the impact of foreign exchange rate changes, our ability to effectively integrate acquired products, businesses and technologies and the timing of repayments of our debt. Based on past performance and our current business outlook, we believe that our sources of liquidity, including potential future issuances of debt, equity or other securities, will satisfy our working capital needs, capital expenditures, investment requirements, stock repurchases, cash dividends, contractual obligations, commitments, principal and interest payments on our debt and other liquidity requirements associated with operations and meet our cash requirements for at least the next 12 months. However, in the event our liquidity is insufficient, we may be required to curtail spending and implement additional cost saving measures and restructuring actions or enter into new financing arrangements. We cannot be certain that we will continue to generate cash flows at or above current levels or that we will be able to obtain additional financing, if necessary, on satisfactory terms, if at all.

Liquidity

Our principal sources of liquidity as of October 27, 2017 consisted of cash, cash equivalents and short-term investments, as well as cash we expect to generate from operations.

Cash, cash equivalents and short-term investments consisted of the following (in millions):

	October 27, 2017	April 28, 2017
Cash and cash equivalents	\$ 3,535	\$ 2,444
Short-term investments	2,430	2,477
Total	\$ 5,965	\$ 4,921

As of October 27, 2017 and April 28, 2017, \$5.0 billion and \$4.5 billion, respectively, of cash, cash equivalents and short-term investments were held by various foreign subsidiaries and were generally based in U.S. dollar-denominated holdings, while \$1.0 billion and \$0.4 billion, respectively, were available in the U.S. at the end of each period. Most of the amounts held outside the U.S. can be repatriated to the U.S. but, under current law, would be subject to U.S. federal, state income and foreign withholding taxes. If we were to repatriate foreign earnings to fund cash requirements in the U.S., we would incur U.S. federal and state income taxes reduced by the current amount of our U.S. federal and state tax credit carryforwards. However, our intent is to keep these funds indefinitely reinvested outside of the U.S., and our current plans do not contemplate a need to repatriate them to fund our U.S. operations. Our principal liquidity requirements are primarily to meet our working capital needs, support ongoing business activities, fund research and development, meet capital expenditure needs, invest in critical or complementary technologies, and service interest and principal payments on our debt.

The principal objectives of our investment policy are the preservation of principal and maintenance of liquidity. We attempt to mitigate default risk by investing in high-quality investment grade securities, limiting the time to maturity and monitoring the counter-parties and underlying obligors closely. We believe our cash equivalents and short-term investments are liquid and accessible. We are not aware of any significant deterioration in the fair value of our cash equivalents or investments from the values reported as of October 27, 2017.

Our investment portfolio has been and will continue to be exposed to market risk due to trends in the credit and capital markets. We continue to closely monitor current economic and market events to minimize the market risk of our investment portfolio. We routinely monitor our financial exposure to both sovereign and non-sovereign borrowers and counterparties. We utilize a variety of planning and financing strategies in an effort to ensure our worldwide cash is available when and where it is needed. Based on past performance and current expectations, we believe our cash and cash equivalents, investments, cash generated from operations, and ability to access capital markets and committed credit lines will satisfy, through at least the next 12 months, our liquidity requirements, both in total and domestically, including the following: working capital needs, capital expenditures, stock repurchases, cash dividends, contractual obligations, commitments, principal and interest payments on debt, and other liquidity requirements associated with our operations. We also have an automatic shelf registration statement on file with the Securities and Exchange Commission. We may in the future offer an additional unspecified amount of debt, equity and other securities.

Senior Notes

The following table summarizes the principal amount of our Senior Notes as of October 27, 2017 (in millions):

2.00% Senior Notes Due December 2017	\$	750
2.00% Senior Notes Due September 2019		400
3.375% Senior Notes Due June 2021		500
3.25% Senior Notes Due December 2022		250
3.30% Senior Notes Due September 2024		400
Total	<u>\$</u>	<u>2,300</u>

On October 4, 2017, we issued a notice to redeem all our 2.00% Senior Notes due December 2017. On November 3, 2017, in the third quarter of fiscal 2018, the notes were extinguished through redemption for cash at an aggregate redemption price of \$751 million, plus accrued and unpaid interest.

Interest on the Senior Notes is payable semi-annually. For further information on the underlying terms, see Note 9 – Financing Arrangements of the Notes to Condensed Consolidated Financial Statements.

Commercial Paper Program and Credit Facility

We have a commercial paper program (the Program), under which we may issue unsecured commercial paper notes. On July 17, 2017 we amended the Program to increase the maximum amounts available that may be borrowed, repaid and re-borrowed to an aggregate face or principal amount of the notes outstanding of \$1.0 billion, as compared to \$600 million prior to the amendment. The maturities of the notes can vary, but may not exceed 397 days from the date of issue. The notes are sold under customary terms in the commercial paper market and may be issued at a discount from par or, alternatively, may be sold at par and bear interest at rates dictated by market conditions at the time of their issuance. The proceeds from the issuance of the notes are used for general corporate purposes. As of October 27, 2017, we had commercial paper notes outstanding with an aggregate principal amount of \$719 million, a weighted-average interest rate of 1.43% and maturities ranging from 13 days to 44 days.

In connection with the Program, we have a senior unsecured credit agreement that expires on December 10, 2021. The credit agreement, which was amended on July 17, 2017 provides a \$1.0 billion revolving unsecured credit facility that serves as a back-up for the Program. Proceeds from the facility may also be used for general corporate purposes, providing another potential source of liquidity to the extent that the credit facility exceeds the outstanding debt issued under the Program. The credit agreement also includes options that allow us to request an increase in the facility of up to an additional \$300 million and to extend its maturity date for two additional one-year periods, both subject to certain conditions. As of October 27, 2017, we were in compliance with all associated covenants in this agreement. No amounts were drawn against this facility during any of the periods presented.

Capital Expenditure Requirements

We expect to fund our capital expenditures, including our commitments related to facilities, equipment, operating leases and internal-use software development projects over the next few years through existing cash, cash equivalents, investments and cash generated from operations. The timing and amount of our capital requirements cannot be precisely determined and will depend on a number of factors, including future demand for products, changes in the network storage industry, hiring plans and our decisions related to the financing of our facilities and equipment requirements. We anticipate capital expenditures for the remainder of fiscal 2018 to be between \$75 million and \$125 million.

Dividends and Stock Repurchase Program

On November 15, 2017, we declared a cash dividend of \$0.20 per share of common stock, payable on January 24, 2018 to holders of record as of the close of business on January 5, 2018.

Our Board of Directors had authorized the repurchase of up to \$9.6 billion of our common stock under our stock repurchase program. Under this program, we can purchase shares of our outstanding common stock through open market and privately negotiated transactions at prices deemed appropriate by our management. The stock repurchase program may be suspended or discontinued at any time. Since the May 13, 2003 inception of this program through October 27, 2017, we repurchased a total of 276 million shares of our common stock at an average price of \$33.07 per share, for an aggregate purchase price of \$9.1 billion. As of October 27, 2017, the remaining authorized amount for stock repurchases under this program was \$0.5 billion, with no termination date, which we plan to complete by May 2018.

The timing and amount of stock repurchase transactions and future dividends will depend on market conditions, corporate business and financial considerations and regulatory requirements.

Contractual Obligations

Operating Lease Commitments

As of October 27, 2017, future annual minimum lease payments under non-cancelable operating leases with an initial term in excess of one year totaled \$203 million.

Purchase Orders and Other Commitments

In the ordinary course of business, we make commitments to our third-party contract manufacturers to manage manufacturer lead times and meet product forecasts, and to other parties to purchase various key components used in the manufacture of our products. A significant portion of our reported purchase commitments arising from these agreements consists of firm, non-cancelable, and unconditional commitments. As of October 27, 2017, we had \$347 million in non-cancelable purchase commitments for inventory. We record a liability for firm, non-cancelable and unconditional purchase commitments for quantities in excess of our future demand forecasts consistent with the valuation of our excess and obsolete inventory. To the extent that such forecasts are not achieved, our commitments and associated accruals may change.

In addition to inventory commitments with contract manufacturers and component suppliers, we have open purchase orders and construction related obligations associated with our ordinary course of business for which we have not received goods or services. As of October 27, 2017, we had \$31 million in construction related obligations and \$199 million in other purchase obligations.

Unrecognized Tax Benefits

As of October 27, 2017, our liability for uncertain tax positions was \$150 million, including interest, penalties and offsetting indirect benefits. Due to the uncertainty of the timing of future cash payments, we cannot make reasonably reliable estimates of the period of cash settlement with the taxing authorities.

Sale-leaseback Transactions

In fiscal 2016, we entered into a sale-leaseback arrangement of certain of our land and buildings, under which we leased back certain of our properties rent free over lease terms ending at various dates ranging from March 31, 2017 to December 31, 2017, unless terminated early by us. Due to the existence of a prohibited form of continuing involvement, these properties did not qualify for sale-leaseback accounting and as a result they have been accounted for as financing transactions under lease accounting standards. Under the financing method, until such time as the related leases are terminated, the assets will remain on our condensed consolidated balance sheets, and proceeds received by us from these transactions are reported as financing obligations. As of October 27, 2017, the balance of the remaining financing obligations, which relate to properties whose leases we expect to terminate in December 2017, was \$130 million. At the end of the leaseback period, or when our continuing involvement under the leaseback agreement ends, this transaction will be reported as a non-cash sale and extinguishment of financing obligations, and the difference between the then net book value of the properties and the unamortized balance of the financing obligations will be recognized as a gain.

Financing Guarantees

While most of our arrangements for sales include short-term payment terms, from time to time we provide long-term financing to creditworthy customers. We have generally sold receivables financed through these arrangements on a non-recourse basis to third party financing institutions within 10 days of the contracts' dates of execution, and we classify the proceeds from these sales as cash flows from operating activities in our condensed consolidated statements of cash flows. We account for the sales of these receivables as "true sales" as defined in the accounting standards on transfers of financial assets, as we are considered to have surrendered control of these financing receivables. Provided all other revenue recognition criteria have been met, we recognize product revenues for these

arrangements, net of any payment discounts from financing transactions, upon product acceptance. We sold \$66 million and \$108 million of receivables during the first six months of fiscal 2018 and fiscal 2017, respectively.

In addition, we enter into arrangements with leasing companies for the sale of our hardware systems products. These leasing companies, in turn, lease our products to end-users. The leasing companies generally have no recourse to us in the event of default by the end-user and we recognize revenue upon delivery to the end-user customer, if all other revenue recognition criteria have been met.

Some of the leasing arrangements described above have been financed on a recourse basis through third-party financing institutions. 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 companies in the event of end-user customer default. These arrangements are generally collateralized by a security interest in the underlying assets. Where we provide a guarantee for recourse leases, we defer revenues subject to the industry-specific software revenue recognition guidance and recognize revenues for non-software deliverables in accordance with our multiple deliverable revenue arrangement policy. In connection with certain recourse financing arrangements, we receive advance payments associated with undelivered elements that are subject to customer refund rights. As of October 27, 2017 and April 28, 2017, the aggregate amount by which such contingencies exceeded the associated liabilities was not significant. To date, we have not experienced significant losses under our lease financing programs or other financing arrangements.

We have entered into service contracts with certain of our end-user customers that are supported by third-party financing arrangements. If a service contract is terminated as a result of our non-performance under the contract or our failure to comply with the terms of the financing arrangement, we could, under certain circumstances, be required to acquire certain assets related to the service contract or to pay the aggregate unpaid payments under such arrangements. As of October 27, 2017, we have not been required to make any payments under these arrangements, and we believe the likelihood of having to acquire a material amount of assets or make payments under these arrangements is remote. The portion of the financial arrangement that represents unearned services revenue is included in deferred revenue and financed unearned services revenue in our condensed consolidated balance sheets.

Indemnification Agreements

We enter 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-parties due to various events, such as lawsuits arising from patent or copyright infringement. These indemnification obligations are considered off-balance sheet arrangements under accounting guidance.

Legal Contingencies

We are subject to various legal proceedings and claims which arise in the normal course of business. See further details on such matters in Note 16 – Commitments and Contingencies of the Notes to Condensed Consolidated Financial Statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

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

Interest Rate Risk

Fixed Income Investments — As of October 27, 2017, we had fixed income debt investments of \$2.9 billion. Our investment portfolio primarily consists of investments with original maturities greater than three months at the date of purchase, which are classified as available-for-sale investments. These investments, which consist primarily of corporate bonds, U.S. Treasury and government debt securities, commercial paper and certificates of deposit, are subject to interest rate and interest income risk and will decrease in value if market interest rates increase. Conversely, declines in interest rates, including the impact from lower credit spreads, could have a material adverse impact on interest income for our investment portfolio. A hypothetical 100 basis point increase in market interest rates from levels as of October 27, 2017 would have resulted in a decrease in the fair value of our fixed-income securities of approximately \$37 million. Volatility in market interest rates over time will cause variability in our interest income. We do not use derivative financial instruments in our investment portfolio.

Our investment policy is to limit 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 actively review, along with our investment advisors, current investment ratings, company-specific events and general economic conditions in managing our investments and in determining whether there is a significant decline in fair value that is other-than-temporary. We monitor and evaluate our investment portfolio on a quarterly basis for any other-than-temporary impairments.

Debt — As of October 27, 2017, we have outstanding \$2.3 billion aggregate principal amount of Senior Notes. We carry these instruments at face value less unamortized discount on our condensed consolidated balance sheets. Since these instruments bear interest at fixed rates, we have no financial statement risk associated with changes in interest rates. However, the fair value of these instruments fluctuates when interest rates change. See Note 9 – Financing Arrangements of the Notes to Condensed Consolidated Financial Statements for more information.

Credit Facility — We are exposed to the impact of changes in interest rates in connection with our \$1.0 billion five-year revolving credit facility. Borrowings under the facility accrue interest at rates that vary based on certain market rates and our credit rating on our Senior Notes. Consequently, our interest expense would fluctuate with any changes in these market interest rates or in our credit rating if we were to borrow any amounts under the credit facility. As of October 27, 2017, no amounts were outstanding under the credit facility.

Foreign Currency Exchange Rate Risk

We hedge risks associated with foreign currency transactions to minimize the impact of changes in foreign currency exchange rates on earnings. We utilize foreign currency exchange forward and option contracts to hedge against the short-term impact of foreign currency fluctuations on certain foreign-currency-denominated monetary assets and liabilities. We also use foreign currency exchange forward contracts to hedge foreign currency exposures related to forecasted sales transactions denominated in certain foreign currencies. These derivatives are designated and qualify as cash flow hedges under accounting guidance for derivatives and hedging.

We do not enter into foreign currency exchange contracts for speculative or trading purposes. In entering into foreign currency exchange forward and option contracts, we have assumed the risk that might arise from the possible inability of counterparties to meet the terms of the contracts. We attempt to limit our exposure to credit risk by executing foreign currency exchange contracts with creditworthy multinational commercial banks. All contracts have a maturity of less than six months. See Note 11 – Derivatives and Hedging Activities of the Notes to Condensed Consolidated Financial Statements for more information regarding our derivatives and hedging activities.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

The phrase “disclosure controls and procedures” refers to controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Securities Exchange Act of 1934, as amended (the Exchange Act), such as this Quarterly Report on Form 10-Q, is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the U.S. Securities and Exchange Commission (SEC). Disclosure controls and procedures are also designed to ensure that such information is accumulated and communicated to our management, including our CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our CEO and CFO, 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 Exchange Act, as of October 27, 2017, the end of the fiscal period covered by this Quarterly Report on Form 10-Q (the Evaluation Date). Based on this evaluation, our CEO and CFO concluded as of the Evaluation Date that our disclosure controls and procedures were effective such that the information required to be disclosed in our 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 our management, including our CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There has been no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) identified in connection with our evaluation that occurred during the second quarter of fiscal 2018 that has materially affected or is reasonably likely to materially affect our internal control over financial reporting.

Item 1. Legal Proceedings.

For a discussion of legal proceedings, see Note 16 – Commitments and Contingencies of the Notes to Condensed Consolidated Financial Statements.

Item 1A. Risk Factors.

The following descriptions of risk factors includes any material changes to, and supersedes the description of risk factors associated with the Company's business previously disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended April 28, 2017 filed with the U.S. Securities and Exchange Commission (the "SEC") (the "2017 Form 10-K") under the heading "Risk Factors." Our business, financial condition and operating results can be affected by a number of factors, whether currently known or unknown, including but not limited to those described below, any one or more of which could, directly or indirectly cause our actual results of operations and financial condition to vary materially from the past, or from anticipated future, results of operations and financial condition. Any of these factors, in whole or in part, could materially and adversely affect our business, financial condition, results of operations and common stock price.

The following discussion of risk factors contains forward-looking statements. These risk factors may be important to understanding any statement in this Form 10-Q or elsewhere. The following information should be read in conjunction with the condensed consolidated financial statements and the related notes in Part I, Item 1 – Financial Statements and Part I, Item 2 – Management's Discussion and Analysis of Financial Condition and Results of Operations of this Form 10-Q.

The following discussion reflects our current judgment regarding the most significant risks we face. These risks can and will change in the future.

Our business may be harmed by trends in the networked storage hardware market or if we are unable to keep pace with rapid industry, technological and market changes.

Our industry and the markets in which we compete have historically experienced significant growth due to the increase in the demand for storage and data management solutions by consumers, enterprises and government bodies around the world, and the resultant purchases of storage and data management solutions to address this demand. However, despite continued data growth, the networked storage hardware market experienced a decline in each of the last two calendar years due to a combination of customers delaying purchases in the face of technology transitions, increasing adoption of Cloud environments built on commodity hardware, increased storage efficiency, and changing economic and business environments. While customers are navigating through their IT transformations, which leverage modern architectures and hybrid cloud environments, they are also reducing IT budgets, looking for simpler solutions, and rethinking how they consume IT. This evolution is diverting spending towards transformational projects and architectures like flash, hybrid cloud, IT as a service, converged infrastructure, and software defined storage. Our business may be adversely impacted if we are unable to keep pace with rapid industry, technological or market changes or if our Data Fabric strategy is not accepted in the marketplace. As a result of these and other factors discussed in the report, our revenue may grow at a slower rate than in past periods, or may decline as it did in fiscal years 2015, 2016 and 2017, on a year-over year basis. The future impact of these trends on both short-term and long-term growth patterns is uncertain. If the general historical rate of industry growth declines, if the growth rates of the specific markets in which we compete decline, and/or if the consumption model of storage changes and our new and existing products, services and solutions do not receive customer acceptance, our business, operating results and financial condition could suffer.

If we are unable to develop, introduce and gain market acceptance for new products while managing the transition from older products, or if we cannot provide the expected level of quality, service and support for our new products, our business, operating results and financial condition could be harmed.

Our future growth depends upon the successful development and introduction of new hardware and software products and related services. Due to the complexity of storage software, subsystems and appliances and the difficulty in gauging the engineering effort required to produce new products, such products are subject to significant technical and quality control risks.

If we are unable, for technological, customer reluctance or other reasons, to develop, introduce and gain market acceptance for new products, as and when required by the market and our customers, our business, operating results and financial condition could be materially and adversely affected.

New or additional product introductions, including new software and flash product offerings, such as ONTAP Cloud, all flash FAS, AltaVault, and SolidFire, subject us to additional financial and operational risks, including our ability to forecast customer preferences and/or demand, our ability to successfully manage the transition from older products and solutions, our ability to forecast the impact of customers' demand for new products and solutions or the products being replaced, and our ability to manage production capacity to meet the demand for new products. In addition, as new or enhanced products are introduced, we must also avoid excessive levels of

older product inventories and related components and ensure that enough supplies of new products can be delivered to meet customers' demands. Further risks inherent in new product and solutions introductions include the uncertainty of price-performance relative to products of competitors, competitors' responses to the introductions, delays in sales caused by the desire of customers to evaluate new products for extended periods of time and our partners' investment in selling our new products and solutions. If these risks are not managed effectively, we could experience material risks to our operations, financial condition and business model.

As we enter 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.

Our new consumption based business models may adversely affect our revenues and profitability.

We offer customers a full range of consumption models, including the deployment of our software through our subscription and cloud-based SaaS, and utility pricing and managed services offerings for our hardware and software systems. These business models continue to evolve, and we may not be able to compete effectively, generate significant revenues or maintain the profitability of our consumption based offerings. Additionally, the increasing prevalence of cloud and SaaS delivery models offered by us and our competitors may unfavorably impact the pricing of our on-premise hardware and software offerings and could have a dampening impact on overall demand for our on-premise hardware and software product and service offerings, which could reduce our revenues and profitability, at least in the near term. If we do not successfully execute our consumption model strategy or anticipate the needs of our customers, our revenues and profitability could decline.

As customer demand for our consumption model offerings increases, we could experience volatility in our reported revenues and operating results due to the differences in timing of revenue recognition between our hardware arrangements and software licenses, (that are generally recognized in full at the time of delivery), relative to our consumption model offering arrangements, (that are generally recognized ratably over the terms of the arrangement). We incur certain expenses associated with the infrastructure and marketing of our consumption model offerings in advance of our ability to recognize the revenues associated with these offerings.

Our sales and distribution structure makes forecasting revenues difficult and, if disrupted, could harm our operating results.

Our business and sales models make revenues difficult to forecast. We sell to a variety of customers, with a corresponding variety of sales cycles. In addition, the majority of our sales are made and/or fulfilled indirectly through channel partners, including value-added resellers, systems integrators, distributors, original equipment manufacturers (OEMs) and strategic business partners. This structure significantly complicates our ability to forecast future revenue, especially within any particular fiscal quarter or year. Moreover, our relationships with our indirect channel partners are critical to our success. The loss of one or more of our key indirect channel partners in a given geographic area or the failure of our channel partners to promote our products could harm our operating results, as qualifying and developing new indirect channel partners typically require a significant investment of time and resources before acceptable levels of productivity are met. If we fail to maintain our relationships with our indirect channel partners, if their financial condition, business or customer relationships were to weaken, if they fail to comply with legal or regulatory requirements, or if we were to cease to do business with them for these or other reasons, our business, operating results and financial condition could be harmed.

Increasing competition and industry consolidation could harm our business and operating results.

The storage and data management markets are intensely competitive and are characterized by rapidly changing technology and fragmentation. We compete with many companies in the markets we serve, including established public companies, newly public companies with a strong flash focus, and new market entrants addressing the growing opportunity for hyper-converged systems. Some offer a broad spectrum of IT products and services (full-stack vendors) and others offer a more limited set of storage and data management products or services. Technology trends, such as the emergence of hosted or public cloud storage, SaaS and flash storage are driving significant changes in storage architectures and solution requirements. Cloud service providers provide customers storage as an operating expense, rather than as a capital expenditure, for the customers' data centers, which meets rapidly evolving business needs and has changed the competitive landscape.

Competitors may develop new technologies or products in advance of us or establish business models or technologies disruptive to us. By extending our flash, converged infrastructure and cloud storage offerings, we are competing in new segments with both traditional competitors and new competitors, particularly smaller emerging storage vendors. The longer-term potential and competitiveness of these emerging vendors remains to be determined. In cloud and converged infrastructure, we also compete with large well-established competitors.

For additional information regarding our competitors, see the section entitled "Competition" contained in Item 1 – Business of Part I of our fiscal 2017 Form 10-K. It is possible that new competitors or alliances among competitors might emerge and rapidly acquire significant market share or buying power. An increase in industry consolidation might result in stronger competitors that are better able to compete as full stack vendors for customers and achieve increased economies of scale in the supply chain. For example, in October 2016, Dell Inc. and EMC Corp. consummated their agreement to merge. Also in April 2017, HP Enterprise completed their

acquisition of Nimble Storage. In addition, current and potential competitors have established or might establish cooperative relationships among themselves or with third parties, including some of our partners or suppliers.

Continuing uncertain economic and political conditions restrict our visibility and may harm our operating results, including our revenue growth and profitability.

The continuing global economic uncertainty, political conditions and fiscal challenges in the United States (U.S.) and abroad have, among other things, limited our ability to forecast future demand for our products, contributed to increased periodic volatility in the computer, storage and networking industries at large, as well as the information technology (IT) market, and could constrain future access to capital for our suppliers, customers and partners. The impacts of these circumstances are global and pervasive, and the timing and nature of any ultimate resolution of these matters remain highly uncertain. Consequently, we expect these concerns to challenge our business for the foreseeable future, which could cause harm to our operating results. Such conditions have resulted, and may in the future again result, in failure to meet our forecasted financial expectations and to achieve historical levels of revenue growth.

Our quarterly operating results may fluctuate materially, which could harm our common stock price.

Our operating results have fluctuated in the past and will continue to do so, sometimes materially. All of the matters discussed in this Risk Factors section could impact our operating results in any fiscal quarter or year. In addition to those matters, we face the following issues, which could impact our quarterly results:

- Seasonality, such as our historical seasonal decline in revenues in the first quarter of our fiscal year and seasonal increase in revenues in the second quarter of our fiscal year, with the latter due in part to the impact of the U.S. federal government's September 30 fiscal year end on the timing of its orders; and
- Linearity, such as our historical intra-quarter bookings and revenue pattern in which a disproportionate percentage of each quarter's total bookings and related revenue occur in the last month of the quarter.

If our operating results fall below our forecasts and the expectations of public market analysts and investors, the trading price of our common stock may decline.

Our gross margins vary.

Our gross margins reflect a variety of factors, including competitive pricing, component and product design, the volume and relative mix of product, software maintenance, hardware maintenance and other services revenues. Increased component costs, increased pricing and discounting pressures, the relative and varying rates of increases or decreases in component costs and product prices, changes in product, software maintenance, hardware maintenance and other services revenue mix or decreased volume could harm our revenues, gross margins or earnings. Our gross margins are also impacted by the cost of any materials that are of poor quality and our sales and distribution activities, including, without limitation, pricing actions, rebates, sales initiatives and discount levels, and the timing of service contract renewals.

The costs of third-party components comprise a significant portion of our product costs. While we generally have been able to manage our component and product design costs, we may have difficulty managing these costs if supplies of certain components become limited or component prices increase. Any such limitation could result in an increase in our product costs. An increase in component or design costs relative to our product prices could harm our gross margins and earnings.

We often incur expenses before we receive related benefits, and expenses may be difficult to reduce quickly if demand declines.

We base our expense levels in part on future revenue expectations and a significant percentage of our expenses is fixed. It is difficult to reduce our fixed costs quickly, and if revenue levels are below our expectations, operating results could be adversely impacted. During periods of uneven growth or decline, we may incur costs before we realize the anticipated related benefits, which could also harm our operating results. We have made, and will continue to make, significant investments in engineering, sales, service and support, marketing and other functions to support and grow our business. We are likely to recognize the costs associated with these investments earlier than some of the related anticipated benefits, such as revenue growth, and the return on these investments may be lower, or may develop more slowly, than we expect, which could harm our business, operating results and financial condition.

If we are unable to maintain and develop relationships with strategic partners, our revenues may be harmed.

Our growth strategy includes developing and maintaining strategic partnerships with major third-party software and hardware vendors to integrate our products into their products and also co-market our products with them. A number of these strategic partners are industry leaders that offer us expanded access to segments of the storage and data management markets. However, there is intense competition for attractive strategic partners, and these relationships may not be exclusive, may not generate significant revenues and may be terminated on short notice. For instance, some of our partners are also partnering with our competitors, which may increase the availability of competing solutions and harm our ability to grow our relationships with those partners. Moreover, some of our partners,

particularly large, more diversified technology companies, are also competitors, complicating our relationships. If we are unable to establish new partnerships or maintain existing partnerships, if our strategic partners favor their relationships with other vendors in the storage industry or if our strategic partners increasingly compete with us, we could experience lower than expected revenues, suffer delays in product development, or experience other harm to our business, operating results and financial condition.

If we do not achieve forecasted bookings in any quarter, our financial results could be harmed.

We derive a majority of our revenues in any given quarter from orders booked in the same quarter. Bookings typically follow intra-quarter seasonality patterns weighted toward the back end of the quarter. If we do not achieve the level, timing and mix of bookings consistent with our quarterly targets and historical patterns, or if we experience cancellations of significant orders, our financial results could be harmed.

A portion of our revenues is generated by large, recurring purchases from various customers, resellers and distributors. A loss, cancellation or delay in purchases by any of these parties has negatively affected us in the past, and in the future could, negatively affect our revenues.

A significant portion of our net revenues are generated through sales to a limited number of distributors. We generally do not enter into binding purchase commitments with our customers, resellers and distributors for extended periods of time, and thus we may not be able to continue to receive large, recurring orders from these customers, resellers or distributors. For example, our reseller agreements generally do not require minimum purchases, and our customers, resellers and distributors can stop purchasing and marketing our products at any time. In addition, unfavorable economic conditions may negatively impact the solvency of our customers, resellers and distributors or the ability of such customers, resellers and distributors to obtain credit to finance purchases of our products. If any of our key customers, resellers or distributors changes its pricing practices, reduces the size or frequency of its orders for our products, or stops purchasing our products altogether, our operating results and financial condition could be materially adversely impacted.

We rely on a limited number of suppliers for critical product components.

We rely on a limited number of suppliers for drives and other components utilized in the assembly of our products, including certain single source suppliers, which has subjected us, and could in the future subject us to, price rigidity, periodic supply constraints, and the inability to produce our products with the quality and in the quantities demanded. Consolidation among suppliers, particularly within the semiconductor and disk drive industries, has contributed to price rigidity and may in the future create supply constraints. When industry supply is constrained, our suppliers may allocate volumes away from us and to our competitors, all of which rely on many of the same suppliers as we do. Accordingly, our operating results may be harmed.

Any disruption to our supply chain could materially harm our business, operating results and financial condition.

We do not manufacture our products or their components. Instead, we rely on third parties to make our products and critical components, such as disk drives, as well as for associated logistics. Our lack of direct responsibility for, and control over, these elements of our business, as well as the diverse international geographic locations of our manufacturing partners and suppliers, creates significant risks for us, including, among other things:

- Limited ability to control the quality, quantity and cost of our products or of their components;
- The potential for binding price or purchase commitments with our suppliers that are higher than market rates;
- Limited ability to adjust production volumes in response to our customers' demand fluctuations;
- Labor and political unrest at facilities we do not operate or own;
- Geopolitical disputes disrupting our supply chain;
- Business, legal compliance, litigation and financial concerns affecting our suppliers or their ability to manufacture and ship our products in the quantities, quality and manner we require; and
- Disruptions due to floods, earthquakes, storms and other natural disasters, particularly in countries with limited infrastructure and disaster recovery resources.

Such risks have in the past and could again in the future subject us to supply constraints, price increases and minimum purchase requirements and our business, operating results and financial condition could be harmed. The risks associated with our out-sourced manufacturing model are particularly acute when we transition products to new facilities or manufacturers, introduce and increase volumes of new products or qualify new contract manufacturers or suppliers, at which times our ability to manage the relationships among us, our manufacturing partners and our component suppliers, becomes critical. New manufacturers, products, components or

facilities create increased costs and risk that we will fail to deliver high quality products in the required volumes to our customers. Any failure of a manufacturer or component supplier to meet our quality, quantity or delivery requirements in a cost-effective manner will harm our business, operating results and customer relationships.

Due to the global nature of our business, risks inherent in our international operations could materially harm our business.

A significant portion of our operations is located, and a significant portion of our revenues is derived, outside of the U.S. In addition, most of our products are manufactured outside of the U.S., and we have research and development, sales and service centers overseas. Accordingly, our business and our future operating results could be adversely impacted by factors affecting our international operations including, among other things, local political or economic conditions, trade protection and export and import requirements, tariffs, local labor conditions, transportation costs, government spending patterns, acts of terrorism, international conflicts and natural disasters in areas with limited infrastructure. In addition, due to the global nature of our business, we are subject to complex legal and regulatory requirements in the U.S. and the foreign jurisdictions in which we operate and sell our products, including antitrust and anti-competition laws, rules and regulations, and regulations related to data privacy. We are also subject to the potential loss of proprietary information due to piracy, misappropriation, or laws that may be less protective of our intellectual property rights than U.S. laws. Such factors could have an adverse impact on our business, operating results and financial condition.

