

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

**Form 10-K**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended April 30, 2006

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from      to      .

Commission File Number 0-27130

**Network Appliance, Inc.**

*(Exact name of registrant as specified in its charter)*

**Delaware**  
*(State or other jurisdiction of incorporation or organization)*

**77-0307520**  
*(IRS Employer Identification No.)*

**495 East Java Drive,  
Sunnyvale, California 94089**  
*(Address of principal executive offices, including zip code)*

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

**Securities registered pursuant to Section 12(b) of the Act:  
None**

**Title of Each Class**  
none

**Name of Exchange on Which Registered**  
none

**Securities registered pursuant to Section 12(g) of the Act:  
Common Stock, \$0.001 Par Value**  
*(Title of Class)*

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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 a check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

The aggregate market value of voting stock held by nonaffiliates of the Registrant, as of October 28, 2005, the last day of Registrant's most recently completed second fiscal quarter, was \$6,336,402,987 (based on the closing price for shares of the Registrant's common stock as reported by the Nasdaq National Market for the last business day prior to that date). Shares of common stock held by each executive officer, director, and holder of 5% or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

On June 23, 2006, 373,430,742 shares of the Registrant's common stock, \$0.001 par value, were outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

The information called for by Part III of this Form 10-K is hereby incorporated by reference from the definitive Proxy Statement for our annual meeting of stockholders to be held on August 31, 2006, which will be filed with the Securities and Exchange Commission not later than 120 days after April 30, 2006.

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## TRADEMARKS

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**PART I**

**Item 1. Business**

**Forward Looking Statements**

With the exception of historical facts, the statements contained in this Annual Report on Form 10-K are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and are subject to the safe harbor provisions set forth in the Exchange Act. Forward-looking statements usually contain the words "estimate," "intend," "plan," "predict," "seek," "may," "will," "should," "would," "anticipate," "expect," "believe," or similar expressions and variations or negatives of these words. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. All forward-looking statements, including, but not limited to, (1) our belief that we are fully compliant with all applicable environmental laws; (2) our belief that we continue to maintain and enhance technological advantage over our competitors; (3) our intention to regularly introduce new products and product enhancements; (4) the possibility that we may engage in future acquisitions; (5) our intention to continue to establish and maintain business relationships with technology companies; (6) our belief that our strategic investments are targeted at some of the strongest growth areas of the storage market; (7) our anticipation that we will experience further price decline per petabyte for our products; (8) our expectation that our future gross margins will be negatively affected by factors such as global service investment cost; competition, indirect sales including OEM, high disk content partially offset by new product introductions and enhancements and product and add-on software mix; (9) our expectation that we will ship our new high-end products, launch our next-generation operating system with enhanced storage grid functionality, and offer a comprehensive suite of data protection solutions; (10) our plan to invest in the people, processes, and systems necessary to best optimize our revenue growth and long-term profitability; (11) our belief that the current and future potential for encryption and data protection technology will enable us to help our customers manage their risk of data theft and corruption; (12) our expectation that our data center penetration will win more NearStore<sup>®</sup> deployments; (13) our belief that our new NearStore Virtual Tape Library solution will further expand our market opportunity; (14) our expectation to continue to expand our global services and support and that such investments will help accelerate the adoption rate of our technology; (15) our expectation that our investment in our services infrastructure will increase commensurate with our revenue growth; (16) our expectation that higher disk content associated with high-end storage systems will negatively affect our gross margins in the future, if not offset by software revenue and new products; (17) our estimates regarding future amortization of existing technology to cost of products revenues relating to our acquisitions; (18) our expectation that service margins will be in the mid 20% range for fiscal 2007; (19) our estimates regarding future amortization of trademarks, tradenames, customer contracts, and relationships relating to our acquisitions; (20) our expectation that we will continue to selectively add sales and professional services capacity; (21) our expectation that we will increase sales and marketing expenses commensurate with future revenue growth; (22) our estimates regarding future capitalized patents amortization expenses; (23) our belief that our future performance will depend in large part on our ability to maintain and enhance our current product line, develop new products, maintain technological competitiveness, and meet an expanding range of customer requirements; (24) our expectation that we will continuously support current and future product development and enhancement efforts and incur corresponding charges; (25) our intention to continuously broaden our existing product offerings and introduce new products; (26) our belief that our research and development expenses will increase in absolute dollars in fiscal 2007; (27) our belief that our general and administrative expenses will increase in absolute terms in fiscal 2007; (28) our estimates regarding future amortization of covenants not to compete relating to our acquisitions; (29) our expectation that research and development costs to bring the products from Decru to technological feasibility may not have a material impact on our future results of operations or financial conditions; (30) our expectation regarding estimated future deferred stock compensation expenses; (31) our expectation that interest income will increase in fiscal 2007; (32) our expectation that cash provided by operating activities may fluctuate in future periods as a result of a number of factors; (33) the possibility we may receive less cash from stock option exercises if stock option exercise patterns change; (34) our expectations regarding our contractual cash obligations and other commercial commitments at April 30, 2006, for the fiscal years 2007 through 2011 and thereafter; (35) our expectation that we will complete construction on our building under the BNP lease by approximately September 2007 and the estimates regarding

future minimum lease payments under the lease term; (36) our expectation that capital expenditures will increase consistent with our business growth; (37) our expectation that our existing facilities, and those currently being developed, are adequate for our requirements for the next two years and that additional space will be available as needed and that our contractual commitments, including operating leases, and any required capital expenditures over the next few years will be funded through cash from operations and existing cash and investments; (38) our expectation that we will incur higher capital expenditures in the near future to expand our operations; (39) the possibility that we may continue to repurchase our common stock, which would reduce cash, cash equivalents, and/or short-term investments available to fund future operations and meet other liquidity requirements; (40) our belief that our existing liquidity and capital resources will satisfy our working capital needs, capital expenditures, stock repurchases, contractual obligations, and other liquidity requirements associated with our operations through at least the next 12 months; (41) our expectation that market interest rate changes would not cause significant decline in our investment value or significant increase in lease and debt interest obligations; (42) our belief that the accounting policies included herein are the policies that most frequently require us to make estimates and judgments and are therefore “critical,” are inherently uncertain as they are based on management’s current expectations and assumptions concerning future events, and they are subject to numerous known and unknown risks and uncertainties. Therefore, our actual results may differ materially from the forward-looking statements contained herein. Factors that could cause actual results to differ materially from those described herein include, but are not limited to: (1) the amount of orders received in future periods; (2) our ability to ship our products in a timely manner; (3) our ability to achieve anticipated pricing, cost, and gross margins levels; (4) our ability to successfully introduce new products; (5) our ability to achieve and capitalize on changes in market demand; (6) acceptance of, and demand for, our products; (7) demand for our global service and support and professional services; (8) our ability to identify and respond to significant market trends and emerging standards; (9) our ability to realize our financial objectives through increased investment in people, process, and systems; (10) our ability to maintain our supplier and contract manufacturer relationships; (11) the ability of our competitors to introduce new products that compete successfully with our products; (12) our ability to expand direct and indirect sales and global service and support; (13) the general economic environment and the continued growth of the storage markets; (14) our ability to sustain and/or improve our cash and overall financial position; and (15) those factors discussed under “Risk Factors” elsewhere in this Annual Report on Form 10-K. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof and are based upon information available to us at this time. These statements are not guarantees of future performance. We disclaim any obligation to update information in any forward-looking statement. Actual results could vary from our forward looking statements due to foregoing factors as well as other important factors, including those described in the Risk Factors included on page 19.

## Overview

Network Appliance, Inc. (“NetApp” or “Network Appliance”), a Delaware corporation, is a leading supplier of storage and data management solutions for enterprise customers worldwide. The company’s broad portfolio of innovative hardware and software products, partnerships, and services helps customers dramatically simplify the complexity of storing and managing corporate data. Many of the world’s largest and most demanding corporations and government agencies rely on Network Appliance™ solutions for their storage and data management requirements.

NetApp was founded in 1992 around the idea of simplifying data management. Our initial product, the world’s first network storage appliance, was shipped in 1993. Now one of the Fortune 1000 and with over 4,900 employees, NetApp has thousands of customers in 120 countries around the globe.

NetApp strives to provide customers the lowest total cost of ownership (“TCO”) by offering innovative solutions that simplify their environments. The company blends a dedication to excellence with customer-focused innovation to address the following customer priorities:

- Reducing cost and complexity: NetApp works to deliver the lowest TCO for its customers on three fronts: 1) increasing the efficiency of customer systems to deliver the highest possible value, 2) simplifying the management requirements to lower personnel costs, and 3) speeding recovery times to significantly reduce the business costs associated with unavailability of critical data.

- **Minimizing risk:** While helping to ensure the highest levels of data availability, NetApp also offers solutions that minimize the many business risks corporations face regarding their data, including mistakes that corrupt or destroy data, network attack and data theft, infrastructure damage from natural disasters, and legal issues involving regulatory non-compliance.
- **Controlling change:** The scalability and flexibility delivered by NetApp architectural simplicity uniquely allows customers to quickly adapt and respond to all types of change. From the challenges of adopting new technologies, to changes in business direction, to competitive response, Network Appliance helps customers stay in control by preserving flexibility.

#### **Customer Challenges**

Network Appliance enterprise data management solutions address several major information technology (“IT”) challenges that plague today’s corporations.

- **Explosive Data Growth.** Managing the continued growth in the volume of data is one of the great challenges enterprises face today. By some estimates, the amount of data corporations are required to keep doubles annually. Network Appliance specializes in storage consolidation solutions that allow customers to manage this explosive growth, while lowering their costs. Pooled resources, which can be centrally managed without disruption, free up valuable infrastructure and staff resources, improving enterprise productivity, performance, and profitability.
- **Doing More with Less.** Many of the costs that drive up the total cost of data management are associated with data center operations and include tasks such as data backup and recovery, hardware and software maintenance, performance management, and resource allocation. By providing solutions based on a common architectural platform, along with the ability to flexibly and dynamically reposition storage resources in real time, Network Appliance delivers solutions with unmatched synergy and efficiency, meaning customers can do more while buying less.
- **Scaling the Infrastructure.** As enterprises grow, customers are challenged to quickly adapt their infrastructure to meet the corporation’s needs. With its compatible, scalable storage platform, Network Appliance delivers systems that economically accommodate growth *and* dramatically reduce the administrative overhead associated with provisioning and configuration changes. Today’s corporations must also provide timely information to offices around the globe. NetApp® solutions help enterprises quickly replicate and relay information between many locations, fully protecting and increasing data access throughout the organization.
- **Round-the-Clock Access.** All companies need to avoid costly downtime, be it for planned maintenance, a localized disruption, or catastrophic disaster. In today’s information-driven world, every second of downtime is costly, and hours of downtime can be catastrophic. Working in tandem with the existing network infrastructure, NetApp storage appliances and data management software enable customers to implement fast and robust replication and recovery solutions within the bounds of their IT budget.
- **Regulatory Compliance.** Regulatory compliance is a growing concern for every industry on a global basis. NetApp offers compliance and security solutions designed to address such government and industry regulations, and to satisfy the need for data permanence, security, and confidentiality while at the same time reducing business risk. By utilizing open industry-standard solutions and best-in-class partners, the NetApp regulatory compliance solutions improve access to information in a transparent and seamless solution.
- **Security of Corporate and Personal Data.** With increasing amounts of personal customer data, companies assume great potential risk, to their customers, their business, and their reputation. Network Appliance data encryption appliances provide the highest level of security available and can be seamlessly added to existing data infrastructures as required.

## Products

NetApp offers highly available, scalable, and cost-effective storage consolidation solutions that incorporate the NetApp unified storage platform and the feature-rich functionality of data and resource management software to deliver storage that helps improve enterprise productivity, performance, and profitability, while providing investment protection and enhanced asset utilization. NetApp enterprise-class storage solutions are interoperable across all platforms and supported by our service expertise.

### Fabric-Attached Storage (“FAS”) Family

The NetApp family of modular, scalable, highly available, unified networked storage systems provides seamless access to a full range of enterprise data for users on a variety of platforms. The FAS6000, FAS900, FAS3000, and FAS200 series of fabric-attached storage enterprise systems are designed to consolidate UNIX®, Windows®, network-attached storage (“NAS”), Fibre Channel (“FC”), Internet Small Computer Systems Interface (“iSCSI”), storage area networks (“SAN”), and Web data in central locations running over the standard connection types: Gigabit Ethernet (“GbE”), Fibre Channel, and parallel SCSI (for backup). The NetApp design optimizes and consolidates high-performance data access for individuals in multiuser environments as well as for application servers and server clusters with dedicated access. All FAS systems run the highly efficient Data ONTAP® microkernel operating system.

- *FAS6000 Series Enterprise Storage Systems:* The FAS6000 series is designed for the largest enterprise applications as well as demanding technical applications. The FAS6000 series offers the scalability of frame array systems in a flexible modular storage architecture. The FAS6000 systems are well suited for storage consolidation supporting hundreds of applications because they are not only highly scalable but also very flexible. Tiered storage can be implemented in one system using cost-saving SATA (serial ATA) disk drives and high-performance FC disk drives. The FAS6030 can be configured with 840 disk drives totaling 420 terabytes (“TB”) of capacity. The FAS6070, which scales to 504TB spread across 1,008 disk drives and has 64 gigabytes (“GB”) per second of internal data bandwidth, can handle the largest enterprise applications. The FAS6000 systems are also capable of 4GB FC SAN implementations.
- *FAS900 Series Enterprise Storage Systems:* The FAS900 series provides performance, scalability, and resiliency to address the challenging storage needs of large corporate data centers and technical applications. The high-end FAS980 system scales to 100TB and can be deployed for performance-intensive applications such as online reservation and ordering, seismic processing, and image rendering. The FAS960 provides solutions for core business applications such as CRM, ERP, and supply chain integration, as well as large enterprise e-mail and database applications.
- *NetApp FAS3000 Series Enterprise Storage Systems:* The FAS3000 series delivers exceptional storage value for mid-tier Enterprise Data Centers and medium-size businesses, including use for database applications, e-mail, and network storage shares. Its compact, modular design scales to 168TB. The FAS3050 system delivers the performance, flexibility, and manageability essential for stable and productive IT operations. The FAS3020 system is capable of providing superb storage price/performance for smaller data centers, midsized businesses, and large department deployments.
- *FAS200 Series Enterprise Storage Systems:* The NetApp FAS200 series provides economical enterprise-class storage for distributed enterprise deployments and small to medium-sized businesses and organizations. FAS200 systems have the same data access and data protection capabilities as the FAS6000 and FAS3000 series, yet are packaged to meet the needs of smaller installations by using an innovative hardware design that shrinks our traditional appliance head to a form factor that fits within a single storage shelf. The FAS250 provides an affordable, entry-level solution for small and medium size businesses. The FAS270 is a midrange system that offers an entry-level Fibre Channel SAN solution while providing strong price/performance for NAS and iSCSI infrastructures. The FAS200 series is easily upgraded to the larger FAS series with no need to migrate data or replace disk storage.

## V-Series Family

NetApp V-Series is a network-based solution that consolidates storage arrays from different suppliers enabling unified SAN and file access to data stored in heterogeneous Fibre Channel SAN storage arrays. Many enterprises have made significant investments in multiple storage architectures to support a variety of different application requirements. This approach often results in inefficient, fractionalized islands of underutilized storage that can be difficult to manage and costly to scale. With V-Series customers can consolidate storage from multiple vendors and achieve:

- Simplified storage provisioning and management
- Increased storage utilization through “thin provisioning”
- Lowered storage management and operating costs
- Comprehensive simple-to-use data protection solutions
- Improved business practices and operational efficiency
- Transformation of heterogeneous storage systems into an efficient storage pool

V-Series Family include V3000, V6000, gF270, and gF980 models and supports storage arrays from IBM Corporation (“IBM”), Hewlett-Packard (“H-P”), and Hitachi Data Systems (“HDS”).

## Data ONTAP and Key Core Systems Software

NetApp FAS and V-Series storage solutions are all based on Data ONTAP, a highly optimized, scalable, and flexible operating system that uniquely supports a mix of SAN, NAS and IP SAN (iSCSI) environments concurrently. Data ONTAP software integrates seamlessly into UNIX, Windows, and Web environments. The Data ONTAP operating system provides the foundation to build storage infrastructure and an enterprise-wide data fabric for mission-critical business applications, while lowering the TCO and complexity typically associated with the management of large-scale enterprise storage infrastructures.

Data ONTAP includes the patented NetApp WAFL® (Write Anywhere File Layout) file management system and the resiliency offered by RAID-DP™ (RAID Double Parity), a unique double-parity software RAID architecture. Data ONTAP supports all of the major industry-standard protocols’ storage, as well as our complete suite of data management, data replication, and data protection software products.

The operating system also includes integrated secure access capabilities and FilerView®, a Web-based element manager. Snapshot™ technology, included as part of the base system, enables online backups and provides rapid access to previous versions of data, without requiring complete separate copies. Snapshot technology also eliminates the need to recover data from a tape archive in the event of a disaster or user error. In addition, SecureShare® is a multiprotocol lock management facility that is integrated into the Data ONTAP microkernel. The cross-protocol locking mechanism in SecureShare ensures heterogeneous data sharing without compromising security, data integrity, or performance.

During fiscal year 2006, we also installed our new high-performance operating system, Data ONTAP GX, at several customer sites. Data ONTAP GX, a next generation version of our operating system, leverages distributed systems technology acquired through the purchase of Spinnaker Networks. With Data ONTAP GX, multiple NetApp storage systems can be managed as a single entity under a global namespace. This enables all members of an application server cluster to access data stored across all of the FAS systems by using a single access point, eliminating the traditional complexities of mapping application servers to storage systems. This scale-out architecture is capable of achieving higher levels of aggregate system performance, because data volumes can span multiple storage nodes. Additionally, Data ONTAP GX provides the ability to dynamically add storage resources and transparently redistribute data without any disruption to client systems. The result is a storage system that combines the advantages of management simplicity with scalable performance and capacity.

## **Data Management Software**

Network Appliance products are in use today in some of the largest data centers in the world. These environments require enterprise class management tools. NetApp provides key management tools to increase productivity and simplify data management. Such tools include FlexVol™, FlexClone™, FlexShare™, and the Data Management Family.

### **FlexVol**

FlexVol technology, included in the Data ONTAP operating system, enables more efficient storage architectures with flexible volumes that do not require repartitioning of physical storage space. The FlexVol technology delivers storage virtualization solutions that can lower overhead and capital expenses, reduce disruption and risk, and provide the flexibility to adapt quickly and easily to the dynamic needs of the enterprise. FlexVol technology provisions storage resources automatically and enables the creation of multiple flexible volumes on a large pool of disks. This flexibility helps organizations maximize storage utilization and efficiency, simplify operations, and make changes quickly and seamlessly without downtime.

### **FlexClone**

NetApp FlexClone technology enables true data cloning, or the instant replication of data volumes and data sets without requiring additional storage space at the time of creation. Each cloned volume is a transparent, virtual copy that can be used for essential enterprise operations, such as testing and bug fixing, platform and upgrade checks, multiple simulations against large data sets, remote office testing and staging, and market-specific product variations. Only data that has changed uses actual disk space. FlexClone provides substantial space savings with minimal overhead. Customers can manage many more data set variations in less time and with less risk to production environments.

### **FlexShare**

FlexShare, introduced in fiscal year 2006 and included in Data ONTAP, directs the way storage system resources are used to deliver an appropriate level of service for each application. With FlexShare, you can host multiple workloads on a single NetApp system and assign individual priorities to each. FlexShare gives storage administrators the ability to leverage existing infrastructure and increase processing utilization without sacrificing the performance allocated to business-critical tasks. Using FlexShare, administrators can confidently consolidate disparate applications, prioritize specific data sets, and dynamically adjust priorities if business needs change.

## **Data Management Family**

Our Network Appliance Data Management Family of products provides comprehensive storage and data management tools to simplify IT administration and enhance productivity. NetApp has four suites of products targeted to different IT administrative roles:

### ***Storage Suite***

- Operations Manager, also known as DataFabric® Manager (“DFM”), provides comprehensive storage and infrastructure management for storage administrators.
- File Storage Resource Manager provides file-based storage utilization reporting and analysis.
- SAN Manager enables visualization, efficient monitoring, and management of Fibre Channel storage networks.



**Data Suite**

- Business Continence Option provides complete data protection management of Snapshot copies, SnapVault®, SnapMirror®, and Open Systems SnapVault (“OSSV”).
- Data Migration Manager provides simple to use data migration between Windows environments and NetApp storage systems.
- VFM™ (Virtual File Manager) enables IT administrators to set up and protect file data. It enables data protection at the virtual namespace level with no need to worry about how the data is spread out.

**Server Suite**

- SnapDrive® products provide integrated data management for Windows and UNIX environments. System administrators can provision storage faster and manage all of the server volume manager and file system dependencies.
- ApplianceWatch™ products simplify management of NetApp systems within third-party “system management” consoles such as Tivoli, Openview, and Microsoft® Operations Manager (“MOM”).

**Application Suite**

- SnapManager® products for SQL Server, SnapManager for Oracle®, and SnapManager for Exchange. Application administrators and database administrators (“DBAs”) can manage their own data with application-consistent Snapshot copies, data protection and disaster recovery management, and application cloning.

**Data Protection Products**

In recent years, enterprises have centralized terabytes of data into networked storage environments to achieve lower costs, higher utilization, and simplified management. On the other hand, geopolitical events such as September 11, 2001; natural disasters such as the Katrina Hurricane disaster; government regulations such as Securities and Exchange Commission’s (“SEC”) Rule 17a-4; banking regulations such as Basel II; increased privacy concerns such as laptop thefts with sensitive data; and industry guidelines such as PCI (Payment Card Industry standard put forth by Visa and MasterCard), have all put a spotlight on the need to protect and retain data for both the public and private sectors. Consolidation, coupled with a higher probability of disasters, has created a heightened sensitivity to the impact of data loss and its disruptive impact on the business. At the same time, compliance and privacy concerns are requiring enterprises to retain data for long periods of time, as well as secure data at rest. Data protection and retention have become critical IT priorities, requiring cost-effective storage solutions that can help the enterprise protect itself from catastrophic business disruption at an affordable cost. NetApp offers a comprehensive set of hardware and software solutions, including the NearStore SATA-based storage, disk-to-disk backup solutions, a family of replication and business continuance solutions, compliance and security solutions, and tools to manage this information ecosystem.

**NearStore**

The NetApp NearStore family of platforms represents SATA-based storage platforms optimized for data protection and retention applications. The NetApp NearStore system bridges the gap between primary storage and offline storage by providing much faster data access than offline storage at a cost much lower than primary storage. This makes NearStore ideal for data protection and retention applications such as disk-to-disk backup, business continuance, archival, compliant retention, and digital content storage.

The NearStore family consists of the R200 platform, the NearStore Virtual Tape Library (“VTL”) platforms, and the FAS platforms with SATA drives and NearStore personality licenses. The R200 is a

SATA-only platform based on Data ONTAP and is available in capacities up to 168TB. The NearStore VTL is a disk-to-disk backup appliance that appears like a tape library to a backup software application but provides the superior speed and reliability of disk technologies for any heterogeneous primary storage environment. NetApp has also expanded the capabilities of its entire FAS platform line for nearline uses through a NearStore personality license that optimizes the system for data protection and retention workloads.

#### **Virtual Tape Library**

The NetApp NearStore VTL solution is a high-performance, easily managed system that significantly improves backup service levels and cost for traditional data center tape backup infrastructures. NearStore VTL ranges in capacity from 4.5TB to 168TB and is based on NetApp system software optimized for the rapid sequential data throughputs seen in data center backup environments that use traditional backup applications such as Symantec® NetBackup™ and Tivoli Storage Manager.

NearStore VTL delivers value to backup customers in two fundamental ways: 1) it provides a far more reliable and high-performance storage target to backup applications than that provided by physical tape drives and libraries, thus enabling more backups to be done in less time; and 2) when backup data is moved directly from the NearStore VTL to physical tape drives and libraries, the NearStore VTL streams the data at a rate that provides for highly efficient utilization of customers' existing tape infrastructure. The net benefit to the customer is that backup service levels improve substantially and expenditure on tape infrastructure is slowed.

Key differentiators of the NearStore VTL versus other VTL competition are its Continuous Self Tuning and Tape Smart Sizing capabilities. Continuous Self Tuning enables the NearStore VTL to deliver maximum performance with no manual tuning at all capacities, something no other VTL can do. Tape Smart Sizing enables physical tape utilization that is far more efficient than is possible with other VTLs that directly create physical tapes.

#### **Data Protection Software Products**

Network Appliance offers comprehensive business continuance and disk backup solutions for enterprise customer environments.

SyncMirror®, MetroCluster, SnapMirror, and SnapRestore® products provide the most appropriate level of data availability and cost of protection matched to the recovery point objectives ("RPOs") and recovery time objectives ("RTOs") of customer environments. SnapMirror supports fully synchronous, near-synchronous, and asynchronous remote replication for easy setup, management, and quick recovery. SyncMirror, in conjunction with other NetApp technologies such as RAID-DP, provides the highest level of local data availability to allow NetApp storage systems to continue delivering data after as many as five simultaneous physical disk component failures. MetroCluster enables a highly available campus or metropolitan business continuance solution, minimizing downtime through auto-site failover. SnapRestore greatly minimizes recovery time in the event of a data corruption or loss by allowing rapid restoration of a volume from an earlier point in time using Snapshot technology.

SnapVault, Open Systems SnapVault ("OSSV"), and SnapVault for NetBackup products provide network and storage-optimized disk-to-disk backup solutions. With the ability to transmit only the changes from one backup to the next, and eliminate duplicates in storage, NetApp disk-to-disk products offer very cost-effective solutions to help customers with shrinking backup windows, rapid recovery objectives, and remote office backup challenges. In conjunction with other products such as FlexClone and LockVault™, customers can significantly enhance the value of their backup investment by utilizing the backups for other uses such as test and development, compliant retention, and business intelligence.

### **Data Retention and Archive Software Products**

To meet growing regulatory compliance demands faced by most enterprises, Network Appliance offers a comprehensive suite of products to ensure data permanence, accessibility, and privacy across the variety of different regulations such as Sarbanes-Oxley Act, 21 CFR Part 11, SEC Rule 17a-4, and HIPAA. Immutable, cost-effective, resilient, and reliable storage architectures can be created utilizing the SnapLock® products in conjunction with NetApp NearStore platforms. The Information Server 1200 products provide advanced capabilities for both the initial classification and subsequent e-discovery requirements. The Decru DataFort™ product adds security and privacy by encrypting data, while still allowing the capability to search the compliant data for legal discovery purposes if the need arises.

A significant demand is being created for disk-based digital content storage in applications such as medical images ("PACS"), video surveillance, interactive voice records, and Web multi-media content. The NetApp NearStore storage platforms offer highly scalable, cost-effective platforms for these applications. The NetApp platforms, based on open standards-based protocols, are easily integrated into the Embedded Solution Vendor's ("ESV") overall solution for these applications. Search, indexing, and classification capabilities of the Information Server 1200 product provide an easy way to access the relevant content in these massive data repositories.

### **Decru**

NetApp also focuses on storage security, and with the acquisition of Decru, we have taken a leadership position in the emerging storage security category. Decru DataFort storage security appliances provide a unified platform for enterprise-wide security, including heterogeneous NAS, DAS, iSCSI, SAN, and tape environments. The Decru® platform combines wire-speed encryption, access controls, authentication, and automated key management to provide strong security for data at rest. Over the last twelve months, Decru has secured design wins with many of the top global corporations, including the financial services, media, software, telecommunications, and pharmaceutical sectors, as well as numerous government agencies worldwide. Flagship customers such as Iron Mountain and the U.S. Marine Corps have highlighted Decru leadership in technology, security, and deployment capabilities.

Decru has announced strategic distribution agreements with EMC Corporation ("EMC") and Quantum Corporation, and works closely with the major storage and networking firms, including Brocade Communication Systems, Inc.; Cisco Systems, Inc. ("Cisco"); H-P; IBM; McData Corporation; Oracle Corporation ("Oracle"); Sun Microsystems, Inc.; and Symantec Corporation ("Symantec") to develop solutions and test interoperability.

### **Content Delivery (NetCache®)**

The NetCache suite of solutions is designed to manage, control, and improve access to Web-based information. Built on an extremely reliable and scalable platform, and working with a range of software partners, NetCache provides solutions to large enterprises to manage Internet Access and Security ("IAS"), enabling IT managers to control who in their user base is going where on the Internet, when, and what content is being accessed. Furthermore, using compression, localized caching, and other techniques, NetCache also optimizes the Wide Area Network ("WAN") to secure and accelerate delivery of information. The same functionality for public Internet access is used to control and improve access to internal Web information, such as Web-based portals and business applications such as Oracle and SAP, and streaming media.

On June 22, 2006, we entered into an Asset Purchase Agreement with Blue Coat Systems, Inc. to sell certain assets of the NetCache business. See Note 16 to the Consolidated Financials Statements accompanying this Annual Report on Form 10-K.

## Solutions-Based Approach

Network Appliance turnkey solutions, which include hardware, software, service, and financing components, enable our customers to simplify their storage management, leverage their existing infrastructure, and increase their return on investment. The solutions include:

- **Business Applications:** Major corporations and government agencies rely on NetApp solutions for storage and data management of their mission-critical applications. Thousands of organizations around the world choose NetApp storage systems to support key databases and applications from DB2, Microsoft, Oracle, SAP, and Sybase. Oracle, SAP, and SAS all use NetApp extensively to develop the software that they sell.
- **Enterprise Data Center Infrastructure:** With its modular fabric-attached storage systems and Data ONTAP operating system, NetApp ensures scalability and high availability for the largest applications and consolidations. NetApp provides solutions that simplify the myriad challenges of data management within the Enterprise Data Center while enabling information managers to dynamically position information assets to best serve an organization's strategic goals. Innovative NetApp solutions enable today's IT manager to architect and deploy an integrated yet flexible information management framework, providing immediate enterprise return on investment ("ROPI") and the lowest TCO, according to a Mercer Consulting Study, while protecting against future business- and technology-related disruptions. The complete NetApp offering is a reliable and proven data center solution in the industry.
- **Data Protection:** Geopolitical events and natural disasters, coupled with the increasingly around the clock operation of most enterprises, have made data protection a critical storage infrastructure requirement. Network Appliance offers comprehensive business continuance and disk backup solutions for every requirement in any environment. NetApp disk backup solutions can dramatically reduce the cost and complexity of backup and recovery of data stored on any storage device in data centers and remote offices. NetApp reduces the cost of backup and recovery using de-duplication, incremental change transmission, and compression technologies to dramatically shrink backup windows and reduce secondary storage requirements. Integration with leading software vendors such as Symantec helps customers effectively manage the complexity of the backup process. Our suite of highly available synchronous, semi-synchronous, and asynchronous application-integrated replication solutions helps our customers tailor the most appropriate and cost-effective solution for their business continuance requirements. The built-in simplicity and cost-effectiveness of our solutions help customers implement a comprehensive business continuance plan and recover rapidly from downtime caused by user errors, system failures, operational outages, natural disasters, or geopolitical risks.
- **Data Retention and Archive:** Growing regulatory data retention requirements for compliance purposes, coupled with an increasing usage of disk-based solutions for digital content retention for data such as medical images, video surveillance, and interactive voice records, are placing a tremendous requirement on enterprises for storing large amounts of data for increasingly longer time periods in a cost-effective, scalable, and secure manner. Network Appliance offers open standards-based solutions for long-term data retention for regulatory compliance and digital content storage. Our industry-leading, cost-effective storage platforms are based on ATA disk technology, WORM (write once, read many) retention solutions compliant with all regulations such as 21 CFR Part 11, SEC Rule 17a-4, and HIPAA, e-discovery classification, indexing and search solutions, and a large ecosystem of application partners based on open protocols and standards-based Application Program Interfaces ("APIs"). Our customers are able to architect a cost-effective, scalable, unified storage infrastructure for all their regulatory compliance and digital content retention needs.
- **Technical Applications:** Network Appliance is a leading storage supplier for key technical applications in energy exploration, semiconductors, software development, and the aerospace, automotive, and entertainment industries. NetApp storage systems provide fast and simultaneous data access for Windows, UNIX, and Linux® operating systems, and unparalleled simplicity in storage provisioning and scaling.

NetApp has strong application-level solutions with key partners, including Cadence Design Systems, Inc., Dassault Systemes, ESRI, IBM Corp./Rational, Landmark Graphics, Synopsys, Inc., and UGS Corp./PLM, assuring high performance, data availability, and ease of use. The combination of solutions and partners

enables customers in these industries to accelerate product development and data analysis, facilitate collaboration, and reduce operational costs.

- *Enterprise File Services:* Network Appliance enables enterprises to effectively consolidate and simplify data management of their business-critical applications in their Windows and UNIX environments. Data ONTAP 7G provides a dynamic virtualization engine, which allows storage to be easily provisioned on the fly without significant administrative intervention. With data management functions that are tailored for individual application data sets, Data ONTAP provides IT administrators with tools to easily accommodate rapidly increasing enterprise storage demands. Optimized storage utilization can be achieved using the Network Appliance industry-leading multiprotocol capabilities.

The net effects are lower storage management costs and significant time savings, because storage is intelligently configured and reconfigured non-disruptively, even during production hours. Network Appliance Enterprise File Services solutions free up valuable organizational infrastructure and staff resources, increasing productivity, performance, and profitability.

#### **Total Customer Experience**

At Network Appliance, we believe in offering complete solutions to help customers effectively streamline operations. We strive to provide customers with the best experience in the industry with every interaction they have with NetApp products, services, and people. In addition to providing global service and support, and offering flexible financing solutions, we strive to simplify customer environments whenever possible by utilizing open standards, driving industry collaboration, and partnering with other industry leaders. Using the right combination of products, technologies, and partners, NetApp helps solve customer business challenges while maximizing their return on investment.

- *Open standards and industry collaboration.* NetApp helps ensure rapid application deployment and smooth integration into customers' existing infrastructures by utilizing and supporting open standards. Network Appliance participates in and leads many industry initiatives and organizations, such as the Storage Networking Industry Association ("SNIA"), the Enterprise Grid Alliance ("EGA"), the Aperi Open SRM initiative, the Open Source Development Lab ("OSDL"), and the Internet Engineering Task Force ("IETF"), that have defined standards that are widely deployed today. Standards that Network Appliance has helped advance include the Network File System ("NFS") protocol for file access in UNIX and Linux environments; the Common Internet File System ("CIFS") protocol for file access in Windows environments; the Network Data Management Protocol ("NDMP") for simplifying backup of networked storage; the Internet Content Adaptation Protocol ("ICAP") for content adaptation in Web environments; the Direct Access File System ("DAFS") protocol for high-performance, high-throughput access to data; and the Internet Small Computer System Interface ("iSCSI") protocol for building block-based storage area networks using widely deployed Ethernet infrastructures. NetApp also actively works with Microsoft on advancing Microsoft standards including CIFS, Virtual Disk Interface ("VDI"), and Virtual Disk Service ("VDS"), and is a Microsoft Communication Protocol Program licensee. We plan to continue to participate in driving emerging standards.
- *Business application integration and partnerships.* A goal of Network Appliance is to deliver complete network storage solutions to customers. Our partners are vital to our success in this area, and we have significant partner relationships with database and business application companies including Dassault Systèmes, Documentum, FileNet, IBM, iLumin, Interwoven, Landmark Graphics, Microsoft, Mobius, Oracle, SAP, SAS, Stellant, Sybase, UGS Corp., and Zantaz. These application partnerships enhance our ability to reduce implementation times, increase application availability, and provide the highest level of solution support to customers. Technology and infrastructure solution partners enable seamless integration into customers' existing environments, resulting in lower costs and more rapid deployment. Our infrastructure partner list includes ADIC, Atempo, Bakbone, Brocade, Cisco Systems, CommVault, Computer Associates, Decru, Egenera, Inc., FalconStor Software, Inc., Fujitsu Siemens Computers, H-P Openview and Storage Essentials, HDS, IBM Tivoli, Intel, IronMountain, Juniper Networks, Legato, McData, Novell/

SuSE, Quantum/ATL, Red Hat, RLX Technologies, Secure Computing, Spectra Logic, StorageTek, Symantec, Syncsort and TekTools.

- *Global service and support.* Network Appliance customers demand high availability and reliability of their storage infrastructure to ensure the successful, ongoing operation of their businesses. NetApp Global Services (“NGS”) is designed with this in mind. We provide professional services, support solutions and customer education and training to help customers solve business problems, save money, leverage new opportunities, comply with regulations and policies, and improve their overall operational results. We utilize a global, integrated model to provide consistent service and support during every phase of the customer engagement, including: presales assessment and analysis, planning, design, installation, implementation, integration, optimization and ongoing support. Services and support often involve phased rollouts, technology transitions and migrations, and other long-term engagements. Network Appliance delivers a comprehensive range of consulting services leveraging our expertise in architecture and design, project management, solution implementation and analysis, network integration, training, best practices, standard operating procedures, specialized deployment and ongoing optimization, as well as a robust set of support services. All of our services and support offerings serve to lower the cost and minimize the risk of storing and managing data.

NGS continues to expand and accelerate our professional service and support offerings, including our worldwide delivery capabilities, partner ecosystem, and customer footprint. In the past year we have taken a number of steps to further build out our service and support portfolio by adding new and enhanced offerings to our customers. We have grown our global services organization by expanding our storage service portfolios, deepening and broadening our storage services partnerships, innovating service delivery tools and technology, and continuing to drive supportability in NGS products and services as well as executing on new business and customer growth.

- *Network Appliance Financial Solutions (“NAFS”).* NAFS, the customer finance group for Network Appliance, offers a variety of standard and tailored financial products to help our customers acquire NetApp solutions. NAFS offers financial programs in the United States, Canada, Europe, and Asia Pacific. Our financial product offerings are designed to help enhance our customers’ ROI and reduce their TCO by providing competitive rates; matching budgetary or cash flow requirements by spreading the payments out over time; providing technology refresh options within the initial term; and financing the entire solution, including hardware, software, and services.

## **Markets and Distribution Channels**

### ***Markets***

NetApp markets products globally in over 120 countries. Our diversified customer base represents a number of large segments and vertical markets. We focus primarily on the enterprise data management and storage solutions markets, offering an array of products from our ultra high-end products designed for large enterprise customers to our low-end products designed for small-to-medium sized businesses. We have also expanded into the virtual tape library and data encryption markets, bring us into parts of the data center we have not competed in before. With our next generation operating system, Data ONTAP GX, we offer storage grid architecture to high performance computing environments.

### ***Distribution***

NetApp employs a multichannel distribution strategy, selling products and services to end users through a direct sales force, value-added resellers, system integrators, OEMs, and distributors. In North America, Europe and Australia, we employ a mix of resellers and direct sales channels to sell to end users. In Asia, Africa, and South America, our products are primarily sold through resellers, which are supported by channel sales representatives and technical support personnel. No single customer or distributor accounted for 10% or more of net sales in fiscal 2006, 2005, or 2004.

The NetApp and IBM OEM (original equipment manufacturer) agreement formed in fiscal year 2005 allows IBM to sell IBM-branded solutions based on Network Appliance unified and open network-attached storage and iSCSI/IP SAN solutions, including NearStore and the NetApp V-Series systems, as well as associated software offerings. The strategic storage relationship expands IBM's portfolio of storage solutions, which is one of the largest and most advanced sets of storage and information management products in the industry.

#### **NetApp Global Services**

NetApp Global Services brings a unique mix of data center management and deep storage expertise combined with a strategic business focus to give customers a full range of consulting, design and implementation services to provide our customers with comprehensive, enduring, storage solutions. From assessment, planning and design to project management, implementation and integration, our Professional Services group provides expertise in several key areas to help customers more efficiently manage their storage environments and the people and processes that support them.

Our Global Support organization supports our hardware and software offerings at worldwide customer sites 24 hours a day, 365 days a year. NetApp Global Services offers NetApp customers the following professional services and support services:

*SupportEdge* offers unprecedented flexibility, allowing enterprise customers the ability to create an integrated support strategy that encompasses everything from corporate data centers to remote offices. Outstanding support services are essential to the success of enterprise IT operations. Potential problems must be anticipated and prevented to ensure the highest possible data availability and operational efficiency. Network Appliance SupportEdge programs feature sophisticated monitoring and diagnostic tools plus regular system availability audits of installed equipment to help anticipate problems before they affect availability.

*ConsultingEdge* services are designed to meet the complex storage needs our customers experience as a result of rapid growth or change in their organizational, end-customer, and technological requirements. Business continuity, data security, and improving the efficiency of access and management for ever-expanding volumes of business-critical and mission-critical data are requirements. New solutions must integrate seamlessly with existing applications, servers, and storage to maximize asset utilization and preserve existing investments.

Benefits from using NetApp Global Services include:

- Risk avoidance. Ensuring a seamless transition to new technologies through world-class domain expertise coupled with active project management and training
- Cost reduction. Extracting maximum value from existing IT investments through better resource allocation and improved day-to-day storage management without sacrificing readiness for the future
- Improved performance. Enhanced storage service quality, resource utilization, and ease of administration
- Accelerated time-to-deployment. Speeding up production implementation and deriving benefit from IT investments more quickly and without adverse impact on an organizations' productivity
- Ensuring scalability and readiness for the future. Enabling future growth by implementing best-practice policies and processes, which can also improve performance while lowering TCO

We intend to continue to enhance our service offerings in this segment with additional capabilities by adding new resources and expertise.

#### **Manufacturing**

Manufacturing operations, with insourced and outsourced locations in Sunnyvale, San Jose, and Fremont, California; Livingston, Scotland; Shanghai, China; and Schiphol Airport, The Netherlands, include materials procurement, commodity management, component engineering, test engineering, manufacturing engineering, product assembly, product assurance, quality control, final test, and global logistics. We rely on a limited number of suppliers for materials, as well as several key subcontractors for the production of certain subassemblies and

finished systems. We multisource wherever possible to mitigate supply risk. Our strategy has been to develop close relationships with our suppliers, exchanging critical information and implementing joint quality programs. We also use contract manufacturers for the production of major subassemblies to improve our manufacturing redundancy.

See "Risk Factors — We rely on a limited number of suppliers" and "Risk Factors — The loss of our contract manufacturers." This manufacturing strategy minimizes capital investment and overhead expenditures and creates flexibility for rapid expansion. We were awarded the ISO 9001 certification on May 29, 1997, ISO 9001:2000 certification on December 3, 2003, and continue to be ISO 9001:2000 certified. We were awarded ISO 14001:2004 certification on January 6, 2006.

#### **Research and Development**

Network Appliance finished fiscal year 2006 with its strongest product portfolio to date and a broad set of software solutions that satisfy the needs of our growing customer base. Continuing with our strategy of a unified storage platform based on the best price performance, we introduced the FAS3000 Family. The FAS3020 and FAS3050 deliver outstanding power to the mid-range server market. This product has achieved unprecedented volume shipments during the fiscal year. Our FAS6070, on the high end, began shipping in the fourth quarter of fiscal year 2006 and is now delivering industry leading performance and positions us well as we step further into the Enterprise Data Center. These new platforms are also being manufactured with RoHS (Restriction of Hazardous Substances) compliance.

Network Appliance has seen excellent growth in the SAN sector during the year. We were one of the first storage management providers to deliver a 4 gigabit per second capable Fibre Channel product in 2006. Our ongoing investment in delivering enterprise level capabilities through our Data ONTAP operating system and our licensed data management products is driving our growth and expanding our market share. New and unique virtualization capabilities and data management tools, such as our Operations Manager (also known as DFM), consistently place us in the forefront of our industry in solving the complex problems of the Enterprise Data Center.

Acquisitions from fiscal years 2004 and 2006 are now producing results. The NearStore VTL was introduced in the fourth quarter of fiscal year 2006, along with new industry leading storage security appliances from Decru. In addition, next generation, highly scalable systems based on technology acquired in the Spinnaker Networks acquisition have been delivered to an initial set of customers. We expect these products to help us continue our leadership in storage innovation.

See "Risk Factors — If we are unable to develop and introduce new products and respond to technological change, or if our new products do not achieve market acceptance, our operating results could be materially adversely affected."

#### **Segment and Geographic Information**

See Note 9 to the Consolidated Financials Statements accompanying this Annual Report on Form 10-K.

#### **Customer Base**

Our diversified customer base spans a number of large segments and vertical markets. Examples include:

- *Animation and video post-production.* Digital artists create and maintain large libraries of models, textures and scene generation instructions that are exploited by Linux compute farms to create complex special effects for games, movies, and advertisements. Increasing desire for more dazzling, realistic effects places stringent performance and reliability demands on shared storage systems at the core of the production process. Our scalable storage configurations deliver the performance, reliability and manageability that allow video and movie production customers to meet ever-increasing demands for more imaginative effects.
- *Energy.* Customers in the energy market have traditionally deployed our products to support their upstream exploration and production, and downstream refining and distribution activities, where the simplicity of the appliance architecture and the ability to support massive amounts of data are critical.



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Our solutions help enable energy companies to meet their workflow optimization objectives, improve quality, reduce cycle times, and lower costs.

- *Federal government.* The United States federal government is one of the largest IT consumers in the world, and Network Appliance Federal Systems, Inc. provides solutions for many data-intensive activities, including intelligence gathering, analysis, and civilian and military operations.
- *Financial services.* New data-processing methodologies, shorter time frames for settlement transactions, and new demands for better knowledge management have required financial services firms to improve their data storage infrastructures. Network Appliance solutions for enterprise storage enable these financial institutions to effectively manage large amounts of data in a high-speed distributed infrastructure, enabling customers to leverage their existing technology investments and derive maximum value from their time-sensitive information.
- *High technology.* Global technology enterprises, including semiconductor, systems, and software companies, are keenly focused on reducing infrastructure cost and improving time-to-market. Network Appliance solutions enable high-technology firms to achieve these goals by reducing TCO and providing highly reliable systems and fast data access, which reduces the time required for software builds and chip simulations.
- *Internet.* Internet-focused businesses place considerable and often unpredictable demands on transaction-intensive, database-driven environments such as e-mail, World Wide Web (“WWW”), and electronic commerce (“e-commerce”). In a marketplace where retaining customer loyalty is paramount, Internet-focused businesses must have high performance and readily available data to ensure that their customers do not seek alternative providers. Scalable distributed architectures based on Network Appliance products improve data availability, scalability, and performance, while reducing the TCO.
- *Life sciences and healthcare services.* Pharmaceutical, bioresearch, genomic research, and clinical-care providers are focused on developing vital new drugs, improving quality of patient care, and increasing their returns on investment. Network Appliance solutions enable fast access, integration, and sharing of massive amounts of exponentially growing scientific and medical imaging data; reduced time-to-market; and improvements in operational efficiency.
- *Major manufacturing.* Global manufacturing companies face intense competitive pressure to develop attractive new products, improve time-to-market, and optimize profitability. Network Appliance solutions enable these companies to simplify the management overhead associated with storing and protecting large amounts of ERP, engineering, and manufacturing product data, while ensuring that information can be easily and efficiently distributed to manufacturing and distribution sites around the world.
- *Telecommunications.* Service providers in the telecommunications industry are faced with deregulation, globalization, increased competition, and often a substantial debt burden. As a result, they must control infrastructure costs while maintaining or improving services to existing customers and at the same time identifying and developing compelling new revenue streams in order to grow their business. Network Appliance products and solutions allow these providers to quickly and cost-effectively build the network storage infrastructure and content delivery networks required by the global telecommunications industry.