We face exposure to adverse movements in foreign currency exchange rates as a result of our international operations. 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. We utilize forward and option contracts in an attempt to reduce the adverse earnings impact from the effect of exchange rate fluctuations on certain assets and liabilities as well as certain anticipated foreign currency cash flows on a short-term basis. Our hedging strategies may not be successful, and currency exchange rate fluctuations could have a material adverse effect on our operating results. In addition, our foreign currency exposure on assets and liabilities for which we do not hedge could have a material impact on our operating results in periods when the U.S. dollar significantly fluctuates in relation to unhedged non-U.S. currencies in which we transact business.

Additional risks inherent in our international business activities generally include, among others, longer accounts receivable payment cycles and difficulties in managing international operations.

Moreover, in many foreign countries, particularly in those with developing economies, it is common to engage in business practices that are prohibited by our internal policies and procedures, or U.S. laws and regulations applicable to us, such as the Foreign Corrupt Practices Act. There can be no assurance that all our employees, contractors and agents, as well as those companies to which we outsource certain of our business operations, will comply with these policies, procedures, laws and/or regulations. Any such violation could subject us to fines and other penalties, which could have a material adverse effect on our business, operating results and financial condition.

We could be subject to additional income tax liabilities.

Our effective tax rate is influenced by a variety of factors, many of which are outside of our control. These factors include among other things, fluctuations in our earnings and financial results in the various countries and states in which we do business, the outcome of income tax audits and changes to the tax laws in such jurisdictions. Changes to any of these factors could materially impact our operating results.

We receive significant tax benefits from sales to our non-U.S. customers. These benefits are contingent upon existing tax laws and regulations in the U.S. and in the countries in which our international operations are located. Future changes in domestic or international tax laws and regulations or a change in how we manage our international operations could adversely affect our ability to continue realizing these tax benefits. Except as required under U.S. tax laws, we do not provide for U.S. federal and state income taxes or foreign withholding taxes that may result from future remittances of undistributed earnings of foreign subsidiaries that have not been previously taxed since we intend to invest such undistributed earnings indefinitely outside of the U.S. If our intent changes, or if these funds are needed for our U.S. operations, we would be required to accrue or pay U.S. taxes on some or all of these undistributed earnings, which could have a material impact on our financial results.

Many countries around the world are beginning to implement legislation and other guidance to align their international tax rules with the Organisation for Economic Co-operation's Base Erosion and Profit Shifting recommendations and related action plans that aim to standardize and modernize global corporate tax policy, including changes to cross-border tax, transfer-pricing documentation rules and nexus-based tax incentive practices. In addition, the U.S. House and Senate have introduced tax bills which, if enacted, would result in significant changes to current U.S. tax laws. The final outcome of all these tax reform efforts is highly uncertain at this time. As a result, many of these changes, if enacted, could increase our worldwide effective tax rate and harm our financial position and results of operations.

We are routinely subject to income tax audits in the U.S. and several foreign tax jurisdictions. If the ultimate determination of income taxes or at-source withholding taxes assessed under these audits results in amounts in excess of the tax provision we have recorded or reserved for, our operating results, cash flows and financial condition could be adversely affected.

Our effective tax rate could also be adversely affected by different and evolving interpretations of existing law or regulations, which in turn would negatively impact our operating and financial results as a whole. Additionally, our effective tax rate could also be adversely affected if there is a change in international operations, our tax structure and how our operations are managed and structured, and as a result, we could experience harm to our operating results and financial condition.

Our success depends upon our ability to effectively plan and manage our resources and restructure our business in response to changing market conditions and market demand for our products, and such actions may have an adverse effect on our financial and operating results.

Our ability to successfully offer our products and services in a rapidly evolving market requires an effective planning, forecasting, and management process to enable us to effectively scale and adjust our business in response to fluctuating market opportunities and conditions.

In response to changes in market conditions and market demand for our products, we have in the past undertaken cost savings initiatives. For example, in May 2015, March 2016 and November 2016, we executed restructuring events designed to streamline our business, reduce our cost structure and focus our resources on key strategic opportunities. As a result, we have recognized substantial restructuring charges. We may in the future undertake initiatives that may include restructuring, disposing of, and/or otherwise discontinuing certain products, or a combination of these actions. Rapid changes in the size, alignment or organization of our workforce, including sales account coverage, could adversely affect our ability to develop, sell and deliver products and services as planned or impair our ability to realize our current or future business and financial objectives. Any decision to take these actions may result in charges to earnings associated with, among other things, inventory or other fixed, intangible or goodwill asset reductions (including, without limitation, impairment charges), workforce and facility reductions and penalties and claims from third party resellers or users of discontinued products. Charges associated with these activities would harm our operating results. In addition to the costs associated with these activities, we may not realize any of the anticipated benefits of the underlying restructuring activities.

If our products are defective, or are perceived to be defective as a result of improper use or maintenance, our gross margins, operating results and customer relationships may be harmed.

Our hardware and software products are complex. We have experienced in the past, and expect to experience in the future, quality issues. Quality risk is most acute when we are introducing new products. Quality issues have and could again in the future cause customers to experience outages or disruptions in service, data loss or data corruption. 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, loss of revenue, inventory costs or product reengineering expenses and higher ongoing warranty and service costs, and these occurrences could have a material impact on our gross margins, business and operating results. In addition, we exercise little control over how our customers use or maintain our products, and in some cases improper usage or maintenance could impair the performance of our products, which could lead to a perception of a quality issue. Customers and we may experience losses that may result from or are alleged to result from defects in our products, which could subject us to claims for damages, including consequential damages.

If a data center or other third-party who relies on our products experiences a disruption in service or a loss of data, such disruption could be attributed to the quality of our products, thereby causing financial or reputational harm to our business.

Our clients, including data centers, SaaS, cloud computing and Internet infrastructure and bandwidth providers, rely on our products for their data storage needs. Our clients may authorize third-party technology providers to access their data on our systems. Because we do not control the transmissions between our clients, their customers, and third-party technology providers, or the processing of such data by third-party technology providers, we cannot ensure the complete integrity or security of such transmissions or processing. Errors or wrongdoing by clients, their customers, or third-party technology providers resulting in security breaches may be attributed to us.

A failure or inability to meet our clients' expectations with respect to security and confidentiality through a disruption in the services provided by these third-party vendors, or the loss of data stored by such vendors, could result in financial or reputational harm to our business to the extent that such disruption or loss is caused by, or perceived by our customers to have been caused by, defects in our products. Moreover, the risk of reputational harm may be magnified and/or distorted through the rapid dissemination of information over the Internet, including through news articles, blogs, chat rooms, and social media sites. This may affect our ability to retain clients and attract new business.

If a cybersecurity or other security breach occurs on our systems or on our end user customer systems, or if stored data is improperly accessed, customers may reduce or cease using our solutions, our reputation may be harmed and we may incur significant liabilities.

We store and transmit sensitive and proprietary data related to our products, our employees, customers, clients and partners (including third-party vendors such as data centers and providers of SaaS, cloud computing, and Internet infrastructure and bandwidth), and their respective customers, including intellectual property, books of record and personally identifiable information. It is critical to our business strategy that our infrastructure remains secure and is perceived by customers, clients and partners to be secure. There are

numerous and evolving risks to cybersecurity and privacy, including criminal hackers, state-sponsored intrusions, industrial espionage, human error and technological vulnerabilities. Cybersecurity incidents or other security breaches could result in (1) unauthorized access to, or loss or unauthorized disclosure of, such information; (2) litigation, indemnity obligations, government investigations and other possible liabilities; (3) negative publicity; and (4) disruptions to our internal and external operations. Any of these could damage our reputation and public perception of the security and reliability of our products, as well as harm our business and cause us to incur significant liabilities. In addition, a cybersecurity incident or other security breach could result in other negative consequences, including remediation costs, disruption of internal operations, increased cybersecurity protection costs and lost revenues.

Our clients and customers use our platforms for the transmission and storage of sensitive data. We do not monitor or review the information or content that our clients and their customers upload and store, and, therefore, we have no direct control over the substance of the information or content stored within our platforms. If our employees, or our clients, partners or their respective customers use our platforms for the transmission or storage of personally identifiable or other sensitive information and our security measures are breached as a result of third-party action, employee error, malfeasance, stolen or fraudulently obtained log-in credentials or otherwise, our reputation could be damaged, our business may be harmed and we could incur significant liabilities.

High-profile cyber-attacks and security breaches have increased in recent years, and security industry experts and government officials have warned about the risks of hackers and cyberattacks targeting information technology products and businesses. Because techniques used to obtain unauthorized access or to sabotage systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. As we continue to increase our client base and expand our brand, we may become more of a target for third parties seeking to compromise our security systems and we anticipate that hacking attempts and cyberattacks will increase in the future. We cannot give assurance that we will always be successful in preventing or repelling unauthorized access to our systems.

Many jurisdictions have enacted or are enacting laws requiring companies to notify individuals of data security breaches involving certain types of personal data. These mandatory disclosures regarding security breaches often lead to widespread negative publicity. Moreover, the risk of reputational harm may be magnified and/or distorted through the rapid dissemination of information over the Internet, including through news articles, blogs, chat rooms, and social media sites. Any security breach, whether actual or perceived, could harm our reputation, erode customer confidence in the effectiveness of our data security measures, negatively impact our ability to attract new customers, cause existing customers to elect not to renew their support contracts, or subject us to third-party lawsuits, regulatory fines or other action or liability, which could materially and adversely affect our business and operating results. In particular, our SaaS business could be subject to stricter obligations and greater fines under the impending enactment of the new European Data Protection Regulation on May 25, 2018.

There can be no assurance that the limitations of liability in our contracts would be enforceable or adequate or would otherwise protect us from any such liabilities or damages with respect to any particular claim. Our existing general liability insurance coverage and coverage for errors and omissions may not continue to be available on acceptable terms or may not be available in sufficient amounts to cover one or more large claims, or our insurers may deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceeds available insurance coverage, or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material adverse effect on our business, operating results and financial condition.

If we are unable to attract and retain qualified personnel, our business, operating results and financial condition could be harmed.

Our continued success depends, in part, on our ability to hire and retain qualified personnel and to preserve the key aspects of our corporate culture. 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 hire and retain qualified engineers. In addition, to increase revenues, we will be required to increase the productivity of our sales force and support infrastructure to achieve adequate customer coverage. Competition for qualified employees, particularly in Silicon Valley, is intense. We have periodically reduced our workforce, including an 11% reduction announced in March 2016 and a 6% reduction announced in November 2016, and these actions may make it more difficult to attract and retain qualified employees. Our inability to hire and retain qualified management and skilled personnel, particularly engineers, salespeople and key executive management, could be disruptive to our development efforts, sales results, business relationships and/or our ability to execute our business plan and strategy on a timely basis and could materially and adversely affect our operating results.

Equity grants are a critical component of our current compensation programs. If we reduce, modify or eliminate our equity programs, we may have difficulty attracting and retaining critical employees.

In addition, because of the structure of our cash and equity incentive compensation plans, we may be at increased risk of losing employees at certain times. For example, the retention value of our compensation plans decreases after the payment of annual bonuses or the vesting of equity awards.

A repatriation of cash held by our foreign subsidiaries to fund U.S. operations, strategic opportunities or debt service may subject us to a significant tax liability.

As of October 27, 2017, \$5.0 billion of cash, cash equivalents and short-term investments was held by our foreign subsidiaries. Under current law, repatriation of this cash may trigger significant adverse tax consequences in the U.S. As a result, if the cash generated by our domestic operations is lower than projected and is not sufficient to fund our domestic operations and our broader corporate initiatives, such as stock repurchases, dividends, acquisitions, and other strategic opportunities, and to service our outstanding indebtedness, we may need to raise additional funds through public or private debt or equity financings, or we may need to obtain new credit facilities to the extent we choose not to repatriate our overseas cash. Such additional financing may not be available on terms favorable to us, or at all, and any new equity financings or offerings would dilute our current stockholders' ownership. Furthermore, lenders may not agree to extend us new, additional or continuing credit. If adequate funds are not available, or are not available on acceptable terms, we may be forced to repatriate our foreign-held cash and incur a significant tax charge. In any such case, our business, operating results or financial condition could be adversely impacted.

We are continually seeking ways to make our cost structure, business processes and systems more efficient, including by moving activities from higher-cost to lower-cost locations, outsourcing certain business processes and functions, and implementing new business information systems. Problems with the execution of these activities could have an adverse effect on our business, operating results and financial condition. In addition, we may not achieve the expected benefits of these initiatives.

We continuously seek to make our cost structure and business processes more efficient, including by moving our business activities from higher-cost to lower-cost locations, outsourcing certain business processes and functions, and implementing changes to our business information systems. These efforts involve a significant investment of financial and human resources and significant changes to our current operating processes. In addition, as we move operations into lower-cost jurisdictions and outsource certain business processes, we become subject to new regulatory regimes and lose control of certain aspects of our operations and, as a consequence, become more dependent upon the systems and business processes of third-parties. If we are unable to move our operations, outsource business processes and implement new business information systems in a manner that complies with local law and maintains adequate standards, controls and procedures, the quality of our products and services may suffer and we may be subject to increased litigation risk, either of which could have an adverse effect on our business, operating results and financial condition. Additionally, we may not achieve the expected benefits of these and other transformational initiatives, which could harm our business, operating results and financial condition.

Our acquisitions may not achieve expected benefits, and may increase our liabilities, disrupt our existing business and harm our operating results.

As part of our strategy, we seek to acquire other businesses and technologies to complement our current products, expand the breadth of our markets, or enhance our technical capabilities. For example, in February 2016, we acquired SolidFire, Inc., and in fiscal 2015 we acquired the SteelStore product line (renamed AltaVault) from Riverbed Technology, Inc. The benefits we expect to receive from these and other acquisitions depend on our ability to successfully conduct due diligence, negotiate the terms of the acquisition and integrate the acquired business into our systems, procedures and organizational structure. Any inaccuracy in our acquisition assumptions or any failure to uncover liabilities or risks associated with the acquisition, make the acquisition on favorable terms, integrate the acquired business or assets as and when expected or retain key employees of the acquired company may reduce or eliminate the expected benefits of the acquisition to us, increase our costs, disrupt our operations, result in additional liabilities, investigations and litigation, and may also harm our strategy, our business and our operating results. The failure to achieve expected acquisition benefits may also result in impairment charges for goodwill and purchased intangible assets.

Reduced U.S. government demand could materially harm our business and operating results. In addition, we could be harmed by claims that we have or a channel partner has failed to comply with regulatory and contractual requirements applicable to sales to the U.S. government.

The U.S. government is an important customer for us. However, government demand is uncertain, as it is subject to political and budgetary fluctuations and constraints. Events such as the U.S. federal government shutdown in October 2013 and continued uncertainty regarding the U.S. budget and debt levels, have increased demand uncertainty for our products, and in our fiscal 2016 resulted in lower sales to these customers. In addition, like other customers, the U.S. government may evaluate competing products and delay purchasing in the face of the technology transitions taking place in the storage industry. If the U.S. government or an individual agency or multiple agencies within the U.S. government continue to reduce or shift their IT spending patterns, our revenues and operating results may be harmed.

Selling our products to the U.S. government, whether directly or through channel partners, also subjects us to certain regulatory and contractual requirements. Failure to comply with these requirements by either us or our channel partners could subject us to investigations, fines, and other penalties, which could materially harm our operating results and financial condition. As an example, the United States Department of Justice (DOJ) and the General Services Administration (GSA) have in the past pursued claims against and financial settlements with IT vendors, including us and several of our competitors and channel partners, under the False Claims Act and other statutes related to pricing and discount practices and compliance with certain provisions of GSA contracts for sales to

the federal government. Although the DOJ and GSA currently have no claims pending against us, we could face claims in the future. Violations of certain regulatory and contractual requirements could also result in us being suspended or debarred from future government contracting. Any of these outcomes could have a material adverse effect on our business, operating results and financial condition.

We are exposed to credit risks and fluctuations in the market values of our investment portfolio.

We maintain an investment portfolio of various holdings, types, and maturities. Credit ratings and pricing of our investments can be negatively affected by liquidity, credit deterioration, financial results, economic risk, political risk, sovereign risk or other factors. As a result, the value and liquidity of our investments may fluctuate substantially. Therefore, although we have not recently realized any significant losses on our investments, future fluctuations in their value could result in a significant realized loss.

There are risks associated with our outstanding and future indebtedness.

As of October 27, 2017, we had an aggregate of \$2.3 billion of outstanding indebtedness for our senior notes that mature at specific dates in calendar years 2017, 2019, 2021, 2022 and 2024, and we had an aggregate of \$719 million of commercial paper notes outstanding with maturities ranging from 13 to 44 days. We may incur additional indebtedness in the future under existing credit facilities and/or entering into new financing arrangements. We may fail to pay these or additional future obligations, as and when required. Specifically, if we are unable to generate sufficient cash flows from operations or to borrow sufficient funds in the future to service or refinance our debt, our business, operating results and financial condition will be harmed. Any downgrades from credit rating agencies such as Moody's Investors Service or Standard & Poor's Rating Services may adversely impact our ability to obtain additional financing or the terms of such financing and reduce the market capacity for our commercial paper. Furthermore, if prevailing interest rates or other factors result in higher interest upon any potential future financing, then interest expense related to the refinance indebtedness would increase.

In addition, all our debt and credit facility arrangements subject us to continued compliance with restrictive and financial covenants. If we do not comply with these covenants or otherwise default under the arrangements, we may be required to repay any outstanding amounts borrowed under these agreements. Moreover, compliance with these covenants may restrict our strategic or operational flexibility in the future, which could harm our business, operating results and financial condition.

We are exposed to the credit and non-payment risk of our customers, resellers and distributors, especially during times of economic uncertainty and tight credit markets, which could result in material losses.

Most of our sales to customers are on an open credit basis, with typical payment terms of 30 days. We may experience losses due to a customer's inability to pay. Beyond our open credit arrangements, some of our customers have entered into recourse and non-recourse financing leasing arrangements using third-party leasing companies. 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 companies in the event of end-user customer default. During periods of economic uncertainty, our exposure to credit risks from our customers increases. In addition, our exposure to credit risks of our customers may increase further if our customers and their customers or their lease financing sources are adversely affected by global economic conditions.

Our failure to adjust to emerging standards in the storage and data management industry may harm our business.

Emerging standards in the storage and data management markets may adversely affect the 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, pharmaceutical and government market segments, industries that are subject to various evolving governmental regulations with respect to data access, reliability and permanence in the U.S. 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 we may not be able to expand our product offerings in these market and geographical segments at the rates which we have forecasted.

Some of our products are subject to U.S. export control laws and other laws affecting the countries in which our products and services may be sold, distributed, or delivered; any violation of these laws could have a material and adverse effect on our business, operating results and financial condition.

Due to the global nature of our business, we are subject to import and export restrictions and regulations, including the Export Administration Regulations administered by the Commerce Department's Bureau of Industry and Security (BIS) and the trade and economic sanctions regulations administered by the Treasury Department's Office of Foreign Assets Control (OFAC). The U.S., through the BIS and OFAC, places restrictions on the sale or export of certain products and services to certain countries and persons. Violators of these export control and sanctions laws may be subject to significant penalties, which may include significant monetary fines, criminal proceedings against them and their officers and employees, a denial of export privileges, and suspension or debarment from selling products to the federal government. Our products could be shipped to those targets by third parties, including potentially our channel partners, despite our precautions.

If we were ever found to have violated U.S. export control laws, we may be subject to various penalties available under the laws, any of which could have a material and adverse impact on our business, operating results and financial condition. Even if we were not found to have violated such laws, the political and media scrutiny surrounding any governmental investigation of us could cause us significant expense and reputational harm. Such collateral consequences could have a material adverse impact on our business, operating results and financial condition.

Changes in regulations relating to our products or their components, or the manufacture, sourcing, distribution or use thereof, may harm our business and operating results.

The laws and regulations governing the manufacturing, sourcing, distribution and use of our products have become more complex and stringent over time. For example, in addition to various environmental laws relating to carbon emissions and the use and discharge of hazardous materials, the SEC adopted regulations concerning the supply of certain minerals originating from the conflict zones of the Democratic Republic of Congo or adjoining countries. We incur costs to comply with the disclosure requirements of this law and may realize other costs relating to the sourcing and availability of minerals used in our products. Further, since our supply chain is complex, we may face reputational harm if our customers or other stakeholders conclude that we are unable to verify sufficiently the origins of the minerals used in the products we sell. As the laws and regulations governing our products continue to expand and change, our costs are likely to rise, and the failure to comply with any such laws and regulations could subject us to business interruptions, litigation risks and reputational harm.

Our failure to protect our intellectual property could harm our business, operating results and financial condition.

Our success depends significantly upon developing, maintaining and protecting our proprietary technology. We rely on a combination of patents, copyrights, trademarks, trade secrets, confidentiality procedures and contractual provisions with employees, resellers, strategic partners and customers, to protect our proprietary rights. We currently have multiple U.S. and international patent applications pending and multiple U.S. and international patents issued. The pending applications may not be approved, and our existing and future patents may be challenged. If such challenges are brought, the patents may be invalidated. We may not be able to develop proprietary products or technologies that are patentable, and patents issued to us may not provide us with any competitive advantages and may be challenged by third parties. Further, the patents of others may materially and adversely affect our ability to do business. In addition, a failure to obtain and defend our trademark registrations may impede our marketing and branding efforts and competitive condition. 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 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 U.S. Our means of protecting our proprietary rights may not be adequate or our competitors may 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 that arise in the normal course of business. We may, from time to time, receive claims that we are infringing third parties' intellectual property rights, including claims for alleged patent infringement brought by non-practicing entities. We are involved in active patent litigations brought by non-practicing entities. We believe we have strong arguments that our products do not infringe and/or the asserted patents are invalid, and we intend to vigorously defend against the plaintiffs' claims. However, there is no guarantee that we will prevail at trial and if a jury were to find that our products infringe, we could be required to pay significant monetary damages, and may cause product shipment delays, require us to redesign our products, or require us to enter into royalty or licensing agreements.

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 network storage and data management markets 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, and any such infringement claims discussed above, 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 could be materially and adversely affected as a result of natural disasters, terrorist acts or other catastrophic events.

We depend on the ability of our personnel, inventories, equipment and products to move reasonably unimpeded around the world. Any political, military, terrorism, global trade, 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 economic failure or other material disruption caused by natural disasters, including fires, floods, hurricanes, earthquakes, and volcanoes; power loss or shortages; environmental disasters; telecommunications or business information systems failures or 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 IT, or directly impact our marketing, manufacturing, financial and logistics functions, or impair our ability to meet our customer demands, our operating results and financial condition could be materially adversely affected. In addition, our

headquarters is located in Northern California, an area susceptible to earthquakes. If any significant disaster were to occur, our ability to operate our business and our financial condition could be impaired.

Changes in financial accounting standards may cause adverse unexpected fluctuations and affect our reported operating results.

A change in accounting standards or practices and varying interpretations of existing accounting pronouncements, the increased use of fair value measures, changes to revenue recognition, lease accounting, financial instruments and other accounting standards could have a significant effect on our reported financial results or the way we conduct our business. Implementation of accounting regulations and related interpretations and policies, particularly those related to revenue recognition, could cause us to defer recognition of revenue or recognize lower revenue, which may affect our operating results.

Our stock price is subject to volatility.

Our stock price is subject to changes in recommendations or earnings estimates by financial analysts, changes in investors' or analysts' valuation measures for our stock, changes in our capital structure, including issuance of additional debt, changes in our credit ratings, our ability to pay dividends and to continue to execute our stock repurchase program as planned and market trends unrelated to our performance.

Our ability to pay quarterly dividends and to continue to execute our stock repurchase program as planned will be subject to, among other things, our financial condition and operating results, available cash and cash flows in the U.S., capital requirements, and other factors. Future dividends are subject to declaration by our Board of Directors, and our stock repurchase program does not obligate us to acquire any specific number of shares. If we fail to meet any expectations related to dividends and/or stock repurchases, the market price of our stock could decline significantly, and could have a material adverse impact on investor confidence. Additionally, price volatility of our stock over a given period may cause the average price at which we repurchase our own stock to exceed the stock's market price at a given point in time.

Furthermore, speculation in the press or investment community about our strategic position, financial condition, results of operations or business can cause changes in our stock price. These factors, as well as general economic and political conditions and the timing of announcements in the public market regarding new products or services, product enhancements or technological advances by our competitors or us, and any announcements by us of acquisitions, major transactions, or management changes may adversely affect our stock price.

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

Purchases of equity securities

The following table provides information with respect to the shares of common stock repurchased by us during the three months ended October 27, 2017:

Period	Total Number of Shares Purchased (Shares in thousands)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Program (Shares in thousands)	Approximate Dollar Value of Shares That May Yet Be Purchased Under The Repurchase Program (Dollars in millions)
July 29, 2017 - August 25, 2017	—	\$ —	272,571	\$ 644
August 26, 2017 - September 22, 2017	1,043	\$ 40.27	273,614	\$ 602
September 23, 2017 - October 27, 2017	2,437	\$ 44.32	276,051	\$ 494
Total	3,480	\$ 43.11		

In May 2003, our Board of Directors approved a stock repurchase program. As of October 27, 2017, our Board of Directors has authorized the repurchase of up to \$9.6 billion of our common stock. Since inception of the program through October 27, 2017, we repurchased a total of 276 million shares of our common stock for an aggregate purchase price of \$9.1 billion. Under this program, we may purchase shares of our outstanding common stock through open market and privately negotiated transactions at prices deemed appropriate by our management. The stock repurchase program may be suspended or discontinued at any time.

Item 3. Defaults upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not Applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

The following documents are filed as exhibits to this report.

Exhibit No	Description	Incorporation by Reference			
		Form	File No.	Exhibit	Filing Date
4.1	Third Supplemental Indenture, dated September 29, 2017, by and between the Company and U.S. Bank National Association.	8-K	000-27130	4.2	September 29, 2017
4.2	Form of Note for the Company's 2.000% Senior Notes due 2019 (incorporated by reference to Exhibit 4.1)	8-K	000-27130	4.3	September 29, 2017
4.3	Form of Note for NetApp's 3.300% Senior Notes due 2024 (incorporated by reference to Exhibit 4.1).	8-K	000-27130	4.4	September 29, 2017
10.1	Underwriting Agreement, dated September 26, 2017, by and among the Company and J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC.	8-K	000-27130	1.1	September 29, 2017
10.2	Agreement of Purchase and Sale and Joint Escrow Instructions, effective September 11, 2017, by and between the Company and Google Inc.	—	—	—	—
10.3	First Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions dated as of October 2, 2017, by and between the Company and Google LLC, successor by conversion to Google Inc.	—	—	—	—
10.4	Second Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions dated as of October 25, 2017, by and between the Company and Google LLC.	—	—	—	—
31.1	Certification of the Chief Executive Officer pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.	—	—	—	—
31.2	Certification of the Chief Financial Officer pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.	—	—	—	—
32.1	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.	—	—	—	—
32.2	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.	—	—	—	—

Exhibit No	Description	Form	File No.	Exhibit	Filing Date
101.INS	XBRL Instance Document	—	—	—	—
101.SCH	XBRL Taxonomy Extension Schema Document	—	—	—	—
101.CAL	XBRL Taxonomy Calculation Linkbase Document	—	—	—	—
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	—	—	—	—
101.LAB	XBRL Taxonomy Label Linkbase Document	—	—	—	—
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	—	—	—	—

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.

NETAPP, INC.

(Registrant)

/s/ RONALD J. PASEK

Ronald J. Pasek

Executive Vice President and

Chief Financial Officer

Date: November 29, 2017

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

I

SUMMARY AND DEFINITION OF BASIC TERMS

This Agreement of Purchase and Sale and Joint Escrow Instructions (this "**Agreement**"), dated as of the Effective Date set forth in Section 1 of the Summary of Basic Terms, below, is made by and between GOOGLE INC., a Delaware corporation ("**Buyer**"), and NETAPP, INC., a Delaware corporation ("**Seller**"). The terms set forth below shall have the meanings set forth below when used in the Agreement.

TERMS OF AGREEMENT (first reference in the Agreement)	DESCRIPTION
1.Effective Date (Introductory Paragraph):	September 11, 2017
2.Buildings:	The three (3) buildings located on the Land situated in the City of Sunnyvale, County of Santa Clara, California, and commonly known as follows: (i) an approximately 126,760 square foot building located at 495 East Java Drive known as Building 1; (ii) an approximately 133,021 square foot building located at 475 East Java Drive known as Building 3; and (iii) an approximately 121,185 square foot building located at 1330 Geneva Drive known as Building 4.
3.Improved Land:	Those certain parcels of land upon which the Buildings are located, as more particularly described on <u>Exhibit "A-1"</u> attached hereto. The Buildings and the Improved Land are collectively referred to herein as the " Improved Property ".

- 4. Unimproved Land:** Undeveloped land located in the City of Sunnyvale, County of Santa Clara, California, as more particularly described on Exhibit "A-2" attached hereto and commonly known as follows: (i) an approximately 130,070 square foot parcel known as Parcel 10; (ii) an approximately 48,700 square foot parcel known as Parcel 11; and (iii) an approximately 44,475 square foot parcel known as Parcel 12. The Unimproved Land parcels are fully entitled to build 413,814 square feet of office improvements and a parking garage.
- 5. Google Common Lot (Section 3.2.3):** That certain approximately 704,077 square foot common lot (the "**Google Common Lot**"), as depicted in Exhibit "A-3" attached hereto, which shall be subdivided from the Common Lot pursuant to Section 3.2.3.
- 6. Buyer's Notice Address (Section 14):** 1600 Amphitheater Parkway
Mountain View, California 94043
Attn: VP, Real Estate and Workplace Services
- With copies as set forth in Section 14 herein
- 7. Purchase Price (Section 2.1):** Three Hundred Eighteen Million Seven Hundred Thousand and 00/100 Dollars \$318,700,000.00 in the aggregate consisting of (i) Two Hundred Forty-Five Million Seven Hundred Thousand and 00/100 Dollars (\$245,700,000.00) for the Improved Property and (ii) Seventy-Three Million and 00/100 Dollars (\$73,000,000.00) for the Unimproved Land.
- 8. First Closing Purchase Price (Section 2.1):** Two Hundred Twenty-Three Million One Hundred Thousand and 00/100 Dollars (\$223,100,000.00) in the aggregate consisting of (i) One Hundred Seventy-Two Million and 00/100 Dollars (\$172,000,000.00) for the Improved Property and (ii) Fifty-One Million One Hundred Thousand and 00/100 Dollars (\$51,100,000.00) for the Unimproved Land.
- 9. Second Closing Purchase Price (Section 2.1):** Ninety-Five Million Six Hundred Thousand and 00/100 Dollars (\$95,600,000.00) in aggregate consisting of (i) Seventy-Three Million Seven Hundred Thousand and 00/100 Dollars (\$73,700,000.00) for the Improved Property and (ii) Twenty-One Million Nine Hundred Thousand and 00/100 Dollars (\$21,900,000.00) for the Unimproved Land.
- 10. Initial Deposit (Section 2.2.1):** Nine Million Five Hundred Thousand and 00/100 Dollars (\$9,500,000.00)
- 11. Additional Deposit (Section 2.2.2):** Nine Million Five Hundred Thousand and 00/100 Dollars (\$9,500,000.00)

12. **Escrow Holder**
and **Escrow Holder's Notice Address**
(Section 3):

First American Title Insurance Company
1737 North First Street
Suite 500
San Jose, California 95112
Attn: Linda Tugade
Email: ltugade@firstam.com

Title Company
(Section 4.2.1):

First American Title Insurance Company
1737 North First Street

Suite 500
San Jose, California 95112
Attn: Mike Hickey
Email: mhickey@firstam.com

13. **Contingency Deadline**
(Section 4.1):

5:00 pm (Pacific Time) on the forty-fifth (45th) day
from (and including) the Effective Date.

14. **First Closing Period**
(Section 3.2):

Upon written notice thereof from Buyer to Seller at
least three (3) business days in advance, but no earlier
than fifteen (15) days and no later than ninety (90) days
following the Contingency Deadline (the "**Outside
First Closing Date**"), subject to any extension rights
provided in this Agreement.

15. **Second Closing Period**
(Section 3.2):

The date that is five (5) business days after the
recordation in the Official Records of Santa Clara,
California (the "**Official Records**") of the final
subdivision map for the Common Lot (as defined in
Section 3.2.3 below), but no earlier than fifteen (15)
days following the Contingency Deadline; and subject
to Section 3.2.2, in no event later than October 31, 2018
(the "**Outside Second Closing Date**"), which Outside
Second Closing Date is subject to potential extension
pursuant to: (i) Buyer Subdivision Delays (as defined in
Section 3.2.3 below), and (ii) any extension of the
Outside Second Closing Date mutually agreed upon by
Seller and Buyer. In addition, if the final Subdivision
Map for the Common Lot has not yet been approved by
the City of Sunnyvale and recorded in the Official
Records by the Outside Second Closing Date, Seller
shall have the right, in Seller's sole and absolute
discretion, and without the payment of any fee
whatsoever, to extend the Outside Second Closing Date
for four (4) periods of six (6) months each by delivering
written notice thereof to Buyer at least three (3)
business days in advance of the then-existing Outside
Second Closing Date. For absence of doubt, if all four
(4) of those extension periods were exercised, the
extended Outside Second Closing Date would be
October 30, 2020.

16. **Seller's Representative:**

Mr. Jeff Bergmann

17. **Natural Hazard Expert**
(Section 10.1.6(b)):

First American Title Insurance Company

List of Exhibits

- A-1 Legal Description of Improved Land
- A-2 Legal Description of Unimproved Land
- A-3 Depiction of Common Lot and Proposed Google Common Lot and Seller Common Lot
- B Grant Deed
- C-1 Transferor's Certification of Non-Foreign Status
- C-2 Real Estate Withholding Certificate
- D Seller's Disclosures
- E Intentionally Deleted
- F Assignment of Contracts and Assumption Agreement
- G Bill of Sale
- H General Assignment
- I [Intentionally Deleted]
- J Contracts
- K [Intentionally Deleted]
- L Excluded Personal Property
- M Due Diligence Items

II

RECITALS

A. Seller desires to sell and convey to Buyer, and Buyer desires to purchase and acquire, all of Seller's right, title and interest in and to the following:

i. The Improved Land and the Unimproved Land (collectively, the "**Land**"), the Google Common Lot, and all of Seller's interest in all rights, privileges, easements and appurtenances benefiting the Land, the Google Common Lot, and/or the Improvements (as defined below), including Seller's interest, if any, in all mineral and water rights and all easements, rights-of-way and other appurtenances used or connected with the beneficial use or enjoyment of the Land, the Google Common Lot and/or the Improvements (the Land, the Google Common Lot, the Improvements and all such rights, privileges, easements and appurtenances are sometimes collectively hereinafter referred to as the "**Real Property**");

ii. The Buildings, associated parking and landscaped areas and all other improvements located on the Land and the Google Common Lot (the "**Improvements**");

iii. All of Seller's interest under the Contracts (as defined in Section 4.1.1 below); provided that the following Contracts shall not be assigned to Buyer: (i) such Contracts as Seller desires to continue to maintain after the Closing in order for Seller to fulfill Seller's obligations pursuant to the NetApp Lease (as defined in Section 5.1.6 below) provided that such Contracts shall be terminated with respect to the portion of the Property that will not be leased back to Seller pursuant to the NetApp Lease, (ii) any brokerage commission agreements (which Contracts shall be terminated by Seller effective as of the First Closing Date at Seller's sole cost), and (iii) other Contracts which, pursuant to the terms of this Agreement, shall be terminated by Seller (which Contracts shall be terminated by Seller effective as of the applicable Closing at Seller's sole cost);

iv. All tangible personal property, equipment, supplies and fixtures owned by Seller and used in the operation of, and located at, the Real Property (collectively, the "**Personal Property**"); provided, however, that the term "Personal Property" shall exclude any tangible personal property, equipment, supplies and/or fixtures set forth on Exhibit "L" attached hereto; provided, further, that Seller shall remove any such Personal Property prior to each Closing or as of the expiration or earlier termination of the NetApp Lease with respect to the portion of the Property that will be leased back to NetApp pursuant to the NetApp Lease and repair any damage caused by the removal of such Personal Property (including, without limitation, completing any patching and filling any holes caused by the removal), at Seller's sole cost and expense; and

v. To the extent assignable, all of Seller's interest in any intangible property rights in connection with the foregoing, contract rights, warranties, guaranties, licenses, permits, entitlements, governmental approvals and certificates of occupancy which apply to and/or benefit the Real Property, the Improvements, and/or the Personal Property (the "**Intangible Personal Property**"). Intangible Personal Property shall not include Seller's interest in (a) any cash, bank or other deposit accounts, (b) refunds of prepaid expenses including any unearned insurance premiums, (c) tax refunds for periods prior to each Closing, (d) all insurance and other claims arising prior to the Effective Date, (e) any website maintained by Seller or its affiliates or the property manager, and (f) any trade name, service name, service mark or other proprietary or intellectual property belonging to Seller or its affiliates or the property manager. The Real

Property, the Improvements, the Personal Property, Seller's interest under the Property Contracts, and the Intangible Personal Property are sometimes collectively hereinafter referred to as the "**Property**."

B. Prior to the Contingency Deadline, Buyer will have the opportunity to conduct all due diligence with regard to the Property as set forth in Sections 4.1 and 4.2 below (collectively, the "**Due Diligence Investigations**").

III

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows, and hereby instruct Escrow Holder as follows.

Purchase and Sale

First Closing Property

. At the First Closing (as defined in Section 3.2.1), Seller hereby agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of Seller's right, title and interest in and to the entirety of the Property associated with the Improved Property and the Unimproved Land (the "**First Closing Property**") upon the terms and conditions set forth in this Agreement.

Second Closing Property

. At the Second Closing (as defined in Section 3.2.2), to the extent the same occurs pursuant to this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of Seller's right, title and interest in and to the Google Common Lot and the Property related thereto (the "**Second Closing Property**") upon the terms and conditions set forth in this Agreement.

2. Purchase Price.

Purchase Price

. Buyer shall pay the Purchase Price for the Property as hereinafter provided in this Section 2.

2.2 Deposit.

2.2.1 Initial Deposit. Within five (5) business days after the Effective Date, Buyer shall deliver to Escrow Holder the Initial Deposit. The Initial Deposit and Additional Deposit (if applicable) shall be deposited by Escrow Holder in an interest-bearing account at a federally insured institution as Escrow Holder deems appropriate and consistent with the timing requirements of this Agreement. The interest thereon shall accrue to the benefit of Buyer and be paid to the party receiving the Deposit pursuant to the terms of this Agreement, and Buyer and Seller hereby acknowledge that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer agrees to provide its Federal Tax Identification Number to Escrow Holder upon the Opening of Escrow. Concurrently with the expiration of the Property Approval Period and provided Buyer has delivered Buyer's Approval Notice (as those terms are defined in Sections 4.1.1 and 4.1.2, respectively, below) to Seller and Escrow Holder, the entire Initial Deposit shall become non-refundable except as otherwise expressly provided in this Agreement. If, prior to the expiration of the Property Approval Period, Buyer delivers written notice to Seller and Escrow Holder terminating this Agreement or if Buyer does not deliver Buyer's Approval Notice to Seller and Escrow Holder as provided herein, this Agreement shall terminate and the Initial Deposit, together with all interest accrued thereon (but less the

Independent Consideration (as defined in Section 2.5 below) and one-half (1/2) of any escrow cancellation costs), shall be returned to Buyer. If this Agreement has not been so terminated, then, after the Contingency Deadline, the Initial Deposit together with interest accrued thereon shall be: (i) applied and credited toward payment of the First Closing Purchase Price on the First Closing Date (as defined in Section 3.2.1 below), or (ii) retained by Seller as liquidated damages pursuant to Section 16.2 below, or (iii) returned to Buyer (less the Independent Consideration) if this Agreement is terminated pursuant to Sections 3.2.2, 4.4 or 13, or this Agreement is terminated because of a material breach by Seller in accordance with Section 16.1, or this Agreement is terminated and otherwise provides for the Deposit to be refunded to Buyer.

2.2.2 Additional Deposit. Within five (5) business days after expiration of the Property Approval Period, and provided Buyer has not elected to terminate this Agreement pursuant to Section 4.1.2, Buyer shall deliver to Escrow Holder the Additional Deposit (the Additional Deposit, together with the Initial Deposit and with all interest accrued thereon in escrow, the "**Deposit**"). Upon receipt by Escrow Holder, the Additional Deposit shall become non-refundable except as otherwise provided in this Agreement. The Additional Deposit, together with interest accrued thereon, shall be (i) applied and credited toward payment of the First Closing Purchase Price on the First Closing Date, (ii) retained by Seller as liquidated damages pursuant to Section 16.2 below, or (iii) returned to Buyer (less the Independent Consideration) if this Agreement is terminated because of a material breach by Seller in accordance with Section 16.1 or as is provided for in Sections 3.2.2 and 13 below, or this Agreement is terminated and otherwise provides for the Deposit to be refunded to Buyer.

First Closing Purchase Price

. On or before the First Closing Date (at such time so as to allow the proceeds to be disbursed to Seller on the First Closing Date), Buyer shall deposit with Escrow Holder cash by means of a confirmed wire transfer through the Federal Reserve System or cashier's check in the amount of the balance of the First Closing Purchase Price, plus Buyer's share of expenses and prorations with respect to the First Closing Property as described in this Agreement.

Second Closing Purchase Price

. On or immediately after the First Closing Date, and provided that the First Closing has occurred, Buyer shall deposit with Escrow Holder cash by means of a confirmed wire transfer through the Federal Reserve System or cashier's check in the amount of the Second Closing Purchase Price (collectively and with all interest accrued thereon in escrow, the "**Second Closing Funds**"). The Second Closing Funds shall be returned to Buyer as provided in Section 3.2.2 and Section 4.4 below in the event the Second Closing fails to occur for any reason, subject to Section 16.2 below and Section 13. Notwithstanding foregoing, Buyer and Seller hereby acknowledge and agree that in the event that the First Closing occurs and the Deposit is applied to the First Closing Purchase Price but the Second Closing does not occur solely as a result of Buyer's default under this Agreement beyond any applicable notice and cure period, then a portion of the Second Closing Funds, in an amount equal to Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00), may be retained by Seller as liquidated damages pursuant to Section 16.2 below, which shall constitute the "Deposit" with respect to the Second Closing.

Independent Contract Consideration

. The sum of One Hundred Dollars (\$100) (the "**Independent Consideration**") out of the Deposit is independent of any other consideration provided hereunder, shall be fully earned by Seller upon the Effective Date, and is not refundable to Buyer under any circumstances. Accordingly, if this Agreement is terminated for any reason by either party, the Independent Consideration shall be paid by the Escrow Holder to Seller. Independent Consideration shall be non-refundable under all circumstances and shall not be applied to the Purchase Price at either the First Closing or the Second Closing. Buyer and Seller expressly acknowledge and agree that the Independent Consideration, plus Buyer's agreement to pay the costs provided in this Agreement, has been bargained for as consideration for Seller's execution and delivery of this Agreement and for

Buyer's review, inspection and termination rights during the Property Approval Period, and is adequate for such purpose.

3. Escrow and Title.

Opening of Escrow

. Buyer and Seller shall promptly deliver a fully executed copy of this Agreement to Escrow Holder, and the date of Escrow Holder's receipt thereof is referred to as the "**Opening of Escrow.**" Seller and Buyer shall execute and deliver to Escrow Holder any additional or supplementary instructions as may be necessary or convenient to implement the terms of this Agreement and close the transactions contemplated hereby, provided such instructions are consistent with and merely supplement this Agreement and shall not in any way modify, amend or supersede this Agreement. Such supplementary instructions, together with the escrow instructions set forth in this Agreement, as they may be amended from time to time by the parties, shall collectively be referred to as the "**Escrow Instructions.**" The Escrow Instructions may be amended and supplemented by such standard terms and provisions as the Escrow Holder may request the parties hereto to execute; provided, however, that the parties hereto and Escrow Holder acknowledge and agree that in the event of a conflict between any provision of such standard terms and provisions supplied by the Escrow Holder and the Escrow Instructions, the Escrow Instructions shall prevail.

Closing

. The transactions contemplated in this Agreement between Buyer and Seller shall be accomplished in two (2) closings as described in Sections 3.2.1 and 3.2.2 below, consisting of the first closing (the "**First Closing**") and the second closing (the "**Second Closing**"). As used herein, the term "**Closing**" shall mean the First Closing Date or the Second Closing Date, as applicable.

3.2.1 First Closing. Subject to the satisfaction or waiver of the conditions to Closing set forth in this Agreement with respect to the First Closing, the purchase and sale of the First Closing Property shall close during the First Closing Period. The "**First Closing Date**" shall mean the earlier of (i) the date on which the Deed (as defined in Section 5.1.1 below) for the First Closing Property is recorded in the Official Records, or (ii) the date on which the First Closing Purchase Price is disbursed by Escrow Holder to Seller pursuant to Section 6.7 below.

3.2.2 Second Closing. Subject to the satisfaction or waiver of the conditions to Closing set forth in this Agreement with respect to the Second Closing, the purchase and sale of the Second Closing Property shall close during the Second Closing Period upon the date that is five (5) business days following recordation in the Official Records of the Subdivision Map (as described in Section 3.2.3), but no earlier than fifteen (15) days following the Contingency Deadline; provided, however, that if the Subdivision Map subdividing the Google Common Lot from the Common Lot has not been recorded by the Outside Second Closing Date (as such date may be extended pursuant to the mutual agreement of Seller and Buyer), then the parties' rights and obligations shall be as set forth in Section 4.4 below (subject to any extensions as provided herein). The "**Second Closing Date**" shall mean the earlier of (i) the date on which the Deed for the Second Closing Property is recorded in the Official Records, or (ii) the date on which the Second Closing Purchase Price is disbursed by Escrow Holder to Seller pursuant to Section 6.7 below. Notwithstanding anything to the contrary set forth herein, in the event that Seller exercises all of the four (4) Seller Outside Second Closing Date Extensions (as defined in Section 3.2.3(h) below) to extend the Second Closing Date as provided in Section 3.2.3(h), but the Second Closing does not occur on or before October 30, 2020 for any reason other than either party's default under the terms of this Agreement, then either party may, by written notice delivered to the other party no later 5:00 pm Pacific Time on October 27, 2020 and without payment of any fee whatsoever, extend the Second Closing Date to be the date (the "**Final Extended Second Closing Date**") that is the earlier to occur of (a) October 31, 2022 or (b) the date that is five (5) business days following the date that the Subdivision Map subdividing the Google Common Lot from the Common Lot has been recorded in

accordance with the terms of this Agreement. In the event that the Second Closing Date is further extended pursuant to this Section 3.2.2, then notwithstanding anything to the contrary set forth in this Agreement, the entire amount of the Second Closing Funds, including any portion thereof designated as the "Deposit" with respect to the Second Closing pursuant to Section 2.4 hereof, together with all interest accrued thereon in escrow, shall be promptly refunded and returned to Buyer and shall no longer be held in escrow hereunder, provided that in the event that the Second Closing Date occurs prior to October 31, 2022, then Buyer shall deposit the Second Closing Funds in escrow by no later than one (1) business day prior to the Final Extended Second Closing Date.

3.2.3 Common Lot Subdivision. Buyer and Seller acknowledge that, as of the Effective Date of this Agreement, the Seller holds fee title to a single, approximately 1,315,076 square foot common lot that serves the Land and each of Seller's nearby buildings and other improvements related thereto (the "Common Lot"). Seller intends to subdivide the Common Lot into two (2) separate legal parcels, one of which shall consist of approximately 610,999 square feet and shall continue to be owned by Seller after the Second Closing and will apply to and serve Seller's nearby buildings not a part of this transaction (the "Seller Common Lot"), and the other of which shall consist of approximately 704,077 square feet and shall be conveyed to Buyer at the Second Closing pursuant to this Agreement, which portion of the Common Lot is referred to herein as the "Google Common Lot." The Common Lot and the approximate location of the Seller Common Lot and Google Common Lot are all shown on Exhibit "A-3" attached hereto. It is understood that the square footages of the Seller Common Lot and Google Common Lot shall be subject to Buyer's review and approval as set forth herein.

(a) As soon as reasonably practicable following the execution of this Agreement but in no event later than November 10, 2017, Seller shall provide to Buyer a draft subdivision map as prepared by a licensed engineer that Seller intends to submit to the City of Sunnyvale ("City") in order to subdivide the Common Lot into the Seller Common Lot and Google Common Lot (the "Subdivision Map"). The Subdivision Map shall further include a precise delineation of the proposed Google Common Lot and the Seller Common Lot, parking space counts, open space area calculations, amenity area calculations and other information as may be required by the City for the processing of the proposed Subdivision Map. Except as otherwise provided herein, the proposed Subdivision Map, if approved, shall, at minimum, allow for the Real Property to be in conformance with governing land use standards promulgated by the City, including without limitation floor area ratio, open space and other standards as set forth in the Moffett Park Specific Plan and the City of Sunnyvale Municipal Code. The proposed Subdivision Map shall be subject to the review, comment, and approval of Buyer, which approval shall not be unreasonably withheld, conditioned, or delayed and, and shall be either granted or expressly withheld within thirty (30) days after Buyer's receipt of the draft Subdivision Map. If Buyer fails to provide its approval or disapproval of the proposed Subdivision Map to Seller within such thirty (30) day period, Seller may send a notice to Buyer, which must contain the following inscription in bold faced letters: "**SECOND NOTICE DELIVERED PURSUANT TO SECTION 3.2.3(a) OF THE PURCHASE AGREEMENT—FAILURE TO TIMELY RESPOND WITHIN THREE (3) DAYS SHALL RESULT IN DEEMED APPROVAL OF PROPOSED SUBDIVISION MAP.**" If Buyer fails to provide its approval or disapproval of the proposed Subdivision Map within such three (3) day period, then Buyer shall be deemed to have approved the proposed Subdivision Map. In any event, Buyer may not object to the draft Subdivision Map unless such objection is based on a "Subdivision Problem". As used herein, the term "Subdivision Problem" shall mean that according to the proposed Subdivision Map, the Common Lot, as subdivided, may: (i) result in the Google Common Lot consisting of less than 704,077 square feet of space, (ii) result in non-conformance with applicable land use and development standards, including but not limited to applicable floor area ratio, open space and amenity space requirements, (iii) require dedications, easements or other encumbrances on the Property that Buyer determines in its sole but good faith discretion to be unacceptable, and (iv) result in other material impediments to Buyer's intended development, use and occupancy of the Property, as

reasonably determined by Buyer. In the event Buyer identifies a Subdivision Problem within the thirty (30) day review period set forth above, Buyer shall deliver written notice of such Subdivision Problem to Seller and Buyer and Seller shall work cooperatively together to resolve such Subdivision Problem, including revising the Subdivision Map as necessary to resolve such Subdivision Problem to the extent feasible. If the parties are unable to resolve any Subdivision Problem after thirty (30) days of Buyer's notice thereof to Seller, either party may terminate the Agreement with respect to the Second Closing Property by providing written notice to the other, in which case the terms of Section 4.4 of this Agreement shall govern.

(b) Buyer agrees to cooperate with Seller, acting in good faith in a commercially reasonable manner, in the application, processing, approval and recordation of the Subdivision Map, including but not limited to responding to requests for approvals and information related to the Subdivision Map that is within Buyer's possession or control within a commercially reasonable time period.

(c) Following Seller's receipt of Buyer's approval of the proposed Subdivision Map, Seller shall diligently pursue to completion all necessary approvals for and the subsequent recordation of the Subdivision Map in the Official Records. Seller shall provide regular updates to Buyer regarding the progress of the Subdivision Map and other required approvals, including update calls or correspondence with Buyer or its designated representatives as may be reasonably requested by Buyer. Seller shall provide Buyer with reasonable advance notice, and in any event no less than forty-eight (48) hours' notice, of any meetings, hearings, conference calls or other material communications with the City or other governmental entity with jurisdiction over the Subdivision Map and related approvals. Buyer shall have an opportunity, but not the obligation, to attend all such meetings, hearings, conference calls, or other material communications relevant to the review, approval and recordation of the Subdivision Map and related approvals; provided, however, that as long as Seller provides the requisite notice to Buyer as provided herein and a commercially reasonable opportunity to participate, Seller shall not be obligated schedule any such meetings, hearings, conference calls or other material communications in order to accommodate Buyer. It is understood that routine phone calls, electronic correspondence and other communications with City staff and Seller regarding the general processing of the Subdivision Map shall not require advance notice to Buyer, but Seller shall promptly advise Buyer of any material information arising out of such communications. The parties shall provide to each other copies of any material written correspondence or communications to or from the City or other governmental entity relating to the Subdivision Map or any related approvals that are received from or delivered to the respective party.

(d) Within thirty (30) days following execution of this Agreement, Seller shall provide Buyer with an estimated budget for the engineering and City processing expenses related to the Subdivision Map. The Subdivision Map budget shall be subject to the review, comment, and approval of Buyer, which approval shall not be unreasonably withheld, conditioned, or delayed and, and shall be either granted or expressly withheld in writing within fifteen (15) days after Buyer's receipt thereof, and Buyer shall be deemed to have accepted the estimated budget if Buyer fails to provide its written approval or disapproval thereof within such fifteen (15) day period. Any increase in the proposed Subdivision Map budget in excess of ten percent (10%) shall be subject to Buyer review upon the same terms and conditions in the preceding sentence. Buyer and Seller shall each bear one-half (1/2) of the City Subdivision Map processing costs and engineering costs associated with the Subdivision Map. Each party shall bear the entire cost of its own attorneys, consultants, and contractors engaged in the Subdivision Map approval process. In seeking reimbursement of processing and engineering costs, Seller shall provide Buyer with a statement for such costs along with reasonably supporting documentation, including invoices from the service providers or City. Buyer shall provide payment of its one-half (1/2) portion of the shared costs within thirty (30) days of receipt of such statement from Seller. In the event

this Agreement is terminated due to a default of Seller or Buyer as provided herein, the defaulting party shall reimburse the non-defaulting party for all shared processing and engineering costs associated with the Subdivision Map within thirty (30) days of such termination and such obligation shall survive the termination of this Agreement.

(e) Once the Subdivision Map has been submitted to the City, during the term of the Agreement, the Subdivision Map shall not be materially modified, changed, or withdrawn by Buyer or Seller; provided, however, that Seller shall be permitted to materially modify, change or withdraw the Subdivision Map in any respect upon receipt of Buyer's written consent, which may only be withheld by Buyer if Buyer reasonably determines that such modification would result in a Subdivision Problem. The process for the review of such proposed modification, change or withdrawal shall be as set forth in Section 3.2.3(a) above. If the City or any governmental agency requires a material modification of the Subdivision Map that, in Buyer's reasonable judgment, would create a Subdivision Problem, Buyer may disapprove of such modification in its sole but good faith discretion by providing written notice to Seller within ten (10) days of receiving written notice of the City's or other governmental agency's Subdivision Map modification. If Buyer fails to provide disapproval of any such proposed modification within the required ten (10) day period, Seller may send a notice to Buyer, which must contain the following inscription in bold faced letters: **"SECOND NOTICE DELIVERED PURSUANT TO SECTION 3.2.3(e) OF THE PURCHASE AGREEMENT—FAILURE TO TIMELY RESPOND WITHIN THREE (3) DAYS SHALL RESULT IN DEEMED APPROVAL OF PROPOSED MODIFICATIONS TO SUBDIVISION MAP BY CITY."** If Buyer fails to provide its disapproval of the proposed modifications to the Subdivision Map by the City within such three (3) day period, then Buyer shall be deemed to have approved the proposed modifications. If Buyer timely provides written notice to Seller of its disapproval of a proposed modification to the Subdivision Map by the City as provided herein, the parties shall then promptly meet and confer. If the parties cannot reach agreement as to the City's proposed modification within thirty (30) days after delivery of Buyer's disapproval notice to Seller, either party may terminate this Agreement with respect to the Second Closing Property by providing written notice, in which case the terms of Section 4.4 of this Agreement shall govern.

(f) Seller shall be obligated to provide Buyer prompt and advance written notice of any proposed restrictions, conditions, limitations, deviations, or modifications in connection with the City's (or other governmental agency's) review and approval of the Subdivision Map (or any related governmental approvals) ("Subdivision Condition"). Buyer shall have the right to disapprove in writing of any Subdivision Condition that Buyer reasonably determines in its sole but good faith discretion to be unacceptable (each, a "Subdivision Condition Problem"). In the event of a Subdivision Condition Problem, Buyer may disapprove of the applicable Subdivision Condition by providing written notice to Seller within ten (10) days of receiving written notice of the Subdivision Condition. If Buyer fails to provide disapproval of any such proposed Subdivision Condition within the required ten (10) day period, Seller may send a notice to Buyer, which must contain the following inscription in bold faced letters: **"SECOND NOTICE DELIVERED PURSUANT TO SECTION 3.2.3(f) OF THE PURCHASE AGREEMENT—FAILURE TO TIMELY RESPOND WITHIN THREE (3) DAYS SHALL RESULT IN DEEMED APPROVAL OF PROPOSED SUBDIVISION CONDITION TO SUBDIVISION MAP BY CITY."** If Buyer fails to provide its disapproval of the proposed Subdivision Condition within such three (3) day period, then Buyer shall be deemed to have approved the proposed Subdivision Condition. If Buyer timely provides written notice to Seller of its disapproval of a proposed Subdivision Condition as provided herein, the parties shall then promptly meet and work cooperatively together in good faith to attempt to resolve such Subdivision Condition Problem. If Buyer and Seller are unable to agree within thirty (30) days regarding acceptable modifications or allocation of responsibility to the Subdivision Condition(s), either party may terminate this Agreement

with respect to the Second Closing Property by written notice to the other party, in which case Section 4.4 of this Agreement shall apply.

(g) The parties will reasonably and in good faith meet and confer and allocate responsibility for compliance with all Subdivision Conditions that must be satisfactorily completed prior to the City's approval of the final Subdivision Map and the recordation of the same. Upon final approval and recordation of the Subdivision Map and any other related governmental approvals in accordance with the terms of this Agreement (including securing Buyer's approval of the final Subdivision Map and any associated Subdivision Conditions as set forth herein), Buyer and Seller shall each be responsible for completion and compliance with any ongoing Subdivision Conditions and other requirements governing their respective portion of the Common Lot that survive recordation of the final Subdivision Map, including, as applicable and as approved by each of the parties in accordance with the provisions set forth above, the implementation and maintenance of all bonds or other security instruments, including the costs thereof, required by the City or other related governmental body as part of the Subdivision Map approval and recordation process.

(h) Seller makes no representation or warranty as to whether the approval and/or recordation of the Subdivision Map can be obtained prior to the Outside Second Closing Date. The Outside Second Closing Date is subject to potential extension pursuant to (i) Buyer Subdivision Delays (as defined below), (ii) any extension Outside Second Closing Date mutually agreed upon by Seller and Buyer, (iii) any Seller Outside Second Closing Date Extensions, and (iv) any extension of the Outside Second Closing Date pursuant to Section 3.2.2 above. Buyer and Seller acknowledge and agree that, if, as of the Outside Second Closing Date (as such date may be extended pursuant to the terms of this Agreement), the Subdivision Map remains unapproved and/or unrecorded in the Official Records, then the parties' rights and obligations shall be as set forth in Section 4.4 below. Neither the failure of Seller or Buyer to obtain the required governmental approval and recordation of the Subdivision Map shall constitute default or breach by such party under this Agreement. As used herein, the term "**Buyer Subdivision Delays**" shall mean any actual delay in the recordation of the Subdivision Map for the Common Lot resulting from Buyer's failure to fulfill its obligations with respect to Subdivision Map as provided in this Section 3.2.3 within the time periods specified therefor herein (excluding all obligations for which Buyer's consent or approval shall be deemed given due to the passage of time as provided in this Section 3.2.3), or where no such time period is specified, then within a commercially reasonable time period, which is not cured within five (5) business days after Buyer receives written notice thereof. In no event shall Buyer be permitted to combine or otherwise connect the subdivision of the Common Lot with any other approvals required from the City in connection with Buyer's development of projects on properties other than the Property. Seller shall provide Buyer with prompt written notification of any alleged Buyer Subdivision Delay, including an estimate of the proposed duration of such delay to the extent known at that time by Seller. In addition, if at any time the final Subdivision Map for the Common Lot has not yet been approved by the City and recorded in the Official Records, Seller shall have the right, in Seller's sole and absolute discretion, and without the payment of any fee whatsoever, to extend the Outside Second Closing Date for four (4) periods of six (6) months each (each, a "**Seller Outside Second Closing Date Extension**") by delivering written notice thereof to Buyer at least three (3) business days in advance of the then-existing Outside Second Closing Date. For absence of doubt, if all four (4) of the Seller Outside Second Closing Date Extensions are exercised by Seller, the Outside Second Closing Date would be October 30, 2020.