### **Seasonality**

Although operating results have not been materially and adversely affected by seasonality in the past, because of the significant seasonal effects experienced within the industry, particularly in Europe, our future operating results could be materially adversely affected by seasonality.

See “Risk Factors — Factors beyond our control could cause our quarterly results to fluctuate” and “Risk Factors — Risks inherent in our international operations could have a material adverse effect on our operating results” accompanying this Annual Report on Form 10-K.

### **Backlog**

Network Appliance manufactures products based on a combination of specific order requirements and forecasts of our customers' demand. Orders are generally placed by customers on an as-needed basis. Products are typically shipped within one to four weeks following receipt of an order. In certain circumstances, customers may cancel or reschedule orders without penalty. For these reasons, "orders" may not constitute a firm backlog and may not be a meaningful indicator of revenues.

### **Competition**

The storage and content delivery markets are intensely competitive and are characterized by rapidly changing technology.

In the storage market, our primary and nearline storage system products and our associated storage software portfolio compete primarily with storage system products and data management software from EMC, HDS, H-P, IBM, and Sun Microsystems. We also see Dell, Inc. as an emerging competitor in the storage marketplace, primarily due to a business partnership that has been established between Dell and EMC, allowing Dell to resell EMC storage hardware and software products. We have also historically encountered less-frequent competition from companies including Engenio Information Technologies, Inc. (formerly the Storage Systems Group of LSI Logic Corp.), Dot Hill Systems Corporation, and Xiotech Corporation. In the nearline storage market, which includes the disk-to-disk backup and regulated data storage segments, our NearStore appliances compete primarily against products from EMC and Sun Microsystems, as a result of their acquisition of StorageTek Technology Corporation. Our NearStore VTL appliances also compete directly with traditional tape backup solutions in the broader data backup/recovery space.

In the content delivery market, our NetCache appliances and content delivery software compete against caching appliance and content delivery software vendors including BlueCoat Systems (formerly CacheFlow, Inc.) and Cisco Systems. Our NetCache business is also subject to indirect competition from content delivery service products such as those offered by Akamai Technologies. On June 22, 2006, we entered into an Asset Purchase Agreement with Blue Coat Systems, Inc. to sell certain assets of the NetCache business. See Note 16 to the Consolidated Financials Statements accompanying this Annual Report on Form 10-K.

Additionally, a number of new, privately held companies are currently attempting to enter the storage systems and data management software markets, the nearline and VTL storage markets, and the caching and content delivery markets, some of which may become significant competitors in the future. We believe that the principal competitive factors affecting the storage and content delivery markets include product benefits such as response time, reliability, data availability, scalability, ease of use, price, multiprotocol capabilities, and customer service and support.

See "Risk Factors — An increase in competition could materially adversely affect our operating results" and "Risk Factors — If we are unable to develop and introduce new products and respond to technological change, or if our new products do not achieve market acceptance."

### **Proprietary Rights**

We currently rely on a combination of copyright and trademark laws, trade secrets, confidentiality procedures, contractual provisions, and patents to protect our proprietary rights. We seek to protect our software, documentation, and other written materials under trade secret, copyright, and patent laws, which afford only limited protection. We have registered our Network Appliance name and logo, Data ONTAP, DataFabric, FAServer®, FilerView, NearStore, NetApp, NetCache, SecureShare, SnapManager, SnapMirror, SnapRestore, SnapLock, SnapVault, WAFL, and others as trademarks in the United States. Other U.S. trademarks and some of the other U.S. registered trademarks are registered internationally as well. We will continue to evaluate the registration of additional trademarks as appropriate. We generally enter into confidentiality agreements with our employees, resellers, and customers. We currently have multiple U.S. and international patent applications pending and multiple U.S. patents issued.

See “Risk Factors — If we are unable to protect our intellectual property, we may be subject to increased competition that could materially adversely affect our operating results.”

#### Environmental Disclosure

Various federal state and local provisions regulate the use and discharge of certain hazardous materials used in our manufacturing. Failure to comply with environmental regulations in the future could cause us to incur substantial costs or subject us to business interruptions. We believe we are fully compliant with all applicable environmental laws. See “Risk Factors — Our business is subject to changing laws and regulations, environmental legislation” accompanying this Annual Report on Form 10-K.

#### Employees

As of April 30, 2006, we had 4,976 employees. Of the total, 1,927 were in sales and marketing, 1,246 in research and development, 568 in finance and administration, and 1,235 in manufacturing and customer service operations. Our future performance depends in significant part on our key technical and senior management personnel, none of whom are bound by an employment agreement. We have never had a work stoppage and consider relations with our employees to be good.

#### Executive Officers

Our executive officers and their ages as of May 26, 2006, are as follows:

Name	Age	Position
Daniel J. Warmenhoven	55	Chief Executive Officer and Director
Thomas F. Mendoza	55	President
Steven J. Gomo	54	Executive Vice President, Finance and Chief Financial Officer
David Hitz	43	Founder and Executive Vice President
Robert E. Salmon	45	Executive Vice President, Field Operations

*Daniel J. Warmenhoven* joined the Company in October 1994 as president and chief executive officer and has been a member of the Board of Directors since October 1994. In May 2000, he resigned the role of president and currently serves as chief executive officer and as a member of the Board of Directors of Network Appliance, Inc. Prior to joining the Company, Mr. Warmenhoven served in various capacities, including president, chief executive officer, and chairman of the Board of Directors of Network Equipment Technologies, Inc., a telecommunications company, from November 1989 to January 1994. Prior to Network Equipment Technologies, Mr. Warmenhoven held executive and managerial positions at Hewlett-Packard from 1985 to 1989 and IBM Corporation from 1972 to 1985. Mr. Warmenhoven is a Director of Stoke, Inc. and PowerFile, Inc., both privately held companies. Mr. Warmenhoven holds a B.S. degree in electrical engineering from Princeton University.

*Thomas F. Mendoza* joined NetApp in 1994 and has served as president since 2000. Mr. Mendoza has more than 31 years as a high-technology executive. He holds a BA degree in economics from Notre Dame and is an alumnus of Stanford University’s Executive Business Program. In September 2000, the University of Notre Dame renamed their business school the Mendoza College of Business based upon an endowment from Tom and his wife, Kathy.

*Steven J. Gomo* joined Network Appliance in August 2002 as senior vice president of finance and chief financial officer. He was appointed executive vice president of finance and chief financial officer in October 2004. Prior to joining the Company, he served as chief financial officer of Silicon Graphics, Inc., from February 1998 to August 2000, and most recently, chief financial officer for Gemplus International S.A., headquartered in Luxembourg from November 2000 to April 2002. Prior to February 1998, he worked at Hewlett-Packard Company for 24 years in various positions, including financial management, corporate finance, general management, and manufacturing. Mr. Gomo currently serves on the board of SanDisk Corporation. Mr. Gomo holds a master’s degree in business administration from Santa Clara University and a BS degree in business administration from Oregon State University.

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David Hitz co-founded NetApp in 1992. As founder and executive vice president, he is responsible for vision, strategy, and direction for NetApp. Mr. Hitz served as executive vice president, engineering from May 2000 to November 2004. Between 1992 and 2000, Mr. Hitz held executive positions at NetApp, including vice president and senior vice president, engineering. Prior to joining the Company in 1992, Mr. Hitz was a senior engineer at Auspex Systems, Inc. and held various engineering positions at MIPS Computer. Mr. Hitz holds a BS degree in computer science and electrical engineering from Princeton University.

Robert E. Salmon joined Network Appliance in January 1994 and was appointed executive vice president, field operations in December 2005. Mr. Salmon has served as the Company's executive vice president of worldwide sales since September 2004. From August 2003 to September 2004, Mr. Salmon served as the Company's senior vice president of worldwide sales and from May 2000 to August 2003, Mr. Salmon served as the Company's vice president of North American sales. Mr. Salmon joined the Company in 1994 after nearly ten years with Sun Microsystems and Data General Corporation. Mr. Salmon graduated from California State University, Chico with a B.S. degree.

**Additional Information**

Our Internet address is [www.netapp.com](http://www.netapp.com). We make available through our Internet Web site our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934, as amended, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

The SEC maintains an Internet site ([www.sec.gov](http://www.sec.gov)) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The public also may read and copy these filings at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Information about this Public Reference Room is available by calling (800) SEC 0330.

**Item 1A. Risk Factors**

*The following risk factors and other information included in this Annual Report on Form 10-K should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we presently deem less significant may also impair our business operations. Please see page 2 of this Annual Report on Form 10-K for additional discussion of these forward-looking statements. If any of the following risks actually occur, our business, operating results, and financial condition could be materially adversely affected.*

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

We believe that period-to-period comparisons of our results of operations are not necessarily meaningful and should not be relied upon as indicators of future performance. Many of the factors that could cause our quarterly operating results to fluctuate significantly in the future are beyond our control and include, but are not limited to, the following:

- Changes in general economic conditions and specific economic conditions in the computer, storage, and networking industries
- General decrease in global corporate spending on information technology leading to a decline in demand for our products
- A shift in federal government spending patterns
- The possible effects of terrorist activity and international conflicts, which could lead to business interruptions and difficulty in forecasting
- The level of competition in our target product markets

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- Our reliance on a limited number of suppliers due to industry consolidation, which could subject us to periodic supply-and-demand, price rigidity and quality issues with our components
- The size, timing, and cancellation of significant orders
- Product configuration and mix
- The extent to which our customers renew their service and maintenance contracts with us
- Market acceptance of new products and product enhancements
- Announcements, introductions, and transitions of new products by us or our competitors
- Deferrals of customer orders in anticipation of new products or product enhancements introduced by us or our competitors
- Changes in pricing by us in response to competitive pricing actions
- Our ability to develop, introduce, and market new products and enhancements in a timely manner
- Supply constraints
- Technological changes in our target product markets
- The levels of expenditure on research and development and sales and marketing programs
- Our ability to achieve targeted cost reductions
- Excess or inadequate facilities
- Disruptions resulting from new systems and processes as we continue to enhance and adapt our system infrastructure to accommodate future growth
- Future accounting pronouncements and changes in accounting policies
- Seasonality

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

We derive a majority of our revenue in any given quarter from orders booked in the same quarter. Bookings typically follow intra-quarter seasonality patterns weighted towards the back-end of the quarter. If we do not achieve bookings in the latter part of a quarter consistent with our quarterly financial targets, our financial results will be adversely impacted.

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

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

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

products in a timely manner in response to changing market conditions or customer requirements, or if such products do not achieve market acceptance, our operating results could be materially and adversely affected.

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

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

The storage markets are intensely competitive and are characterized by rapidly changing technology.

In the storage market, our primary and nearline storage system products and our associated storage software portfolio compete primarily with storage system products and data management software from EMC, HDS, H-P, IBM, and Sun Microsystems. We also see Dell, Inc. as an emerging competitor in the storage marketplace, primarily due to a business partnership that has been established between Dell and EMC, allowing Dell to resell EMC storage hardware and software products. We have also historically encountered less-frequent competition from companies including Engenio Information Technologies, Inc. (formerly the Storage Systems Group of LSI Logic Corp.), Dot Hill Systems Corporation, and Xiotech Corporation. In the secondary storage market, which includes the disk-to-disk backup, compliance and business continuity segments, our solutions compete primarily against products from EMC and Sun Microsystems, as a result of their acquisition of StorageTek Technology Corporation. Our NearStore VTL appliances also compete directly with traditional tape backup solutions in the broader data backup/recovery space.

In the content delivery market, our NetCache appliances and content delivery software compete against caching appliance and content delivery software vendors including BlueCoat Systems (formerly CacheFlow, Inc.) and Cisco Systems. On June 22, 2006, we entered into an Asset Purchase Agreement with Blue Coat Systems, Inc. to sell certain assets of the NetCache business. See Note 16 to the Consolidated Financials Statements accompanying this Annual Report on Form 10-K. Our NetCache business is also subject to indirect competition from content delivery service products such as those offered by Akamai Technologies.

Additionally, a number of new, privately held companies are currently attempting to enter the storage systems and data management software markets, the nearline and VTL storage markets, some of which may become significant competitors in the future.

We believe that the principal competitive factors affecting the storage markets include product benefits such as response time, reliability, data availability, scalability, ease of use, price, multiprotocol capabilities, and global service and support. We must continue to maintain and enhance this technological advantage over our competitors. If those competitors with greater financial, marketing, service, support, technical, and other resources were able to offer products that matched or surpassed the technological capabilities of our products, these competitors would, by virtue of their greater resources, gain a competitive advantage over us that could lead to greater sales for these competitors at the expense of our own market share, which would have a material adverse affect on our business, financial condition, and results of operations.

Increased competition could also result in price reductions, reduced gross margins, and loss of market share, any of which could materially and adversely affect our operating results. Our competitors may be able to respond more quickly than we can to new or emerging technologies and changes in customer requirements or devote greater resources to the development, promotion, sale, and support of their products. In addition, current and potential competitors have established or may establish cooperative relationships among themselves or with third parties. Accordingly, it is possible that new competitors or alliances among competitors may emerge and rapidly acquire significant market share. We cannot assure you that we will be able to compete successfully against current or future competitors. Competitive pressures we face could materially and adversely affect our operating results.

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

We rely on a limited number of suppliers of several key components utilized in the assembly of our products. We purchase our disk drives through several suppliers. We purchase computer boards and microprocessors from a limited number of suppliers. Our reliance on a limited number of suppliers involves several risks, including:

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

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

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

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

We currently rely on several contract manufacturers to manufacture most of our products. Our reliance on our third-party contract manufacturers reduces our control over the manufacturing process, exposing us to risks, including reduced control over quality assurance, production costs, and product supply. If we should fail to effectively manage our relationships with our contract manufacturers, or if our contract manufacturers experience delays, disruptions, capacity constraints, or quality control problems in their manufacturing operations, our ability to ship products to our customers could be impaired and our competitive position and reputation could be harmed. Qualifying a new contract manufacturer and commencing volume production are expensive and time-consuming. If we are required to change contract manufacturers or assume internal manufacturing operations, we may lose revenue and damage our customer relationships. If we inaccurately forecast demand for our products, we may have excess or inadequate inventory or incur cancellation charges or penalties, which could adversely impact our operating results. As of April 30, 2006, we have no purchase commitment under these agreements.

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

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

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

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

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

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

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

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

- Demand for storage and data management products
- Discount levels and price competition
- Direct versus indirect and OEM sales
- Product and add-on software mix
- The mix of services as a percentage of revenue
- The mix and average selling prices of products
- The mix of disk content
- New product introductions and enhancements



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- Excess inventory purchase commitments as a result of changes in demand forecasts and possible product and software defects as we transition our products
- The cost of components, manufacturing labor, and quality

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

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

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

- Earnings being lower than anticipated in countries where we are taxed at lower rates as compared to the United States statutory tax rate
- Material differences between forecasted and actual tax rates as a result of a shift in the mix of pre-tax profits and losses by tax jurisdiction, our ability to use tax credits, or effective tax rates by tax jurisdiction different than our estimates
- Changing tax laws, accounting standards, including SFAS No. 123R, regulations, and interpretations in multiple tax jurisdictions in which we operate as well as the requirements of certain tax rulings
- An increase in expenses not deductible for tax purposes, including certain stock compensation, write-offs of acquired in-process research and development and impairment of goodwill
- The tax effects of purchase accounting for acquisitions and restructuring charges that may cause fluctuations between reporting periods
- Changes in the valuation of our deferred tax assets and liabilities
- Changes in tax laws or the interpretation of such tax laws
- Tax assessments, or any related tax interest or penalties, could significantly affect our income tax expense for the period in which the settlements take place
- A change in our decision to indefinitely reinvest foreign earnings

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

***We may incur problems with current or future acquisitions and equity investments, and these investments may not achieve our objectives.***

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

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

From time to time, we also make equity investments for the promotion of business and strategic objectives. We have already made strategic investments in a number of storage and data management-related technology companies. Equity investments may result in the loss of investment capital. The market price and valuation of our equity investments in these companies may fluctuate due to market conditions and other circumstances over which we have little or no control. To the extent that the fair value of these securities is less than our cost over an extended period of time, our results of operations and financial position could be negatively impacted.

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

In April 2005, we announced a strategic partner relationship with IBM. As part of the relationship, we entered into an original equipment manufacturing (OEM) agreement that enables IBM to sell IBM branded solutions based on Network Appliance unified and open network attached storage (NAS) and iSCSI/IP SAN solutions, including NearStore and the NetApp V-Series Systems, as well as associated software offerings. While this agreement is an element of our strategy to expand our reach into more customers and countries, we do not have an exclusive relationship with IBM and there is no minimum commitment for any given period of time, and therefore, we cannot assure you that this relationship will contribute any revenue in future years. In addition, we have no control over the products IBM selects to sell, their release schedule and timing of those products, nor do we control their pricing. Revenues from the IBM relationship were not significant during fiscal 2006 and accounted for approximately 1.0% of our total consolidated revenue. In the event that sales through IBM were to gain significant traction, we may experience distribution channel conflicts between our direct sales force and IBM, or among our channel partners. If we fail to minimize channel conflicts, our operating results and financial condition could be harmed. In addition, since this agreement is relatively new, we do not have a history upon which to base our analysis of its future success.

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

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

An element of our strategy to increase revenue is to strategically partner with major third-party software and hardware vendors that integrate our products into their products and also comarket our products with these vendors. We have significant partner relationships with database, business application and backup management companies including Microsoft, Oracle, SAP and Symantec. A number of these strategic partners are industry leaders that offer us expanded access to segments of the storage market. There is intense competition for attractive strategic partners, and even if we can establish strategic relationships with these partners, we cannot assure you that these partnerships will generate significant revenue or that the partnerships will continue to be in effect for any specific period of time.

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

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

We market and sell our storage solutions directly through our worldwide sales force and indirectly through channels such as value-added resellers, or VARs, systems integrators, distributors, OEMs and strategic business partners and derive a significant portion of our revenue from these indirect channel partners. In fiscal 2006, Fujitsu Siemens and our two-tier distribution partners, Arrow and Avnet, accounted for 4.2% and 10.6%, respectively, of our consolidated revenue.

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

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

We conduct business internationally. For the year ended April 30, 2006, 45.7% of our total revenues were from international customers (including U.S. exports). Accordingly, our future operating results could be materially and adversely affected by a variety of factors, some of which are beyond our control, including regulatory, political, or economic conditions in a specific country or region, trade protection measures and other regulatory requirements, government spending patterns, and acts of terrorism and international conflicts.

Our international sales are denominated in U.S. dollars and in foreign currencies. An increase in the value of the U.S. dollar relative to foreign currencies could make our products more expensive and, therefore, potentially less competitive in foreign markets. For international sales and expenditures denominated in foreign currencies, we are subject to risks associated with currency fluctuations. We utilize forward and option contracts to hedge our foreign currency exposure associated with certain assets and liabilities as well as anticipated foreign currency cash flows. All balance sheet hedges are marked to market through earnings every quarter, while gains and losses on cash flow hedges are recorded in other comprehensive income. These hedges attempt to reduce, but do not always entirely eliminate, the impact of currency exchange movements. Factors that could have an impact on the effectiveness of our hedging program include the accuracy of forecasts and the volatility of foreign currency markets. There can be no assurance that such hedging strategies will be successful and that currency exchange rate fluctuations will not have a material adverse effect on our operating results.

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

We receive significant tax benefits from sales to our non-U.S. customers. These benefits are contingent upon existing tax regulations in the U.S. and in the countries in which our international operations are located. Future changes in domestic or international tax regulations could adversely affect our ability to continue to realize these tax benefits. Our effective tax rate could also be adversely affected by different and evolving interpretations of existing

law or regulations. Potentially adverse tax consequences could negatively impact the operating and financial results from international operations. International operations currently benefit from a tax ruling concluded in the Netherlands.

Although operating results have not been materially and adversely affected by seasonality in the past, because of the significant seasonal effects experienced within the industry, particularly in Europe, our future operating results could be materially and adversely affected by seasonality.

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

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

We experienced growth in fiscal 2006, 2005 and 2004. Our future operating results depend to a large extent on management's ability to successfully manage expansion and growth, including but not limited to, expanding international operations, forecasting revenues, addressing new markets, controlling expenses, implementing and enhancing infrastructure, systems and processes, and managing our assets.

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

In addition, an unexpected decline in the growth rate of revenues without a corresponding and timely reduction in expense growth or a failure to manage other aspects of growth could materially and adversely affect our operating results.

***A significant percentage of our expenses are fixed, which could materially and adversely affect our net income.***

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

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

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

- Fluctuations in our operating results
- Fluctuations in the valuation of companies perceived by investors to be comparable to us
- Economic developments in the storage and data management market as a whole
- International conflicts and acts of terrorism
- A shortfall in revenues or earnings compared to securities analysts' expectations
- Changes in analysts' recommendations or projections
- Announcements of new products, applications, or product enhancements by us or our competitors

- Changes in our relationships with our suppliers, customers, and channel and strategic partners
- General market conditions

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

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

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

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

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

***Undetected software, hardware errors, or failures found in new products may result in loss of or delay in market acceptance of our products, which could increase our costs and reduce our revenues.***

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

***If we are unable to protect our intellectual property, we may be subject to increased competition that could materially and adversely affect our operating results.***

Our success depends significantly upon our proprietary technology. We rely on a combination of copyright and trademark laws, trade secrets, confidentiality procedures, contractual provisions, and patents to protect our proprietary rights. We seek to protect our software, documentation, and other written materials under trade secret, copyright, and patent laws, which afford only limited protection. Some U.S. trademarks and some U.S.-registered trademarks are registered internationally as well. We will continue to evaluate the registration of additional trademarks as appropriate. We generally enter into confidentiality agreements with our employees and with our resellers, strategic partners, and customers. We currently have multiple U.S. and international patent applications pending and multiple U.S. patents issued. The pending applications may not be approved, and if patents are issued, such patents may be challenged. If such challenges are brought, the patents may be invalidated. We cannot assure

you that we will develop proprietary products or technologies that are patentable, that any issued patent will provide us with any competitive advantages or will not be challenged by third parties, or that the patents of others will not materially and adversely affect our ability to do business.

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

We are subject to intellectual property infringement claims. We may, from time to time, receive claims that we are infringing third parties' intellectual property rights. Third parties may in the future claim infringement by us with respect to current or future products, patents, trademarks, or other proprietary rights. We expect that companies in the appliance market will increasingly be subject to infringement claims as the number of products and competitors in our industry segment grows and the functionality of products in different industry segments overlaps. Any such claims could be time-consuming, result in costly litigation, cause product shipment delays, require us to redesign our products, or require us to enter into royalty or licensing agreements, any of which could materially and adversely affect our operating results. Such royalty or licensing agreements, if required, may not be available on terms acceptable to us or at all.

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

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

We have recently completed our evaluation of our internal controls over financial reporting as required by Section 404 of the Sarbanes-Oxley Act of 2002. Although our assessment, testing, and evaluation resulted in our conclusion that as of April 30, 2006, our internal controls over financial reporting were effective, we cannot predict the outcome of our testing in future periods. If our internal controls are ineffective in future periods, our business and reputation could be harmed. We may incur additional expenses and commitment of management's time in connection with further evaluations, either of which could materially increase our operating expenses and accordingly reduce our net income.

The impact of option expensing under SFAS No. 123R will result in lower reported earnings per share, which could negatively impact our future stock price. This could also impact our ability to use or our future practice of utilizing, broad-based employee stock plans to attract, reward, and retain employees, which could also adversely impact our operations. In addition, the option pricing models used to estimate the fair value of employee stock options are based on highly subjective inputs and assumptions. If another party asserts that the fair value of our employee stock options is misstated, securities class action litigation could be brought against us, or the market price of our common stock could decline, or both could occur. As a result, we could incur significant losses, and our operating results may be below our expectations and those of investors and stock market analysts.