3.2.4 Revised CC&Rs. The Property is currently encumbered with that certain Declaration of Covenants, Conditions and Restrictions for Crossman Commons, recorded in the Official Records as Document Number 19976446 (the "**Existing CC&Rs**"). Buyer and Seller hereby acknowledge and agree that the Existing CC&Rs shall be amended, restated and superseded in their entirety with a revised Declaration of Covenants, Conditions and Restrictions and recorded in the Official

Records (the “**Revised CC&Rs**”) as of the First Closing Date prior to the recordation of the conveying deed for the First Closing Property. The Revised CC&Rs shall govern the respective rights and obligations of Buyer and Seller with respect to the Common Lot during the period prior to the recordation of the Subdivision Map and the transfer of the Google Common Lot to Buyer as provided herein, and subject to the terms set forth below regarding the Reduced CC&Rs (as defined below), the Revised CC&Rs shall continue to govern in the event the Second Closing does not occur. During the Property Approval Period, Buyer and Seller shall negotiate in good faith and agree upon the terms and conditions of the Revised CC&Rs, which, subject to Buyer’s due diligence review, shall provide, at a minimum: (i) Seller as the declarant; (ii) that the Revised CC&Rs wholly replace and supersedes the Existing CC&Rs and that the Existing CC&Rs shall be of no further force or effect upon recordation of the Revised CC&Rs; (iii) an area of control for Buyer (the “**Buyer Area of Control**”) and an area of control for Seller (the “**Seller Area of Control**”), both of which shall be generally equivalent to the size and location of the Seller Common Lot and the Google Common Lot as depicted in Exhibit “A-3” (as may be modified and agreed to by the parties pursuant to Section 3.2.3), where Buyer shall have the exclusive right to use the Buyer Area of Control and Seller shall have the exclusive right to use the Seller Area of Control (except as otherwise agreed to by Buyer and Seller in the Revised CC&Rs); (iv) Buyer shall maintain, repair and insure the entire Buyer Area of Control at Buyer’s own expense and Seller shall maintain, repair and insure the entire Seller Area of Control at Seller’s own expense; (v) any portions of the Common Lot that are used jointly by Buyer and Seller shall be managed by Seller if within the Seller Area of Control or by Buyer if within the Buyer Area of Control, and each party shall reimburse the other for their respective share of the cost of the services or materials used based on the metered use thereof (if separate meters are installed) or for their respective pro rata share thereof (based on the ratio of Buyer’s or Seller’s pro rata rentable area of the Buildings owned by Buyer or Seller following the First Closing Date to the aggregate rentable area of building square footage owned by Buyer and Seller); provided that Buyer shall indemnify Seller against all claims arising from Buyer’s joint use of any portion of the Seller Area of Control, and Seller shall indemnify Buyer against all claims arising from Seller’s joint use of any portion of the Buyer Area of Control; (vi) any easement areas shall be established, maintained and the cost thereof allocated as provided for in the Revised CC&Rs; (vii) the Revised CC&Rs shall not provide for an association while Buyer and Seller are the exclusive owners of the parcels encumbered by the Revised CC&Rs, but shall provide that any matters subject to a vote thereunder must be agreed to by both Seller and Buyer, it being understood that, except as provided to the contrary in the Revised CC&Rs, no matters solely affecting either the Buyer Area of Control or the Seller Area of Control shall be subject to a vote or any input by the other party; (viii) the Revised CC&Rs shall not provide for any prohibitions on Buyer’s use of the Buyer Area of Control or Seller’s use of the Seller Area of Control (except to the extent required by applicable law and/or any governmental agencies); (ix) the Revised CC&Rs shall grant certain access rights and/or, if applicable, easement rights, to Seller and/or Buyer to install cable conduits and manhole covers throughout the Common Lot, provide for certain rights and easements reasonably required by either party over the Common Lot in connection with each party’s development, maintenance and operation of their respective properties or Area of Control subject to the terms and conditions to be set forth in the Revised CC&Rs, provided, however, that if any party’s access or easement rights materially affect or are located on the other party’s respective Area of Control, such access or easement rights shall be subject to the prior approval of the other party; (x) there shall be no design review process over buildings to be built, renovated or redeveloped by Buyer or Seller; provided, however, that all other improvements to be constructed by Buyer on the Seller Area of Control shall be subject to Seller’s prior review and approval, and all other improvements to be constructed by Seller on the Buyer Area of Control shall be subject to Buyer’s prior review and approval; and provided, further that any improvements constructed on the Common Lot by Buyer or Seller shall not restrict access to, or materially impair the use and enjoyment of, any property of Buyer or Seller; (xi) each party shall indemnify and defend the other for personal injury or damage to property on the other’s property due to the negligence or willful misconduct of the indemnifying party or its agents, employees, contractors or invitees on the Common Lot; (xii) Buyer and Seller may each enforce the terms of the Revised CC&Rs; (xiii) the Revised CC&Rs

shall include commercially reasonable mortgagee protection provisions; (xiv) the Revised CC&Rs shall include commercially reasonable insurance requirements; (xv) the Revised CC&Rs may only be subsequently amended by mutual consent of Buyer and Seller, and following any property disposition by Buyer or Seller within its respective Area of Control, then by a majority vote of the parcel owners as set forth in the Revised CC&Rs; and (xvi) the Revised CC&Rs shall include a right of both Buyer and Seller to terminate or amend the Revised CC&Rs with respect to each party's respective Area of Control once the Subdivision Map is recorded in the Official Records and the Google Common Lot is deeded to Buyer. Notwithstanding the foregoing, following the recordation of the Subdivision Map and the transfer of fee title to the Google Common Lot to Buyer, Buyer and Seller may mutually determine that the Revised CC&Rs are no longer necessary or desirable, in which case Buyer and Seller shall agree that a substitute document, such as a reciprocal easement agreement, would be sufficient to address utility, access, or other mutual rights and obligations as between the Seller Common Lot and the Google Common Lot. In addition to the Revised CC&Rs, during the Property Approval Period, Buyer and Seller shall negotiate in good faith a form of reduced conditions, covenants and restrictions ("**Reduced CC&Rs**") that would amend, restate and supersede in their entirety the Revised CC&Rs in the event that the Subdivision Map is not recorded in the Official Records by the Outside Second Closing Date or Final Extended Second Closing Date, as applicable, for any reason other than Seller's default under this Agreement. The parties hereby acknowledge and agree that (1) the Reduced CC&Rs would be recorded in the Official Records only if the Subdivision Map is not recorded in the Official Records by the Outside Second Closing Date or Final Extended Second Closing Date, as applicable, for any reason other than Seller's default under this Agreement, and (2) Buyer and Seller expressly agree in writing to the form of the Reduced CC&Rs during the Property Approval Period, and in no event shall the delivery of Buyer's Approval Notice be deemed to constitute Buyer's consent to the Reduced CC&Rs. In all other events, the Revised CC&Rs shall continue in full force and effect in accordance with their terms.

4. Contingencies; Conditions Precedent to Closing.

4.1 Buyer's Review.

4.1.1 Delivery of Due Diligence Materials by Seller. To the extent within the immediate possession of Seller or Seller's property manager, Seller shall make available to Buyer and Buyer's representatives at Seller's offices, at the Property or on a diligence database established by Seller (the "**Diligence Database**"), for inspection and right to copy, at Buyer's expense, any environmental studies, soils studies, plans, specifications and other similar materials relating to the physical and environmental condition of the Property ("**Reports**"). Except as otherwise expressly set forth in this Agreement, Seller makes no representations or warranties regarding the accuracy of the Reports or that the Reports are complete copies of the same. Buyer acknowledges and understands that all such materials made available by Seller are only for Buyer's convenience in making its own examination and determination prior to the Contingency Deadline as to whether it wishes to purchase the Property, and, in so doing, Buyer shall rely exclusively upon its own independent investigation and evaluation of every aspect of the Property and not on any materials supplied by Seller.

Without limiting the generality of the foregoing, Seller shall also make available, in Seller's discretion, at Seller's offices, on the Diligence Database, or at the Property for review and copying, at Buyer's expense, the following due diligence items (together with the Reports, collectively, "**Due Diligence Items**") at any time after Opening of Escrow, to the extent in the possession of Seller or Seller's property manager: (a) any plans and specifications for the Property, (b) copies of all service contracts or service agreements relating to the maintenance and operation of the Property including the service contracts set forth on Exhibit "J" hereto (but expressly excluding any contracts Seller determines are "master contracts" affecting other properties in addition to the Property and which will not be assigned to Buyer at Closing) (collectively, the "**Contracts**"); (c) property tax bills for the last two (2) fiscal tax

years and the property tax bill for the current year to the extent in the possession of Seller; and (d) any other documents described in Exhibit "M" attached hereto. Except as otherwise expressly set forth in this Agreement, Seller makes no representations regarding, and shall have no liability or responsibility with respect to, the accuracy or completeness of the information and/or materials included in the Due Diligence Items. Seller acknowledges Buyer may desire to discuss or otherwise inquire about matters related to the Property with various governmental entities and utilities and the other Due Diligence Items with other third parties. In this regard, Buyer is permitted to contact all necessary governmental entities, utilities and third parties, and discuss with such parties the Due Diligence Items; provided, however, that (i): Seller is first given written (which may be electronic) notice or telephonic notice and a reasonable opportunity to be present at such contact or discussions at a time and location reasonably convenient to Seller, and (ii) Buyer's communication with governmental entities shall be limited to the Due Diligence Items and any Buyer communication with governmental entities regarding the processing of Subdivision Map shall be subject to the provisions of Section 3.2.3(c) above.

Between the Effective Date and the Contingency Deadline (the "**Property Approval Period**"), Buyer shall have the right to review and investigate the Due Diligence Items, the physical and environmental condition of the Property, the character, quality, value and general utility of the Property, the zoning, land use, environmental and building requirements and restrictions applicable to the Property, the state of title to the Property, and any other factors or matters relevant to Buyer's decision to purchase the Property. Buyer, in Buyer's sole and absolute discretion, may determine whether or not the Property is acceptable to Buyer within the Property Approval Period. Buyer shall provide Seller with at least one (1) business day's prior written notice of its desire to enter upon the Real Property for inspection and/or testing and any such inspections or testing shall be conducted at a time and manner reasonably approved by Seller and to minimize disruption or interference with any tenants. Prior to conducting any inspection or testing, Buyer or its testing consultants, as applicable, shall deliver to Seller a certificate of insurance naming Seller as additional insured (on a primary, non-contributing basis) evidencing commercial general liability and property damage insurance with limits of not less than Two Million Dollars (\$2,000,000) in the aggregate for liability coverage and not less than One Million Dollars (\$1,000,000) in the aggregate for property damage. Notwithstanding the foregoing, Buyer shall not be permitted to undertake any air sampling or any intrusive or destructive testing of the Property, including a "Phase II" environmental assessment (collectively, the "**Intrusive Tests**"), without in each instance first (i) providing Seller with a detailed work plan identifying the applicable consultant and the type and specific locations of all proposed testing, and (ii) obtaining Seller's prior written consent thereto, which consent Seller may give or withhold in Seller's sole and absolute discretion (provided that such consent shall not be unreasonably withheld if the results of the Phase I Report, a copy of which Phase I Report shall have been delivered to Seller, recommends further testing). Seller, and its representatives, agents, and/or contractors shall have the right to be present during any entry on the Real Property by Buyer or its representatives or consultants or any such Intrusive Test. If Seller fails to advise Buyer of its disapproval of any proposed Intrusive Tests within such two (2) business day period, such failure shall be deemed Seller's disapproval thereof. All work and activities conducted on the Real Property by Buyer or its representatives, vendors or consultants pursuant to this Section 4.1.1 shall be conducted in accordance with applicable law. Buyer hereby indemnifies and holds Seller and the Seller Group (as defined below) harmless from any and all costs, loss, damages or expenses of any kind or nature arising out of or resulting from any entry and/or activities upon the Property by Buyer and/or Buyer's representatives, vendors and consultants; provided, however, such indemnification obligation shall not be applicable to Buyer's mere discovery of any adverse physical condition at the Property, except to the extent Buyer or its representatives, vendors or consultants aggravate such condition following the initial discovery of the same. Buyer's indemnification obligations under this Section 4.1.1 shall survive each Closing or any termination of this Agreement.

4.1.2 Termination. If Buyer either (a) delivers a notice of termination to Seller and Escrow Holder prior to the Contingency Deadline, or (b) fails to deliver written notice ("**Buyer's**

Approval Notice") to Seller and Escrow Holder prior to the Contingency Deadline of Buyer's approval of the Property, Buyer shall be deemed to have disapproved the Property and in such event, this Agreement shall terminate, the Deposit (less the Independent Consideration) will be returned to Buyer and, except for Buyer's indemnity and Buyer's and Seller's confidentiality obligations under this Agreement and any other obligations which expressly survive termination of this Agreement, the parties shall have no further rights or obligations to one another under this Agreement.

4.1.3 **Due Diligence Materials.** In the event Buyer does not purchase the Property for any reason, within five (5) days after the date this Agreement is terminated Buyer shall return to Seller all documents, information and other materials supplied by Seller to Buyer or destroy any such materials in its possession (except any original copies of such documents, which Buyer shall not destroy but shall instead be required to physically return to Seller), except to the extent that (i) electronic records and files are retained pursuant to automated electronic archiving, back-up or internal disaster recovery procedures or which are difficult to extract and (ii) back-up copies of such information are retained pursuant to Buyer's document retention policies consistently applied or any regulatory or investigatory requirements of any governmental or regulatory authority, and, at Seller's written request, without warranty or representation of any kind, any final, non-proprietary inspection reports, studies, surveys, and other reports and/or test results relating to the physical and environmental condition of the Property which were prepared by consultants retained by Buyer in contemplation of this Agreement, excluding any drafts, attorney-client privileged communications, or internally generated work product.

Title and Survey

4.2.1 Buyer shall obtain from the Title Company a preliminary title report for the Property (the "**PTR**") and copies of all underlying title documents described in the PTR. Buyer may obtain, at Buyer's sole cost and expense, a land title survey (certified to include Seller) of the Property prepared by a licensed surveyor (the "**Survey**"). Seller shall also deliver to Buyer any Survey that has been performed within the last twelve (12) months. Buyer shall deliver a copy of any Survey to Seller and Title Company within three (3) business days after Buyer's receipt thereof. Buyer shall have twenty-one (21) days after receipt of the PTR (but in any event not later than nine (9) business days prior to the Contingency Deadline) (the "**Interim Date**") to provide written notice (the "**Objection Notice**") to Seller of any matters shown by the PTR and/or the Survey which are not satisfactory to Buyer; provided, however, in the event that legal descriptions, assessors numbers, or essential title information is not available for one or more of the parcels comprising the Unimproved Land by the date that is ten (10) business days prior to the Interim Date, the Interim Date shall automatically be extended on a day for day basis until such date as Buyer receives such information. If Seller and Escrow Holder have not received the Objection Notice from Buyer by the Interim Date, that shall be deemed Buyer's unconditional approval of the condition of title to the Property and the Survey, subject to Section 4.2.4 below. For the avoidance of doubt, in the event that Buyer fails to obtain the Survey, Buyer shall not be entitled to disapprove or object to any survey matters shown on any existing survey delivered by Seller in the Objection Notice or otherwise, and such survey matters shall be deemed approved by Buyer if Buyer does not terminate this Agreement prior to the Contingency Deadline pursuant to Section 4.1.2 above. Except as provided in this Section 4.2, Seller shall have until the date which is two (2) business days prior to the Outside First Closing Date to make such arrangements or take such steps as the parties shall mutually agree to satisfy Buyer's objection(s) set forth in the Objection Notice; provided, however, that, except with respect to liens secured by deeds of trust securing loans made to Seller, mechanics' liens relating to work authorized and contracted by Seller, judgment liens against Seller, and delinquent taxes (herein "**Monetary Liens**", which Seller agrees to have removed on or before the First Closing Date), Seller shall have no obligation whatsoever to expend or agree to expend any funds, to undertake or agree to undertake any obligations or otherwise to cure or agree to cure any of Buyer's objections in the Objection Notice. Within two (2) business days of receipt of the Objection Notice, Seller may, in its sole discretion, deliver

written notice to Buyer and Escrow Holder identifying which disapproved items Seller shall undertake to cure or not cure ("**Seller's Response**"). If Seller does not deliver a Seller's Response within said two (2) business day period, Seller shall be deemed to have elected to not remove or otherwise cure any exceptions disapproved by Buyer. If Seller elects, or is deemed to have elected, not to remove or otherwise cure an exception disapproved in the Objection Notice, and Buyer does not terminate this Agreement prior to the Contingency Deadline pursuant to Section 4.1.2 above, Buyer shall be deemed to have approved Seller's Response (or, if applicable, Seller's deemed election to not remove or otherwise cure any exceptions disapproved by Buyer) and irrevocably waived its objection to any title and/or survey matters which Seller has not expressly undertaken to cure in Seller's Response. Except for Monetary Liens, all matters shown in the PTR and the Survey obtained by Buyer with respect to which Buyer fails to give an Objection Notice on or before the Interim Date shall be deemed to be approved by Buyer. For the avoidance of doubt, nothing in this Section 4.2.1 shall limit or modify the parties' rights and obligations with respect to the Subdivision Map for the Common Lot as set forth in Section 3.2.3 above.

4.2.2 Notwithstanding anything to the contrary herein, Buyer may not object to any of the following title matters in the Objection Notice: (i) the preprinted standard exceptions in the PTR, (ii) non-delinquent real property taxes and special assessments, and (iii) zoning and other regulatory laws and ordinances applicable the Property (collectively, the "**Permitted Title Matters**"). Buyer hereby acknowledges and agrees that the owner's policy of title insurance that Buyer obtains from the Title Company insuring Buyer's title to the Property (the "**Title Policy**") may be subject to (a) the Permitted Title Matters, (b) any exceptions approved in writing or deemed approved by Buyer pursuant to Section 4.2.1, (c) any exceptions arising from Buyer's inspections of the Property, (d) any matters which would be disclosed by an accurate survey or physical inspection of the Property, and (e) in the case of the Second Closing Property only, any title exceptions associated with the final subdivision of the Second Closing Property which have been approved in writing by Buyer (collectively, the "**Permitted Title Encumbrances**"). Buyer also acknowledges and agrees that if the Survey that Buyer obtains and delivers to the Title Company is not an ALTA survey acceptable to the Title Company for purposes of issuing an ALTA extended coverage owner's policy of title insurance, then the Title Company would issue or be committed to issue an ALTA extended coverage owner's policy of title insurance with a general survey exception. Buyer shall pay the additional premium for extended coverage in excess of a standard CLTA policy and any endorsements requested by Buyer.

4.2.3 If Seller delivers a Seller's Response to Buyer specifying that Seller elects to cure any one or more of the title or survey matters objected to by Buyer in the Objection Notice, and Seller is unable or unwilling to make such arrangements or take such steps to address such objections that Seller has elected to satisfy in the Seller's Response to Buyer's reasonable satisfaction on or prior to the date which is two (2) business days prior to the Outside First Closing Date (the "**Cure Deadline**"), then Buyer may (as its sole and exclusive remedy) terminate this Agreement by delivering written notice thereof to Seller within two (2) days following the Cure Deadline, in which event, the Deposit (less the Independent Consideration) and any Second Closing Funds deposited with Escrow Holder will be returned to Buyer and, except for Buyer's indemnity and Buyer's and Seller's confidentiality obligations under this Agreement and any other obligations which expressly survive termination of this Agreement, the parties shall have no further rights or obligations to one another under this Agreement. If Buyer does not deliver such written notice of termination to Seller prior to the date which is two (2) days following the Cure Deadline, then the title and/or survey matters that Buyer objected to in the Objection Notice that Seller has elected to cure, and which Seller is subsequently unable or unwilling to cure, shall be deemed approved by Buyer and will be included as exceptions to the Title Policy. The foregoing shall not be applicable to Monetary Liens, which Seller is obligated to cure as a condition to either Closing for Buyer's benefit.

4.2.4 If Buyer elects not to terminate this Agreement in accordance with Section 4.2.1 above, Buyer may cause Title Company to reissue from time to time the PTR prior to the applicable Closing, including without limitation, an updated PTR that applies solely to the Second Closing Property following the recordation of the Subdivision Map with respect thereto. Buyer shall have the right to object to any new exceptions, other than (i) the Permitted Title Matters or (ii) any restrictions or conditions arising from the subdivision of the Common Lot that have been approved by Buyer pursuant to Sections 3.2.3(e) and 3.2.3(f) above, which may appear of record or be revealed by any updated PTR within three (3) business days after Buyer's receipt of such updated PTR, but in no event later than the date that is three (3) days prior to the applicable scheduled Closing Date, in which event the same procedures for response, termination and waiver set forth above in Section 4.2.1 including, without limitation, Seller's obligations with respect to Monetary Liens, shall apply to such new objections, with respect to applicable Closing and all other dates set forth for performance of the parties' obligations hereunder adjusted accordingly and, if necessary, the Closing Date shall be extended for such purposes.

Conditions Precedent to Buyer's Obligation to Close

4.3.1 First Closing. Buyer's obligation to close the acquisition of the First Closing Property pursuant to this Agreement is subject to the satisfaction or waiver of the following conditions:

(a) Seller's Performance. Seller shall have duly performed in all material respects each and every covenant of Seller hereunder with respect to the First Closing, unless the failure or failures to perform in all material respects such covenants would not, in the aggregate, have a Material Adverse Effect (as defined in Section 18.9 below), and Seller shall have delivered all of the documents required to be delivered by Seller pursuant to Section 5.1.

(b) Accuracy of Representations and Warranties. On the First Closing Date, all representations and warranties made by Seller in Section 11 shall be true and correct in all material respects as if made on and as of the First Closing Date (subject to modifications permitted under this Agreement), unless the failure or failures of all such representations and warranties to be true and correct in all material respects would not, in the aggregate, have a Material Adverse Effect.

(c) Title Policy. The irrevocable commitment of the Title Company to issue the Title Policy to Buyer, insuring Buyer's interest in the First Closing Property dated as of the First Closing Date, with liability in the amount of the First Closing Purchase Price, subject only to the Permitted Title Encumbrances applicable to the First Closing Property upon payment of its regularly scheduled premiums therefor.

(d) No Material Change. There shall be no change in the environmental condition of the First Closing Property from the condition that existed upon the expiration of the Contingency Deadline that would have a Material Adverse Effect.

(e) Subdivision of Unimproved Land. A subdivision map subdividing the Unimproved Land as described in the Summary and Definition of Basic Terms shall have been recorded in the Official Records and an assessor parcel number issued.

(f) Other Conditions. Any other condition set forth in this Agreement to Buyer's obligation to close the acquisition of the First Closing Property has been satisfied by the applicable date.

4.3.2

Second Closing. Buyer's obligation to close the acquisition of the Second Closing Property pursuant to this Agreement is subject to the satisfaction or waiver of the following conditions:

(a) Seller's Performance. Seller shall have duly performed in all material respects each and every covenant of Seller hereunder with respect to the Second Closing Property, unless the failure or failures to perform in all material respects such covenants would not, in the aggregate, have a Material Adverse Effect (as defined in Section 18.9 below), and Seller shall have delivered all of the documents required to be delivered by Seller pursuant to Section 5.1.

(b) Occurrence of First Closing. On the Second Closing Date, the First Closing shall have occurred as specified in this Agreement.

(c) Accuracy of Representations and Warranties. On the Second Closing Date, all representations and warranties made by Seller in Section 11 shall be true and correct in all material respects as if made on and as of the Second Closing Date (subject to modifications permitted under this Agreement), unless the failure or failures of all such representations and warranties to be true and correct in all material respects would not, in the aggregate, have a Material Adverse Effect.

(d) Title Policy. The irrevocable commitment of the Title Company to issue the Title Policy to Buyer, insuring Buyer's interest in the Second Closing Property dated as of the Second Closing Date, with liability in the amount of the Second Closing Purchase Price, subject only to the Permitted Title Encumbrances applicable to the Second Closing Property upon payment of its regularly scheduled premiums therefor.

(e) No Material Change. There shall be no change in the environmental condition of the Second Closing Property from the condition that existed upon the expiration of the Contingency Deadline that would have a Material Adverse Effect.

(f) Subdivision of Google Common Lot. The Subdivision Map subdividing the Google Common Lot from the Common Lot shall have been recorded in the Official Records and an assessor parcel number issued.

(g) Other Conditions. Any other condition set forth in this Agreement to Buyer's obligation to close the acquisition of the Second Closing Property has been satisfied by the applicable date.

Failure of Conditions Precedent to Buyer's Obligations

. Buyer's obligation to close on the acquisition of the Property at each Closing pursuant to this Agreement is subject to the satisfaction of the relevant conditions precedent to such Closing for Buyer's benefit set forth in Section 4.3. If Buyer timely provides a Buyer's Disapproval Notice or if Buyer terminates this Agreement by notice to Seller because of the failure of the conditions precedent set forth in Section 4.3, then (a) Escrow Holder shall return the Deposit (less the Independent Consideration) and Second Closing Funds, if any, to Buyer (plus interest accrued on the Deposit and Second Closing Funds only while held by Escrow Holder) in accordance with Buyer's written instructions within five (5) business days following Buyer's delivery of a written termination notice to Seller and Escrow Holder, (b) Seller and Buyer shall each pay one-half (1/2) of any escrow cancellation fees or charges, and (c) except for Buyer's indemnity and Buyer's and Seller's confidentiality obligations under this Agreement and any other obligations which expressly survive termination of this Agreement, the parties shall have no further rights or obligations to one another under this Agreement.

Conditions Precedent to Seller's Obligations.

4.5.1 Each Closing and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to the timely satisfaction or waiver of the following conditions:

(a) Buyer shall have duly performed in all material respects each and every covenant of Buyer hereunder and Buyer shall have delivered all of the documents required to be delivered by Buyer pursuant to Section 5.2;

(b) Buyer's representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the relevant Closing Date as if made on and as of such Closing Date. Without limitation of the foregoing, Buyer shall have timely delivered the Purchase Price pursuant to the provisions of Section 2 above; and

(c) For the Second Closing Property only, the Subdivision Map subdividing the Google Common Lot from the Common Lot shall have been recorded in the Official Records and an assessor parcel number issued.

4.5.2 In the event any of the conditions set forth in Section 4.5.1 have not been timely satisfied, Seller may elect to either (a) terminate this Agreement by delivery of written notice to Buyer and Escrow Holder (provided that the Deposit and the Second Closing Funds (if deposited with Escrow Holder) shall be refunded to Buyer, or (b) waive the applicable condition(s) and proceed to the relevant Closing. If Seller terminates this Agreement pursuant to this Section 4.5.2, then (A) Seller and Buyer shall each pay one-half (1/2) of any escrow cancellation fees or charges, and (B) except for Buyer's indemnity and Buyer's and Seller's confidentiality obligations under this Agreement and any other obligations which expressly survive termination of this Agreement, the parties shall have no further rights or obligations to one another under this Agreement.

Effect of Closing or Termination

. Each Closing shall constitute conclusive evidence that Seller and Buyer have respectively waived any conditions which are not satisfied as of the applicable Closing, and after such Closing, neither Buyer nor Seller shall have any right to terminate this Agreement or rescind the purchase and sale of the Property at such Closing by reason of the failure of any such condition to the extent applicable to such Closing, whether or not such failure was known to or discoverable prior to such Closing.

Defective Condition Extension; Termination

. The obligations of Seller under this Agreement are further subject to and contingent upon the following:

4.7.1 If Buyer requests and Seller permits, in accordance with Section 4.1.1, any air sampling or other environmental testing or investigation, or any other inspection that could materially alter the physical condition of the Property, other than a non-intrusive Phase I environmental inspection, and as a result of such testing, investigation or other inspection, Seller obtains knowledge of, or Buyer's inspection of the Property reveals, either (a) the presence of any Hazardous Substances (as defined in Section 10.1.2 of this Agreement) or the violation or potential violation of any Environmental Laws (as defined in Section 10.1.2 of this Agreement) or (b) any structural or other defect in the Improvements, whether or not in violation of any applicable law, ordinance, code, regulation or decree of any governmental authority having jurisdiction over the Property (collectively, a "**Defective Condition**"), which Seller, in its sole judgment, determines could constitute a potential liability to Seller after either Closing or should be remedied prior to the sale of the Property, Seller shall have the right upon written notice to Buyer on or before the scheduled Closing Date to extend the Outside First Closing Date only for

the period of time necessary to evaluate the possibility of remediating the Defective Condition (not to exceed sixty (60) days) and, if Seller so elects, to complete such remediation at Seller's sole cost and expense. The terms of this Section 4.7 are solely for the benefit of Seller and Buyer shall have no additional right or remedy hereunder as a result of the exercise by Seller of its rights under this Section 4.7.

5. Deliveries to Escrow Holder.

Seller's Deliveries

. Seller hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder at least one (1) business day prior to each Closing Date the following funds, instruments and documents, the delivery of each of which shall be a condition to such Closing:

5.1.1 Deed. A Grant Deed (the "**Deed**") in the form of Exhibit "B" attached hereto, duly executed and acknowledged in recordable form by Seller, conveying Seller's interest in the applicable Property to Buyer;

5.1.2 Non-Foreign Certifications. Certificates duly executed by Seller in the forms of Exhibit "C-1" and "C-2" attached hereto (the "**Tax Certificates**");

5.1.3 Assignment of Contracts and Assumption Agreement. Two (2) counterparts of the Assignment of Contracts and Assumption Agreement in the form attached hereto as Exhibit "F" ("**Assignment of Contracts**"), duly executed by Seller, pursuant to which Seller shall assign to Buyer all of Seller's right, title and interest in, under and to the Contracts;

5.1.4 Bill of Sale. Two (2) counterparts of a Bill of Sale in the form attached hereto as Exhibit "G" ("**Bill of Sale**"), duly executed by Seller, conveying Seller's right, title and interest in and to the Personal Property;

5.1.5 General Assignment. Two (2) counterparts of a General Assignment in the form of Exhibit "H" attached hereto (the "**General Assignment**"), duly executed by Seller;

5.1.6 NetApp Lease. With respect to the First Closing only, two (2) counterparts of the Lease Agreement (the "**NetApp Lease**") duly executed by Seller, pursuant to which Seller, as tenant, shall lease back from Buyer, as landlord, the portion of the Real Property known as 495 Java Drive for a term beginning on the First Closing Date and expiring on February 28, 2018. The terms of the NetApp Lease shall be mutually approve by Buyer and Seller prior to the expiration of the Property Approval Period and shall, at a minimum, provide that Seller shall pay, in addition to base rent, which shall be charged at a rate equal to \$2.85 per rentable square foot per month on a triple net basis, its pro rata portion of operating expenses and real property taxes, as such real property taxes may be adjusted as a result of the sale of the Real Property to Buyer as contemplated herein;

5.1.7 Revised CC&Rs. With respect to the First Closing only, two (2) copies of the Revised CC&Rs, approved by Buyer and duly executed and acknowledged in a recordable form by Seller, setting forth the respective rights and obligations of Buyer and Seller with respect to the Common Lot during the period prior to the recordation of the Subdivision Map and the transfer of the Google Common Lot to Buyer; and

5.1.8 Proof of Authority. Such proof of Seller's authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller, as may be reasonably required by Title Company.

Buyer's Deliveries

. Buyer hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder at least one (1) business day prior to each Outside Closing Date (unless another date is specified below) the following funds, instruments and documents, the delivery of each of which shall be a condition to Closing:

- 5.2.1 Buyer's Funds. On or prior to the First Closing Date, the balance of the Purchase Price in accordance with Section 2 above, and on or prior to the applicable Closing Date such additional funds, if any, necessary to comply with Buyer's obligations hereunder regarding prorations, credits, costs and expenses;
- 5.2.2 Assignment of Contracts. Two (2) counterparts of an Assignment of Contracts duly executed by Buyer;
- 5.2.3 Bill of Sale. Two (2) counterparts of the Bill of Sale duly executed by Buyer;
- 5.2.4 General Assignment. Two (2) counterparts of the General Assignment duly executed by Buyer;
- 5.2.5 NetApp Lease. With respect to the First Closing only, two (2) counterparts of the NetApp Lease duly executed by Buyer;
- 5.2.6 Revised CC&Rs. With respect to the First Closing only, written approval of the Revised CC&Rs submitted to Escrow Holder by Seller; and
- 5.2.7 Proof of Authority. Such proof of Buyer's authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Buyer to act for and bind Buyer, as may be reasonably required by Title Company.

Deliveries Upon Closing

. Upon each Closing, Escrow Holder shall promptly undertake all of the following:

Tax Filings

. The Title Company shall file the information return for the sale of the Property required by Section 6045 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder;

Prorations

. Prorate all matters referenced in Section 8 based upon the closing statement delivered into escrow with Escrow Holder signed by the parties;

Recording

. Cause the Revised CC&Rs (as to the First Closing), applicable Deed and any other documents which the parties hereto may mutually direct, to be recorded in the Official Records in the order mutually directed by the parties;

Buyer Funds

. Disburse from funds deposited by Buyer with Escrow Holder towards payment of all items and costs (including the First Closing Purchase Price or the Second Closing Purchase Price, as applicable) chargeable to the account of Buyer pursuant hereto in payment of such items and costs and disburse the balance of such funds, if any, to Buyer;

Documents to Seller

6.5.1 At the First Closing, deliver to Seller one (1) set of originals of the NetApp Lease, the Assignment of Contracts, the Bill of Sale and the General Assignment executed by Buyer and Seller and a conformed copy of the recorded Deed for the First Closing Property and the Revised CC&Rs;

6.5.2 At the Second Closing, deliver to Seller one (1) conformed copy of the recorded Deed, the Bill of Sale, the Assignment of Contracts and the General Assignment for the Second Closing Property.

Documents to Buyer

6.6.1 At the First Closing, deliver to Buyer one (1) set of originals of the Tax Certificates, the NetApp Lease, Assignment of Contracts, Bill of Sale and General Assignment executed by Seller, a conformed copy of the Revised CC&Rs and recorded Deed for the First Closing Property, and, when issued, the Title Policy for the First Closing Property;

6.6.2 At the Second Closing, deliver to Buyer a conformed copy of the recorded Deed, along with the Assignment of Contracts, Bill of Sale and the General Assignment for the Second Closing Property and, when issued, the Title Policy for the Second Closing Property.

Seller Funds

. Deduct all items chargeable to the account of Seller pursuant to Section 7. If, as the result of the net proration and credits pursuant to Section 8, amounts are to be charged to the account of Seller, deduct the total amount of such charges (unless Seller elects to deposit additional funds for such items in escrow with Escrow Holder); and if amounts are to be credited to the account of Seller, disburse such amounts to Seller, or in accordance with Seller's instructions, at each Closing. Disburse the First Closing Purchase Price and the Second Closing Purchase Price (as adjusted in accordance with this Agreement) to Seller, as applicable, or as otherwise directed by Seller, promptly upon each Closing in accordance with Seller's wire transfer instructions.

Costs and Expenses

. Seller shall pay (i) that portion of the Title Policy premium for standard CLTA owner's coverage (without endorsements), (ii) all documentary transfer taxes assessed by the County, and (iii) the Escrow Holder's fee. In addition, Seller shall pay outside of Escrow all legal and professional fees and costs of attorneys and other consultants and agents retained by Seller. Buyer shall pay through Escrow (x) all document recording charges and, (y) the additional Title Policy premium for ALTA extended coverage and any title endorsements requested by Buyer. Buyer shall pay outside of Escrow all costs and expenses related to the Due Diligence Investigations, all charges for the Survey or any other survey, and all legal and professional fees and costs of attorneys and other consultants and agents retained by Buyer. The cost of subdividing the Common Lot shall be as provided for elsewhere in this Agreement.

Prorations

. The following prorations between Seller and Buyer shall be made by Escrow Holder computed as of each Closing Date as indicated below, in each instance, based on either the actual number of days in the year or, if applicable, the actual number of days in the calendar month, in which each Closing occurs.

Ad Valorem Taxes

. All real estate taxes and assessments attributable to the First Closing Property and the Second Closing Property will be prorated as of the First Closing Date and the Second Closing Date, respectively. Seller shall be charged with all such taxes up to, but not including, each Closing Date. If the applicable tax rate and assessments for the applicable Property have not been

established for the tax year in which the applicable Closing occurs, the proration of real estate taxes, and assessments will be based upon the rate and assessments for the preceding year plus two percent (2%) with a post-closing reconciliation when the actual tax bills are available. Real property tax refunds and credits received after each Closing which are attributable to a fiscal tax year prior to such Closing shall belong to Seller, and those which are attributable to the fiscal tax year in which each Closing occurs shall be prorated based upon the date of such Closing.

Excise, Transfer and Sales Taxes

. Buyer will be responsible for the payment of all excise, transfer and use taxes imposed with respect to the conveyance of any personal property contemplated by this Agreement; provided that the parties agree that no value has been attributed to any personal property included in the sale.

Operating Expenses

. With respect to the First Closing, all utility service charges for electricity, heat and air conditioning service, other utilities, elevator maintenance, common area maintenance, taxes other than real estate taxes such as rental taxes, other expenses incurred in operating the First Closing Property only that Seller customarily pays shall be prorated on an accrual basis so long as Seller has delivered written notice to Buyer at least five (5) business days prior to the Contingency Deadline of any such charges it intends to prorate. Seller shall pay all such expenses that accrue in connection with the First Closing Property prior to the First Closing Date, and Buyer shall pay all such expenses accruing on and after the First Closing Date with respect to the First Closing Property. All such expenses as to the Second Closing Property shall be paid by Buyer and Seller in accordance with the Revised CC&Rs. Seller and Buyer shall obtain billings and meter readings as of the First Closing Date (or shall make reasonable estimates of meter readings if same-day readings are not available) to aid in such prorations (if such utilities cannot be changed to Buyer's name on the First Closing Date). Insurance or any other operating expense refunds and credits received after the First Closing which are attributable to a time period prior to the First Closing shall belong to Seller, and those which are attributable to a time period in which the Closing occurs shall be prorated based upon the date of the First Closing.

Contracts

. Amounts payable under the Contracts being assigned to Buyer shall be prorated on an accrual basis. Seller shall pay all amounts due thereunder which accrue prior to the applicable Closing Date and Buyer shall pay all amounts accruing on such Closing Date and thereafter.

Prorations at Closing; Final Adjustment

. At least two (2) business days prior to each Closing Date, the parties shall agree upon all of the prorations to be made and submit a statement to Escrow Holder setting forth the same. In the event that any prorations, apportionments or computations made under Section 8 through Section 8.5 shall require final adjustment, then the parties shall make the appropriate adjustments promptly when accurate information becomes available and either party hereto shall be entitled to an adjustment to correct the same, but in no event shall such final adjustment occur later than 120 days after the applicable Closing Date. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto. The provisions of this Section 8.5 shall survive each Closing.

Covenants of Seller

. Seller hereby covenants with Buyer, as follows:

Contracts

9.1.1 Existing Contracts. If Buyer shall elect, by giving notice thereof to Seller not later than five (5) days prior the First Closing Date or the Second Closing Date, as applicable, not to take the Property subject to any one or more of the Contracts listed in Exhibit "J" attached hereto, then Seller shall, to the extent permitted under any such Contract, give prompt notice of termination thereof to the other party or parties thereto in order to terminate the same either (a) at or prior to the applicable Closing Date or (b) the earliest date permitted under any such Contract, whichever shall be later.

9.1.2

New Contracts and Leases.

Between the Effective Date and the date which is three (3) business days prior to the expiration of the Property Approval Period, (i) Seller will keep Buyer informed of any new Contracts that are entered into by Seller or any amendments or modifications to the existing Contracts, which new Contracts or modifications will survive Closing or otherwise affect the use, operation or enjoyment of the Property after Closing (collectively, "**New Contracts**"), and (ii) Buyer shall have no right to object or consent to the terms or conditions of any such New Contracts or amendments or extensions thereto. Without limiting the generality of the foregoing, Seller will provide Buyer with copies of all New Contracts. Subsequent to the date which is three (3) business days prior to the expiration of the Property Approval Period, and continuing until each First Closing or Second Closing (provided the Agreement has not been terminated), Seller will not enter into any New Contracts associated with the First Closing Property or Second Closing Property, as applicable, without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion, and which consent will be deemed to have been denied by Buyer if Buyer does not notify Seller in writing to the contrary within three (3) business days after Seller provides written notice to Buyer of such New Contract; provided, however, that Seller shall be entitled to enter into any New Contracts at any time, without Buyer's prior written consent, if such New Contracts are terminable within thirty (30) days at no cost to Buyer and are terminated by Seller prior to the applicable Closing Date. From and after the Effective Date, Seller shall not enter into any leases, licenses or other similar occupancy agreements applicable to the Real Property, or any portion thereof, without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion.

Operation in the Ordinary Course

. Subject to Section 9.1 above, from the Effective Date until each Closing, Seller shall (i) operate and manage the Property in the ordinary course and consistent with Seller's past practices (except for the subdivision of the Common Lot pursuant to the terms of this Agreement), and (ii) perform when due, and otherwise comply with, all of Seller's material obligations and duties under the Contracts. None of the Personal Property shall be removed from the Real Property, unless replaced by unencumbered personal property of equal or greater utility and value. All Personal Property and Intangible Personal Property shall be conveyed to Buyer by Seller at Closing free from any liens, encumbrances or security interests of any kind or nature other than all such matters that the Title Policy may be subject to as set forth in Section 4.2.2, including, without limitation, the Permitted Title Matters.

AS-IS Sale and Purchase

. Buyer acknowledges, by its initials as set forth below, that the provisions of this Section 10 have been required by Seller as a material inducement to enter into the contemplated transactions, and the intent and effect of such provisions have been explained to Buyer by Buyer's counsel and have been understood and agreed to by Buyer.

Buyer's Acknowledgment

. As a material inducement to Seller to enter into this Agreement and to convey the Property to Buyer, Buyer hereby acknowledges and agrees that:

10.1.1

AS-IS.

Except as otherwise expressly set forth in this Agreement and in the documents delivered by Seller to Buyer at the applicable Closing, and subject to Seller's representation and warranties expressly set forth in this Agreement, Buyer is purchasing the Property in its existing condition, "AS-IS, WHERE-IS, WITH ALL FAULTS," and upon the Contingency Deadline has made or has waived all inspections and investigations of the Property and its vicinity which Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property.

/s/ DR

Buyer's Initials

10.1.2

No Representations. Other than the express representations and warranties of Seller contained in this Agreement and in the documents delivered by Seller to Buyer at the Closing, neither Seller, nor any person or entity acting by or on behalf of Seller, nor any direct or indirect partner, officer, director, member, manager, employee, agent, affiliate, successor or assign of Seller (collectively, the "**Seller Group**") has made any representation, warranty, inducement, promise, agreement, assurance or statement, oral or written, of any kind to Buyer upon which Buyer is relying, or in connection with which Buyer has made or will make any decisions concerning the Property or its vicinity including its use, condition, value, entitlements, condemnation actions (current or prospective), compliance with Governmental Regulations (defined below), existence or absence of Hazardous Substances, or the permissibility, feasibility, or convertibility of all or any portion of the Property for any particular use or purpose, including its present or future prospects for sale, lease, development, occupancy or suitability as security for financing. As used herein, the term "**Governmental Regulations**" means any laws (including Environmental Laws), ordinances, rules, requirements, resolutions, policy statements and regulations (including those relating to land use, subdivision, zoning, Hazardous Substances, occupational health and safety, handicapped access, water, earthquake hazard reduction, and building and fire codes) of any governmental or quasi-governmental body or agency claiming jurisdiction over the Property. As used in this Agreement, the following definitions shall apply: "**Environmental Laws**" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, and all federal and state court decisions, consent decrees and orders interpreting or enforcing any of the foregoing, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., and the Clean Water Act, 33 U.S.C. § 1251, et seq. "**Hazardous Substances**" shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws, and includes asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum-based products and petroleum additives and derived substances, lead-based paint, mold, fungi or bacterial matter, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

/s/ DR

Buyer's Initials

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10.1.3 No Implied Warranties. Excluding any express representation or warranty set forth herein and in the documents delivered by Seller to Buyer at each Closing, Seller hereby specifically disclaims: (a) all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Seller's obligations hereunder including all implied warranties of merchantability, habitability and/or fitness for a particular purpose; and (b) any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of the Property or other items conveyed hereunder, including the water, soil, and geology, the suitability thereof and of the Property or other items conveyed hereunder for any and all activities and uses which Buyer may elect to conduct thereon, the existence of any environmental hazards or conditions thereon (including to the presence of asbestos or other Hazardous Substances) or compliance with applicable Environmental Laws; (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, current or potential eminent domain proceedings, condition or otherwise; and (iii) the compliance of the Property or other items conveyed hereunder or its operation with any Governmental Regulations.

/s/ DR
Buyer's Initials

10.1.4 Information Supplied by Seller. Buyer specifically acknowledges and agrees that, except as expressly contained in this Agreement and in the documents delivered by Seller to Buyer at each Closing, Seller has made no representation or warranty of any nature concerning the accuracy or completeness of any documents delivered or made available for inspection by Seller to Buyer, including the Due Diligence Items and that Buyer has undertaken such inspections of the Property as Buyer deems necessary and appropriate and that Buyer is relying solely upon such investigations and not on any of the Due Diligence Items or any other information provided to Buyer by or on behalf of Seller. As to the Due Diligence Items, Buyer specifically acknowledges that they have been prepared by third parties with whom Buyer has no privity and Buyer acknowledges and agrees that no warranty or representation, express or implied, has been made, nor shall any be deemed to have been made, to Buyer with respect to any and all Due Diligence Items, either by the Seller Group or by any third parties that prepared the same.

/s/ DR
Buyer's Initials

10.1.5 Release. As of each Closing, Buyer and the Buyer Parties (as defined below) hereby (i) assume the risk of adverse matters, including adverse physical conditions, defects, construction defects, environmental, health, safety and welfare matters which may not have been revealed by Buyer's investigation and evaluation of the First Closing Property or Second Closing Property, as applicable, and (ii) fully and irrevocably release the Seller Group from any and all claims that Buyer and/or the Buyer Parties may have or thereafter acquire against the Seller Group for any cost, loss, liability, damage, expense, demand, action or cause of action ("**Claims**") arising from or related to any matter of any nature relating to, and the condition of, such Property, including any Claims arising in connection with any latent or patent construction defects, errors or omissions, compliance with law matters, Hazardous Substances and other environmental matters within, under or upon, or in the vicinity of the relevant Property, any statutory or common law right Buyer may have to receive disclosures from Seller, including any disclosures as to the Property's location within areas designated as subject to flooding, fire, seismic or earthquake risks by any federal, state or local entity, the need to obtain flood insurance, the certification of water heater bracing and/or the advisability of obtaining title insurance, or any other condition or circumstance affecting the relevant Property, its financial viability, use or operation, or any portion thereof. This release includes Claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist in its favor which, if known by Buyer, would materially

affect Buyer's release of the Seller Group. In connection with the general release set forth in this Section 10.1.5, Buyer specifically waives the provisions of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

/s/ DR
Buyer's Initials

Notwithstanding anything to the contrary set forth in this Section 10.1.5, the foregoing release is not intended to and does not cover (i) any claims arising from a breach of Seller's representations or warranties expressly set forth in this Agreement or in the documents delivered by Seller to Buyer at each Closing (ii) any other breach by Seller of an express obligation of Seller under this Agreement which by its terms survives Closing, or (iii) Seller's fraud; or (iv) any liability of Seller under the NetApp Lease (herein collectively the "**Excluded Claims**").

10.1.6

California Specific Provisions.

(a) Section 25359.7 of the California Health and Safety Code requires owners of nonresidential property who know or have reasonable cause to believe that a release of Hazardous Substances have come to be located on or beneath real property to provide written notice of that condition to a buyer of said real property. There is a possibility that a release of Hazardous Substances may have come to be located on or beneath the Property. By Buyer's execution of this Agreement, Buyer (a) acknowledges Buyer's receipt of the foregoing notice given pursuant to Section 25359.7 of the California Health and Safety Code and that it is aware of the benefits conferred to Buyer by Section 1542 of the California Civil Code and the risks it assumes by any waiver of Buyer's benefits thereunder and (b) as of the Closing Date and after receiving advice of Buyer's legal counsel, waives any and all rights or remedies whatsoever, express, implied, statutory or by operation of law, Buyer may have against Seller, including remedies for actual damages under Section 25359.7 of the California Health and Safety Code, arising out of or resulting from any unknown, unforeseen or unanticipated presence or releases of Hazardous Substances or other hazardous materials from, on or about the Property.

(b) Buyer and Seller acknowledge that Seller is required to disclose if any of the Property lies within the following natural hazardous areas or zones: (i) a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency (Cal. Gov. Code § 8589.3); (ii) an area of potential flooding shown on a dam failure inundation map designated pursuant to California Government Code Section 8589.5 (Cal. Gov. Code § 8589.4); (iii) a very high fire hazard severity zone designated pursuant to California Government Code Section 51178 or 51179 (in which event the owner maintenance obligations of California Government Code Section 51182 would apply) (Cal. Gov. Code § 51183.5); (iv) a wildland area that may contain substantial forest fire risks and hazards designated pursuant to California Public Resources Code Section 4125 (in which event (x) the Property owner would be subject to maintenance requirements of California Public Resources Code Section 4291 and (y) it would not be the State's responsibility to provide fire protection services to any building or structure located within the wildland area except, if applicable, pursuant to California Public Resources Code Section 4129 or pursuant to a cooperative agreement with a local agency for those

purposes pursuant to California Public Resources Code Section 4142) (Cal. Pub. Resources Code § 4136); (v) an earthquake fault zone (Cal. Pub. Resources Code § 2621.9); or (vi) a seismic hazard zone (and, if applicable, whether a landslide zone or liquefaction zone) (Cal. Pub. Resources Code § 2694). As contemplated in California Civil Code Section 1103.2(b), if an earthquake fault zone, seismic hazard zone, very high fire hazard severity zone or wildland fire area map or accompanying information is not of sufficient accuracy of scale for the Natural Hazard Expert to determine if the Property is within the respective natural hazard zone, then for purposes of the disclosure the Property shall be considered to lie within such natural hazard zone. Buyer acknowledges and agrees that the written report prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges Seller for errors or omission not within their personal knowledge and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above. In no event shall Seller have any responsibility for matters not actually known to Seller. THESE HAZARDS MAY LIMIT THE BUYER'S ABILITY TO DEVELOP THE PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ON ESTIMATES WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

10.1.7 Survival. The provisions of this Section 10.1 shall survive each Closing.

Seller's Representations and Warranties

. Subject at all times to (i) those matters, if any, disclosed in the Due Diligence Items or any other information delivered to Buyer, and (ii) all applicable provisions of this Agreement, Seller represents and warrants to Buyer as of the Effective Date as follows (provided that, each of the representations and warranties set forth herein is qualified to the extent of any applicable information or exception that is otherwise disclosed in another representation or warranty of Seller herein):

Formation; Authority

. Seller is duly formed, validly existing, and in good standing under laws of the state of its formation. Seller has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Seller have been duly and validly authorized by all necessary action on the part of Seller and all required consents and approvals have been duly obtained. All requisite action has been taken by Seller in connection with the entering into of this Agreement and the instruments referenced herein and the consummation of the transactions contemplated hereby. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

Leases

. As of the Effective Date, Seller shall not be a party to any leases, licenses or other similar occupancy agreements with respect to the leasing or occupancy of the Real Property.

Litigation

. There is no litigation, arbitration or other legal or administrative suit, action, proceeding or investigation of any kind pending or, to Seller's knowledge, threatened in writing against Seller relating to ownership or operation of the Real Property or any part thereof which is not covered by insurance, including any condemnation action relating to the Real Property or any part thereof.

Foreign Person

. Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder.

No Bankruptcy

. No petition in bankruptcy (voluntary or otherwise), attachment, execution proceeding, assignment for the benefit of creditors, or petition seeking reorganization or insolvency, arrangement or other action or proceeding under federal or state bankruptcy law is pending against or contemplated (or, to Seller's actual knowledge, threatened) by or against Seller.

Contracts

. Attached hereto as Exhibit "J" is a true, correct and complete list of all management, service, supply, repair and maintenance agreements, equipment leases and all other contracts and agreements with respect to or affecting the Property as of the Effective Date and at each Closing the contract list shall not include those Contracts being terminated pursuant to the provisions of this Agreement. True, correct and complete copies of all Contracts shall be provided to Buyer. Seller has no actual knowledge of and has neither given nor received any written notice of default with respect to any of the Contracts.

Hazardous Substances

. Except as disclosed in the Due Diligence Items or any other information delivered to Buyer, Seller has not received written notice from any governmental entity alleging that Seller or the Real Property is in violation of any Environmental Laws.

Compliance With Laws

. Except as set forth in Exhibit "D" attached hereto, Seller has not received written notice from any governmental entity of any violations of any laws affecting or applicable to any or all of the Property.

Employees

. There are no employees of Seller employed in connection with the use, management, maintenance or operation of the Property whose employment will continue after each Closing Date, except as is necessary to fulfill Seller's obligations as tenant pursuant to the NetApp Lease.

Prohibited Person; Patriot Act Compliance

. Neither Seller, nor any person controlling or controlled by Seller is a country, individual or entity named on a Government List, and the monies obtained in connection with this Agreement will not be used for any activities that contravene any applicable Anti-Money Laundering Laws (as hereinafter defined). Seller is not a person described by Section 1 of the Executive Order (No. 13,224) Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49,079 (September 24, 2001) and Seller has not engaged in any dealings or transactions or is otherwise associated with any such person. Neither Seller, nor any person controlling or controlled by Seller (A) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the USA PATRIOT Act or any other United States law or regulation governing money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes (collectively, "**Anti-Money Laundering Laws**"); (B) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (C) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws.

No Additional Consents

. No approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Seller to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Seller to consummate the transaction contemplated hereby.

Subsequent Changes

. Upon Buyer gaining actual knowledge (as opposed to constructive or imputed knowledge) of any fact which (a) would materially and adversely change the representations or warranties contained herein and (b) would constitute a breach thereof by Seller (which material and adverse change in representations or warranties and breach thereof by Seller have a Material

Adverse Effect), Buyer, as its sole remedy, shall have the option of either (i) waiving the breach of warranty or change, and proceeding with Closing, or (ii) subject to the provisions in Section 11.14 below, terminating this Agreement in accordance with Section 4.4 above and this Section 11.12. Any such election shall be made by Buyer not later than five (5) business days from Buyer obtaining actual knowledge of such fact, provided that any election by Buyer to terminate shall not be effective unless Seller fails to cure such changed representation or warranty within thirty (30) days following the delivery of Buyer's termination notice. If Seller elects to cure any changed representation or warranty following a termination of this Agreement by Buyer, and the end of such 30-day cure period extends beyond either Outside Closing Date, then such Outside Closing Date shall be extended by two (2) business days following the end of such 30-day cure period. If Buyer does not so elect to terminate this Agreement pursuant to Section 4.4 and this Section 11.12, then Buyer shall be deemed to have elected to waive its right to terminate this Agreement pursuant to Section 4.4 and this Section 11.12 in connection with the applicable breach only, elected to acquire the applicable Property on the terms set forth in this Agreement, and waived all remedies at law or in equity with respect to any representations or warranties resulting from the facts or circumstances that have actually become known to Buyer. In no event shall Seller be liable to Buyer for, or be deemed to be in default hereunder by reason of, any breach of Seller's representation or warranty which results from any change that (A) is related to either the First Closing Property or the Second Closing Property and occurs between the Effective Date and the First Closing Date or Second Closing Date, respectively and (B) (1) is permitted under the terms of this Agreement, (2) is beyond the reasonable control of Seller or (3) results from any affirmative acts of or breach of this Agreement by Buyer; provided, however, any breach of such Seller's representation or warranty in any material respect (other than those that are permitted under the terms of this Agreement) shall, if such breach has a Material Adverse Effect and does not result from any affirmative acts of or breach of this Agreement by Buyer, constitute the non-fulfillment of the condition set forth in Section 4.3 and Buyer may elect to terminate this Agreement pursuant to Section 4.4 and this Section 11.12.

Seller's Knowledge

. Whenever phrases such as "**to Seller's knowledge**" or "**Seller has no knowledge**" or similar phrases are used in the foregoing representations and warranties, they will be deemed to refer exclusively to matters within the current actual (as opposed to constructive) knowledge of the Seller's Representative, which is the individual with Seller with the most knowledge of the Property. No duty of inquiry or investigation on the part of Seller or Seller's Representative will be required or implied by the making of any representation or warranty which is so limited to matters within Seller's actual knowledge, and in no event shall Seller's Representative have any personal liability therefor.

Survival

. All of the covenants, representations and warranties of Seller set forth in this Agreement with respect to the First Closing and the Second Closing will survive each Closing for a period of twelve (12) months after the First Closing Date or Second Closing Date, as applicable. No claim for a breach of any covenant, representation or warranty of Seller will be actionable or payable if (i) Buyer does not notify Seller in writing of such breach within said twelve (12) months and commence a "legal action" thereon within fourteen (14) months after the applicable Closing Date, or (ii) the breach in question results from or is based on a condition, state of facts or other matter which was actually known to Buyer prior to Closing.

Buyer's Representations and Warranties

. In addition to any express agreements of Buyer contained herein, the following constitute representations and warranties of Buyer:

Formation; Authority

. Buyer is duly formed, validly existing and in good standing under the laws of the state of its formation. Buyer has full power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby. All requisite action has been taken by Buyer in connection with the entering into of this

Agreement and the instruments referenced herein, and the consummation of the transactions contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

Prohibited Person; Patriot Act Compliance

. Neither Buyer, nor any person controlling or controlled by Buyer, is a country, individual or entity named on a Government List, and the monies obtained in connection with this Agreement will not be used for any activities that contravene any applicable Anti-Money Laundering Laws (as hereinafter defined). Buyer is not a person described by Section 1 of the Executive Order (No. 13,224) Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49,079 (September 24, 2001) and Buyer has not engaged in any dealings or transactions or is otherwise associated with any such person. Neither Buyer, nor any person controlling or controlled by Buyer (A) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (B) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (C) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws.

13. Casualty and Condemnation.

Casualty

. In the event that the First Closing Property, or any portion thereof, prior to the First Closing Date, or the Second Closing Property, or any portion thereof, prior to the Second Closing Date, is destroyed or materially damaged, Buyer shall accept the First Closing Property or the Second Closing Property, as the case may be, in its then condition and proceed with the consummation of the transaction contemplated by this Agreement; provided, however: (i) there shall be an abatement or reduction in the First Closing Purchase Price or the Second Closing Price, as applicable, in the amount of the deductible for the applicable insurance coverage, and (ii) Seller shall assign to Buyer any insurance proceeds payable by reason of such damage or destruction, other than rental abatement/rent loss insurance attributable to the period of time prior to the First Closing and the value of any of Seller's tenant improvements and personal property, which shall be retained by or paid to Seller. Seller shall not compromise, settle or adjust any claims to such proceeds without Buyer's prior written consent.

Material Condemnation

13.2.1 First Closing Property. In the event that prior to the First Closing Date, all or any material portion of the First Closing Property is subject to a taking by a public or governmental authority, Buyer shall have the right to: (A) terminate the entirety of this Agreement, in which event the Deposit (less the Independent Consideration), the Seller Funds (to the extent deposited with Escrow Holder) and all interest accrued thereon shall be immediately returned to Buyer, any other money or documents in escrow with Escrow Holder shall be returned to the party depositing the same or (B) accept the First Closing Property in its then-existing condition, without a reduction in the First Closing Purchase Price, and to receive an assignment of all of the Seller's rights to any condemnation award or proceeds payable by reason of such taking. If Buyer elects to proceed under clause (B) above, Seller shall not compromise, settle or adjust any claims to such award without Buyer's written consent.

13.2.2 Second Closing Property. In the event that prior to the Second Closing Date, all or a material portion of the Second Closing Property is subject to a taking by a public or governmental authority, Buyer shall have the right to: (A) terminate this Agreement with respect to the Second Closing Property, in which event any Seller Funds (to the extent deposited with Escrow Holder) and all interest accrued thereon shall be immediately returned to Buyer and any other money or

documents in escrow with Escrow Holder shall be returned to the party depositing the same or (B) accept the Second Closing Property in its then-existing condition, without a reduction in the Second Closing Purchase Price, and to receive an assignment of all of the Seller's rights to any condemnation award or proceeds payable by reason of such taking. If Buyer elects to proceed under clause (B) above, Seller shall not compromise, settle or adjust any claims to such award without Buyer's written consent.

13.2.3 Termination. Buyer shall deliver any notice of termination to Seller pursuant to Section 13.2.1 and Section 13.2.2 above in writing by no later than the earlier of (i) within ten (10) days after receiving written notice of such taking or (ii) two (2) business days prior to the Outside First Closing Date or the Outside Second Closing Date (as applicable).

Non-Material Condemnation

. In the event that prior to the First Closing Date any non-material portion of the First Closing Property, or that prior to the Second Closing Date any non-material portion of the Second Closing Property, is subject to a taking by any public or governmental authority, Buyer shall accept the First Closing Property or Second Closing Property, as applicable, in its then condition and proceed with the consummation of the transaction contemplated by this Agreement, in which event Buyer shall be entitled to an assignment of all of Seller's rights to any award or proceeds payable in connection with such taking. In the event of any such non-material taking, Seller shall not compromise, settle or adjust any claims to such award without Buyer's prior written consent.

Materiality Standard

. For purposes of this Section 13, a taking of a portion of the Property shall be deemed to involve a material portion thereof if the amount of the condemnation award, or settlement in lieu of condemnation, with respect to the taking either (a) exceeds one percent (1%) of the Purchase Price, or in the absence of a condemnation award (or settlement in lieu of condemnation), the value of the Property subject to the taking is estimated by a certified appraiser to exceed one percent (1%) of the Purchase Price, or (b) results in a material impairment to Buyer's access to the Property or the availability of parking for the Property, or (c) materially impairs the development potential of the Unimproved Land for Buyer's intended development.

Notice of Casualty and Condemnation

. Seller agrees to give Buyer prompt written notice of any taking of, proposed taking of, damage to or destruction of the Real Property or any portion thereof.

Notices

. Except as otherwise provided herein, all notices, demands and communications sent hereunder shall be in writing, and shall be delivered (a) personally, (b) by United States registered or certified mail, postage prepaid, (c) by Federal Express or other reputable courier service regularly providing evidence of delivery (with charges paid by the party sending the notice), or (d) by e-mail (including a PDF or similar attachment to an e-mail), and shall be deemed received upon the date of receipt thereof if received prior to 5:00 p.m. (Pacific time) of the recipient's business day, and if not so received, shall be deemed received upon the following business day. Any such notice to a party shall be addressed at the address set forth below (subject to the right of a party to designate a different address for itself by notice similarly given):

To Seller: NetApp, Inc.,
495 East Java Drive
Sunnyvale, California 94089
Attn: Mr. Jeff Bergmann
Email: jeff.bergmann@netapp.com

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with a copy to: Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111
Attn: Doug Van Gessel
Email: dvangessel@sheppardmullin.com

To Buyer: Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: VP, Real Estate and Work Place Services
Email: jbechtel@google.com

and

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: Legal Department/RE Matters
Email: sallie@google.com

with a copy to:

SSL Law Firm LLP
575 Market Street, Suite 2700
San Francisco, California 94105
Attn: Sally Shekou, Esq. and Diane Hanna, Esq.
Email: sally@sslfirm.com
Email: diane@sslfirm.com

To Escrow Holder: At Escrow Holder's Address set forth in the Summary of Basic Terms.

Notice of change of address shall be given by written notice in the manner detailed in this [Section 14](#).

Broker Commissions

. Seller represents and warrants to Buyer that no broker or finder has been engaged by Seller in connection with any of the transactions contemplated by this Agreement, except that for Newmark Cornish & Carey, who shall be paid by Seller in accordance with Seller's separate agreement with Newmark Cornish & Carey. Buyer represents and warrants to Seller that no broker or finder has been engaged by Buyer in connection with any of the transactions contemplated by this Agreement, except that for CBRE, who shall be paid by Buyer in accordance with Buyer's separate agreement with CBRE. In the event of any claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then as a covenant which shall survive the termination of this Agreement or each Closing, Buyer shall indemnify, save harmless and defend Seller from and against such claims if they shall be based upon any statement or representation or agreement by Buyer, and Seller shall indemnify, save harmless and defend Buyer if such claims shall be based upon any statement, representation or agreement made by Seller.

16. Default.

Default by Seller

. In the event that Seller fails to perform any of the material covenants or agreements contained herein which are to be performed by Seller, Buyer may, at its option and as its exclusive remedy, either (i) terminate this Agreement by giving written notice of termination to Seller whereupon Escrow Holder will return to Buyer the Deposit (less the Independent Consideration)

and the Second Closing Funds (to the extent deposited with Escrow Holder), Seller shall reimburse Buyer for Buyer's Due Diligence Expenses, not to exceed Two Hundred Thousand Dollars (\$200,000.00), and both Buyer and Seller will be relieved of any further obligations or liabilities hereunder, except for those obligations which expressly survive any termination of this Agreement, or (ii) Buyer may seek specific performance of this Agreement; provided, however, that, (a) Buyer shall only be entitled to the remedy in subsection (ii) above, if (1) Buyer commences and files such specific performance action in the appropriate court not later than the earlier of (A) thirty (30) days following the applicable Closing Date or (B) sixty (60) days after Buyer becomes aware of the default by Seller, and (2) Buyer is not in default under this Agreement. Except as specifically set forth in this Section 16.1, Buyer does hereby specifically waive any right to pursue any other remedy at law or equity for such default of Seller, including any right to seek, claim or obtain damages, punitive damages, consequential damages or any other damages that would be predicated in whole or in part upon loss of bargains, opportunity lost or any loss of anticipated benefits incurred by Buyer. Buyer shall not be entitled to record a lien or lis pendens against the Property other than in connection and concurrently with the filing of such specific performance action. For the purposes of this Section 16.1, the term "**Buyer's Due Diligence Expenses**") shall mean Buyer's third party actual out-of-pocket expenses incurred by Buyer and paid (x) to Buyer's attorneys in connection with the negotiation of this Agreement, and (y) to unrelated and unaffiliated third party consultants in connection with the performance of examinations, inspection and/or investigations of the Real Property.