We also face increasing complexity in our product design and procurement operations as we adjust to new and upcoming requirements relating to the materials composition of many of our products. The European Union ("EU") has adopted two directives to facilitate the recycling of electrical and electronic equipment sold in the EU. One of these is the Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment

("RoHS") directive. The RoHS directive restricts the use of lead, mercury, and certain other substances in electrical and electronic products placed on the market in the European Union after July 1, 2006.

In connection with our compliance with such environmental laws and regulations, we could incur substantial costs (including excess component inventory) and be subject to disruptions to our operations and logistics. In addition, we will need to ensure that we can manufacture compliant products, and that we can be assured a supply of compliant components from suppliers. Similar laws and regulations have been or may be enacted in other regions, including in the United States, China, and Japan. Other environmental regulations may require us to reengineer our products to utilize components that are more environmentally compatible, and such reengineering and component substitution may result in additional costs to us. Although we do not anticipate any material adverse effects based on the nature of our operations and the effect of such laws, there is no assurance that such existing laws or future laws will not have a material adverse effect on our business.

***The U.S. government has contributed to our revenue growth and become an important customer for us. However, government demand is unpredictable, and there is no guarantee of future revenue growth from the U.S. government.***

The U.S. government has become an important customer for the storage market and for us. Government agencies are subject to budgetary processes and expenditure constraints that could lead to delays or decreased capital expenditures in IT spending on infrastructures. If the government or individual agencies within the government reduce or shift their capital spending pattern, our financial results may be harmed. We cannot assure you that revenue from the U.S. government will continue to grow in the future.

**Item 1B. Unresolved Staff Comments**

There are currently no unresolved issues with respect to any Commission staff's written comments that were received at least 180 days before the end of the Company's fiscal year to which this report relates and that relate to the Company's periodic or current reports under the Act.

On April 28, 2006, the Company received a comment letter from the staff of the Commission relating to a routine review of the Company's periodic and current reports under the Act. The Company is currently in the process of working to resolve these comments with the staff.

**Item 2. Properties**

Our headquarters site for corporate general administration, sales and marketing, research and development, global services, and manufacturing operations is located in Sunnyvale, California. We own and occupy approximately 800,000 square feet of space in buildings at our Sunnyvale headquarters.

We have commitments related to a lease arrangement with BNP Paribas LLC ("BNP") for approximately 190,000 square feet of office space to be located on land currently owned by us in Sunnyvale, California (as further described below under "Contractual Cash Obligations and Other Commercial Commitments"). We expect to pay lease payments on the completed buildings from BNP on September 2007 for a term of five years. We have the option to renew the lease for two consecutive five-year periods upon approval by BNP.

We lease other sales offices and research and development facilities throughout the United States and internationally. We expect that our existing facilities and those being developed in Sunnyvale, California; RTP, North Carolina; and worldwide are adequate for our requirements over at least the next two years and that additional space will be available as needed.

See additional discussion regarding properties in "Note 4 under Item 8. Financial Statements and Supplementary Data — Notes to Consolidated Financial Statements" and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources."

**Item 3. *Legal Proceedings***

We are subject to legal proceedings, claims, and litigation arising in the ordinary course of business. We defend ourselves vigorously against any such claims. While the outcome of these matters is currently not determinable, management does not expect that the ultimate costs to resolve these matters will have a material adverse effect on our consolidated financial position, results of operations, or cash flows.

**Item 4. *Submissions of Matters to a Vote of Security Holders***

No matters were submitted to a vote of security holders during the fourth quarter of the fiscal year covered by this Annual Report on Form 10-K.



**PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

Our common stock commenced trading on the Nasdaq National Market on November 21, 1995, and is traded under the symbol "NTAP." As of April 30, 2006 there were 1,384 holders of record of the common stock. The closing price for our common stock on July 10, 2006 was \$31.47. The following table sets forth for the periods indicated the high and low closing sale prices for our common stock as reported on the Nasdaq National Market.

	Fiscal 2006		Fiscal 2005	
	High	Low	High	Low
First Quarter	\$30.47	\$25.51	\$21.53	\$17.05
Second Quarter	27.12	22.77	24.83	16.57
Third Quarter	32.67	26.92	34.64	24.98
Fourth Quarter	37.79	30.81	34.36	25.91

We believe that a number of factors may cause the market price of our common stock to fluctuate significantly. See "Item 1. Business — Risk Factors."

**Dividend Policy**

We have never paid cash dividends on our capital stock. We currently anticipate retaining all available funds, if any, to finance internal growth and product development as well as other possible management initiatives, including stock repurchases and acquisitions. Payment of dividends in the future will depend upon our earnings and financial condition and such other factors as the directors may consider or deem appropriate at the time.

Information regarding securities authorized for issuance under equity compensation plans is incorporated by reference from our Proxy Statement for the 2006 Annual Meeting of Stockholders.

**Unregistered Securities Sold in Fiscal 2006**

On August 26, 2005, we acquired Decru, Inc. ("Decru") which resulted in the issuance of 8.3 million shares of our common stock with a fair value of \$191.9 millions, 1.9 million shares of stock options and restricted stock with a fair value of \$36.1 million and the payment of \$54.5 million in cash, and \$0.7 million acquisition-related transaction costs, for a total purchase price of \$283.2 million.

We relied on an exemption from registration pursuant to Section 3(a)10 of the Securities Act and the related fairness hearing relating to our issuance of unregistered securities in connection with the Decru merger. On September 2, 2005, a Form S-8 registration statement was filed with the SEC to register the assumed options of the Decru, Inc. 2001 Equity Incentive Plan.

See Note 7 for securities authorized for issuance under our Equity Compensation Plans.

**Issuer Purchases of Equity Securities**

The table below sets forth activity in the fourth quarter of fiscal 2006:

Period	Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of the Repurchase Program(1)	Approximate Dollar Value of Shares That May yet be Purchased under the Repurchase Program(2)
January 28, 2006 — February 24, 2006	—	\$ —	29,177,787	\$ 504,416,692
February 25, 2006 — March 24, 2006	1,284,400	\$ 34.90	30,462,187	\$ 459,590,424
March 25, 2006 — April 30, 2006	1,534,172	\$ 35.16	31,996,359	\$ 405,655,787
Total	2,818,572	\$ 35.04	31,996,359	\$ 405,655,787

- (1) This amount represented total number of shares purchased under our publicly announced repurchase programs since inception.
- (2) Through April 30, 2006, the Board of Directors had authorized the repurchase of up to \$650,000,000 in shares of our outstanding common stock. At April 30, 2006, \$405,655,787 remained available for future repurchases. The stock repurchase program may be suspended or discontinued at any time.

**Item 6. Selected Financial Data**

The data set forth below are qualified in their entirety by reference to, and should be read in conjunction with, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the Consolidated Financial Statements and related notes thereto included in this Annual Report on Form 10-K.

**Five fiscal years ended April 30, 2006**

	2006	2005	2004	2003	2002
	(In thousands, except per-share amounts)				
Total Revenues	\$2,066,456	\$1,598,131	\$1,170,310	\$ 892,068	\$ 798,369
Income (Loss) from Operations	308,291	253,187	158,463	87,606	(1,062)
Net Income(1)	266,452	225,754	152,087	76,472	3,033
Net Income per Share, Basic	0.72	0.63	0.44	0.23	0.01
Net Income per Share, Diluted	0.69	0.59	0.42	0.22	0.01
Cash, Cash Equivalents and Short-Term Investments	1,322,892	1,169,965	807,965	618,838	454,127
Total Assets	3,260,965	2,372,647	1,877,266	1,319,173	1,108,806
Short-Term Debt	133,789	—	—	—	—
Long-Term Deferred Revenue	282,149	187,180	112,337	63,698	31,036
Long-Term Debt and Other	138,200	4,474	4,858	3,102	3,734
Total Stockholders’ Equity	1,923,453	1,660,804	1,415,848	987,357	858,476

- (1) Net income for fiscal 2006 included an American Jobs Creation Act income tax expense of \$22.5 million or approximately \$0.06 per share. Net income for fiscal 2004 included an income tax benefit of \$16.8 million or approximately \$0.05 per share associated with a favorable foreign tax ruling. Net income for fiscal 2002 includes restructuring charges of \$7.4 million (net of taxes of \$4.8 million) and impairment loss on investments of \$7.8 million (net of taxes of \$5.2 million).

**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion of our financial condition and results of operations should be read together with the financial statements and the related notes set forth under "Item 8. Financial Statements and Supplementary Data." The following discussion also contains trend information and other forward looking statements that involve a number of risks and uncertainties. The Risk Factors set forth in "Item 1. Business" are hereby incorporated into the discussion by reference.

**Overview**

Enterprises are generating vast quantities of data. The rapidly growing amount of data a company generates and the requirements to retain data for longer periods of time are driving an increasing demand for storage and data management solutions. There is an increase in demand for online access to historical information for business or regulatory requirements. The growth in storage capacity requirements further increases the complexity of data management. Managing the continued growth in the volume of data and the on-demand information access continue to challenge our enterprise customers. Companies are looking for solutions to help simplify data storage, IT administration and reduce total costs of ownership. Companies are migrating toward modular, unified storage systems away from large, fixed, expensive, frame-class arrays and inefficient direct-attached storage. There is a growing trend toward consolidating storage and serving a variety of applications from a unified storage pool.

In recent years, enterprises have centralized terabytes of data into networked storage environments to achieve lower costs, higher utilization, and simplified management. On the other hand, geopolitical events such as September 11, 2001; natural disasters such as the Katrina Hurricane disaster; government regulations such as Securities and Exchange Commission's ("SEC") Rule 17a-4; banking regulations such as Basel II; increased privacy concerns such as laptop thefts with sensitive data; and industry guidelines such as PCI (Payment Card Industry standard put forth by Visa and MasterCard), have all put a spotlight on the need to protect and retain data for both the public and private sector. Consolidation, coupled with a higher probability of disasters, has created a heightened sensitivity to the impact of data loss and its disruptive impact on the business. At the same time, compliance and privacy concerns are requiring enterprises to retain data for long periods of time, as well as secure data at rest. Data protection and retention have become a critical IT priorities, requiring cost-effective storage solutions that can help the enterprise protect itself from catastrophic business disruption at an affordable cost.

We believe that our strategic investments are targeted at some of the strongest growth areas of the storage market, such as modular storage, data protection, data retention, data security, iSCSI, and grid computing. However, if any storage market trends and emerging standards on which we are basing our assumptions do not materialize as anticipated, our business could be materially adversely affected. The fiscal 2006 revenue growth and increased gross margins have occurred while the market for our storage products and solutions has grown more competitive with downward pricing pressures that could negatively impact our future revenue growth rate and our future gross margins. At the same time, we anticipate and continue to experience further price decline per petabyte for our products which may have an adverse impact on our future gross margins if not offset by favorable software mix and higher average selling prices associated with new products. We expect our future gross margins to be negatively affected by factors such as global service investment cost; competition, indirect sales including OEM, high disk content partially offset by new product introductions and enhancements and product and add-on software mix.

Continued revenue growth is dependent on the introduction and market acceptance of our new products. In fiscal 2007, we expect to ship our new high-end products, launch our next-generation operating system with enhanced storage grid functionality and offer a comprehensive suite of data protection solutions. If we fail to timely deliver new products or successfully integrate acquired technology into our existing architecture, or if our new products do not achieve market acceptance or if there is no or reduced demand for these or our current products, we may experience a decline in revenue. Additionally, we plan to invest in the people, processes, and systems necessary to best optimize our revenue growth and long-term profitability. However, we cannot assure you that such investments will achieve our financial objectives.

### **Fiscal 2006 Highlights**

In fiscal 2006, we continued to enhance our enterprise solutions, broaden our customer portfolio, extend our channel/partner opportunities, build additional infrastructure to manage our growth and broaden our total addressable market. During the second quarter of fiscal 2006, we acquired Decru, Inc. that develops and sells encryption software and appliances which offers data protection solutions for enterprises and governments, including regulatory compliance, privacy, secure consolidation, and outsourcing. We believe that the current and future potential for this technology will enable us to help our customers manage their risk of data theft and corruption with data encryption and authentication products. Some of the key fiscal 2006 highlights included:

*Penetrated in enterprise data centers and expanded our breadth of disk-to-disk backup and security solutions.* We achieved revenue growth and profitability in fiscal 2006 driven primarily by our new FAS3000 midrange product line. For the first time, customers can choose to purchase Fibre Channel and/or lower-cost ATA drives, on the same system. Combined with our patented RAID-DP protection and our FlexVol and FlexClone technologies, the FAS3000 allows more cost-effective "ATA" drives to be used safely in primary storage applications, which offers the best price-performance value to our customers. We expect our data center penetration will win more NearStore deployments as customers choose NetApp data production solutions to back up their mission critical systems. During fiscal 2006, we introduced an array of products, technologies, and services that highlight the broad range of NetApp disk-to-disk backup and security solutions which simplify data backup procedures, improve recoverability, and lower backup infrastructure expenses. We believe that our new NearStore Virtual Tape Library solution will further expand our market opportunity as we can now provide disk-to-disk backup solutions for all open systems enterprise primary storage.

*Extended our channel/partner opportunities.* We continued to make progress in penetrating and expanding our business in enterprise data centers with mission critical partners. Our fiscal 2006 channel mix demonstrated increased expansion through our partner programs, with approximately 55.5% of our business coming through indirect channels and the remaining 44.5% coming through direct sales. The majority of our block-based storage business and the U.S. Federal business came from indirect channels. Higher growth rates in our indirect channels demonstrated our increasing leverage, giving us broader market reach and increasing enterprise penetration.

*Expanded our global services and support.* It is an element of our strategy to expand and offer a global, comprehensive, end-to-end suite of world-class service and support solutions designed to help our customers meet their goals of simplifying their storage solutions. We increased our business with our top enterprise customers who typically purchase more complete and longer-term service packages. The growth in service revenue in fiscal 2006 was also driven by increases in professional services. We expect to continue to expand our global services and support and believe that such investments will help accelerate the adoption rate of our technology. We cannot assure you that service revenue will continue to grow at previous rates. We expect to invest in our services infrastructure commensurate with our revenue growth.

*Broadened our total addressable market and extended our product lines into adjacent spaces.* We have brought a more comprehensive set of products to the market place, with the new high end offering next generation operating system with enhanced storage grid functionality, the disk-to-disk backup solution on the VTL space, the Decru security and encryption solutions and in early fiscal 2007 our entry into the small-to-medium businesses. We also continued to broaden our addressable market by increasing our focus on the V-Series product line, which uses virtualization to let customers take advantage of the management simplicity of NetApp Data ONTAP with their storage from other vendors.

### **Fiscal 2006 Financial Performance**

- Our revenues for fiscal 2006 were \$2.1 billion, a 29.3% increase over the same period a year ago. Our revenues for fiscal 2005 were \$1.6 billion, a 36.6% increase compared to revenues of \$1.2 billion in fiscal 2004. Our revenue growth was driven by the adoption of our new products targeted at the areas of fastest growth in storage, secondary storage for compliance applications and our broadened NetApp storage solutions that simplify data management.

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- Our overall gross margins were 60.8%, 61.0% and 60.2% in fiscal 2006, 2005 and 2004, respectively. The slight decline in our overall gross margins for fiscal 2006 compared to fiscal 2005 was primarily due to a shift in revenue mix with an increase in disk sales and IBM OEM business partially offset by improved service gross margins. The improvement in our overall gross margins for fiscal 2005 compared to fiscal 2004 was primarily attributable to a favorable change in product and add-on software mix and improved services margins.
- Cash, cash equivalents and short-term investments increased to \$1,322.9 million, compared to \$1,170.0 million as of April 30, 2005, due primarily to cash generated from operations partially offset by cash repurchases of our common stock of \$488.9 million and net cash paid of \$53.7 million in connection with the Alacritus and Decru acquisitions. Days Sales Outstanding in receivable were 63 days, and 60 days, respectively, as of April 30, 2006 and 2005, reflecting increased sales and less linear shipments. Inventory turns were 14.7 times and 17.9 times, respectively, as of April 30, 2006 and 2005 due to higher consigned inventory for IBM sales and new products at customer sites. Deferred revenue increased to \$681.5 million in fiscal 2006 from \$449.2 million reported in fiscal 2005 due to higher software subscription and service arrangements attributable to our continuing shift toward larger enterprise customers. Capital purchases of plant, property, and equipment for fiscal 2006, 2005 and 2004 were \$132.9 million, \$93.6 million and \$48.7 million, respectively, reflecting continued worldwide capital investment to meet our business growth.

**Critical Accounting Estimates and Policies**

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

We believe that the following accounting policies are "critical" as defined by the Securities and Exchange Commission, in that they are both highly important to the portrayal of our financial condition and results, and require difficult management judgments and assumptions about matters that are inherently uncertain. We also have other important policies, including those related to derivative instruments and concentration of credit risk. However, these policies do not meet the definition of critical accounting policies because they do not generally require us to make estimates or judgments that are difficult or subjective. These policies are discussed in Note 2 to the Consolidated Financial Statements accompanying this Annual Report on Form 10-K.

We believe the accounting policies described below are the ones that most frequently require us to make estimates and judgments, and therefore are critical to the understanding of our results of operations:

- Revenue recognition and allowances
- Valuation of goodwill and intangibles
- Accounting for income taxes
- Inventory write-downs
- Restructuring accruals
- Impairment losses on investments
- Accounting for stock-based compensation
- Loss contingencies

### **Revenue Recognition and Allowances**

We apply the provisions of Statement of Position (“SOP”) No. 97-2, “*Software Revenue Recognition*,” and related interpretations to our product sales because we believe our firmware and operating software are essential to the functionality of our hardware products. We recognize revenue when:

- *Persuasive evidence of an arrangement exists.* It is our customary practice to have a purchase order and/or contract prior to recognizing revenue on an arrangement from our end user customers, value-added resellers, or distributors.
- *Delivery has occurred.* Our product is physically delivered to our customers, generally with standard transfer terms such as FOB origin. We typically do not allow for restocking rights with any of our value-added resellers or distributors. Products shipped with acceptance criteria or return rights are not recognized as revenue until all criteria are achieved. If undelivered products or services exist that are essential to the functionality of the delivered product in an arrangement, delivery is not considered to have occurred.
- *The fee is fixed or determinable.* Arrangements with payment terms extending beyond our standard terms, conditions and practices are not considered to be fixed or determinable. Revenue from such arrangements is recognized as the fees become due and payable. We typically do not allow for price-protection rights with any of our value-added resellers or distributors.
- *Collection is probable.* Probability of collection is assessed on a customer-by-customer basis. Customers are subject to a credit review process that evaluates the customer’s financial position and ultimately their ability to pay. If it is determined at the outset of an arrangement that collection is not probable based upon our review process, revenue is deferred and recognized when collection becomes probable.

For arrangements with multiple elements, we allocate revenue to each element using the residual method. When all of the undelivered elements are software-related, this allocation is based on vendor specific objective evidence of fair value of the undelivered items. When the undelivered elements include non-software related items that are only sold as a bundle with software related items, this allocation is based on objective and reliable evidence of fair value, in accordance with Emerging Issues Task Force Issue No. 00-21, “*Revenue Arrangements with Multiple Deliverables*” (“EITF 00-21”), We defer the portion of the arrangement fee equal to the fair value of the undelivered elements until they are delivered. Vendor specific objective evidence of fair value is based on the price charged when the element is sold separately. If vendor specific evidence cannot be obtained to determine fair value of the undelivered elements, revenue from the entire arrangement would be deferred and recognized as these elements are delivered. This would have a material effect on the timing of product revenues.

A typical arrangement includes product, software subscription, and maintenance. Some arrangements include technical consulting and training. Software subscriptions represent the right to unspecified product upgrades and enhancements on a when-and-if-available basis, bug fixes, and patch releases. Service maintenance includes contracts for technical support and hardware maintenance. Revenue from software subscriptions and service maintenance is recognized ratably over the contractual term, generally one to three years. We typically sell technical consulting services and training separately from any of our other revenue elements, either on a time and materials basis or for fixed price standard projects. The type of work that is performed is not essential to the functionality of the software or hardware. Accordingly, we recognize revenue as the services are performed and in accordance with EITF 03-05 “*Applicability of AICPA Statement of Position 97-2 to Non-Software Deliverables in an Arrangement Containing More-Than-Incidental Software*”. Revenue from hardware installation services is a non-software deliverable because the software is not essential to the functionality of the installation service and is therefore outside of the scope of SOP 97-2. Revenue from shipping and handling is included in product revenue and its related cost included in cost of product revenue.

We record reductions to revenue for estimated sales returns at the time of shipment. Sales returns are estimated based on historical sales returns, changes in customer demand, current trends, and our expectations regarding future experience. Reductions to revenue associated with sales returns include consideration of historical sales levels, the timing and magnitude of historical sales returns and a projection of this experience into the future. We monitor and analyze the accuracy of sales returns estimate by reviewing actual returns and adjust it for future expectations to

determine the adequacy of our current and future reserve needs. If actual future returns and allowances differ from past experience and expectation, additional allowances may be required.

We also maintain a separate allowance for doubtful accounts for estimated losses based on our assessment of the collectibility of specific customer accounts and the aging of the accounts receivable. We analyze accounts receivable and historical bad debts, customer concentrations, customer solvency, current economic and geographic trends, and changes in customer payment terms and practices when evaluating the adequacy of the allowance for doubtful accounts. In circumstances where we are aware of a specific customer's inability to meet its financial obligations to us, a specific allowance for bad debt is estimated and recorded which reduces the recognized receivable to the estimated amount we believe will ultimately be collected. We monitor and analyze the accuracy of allowance for doubtful accounts estimate by reviewing past collectibility and adjust it for future expectations to determine the adequacy of our current and future allowance. Our allowance for doubtful accounts as of April 30, 2006 was \$2.4 million, compared to \$5.4 million as of April 30, 2005. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

#### *Valuation of Goodwill and Intangibles*

Identifiable intangible assets are amortized over time, while in-process research and development is recorded as a charge on the date of acquisition and goodwill is capitalized, subject to periodic review for impairment. Accordingly, the allocation of the acquisition cost to identifiable intangible assets has a significant impact on our future operating results. The allocation process requires extensive use of estimates and assumptions, including estimates of future cash flows expected to be generated by the acquired assets. Should conditions be different than management's current assessment, material write-downs of the fair value of intangible assets may be required. We periodically review the estimated remaining useful lives of our other intangible assets. A reduction in the estimate of remaining useful life could result in accelerated amortization expense or a write-down in future periods. As such, any future write-downs of these assets would adversely affect our gross and operating margins.

Under our accounting policy we perform an annual review in the fourth quarter of each fiscal year, or more often if indicators of impairment exist. Triggering events for impairment reviews may be indicators such as adverse industry or economic trends, restructuring actions, lower projections of profitability, or a sustained decline in our market capitalization. Evaluations of possible impairment and, if applicable, adjustments to carrying values, require us to estimate, among other factors, future cash flows, useful lives, and fair market values of our reporting units and assets. When we conduct our evaluation of goodwill, the fair value of goodwill is assessed using valuation techniques that require significant management judgment. Should conditions be different from management's last assessment, significant write-downs of goodwill may be required. In fiscal 2006 and 2005, we performed such evaluation and found no impairment. However, any future write-downs of goodwill would adversely affect our operating margins. As of April 30, 2006, our assets included \$487.5 million in goodwill. See Note 14, "Goodwill and Purchased Intangible Assets" to our consolidated financial statements.

During fiscal 2006, we adjusted goodwill by \$3.5 million and \$2.1 million relating to the tax benefits associated with the subsequent exercise of previously vested assumed Spinnaker and Decru options, respectively. Estimated future adjustments to goodwill related to the tax benefits associated with subsequent exercise of previously vested assumed options by previous acquisitions are approximately \$8.4 million, subject to future cancellations relating to employee terminations.