Default by Buyer

. IN THE EVENT THAT EITHER CLOSING DOES NOT OCCUR IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER AND BUYER FAILS TO CURE SUCH DEFAULT WITHIN FIVE (5) BUSINESS DAYS AFTER WRITTEN NOTICE FROM SELLER (OTHER THAN MONETARY DEFAULTS, FOR WHICH THERE SHALL BE NO CURE PERIOD), BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE BUYER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE AN AMOUNT EQUAL TO THE DEPOSIT (WHICH DEPOSIT, FOR PURPOSES OF LIQUIDATED DAMAGES PAYABLE TO SELLER PURSUANT TO THIS SECTION 16.2 IN THE EVENT THAT THE SECOND CLOSING DOES NOT OCCUR AS A RESULT OF A BREACH OF THIS AGREEMENT BY BUYER FROM AND AFTER THE FIRST CLOSING DATE, SHALL BE EQUAL TO SEVEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,500,000.00) OF THE SECOND CLOSING FUNDS), TOGETHER WITH THE ACCRUED INTEREST THEREON; AND, AS SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY) FOR BUYER'S BREACH OF ITS OBLIGATION TO CLOSE ESCROW AND PURCHASE THE PROPERTY, SAID AMOUNT SHALL BE DISBURSED TO SELLER AS THE FULL, AGREED AND LIQUIDATED DAMAGES FOR A BREACH OF THIS AGREEMENT BY BUYER WHICH RESULTS IN EITHER CLOSING NOT OCCURRING. THE PARTIES ACKNOWLEDGE THAT SUCH PAYMENT OF THE DEPOSIT IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER UNDER CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SUCH PAYMENT OF THE DEPOSIT IS NOT INTENDED AS A PENALTY, BUT AS FULL LIQUIDATED DAMAGES FOR SUCH BREACH. NOTHING CONTAINED IN THIS SECTION 16.2 SHALL LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR COSTS AND EXPENSES PURSUANT TO SECTION 18.5 BELOW, NOR WAIVE OR AFFECT BUYER'S INDEMNITY AND CONFIDENTIALITY OBLIGATIONS.

/s/ JKB
SELLER'S INITIALS

/s/ DR
BUYER'S INITIALS

Indemnities; Defaults after Closing or Termination

. The limitations on the parties' remedies set forth in Sections 16.1 and 16.2 above will not be deemed to prohibit either party from (i) specifically seeking indemnification from the other for any matter with respect to which such other party has agreed hereunder to provide indemnification or from seeking damages from such other party in the event it fails or refuses to provide such indemnification; (ii) subject to the terms, conditions and limitations of this Agreement, seeking damages incurred during the period of time after Closing that a representation or warranty given as of the applicable Closing Date by the other party hereunder survives that Closing, for the other party's breach of such representation or warranty discovered after such Closing; or (iii) subject to the terms, conditions and limitations of this Agreement seeking damages or such equitable relief as may be available for the other party's failure to perform after any termination of this Agreement any obligation hereunder which expressly survives such termination; provided, however, that in no event whatsoever will either party be entitled to recover from the other any punitive, consequential or speculative damages.

/s/ JKB

SELLER'S INITIALS

/s/ DR

BUYER'S INITIALS

Limited Liability

. Notwithstanding anything to the contrary herein, Buyer, on its own behalf and on behalf of its agents, members, partners, employees, representatives, officers, directors, agents, related and affiliated entities, successors and assigns (collectively, the "**Buyer Parties**") hereby agrees that in no event or circumstance shall any of the members, partners, employees, representatives, officers, directors, agents, property management company, affiliated or related entities of Seller, Seller Group or Seller's property management company have any personal liability under this Agreement. Notwithstanding anything to the contrary contained in this Agreement: (a) the maximum aggregate liability of Seller, and the maximum aggregate amount which may be awarded to and collected by Buyer (including for any breach of any representation, warranty and/or covenant of Seller) under this Agreement or any documents executed pursuant hereto (excluding the NetApp Lease) or in connection herewith, including the Exhibits attached hereto (collectively, the "**Other Documents**") shall, under no circumstances whatsoever, exceed, in the aggregate, (i) one percent (1%) of the Purchase Price, in the event that the First Closing does not occur, or (ii) one percent (1%) the Second Purchase Price, in the event that the First Closing has occurred but the Second Closing does not occur (collectively, the "**CAP Amounts**"); and (b) no claim by Buyer alleging a breach by Seller of any representation, warranty and/or covenant of Seller contained herein or any of the Other Documents (excluding the NetApp Lease) may be made, and Seller shall not be liable for any judgment in any action based upon any such claim, unless and until such claim, either alone or together with any other claims by Buyer alleging a breach by Seller of any such representation, warranty and/or covenant, is for an aggregate amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) (the "**Floor Amount**"), in which event Seller's liability respecting any final judgment concerning such claim or claims shall only be for the amount (if any) in excess of the Floor Amount, subject to the CAP Amounts set forth in clause (a) above.

Assignment

. Buyer may not assign, transfer or convey its rights and obligations under this Agreement or in the Property without the prior written consent of Seller, which consent may be given or withheld in Seller's sole discretion, and no such approved assignment shall relieve Buyer from its liability under this Agreement until Buyer's assignee has fully performed all of Buyer's obligations hereunder and each Closing has occurred, at which time Buyer shall be released from any further obligations or responsibilities under this Agreement, except for those obligations or responsibilities which specifically survive such Closing. Notwithstanding the foregoing, Seller consents in advance to an assignment by Buyer to any entity controlling, controlled by, or under common control with Buyer, so long as: (i) no such assignment shall be deemed to relieve Buyer from its liability under this Agreement as provided above, and (ii) Buyer shall deliver written notice to Seller of any such assignment at least five (5) business days in advance of the applicable Closing Date. Any assignee shall assume all of Buyer's

obligations hereunder and succeed to all of Buyer's rights and remedies hereunder and any assignment and assumption must be in writing and delivered to Seller at least five (5) business days prior to the First Closing Date or Second Closing Date, as applicable.

18. Miscellaneous.

Governing Law

. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

Partial Invalidity

. If any term or provision or portion thereof of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision or portion thereof to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Waivers

. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

Successors and Assigns

. Subject to the provisions of Section 17, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

Professional Fees

. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit and any appeals therefrom, and enforcement of any judgment in connection therewith, including actual attorneys' fees, accounting and engineering fees, and any other professional fees resulting therefrom.

Entire Agreement

. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument. A party may deliver executed signature pages to this Agreement by facsimile or electronic (portable data format) transmission to the other party, which facsimile or electronic copies shall be deemed to be original executed signature pages binding on the party that so delivered the executed signature pages by facsimile or electronic transmission. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

Time of Essence/Business Days

. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform. Unless the context otherwise requires, all periods

terminating on a given day, period of days, or date shall terminate at 5:00 p.m. (Pacific time) on such date or dates, and references to "days" shall refer to calendar days except if such references are to "business days" which shall refer to days which are not Saturday, Sunday or a legal holiday. Notwithstanding the foregoing, if any period terminates on a Saturday, Sunday or a legal holiday, under the laws of the State of California, the termination of such period shall be on the next succeeding business day.

Construction

. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. The terms "Property" or "Real Property" shall refer to the First Closing Property and the Second Closing Property, collectively, or either the First Closing Property or the Second Closing Property, individually, whenever required by the context of this Agreement. The terms "Closing" or "Closing Date" shall refer to the First Closing Date and the Second Closing Date, collectively, or either the First Closing Date or the Second Closing Date, individually, whenever required by the context of this Agreement. The terms "include", "includes", "including" and words of similar import shall be deemed in all cases to be followed by "without limitation". This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. In the event the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

Material Adverse Effect

. For purposes of this Agreement, the term "**Material Adverse Effect**" shall mean an effect, event, development or change that, individually or in the aggregate with all other effects, events, developments or changes, is materially adverse to the business, results of operations or financial condition of the Property or Buyer's intended development and occupancy of the Property, taken as a whole, regardless of whether the use of such term is only in respect of a single matter; provided, that none of the following shall be included in determining whether a Material Adverse Effect has occurred: (a) changes in conditions in the U.S. or global economy or capital or financial markets generally, including changes in interest or exchange rates, (b) changes in general legal, tax, regulatory, political or business conditions that, in each case, generally affect the geographic region in which the Property is located or the commercial real estate industry (unless, and only to the extent, such effect, event, development or change affects the Property in a disproportionate manner as compared to other properties in such geographic region affected by such effect, event, development or change), (c) changes in GAAP, (d) the negotiation, execution, announcement or performance of this Agreement or the transactions contemplated hereby or the consummation of the transactions contemplated by this Agreement, including the impact thereof on relationships, contractual or otherwise, with tenants, suppliers, lenders, investors, venture partners or employees, (e) acts of war, armed hostilities, sabotage or terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement (unless, and only to the extent, such effect, event, development or change affects the Property in a disproportionate manner as compared to other properties in the geographic regions affected by such effect, event, development or change), (f) earthquakes, hurricanes or other natural disasters (unless, and only to the extent, such effect, event, development or change affects the Property in a disproportionate manner as compared to other properties in such geographic region affected by such effect, event, development or change), (g) any action taken by Seller at the request, or with the prior written consent, of Buyer, or (h) any conditions of approval for the subdivision of the Common Lot that affect the Google Common Lot and have been approved in writing by Buyer in accordance with this Agreement.

Exchange

. Upon the request of a party hereto (the "**Requesting Party**"), the other party (the "**Cooperating Party**") shall cooperate with the Requesting Party in Closing the sale of the Property

in accordance with this Agreement so as to qualify such transaction as an exchange of like-kind property; provided, however, the Cooperating Party shall not be required to take title to any exchange property and the Cooperating Party will not be required to agree to or assume any covenant, obligation or liability in connection therewith, neither Closing hereunder shall be delayed as a result of, or conditioned upon, such exchange, the Requesting Party shall pay all costs associated with such exchange, and the Requesting Party shall remain primarily liable under this Agreement and indemnify the Cooperating Party from any liability in connection with such exchange.

20. Confidentiality.

20.1 Buyer agrees that, (a) except as otherwise provided or required by valid law or in connection with Buyer's involvement in the Subdivision Map and the Common Lot process in accordance with this Agreement, (b) except to the extent Buyer considers such documents or information reasonably necessary to prosecute and/or defend any claim made with respect to the Property or this Agreement, and (c) except to the extent reasonably necessary to deliver such documents or information to Buyer's or its affiliate's employees, paralegals, attorneys, brokers, officers, directors, agents and/or consultants in connection with Buyer's evaluation of this transaction on a confidential basis, Buyer shall keep the contents of any materials, reports, documents, data, test results, and other information related to the transaction contemplated hereby, including the Due Diligence Items and all information regarding Buyer's acquisition or ownership of the Property confidential. Buyer acknowledges that significant portions of the Due Diligence Items are proprietary in nature and that Seller would suffer significant and irreparable harm in the event of the misuse or disclosure of the Due Diligence Items. Without affecting any other rights or remedies that either party may have, Buyer acknowledges and agrees that Seller shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any breach, threatened breach or anticipatory breach of the provisions of this Section 20.1 by Buyer. The provisions of this Section 20.1 shall not apply any documents or information that is or becomes generally available to the public and publicly known other than as a result of disclosure in breach of this Agreement by Buyer or information that Buyer may have received from sources other than Seller without restriction or knowledge that such information is confidential or proprietary.

20.2 Each party hereto agrees not to disclose or permit the disclosure of any of the terms of this Agreement or the identity of the other party to this Agreement, provided that such disclosure may be made (a) to any party who is a partner, officer, director or employee of such party or an affiliate of such party or counsel to or accountants of such party or an affiliate of such party solely for their use and on a need-to-know basis, provided that such parties are notified of the party's confidentiality obligations hereunder, (b) to the extent required with respect to the Subdivision Map and the Common Lot, (c) with the prior consent of the other parties hereto, (d) subject to the following sentence, pursuant to a subpoena or order issued by a court, arbitrator or governmental body, agency or official of competent jurisdiction, or (e) if required under applicable law, regulatory or stock market rule or of information of the type otherwise customarily disclosed by public companies in such public filings. Neither Buyer nor Seller shall issue any press release or make any other public disclosure of the specific terms of this Agreement, except as required by law (including SEC regulations and NYSE requirements).

20.3 In connection with Treasury Regulation §1.6011-4 of the Internal Revenue Code of 1986, as amended, the Parties hereby agree that each Party (and each employee, representative, or other agent of such Party) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to such Party relating to such U.S. tax treatment and U.S. tax structure, other than any information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws.

The provisions of this Section 20 shall survive each Closing or any termination of this Agreement, but Buyer's obligations as to keeping any information regarding the Property confidential pursuant to Section 20.1 shall not survive the Closing

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

-40-

SMRH:484745841.1

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

"SELLER"

NETAPP, INC.,
a Delaware Corporation
By: /s/ Jeffrey Bergmann
Name: Jeffrey Bergmann
Title: Vice President, Tax & Treasury

"BUYER"

GOOGLE INC.,
a Delaware corporation
By: /s/ David Radcliffe
Name: David Radcliffe
Title: Authorized Signatory

JOINDER BY ESCROW HOLDER

Escrow Holder (as defined in Section 11 of Article I above) hereby (a) acknowledges that it has received this Agreement executed by the Seller and Buyer and accepts the obligations of and instructions for the Escrow Holder set forth herein, and (b) agrees to disburse and/or handle the Deposit, the Purchase Price and all closing documents in accordance with this Agreement.

Dated: September 11, 2017

“ESCROW HOLDER”

FIRST AMERICAN TITLE INSURANCE

COMPANY

By: /s/ Linda Tugade
Name: Linda Tugade
Title: Escrow Officer

EXHIBIT "A-1"

LEGAL DESCRIPTION OF IMPROVED LAND

All that certain Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcels 1, 5 and 6, as shown on the certain Parcel Map filed October 30, 2008 in Book 828 of Maps, Pages 17-19, Santa Clara County Records.

Exhibit "A-1"-1-

SMRH:484745841.1

EXHIBIT "A-2"

LEGAL DESCRIPTION OF UNIMPROVED LAND

All that certain Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcels 10, 11 and 12, as shown on the certain Parcel Map filed July 13, 2017 in Book 905 of Maps, Pages 11-13, Santa Clara County Records.

Exhibit "A-2"-1-

SMRH:484745841.1

EXHIBIT "A-3"

DEPICTION OF COMMON LOT AND PROPOSED GOOGLE COMMON LOT AND SELLER COMMON LOT

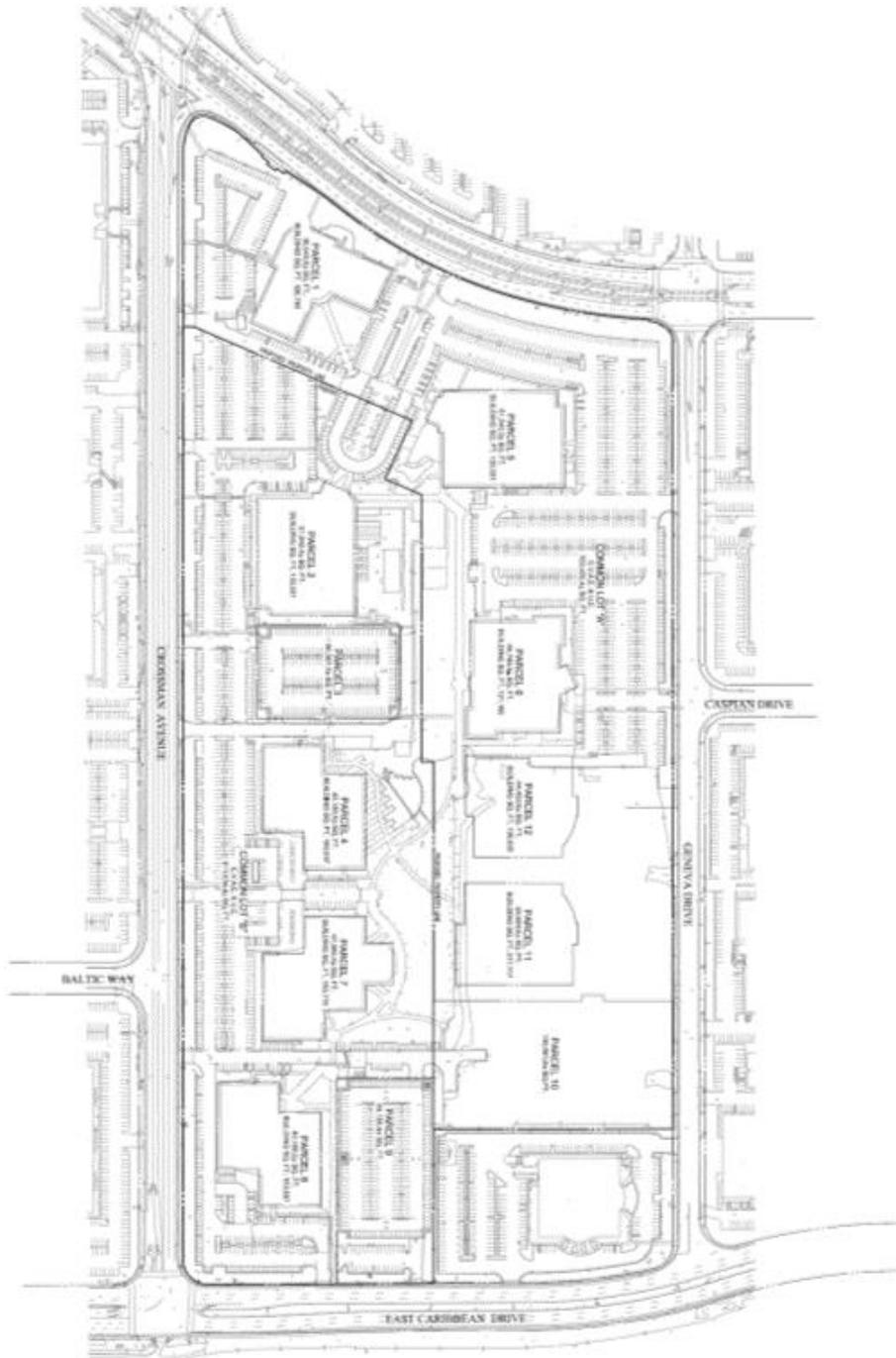


Exhibit "A-3"-1-

The Common Lot is comprised of Common Lot "A" and Common Lot "B".

The proposed Google Common Lot is comprised of Common Lot "A".

The proposed Seller Common Lot is comprised of Common Lot "B".

Exhibit "A-3"-2-

SMRH:484745841.1

EXHIBIT "B"

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

(Above Space For Recorder's Use Only)

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S):
DOCUMENTARY TRANSFER TAX is \$ _____. CITY TAX \$ _____.

Computed on full value of property conveyed, or
Computed on full value less value of liens or encumbrances remaining at time of sale,
Unincorporated area: City of _____.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, NETAPP, INC., a Delaware corporation, hereby GRANTS to GOOGLE INC., a Delaware corporation, that certain real property which is more particularly described on Exhibit "A" which is attached hereto.

Subject to:

1. Non-delinquent taxes and assessments;
2. All other covenants, conditions, and restrictions, reservations, rights, rights of way, easements and title matters of record or visible from an inspection of the property or which an accurate survey of the property would disclose.

Dated: _____, NETAPP, INC.,
2017 a Delaware corporation

By:
Name:
Title:

Exhibit "B"-1-

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Exhibit "B"-2-

SMRH:484745841.1

EXHIBIT "C-2"

TAXABLE YEAR

CALIFORNIA FORM

2017 Real Estate Withholding Certificate

593-C

Part I – Seller/Transferor Information			Return this form to your escrow company	
Name _____		SSN or ITIN _____		
Spouse's/RDP's name (if jointly owned) _____		Spouse's/RDP's SSN or ITIN (if jointly owned) _____		
Address (apt./sta., room, PO box, or PMB no.) _____		<input type="checkbox"/> FEIN <input type="checkbox"/> CA Corp no. <input type="checkbox"/> CA SOS file no.		
City (if you have a foreign address, see instructions.) _____	State _____	ZIP code _____	Ownership percentage _____ %	
Property address (if no street address, provide parcel number and county) _____				

To certify that you qualify for a full or partial withholding exemption, check all boxes that apply to the property being sold or transferred. (See instructions)

Part II – Certifications which fully exempt the sale from withholding:

1. The property qualifies as the seller's/transferor's (or decedent's, if sold by the decedent's estate or trust) principal residence within the meaning of Internal Revenue Code (IRC) Section 121.
2. The seller/transferor (or decedent, if sold by the decedent's estate or trust) last used the property as the seller's/transferor's (decedent's) principal residence within the meaning of IRC Section 121 without regard to the two-year time period.
3. The seller/transferor has a loss or zero gain for California income tax purposes on this sale. To check this box you must complete Form 593-E, Real Estate Withholding-Computation of Estimated Gain or Loss, and have a loss or zero gain on line 16.
4. The property is being compulsorily or involuntarily converted and the seller/transferor intends to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for California income tax purposes under IRC Section 1033.
5. The transfer qualifies for nonrecognition treatment under IRC Section 351 (transfer to a corporation controlled by the transferor) or IRC Section 721 (contribution to a partnership in exchange for a partnership interest).
6. The seller/transferor is a corporation (or a limited liability company (LLC) classified as a corporation for federal and California income tax purposes) that is either qualified through the California Secretary of State (SOS) or has a permanent place of business in California.
7. The seller/transferor is a California partnership or a partnership qualified to do business in California (or an LLC that is classified as a partnership for federal and California income tax purposes and is not a single member LLC that is disregarded for federal and California income tax purposes).
8. The seller/transferor is a tax-exempt entity under California or federal law.
9. The seller/transferor is an insurance company, individual retirement account, qualified pension/profit sharing plan, or charitable remainder trust.

Part III – Certifications that may partially or fully exempt the sale from withholding:

Real Estate Escrow Person (REEP): See instructions for amounts to withhold.

10. The transfer qualifies as a simultaneous like-kind exchange within the meaning of IRC Section 1031.
11. The transfer qualifies as a deferred like-kind exchange within the meaning of IRC Section 1031.
12. The transfer of this property is an installment sale where the buyer/transferee is required to withhold on the principal portion of each installment payment. Copies of Form 593-I, Real Estate Withholding Installment Sale Acknowledgement, and the promissory note are attached.

Seller/Transferor Signature

To learn about your privacy rights, how we may use your information, and the consequences for not providing the requested information, go to ftb.ca.gov and search for **privacy notice**. To request this notice by mail, call 800.822.5711.

Under penalties of perjury, I declare that I have examined the information on this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare under penalties of perjury that if the facts upon which this form are based change, I will promptly notify the REEP.

Seller's/Transferor's Name and Title _____	Seller's/Transferor's Signature _____	Date _____
Spouse's/RDP's Name _____	Spouse's/RDP's Signature _____	Date _____

Seller/Transferor If you checked any box in Part II, you are exempt from real estate withholding.
 If you checked any box in Part III, you may qualify for a partial or complete withholding exemption.

Except as to an installment sale, if the seller/transferor did not check any box in Part II or Part III of Form 593-C, the withholding will be 3/3% (.0333) of the total sales price or the optional gain on sale withholding amount from line 5 of Form 593, Real Estate Withholding Tax Statement. If the seller/transferor does not return the completed Form 593 and Form 593-C by the close of escrow, the withholding will be 3/3% (.0333) of the total sales price, unless the type of transaction is an installment sale. If the transaction is an installment sale, the withholding will be 3/3% (.0333) of the down payment.

If you are withheld upon, the REEP should give you one copy of Form 593. Attach a copy to the lower front of your California income tax return and make a copy for your records.

7131173

Form 593-C c2 2016

EXHIBIT "D"

SELLER'S DISCLOSURES

Seller hereby discloses to Buyer that the Property, the Common Lot and the Seller's adjacent property, including the buildings and improvements related thereto, may not be in conformance with certain applicable parking requirements contained in the Moffett Park Specific Plan and the City of Sunnyvale Municipal Code. This disclosure shall not modify the parties rights and obligations as set forth in this Agreement, including but not limited to Buyer's due diligence and Subdivision Condition approval rights; provided, however, that in no event may Buyer terminate this Agreement as of either the First Closing or the Second Closing pursuant to Sections 4.3.1(b) or 4.3.2(c) hereof , respectively, by claiming a breach of Buyer's representation and warranty in Section 11.8 hereof as a result of any written notice of violation from any governmental entity received as a result of such potential or actual parking shortfall.

Exhibit "D"-1-

SMRH:484745841.1

EXHIBIT "E"

[Intentionally Deleted.]

Exhibit "E"-1-

SMRH:484745841.1

EXHIBIT "F"

ASSIGNMENT OF CONTRACTS AND ASSUMPTION AGREEMENT

This Assignment of Contracts and Assumption Agreement (the "**Assignment**") is made and entered into as of this ____ day of _____, 2017 ("**Assignment Date**"), by and between NETAPP, INC., a Delaware corporation ("**Assignor**"), and GOOGLE INC., a Delaware corporation ("**Assignee**"), with reference to the following facts.

RECITALS:

- A. Assignor and Assignee are parties to that certain Agreement of Purchase and Sale and Joint Escrow Instructions, made and entered into as of _____, 2017 (the "**Agreement**"), pursuant to which Assignor agreed to sell to Assignee, and Assignee agreed to purchase from Assignor the Property. Capitalized terms used herein and not separately defined have the meanings ascribed to them in the Agreement.
- B. Assignee has acquired fee title to the Real Property from Assignor on the Assignment Date. Assignor now desires to assign and transfer to Assignee all of Assignor's rights and interests in, to and under the Property Contracts.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. **Assignment and Assumption.** Effective as of the Assignment Date, Assignor hereby grants, transfers, conveys, assigns and delegates to Assignee all of its rights, interests, duties and obligations of Assignor in, to and under the Property Contracts listed on Schedule 1. Assignee hereby accepts such assignment and delegation by Assignor and agrees to fully perform and assume all the obligations of Assignor under the Property Contracts first arising from and after the Assignment Date.
2. **No Warranties.** Assignee does hereby acknowledge and agree, and represents and warrants to Assignor, that Assignor is transferring each of the Property Contracts to Assignee (to the extent the terms of any of the Property Contracts do not limit or restrict such right) without any warranty of any kind or nature except as set forth in the Purchase Agreement. This Assignment shall not be construed as a representation or warranty by Assignor as to the transferability or enforceability of the Property Contracts, and Assignor shall have no liability to Assignee in the event that any or all of the Property Contracts (a) are not transferable to Assignee or (b) are canceled or terminated by reason of this Assignment or any acts of Assignee.
3. **Dispute Costs.** In the event of any dispute between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the prevailing party's costs and expenses of such dispute, including, without limitation, reasonable attorneys' fees and costs. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Assignment shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Assignment and to survive and not be merged into any such judgment.
4. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which shall, taken together, be deemed one document.

Exhibit "F"-1-

5. Survival. This Assignment and the provisions hereof shall inure to the benefit of and be binding upon the parties to this Assignment and their respective successors, heirs and permitted assigns.

6. No Third Party Beneficiaries. Except as otherwise expressly set forth herein, Assignor and Assignee do not intend, and this Assignment shall not be construed, to create a third-party beneficiary status or interest in, nor give any third-party beneficiary rights or remedies to, any other person or entity not a party to this Assignment.

7. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Assignment Date.

ASSIGNOR:

NETAPP, INC.,
a Delaware corporation

By:
Name:
Title:

ASSIGNEE:

GOOGLE INC.,
a Delaware corporation

By:
Name:
Title:

Exhibit "F"-2-

Schedule 1 to Exhibit F

Exhibit "F"-3-

SMRH:484745841.1

EXHIBIT "G"

BILL OF SALE

Reference is made to that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of _____, 2017, by and between NETAPP, INC., a Delaware corporation ("**Seller**"), and GOOGLE INC., a Delaware corporation ("**Buyer**") (the "**Agreement**"). Capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby GRANT, SELL, CONVEY, TRANSFER AND DELIVER to Buyer without any warranty of any kind, any and all of Seller's rights, title and interests in and to the Personal Property (as defined in the Agreement); provided, however, such transfer, assignment and sale shall not include any right to use the name "NetApp," and/or any other similar name relating to any of such names.

From and after the date of this Bill of Sale, it is intended by the parties that Buyer and its successors and assigns shall have the right to use, have, hold and own the Personal Property forever. This Bill of Sale may be executed in counterparts, each of which shall be deemed an original, and all of which shall, taken together, be deemed one document. Seller and Buyer agree that the delivery of an executed copy of this Bill of Sale by facsimile shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Bill of Sale had been delivered.

Buyer hereby acknowledges, covenants, represents and warrants that Seller has made absolutely no warranties or representations of any kind or nature regarding title to the Personal Property or the condition of the Personal Property except as expressly set forth in the Purchase Agreement.

Buyer on behalf of itself and its officers, directors, employees, partners, agents, representatives, successors and assigns hereby agrees that in no event or circumstance shall Seller or its partners, members, trustees, employees, representatives, officers, related or affiliated entities, successors or assigns have any personal liability under this Bill of Sale, or to any of Buyer's creditors, or to any other party in connection with the Personal Property or the Property.

This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

Exhibit "G"-1-

IN WITNESS WHEREOF, this Bill of Sale has been executed as of this ____ day of _____, 2017.

SELLER:

NETAPP, INC.,
a Delaware corporation

By:
Name:
Title:

BUYER:

GOOGLE INC.,
a Delaware corporation

By:
Name:
Title:

Exhibit "G"-2-

SMRH:484745841.1

EXHIBIT "H"

GENERAL ASSIGNMENT

This General Assignment (this "**Assignment**") is made as of the ____ day of _____, 2017 ("**Assignment Date**"), by NETAPP, INC., a Delaware corporation (the "**Assignor**"), and GOOGLE INC., a Delaware corporation (the "**Assignee**").

Pursuant to that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of _____, 2017 (the "**Agreement**"), Assignee has this day acquired from Assignor the Property. Capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

In consideration of the acquisition of the Property by Assignee and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Assignment.** Assignor hereby assigns, transfers and sets over unto Assignee, without representation or warranty of any kind, and Assignee hereby accepts from Assignor, any and all of Assignor's right, title and interest in and to (i) all freely transferable warranties and guaranties (collectively, the "**Warranties and Guaranties**"), if any, with respect to the Property and (ii) all freely transferable consents, authorizations, variances or waivers, licenses, permits and approvals (collectively, the "**Approvals**") from any governmental or quasi-governmental agency, department, board, commission, bureau or other entity or instrumentality of any nature relating solely to the Property.

2. **No Warranties.** Assignee does hereby acknowledge and agree, and represents and warrants to Assignor, that Assignor is transferring each of the Warranties and Guaranties and the Approvals to Assignee (to the extent the terms thereof do not limit or restrict such right) without any warranty of any kind or nature except as expressly set forth in the Purchase Agreement. This Assignment shall not be construed as a representation or warranty by Assignor as to the transferability or enforceability of the Warranties and Guaranties or the Approvals, and Assignor shall have no liability to Assignee in the event that any or all of the Warranties and Guaranties and the Approvals (a) are not transferable to Assignee or (b) are canceled or terminated by reason of this Assignment or any acts of Assignee.

3. **Dispute Costs.** In the event of any dispute between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the prevailing party's costs and expenses of such dispute, including, without limitation, reasonable attorneys' fees and costs. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Assignment shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Assignment and to survive and not be merged into any such judgment.

4. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which shall, taken together, be deemed one document.

5. **Survival.** This Assignment and the provisions hereof shall inure to the benefit of and be binding upon the parties to this Assignment and their respective successors, heirs and permitted assigns.

6. **No Third Party Beneficiaries.** Except as otherwise expressly set forth herein, Assignor and Assignee do not intend, and this Assignment shall not be construed, to create a third-party beneficiary

Exhibit "H"-1-

status or interest in, nor give any third-party beneficiary rights or remedies to, any other person or entity not a party to this Assignment.

7. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, Assignor and Assignee have caused this instrument to be executed as of the Assignment Date.

"ASSIGNOR"

NETAPP, INC.,
a Delaware corporation

By:
Name:
Title:

"ASSIGNEE"

GOOGLE INC.,
a Delaware corporation

By:
Name:
Title:

Exhibit "H"-2-

EXHIBIT "I"

[Intentionally Deleted.]

Exhibit "I"-1-

SMRH:484745841.1

EXHIBIT "J"

LIST OF SERVICE CONTRACTS

Exhibit J



NetApp Inc.

SUPPLIER:

SUPPLIER ADDRESS:

Dakin Applied

13600 Industrial Park Blvd
Minneapolis, MN 55441
United States

PURCHASE ORDER		
PURCHASE ORDER NUMBER	DATE OF ORDER	PAGE
132070	17-MAR-2016	1 of 4
This Purchase Order Number must appear on all order acknowledgements, packing lists, cartons, invoices and correspondence.		
REVISION:	0	REVISION DATE:
SHIP TO:	NetApp, Inc. 603 Baltic Way Building 15 Sunnyvale, CA 94089 United States	
BILL TO:	NetApp, Inc. Attention Accounts Payable Email: APINVOICES_US@netapp.com PO Box 61659 Sunnyvale, CA 94088-1659 United States	
REQUESTOR		
MANDRUSOV, ALEX (Alex) malex@netapp.com		

SUPPLIER NO.		PAYMENT TERMS			NETAPP CONTACT			
21447		EOAP60			IntelSourcehelp@netapp.com			
DELIVERY TERMS		F.O.B			SHIP VIA			
		Destination						
#	ITEM/PART NO./REV/DESCRIPTION	DELIVERY DATE	QUANTITY	UNIT	UNIT PRICE	CUR	AMOUNT	T
1	Chiller PM Services	22-MAR-2016	60393	Each	1.00	USD	60,393.00	N
Note to Supplier:					SUBTOTAL:		60,393.00	
					TAX:		0.00	
					TOTAL:		60,393.00	

Exhibit "J"-1-

1. General. The party providing NETAPP with any goods and services ("Seller") agrees to perform the services ("Services") and/or provide the goods or Service deliverables (collectively referred to as "Goods"), described in any purchase order, in accordance with the applicable purchase order, scope of work and with these Terms and Conditions ("Agreement"). Upon acceptance of a purchase order, shipment of Goods or commencement of a Service, Seller shall be bound by the provisions of this Agreement, including all provisions set forth on the face of any applicable purchase order, whether Seller acknowledges or otherwise signs this Agreement or the purchase order, unless Seller objects to such terms in writing prior to signing Goods or commencing Services. The writing does not constitute a firm offer within the meaning of Section 2205 of the California Commercial Code, and may be revoked at any time prior to acceptance. Any terms or conditions contained in any acknowledgment, invoice or other communication of Seller, which are inconsistent with the terms and conditions herein, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof and shipment of the Goods or beginning performance of any Services by Seller shall constitute such assent.

2. Changes. NETAPP may at any time by a written change order make changes in the general scope and terms of this Agreement, and hereby reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods or prior to commencement of any Services. NETAPP shall not be subject to any charges or other fees as a result of such cancellation. Notwithstanding, Seller shall remain bound by the Agreement as changed. This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part, except by written change order signed by a NETAPP authorized purchasing representative. After NETAPP's approval or acceptance of the initial qualification prototypes of the Goods, Seller shall not make any changes in the design, material or processes that may affect the form, fit, function, interchangeability, quality or reliability of the Goods without NETAPP's prior written consent.

3. Purchase Order Number. NETAPP's purchase order number must appear on all invoices, packing lists and bills of lading and shall appear on each package, container or envelope on each shipment made pursuant to such purchase order.

4. Delivery Documentation. All deliveries of Goods to NETAPP must contain a packing list referencing Goods delivered. Each copy must show the NETAPP purchase order number, part number, and quantity of Goods shipped. Bills of Lading shall be mailed in triplicate to the destination address shown on the face of the NETAPP purchase order, or to the consignee of such purchase order on the day shipment is made. Delivery and acceptance of Services shall be evidenced by an authorized representative of NETAPP signing the submitted invoice specifically accepting the Services and referencing the appropriate purchase order number.

5. Packaging and Shipment. All articles are to be packed in accordance with sound commercial practices to obtain the lowest transportation rates unless otherwise specified in the NETAPP purchase order and comply with requirements of common carriers. Shipments will be valued so as to obtain the lowest transportation rate and must be made by Seller's choice of common carrier if specified in the purchase order. Transportation insurance for loss or damage will not be purchased by NETAPP unless specifically directed. Excess transportation costs resulting from failure to comply with the provisions of this paragraph will be debited to Seller's account. Unless otherwise specified in the NETAPP purchase order, packaging must conform to NETAPP's specifications and should be constructed for handling with a mechanical device. A complete packing list specifying NETAPP's applicable purchase order number, quantity of Goods shipped, and part number shall be enclosed with all shipments hereunder. Seller shall mark each container with necessary IPIRG, loading and shipping information, including the NETAPP purchase order number, date of shipment, and name and address of consignor and consignee. Seller shall bear the expense of any premium transportation charges unless otherwise agreed. Prepaid transportation charges appearing on Seller's invoice must be supported by a paid freight bill and bill of lading.

6. Delivery Time is of the essence. Deliveries are to be made in such quantities and at such times as are specified herein. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation. If no method of shipment is specified in the purchase order, Seller shall use the least expensive carrier. Upon request Seller shall provide NETAPP notice of the departure of any shipment of Goods from Seller's site. Seller shall provide NETAPP notice as soon as it is aware that any delivery will not be on time. At NETAPP's request, Seller will provide NETAPP with daily notification of shipping delays or of the progress of delayed Goods in transit. Such notification will include action plans for recovery or expediting of the affected Goods. If Seller's deliveries fail to meet schedule, NETAPP, without limiting its other rights and remedies, may, at its option, either: (x) direct expedited routing, and any excess costs incurred thereby shall be debited to Seller's account; or (y) in accordance with Section 12 hereof, cancel all or any part of the NETAPP purchase order in the event Seller fails to deliver Goods as scheduled. With regard to any Goods delivered in advance of schedule NETAPP may, at its option, either: (i) return the Goods at Seller's expense for proper delivery, or (ii) accept the Goods with payment only in accordance with Section 9 below and with the right to charge Seller for storage of the Goods. Delivery terms are DDU/NETAPP's dock or the dock of NETAPP's designated manufacturer.

7. Identification of the Goods shall occur in accordance with Section 2501 of the California Commercial Code. Seller assumes all risk of loss until receipt by NETAPP. Title to the Goods shall pass to NETAPP upon receipt by it of the Goods at the designated destination. If the Goods ordered are destroyed prior to title passing to NETAPP, NETAPP may at its option cancel the Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, NETAPP shall have the right to require delivery of the Goods not destroyed.

8. Payment Terms. Invoices shall be due and payable within forty-five (45) days from the date of NETAPP'S Accounts Payable Department's receipt of the invoice. Incorrect invoices will be returned to Seller for correction and/or credit. After Seller resubmits the corrected invoice, NETAPP will pay Seller forty-five (45) days from receipt of the corrected invoice. NETAPP shall assume all responsibilities for taxes on shipments or provide Seller with a tax exemption certificate acceptable to the taxing authorities. On orders for shipment outside the United States all required import duties, licenses and fees shall be payable by the Seller and shall be included in the quoted pricing to NETAPP.

9. Inspection. Seller shall test each lot to ensure that the Goods meet NETAPP'S specifications and acceptance criteria, and Seller shall not ship any Goods that do not conform thereto. All Goods (including raw materials, components, subassemblies and end products) may be inspected and tested by NETAPP at all reasonable times and places before, during and after manufacture. If any Goods are defective in materials or workmanship, or are otherwise not in conformity with the requirements of this Agreement, it shall be at NETAPP'S sole discretion, whether or not payment has been made, to reject such Goods, return them to Seller at Seller's expense, and receive a refund for the purchase price (if payment has been made), or require that such Goods be corrected or replaced promptly with satisfactory materials or workmanship. Payment shall not constitute acceptance. In no event shall NETAPP be liable for any reduction in value of any Goods used in connection with any inspection or test. If any inspection or test is made on Seller's premises, Seller shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of inspectors in such

manner as not unduly to delay the work. Inspection of Goods at Seller's facility shall be without prejudice to NETAPP'S right to inspect and retest such Goods upon delivery to NETAPP'S facility. Where applicable, NETAPP may, at its option, inspect all Goods or request a statistical sample selected from each lot. Seller further agrees to maintain adequate substantiated inspection test documents that relate to work performed under this Agreement. Such records shall be retained by Seller for a period of three (3) years after completion of this Agreement or as otherwise specified by NETAPP and made available to NETAPP upon request. Seller agrees to supply NETAPP with inspection and test reports, affidavits, certifications or any other documents as may be reasonably requested.

10. Confidential Information. Seller will acquire knowledge of NETAPP Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such NETAPP Confidential Information in confidence during, and following termination or expiration, of the term of this Agreement. "NETAPP Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by NETAPP relating to the current or anticipated business or affairs of NETAPP which is disclosed directly or indirectly to Seller. In addition, NETAPP Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Services or Goods to NETAPP. NETAPP Confidential Information does not include any information (i) which Seller lawfully knew without restriction on disclosure before NETAPP disclosed it to Seller, (ii) which is now or becomes publicly known through no wrongful act or failure to act of Seller, (iii) which Seller developed independently without use of the NETAPP Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to Seller by a third party as a matter of right and without restriction on disclosure. In addition, Seller may disclose Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Seller provides prompt notice to NETAPP of such requirement prior to disclosure.

Seller agrees not to copy, alter or directly or indirectly disclose any NETAPP Confidential Information. Additionally, Seller agrees to limit its internal distribution of NETAPP Confidential Information to Seller's Assistants (defined in Section 15) who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Seller's Assistants of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of NETAPP Confidential Information. Seller further agrees not to use the NETAPP Confidential Information except in the course of performing hereunder, and agrees not to use such NETAPP Confidential Information for its own benefit or for the benefit of any third party. Seller agrees not to design or manufacture any products which incorporate NETAPP Confidential Information. All NETAPP Confidential Information is and shall remain the property of NETAPP. Upon NETAPP'S written request or the termination of this Agreement, Seller shall return, transfer or assign to NETAPP all NETAPP Confidential Information, including all Work Product, as defined herein, and all copies thereof.

11. Tooling. Unless otherwise specified in this Agreement, all tooling and/or all other articles required for the performance hereof shall be furnished by Seller, maintained in good condition and replaced when necessary at Seller's expense. If NETAPP agrees to pay Seller for special tooling or other items either separately or as a stated part of the unit price of Goods purchased herein, title to same shall be and remain in NETAPP upon payment thereof.

12. Default-Cancellation. NETAPP may, by written notice of default to Seller, terminate the whole or any part of this Agreement if Seller fails to make delivery of the Goods or perform the Services within the time specified herein or in any authorized extension, if this Agreement or any part hereof is terminated by NETAPP, then in addition to any other rights provided in this Agreement, NETAPP may require Seller to transfer title and deliver to NETAPP in the manner and to the extent directed by NETAPP, any completed or partially completed Goods and any materials, parts, dies, jigs, fixtures, plans, drawings, information and manufacturing materials specifically produced or acquired for performance of this Agreement. If, after notice of termination of the Agreement under the provisions of this Section 12, it is determined for any reason that Seller was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 13 hereof. The rights and remedies of NETAPP provided in this Section 12 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

13. Termination. This Agreement may be terminated in whole or in part at any time by NETAPP for its own convenience. Any such termination will not be construed as a cancellation for breach. NetApp's exclusive liability and Seller's exclusive remedy for such termination will be as follows: (a) NETAPP will purchase and pay for any Goods that have been completed as of the effective date of the cancellation; (b) NETAPP will pay Seller for the actual labor and materials costs incurred by Seller in connection with the assembly of any Goods that are partially completed as of the effective date of cancellation; and (c) NETAPP will pay Seller for the costs of components and other materials procured by Seller specifically on account of the cancelled Agreements if such components cannot be diverted by Seller to another use. In no event will NETAPP'S liability in the aggregate exceed the total price which would have been paid hereunder for the work had it not been terminated. Notwithstanding the foregoing, to the extent such termination involves materials Seller normally manufactures or supply for distribution to other customers, and not specifically manufactured to this Agreement, NETAPP'S exclusive liability and Seller's exclusive remedy will be payment for finished Goods and Services delivered or performed according to schedule prior to termination, subject to NETAPP'S final acceptance of the applicable price specified. The provisions of this paragraph will not apply to any portion of the Agreement canceled for Seller's breach. No cancellation charges shall be payable if notice of cancellation is given or deemed to be given at least forty (40) days before the scheduled shipment date. Prior to NETAPP'S payment, NETAPP may audit Seller's records at reasonable times or require Seller to provide reasonable documentation and invoices to substantiate any cancellation charges or require Seller to produce evidence that the relevant Goods, materials, assemblies and

Exhibit "J"-2-

components shall have been disposed of in accordance with NETAPP's instructions. NETAPP reserves the right to direct the disposition of any work or property paid by NETAPP hereunder. Seller's termination claim must be submitted in writing no later than thirty (30) days from the date of receipt of termination notice.

14. **NETAPP's Property.** Title and property furnished to Seller by NETAPP or paid for by NETAPP shall remain with NETAPP. Seller shall not alter or use such property for any purpose other than that specified by NETAPP, or for any other person, without the prior written consent of NETAPP. Seller shall keep adequate records of such property and such records shall be made available to NETAPP upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound commercial practice, all at Seller's expense. Unless otherwise agreed to by NETAPP, Seller shall insure NETAPP's interest in such material against loss or damage by reason of fire (including extended coverage), flood, accident, theft, riot or civil commotion. In the event that NETAPP's property becomes lost or damaged to any extent while in Seller's possession, Seller agrees to indemnify NETAPP or replace such property at Seller's expense, in accordance with NETAPP's request. At the completion or termination of this Agreement, Seller shall request disposition instructions for all such property or the remainder thereof, whether in its original form or in semi-processed form. Seller agrees to make such property available as directed by NETAPP, including preparation, packaging and shipping. The use of NETAPP's name, logo or reference to any association or partnership is expressly prohibited without NETAPP's written permission.

15. **Independent Contractor.** NETAPP is interested only in the results obtained under this Agreement, the manner and means of achieving the results are subject to Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind NETAPP by contract or otherwise. Neither Seller nor its employees, agents or subcontractors ("Seller's Assistants") are agents or employees of NETAPP, and therefore are not entitled to any employee benefits of NETAPP, including but not limited to, any type of insurance. Seller shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Seller's own supplies and equipment.

16. **Ownership of Work Product.** For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, Service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to NETAPP without having been designed, customized or modified for NETAPP do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of NETAPP. Seller hereby agrees to irrevocably assign and transfer to NETAPP and does hereby assign and transfer to NETAPP all of its worldwide rights, title and interest in and to the Work Product including all associated intellectual property rights. NETAPP will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that NETAPP deems appropriate. Seller agrees: (a) to disclose promptly in writing to NETAPP all Work Product in its possession; (b) to assist NETAPP in every reasonable way, at NETAPP's expense, to secure, perfect, register, apply for, maintain, and defend for NETAPP's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in NETAPP's name as it deems appropriate; and (c) to otherwise treat all Work Product as NETAPP Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by NETAPP to Seller shall remain the sole property of NETAPP. Seller will ensure that Seller's Assistants appropriately waive any and all claims and assign to NETAPP any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Seller irrevocably agrees not to assert against NETAPP or its direct or indirect customers, assignees or licensees, or distributors any claim of any intellectual property rights of Seller affecting the Work Product. NETAPP will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities or trade secret or NETAPP Confidential Information, unless (i) such works relate to NETAPP's business, or NETAPP's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Seller for NETAPP. Except for works within (i), (ii) or (iii) of the preceding sentence which shall be works owned by NETAPP, for any other works within the preceding sentence not owned by NETAPP but which are necessary to use the Goods and Services for their intended purposes, Seller hereby grants NETAPP a non-exclusive, irrevocable, perpetual, worldwide, royalty free, fully paid-up license to make, have made, sell, demonstrate, use, reproduce, modify, create derivative works based on such works, and sublicense such works, including the right to sublicense through multiple tiers of distribution.

17. **Indemnification.** Seller shall, in the performance of work or services under this Agreement, fully comply with all applicable federal, state and local laws, rules, regulations and ordinances and shall indemnify and hold harmless NETAPP from and against any loss, claim, damage, liability, expense, or cost (including without limitation attorney's fees and court costs) resulting from failure of such compliance, or out of any other negligence by Seller or those acting on Seller's behalf.

18. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL NETAPP BE LIABLE TO SELLER OR SELLER'S ASSISTANTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT NETAPP WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL NETAPP BE LIABLE FOR SUMS IN EXCESS OF THE VALUE OF THE GOODS AND SERVICES PROVIDED HEREUNDER.

19. **Assignments and Subcontracts.** Seller shall not assign or subcontract this Agreement or any right or obligation hereunder without the prior written consent of NETAPP. NETAPP may from time to time assign this Agreement or any rights, obligations, or benefits hereunder to its related, affiliated, or successor corporations.

20. **Delays.** Whenever any cause delays or threatens to delay the timely performance of this Agreement or any work or service hereunder, Seller shall immediately notify NETAPP of all relevant information with respect to such cause. If Seller is or will be delayed in any performance or delivery by more time than is acceptable to NETAPP in NETAPP's sole judgment, then NetApp may terminate this Agreement in whole or in part and such termination shall not be a breach of this Agreement and shall be without penalty or payment.

21. **Price Warranty.** Seller warrants that the prices specified in this Agreement do not exceed the prices charged for like quantities of the same or substantially similar articles to any other purchaser. If prices are lowered for any other customer purchasing similar articles in similar quantities, NETAPP's price shall be lowered to such price. Seller agrees to notify NETAPP of such lower prices within ten (10) days of such sale. Seller will give NETAPP the benefit of any price declines to actual time of shipment. This Agreement must not be filled at higher prices than last quoted or charged without prior written consent of NETAPP. Prices include and Seller shall bear all duties, fees, and taxes including sales, use, property, excise, value added and gross receipts levied on this Agreement or the Goods prior to delivery to the F.O.S. Point. Seller agrees that if any of the above is paid by NETAPP, Seller shall immediately reimburse NETAPP for the amount paid plus any related expenses and interest.

22. **Services Warranty.** Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, Seller represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in this Agreement. Seller represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Seller is bound.

23. **Goods Warranty.** Seller warrants that (i) all Goods and packaging material will comply with all applicable laws and governmental regulations, accepted industry standards, and with all applicable specifications, drawings, or other descriptions given, including those set forth in this Agreement and, if of Seller's design, to be suitable for the purpose intended; (ii) all components or parts used in the Goods or spare parts for the Goods will be new; (iii) the Goods and spare parts comply with all applicable laws and regulations relating to the restrictions on substances in electrical and electronic equipment ("ROHS/REACH") and, if applicable, with the collection, treatment, recycling and disposal of waste from electrical and electronic equipment ("WEEE") in connection with any disposal activities of the Goods conducted by Seller; (iv) Goods will meet all requirements of NETAPP Specification 267-00046 PROC. ENVIRONMENTAL PRODUCT REQUIREMENTS, the current version of which is posted on the NETAPP Document Portal website (if Seller does not have access to the NetApp Document Portal website, Seller shall contact NetApp for a copy of the most current version of such specification and its attachments); (v) for a period of five (5) years from delivery unless specifically stated otherwise in a relevant exhibit, all Goods will be safe for use consistent with the applicable governmental regulations and specifications and be free of defects in design, materials, and workmanship; and (vi) the manufacture, sale, distribution and use of the Goods does not and will not infringe an intellectual property right of any third party. Upon request by NETAPP, Seller shall (a) facilitate inquiries into the Seller supply chain for auditing compliance and collection of material content, including written material content declarations, by NETAPP or its authorized third party and (b) provide NETAPP or its authorized third party a written certification of the Goods' compliance with the applicable governmental regulations and the NETAPP Environmental Product Requirements specification and other required reporting set forth in subparagraphs (ii) and (vi) above. Seller will have no liability or obligation to NETAPP under this Section to the extent that defects in Goods are due to NETAPP's abuse, misuse, improper use, negligence, accident, alteration, tampering or faulty repair. NETAPP's acceptance or approval of Goods will not relieve Seller of its warranty obligations pursuant to this Section. This warranty shall run to NETAPP, its successors, assigns, and the users of Goods covered by this Agreement. The aforesaid expressed warranties shall be in addition to any warranty implied by law and any standard warranty or guarantee of Seller, shall be construed as conditions as well as warranties, and shall not be exclusive. Seller agrees to replace or to construct any Goods not conforming to the foregoing requirements when notified by NETAPP or its successors within five (5) years after delivery. Seller hereby agrees that it will make spare parts available to NETAPP for a period of seven (7) years from the date of shipment at Seller's then current price, less applicable discounts. If Seller, upon notice of defect, fails promptly to correct or replace the Goods, NETAPP may do so without further notice and Seller shall reimburse NETAPP for all costs incurred thereby. No inspection, test or approval of any kind, including approval of designs, shall affect Seller's obligation under this Section. Goods which have been rejected shall not thereafter be tendered for acceptance unless the former rejection and correction are identified. Replaced or repaired Goods shall be subject to the provisions of this Section 23 to the same extent as the original Goods except that the warranty shall run from the last delivery date. NETAPP may return rejected Goods or hold them at Seller's risk and expense, and may in either event charge Seller with costs of transportation, shipping, unpacking, examining, retesting, reshipping, and the like.

24. **Patents.** Unless an infringement arises exclusively from a design that is proprietary to NETAPP and provided by NETAPP, Seller shall, at its expense, hold harmless and defend NETAPP, its customers, and all persons claiming under NETAPP against any suit or suits for the infringement of any patent, trade secret, copyright, trademark or other intellectual property right of a third party and shall indemnify the aforesaid parties against all damages, claims, losses, liabilities, costs and expense of any kind or nature (including without limitation attorney's fees and court costs) arising there from by reason of the manufacture, sale or the normal and intended use of the articles covered by this Agreement. Where performance under this Agreement includes experimental, developmental or research effort and such work is paid for in whole or in part by NETAPP, Seller agrees to disclose to NETAPP all confidential processes, know how and trade secrets resulting there from and, on request, to assign to NETAPP each invention and property right resulting there from. Should the use by NETAPP or its customers of any of the Goods enjoined, or in the event Seller desires to minimize its liabilities hereunder, Seller may, at its option, either: (a) substitute a fully equivalent non-infringing item; (b) modify the infringing item so that it no longer infringes but remains functionally equivalent; (c) obtain for NETAPP or NETAPP's customers, at Seller's expense, the right to continue use of such item. If none of the foregoing is feasible, NETAPP may, at its option, require that Seller take back such infringing item and refund to NETAPP or its customers the purchase price therefor.

25. **Governing Law; Venue.** This agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the state of California, except its conflicts of law rules. The California Superior Court in Santa Clara County and/or United States District Court for the Northern District of California in San Jose, California shall have jurisdiction and venue over all controversies in connection herewith.

26. **Attorneys' Fees.** The prevailing party in any action to enforce this Agreement shall be entitled to receive its reasonable court costs and attorney's fees in addition to any other damages.

27. **Notices.** Manner of Giving Notice. All notices hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, two days after delivery to an internationally or nationally recognized overnight delivery service, charges prepaid, five days after sent by registered or certified mail, postage prepaid, or when receipt is confirmed by telex, confirmed facsimile or other telegraphic means to such address as shall be provided by the parties from time to time in writing. Any party may change its address for such communications by giving notice thereof to the other party in conformance with this Section.

28. **Government Flow down Provisions.** If this Agreement is placed under a U.S. Government contract/subcontract, at any tier, all provisions of the Federal Acquisition Regulations (FAR), and other Government agency regulations contained or incorporated by reference in NETAPP's Government contract/subcontract apply to, and are incorporated by reference in, this Agreement. Seller shall indemnify and hold NETAPP harmless from any and all liability under NETAPP's Government contract/subcontract arising from: (a) Seller's failure to submit cost or pricing data which is accurate, current and complete; and (b) Seller's failure to comply with any Cost Accounting Standards.

Exhibit "J"-3-

SMRH:48474584.1

29. **Export Law Compliance.** Seller shall comply fully with all applicable federal, state and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws. Neither Seller nor NETAPP shall export directly or indirectly, any information acquired under this Agreement or any Goods utilizing any such information to any country for which the United States Government or any agency thereof at the time of export requires an export license or other government approval, without first obtaining such license or approval. Upon NETAPP's request, Seller will promptly provide NETAPP with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States. With respect to any transactions under these purchase order terms and conditions, both parties will cooperate in any reasonable manner to effect compliance with foreign sales corporation rules as set forth in the Internal Revenue Code.

30. **Subcontracting and Equal Employment Opportunity.** Seller shall not subcontract any portion of the Work without prior written approval of Buyer. Seller agrees, to the extent applicable, to comply with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and the implementing regulations for each found at 41 CFR Part 60. Seller incorporates into this Agreement, as applicable, the Equal Opportunity clauses found at 41 CFR § 60-1.4(a), 60-250.5(a), 60-741.5(a), and 60-300.5(a), and will likewise incorporate the clauses into all applicable subcontracts as required by 41 CFR § 60-1.4(b).

31. **Notice of Employee Rights under Federal Labor Law.** Seller incorporates into this Purchase Order, as applicable, the obligations regarding the notice of employee rights under federal labor laws found at 29 CFR Part 471, Appendix A to Subpart A, and will likewise incorporate those obligations into all applicable subcontracts as required by 29 CFR Part 471.

32. **Disclaimer of Trademark Rights.** Seller hereby disclaims any interest in any trademark, tradenames, or good will associated therewith belonging to NETAPP and further hereby assigns to NETAPP any such rights Seller may acquire in such trademarks, tradenames or goodwill, however acquired, whether by operation of law, estoppel or otherwise.

33. **Survival.** Seller's obligations under Sections 10, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 shall survive any termination of this Agreement.

34. **Entire Agreement.** Other than with respect to any previously executed contracts between the parties concerning the same subject matter to which this Agreement is meant to serve as an exhibit or addendum (e.g., any Master Services Agreements, Statements of Work or other procurement contracts entered into by the parties prior to the effective date of this Agreement) (collectively, "Current Contracts"), which this Agreement shall not be deemed to supersede, this Agreement, including all of these terms and conditions, constitutes the exclusive and entire agreement between NETAPP and Seller and, hereby supersedes all other prior discussions, correspondence, understandings and/or agreements between the parties pertaining to its subject matter. In the event of a conflict between the terms of this Agreement and any Current Contract, the terms of the Current Contract shall govern.

Exhibit "J"-4-

SMRH:484745841.1



Assured Maintenance Agreement



Offered to:

ALEX MANDRUSOV

NETWORK APPLIANCE

Assured Maintenance Agreement Page 1 of 12

Customer Name **NETWORK APPLIANCE**

Proposal No.
MA-SDA05161402

(Hereinafter referred to as "Customer")

Address **495 E. Java Road**

Agreement No.

City **Sunnyvale** State **CA**

Zip **94901**

Locations(s) **Same as above**

Scope of Service

In consideration of their mutual agreement, Daikin Applied Americas Inc. (hereinafter also referred to as "Daikin Applied") and Customer agree that the following services and type of coverage for the above location(s) for the equipment listed on the attached Equipment Schedule (hereinafter referred to as "Equipment") will be provided in accordance with the Terms and Conditions, Assured Maintenance Agreement Equipment Schedule and Assured Maintenance Agreement Plans and Service Programs included herein.

I. Type of Plan

First Year Maintenance Labor Maintenance D-Net[®] Remote Support*

Inspection Comprehensive Maintenance

*D-Net Performance Services can be a stand alone Remote Support plan or can be included with any other plan.

IIa. System Components Covered

VRV Systems Water Treatment
 Air Conditioning / Chiller Air Filters
 Heating Refrigeration
 Temperature Controls Digital Systems
 Electrical Equipment Refrigerant Coverage

IIb. Service Options Included

Predictive Maintenance-Oil Test
 D-Net Performance Services

Emergency Service Response

This Agreement includes emergency service response as checked below:

- 24 hours per day, 7 days per week including holidays.
 24 hours per day, 5 days per week (Monday - Friday).
 During normal working hours on McQuay International scheduled business days.
 Not included in this Agreement but available on a time and material basis.

Important: Additional terms and conditions are continued on the following pages.

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Exhibit "J"-6-

Assured Maintenance Agreement Comprehensive Maintenance Plan

Customer Name **NETWORK APPLIANCE**

Agreement No.

Inspections

During normal working hours Daikin Applied shall provide 6 inspections per year, unless otherwise noted, for the Equipment.

1. Daikin Applied agrees to:

- a) Furnish all labor, parts, oil, and material needed to maintain the Equipment in good operating condition, perform during normal working hours the maintenance service in accordance with the Assured Maintenance Agreement Service Program(s) at the price stated herein and subject to the terms and conditions set forth herein.
- b) Annually inspect the water-side of water cooled condensers and air-side of air cooled condensers with procedures determined by Daikin Applied.
- c) Maintain the following items related to the Equipment:
 - i) Electric wiring from the starter to its respective motor.
 - ii) Refrigerant piping between two or more pieces of Equipment.
 - iii) The pressure and temperature controls, thermometers, gauges, control devices, thermostats and manual valves located on the Equipment.
 - iv) Mechanical starters.
- d) Provide a written report to the Customer about the condition of the Equipment and any recommendations for enhancements to maintain capacity, reliability, and efficiency.

2. Customer agrees to:

- a) Designate a representative in its employ to receive instructions in the operation of the Equipment. Such representative shall have authority to carry out recommendations received from Daikin Applied in conjunction with the performance of this Agreement.
- b) Allow Daikin Applied to start and stop the Equipment in order to perform services specified in this Agreement, in coordination with owner or his representative.
- c) Operate the Equipment in accordance with Daikin Applied instruction, and to notify Daikin Applied promptly of any change in the usual operating conditions.
- d) Provide reasonable means of access to the Equipment, including any required removal, replacement and refinishing of the building structure.
- e) Permit the use by Daikin Applied of the usual building maintenance materials and tools.
- f) Daikin Applied assumes customer maintains building boiler and machinery insurance on listed equipment. In the event of a claim on listed equipment, Daikin Applied will be responsible only for the deductible on such policy. In no event will Daikin Applied's liability be greater than the yearly contract amount.
- g) Employ only Daikin Applied personnel or persons authorized by Daikin Applied to perform all work on the Equipment, except for operation of same.
- h) Provide proper condenser water treatment.

3. It is understood that, except to the extent otherwise provided in the Assured Maintenance Agreement Equipment Schedule, the services and maintenance provided for herein includes only those items listed above. It does not, for example, include any of the following:

- a) Normal daily and weekend functions of stopping/starting the Equipment covered hereunder.
- b) The maintenance of space conditions or system performance unless improper conditions are directly due to the failure of the mechanical Equipment covered hereunder.
- c) The changing or cleaning of air filters.
- d) Piping and valves other than refrigerant.
- e) Ductwork.

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Exhibit "J"-7-

- f) Crane service, special rigging or freight charges.
- g) Damage due to freezing weather.
- h) Water treatment.
- i) Corrosion or erosion damage to water and/or air side of Equipment (for example, but not limited to the following: tube bundles, heat exchangers, structural supports, and coils.)
- j) Disconnect switches, fuses and circuit breakers.
- k) Portable recorders
- l) Complementary equipment (for example, but not limited to the following: cabinets, fixtures, water boxes, water supply lines and drain lines).
- m) Boiler shell, tubes, and refractory material.
- n) Complete replacement of unit.
- o) Any items of equipment that are recommended or required by Insurance Companies, Government, State, Municipal or other authorities.
- p) Any inspection, service provided, or worked performed, including, but not limited to, the discovery of any worn or defective parts or components thereof under the Compressor Assurance Program ("CAP") or any other optional scheduled internal inspection of compressors are not covered under this agreement.

Exceptions and additions:

Assured Maintenance Agreement
Centrifugal Chillers
Service Program 1

Customer Name **NETWORK APPLIANCE**

Agreement No.