#### *Accounting for Income Taxes*

The determination of our tax provision is subject to judgments and estimates due to operations in several tax jurisdictions outside the U.S. Earnings derived from our international business are generally taxed at rates that are lower than U.S. rates, resulting in a reduction of our effective tax rate. The ability to maintain our current effective tax rate is contingent upon existing tax laws in both the U.S. and the respective countries in which our international subsidiaries are located. Future changes in domestic or international tax laws could affect the continued realization of the tax benefits we are currently receiving and expect to receive from international business. In addition, a

decrease in the percentage of our total earnings from our international business or in the mix of international business among particular tax jurisdictions could increase our overall effective tax rate.

While most of our profits are earned in foreign jurisdictions with income tax rates generally lower than the combined U.S. federal and state income tax rates, judgment must be made with respect to other estimates of income tax provision, such as R&D tax credits and valuation allowances against deferred tax assets, primarily those set up for net operating losses and income tax credits.

The carrying value of our net deferred tax assets, which consists primarily of the reversal of net deductible temporary differences including credits and net operating loss carryforwards, assumes that we will be able to generate sufficient future taxable income to fully utilize these tax attributes. If we do not generate sufficient future income, the realization of these deferred tax assets may be impaired, resulting in additional income tax expense. We have provided a valuation allowance of \$431.2 million as of April 30, 2006 on the deferred tax attributes associated with the exercise of employee stock options (primarily credits and net operating loss carryforwards) because of uncertainty regarding their realization due to the expectation that future employee stock option exercises will reduce our ability to generate sufficient taxable income in the future. In the event these attributes are realized, the associated tax benefit will be credited to stockholders' equity, rather than as a reduction in the income tax provision.

Prior to fiscal year 2006, our current effective tax rate assumed that U.S. income taxes were not provided for undistributed earnings of certain non-U.S. subsidiaries. However, pursuant to the one-time incentive created under Section 965 of The American Jobs Creation Act of 2004 (the "Jobs Act"), our foreign subsidiaries remitted approximately \$405.5 million in accumulated earned income on which we incurred approximately \$22.5 million in federal and state income taxes in the fourth quarter of fiscal year 2006. In fiscal 2004, we recorded an income tax benefit of \$16.8 million associated with a favorable foreign tax ruling. This favorable ruling from the Netherlands provided for retroactive benefits dating back to fiscal year 2001 and continuing until December 31, 2005. Subsequent to our fiscal 2005 year end, we obtained a new tax ruling from the Netherlands, which terminated the first ruling and provides for continuing favorable tax rate benefits until April 30, 2010. As of April 30, 2006, our Netherlands subsidiary had a conditional royalty expense carryforward of \$51.7 million that may become available for offset against future Dutch income. The carryforward may not, however, be used to offset income under the new Dutch tax ruling expiring April 30, 2010. We have established a valuation allowance against the deferred tax asset for this carryforward based upon our belief that we will not be able to utilize this attribute.

We have been notified of examinations in the U.S. and several foreign tax jurisdictions. Our management does not believe, based upon information currently known to it that the final resolution of any of these audits will have a material adverse effect on our results of operations. However, if upon the conclusion of these audits the ultimate determination of our taxes owed in any of these tax jurisdictions is for an amount in excess of the tax provision we have recorded or reserved for, our overall effective tax rate may be adversely impacted.

Beginning with the fiscal year 2007 implementation of SFAS No. 123R, we may experience adverse impacts to future years effective tax rates in the event that we determine that our APIC pool as of the beginning of fiscal year 2007 is not sufficient enough to cover the impacts of future stock compensation shortfalls.

#### ***Inventory Write-Downs***

Our inventories net balance was \$64.5 million as of April 30, 2006, compared with \$39.0 million as of April 30, 2005. Inventories are stated at the lower of cost (first-in, first-out basis) or market. We perform an in depth excess and obsolete analysis of our inventory based upon assumptions about future demand and market conditions. We adjust the inventory value based on estimated excess and obsolete inventories determined primarily by future demand forecasts. Although we strive for accuracy in our forecasts of future product demand, any significant unanticipated changes in demand or technological developments could have a significant impact on the value of our inventory and commitments, and our reported results. If actual market conditions are less favorable than those projected, additional write-downs and other charges against earnings may be required. If actual market conditions are more favorable, we may realize higher gross margins in the period when the written-down inventory is sold.



We record purchase commitment liabilities with our contract manufacturers and suppliers as a result of changes in demand forecasts or as we transition our products. As of April 30, 2006, we do not have purchase commitment under such arrangements.

We engage in extensive product quality programs and processes, including actively monitoring and evaluating the quality of our component suppliers. We also provide for the estimated cost of known product failures based on known quality issues when they arise. Should actual cost of product failure differ from our estimates, revisions to the estimated liability would be required.

We are subject to a variety of federal, state, local and foreign environmental regulations relating to the use, storage, discharge and disposal of hazardous chemicals used during our manufacturing process or requiring design changes or recycling of products we manufacture. We will continue to monitor our environmental compliance and could incur higher costs including additional reserves for excess component inventory.

#### ***Restructuring Accruals***

In fiscal 2002, as a result of continuing unfavorable economic conditions and a reduction in IT spending rates, we implemented two restructuring plans, which included reductions in our workforce and a consolidation of our facilities. In fiscal 2006, we implemented the third restructuring plan related to the move of our global service center operations. In determining restructuring charges, we analyze our future business requirements in order to properly align and manage our business commensurate with our future revenue levels.

Our restructuring costs, and any resulting accruals, involve significant estimates made by management using the best information available at the time the estimates are made, some of which may be provided by third parties. In recording severance reserves, we accrue a liability when the following conditions have been met: employees' rights to receive compensation is attributable to employees' services already rendered; the obligation relates to rights that vest or accumulate; payment of the compensation is probable; and the amount can be reasonably estimated. In recording facilities lease restructuring reserve, we make various assumptions, including the time period over which the facilities are expected to be vacant, expected sublease terms, expected sublease rates, anticipated future operating expenses, and expected future use of the facilities.

Our estimates involve a number of risks and uncertainties, some of which are beyond our control, including future real estate market conditions and our ability to successfully enter into subleases or lease termination agreements with terms as favorable as those assumed when arriving at our estimates. We regularly evaluate a number of factors to determine the appropriateness and reasonableness of our restructuring and lease loss accruals including the various assumptions noted above. If actual results differ significantly from our estimates, we may be required to adjust our restructuring and lease loss accruals in the future. In fiscal 2005, we estimated our facility restructuring reserve to be \$4.5 million. Our fiscal 2006 estimate for the facility restructuring reserve was \$2.7 million which included a \$1.0 million adjustment due to the execution of new sublease agreement for our Tewksbury facility net of related cost.

#### ***Impairment Losses on Investments***

As of April 30, 2006, our short-term investments have been classified as "available-for-sale" and are carried at fair value. There have been no significant declines in fair value of investments that are considered to be other-than-temporary, for any of the three years in the period ended April 30, 2006. The fair value of our available-for-sale investment reflected in the Consolidated Balance Sheets was \$1,102.8 million and \$976.4 million as of April 30, 2006 and 2005, respectively. We have not identified any of these declines to be other than temporary as market declines of our investments have been caused by interest rate changes and were not due to credit worthiness. Because we have the ability to hold these investments until maturity, we would not expect any significant decline in value of our investments caused by market interest rate changes. We have no impairment losses on our available-for-sale investment or investment in privately held companies for fiscal 2006, 2005 and 2004.

All of our available-for-sale investments and non-marketable equity securities are subject to a periodic impairment review. Investments are considered to be impaired when a decline in fair value is judged to be

other-than-temporary. This determination requires significant judgment. For publicly traded investments, impairment is determined based upon the specific facts and circumstances present at the time, including factors such as current economic and market conditions, the credit rating of the security's issuer, the length of time an investment's fair value has been below our carrying value, and our ability to hold investments to maturity. If an investment's decline in fair value, caused by factors other than changes in interest rates, is deemed to be other-than-temporary, we would reduce its carrying value to its estimated fair value, as determined based on quoted market prices or liquidation values. Our investments in privately held companies were \$11.0 million and \$1.8 million as of April 30, 2006 and 2005, respectively. For non-marketable equity securities, the impairment analysis requires the identification of events or circumstances that would likely have a significant adverse effect on the fair value of the investment, including, revenue and earnings trends, overall business prospects, limited capital resources, limited prospects of receiving additional financing, limited prospects for liquidity of the related securities and general market conditions in the investees' industry.

#### ***Accounting for Stock-Based Compensation***

We adopted the disclosure-only provisions of SFAS No. 123 as amended by SFAS No. 148 and provide pro forma disclosure using the Black-Scholes option pricing model to value our employee stock options. The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model, and is not remeasured as a result of subsequent stock price fluctuations. Option pricing models require the input of highly subjective assumptions, including the expected stock price volatility, expected life and forfeiture rate. We are currently evaluating the expected volatility rates in accordance with SAB No. 107, including the use of historical, blended and implied volatility. As of May 1, 2006, the contractual life of our stock options has been shortened to seven years from ten years for options issued on or after this date, and to the extent that the shorter life changes employees' exercise behavior, it may change the expected term of an option going forward. SFAS No. 123R will require us to include estimated forfeitures, and therefore, the required adoption of SFAS No. 123R could have a material impact on the timing of and, based on the accuracy of estimates of future actual forfeitures, the amount stock compensation expense. Any changes in these highly objective assumptions may significantly impact the stock compensation expenses for the future.

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123 (revised 2004), "*Share-Based Payment*" ("SFAS No. 123R"), see discussion under New Accounting Standards below. In March 2005, the SEC issued Staff Accounting Bulletin No. 107 ("SAB 107"). SAB 107 includes interpretive guidance for the initial implementation of SFAS No. 123R. We will apply the principles of SAB 107 in conjunction with our adoption of SFAS No. 123R in our first quarter of fiscal 2007, which begins on May 1, 2006.

#### ***Loss Contingencies***

We are subject to the possibility of various loss contingencies arising in the course of business. We consider the likelihood of the loss or impairment of an asset or the incurrence of a liability as well as our ability to reasonably estimate the amount of loss in determining loss contingencies. An estimated loss contingency is accrued when it is probable that a liability has been incurred or an asset has been impaired and the amount of loss can be reasonably estimated. In fiscal 2006, 2005 and 2004, we did not identify or accrue for any loss contingencies. We regularly evaluate current information available to us to determine whether such accruals should be adjusted.

#### ***New Accounting Standards***

In November 2005, the Financial Accounting Standards Board ("FASB") issued FASB Staff Position FSP 115-1 which addresses the determination as to when an investment is considered impaired, whether that impairment is other-than-temporary, and the measurement of an impairment loss. This FSP also includes accounting considerations subsequent to the recognition of an other-than-temporary impairment and requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. The guidance in this FSP amends Statement of Financial Accounting Standards ("SFAS") No. 115, "Accounting for Certain Investments in Debt and Equity Securities" and APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock." The guidance in FSP 115-1 shall be applied to reporting periods beginning after December 15, 2005. We are required to adopt FSP 115-1 for fiscal years beginning after May 1, 2006. We are

currently evaluating the effect that the adoption of FSP 115-1 will have on our consolidated results of operations and financial condition but do not expect it to have a material impact.

In June 2005, the FASB issued SFAS No. 154 (“SFAS No. 154”), *Accounting Changes and Error Corrections: a Replacement of Accounting Principles Board Opinion No. 20 (“APB 20”) and FASB Statement No. 3*. SFAS No. 154 requires retrospective application for voluntary changes in accounting principle unless it is impracticable to do so. Retrospective application refers to the application of a different accounting principle to previously issued financial statements as if that principle had always been used. SFAS No. 154’s retrospective-application requirement replaces APB 20’s requirement to recognize most voluntary changes in accounting principle by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. This Statement defines retrospective application as the application of a different accounting principle to prior accounting periods as if that principle had always been used or as the adjustment of previously issued financial statements to reflect a change in the reporting entity. This Statement also redefines restatement as the revising of previously issued financial statements to reflect the correction of an error. The requirements are effective for accounting changes made in fiscal years beginning after December 15, 2005 and will only impact the consolidated financial statements in periods in which a change in accounting principle is made.

In November 2004, the FASB issued SFAS No. 151 “*Inventory Costs*” (SFAS No. 151). This statement amends the guidance in ARB No. 43, Chapter 4, “Inventory Pricing,” to clarify the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). SFAS No. 151 requires that those items be recognized as current-period charges. In addition, this Statement requires that allocation of fixed production overhead to costs of conversion be based upon the normal capacity of the production facilities. The provisions of SFAS No. 151 are effective for inventory cost incurred in fiscal years beginning after June 15, 2005. As such, we are required to adopt these provisions at the beginning of fiscal 2007, which begins on May 1, 2006. We do not expect the adoption of SFAS No. 151 to have a material impact on our consolidated financial statements.

In December 2004, the FASB issued SFAS No. 123R. Generally, the requirements of SFAS No. 123R are similar to those of SFAS No. 123. However, SFAS No. 123R requires companies to now recognize all share-based payments to employees, including grants of employee stock options, in their statements of operations based on the fair value of the payments. Pro forma disclosure will no longer be an alternative. The effective date of the new standard for our consolidated financial statements is the first quarter of fiscal 2007, which begins on May 1, 2006.

In March 2005, the Securities and Exchange Commission (“SEC”) issued Staff Accounting Bulletin (“SAB”) No. 107, which provides guidance on the implementation of SFAS No. 123R, “*Share-Based Payments*” (SFAS No. 123R) (see discussion below). In particular, SAB No. 107 provides key guidance related to valuation methods (including assumptions such as expected volatility and expected term), the accounting for income tax effects of share-based payment arrangements upon adoption of SFAS No. 123R, the modification of employee share options prior to the adoption of SFAS No. 123R, the classification of compensation expense, capitalization of compensation cost related to share-based payment arrangements, first-time adoption of SFAS No. 123R in an interim period, and disclosures in Management’s Discussion and Analysis subsequent to the adoption of SFAS No. 123R.

In November 2005, the FASB issued FSP FAS 123R-3, *Transition Election and Accounting for Tax Effects*. The guidance provides a simplified method to calculate the Additional Paid-In Capital (APIC) pool for beginning balance of excess tax benefits and the method of determining the subsequent impact on the pool of option awards that are outstanding and fully or partially vested upon the adoption of SFAS No. 123R beginning on May 1, 2006. In addition, this FSP addresses that when the alternative APIC pool calculation is used, tax benefits related to certain employee awards should be included as a cash flow from financing activities and a cash outflow from operating activities within the statements of cash flows. The FSP allows companies up to one year from the later of the adoption date of SFAS No. 123R or November 10, 2005 to evaluate the available transition alternatives and make a one-time election. We are in the process of evaluating the impact of the new method provided by this guidance.

SFAS No. 123R and its related guidance permits public companies to adopt its requirements using one of two methods: modified prospective method or modified retrospective method. We plan to adopt SFAS No. 123R using the modified prospective method, in which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS No. 123R for all share-based payments granted after the effective date and

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(b) based on the requirements of SFAS No. 123 for all awards granted to employees prior to the effective date of SFAS No. 123R that remain unvested on the effective date. We will recognize in our results of operations the compensation cost for stock-based awards issued after April 30, 2006 on a straight-line basis over the requisite service period for the entire award. For stock-based awards issued prior to May 1, 2006, we amortized the related compensation costs using the graded-vesting method.

As permitted by SFAS No. 123, we currently account for share-based payments to employees using the APB 25 intrinsic value method and, as such, generally recognize no compensation cost for employee stock options as grant date value equals fair value. The adoption of the SFAS No. 123R fair value method will have a significant impact on our reported results of operations because the stock-based compensation expense will be charged directly against our reported earnings. The pre-tax balance of unearned stock-based compensation to be expensed in the period fiscal 2007 through 2010 related to share-based awards unvested as of April 30, 2006, as previously calculated under the disclosure-only requirements of SFAS No. 123, is approximately \$240.5 million. If there are any modifications or cancellations of the underlying unvested securities, we may be required to accelerate, increase, or cancel any remaining unearned stock-based compensation expense. To the extent that we grant additional equity securities to employees or assume unvested securities in connection with any acquisitions, our stock-based compensation expense will be increased by the additional unearned compensation resulting from those additional grants or acquisitions. We anticipate that we will grant additional employee stock options and restricted stock units in fiscal 2007. The fair value of these grants cannot be predicted with certainty at this time due to the fact that the expense amount will depend on the timing of new grants, the number of new grants, changes in the market price or the volatility of our common stock. However, we currently estimate that the impact on our first fiscal quarter will be between \$0.07 — \$0.09 per share. As of May 1, 2006, the contractual life of our stock options has been shortened to seven years from ten years for options issued on or after this date, and to the extent that the shorter life changes employees' exercise behavior, it may change the expected term of an option going forward. We are not aware of any other changes in business practices and do not expect any violations of debt covenants due to the adoption of SFAS No. 123R.

#### Results of Operations

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

	Years Ended April 30,		
	2006	2005	2004
Revenues:			
Product	76.3%	78.9%	80.7%
Software subscriptions	11.6	10.6	9.7
Service	12.1	10.5	9.6
	100.0	100.0	100.0
Cost of Revenues:			
Cost of product	30.1	30.4	31.6
Cost of software subscriptions	0.1	0.1	0.1
Cost of service	9.0	8.5	8.1
Gross Profit	60.8	61.0	60.2

	Years Ended April 30,		
	2006	2005	2004
Operating Expenses:			
Sales and marketing	28.9	29.1	29.9
Research and development	11.8	10.7	11.3
General and administrative	4.4	4.8	4.7
Acquired in process research and development	0.2	—	0.4
Stock compensation	0.6	0.5	0.3
Restructuring charges (recoveries)	—	—	0.1
Total Operating Expenses	45.9	45.1	46.7
Income From Operations	14.9	15.9	13.5
Other Income (Expenses), Net:			
Interest income	2.1	1.5	1.2
Interest expense	(0.1)	—	—
Other expenses, net	0.1	(0.1)	(0.2)
Net gain on investments	—	—	0.1
Total Other Income, Net	2.1	1.4	1.1
Income Before Income Taxes	17.0	17.3	14.6
Provision for Income Taxes	4.1	3.2	1.6
Net Income	12.9%	14.1%	13.0%

#### Fiscal 2006 Compared to Fiscal 2005

*Product Revenues* — Product revenues increased by 25.1% to \$1,577.4 million in fiscal 2006, from \$1,260.6 million in fiscal 2005. Product revenues growth was across all geographies. This net increase year over year was specifically attributable to increased software licenses, an increase in units shipped, and an increase in demand for data protection and mission-critical storage environments, partially offset by a decline in shipments and lower average selling prices of older generation products, lower cost-per-megabyte disks. Our systems are highly configurable because of customer requirements in the open systems storage markets we serve. As a result, the wide variation in customized configuration can significantly impact revenue, cost of revenues, and gross margin performance. Price changes, volumes and product model mix can have an effect on changes in product revenues, the impact on these forces is significantly affected by the configuration of systems shipped.

Product revenues were favorably affected by the following factors:

- Increased revenues from our current product portfolio, such as FAS980, and FAS270 storage systems; and introduction of new products, such as FAS3020, FAS3050, and FAS6070 storage systems; V3020, and V3050 storage virtualization systems; NetCache C2300, and C3300 appliances and add-on software
- Revenue generated from disk-to-disk backup/archival, and security solutions increased by 28.1% in fiscal 2006 compared to fiscal 2005
- Increased sales through indirect channels in absolute dollars, including sales through our resellers, distributors, and OEM partners, representing 55.5% and 51.2% of total revenues for fiscal 2006 and 2005, respectively

Product revenues were negatively affected by the following factors:

- Lower-cost-per-megabyte disks which are a significant component of our hardware costs. As performance has improved on these devices, the related sales price we can charge per megabyte of storage has decreased as well.
- Declining average selling prices and unit sales of our older products.

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The Decru acquisition and the IBM OEM relationship did not have a significant impact on the revenue for fiscal 2006. There can be no assurance that IBM and Decru will contribute meaningful revenue in future quarters. We also cannot assure you that we will be able to maintain or increase market demand for our products.

*Software Subscriptions Revenues* — Software subscriptions revenues increased by 40.9% to \$239.1 million in fiscal 2006, from \$169.7 million in fiscal 2005 due primarily to a larger installed base renewals, upgrades and an increasing number of new enterprise customers. Software subscriptions revenues represent 11.6% and 10.6% of total revenues for fiscal 2006 and 2005, respectively.

*Service Revenues* — Service revenues, which include hardware support, professional services, and educational services, increased by 48.9% to \$249.9 million in fiscal 2006, from \$167.8 million in fiscal 2005.

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

- Professional service revenue increased by 49.0% to \$89.4 million in fiscal 2006 from \$60.0 million in fiscal 2005
- An increasing number of enterprise customers, which typically purchase more complete and generally longer-term service packages than our non-enterprise customers
- A growing installed base resulting in new customer support contracts in addition to support contract renewals by existing customers

While it is an element of our strategy to expand and offer a more comprehensive, global enterprise support and service solution, we cannot assure you that service revenue will grow at the current rate in fiscal 2007.

A large portion of our service revenues is deferred and, in most cases, recognized ratably over the service obligation periods, which are typically one to three years, and are classified as short-term and long-term deferred revenue on our Consolidated Balance Sheets. Service revenues represented 12.1% and 10.5% of total revenues for fiscal year 2006 and 2005, respectively.

*International total revenues* — International total revenues (including U.S. exports) increased by 23.2% in fiscal year 2006 compared with fiscal 2005. International total revenues were \$943.8 million, or 45.7% of total revenues for fiscal year 2006 compared with \$765.8 million or 47.9% of total revenues for fiscal 2005. The increase in international sales was primarily a result of revenue growth from our European and Asia Pacific geographies, driven by increased demand for our solutions portfolio, new customers, and higher storage spending in certain geographic regions as compared to the same period in the prior fiscal year. We cannot assure you that we will be able to maintain or increase international revenues in fiscal 2007.

*Product Gross Margins* — Product gross margins decreased to 60.5% for fiscal 2006, from 61.4% for fiscal 2005.

Product gross margins were negatively affected by the following factors:

- Sales price reductions due to competitive pricing pressure and selective pricing discounts
- Increased sales through certain indirect channels, which may have lower gross margins than our direct sales in certain geographic regions
- Sales of relatively lower margin add-on storage shelves and hardware increased by 57.1% in fiscal 2006 compared to fiscal 2005

Product gross margins were favorably affected by the following factors:

- Favorable product and add-on software mix with software licenses increasing by 32.8% in fiscal 2006 compared to fiscal 2005
- Better disk utilization rates associated with sales of higher-margins management software products like FlexClone and FlexVol that run on the Data ONTAP 7G operating system allowing customers to buy less disk storage but buy more high-value software
- Higher average selling prices for our newer products

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

Amortization of existing technology from acquisitions included in cost of product revenues was \$11.8 million and \$3.4 million for fiscal 2006 and 2005, respectively. Estimated future amortization of existing technology to cost of product revenues relating to acquisitions will be \$15.5 million for each of fiscal years 2007 and 2008; \$14.7 million for fiscal year 2009; \$10.3 million for fiscal year 2010, \$2.8 million for fiscal year 2011; and none thereafter.

*Software Subscriptions Gross Margins* — Software subscriptions gross margins increased slightly to 99.4% for fiscal 2006, from 99.1% for fiscal 2005 due primarily to improved headcount utilization and a larger installed base renewals, upgrades and an increasing number of new enterprise customers.

*Service Gross Margins* — Service gross margins increased to 25.9% in fiscal 2006 compared to 19.4% in fiscal 2005. Cost of service revenue increased by 36.9% to \$185.0 million in fiscal 2006, from \$135.2 million in fiscal 2005.

The improvement in service gross margins for fiscal 2006 compared to fiscal 2005 was primarily due to an increase in services revenue and improved headcount utilization offset by the continued spending in our service infrastructure to support our increasing enterprise customer base. This spending included additional professional support engineers, increased support center activities, and global service partnership programs. Service gross margins will typically experience some variability over time due to the timing of technical support service initiations, renewals and additional investments in our customer support infrastructure. In fiscal 2007, we expect service gross margins to be in the mid 20% range, as we continue to build out our service capability and capacity to support our growing enterprise customers and new products. Our fiscal 2007 total gross margin will also be negatively impacted by stock compensation expenses as a result of the adoption of SFAS No. 123R.

*Sales and Marketing* — Sales and marketing expenses consist primarily of salaries, commissions, advertising and promotional expenses, and certain customer service and support costs. Sales and marketing expenses increased 27.7% to \$595.2 million for fiscal 2006, from \$466.0 million for fiscal 2005. These expenses were 28.9% and 29.1% of total revenues for fiscal 2006 and fiscal 2005, respectively. The increase in absolute dollars was attributed to increased commission expenses resulting from increased revenues, higher performance-based payroll expenses due to higher profitability, higher partner program expenses, and the continued worldwide investment in our sales and global service organizations associated with selling complete enterprise solutions.

Amortization of acquisitions-related trademarks/tradenames and customer contracts and relationships included in sales and marketing expenses was \$2.1 million and \$0.8 million for fiscal 2006 and fiscal 2005, respectively. Estimated future amortization of trademarks, tradenames, customer contracts, and relationships relating to acquisitions and included in sales and marketing expenses will be \$2.3 million for fiscal 2007, \$2.2 million for fiscal 2008, 2009, and 2010, \$1.3 million for fiscal 2011 and \$0.3 million thereafter.

Sales and marketing headcount increased to 1,927 at April 30, 2006, from 1,918 at April 30, 2005. We expect to continue to selectively add sales capacity in an effort to expand domestic and international markets, introduce new products, establish and expand new distribution channels, and increase product and company awareness. Our sales and market expenses will also increase as a result of the adoption of SFAS No. 123R. We expect to increase our sales and marketing expenses commensurate with future revenue growth.

*Research and Development* — Research and development expenses consist primarily of salaries and benefits, prototype expenses, non-recurring engineering charges, fees paid to outside consultants and amortization of capitalized patents.

Research and development expenses increased 42.1% to \$243.0 million for fiscal 2006 from \$171.0 million for fiscal 2005. These expenses represented 11.8% and 10.7% of total revenues for fiscal 2006 and 2005, respectively. The increase in research and development expenses was primarily a result of increased headcount, ongoing operating impact of the acquisitions, ongoing support of current and future product development and enhancement efforts, and higher performance-based payroll expenses due to higher profitability. Research and development

headcount increased to 1,246 as of April 30, 2006, compared to 827 as of April 30, 2005. For both fiscal 2006 and 2005, no software development costs were capitalized.

Included in research and development expenses is amortization of acquired patents of \$2.0 million and \$1.8 million for fiscal 2006 and 2005, respectively. Based on acquired patents existing at April 30, 2006, estimated future capitalized patents amortization expenses will be \$2.0 million for each of the fiscal years 2007 and 2008, respectively, and \$0.5 and \$0.2 million for fiscal 2009 and 2010.

We believe that our future performance will depend in large part on our ability to maintain and enhance our current product line, develop new products that achieve market acceptance, maintain technological competitiveness, and meet an expanding range of customer requirements. We expect to continuously support current and future product development and enhancement efforts, and incur prototyping expenses and nonrecurring engineering charges associated with the development of new products and technologies. We intend to continuously broaden our existing product offerings and introduce new products that expand our solutions portfolio.

We believe that our research and development expenses will increase in absolute dollars for fiscal 2007, primarily due to ongoing costs associated with the development of new products and technologies, projected headcount growth, the operating impact of potential future acquisitions as compared to fiscal 2006, and stock-based compensation as a result of the adoption of SFAS No. 123R.

*General and Administrative* — General and administrative expenses increased 19.4% to \$91.9 million for fiscal 2006, from \$76.9 million for fiscal 2005. These expenses represented 4.4% and 4.8% of total revenues for fiscal 2006 and 2005, respectively. This increase in absolute dollars was primarily due to expenses associated with expanded regulatory requirements, higher legal expenses and professional fees for general corporate matters including patents and higher performance-based payroll expenses due to higher profitability.

General and administrative headcount increased to 568 at April 30, 2006, from 331 at April 30, 2005. We believe that our general and administrative expenses will increase in absolute dollars for fiscal 2007 due to projected G&A headcount growth and the stock-based compensation as a result of the adoption of SFAS No. 123R. Amortization of acquisitions-related covenants not to compete included in general and administrative expenses was \$2.2 million and \$5.1 million for fiscal 2006 and 2005, respectively. Estimated future amortization of covenants not to compete relating to acquisitions will be \$1.0 million for fiscal year 2007, and \$0.2 million in fiscal year 2008.

*In-Process Research and Development* — We recorded in-process research and development charges of \$5.0 million in fiscal 2006 related to the acquisition of Decru. The purchase price of the transaction was allocated to the acquired assets and liabilities based on their estimated fair values as of the date of the acquisition. Approximately \$5.0 million was allocated to in-process research and development and charged to operations because the acquired technology had not reached technological feasibility and had no alternative uses. The value was determined by estimating the costs to develop the acquired in-process technology into commercially viable products, estimating the resulting future net cash flows from such projects, and discounting the net cash flows back to their present value. The discount rate included a factor that took into account the uncertainty surrounding the successful development of the acquired in-process technology. These estimates are subject to change, given the uncertainties of the development process, and no assurance can be given that deviations from these estimates will not occur. Research and development costs to bring the products from Decru to technological feasibility are not expected to have a material impact on our future results of operations or financial conditions.

*Stock Compensation* — Stock compensation expenses were \$13.3 million and \$8.1 million for fiscal 2006 and 2005, respectively. This net increase in year-over-year stock compensation expenses reflected primarily higher stock compensation relating to stock options and restricted stocks assumed in acquisitions, and restricted stock awards, partially offset by forfeitures of unvested options and forfeited restricted stock assumed in the acquisitions. Based on deferred stock compensation recorded at April 30, 2006, estimated future deferred stock compensation amortization expenses, excluding the impact of SFAS No. 123R, are \$20.3 million in fiscal 2007, \$14.3 million in fiscal 2008, \$8.1 million in fiscal 2009, and \$6.6 million in fiscal 2010.

*Restructuring Charges* — In fiscal 2002, as a result of continuing unfavorable economic conditions and a reduction in IT spending rates, we implemented two restructuring plans, which included reductions in our workforce and consolidations of our facilities. As of April 30, 2006, we have no outstanding balance in our



restructuring liability for the first restructuring. The second restructuring related to the closure of an engineering facility and consolidation of resources to the Sunnyvale headquarters. In the second quarter of fiscal 2006, we implemented a third restructuring plan related to the move of our global services center operations from Sunnyvale to our new flagship support center at our Research Triangle Park facility in North Carolina.

Our restructuring estimates are reviewed and revised periodically and may result in a substantial charge or reduction to restructuring expense should different conditions prevail than were anticipated in previous management estimates. Such estimates included various assumptions such as the time period over which the facilities will be vacant, expected sublease terms, and expected sublease rates. In fiscal 2006, we recorded a reduction in restructuring reserve of \$1.3 million resulting from the execution of a new sublease agreement for our Tewksbury facility. In fiscal 2006, we recorded a restructuring charge of \$1.1 million, primarily attributed to severance-related amounts and relocation expenses related to the third restructuring plan.

Of the reserve balance at April 30, 2006, \$0.9 million was included in other accrued liabilities and the remaining \$2.1 million was classified as long-term obligations. The balance of the reserve is expected to be paid by fiscal 2011.

The following analysis sets forth the significant components of the second restructuring at April 30, 2006 (in thousands):

	Severance- Related Amounts	Fixed Assets Write-off	Facility	Total
Restructuring charge	\$ 813	\$ 473	\$ 4,564	\$ 5,850
Cash payments and others	(706)	—	(1,713)	(2,419)
Noncash portion	—	(473)	—	(473)
Adjustments	(107)	—	2,357	2,250
Reserve balance at April 30, 2004	—	—	5,208	5,208
Cash payments and others	—	—	(705)	(705)
Reserve balance at April 30, 2005	—	—	4,503	4,503
Restructuring charges	859	—	281	1,140
Cash payments and others	(521)	—	(862)	(1,383)
Recoveries	—	—	(1,256)	(1,256)
Reserve balance at April 30, 2006	<u>\$ 338</u>	<u>\$ —</u>	<u>\$ 2,666</u>	<u>\$ 3,004</u>

*Interest Income* — Interest income was \$41.5 million and \$24.2 million for fiscal 2006 and 2005, respectively. Included in interest income for fiscal 2005 was a \$1.3 million interest received on a tax refund. The increase in interest income was primarily driven by higher average interest rates on our investment portfolio. We expect interest income to increase for fiscal 2007 as a result of rising average interest rates and higher cash and invested balances in a higher interest-rate portfolio environment.

*Interest Expense* — Interest expense was \$1.3 million and \$0.1 million in fiscal 2006 and 2005, respectively. The increase in fiscal 2006 was primarily due to interest incurred in connection with our debt.

*Other Income (Expense), Net* — Other Income (Expense), Net, included net exchange gains from foreign currency transactions of \$1.7 million in fiscal 2006, due primarily to forecast variances offset by hedging costs as a result of higher U.S. interest rates compared to other countries. Net exchange losses from foreign currency transactions were \$1.6 million in fiscal 2005 as a result of exchange rate volatility, forecast variances and higher hedging costs.

*Provision for Income Taxes* — The provision for income taxes for fiscal 2006 included an income tax provision of \$22.5 million or \$0.06 per share associated with the repatriation of cumulative foreign earnings which occurred during the fourth quarter of fiscal 2006 under the one-time incentive created pursuant to Section 965 of the Jobs Act. We will invest these earnings pursuant to an approved Domestic Reinvestment Plan that conforms to the Jobs Act guidelines.

For fiscal 2006, we had an effective tax rate of 23.9% to pretax income, which included a 6.4% increase to account for the income tax provision of \$22.5 million associated with the cash repatriation of cumulative foreign earnings. The effective tax rate for fiscal 2006 differed from the U.S. statutory rate primarily due to a beneficial foreign tax ruling for our principal European subsidiary, the availability of tax credits, and the generation of foreign earnings in lower tax jurisdictions. For fiscal 2005, our effective tax rate was 18.3%.

#### **Fiscal 2005 Compared to Fiscal 2004**

*Product Revenues* — Product revenues increased by 33.4% to \$1,260.6 million in fiscal 2005, from \$944.9 million in fiscal 2004. Product revenues growth was across all geographies. This increase in product revenues was specifically attributable to increased software licenses and an increase in units shipped, compared to the prior year.

Product revenues were favorably affected by the following factors:

- Increased revenues from our then current products such as: FAS960, FAS940, FAS270, and FAS250 storage systems; NearStore R200 and R150 nearline storage systems; NetCache C2100 and C6200 appliances, as well as our gateway storage systems (gFiler), GF960, GF940 and GF825
- Increased revenues from data management software products that are focused on solving enterprise customer storage challenges, including regulatory and compliance data needs, storage consolidation, Internet access and security, technical applications, and data protection
- Increased demand for regulatory compliance WORM solutions and backup-to-disk solutions
- Increased sales through indirect channels, including sales through our resellers, distributors, and OEM partners, representing 51.2% and 47.9% of total revenues for fiscal 2005 and 2004, respectively.

Product revenues were negatively affected by the following factors:

- Lower-cost-per-megabyte disks which are a significant component of our hardware costs. As performance has improved on these devices, the related sales price we can charge per megabyte of storage has decreased as well.
- Incremental revenue due to an extra week of business in fiscal 2004 compared to fiscal 2005
- Declining average selling price and unit sales of our older storage systems.

*Software Subscriptions Revenues* — Software subscriptions revenues increased by 49.8% to \$169.7 million in fiscal 2005, from \$113.3 million in fiscal 2004 due primarily to a larger installed base renewals, upgrades and an increasing number of new enterprise customers. Software subscription revenues represent 10.6% and 9.7% of total revenues for fiscal year 2005 and 2004, respectively.

*Service Revenues* — Service revenues, which include hardware support, professional services, and educational services, increased by 49.7% to \$167.8 million in fiscal 2005, from \$112.1 million in fiscal 2004. Service revenues are generally deferred and, in most cases, recognized ratably over the service obligation periods, which are typically one to three years. Service revenues represented 10.5%, and 9.6% of total revenues for fiscal year 2005 and 2004, respectively. The increase in absolute dollars was due to an increasing number of enterprise customers, which typically purchase more complete and generally longer-term service packages. Higher service revenues were also related to a growing installed base resulting in new customer support contracts in addition to support contract renewals by existing customers.

*International Total Revenues* — International total revenues (including U.S. exports) increased by 39.0% in fiscal year 2005 compared with fiscal 2004. International total revenues were \$765.8 million, or 47.9% of total revenues for fiscal year 2005 compared with \$551.0 million or 47.1% of total revenues for fiscal 2004. The increase in international sales for fiscal year 2005 was primarily a result of revenue growth from our European and Asia Pacific geography, driven by larger storage implementations, increased demand for our solutions portfolio, new customers, and higher storage spending in certain geographic regions, as compared to the same period in the prior fiscal year.

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*Product Gross Margins* — Product gross margins increased to 61.4% for fiscal 2005, from 60.8% for fiscal 2004. Amortization of existing technology included in cost of product revenues was \$3.4 million and \$3.7 million for fiscal 2005 and 2004, respectively.

Product gross margins were favorably affected by the following factors:

- Favorable product and add-on software mix
- Competitive pricing solutions with our bundled software and solutions set
- Higher average selling prices for our newer products
- Growth in software subscription upgrades and software licenses due primarily to a larger installed base and an increasing number of new enterprise customers
- Transitional expenses incurred in fiscal 2004 associated with the initial implementation of a new Enterprise Resource Planning (ERP) system, which we did not incur in fiscal 2005

Product gross margins were negatively affected by the following factors:

- Higher disk content with an expanded storage capacity for the higher-end storage systems and NearStore systems, as resale of disk drives generates lower gross margins
- Increased sales through certain indirect channels, which typically carry lower gross margins than our direct sales
- Sales price reductions due to competitive pricing pressure and selective pricing discounts
- Lower average selling price of certain add-on software options

*Software Subscriptions Gross Margins* — Software Subscriptions gross margins increased to 99.1% for fiscal 2005, from 98.9% for fiscal 2004 due primarily to improved headcount utilization and a larger installed base renewals, upgrades and an increasing number of new enterprise customers.

*Service Gross Margins* — Service gross margins increased to 19.4% in fiscal 2005 as compared to 15.9% in fiscal 2004. Cost of service revenue increased by 43.4% to \$135.2 million in fiscal 2005, from \$94.3 million in fiscal 2004. The improvement in service gross margins for fiscal 2005 compared to fiscal 2004 was primarily due to an increase in services revenue and improved headcount utilization offset by the continued spending in our service infrastructure to support our increasing enterprise customer base. This spending included additional professional support engineers, increased support center activities, and global service partnership programs. Service gross margins will typically experience some variability over time due to the timing of technical support service initiations and renewals and additional investments in our customer support infrastructure.

*Sales and Marketing* — Sales and marketing expenses consist primarily of salaries, commissions, advertising and promotional expenses, and certain global service and support costs. Sales and marketing expenses increased 33.3% to \$466.0 million for fiscal 2005, from \$349.5 million for fiscal 2004. These expenses were 29.1% and 29.9% of total revenues for fiscal 2005 and fiscal 2004, respectively. The increase in absolute dollars was attributed to increased commission expenses resulting from increased revenues, higher performance-based payroll expenses due to higher profitability, higher sales kickoff expenses, higher partner program expenses, and the continued worldwide spending in our sales and global service organizations associated with selling complete enterprise solutions, partially offset by an extra week of business in fiscal 2004 as compared to fiscal 2005.

Amortization of acquired trademarks/tradenames and customer contracts, and relationships included in sales and marketing expenses was \$0.8 million and \$0.2 million for fiscal 2005 and fiscal 2004, respectively.

Sales and marketing headcount increased to 1,918 at April 30, 2005, from 1,421 at April 30, 2004.

*Research and Development* — Research and development expenses consist primarily of salaries and benefits, prototype expenses, nonrecurring engineering charges, fees paid to outside consultants and amortization of capitalized patents. Research and development expenses increased 29.7% to \$171.0 million for fiscal 2005 from \$131.9 million for fiscal 2004. These expenses represented 10.7% and 11.3% of total revenues for fiscal 2005 and

2004, respectively. The increase in research and development expenses was primarily a result of increased headcount, ongoing impact of the Spinnaker acquisition, ongoing support of current and future product development and enhancement efforts, higher performance-based payroll expenses due to higher profitability, partially offset by an extra week of expenses in fiscal 2004 compared to fiscal 2005, cost control, and reduction in discretionary spending efforts. Research and development headcount increased to 827 as of April 30, 2005, compared to 650 as of April 30, 2004. For both fiscal 2005 and 2004, no software development costs were capitalized. Included in research and development expenses is capitalized patents amortization of \$1.8 million and \$1.5 million for fiscal 2005 and 2004, respectively.

*General and Administrative* — General and administrative expenses increased 41.0% to \$76.9 million for fiscal 2005, from \$54.6 million for fiscal 2004. These expenses represented 4.8% and 4.7% of total revenues for fiscal 2005 and 2004, respectively. This increase in absolute dollars was primarily due to expenses associated with expanded regulatory requirements, higher legal expenses and professional fees for general corporate matters including patents, higher performance-based payroll expenses due to higher profitability, partially offset by reduced expenses as a result of one less week of expenses in fiscal 2005 compared to fiscal 2004 and higher expenses associated with investments in our enterprise-wide ERP system and back-office infrastructure in fiscal 2004, which we did not incur in fiscal 2005.

General and administrative headcount increased to 432 at April 30, 2005, from 331 at April 30, 2004. Amortization of Spinnaker covenants not to compete included in general and administrative expenses was \$5.1 million and \$1.1 million for fiscal 2005 and 2004, respectively.

*Stock Compensation* — Stock compensation expenses were \$8.1 million and \$3.9 million for fiscal 2005 and 2004, respectively. This net increase year-over-year in stock compensation expenses reflected primarily higher stock compensation relating to stock options and restricted stocks assumed in the Spinnaker acquisition, restricted stock awards, partially offset by forfeitures of unvested options and forfeited restricted stock assumed in the Spinnaker acquisition.

*Restructuring Charges* — In fiscal 2002, as a result of continuing unfavorable economic conditions and a reduction in IT spending rates, we implemented two restructuring plans, which included reductions in our workforce and consolidations of our facilities. During fiscal 2005, we paid \$0.6 million pursuant to final resolution of certain severance-related restructuring accruals. As of April 30, 2005, we have no outstanding balance in our restructuring liability for the first restructuring. The second restructuring related to the closure of an engineering facility and consolidation of resources to the Sunnyvale headquarters. Of the reserve balance at April 30, 2005, \$0.8 million was included in other accrued liabilities and the remaining \$3.7 million was classified as long-term obligations.

*Interest Income* — Interest income was \$24.2 million and \$13.7 million for fiscal 2005 and 2004, respectively. Included in interest income for fiscal 2005 was \$1.3 million interest received on a tax refund. In addition, the increase in interest income was primarily driven by higher cash and investment balances provided by operating activities and higher average interest rates on our investment portfolio.

*Other Income (Expense), Net* — Other Income (Expense), Net, included net exchange losses from foreign currency transactions of \$1.6 million and \$2.9 million in fiscal 2005 and 2004, respectively. The net exchange loss was a result of the volatility of the currency exchange market and increased hedging costs associated with our forward and option activities.

*Provision for Income Taxes* — For fiscal 2005, we had an effective tax rate of 18.3% to pretax income. The effective tax rate for fiscal 2005 differed from the U.S. statutory rate primarily due to a beneficial foreign tax ruling for our principal European subsidiary, the availability of tax credits, and the generation of foreign earnings in lower tax jurisdictions. For fiscal 2004, our effective tax rate was 10.8% which included 9.9% reduction to account for the \$16.8 million benefit from the retroactive portion of foreign tax ruling.

## Liquidity and Capital Resources

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

### *Balance Sheet and Other Cash Flows*

As of April 30, 2006, compared to April 30, 2005, our cash, cash equivalents, and short-term investments increased by \$152.9 million to \$1,322.9 million. We derive our liquidity and capital resources primarily from our cash flows from operations and from working capital. Working capital increased by \$60.3 million to \$1,116.0 million as of April 30, 2006, compared to \$1,055.7 million as of April 30, 2005.

During fiscal 2006, we recorded cash flows from operating activities of \$554.3 million as compared with \$462.1 million and \$313.0 million for fiscal 2005 and fiscal 2004, respectively. The largest driver of this increase was fiscal 2006 net income of \$266.5 million as compared to \$225.8 million and \$152.1 million in fiscal 2005 and fiscal 2004, respectively. Noncash adjustments were higher in fiscal 2006 compared to fiscal 2005, including depreciation, which was higher by \$9.2 million due to worldwide facilities expansion; amortization of intangible assets, which was higher by \$6.8 million; stock compensation, which was higher by \$5.1 million, and acquired in-process research and development of \$5.0 million. The increase in these acquisition-related non-cash charges was related to the Decru and Alacritus acquisitions during fiscal 2006. In addition to higher net income and noncash adjustments in fiscal 2006 compared to fiscal 2005 and fiscal 2004, the primary factors that impacted the period-to-period change in cash flows relating to operating activities included the following:

- An increase in deferred revenues from higher software subscription and service billings attributable to our continuing shift toward larger enterprise customers, as well as increasing renewals of existing maintenance agreements in fiscal 2006 compared to fiscal 2005 and fiscal 2004
- An increase in accounts payable in fiscal 2005, compared to fiscal 2006 and 2004, primarily attributable to elevated purchasing activity in fiscal 2005 required to support our business growth and facilities expansion projects
- Increased income taxes payable in fiscal 2006 compared to fiscal 2005 and 2004, primarily reflecting the \$22.5 million of federal and state income tax liability relating to the repatriation of accumulated foreign earnings under the Jobs Act and higher profitability in fiscal 2006 compared to fiscal 2005 and 2004

The above factors were partially offset by the effects of the following:

- Increased accounts receivable balances due to increased sales in fiscal 2006 compared to fiscal 2005 and fiscal 2004, and a shipping profile weighted towards the second half of the fourth quarter of fiscal 2006
- An increase in inventories in fiscal 2006 compared to fiscal 2005 due primarily to higher consigned inventory for IBM sales, new products at customer sites and configured units to meet revenue growth and an increase in fiscal 2005 inventories compared to fiscal 2004 due primarily to end-of-life buys for certain products
- An increase in prepaid expenses and other assets in fiscal 2006 and fiscal 2004 as compared to fiscal 2005. The fiscal 2005 prepaid expenses included a tax refund of \$9.0 million in connection with a carryback of net operating losses generated in fiscal 2000

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

Cash used in investing activities was \$326.0 million in fiscal 2006 as compared to \$351.3 million and \$259.8 million in fiscal 2005 and fiscal 2004, respectively. Capital expenditures for fiscal 2006 were \$132.9 million, compared to \$93.6 million and \$48.7 million in fiscal 2005 and fiscal 2004, respectively. We used net proceeds of \$128.5 million, \$266.8 million, and \$191.7 million in fiscal 2006, 2005, and 2004, respectively, for net purchases/redemptions of short-term investments. In fiscal 2006, we acquired Alacritus and Decru and incurred total cash

payments including related transactions costs totaling \$53.7 million. In fiscal 2004, we incurred \$8.0 million on related transactions costs and assumed \$1.2 million relating to the Spinnaker acquisition. In fiscal 2005 and 2004, we acquired additional patents for a purchase price of approximately \$0.9 million and \$9.0 million, respectively. Investing activities in fiscal 2006, 2005, and 2004 also included new investments in privately held companies of \$9.3 million, \$0.4 million and \$0.9 million, respectively. We received \$0.1 million, \$0.3 million, and \$1.1 million in proceeds from sales of investments in fiscal 2006, 2005, and 2004, respectively. Under a split dollar insurance arrangement with our CEO entered in May 2000, we paid total premiums of \$10.2 million, including \$0.2 million and \$3.9 million for fiscal years 2005, and 2004, respectively. In April 2005, our CEO reimbursed us \$10.2 million for these premiums.