Daikin Applied will perform the following procedures, as applicable:

Annual Inspection

1. Test for refrigerant leaks including relief valve piping outlets.
2. Check main starter and control panel.
3. Inspect and tighten electrical connections.
4. Check relays, operating, and safety controls
5. Check flow switch operation.
6. Lubricate inlet vane linkage, if applicable.
7. Check vane control setting and operation
8. Take and record water side pressure drops across vessels.
9. Perform MicroTech check, log, and last fault analysis, analyze performance.
10. Perform operating log if not MicroTech and analyze.
11. Meg compressor and oil pump motors.
12. Clean oil cooler strainer, water cooled only.
13. Check oil sump heater operation.
14. Perform oil analysis for wear metals, moisture, acid.
15. Inspect vibration eliminators and inspect water piping for leaks.
16. Blow down condenser water strainer(s).
17. Check head pressure control operation for tower fans or bypass valve.
18. Check minimum condenser water temperature operation.
19. Clean purge drum and oil separator where applicable.
20. Check oil in purge pump and oil separator where applicable.
21. Lubricate purge pump motor where applicable.
22. Visually inspect water side of condenser.

Head removal by: Daikin Applied Customer

Clean Condensers by: Daikin Applied Customer

Semi-Annual Inspection

1. Review manufacturer's recommendations for operation.
2. Check auxiliary equipment operation.
3. Check oil levels.
4. Check oil sump heater, gear case heater, and purge pump oil heaters where applicable.
5. Check relays, operating, and safety controls.
6. Check chilled water pump(s).
7. Check condenser water pump(s) and cooling tower.
8. Check water chiller.
9. Check purge unit operation where applicable.
10. Log all operating conditions.
11. Review operating procedures with chiller operator.

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Exhibit "J"-9-

Operational Inspection

1. Review owner's log for trends.
2. Inspect chiller for leaks.
3. Inspect starter contacts for burns and discoloration.
4. Run chiller and log readings, analyze performance.
5. Record unusual noises and vibrations.
6. Record refrigerant level in sightglass.
7. Record oil level in sightglass.
8. Verify operation of the oil heater and cooler.
9. Check purge operation. Check sight glass and drain non-condensibles from purge drum where applicable.
10. Review chiller operation with chiller operator.

Exceptions and additions: This service does not include "slide back" service on low pressure equipment.

Assured Maintenance Agreement Predictive Maintenance Service Program 16

Page 6 of 12

Customer Name **NETWORK APPLIANCE**

Agreement No.

Daikin Applied will perform the following procedures:

Spectrochemical Oil Analysis

Parameters tested	Results
Metals	Diagnosis
Moisture	Trends
Acid Number	Recommendations

1 Oil analysis(es) will be performed annually per compressor

Refrigerant Analysis

Parameters tested	Results
High boiling residue	Diagnosis
Acid number	Trends
Moisture content	Recommendations

0 Refrigerant analysis(es) will be performed annually

Eddy Current Tube Analysis

Parameters tested	Results
Corrosion	Verbal report
Support wear	Written report
Freeze bulges	Charts/Diagrams
Split fins	Recommendations
Leakers	
Pitting	

0 Eddy current analysis(es) will be performed annually. (Or is available on a quoted basis.)

Vibration Analysis

Parameters tested	Results
Measure horizontal deflections	Report
Measure vertical deflections	Trends
Measure axial deflections	Recommendations
Establish baseline	

0 Vibration analysis(es) will be performed annually

Lithium Bromide Analysis

Parameters tested	Results
Metals	Diagnosis
Lithium Bromide %	Trends
Lithium Hydroxide	Recommendations
Inhibitor	Chemical additions
Ammonia %	
Alcohol additive	
Foaming test	
Foreign contamination	

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Exhibit "J"-11-

SMRH:484745841.1

0 Lithium Bromide analysis(es) will be performed annually

Refrigerant Water Analysis

Parameters tested	Results
Lithium bromide content	Diagnosis
Alkalinity	Trends
Inhibitor by-product	Recommendations
N factor	

0 Refrigerant water analysis(es) will be performed annually

Glycol Analysis

Parameters tested	Results
Color	Diagnosis
Glycol content	Trends
Freezing point	Recommendations
Suspended solids	
Reserve alkalinity	
Acid number	

0 Glycol analysis(es) will be performed annually

Flue Gas Analysis

Parameters tested	Results
CO ₂ content	Diagnosis
O ₂ content	Trends
Stack temperature	Recommendations

0 Flue gas analysis(es) will be performed annually

Exceptions and additions: _____

Assured Maintenance Agreement Equipment Schedule

Customer Name **NETWORK APPLIANCE**

Agreement No.

Equipment	Size	Qty	Manufacturer	Model/Serial No.	Program	Frequency
Water-cooled Centrifugal Chiller	600 Tons	1	McQuay	WSC087	Comprehensive	Annual 1x Semi-Annual 1 x Operating 4x Oil Test 1x Tube Brushing 1x
				STNU050200116		
Water-cooled Centrifugal Chiller	600 Tons	1	McQuay	WSC087	Comprehensive	Annual 1x Semi-Annual 1 x Operating 4x Oil Test 1x Tube Brushing 1x
				STNU050200125		
End of List						

Assured Maintenance Agreement Page 9 of 12

Customer Name **NETWORK APPLIANCE**

Agreement No.

Duration

This Agreement shall remain in effect for an initial term of 2 year(s) beginning May 1, 2016 (the "Effective Date") and shall continue from year to year thereafter unless at least 30 days prior to the expiration date of the initial term or any extended term, either party gives the other written notice of its intention to terminate this Agreement.

Price and Payment Terms

1. Daikin Applied will provide services pursuant to this Assured Maintenance Agreement for the sum of

Year 1	\$29,460
Year 2	\$30,933
Total	\$60,393

2. Payment will be in advance as follows: on the first day of each month beginning on the Effective Date of this Agreement, Daikin Applied will provide Customer with the following monthly invoices and payment will be due upon receipt.

Year 1	\$2,455.00 per month
Year 2	\$2,577.75 per month

3. The first monthly payment will also include a one-time charge of \$ N/A to cover the cost of placing the Equipment in good operating condition prior to the first contract year.

4. The monthly payments will be decreased by \$ N/A due to the Equipment warranty which is in effect during this period and which expires on: April 30, 2019.

5. Customer shall pay for all costs, including all taxes, fees and governmental assessments, in excess of \$ N/A per pound incurred by Daikin Applied for refrigerant used in connection with this Agreement.

NOTE: This Agreement is subject to final approval by Daikin Applied.

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Exhibit "J"-14-

SMRH:484745841.1

Assured Maintenance Agreement Amendments

This Agreement contains two (2) or more Plans as checked on page 1 hereof. The second and third Plan (if applicable) are attached as Exhibit A and incorporated herein.

This proposal expires on: April 10, 2016

The Terms and Conditions set forth on the reverse side of this signature page from an integral part of this Agreement and are expressly incorporated herein.

Submitted by Sandra Agonoy Date March 10, 2016
Daikin Applied
Service Sales Representative

Accepted:

(Full legal name of Customer)

Approved:
Daikin Applied Americas Inc.

Signature

Title
Date _____

Signature

Title
Date _____

Service location: Daikin Applied – San Francisco District

Address: 2568 Barrington Ct., Hayward, Ca 94545

Location code: 2842

Phone: 510-340-0733

Salesman code: 13579

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Exhibit "J"-15-

**DAIKIN APPLIED AMERICAS
INC.
TERMS & CONDITIONS**

1. This Standard Service Proposal or Maintenance Agreement (hereinafter sometimes referenced as "Agreement"), upon acceptance by the Customer, is made solely on the terms and conditions hereof, notwithstanding any additional or conflicting conditions that may be contained in any purchase order or other form of Customer, all of which additional or conflicting terms and conditions are hereby rejected by Daikin Applied. Further, you acknowledge and agree that any purchase order issued by you in accordance with this Agreement will only establish payment authority for your internal accounting purposes. Any such purchase order will not be considered by us to be a counteroffer, amendment, modification, or other revision to the terms of this agreement. No waiver, alteration or modification of the terms and conditions herein shall be valid unless made in writing and signed by an authorized representative of Daikin Applied.
2. This Maintenance Agreement or Standard Service Proposal is subject to acceptance by the Customer within 30 days from date shown on the quote, unless specified otherwise. Prices quoted are for services, labor, and material as specified in this Proposal. If acceptance of this Maintenance Agreement or Standard Service Proposal is delayed or modified, prices are subject to adjustment.
3. Terms of payment are subject at all times to prior approval of Daikin Applied's credit department. Terms of payment are net 30 days upon receipt of invoice unless previously otherwise agreed in writing. Should payment become more than 30 days delinquent, Daikin Applied may stop all work under this Agreement or terminate this Agreement with five (5) days written notice to Customer. Daikin Applied reserves the right to add to any account outstanding more than 30 days interest at 1 1/2% per month or the highest rate allowed by law. In the event of default in payment, Customer agrees to pay all costs of collection incurred by Daikin Applied including, but not limited to, collection agency fees, attorney fees and court costs. Additional services may be performed upon request at a price to be determined, subject to these Terms and Conditions.
4. In the event that Daikin Applied determines, during the first thirty (30) days of any Maintenance Agreement or upon seasonal start-up (discovery period) that any equipment covered under this Agreement in need of repair and/or replacement, Daikin Applied shall inform Customer of the equipment condition and remedy. Daikin Applied shall not be responsible for the present or future repair and/or replacement or operability of any specific equipment, until such time as the equipment is brought up to an acceptable condition or the Customer removes the unacceptable system(s), component(s), or part(s) from this contract.
5. Any Maintenance Agreement price is subject to adjustment once each calendar year, effective on the anniversary date, for changes in labor, subcontractor and material costs. The customer shall receive forty-five (45) days prior written notice of such adjustment unless specifically excluded otherwise in writing.
6. A Maintenance Agreement may be terminated: (i) by either party upon the anniversary date hereof; provided however, that written notice of such termination must be given to the non-terminating party at least thirty (30) days prior to the anniversary date; (ii) by Daikin Applied upon five (5) days prior written notice to Customer, in the event that any sums or monies due or payable pursuant to this Agreement are not paid when due or in the event that additions, alterations, repairs or adjustments are made to the system or equipment without Daikin Applied's prior approval; (iii) by either party, in the event that the other party commits any other material breach of this Agreement and such breach remains uncured for ten (10) business days, after written notice thereof. If a Maintenance Agreement is terminated for any reason, other than a material breach by Daikin Applied, Customer shall pay, in addition to all sums currently due and owing, the entire remaining balance due for the term of the Maintenance Agreement, or an amount equal to time and materials expended for the year, whichever is less. Notices required hereunder shall be sent via Certified U.S. Mail, Return Receipt Requested and provided that such notice is postmarked by the required date, such notice shall be deemed properly given.
7. Unless Customer provides appropriate documentation of tax exemption, Customer shall pay Daikin Applied, in addition to the contract price, the amount of all excise, sales, use, privilege, occupation or other similar taxes imposed by the United States Government or any other National, State or Local Government, which Daikin Applied is required to pay in connection with the services or materials furnished hereunder. Customer shall promptly pay invoices within 30 days of receipt. Should payment become more than 30 days delinquent, Daikin Applied may stop all work under this Agreement or terminate this Agreement as provided in the next paragraph.
8. Any and all costs, fees and expenses arising from or incurred in anticipation of any federal, state, county, local or administrative statute, law, rule, regulation or ordinance (collectively "Governmental Regulations") directly or indirectly requiring that refrigerant other than the type of refrigerant currently being utilized in connection with the equipment subject to this Agreement be used, shall be borne solely by Customer. In this regard, Daikin Applied shall not be required to bear any expense in connection with the modification, removal, replacement or disposal of any refrigerant in response to any Governmental Regulation designed to reduce or eliminate the alleged environmental hazards associated with the refrigerant.
9. The contract price stated herein is predicated on the fact that all work will be done during regular working hours of regular working days unless otherwise specified. If for any reason Customer requests that work be performed other than during regular working hours or outside the scope of services specified hereunder, Customer agrees to pay Daikin Applied any additional charges arising from such additional services, including but not limited to premium pay, special freight or other fees or costs associated therewith.
10. Customer shall be responsible for all costs, expenses, damages, fines, penalties, claims and liabilities associated with or incurred in connection with any hazardous materials or substances, including but not limited to asbestos, upon, beneath, about or inside Customer's equipment or property.

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Exhibit "J"-16-

Title to, ownership of, and legal responsibility and liability for any and all such hazardous materials or substances, shall at all times remain with Customer. Customer shall be responsible for the removal, handling and disposal of all hazardous materials and substances in accordance with all applicable Governmental Regulations. Customer shall defend, indemnify, reimburse and hold harmless Daikin Applied and its officers, directors, agents, and employees from and against any and all claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties (including without limitation, attorneys' fees and expenses) suffered or incurred by any such indemnified parties, based upon, arising out of or in any way relating to exposure to, handling of, or fees and expenses) suffered or incurred by any such indemnified parties, based upon, arising out of or in any way relating to exposure to, handling of, or disposal of any hazardous materials or substances, including but not limited to asbestos, in connection with the services performed hereunder. Daikin Applied shall have the right to suspend its work at no penalty to Daikin Applied until such products or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted. Daikin Applied reserves the right to engage others in a subcontractor status to perform the work hereunder.

11. Customer agrees to provide Daikin Applied personnel with the usual required utilities (water, electricity, compressed air, etc.) and special tools and equipment normally used for such services unless restricted specifically in the quote. Customer agrees to ensure that sufficient service access space is provided. Daikin Applied shall not be held liable for failure or damage to any equipment caused by power interruptions, single phasing, phase reversal, low voltage, or other deficiencies beyond the control of Daikin Applied.
12. This agreement does not include responsibility for design of the system (unless specifically included), obsolescence, electrical power failures, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s) by others (including the Customer), negligence of the system by others (including the Customer), failure of the Customer to properly operate the system(s), or other causes beyond the control of Daikin Applied.
13. In the event that Daikin Applied is required to make any repairs and/or replacements or emergency calls occasioned by the improper operation of the equipment covered hereby, or any cause beyond Daikin Applied's control, Customer shall pay Daikin Applied for the charges incurred in making such repairs and/or replacements or emergency calls in accordance with the current established Daikin Applied rates for performing such services.
14. Daikin Applied shall not in any event be liable for failure to perform or for delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any Governmental Authority or of Customer, riot, war, embargo, fuel or energy shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials, or equipment from usual sources, or due to any cause beyond its reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of such delay. If the materials or equipment included in this Proposal become temporarily or permanently unavailable for reasons beyond the control of Daikin Applied, Daikin Applied shall be excused from furnishing said materials or equipment and be reimbursed for the difference between cost of materials or equipment unavailable and the cost of an available reasonable substitute.
15. DAIKIN APPLIED SHALL NOT IN ANY EVENT BE LIABLE TO THE CUSTOMER OR TO THIRD PARTIES FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PRODUCTION, LOSS OF USE OR LOSS OF PROFITS OR REVENUE ARISING FROM ANY CAUSE WHATSOEVER INCLUDING, BUT NOT LIMITED TO ANY DELAY, ACT, ERROR OR OMISSION OF DAIKIN APPLIED. IN NO EVENT WILL DAIKIN APPLIED'S LIABILITY FOR DIRECT OR COMPENSATORY DAMAGES EXCEED THE PAYMENT RECEIVED BY DAIKIN APPLIED FROM CUSTOMER UNDER THE INSTANT AGREEMENT.
16. Daikin Applied extends the manufacturer's warranties on all parts and materials and warrants labor to meet industry standards for a period of thirty (30) days from the date performed, unless a longer duration is expressly stated elsewhere in this Agreement. Daikin Applied expressly limits its warranty on Customer's Equipment to cover only that portion of Equipment which had specific service work done by Daikin Applied. These warranties do not extend to any Equipment or service which has been repaired by others, abused, altered, or misused, or which has not been properly maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR SPECIFIC PURPOSE, WHICH ARE HEREBY SPECIFICALLY DISCLAIMED.
17. Each of us agrees that we are responsible for any injury, loss, or damage caused by any negligence or deliberate misconduct of our employees or employees of our subcontractors. If any of our employees or those of our subcontractors, cause any injury, loss or damage in connection with performing their duties under this agreement, the responsible party will pay for all costs, damages, and expenses, which arise. Each of us agrees to defend and hold harmless the other party, its officers, directors and employees, from and against all claims, damages, losses and expenses, including but not limited to attorney's fees and court costs, arising out of or resulting from the performance of work hereunder, to the extent that such claim, damage, loss, or expense is caused by an active or passive act or omission of the indemnifying party or anyone directly or indirectly employed by that party, or anyone for whose acts that party may be liable.
18. This Agreement shall be binding upon and inure to the benefit of each party's respective successors, assigns and affiliates. This Agreement is governed by and construed in accordance with the laws of the State of Minnesota.

2568 Barrington Court, Hayward, California 94545 Administration: 510-786-4161 Fax: 763-383-4591

Exhibit "J"-17-

SMRH:484745841.1

EXHIBIT "K"

[Intentionally Deleted.]

Exhibit "K"-1-

SMRH:484745841.1

EXHIBIT "L"

EXCLUDED PERSONAL PROPERTY

All AV studio and associated equipment in rooms:

- 1.3.207
- 1.3.212
- 1.3.205
- 1.3.204

All IT equipment in the following rooms:

- 1.1.034
- 1.1.019
- 1.2.232
- 1.3.231A
- 1.4.233

Specific pieces of furniture as follows:

- 4 @ Barcelona chairs + 2 ottomans in Spinneybeck Sabrina Jasper (dye lot #1)
- 4 @ MR chairs in Spinneybeck Sabrina Jasper (dye lot #2)
- 4 @ Divina lounge chairs (large) in Spinneybeck Sabrina Jasper (dye lot #2) & Maharam Pebble Multi, color Slate
- 9 @ Divina lounge chairs (petite) in Maharam Pebble Multi, color Slate
- 4 @ MR chairs in Spinneybeck Sabrina Jasper (dye lot #3)
- 2 @ Plattner chairs with ottomans in Knoll Hopsack Charcoal
- 2 @ Plattner coffee tables
- 4 @ Plattner side tables
- 1 Arper Saari 3-seat sofa in HBF Equation
- 4 @ Arper Saari XL Armchair with Elmsoft leather ES11049
- 2 @ DWR Niels Bendsten pool coffee table low & high (2 each)
- 4 @ HBF Duna Chair: Shell: Edelman Leather – Dream Cow Sediment DRC-E2; cushions: Maharam Kvadrat Tundra color 227 (this appears to be out of production) – currently in the B9 lobby
- 1 barcelona coffee table with Starphire glass top
- 1 barcelona coffee table with clear glass top

Exhibit "L"-1-

EXHIBIT "M"

DUE DILIGENCE ITEMS

- Copies of all leases (current or pending), any amendments, guaranties, Letters of Credit, letter agreements and/or letters of intent (current or pending) relating thereto (as applicable).
- Copies of all operating contracts, and all service and maintenance agreements, if any, and any amendments and letter agreements relating thereto (as applicable).
- Monthly operating statements for the past 12 months and annual statements for the past 3 years as well as the current year budget (as applicable).
- Engineering, environmental and physical inspection reports generated by third parties in Seller's possession regarding the Property, including soil reports and maintenance records for mechanical equipment.
- Current tenant billing statements (as applicable).
- Current aged receivable report and security deposit ledger (as applicable).
- Annual tenant reconciliation statements for the past 3 years (as applicable).
- Copies of recent property tax bills and assessor's statements of current assessed value.
- Detail of capital improvements made over the past 3 years, including any LEED-related improvements.
- Statement of insurance coverage by policy type, a list any claims against such policies over the past three years and copies of the actual insurance policies.
- Copies of "as built" plans, scaled drawings, drawings of future buildings or structures and specifications including the actual floor area measurements and floor diagrams for the Property, plus detailed gross, rentable and usable floor area calculations for the building, each floor and each tenant.
- A current title report issued by the Title Company, together with copies of all listed exceptions.
- Any existing survey of the Property.
- Copies of all unexpired warranty agreements in Seller's possession covering all real or personal property to be conveyed.
- Copies of all approvals, permits and licenses from each governmental authority having jurisdiction over the Property as are necessary to permit the full use, occupancy and/or development of the Property. These shall include but not be limited to: environmental permits and approvals, certificate of completion, certificates of occupancy (each tenant's suite and the entire property) and evidence of approval and compliance with applicable zoning and use regulations.
- List of personal property to be conveyed, along with a basic inventory of technological improvements found in the Property, e.g., wiring, power, generator(s), etc.
- Copies of all reciprocal easement agreements, CC&Rs and parking agreements affecting the Property.
- A detailed summary of all unresolved legal actions concerning the Property, including actions taken on behalf of or against the ownership of the Property.
-

Exhibit "M" -1-

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

BETWEEN

NETAPP, INC.,
a Delaware corporation
as SELLER

and

GOOGLE INC.,
a Delaware corporation
as BUYER

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**FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

THIS FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this "**Amendment**") is dated as of October 2, 2017 by and between **NETAPP, INC., a Delaware corporation** ("**Seller**"), and **GOOGLE LLC, a Delaware limited liability company**, successor by conversion to Google Inc., a Delaware corporation ("**Buyer**").

RECITALS

A. Buyer and Seller entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of September 11, 2017 (the "**Agreement**") with respect to certain real property, improvements and undeveloped land located in Sunnyvale, California (as more particularly described in the Agreement, the "**Property**"). All capitalized and undefined terms used in this Amendment shall have the meanings given to them in the Agreement.

B. Buyer is currently in the process of conducting a Survey of the Property and, therefore, Buyer and Seller have agreed to revise the Interim Date as it relates to Buyer's review of the Survey and for Buyer to provide an additional Objection Notice, if any, as provided below.

C. Buyer and Seller have mutually agreed to modify the Agreement, all as more particularly set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and of the conditions, terms, covenants, and agreements set forth herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree that the Agreement is amended as follows:

1. **Extension for Survey Review.** Section 4.2.1 of the Agreement is hereby deleted in its entirety and replaced by the following:

"Buyer shall obtain from the Title Company a preliminary title report for the Property (the "**PTR**") and copies of all underlying title documents described in the PTR. Buyer may obtain, at Buyer's sole cost and expense, a land title survey (certified to include Seller) of the Property prepared by a licensed surveyor (the "**Survey**"). Seller shall also deliver to Buyer any Survey that has been performed within the last twelve (12) months. Buyer shall deliver a copy of any Survey to Seller and Title Company within three (3) business days after Buyer's receipt thereof. Buyer shall have twenty-one (21) days after receipt of the PTR (but in any event not later than nine (9) business days prior to the Contingency Deadline) (the "**PTR Interim Date**") to provide written notice (the "**PTR Objection Notice**") to Seller of any matters shown by the PTR which are not satisfactory to Buyer. In addition, Buyer shall have until 5:00 p.m. Pacific Standard Time on October 19, 2017 (the "**Survey Interim Date**") to provide written notice (the "**Survey Objection Notice**") to Seller of any such matters shown by the Survey which are not satisfactory to Buyer. The PTR Objection Notice and the Survey Objection Notice may be referred to herein, collectively, as the "**Objection Notice**". In the event that legal descriptions, assessors numbers, or essential title information is not available for one or more of the parcels comprising the Unimproved Land by the date that is ten (10) business days prior to either the

PTR Interim Date and/or the Survey Interim Date, the PTR Interim Date and/or Survey Interim Date shall be extended on a day for day basis until such date as Buyer receives such information. If Seller and Escrow Holder have not received the PTR Objection Notice by the PTR Interim Date, that shall be deemed Buyer's unconditional approval of the condition of title to the Property, subject to the provisions of Section 4.2.2 below. If Seller and Escrow Holder have not received the Survey Objection Notice by the Survey Interim Date, that shall be deemed Buyer's unconditional approval of the condition the matters on the Survey, subject to the provisions of Section 4.2.2 below. Except as provided in this Section 4.2, Seller shall have until the date which is two (2) business days prior to the Outside First Closing Date to make such arrangements or take such steps as the parties shall mutually agree to satisfy Buyer's objection(s) set forth in the PTR Objection Notice and/or the Survey Objection Notice; provided, however, that, except with respect to liens secured by deeds of trust securing loans made to Seller, mechanics' liens relating to work authorized and contracted by Seller, judgment liens against Seller, and delinquent taxes (herein "Monetary Liens", which Seller agrees to have removed on or before the First Closing Date), Seller shall have no obligation whatsoever to expend or agree to expend any funds, to undertake or agree to undertake any obligations or otherwise to cure or agree to cure any of Buyer's objections in the PTR Objection Notice. Within two (2) business days of receipt of the PTR Objection Notice and within two (2) business days of receipt of the Survey Objection Notice, Seller may, in its sole discretion, deliver separate written notice to Buyer and Escrow Holder as to each Objection Notice identifying which disapproved items Seller shall undertake to cure or not cure ("Seller's Response"). If Seller does not deliver a Seller's Response within said two (2) business day periods, Seller shall be deemed to have elected to not remove or otherwise cure any exceptions disapproved by Buyer. If Seller elects, or is deemed to have elected, not to remove or otherwise cure an exception disapproved in either Objection Notice, and Buyer does not terminate this Agreement prior to the Contingency Deadline pursuant to Section 4.1.2 above, Buyer shall be deemed to have approved Seller's Response (or, if applicable, Seller's deemed election to not remove or otherwise cure any exceptions disapproved by Buyer) and irrevocably waived its objection to any title and/or survey matters which Seller has not expressly undertaken to cure in Seller's Response. Except for Monetary Liens, all matters shown in the PTR with respect to which Buyer fails to give a PTR Objection Notice on or before the PTR Interim Date shall be deemed to be approved by Buyer and, all matters shown in the Survey with respect to which Buyer fails to give a Survey Objection Notice on or before the Survey Interim Date shall be deemed to be approved by Buyer. For the avoidance of doubt, nothing in this Section 4.2.1 shall limit or modify the parties' rights and obligations with respect to the Subdivision Map for the Common Lot as set forth in Section 3.2.3 above."

2. **Full Force and Effect.** Except as modified by this Amendment, the terms and provisions of the Agreement are hereby ratified and confirmed and are and shall remain in full force and effect. Should any inconsistency arise between this Amendment and the Agreement as to the specific matters which are the subject of this Amendment, the terms and conditions of this Amendment shall control. This Amendment shall be construed to be a part of the Agreement and shall be deemed incorporated in the Agreement by this reference.

3. **Counterparts; Facsimile and Electronic Copy.** This Amendment may be executed in two (2) or more counterparts, each of which shall be an original, and all of which shall constitute one original of this Amendment. Signatures to this Amendment transmitted by telecopy or email shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Amendment with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Amendment, it being expressly agreed that each party to this Amendment shall be bound by its own telecopied or emailed signature and shall accept the telecopied or emailed signature of the other party to this Amendment

4. **Entire Agreement.** The Agreement, as amended by this Amendment, constitutes the full and complete agreement and understanding between the parties hereto and shall supercede all prior communications, representations, understandings or agreements, if any, whether oral or written, concerning the subject matter contained in the Agreement, as so amended, and no provision of the Agreement, as so amended, may be modified, amended, waived or discharged, in whole or in party, except by a written instrument executed by all of the parties hereto.

5. **Governing Law.** This Amendment shall be governed by the laws of the State set forth in the Agreement.

6. **Authority.** Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

SELLER:

**NETAPP, INC.,
a Delaware corporation**

By: /s/ Jeffrey
Bergmann
Name: Jeffrey
Bergmann
Title: Vice President, Tax &
Treasury

BUYER:

**GOOGLE INC.,
a Delaware corporation**

By: /s/ Mark
Golan
Name: Mark
Golan
Title: Vice President, Real Estate and Workplace Services,
Bay
Area

**SECOND AMENDMENT TO AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

THIS SECOND AMENDMENT TO AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this "**Amendment**") is dated as of October 25, 2017 by and between **NETAPP, INC., a Delaware corporation** ("**Seller**"), and **GOOGLE LLC, a Delaware limited liability company** ("**Buyer**").

RECITALS

A. Buyer (as successor-in-interest to Google Inc.) and Seller entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of September 11, 2017 (the "**Original Agreement**"), as amended by that certain First Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions dated as of October 2, 2017 (the "**First Amendment**", and together with the Original Agreement, the "**Agreement**") with respect to certain real property, improvements and undeveloped land located in Sunnyvale, California (as more particularly described in the Agreement, the "**Property**"). All capitalized and undefined terms used in this Amendment shall have the meanings given to them in the Agreement.

B. Pursuant to the terms of the Purchase Agreement, the period of time (the "**Property Approval Period**") for Buyer's due diligence inspection of the Property will expire on the Contingency Deadline, which is 5:00 pm (Pacific Time) on October 25, 2017.

C. Buyer and Seller have mutually agreed to modify the Agreement, all as more particularly set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and of the conditions, terms, covenants, and agreements set forth herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree that the Agreement is amended as follows:

1. **Recitals & References.** The Recitals set forth above are incorporated herein as though set forth in full herein. All references to the "Agreement" in this Amendment or in the Agreement shall mean the Agreement as amended by this Amendment.

2. **Contingency Deadline.** Notwithstanding anything to the contrary in the Agreement, the Contingency Deadline is hereby extended to expire at 5:00 pm (Pacific Time) on October 31, 2017.

3. **Full Force and Effect.** Except as modified by this Amendment, the terms and provisions of the Agreement are hereby ratified and confirmed and are and shall remain in full force and effect. Should any inconsistency arise between this Amendment and the Agreement as to the specific matters which are the subject of this Amendment, the terms and conditions of this Amendment shall control. This Amendment shall be construed to be a part of the Agreement and shall be deemed incorporated in the Agreement by this reference.

4. **Counterparts; Facsimile and Electronic Copy.** This Amendment may be executed in two (2) or more counterparts, each of which shall be an original, and all of which shall constitute one original of this Amendment. Signatures to this Amendment transmitted by telecopy or email shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Amendment with its

actual signature to the other party, but a failure to do so shall not affect the enforceability of this Amendment, it being expressly agreed that each party to this Amendment shall be bound by its own telecopied or emailed signature and shall accept the telecopied or emailed signature of the other party to this Amendment

5. **Entire Agreement.** The Agreement, as amended by this Amendment, constitutes the full and complete agreement and understanding between the parties hereto and shall supersede all prior communications, representations, understandings or agreements, if any, whether oral or written, concerning the subject matter contained in the Agreement, as so amended, and no provision of the Agreement, as so amended, may be modified, amended, waived or discharged, in whole or in part, except by a written instrument executed by all of the parties hereto.

6. **Governing Law.** This Amendment shall be governed by the laws of the State of California.

7. **Authority.** Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

SELLER:

**NETAPP, INC.,
a Delaware corporation**

By: /s/ Jeffrey
Bergmann
Name: Jeffrey
Bergmann
Title: Vice President, Tax &
Treasury.

BUYER:

**GOOGLE LLC,
a Delaware limited liability company**

By: /s/ Mark
Golan
Name: Mark
Golan
Title: Authorized
Signatory

**CERTIFICATION PURSUANT TO SECTION 302(a)
OF THE SARBANES-OXLEY ACT OF 2002**

I, George Kurian, certify that:

1) I have reviewed this Quarterly Report on Form 10-Q of NetApp, 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/ GEORGE KURIAN

George Kurian

Chief Executive Officer and President

(Principal Executive Officer and Principal Operating Officer)

Date: November 29, 2017

**CERTIFICATION PURSUANT TO SECTION 302(a)
OF THE SARBANES-OXLEY ACT OF 2002**

I, Ronald J. Pasek, certify that:

1) I have reviewed this Quarterly Report on Form 10-Q of NetApp, 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/ RONALD J. PASEK

Ronald J. Pasek

Executive Vice President and Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

Date: November 29, 2017

**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, George Kurian, 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 NetApp, Inc., on Form 10-Q for the quarterly period ended October 27, 2017 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 NetApp, Inc.

/s/ GEORGE KURIAN

George Kurian

Chief Executive Officer and President

(Principal Executive Officer and Principal Operating Officer)

Date: November 29, 2017

**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, Ronald J. Pasek, 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 NetApp, Inc., on Form 10-Q for the quarterly period ended October 27, 2017 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 NetApp, Inc.

/s/ RONALD J. PASEK

Ronald J. Pasek

Executive Vice President and Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

Date: November 29, 2017