Cash provided by financing activities was \$42.8 million in fiscal 2006 as compared to cash used in financing activities of \$12.1 million and \$54.6 million in fiscal 2005 and fiscal 2004, respectively. During fiscal 2006, 2005 and 2004, we repurchased 17.4 million, 7.7 million and 6.9 million shares of common stock at a total of \$488.9 million, \$192.9 million and \$136.2 million, respectively. Other financing activities provided \$232.7 million, \$181.9 million, and \$81.5 million in fiscal 2006, 2005, and 2004, respectively, which related to sales of common stock from employee stock transactions. Pursuant to the provisions of our Stock Option plans, we allowed optionees to satisfy withholding tax obligations by electing to have us withhold from the shares to be issued upon exercise of a restricted stock the equivalent shares having a fair market value equal to \$1.1 million in withholding taxes in both fiscal 2006 and fiscal 2005 to cover for federal, state, and local withholding taxes. During fiscal 2006, we borrowed \$300.0 million to fund the repatriation in cash from foreign earnings and investments under the Jobs Act.

The change in cash flows from financing activities was primarily due to the effects of higher common stock repurchases partially offset by proceeds from issuance of common stock under employee programs compared to the same periods in the prior year. Net proceeds from the issuance of common stock related to employee participation in employee stock programs have historically been a significant component of our liquidity. The extent to which our employees participate in these programs generally increases or decreases based upon changes in the market price of our common stock. As a result, our cash flows resulting from the issuance of common stock related to employee participation in employee stock programs will vary.

#### ***Stock Repurchase Program***

Through April 30, 2006, the Board of Directors had authorized the repurchase of up to \$650.0 million in shares of our outstanding common stock. At April 30, 2006, \$405.7 million remained available for future repurchases. The stock repurchase program may be suspended or discontinued at any time.

#### ***Other Sources and Uses of Cash and Tax Opportunities***

The Jobs Act created a one-time incentive for U.S. corporations to repatriate accumulated income earned abroad by providing an 85% dividend-received deduction for certain dividends from certain non-U.S. subsidiaries. During the fourth quarter of fiscal 2006, we repatriated \$405.5 million of accumulated foreign earnings and recorded a \$22.5 million federal and state income tax liability upon the remittance of these foreign earnings.

For fiscal 2006, 2005, and 2004, we recorded tax benefits, in the form of reduced payments, of \$42.2 million, \$27.8 million, and \$49.5 million, respectively, associated with disqualifying dispositions of employee stock options. If stock option exercise patterns change, we may receive less cash from stock option exercises and may not receive the same level of tax benefits in the future, which could cause our cash payments for income taxes to increase.

#### ***Debt***

In March 2006, we received proceeds of the term loans totaling \$300.0 million to finance a dividend under the Jobs Act. (See Note 6). The loan repayments of \$166.2 million and \$133.8 million are due in fiscal 2007 and 2008, respectively. This debt was collateralized by restricted investments totaling \$241.2 million, as well as certain foreign receivables. In accordance with the payment terms of the loan agreement, interest payments will be approximately \$12.4 million and \$4.1 million in fiscal 2007 and 2008, respectively. As of April 30, 2006, we are in compliance with the liquidity and leverage ratio as required by the Loan Agreement with the lenders.

**Contractual Cash Obligations and Other Commercial Commitments**

The following summarizes our contractual cash obligations and commercial commitments at April 30, 2006, and the effect such obligations are expected to have on our liquidity and cash flows in future periods (in thousands):

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Thereafter</u>	<u>Total</u>
	<u>(In thousands)</u>						
<b>Contractual Obligations:</b>							
Office operating lease payments(1)	\$ 15,466	\$ 15,630	\$14,942	\$12,026	\$ 9,703	\$ 20,934	\$ 88,701
Real estates lease payments(2)	—	1,252	2,147	2,147	2,147	35,766	43,459
Equipment operating lease payments(3)	7,215	6,534	4,083	50	6	—	17,888
Venture capital funding commitments(4)	381	368	356	343	331	21	1,800
Capital expenditures(5)	10,684	—	—	—	—	—	10,684
Communications and maintenance(6)	9,098	5,956	2,072	419	1	—	17,546
Restructuring charges(7)	806	579	603	637	379	—	3,004
Debt(8)	178,633	137,895	—	—	—	—	316,528
<b>Total Contractual Cash Obligations</b>	<b>\$222,283</b>	<b>\$168,214</b>	<b>\$24,203</b>	<b>\$15,622</b>	<b>\$12,567</b>	<b>\$ 56,721</b>	<b>\$499,610</b>

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

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Thereafter</u>	<u>Total</u>
	<u>(In thousands)</u>						
<b>Other Commercial Commitments:</b>							
Letters of credit(9)		<u>\$1,471</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 337</u>
							<u>\$1,808</u>

- (1) We enter into operating leases in the normal course of business. We lease sales offices, research and development facilities, and other property under operating leases throughout the U.S. and internationally, which expire through fiscal 2015. Substantially all lease agreements have fixed payment terms based on the passage of time and contain escalation clauses. Some lease agreements provide us with the option to renew the lease or to terminate the lease. Our future operating lease obligations would change if we were to exercise these options or if we were to enter into additional operating lease agreements. Sublease income of \$0.03 million has been included as a reduction of the payment amounts shown in the table. Facilities operating lease payments exclude the leases impacted by the restructurings. The amounts for the leases impacted by the restructurings are included in subparagraph (7) below.
- (2) On December 16, 2005, we entered into financing, construction and leasing arrangements with BNP for office space to be located on land currently owned by us in Sunnyvale, California. This arrangements requires us to lease our land to BNP for a period of 50 years to construct approximately 190,000 square feet of office space costing up to \$38.5 million. After completion of construction, we will pay minimum lease payments which vary based on London Interbank Offered Rate ("LIBOR") plus a spread (5.58% at April 30, 2006) on the cost of the facilities. We expect to begin paying lease payments on the completed buildings on September 2007 for a term of five years. We have the option to renew the lease for two consecutive five-year periods upon approval by BNP.

Upon expiration (or upon any earlier termination) of the lease term, we must elect one of the following options: we may (i) purchase the building from BNP for \$38.5 million, (ii) if certain conditions are met, arrange for the sale of the building by BNP to a third party for an amount equal to at least \$32.7 million, and be liable for any deficiency between the net proceeds received from the third party and \$32.7 million, or (iii) pay BNP a supplemental payment of \$32.7 million, in which event, we may recoup some or all of such payment by arranging for a sale of the building by BNP during the ensuing 2 year period.

Included in the above contractual cash obligations are (a) lease commitments of \$1.3 million in fiscal 2008, \$2.1 million in each of the fiscal years 2009, 2010, 2011, 2012 and \$0.9 million in fiscal 2013, which are based on the LIBOR rate at April 30, 2006 for a term of 5 years, and (b) at the expiration or termination of the lease, a supplemental payment obligation equal to our minimum guarantee of \$32.7 million in the event that we elect not to purchase or arrange for a sale of the building.

The lease also requires us to maintain specified financial covenants with which we were in compliance as of April 30, 2006. Such specified financial covenants include a maximum ratio of Total Debt to Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") and a Minimum Unencumbered Cash and Short Term Investments.

- (3) Equipment operating leases include servers and IT equipment used in our Engineering labs and data centers.
- (4) Venture capital funding commitments include a quarterly committed management fee based on a percentage of our committed funding to be payable through June 2011.
- (5) Capital expenditures include worldwide contractual commitments to purchase equipment and to construct building and leasehold improvements, which will be recorded as Property and Equipment.
- (6) We are required to pay based on a minimum volume under certain communication contracts with major telecommunication companies as well as maintenance contracts with multiple vendors. Such obligations expire in April 2010.
- (7) These amounts are included on our Consolidated Balance Sheets under Other accrued liabilities and Long-term Obligations, which is comprised of committed lease payments and operating expenses net of committed sublease income.
- (8) Included in these amounts are \$300.0 million loan on our Consolidated Balance Sheets under Current portion of long-term debt and Long-term Debt. This amount also includes estimated interest payments of \$12.4 million and \$4.1 million for fiscal 2007 and 2008, respectively.
- (9) The amounts outstanding under these letters of credit relate to workers' compensation, a customs guarantee, a corporate credit card program, and a foreign rent guarantee.

#### ***Capital Expenditure Requirements***

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

#### ***Off-Balance Sheet Arrangements***

As of April 30, 2006, our financial guarantees of \$1.8 million that were not recorded on our balance sheet consisted of standby letters of credit related to workers' compensation, a customs guarantee, a corporate credit card program, and a foreign lease.

As of April 30, 2006, our notional fair values of foreign exchange forward and foreign currency option contracts totaled \$345.1 million. We do not believe that these derivatives present significant credit risks because the counterparties to the derivatives consist of major financial institutions, and we manage the notional amount of contracts entered into with any one counterparty. We do not enter into derivative financial instruments for



speculative or trading purposes. Other than the risk associated with the financial condition of the counterparties, our maximum exposure related to foreign currency forward and option contracts is limited to the premiums paid.

We have entered into indemnification agreements with third parties in the ordinary course of business. Generally, these indemnification agreements require us to reimburse losses suffered by the third party due to various events, such as lawsuits arising from patent or copyright infringement. These indemnification obligations are considered off-balance sheet arrangements in accordance with FASB, Interpretation 45, of FIN 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." See "Guarantees" in footnote 15 for further discussion of these indemnification agreements.

We have commitments related to a lease arrangement with BNP for approximately 190,000 square feet of office space to be located on land currently owned by us in Sunnyvale, California (as further described above under "Contractual Cash Obligations and Other Commercial Commitments"). We have evaluated our accounting for this lease under the provisions of FIN 46R, and have determined the following:

- BNP is a leasing company for BNP Paribas in the U.S. BNP is not a "special purpose entity" organized for the sole purpose of facilitating the lease to us. The obligation to absorb expected losses and receive expected residual returns rests with the parent BNP Paribas. Therefore, we are not the primary beneficiary of BNP as we do not absorb the majority of BNP's expected losses or expected residual returns; and
- BNP has represented in the Closing Agreement (filed as Exhibit 10.40) that the fair value of the property leased to us by BNP is less than half of the total of the fair values of all assets of BNP, excluding any assets of BNP held within a silo. Further, the property leased to Network Appliance is not held within a silo. The definition of "held within a silo" means that BNP has obtained funds equal to or in excess of 95% of the fair value of the leased asset to acquire or maintain its investment in such asset through non-recourse financing or other contractual arrangements, the effect of which is to leave such asset (or proceeds thereof) as the only significant asset of BNP at risk for the repayment of such funds.

Accordingly, under the current FIN 46R standard, we are not required to consolidate either the leasing entity or the specific assets that we lease under the BNP lease. Assuming this transaction will continue to meet the provisions of FIN 46R as new standards evolve over time, our future minimum lease payments under this real estates lease will amount to a total of \$43.5 million reported under our Note 4 "Commitments and Contingencies".

As of April 30, 2006, except for operating leases and other contractual obligations outlined under the "Contractual Cash Obligations" table, we do not have any off-balance sheet financing arrangements or liabilities, retained or contingent interests in transferred assets, or any obligation arising out of a material variable interest in an unconsolidated entity. We also do not have any majority-owned subsidiaries that are not included in the consolidated financial statements. Additionally, we do not have any interest in or relationship with, any special purpose entities.

#### ***Liquidity and Capital Resource Requirements***

Key factors affecting our cash flows include our ability to effectively manage our working capital, in particular, accounts receivable and inventories and future demand for our products and related pricing. We expect to incur higher capital expenditures in the near future to expand our operations. We will from time to time acquire products and businesses complementary to our business. In the future, we may continue to repurchase our common stock, which would reduce cash, cash equivalents, and/or short-term investments available to fund future operations and meet other liquidity requirements. Based on past performance and current expectations, we believe that our cash and cash equivalents, short-term investments, and cash generated from operations will satisfy our working capital needs, capital expenditures, stock repurchases, contractual obligations, and other liquidity requirements associated with our operations.

#### **Item 7A. *Quantitative and Qualitative Disclosures About Market Risk***

We are exposed to market risk related to fluctuations in interest rates and foreign currency exchange rates. We use certain derivative financial instruments to manage these risks. We do not use derivative financial instruments for

speculative or trading purposes. All financial instruments are used in accordance with management-approved policies.

#### **Market Interest and Interest Income Risk**

*Interest and Investment Income* — As of April 30, 2006, we had available-for-sale investments of \$1,102.8 million. Our investment portfolio primarily consists of highly liquid investments with original maturities at the date of purchase of greater than three months, which are classified as available for sale. These highly liquid investments, consisting primarily of government, municipal, corporate debt, and auction-rate securities, are subject to interest rate and interest income risk and will decrease in value if market interest rates increase. A hypothetical 10% increase in market interest rates from levels at April 30, 2006, would cause the fair value of these short-term investments to decline by approximately \$3.5 million. Because we have the ability to hold these investments until maturity, we would not expect any significant decline in value of our investments caused by market interest rate changes. Declines in interest rates over time will, however, reduce our interest income. We do not use derivative financial instruments in our investment portfolio.

*Lease Commitments* — As of April 30, 2006, we have arrangements with BNP to lease our land for a period of 50 years to construct approximately 190,000 square feet of office space costing up to \$38.5 million. After completion of construction, we will pay minimum lease payments which vary based on London Interbank Offered Rate (“LIBOR”) plus a spread. We expect to pay lease payments on the completed buildings from BNP on September 2007 for a term of five years. We have the option to renew the lease for two consecutive five-year periods upon approval by BNP. A hypothetical 10% increase in market interest rates from levels at April 30, 2006, would increase our total lease payments under the initial 5-year term by approximately \$0.9 million. We do not currently hedge against market interest rate increases. As cash from operating cash flows are invested in a higher interest rate environment, it will offer a natural hedge against interest rate risk from our lease commitments in the event of a significant increase in market interest rate.

*Debt Obligation* — We have an outstanding variable rate term loan totaling \$300.0 million as of April 30, 2006. Under terms of these arrangements, we expect to pay interest payments at LIBOR plus a spread. Due to the short-term nature of these debt arrangements, a hypothetical 10% change in interest rates would not have a material effect on our financial position, results of operations and cash flows over the next two fiscal years. We do not currently use derivatives to manage interest rate risk.

*Equity securities* — We have from time to time made cash investments in companies with distinctive technologies that are potentially strategically important to us. Our investments in non-marketable equity securities would be negatively affected by an adverse change in equity market prices, although the impact cannot be directly quantified. Such a change, or any negative change in the financial performance or prospects of the companies whose non-marketable securities we own, would harm the ability of these companies to raise additional capital and the likelihood of our being able to realize any gains or return of our investments through liquidity events such as initial public offerings, acquisitions and private sales. These types of investments involve a high degree of risk, and there can be no assurance that any company we invest in will grow or be successful. Accordingly, we could lose all or part of our investment. Our investments in non-marketable equity securities had a carrying amount of \$11.0 million as of April 30, 2006 and \$1.8 million as of April 30, 2005. If we determine that an other-than-temporary decline in fair value exists for a non-marketable equity security, we write down the investment to its fair value and record the related write-down as an investment loss in our Consolidated Statements of Income.

#### **Foreign Currency Exchange Rate Risk and Foreign Exchange Forward Contracts**

We hedge risks associated with foreign currency transactions to minimize the impact of changes in foreign currency exchange rates on earnings. We utilize forward and option contracts to hedge against the short-term impact of foreign currency fluctuations on certain assets and liabilities denominated in foreign currencies. All balance sheet hedges are marked to market through earnings every period. We also use foreign exchange forward contracts to hedge foreign currency forecasted transactions related to certain sales and operating expenses. These derivatives are designated as cash flow hedges under SFAS No. 133. For cash flow hedges outstanding at April 30, 2006, the gains or losses were included in other comprehensive income.

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

The following table provides information about our foreign exchange forward contracts and currency options contracts outstanding on April 30, 2006 (in thousands):

Currency	Buy/Sell	Foreign Currency Amount	Notional Contract Value USD	Notional Fair Value in USD
<b>Forward contracts:</b>				
CAD	Sell	13,493	\$ 12,072	\$ 12,065
CHF	Sell	2,984	\$ 2,414	\$ 2,414
ILS	Sell	15,151	\$ 3,374	\$ 3,373
ZAR	Sell	26,673	\$ 4,403	\$ 4,403
EUR	Sell	145,804	\$ 183,852	\$184,716
GBP	Sell	45,292	\$ 82,258	\$ 82,614
AUD	Buy	13,866	\$ 10,509	\$ 10,508
JPY	Buy	236,841	\$ 2,092	\$ 2,093
DKK	Buy	10,864	\$ 1,841	\$ 1,841
NOK	Buy	6,139	\$ 999	\$ 999
SEK	Buy	15,707	\$ 2,141	\$ 2,142
EUR	Buy	12,092	\$ 15,156	\$ 15,322
GBP	Buy	2,851	\$ 5,129	\$ 5,201
<b>Option contracts:</b>				
EUR	Sell	10,000	\$ 12,655	\$ 12,778
GBP	Sell	2,500	\$ 4,559	\$ 4,598

The following table provides information about our foreign exchange forward contracts and currency options contracts outstanding on April 30, 2005 (in thousands):

Currency	Buy/Sell	Foreign Currency Amount	Notional Contract Value USD	Notional Fair Value in USD
<b>Forward contracts:</b>				
CAD	Sell	9,612	\$ 7,631	\$ 7,631
CHF	Sell	3,454	\$ 2,890	\$ 2,890
ILS	Sell	9,136	\$ 2,092	\$ 2,092
ZAR	Sell	16,405	\$ 2,682	\$ 2,682
EUR	Sell	90,856	\$ 117,233	\$117,113
GBP	Sell	21,087	\$ 40,063	\$ 40,111
AUD	Buy	9,283	\$ 7,234	\$ 7,233
DKK	Buy	5,988	\$ 1,036	\$ 1,036
SEK	Buy	17,752	\$ 2,502	\$ 2,502
EUR	Buy	8,759	\$ 11,298	\$ 11,284
GBP	Buy	2,357	\$ 4,481	\$ 4,484
<b>Option contracts:</b>				
EUR	Sell	7,000	\$ 9,020	\$ 9,124
GBP	Sell	1,500	\$ 2,857	\$ 2,881

**Item 8. Financial Statements and Supplementary Data**

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of  
Network Appliance, Inc.  
Sunnyvale, California

We have audited the accompanying consolidated balance sheets of Network Appliance, Inc. and its subsidiaries (the "Company") as of April 30, 2006 and 2005, and the related consolidated statements of income, cash flows and stockholders' equity and comprehensive income (loss) for each of the three years in the period ended April 30, 2006. Our audits also included the consolidated financial statement schedule listed in Item 15(a)(2). These financial statements and the financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements and the financial statement schedule based on our audits.

We conducted our audits in accordance with standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Network Appliance, Inc. and its subsidiaries as of April 30, 2006 and 2005, and the results of their operations and their cash flows for each of the three years in the period ended April 30, 2006 in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the consolidated financial statement schedule listed in Item 15(a)(2), when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of April 30, 2006, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated July 11, 2006 expressed an unqualified opinion on management's assessment of the effectiveness of the Company's internal control over financial reporting and an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ DELOITTE & TOUCHE LLP

San Jose, California  
July 11, 2006

**NETWORK APPLIANCE, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except per share amounts)

	April 30,	
	2006	2005
<b>ASSETS</b>		
<b>Current Assets:</b>		
Cash and cash equivalents	\$ 461,256	\$ 193,542
Short-term investments	861,636	976,423
Accounts receivable, net of allowances of \$2,380 in 2006 and \$5,445 in 2005	415,295	296,885
Inventories	64,452	38,983
Prepaid expenses and other assets	43,536	30,773
Short-term restricted cash and investments	138,539	1,699
Deferred income taxes	48,496	37,584
Total current assets	2,033,210	1,575,889
<b>Property and Equipment, net</b>	<b>513,193</b>	<b>418,749</b>
<b>Goodwill</b>	<b>487,535</b>	<b>291,816</b>
<b>Intangible Assets, net</b>	<b>75,051</b>	<b>21,448</b>
<b>Long-Term Restricted Cash and Investments</b>	<b>108,371</b>	<b>2,361</b>
<b>Other Assets</b>	<b>43,605</b>	<b>62,384</b>
	<u>\$3,260,965</u>	<u>\$2,372,647</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current Liabilities:</b>		
Current portion of long-term debt	\$ 166,211	\$ —
Accounts payable	101,278	83,572
Income taxes payable	51,577	20,823
Accrued compensation and related benefits	129,636	100,534
Other accrued liabilities	69,073	53,262
Deferred revenue	399,388	261,998
Total current liabilities	917,163	520,189
<b>Long-Term Debt</b>	<b>133,789</b>	<b>—</b>
<b>Long-Term Deferred Revenue</b>	<b>282,149</b>	<b>187,180</b>
<b>Long-Term Obligations</b>	<b>4,411</b>	<b>4,474</b>
	<u>1,337,512</u>	<u>711,843</u>
<b>Commitments and Contingencies (Note 4)</b>		
<b>Stockholders' Equity:</b>		
Preferred stock, \$0.001 par value, 5,000 shares authorized; shares outstanding: none in 2006 and 2005	—	—
Common stock, \$0.001 par value; 885,000 shares authorized: shares issued: 407,994 in 2006 and 381,509 in 2005	408	381
Additional paid-in capital	1,872,962	1,347,352
Deferred stock compensation	(49,266)	(15,782)
Treasury stock (31,996 shares in 2006, 14,566 shares in 2005)	(817,983)	(329,075)
Retained earnings	928,430	661,978
Accumulated other comprehensive loss	(11,098)	(4,050)
Total stockholders' equity	<u>1,923,453</u>	<u>1,660,804</u>
	<u>\$3,260,965</u>	<u>\$2,372,647</u>

See notes to consolidated financial statements.

NETWORK APPLIANCE, INC.  
**CONSOLIDATED STATEMENTS OF INCOME**  
(In thousands, except per share amounts)

	Years Ended April 30,		
	2006	2005	2004
<b>Revenues</b>			
Product	\$1,577,435	\$1,260,611	\$ 944,902
Software subscriptions	239,139	169,726	113,302
Service	249,882	167,794	112,106
Total revenues	<u>2,066,456</u>	<u>1,598,131</u>	<u>1,170,310</u>
<b>Cost of Revenues</b>			
Cost of product	623,564	486,383	370,271
Cost of software subscriptions	1,382	1,497	1,209
Cost of service	185,049	135,203	94,309
Total cost of revenues	<u>809,995</u>	<u>623,083</u>	<u>465,789</u>
Gross margin	<u>1,256,461</u>	<u>975,048</u>	<u>704,521</u>
<b>Operating Expenses:</b>			
Sales and marketing	595,154	466,032	349,490
Research and development	242,988	171,049	131,856
General and administrative	91,852	76,903	54,550
Acquired in-process research and development	5,000	—	4,940
Stock compensation(1)	13,293	8,148	3,895
Restructuring charges (recoveries)	(117)	(271)	1,327
Total operating expenses	<u>948,170</u>	<u>721,861</u>	<u>546,058</u>
<b>Income from Operations</b>	<u>308,291</u>	<u>253,187</u>	<u>158,463</u>
<b>Other Income (Expenses), net:</b>			
Interest income	41,519	24,249	13,704
Interest expense	(1,283)	(97)	(292)
Other income (expenses), net	1,644	(1,152)	(2,168)
Net gain on investments	101	41	747
Total other income, net	<u>41,981</u>	<u>23,041</u>	<u>11,991</u>
<b>Income Before Income Taxes</b>	<u>350,272</u>	<u>276,228</u>	<u>170,454</u>
<b>Provision for Income Taxes</b>	<u>83,820</u>	<u>50,474</u>	<u>18,367</u>
<b>Net Income</b>	<u>\$ 266,452</u>	<u>\$ 225,754</u>	<u>\$ 152,087</u>
<b>Net Income per Share:</b>			
Basic	<u>\$ 0.72</u>	<u>\$ 0.63</u>	<u>\$ 0.44</u>
Diluted	<u>\$ 0.69</u>	<u>\$ 0.59</u>	<u>\$ 0.42</u>
<b>Shares Used in per Share Calculations:</b>			
Basic	<u>371,061</u>	<u>361,009</u>	<u>346,965</u>
Diluted	<u>388,381</u>	<u>380,412</u>	<u>366,195</u>
(1) Stock compensation includes:			
Sales and marketing	\$ 3,986	\$2,168	\$1,640
Research and development	8,342	5,251	1,746
General and administrative	965	729	509
	<u>\$13,293</u>	<u>\$8,148</u>	<u>\$3,895</u>

See notes to consolidated financial statements.

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

	Years Ended April 30,		
	2006	2005	2004
<b>Cash Flows from Operating Activities:</b>			
Net income	\$ 266,452	\$ 225,754	\$ 152,087
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation	63,679	54,459	53,052
Acquired in-process research and development	5,000	—	4,940
Amortization of intangible assets	16,136	9,332	4,898
Amortization of patents	1,982	1,833	1,503
Stock compensation	13,293	8,148	3,895
Net gain on investments	(101)	(70)	(941)
Loss on disposal of equipment	1,381	1,990	291
Allowance for doubtful accounts (reduction)	46	1,110	(259)
Deferred income taxes	1,545	6,321	(21,446)
Deferred rent	669	294	301
Changes in assets and liabilities:			
Accounts receivable	(116,816)	(103,352)	(40,078)
Inventories	(46,247)	(14,996)	(9,975)
Prepaid expenses and other assets	(12,964)	(2,336)	(10,571)
Accounts payable	17,405	30,460	11,714
Income taxes payable	72,669	32,541	35,000
Accrued compensation and related benefits	28,353	33,828	22,722
Other accrued liabilities	8,571	7,369	1,608
Deferred revenue	233,229	169,433	104,271
Net cash provided by operating activities	<u>554,282</u>	<u>462,118</u>	<u>313,012</u>
<b>Cash Flows from Investing Activities:</b>			
Purchases of investments	(1,029,412)	(872,237)	(1,050,915)
Redemptions of investments	900,863	605,426	859,259
Increase in restricted cash	(1,678)	—	—
Purchase of patents	—	(895)	(9,015)
Purchases of property and equipment	(132,915)	(93,568)	(48,675)
Purchases of equity securities	(9,275)	(425)	(925)
Proceeds from sales of investments	130	347	1,113
Proceeds from disposal of property and equipment	32	—	123
Payments for split-dollar insurance premiums	—	(183)	(3,912)
Reimbursements for split-dollar insurance premiums	—	10,227	—
Purchase of businesses, net of cash acquired	(53,747)	—	(6,841)
Net cash used in investing activities	<u>(326,002)</u>	<u>(351,308)</u>	<u>(259,788)</u>
<b>Cash Flows from Financing Activities:</b>			
Proceeds from sale of common stock related to employee stock transactions	232,745	181,922	81,548
Proceeds from debt	300,000	—	—
Tax withholding payments reimbursed by restricted stock	(1,062)	(1,122)	—
Repurchases of common stock	(488,908)	(192,903)	(136,172)
Net cash provided by (used in) financing activities	<u>42,775</u>	<u>(12,103)</u>	<u>(54,624)</u>
<b>Effect of Exchange Rate Changes on Cash and Cash Equivalents</b>	<u>(3,341)</u>	<u>2,507</u>	<u>1,862</u>
<b>Net Increase in Cash and Cash Equivalents</b>	<u>267,714</u>	<u>101,214</u>	<u>462</u>
<b>Cash and Cash Equivalents:</b>			
Beginning of year	193,542	92,328	91,866
End of year	<u>\$ 461,256</u>	<u>\$ 193,542</u>	<u>\$ 92,328</u>

See notes to consolidated financial statements.

**NETWORK APPLIANCE INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**AND COMPREHENSIVE INCOME (LOSS)**  
(In thousands)

	Common Stock			Treasury Stock		Deferred Stock Compensation	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total
	Shares	Amount	Additional Paid-in Capital	Shares	Treasury Amount				
<b>Balances, April 30, 2003</b>	340,668	\$ 341	\$ 704,338	—	\$ —	\$ (1,363)	\$ 284,137	\$ (96)	\$ 987,357
Components of comprehensive income:									
Net income	—	—	—	—	—	—	152,087	—	152,087
Currency translation adjustment	—	—	—	—	—	—	—	2,440	2,440
Unrealized gain on derivatives	—	—	—	—	—	—	—	341	341
Unrealized loss on investments, net	—	—	—	—	—	—	—	(2,063)	(2,063)
Total comprehensive income	—	—	—	—	—	—	—	—	152,805
Issuance of common stock related to employee transactions	11,170	11	81,537	—	—	—	—	—	81,548
Issuance of restricted stock	120	—	—	—	—	—	—	—	—
Issuance of common stock to acquire Spinnaker Networks, Inc.	12,377	12	259,666	—	—	—	—	—	259,678
Repurchase of common stock	—	—	—	(6,853)	(136,172)	—	—	—	(136,172)
Deferred stock compensation	—	—	2,725	—	—	(2,725)	—	—	—
Assumption of options in connection with Spinnaker acquisition	—	—	43,094	—	—	(25,892)	—	—	17,202
Amortization of deferred stock compensation	—	—	—	—	—	3,397	—	—	3,397
Reversal of deferred stock compensation due to employee terminations	—	—	(3,235)	—	—	3,235	—	—	—
Stock compensation expense — nonemployee	—	—	498	—	—	—	—	—	498
Income tax benefit from employee stock transactions	—	—	49,535	—	—	—	—	—	49,535
<b>Balances, April 30, 2004</b>	364,335	\$ 364	\$ 1,138,158	(6,853)	\$ (136,172)	\$ (23,348)	\$ 436,224	\$ 622	\$ 1,418,848
Components of comprehensive income:									
Net income	—	—	—	—	—	—	225,754	—	225,754
Currency translation adjustment	—	—	—	—	—	—	—	81	81
Unrealized gain on derivatives	—	—	—	—	—	—	—	(201)	(201)
Unrealized loss on investments, net	—	—	—	—	—	—	—	(4,552)	(4,552)
Total comprehensive income	—	—	—	—	—	—	—	—	221,082
Issuance of common stock related to employee transactions	17,111	17	181,905	—	—	—	—	—	181,922
Issuance of restricted stock	10	—	—	—	—	—	—	—	—
Spinnaker restricted stock units exercises	98	—	—	—	—	—	—	—	—
Restricted stock withheld for taxes	(37)	—	(1,122)	—	—	—	—	—	(1,122)
Repurchase of common stock	—	—	—	(7,713)	(192,903)	—	—	—	(192,903)
Repurchase of Spinnaker restricted stock units	(3)	—	—	—	—	—	—	—	—
Repurchase of restricted stock	(5)	—	—	—	—	—	—	—	—
Deferred stock compensation	—	—	1,401	—	—	(1,401)	—	—	—
Amortization of deferred stock compensation	—	—	—	—	—	7,720	—	—	7,720
Reversal of deferred stock compensation due to employee terminations	—	—	(1,247)	—	—	1,247	—	—	—
Stock compensation expense — nonemployee	—	—	428	—	—	—	—	—	428
Income tax benefit from employee stock transactions	—	—	27,829	—	—	—	—	—	27,829
<b>Balances, April 30, 2005</b>	381,509	\$ 381	\$ 1,347,352	(14,566)	\$ (329,075)	\$ (15,782)	\$ 661,978	\$ (4,050)	\$ 1,660,804
Components of comprehensive income:									
Net income	—	—	—	—	—	—	266,452	—	266,452
Currency translation adjustment	—	—	—	—	—	—	—	(914)	(914)
Unrealized gain on derivatives	—	—	—	—	—	—	—	(4,271)	(4,271)
Unrealized loss on investments, net	—	—	—	—	—	—	—	(1,863)	(1,863)
Total comprehensive income	—	—	—	—	—	—	—	—	259,404
Issuance of common stock related to employee transactions	18,081	18	232,726	—	—	—	—	—	232,744
Spinnaker restricted stock units exercises	98	—	—	—	—	—	—	—	—
Restricted stock withheld for taxes	(34)	—	(1,062)	—	—	—	—	—	(1,062)
Repurchase of common stock	—	—	—	(17,430)	(488,908)	—	—	—	(488,908)
Repurchase of restricted stock	(15)	—	—	—	—	—	—	—	—
Issuance of common stock to acquire Decru, Inc.	8,270	9	191,865	—	—	—	—	—	191,874
Assumption of options in connection with Decru	—	—	36,142	—	—	(18,549)	—	—	17,593
Assumption of options in connection with Alacritus	—	—	2,314	—	—	(1,199)	—	—	1,115
Deferred stock compensation	85	—	29,855	—	—	(29,855)	—	—	—
Amortization of deferred stock compensation	—	—	—	—	—	13,233	—	—	13,233
Reversal of deferred stock compensation due to employee terminations	—	—	(2,886)	—	—	2,886	—	—	—
Stock compensation expense — nonemployee	—	—	60	—	—	—	—	—	60
Income tax benefit from employee stock transactions	—	—	36,596	—	—	—	—	—	36,596
<b>Balances, April 30, 2006</b>	407,994	\$ 408	\$ 1,872,962	(31,996)	\$ (817,983)	\$ (49,266)	\$ 928,430	\$ (11,098)	\$ 1,923,453

See notes to consolidated financial statement



NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(Dollar and share amounts in thousands, except per-share data)

**1. The Company**

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

**2. Significant Accounting Policies**

*Fiscal Year* — We operate on a 52-week or 53-week year ending on the last Friday in April. For presentation purposes we have indicated in the accompanying consolidated financial statements that our fiscal year end is April 30. Fiscal 2006 and 2005 were 52-week fiscal years. Fiscal 2004 was 53-week fiscal year.

*Basis of Presentation* — The consolidated financial statements include the Company and its wholly-owned subsidiaries. Intercompany accounts and transactions are eliminated in consolidation.

*Risk and Uncertainties* — There are no concentrations of business transacted with a particular customer nor concentrations of sales from a particular market or geographic area that would severely impact our business in the near term. However, we currently rely on a limited number of suppliers for certain key components and several key contract manufacturers to manufacture most of our products; any disruption or termination of these arrangements could materially adversely affect our operating results.

*Cash and Cash Equivalents* — We consider all highly liquid debt investments with original maturities of three months or less to be cash equivalents at time of purchase.

*Available-for-Sale Investments* — Available-for-sale investments with original maturities of greater than three months are classified as short-term investments as these investments generally consist of highly marketable securities that are intended to be available to meet current cash requirements. All of our investments are classified as available-for-sale, are carried at fair market value, and unrealized gains or losses are recorded, net of taxes in accumulated other comprehensive income (loss), which is a separate component of stockholders' equity. Any gains or losses on sales of investments are computed based upon specific identification. For all periods presented, realized gains and losses on available-for-sale investments were not material. Management determines the appropriate classification of debt and equity securities at the time of purchase and reevaluates the classification at each reporting date. The fair value of our available-for-sale investment reflected in the Consolidated Balance Sheets was \$1,102,787 and \$976,423 as of April 30, 2006 and 2005, respectively.

*Restricted Investments* — We have available-for-sale investments that are pledged as collateral pursuant to the Loan agreement entered into with JPMorgan Chase Bank. These investments are classified as short-term and long-term restricted investment in our Consolidated Balance Sheets in accordance with the investment maturity and loan repayment schedule.

*Investments in Nonpublic Companies* — We have certain investments in nonpublicly traded companies in which we have less than 20% of the voting rights and in which we do not exercise significant influence and accordingly, we account for these investments under the cost method. As of April 30, 2006 and 2005, \$11,020 and \$1,837 of these investments are included in other long-term assets on the balance sheet and are carried at cost. We perform periodic reviews of our investments for impairment.

*Other-than-temporary Impairment* — All of our available-for-sale investments and non-marketable equity securities are subject to a periodic impairment review. Investments are considered to be impaired when a decline in fair value is judged to be other-than-temporary. This determination requires significant judgment. For publicly

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

traded investments, impairment is determined based upon the specific facts and circumstances present at the time, including factors such as current economic and market conditions, the credit rating of the security's issuer, the length of time an investment's fair value has been below our carrying value, and our ability to hold investments to maturity. If an investment's decline in fair value, caused by factors other than changes in interest rates, is deemed to be other-than-temporary, we would reduce its carrying value to its estimated fair value, as determined based on quoted market prices or liquidation values. Declines in value judged to be other-than-temporary, if any, are recorded in operations as incurred. For non-marketable equity securities, the impairment analysis requires the identification of events or circumstances that would likely have a significant adverse effect on the fair value of the investment, including, revenue and earnings trends, overall business prospects, limited capital resources, limited prospects of receiving additional financing, limited prospects for liquidity of the related securities and general market conditions in the investees' industry.

*Inventories* — Inventories are stated at the lower of cost (first-in, first-out basis) or market. Cost components include materials, labor, and manufacturing overhead costs. We write down inventory and record purchase commitment liabilities for excess and obsolete inventory equal to the difference between the cost of inventory and the estimated fair value based upon assumptions about future demand and market conditions.

*Property and Equipment* — Property and equipment are recorded at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, which generally range from three to five years. The land at the Sunnyvale headquarters site and Research Triangle Park (RTP), North Carolina are not depreciated but are reviewed for impairment similar to our review of goodwill and intangible assets discussed below. Leasehold improvements are amortized over the shorter of the estimated useful lives of the assets or the remaining term of the lease. Building improvements are amortized over the estimated lives of the assets, which generally range from 10 to 40 years. Construction in progress will be amortized over the estimated useful lives of the respective assets when they are ready for their intended use.

We review the carrying values of long-lived assets whenever events and circumstances indicate that the net book value of an asset may not be recovered through expected future cash flows from its use and eventual disposition. The amount of impairment loss, if any, is measured as the difference between the net book value and the estimated fair value of the asset.

*Goodwill and Purchased Intangible Assets* — Goodwill and identifiable intangibles are accounted for in accordance with SFAS No. 141 "Business Combinations" and SFAS No. 142 "Goodwill and Other Intangible Assets". We recorded goodwill and identifiable intangibles related to the acquisitions and evaluate these items for impairment on an annual basis, or sooner if events or changes in circumstances indicate that carrying values may not be recoverable. If an evaluation is required, the estimated future undiscounted cash flows associated with these assets would be compared to their carrying amount to determine if a write-down to fair market value or discounted cash flow value is required. We performed an annual impairment test of goodwill on February 24, 2006 and February 25, 2005, respectively, and found no impairment.

Purchased intangible assets include patents, trademarks, tradenames, customer contracts/relationships and covenants not to compete, which are carried at cost less accumulated amortization. Amortization of purchased intangible assets is computed using the straight-line method over estimated useful lives of the assets, which generally range from 18 months to five years. See Note 14 "Goodwill and Purchased Intangible Assets."

*Revenue Recognition and Allowance* — We apply the provisions of Statement of Position ("SOP") No. 97-2, "Software Revenue Recognition," and related interpretations to our product sales because we believe our firmware and operating software are essential to the functionality of our hardware products. We recognize revenue when:

- *Persuasive Evidence of an Arrangement Exists.* It is our customary practice to have a purchase order and/or contract prior to recognizing revenue on an arrangement from our end users, customers, value-added resellers, or distributors.

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

- *Delivery has Occurred.* Our product is physically delivered to our customers, generally with standard transfer terms such as FOB origin. We typically do not allow for restocking rights with any of our value-added resellers or distributors. Products shipped with acceptance criteria or return rights are not recognized as revenue until all criteria are achieved. If undelivered products or services exist that are essential to the functionality of the delivered product in an arrangement, delivery is not considered to have occurred.
- *The Fee is Fixed or Determinable.* Arrangements with payment terms extending beyond our standard terms, conditions and practices are not considered to be fixed or determinable. Revenue from such arrangements is recognized as the fees become due and payable. We typically do not allow for price-protection rights with any of our value-added resellers or distributors.
- *Collection is Probable.* Probability of collection is assessed on a customer-by-customer basis. Customers are subjected to a credit review process that evaluates the customers' financial position and ultimately their ability to pay. If it is determined at the outset of an arrangement that collection is not probable based upon our review process, revenue is recognized upon cash receipt.

For arrangements with multiple elements, we allocate revenue to each element using the residual method. When all of the undelivered elements are software-related, this allocation is based on vendor specific objective evidence of fair value of the undelivered items. When the undelivered elements include non-software related items that are only sold as a bundle with software related items, this allocation is based on objective and reliable evidence of fair value, in accordance with EITF 00-21. We defer the portion of the arrangement fee equal to the fair value of the undelivered elements until they are delivered. Vendor specific objective evidence of fair value is based on the price charged when the element is sold separately.

A typical arrangement includes product, software subscription, and maintenance. Some arrangements include technical consulting and training. Software subscriptions represent the right to unspecified product upgrades and enhancements on a when-and-if-available basis, bug fixes, and patch releases. Service maintenance includes contracts for technical support and hardware maintenance. Revenue from software subscriptions and service maintenance is recognized ratably over the contractual term, generally one to three years. We typically sell technical consulting services and training separately from any of our other revenue elements, either on a time and materials basis or for fixed price standard projects. The type of work that is performed is not essential to the functionality of the software or hardware. Accordingly, we recognize revenue as the services are performed and in accordance with EITF 03-05 "*Applicability of AICPA Statement of Position 97-2 to Non-Software Deliverables in an Arrangement Containing More-Than-Incidental Software*". Revenue from hardware installation services is a non-software deliverable because the software is not essential to the functionality of the installation service and is therefore outside of the scope of SOP 97-2. Revenue from shipping and handling is included in product revenue and its related cost included in cost of product revenue.

In prior years, software subscriptions revenue was included as a part of product revenue and disclosed separately in our footnotes. Beginning in fiscal 2006, this revenue and its related cost of revenue have been separately disclosed in our income statements, and prior periods have been revised to reflect this presentation.

We record reductions to revenue for estimated sales returns at the time of shipment. These estimates are based on historical sales returns, changes in customer demand, and other factors. If actual future returns and allowances differ from past experience, additional allowances may be required.

We also maintain a separate allowance for doubtful accounts for estimated losses based on our assessment of the collectibility of specific customer accounts and the aging of our accounts receivable. We analyze accounts receivable and historical bad debts, customer concentrations, customer solvency, current economic and geographic trends, and changes in customer payment terms and practices when evaluating the adequacy of the allowance for doubtful accounts. Our allowance for doubtful accounts as of April 30, 2006 was \$2,380, compared to \$5,445 as of April 30, 2005. If the financial condition of our customers deteriorates, resulting in an impairment of their ability to make payments, additional allowances may be required.

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Deferred Revenues* — Deferred revenues consist primarily of amounts related to software subscriptions and other service arrangements.

*Software Development Costs* — The costs for the development of new software products and substantial enhancements to existing software products are expensed as incurred until technological feasibility has been established, at which time any additional costs would be capitalized in accordance with SFAS No. 86, "Accounting for the Costs of Software to Be Sold, Leased, or Otherwise Marketed." Because we believe our current process for developing software is essentially completed concurrently with the establishment of technological feasibility, which occurs upon the completion of a working model, no costs have been capitalized for any of the periods presented. In accordance with SOP No. 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use," the cost of internally developed software is capitalized and included in property and equipment at the point at which the conceptual formulation, design, and testing of possible software project alternatives have been completed and management authorizes and commits to funding the project. Pilot projects and projects where expected future economic benefits are less than probable are not capitalized. Internally developed software costs include the cost of software tools and licenses used in the development of our systems, as well as consulting costs. Completed projects are transferred to property and equipment at cost and are amortized on a straight-line basis over their estimated useful lives, generally three years. We did not capitalize any software development costs in fiscal 2006 and 2005.

*Income Taxes* — Deferred income tax assets and liabilities are provided for temporary differences that will result in future tax deductions or income in future periods, as well as the future benefit of tax credit carryforwards. A valuation allowance reduces tax assets to their estimated realizable value. In years prior to fiscal 2006, U.S. income taxes were not provided on that portion of unremitted earnings of foreign subsidiaries that were expected to be reinvested indefinitely. The Jobs Act created a one-time incentive for U.S. corporations to repatriate accumulated income earned abroad by providing an 85% dividend-received deduction for certain dividends from certain non-U.S. subsidiaries. During the fourth quarter of fiscal 2006, we repatriated \$405.5 million of accumulated foreign earnings and recorded a \$22.5 million federal and state income tax liability upon the remittance of those foreign earnings.

*Foreign Currency Translation* — For subsidiaries whose functional currency is the local currency, gains and losses resulting from translation of these foreign currency financial statements into U.S. dollars are recorded within stockholders' equity as part of accumulated other comprehensive income (loss). For subsidiaries where the functional currency is the U.S. dollar, gains and losses resulting from the process of remeasuring foreign currency financial statements into U.S. dollars are included in other income (expenses), net.

*Derivative Instruments* — We follow SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" as amended. Derivatives that are not designated as hedges are adjusted to fair value through earnings. If the derivative is designated as a hedge, depending on the nature of the exposure being hedged, changes in fair value will either be offset against the change in fair value of the hedged items through earnings, or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of the hedge is recognized in earnings immediately. For all periods presented, realized gains and losses on ineffective portion of the hedge were not material.

As a result of our significant international operations, we are subject to risks associated with fluctuating exchange rates. We use derivative financial instruments, principally currency forward contracts and currency options, to attempt to minimize the impact of exchange rate movements on our balance sheet and operating results. Factors that could have an impact on the effectiveness of our hedging program include the accuracy of forecasts and the volatility of foreign currency markets. These programs reduce, but do not always entirely eliminate, the impact of currency exchange movements. The maturities of these instruments are generally less than one year.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Currently, we do not enter into any foreign exchange forward contracts to hedge exposures related to firm commitments or equity investments. Our major foreign currency exchange exposures and related hedging programs are described below:

*Balance Sheet.* We utilize foreign currency forward and options contracts to hedge exchange rate fluctuations related to certain foreign assets and liabilities. Gains and losses on these derivatives offset gains and losses on the assets and liabilities being hedged and the net amount is included in earnings. In fiscal 2006, net gains generated by hedged assets and liabilities totaled \$3,505, which were offset by losses on the related derivative instruments of \$1,681. In fiscal 2005, net gains generated by hedged assets and liabilities totaled \$4,312, which were offset by losses on the related derivative instruments of \$5,933. In fiscal 2004, net gains generated by hedged assets and liabilities totaled \$7,265, which were offset by losses on the related derivative instruments of \$10,115.

The premiums paid on the foreign currency option contracts are recognized as a reduction to other income when the contract is entered into. Other than the risk associated with the financial condition of the counterparties, our maximum exposure related to foreign currency options is limited to the premiums paid.

*Forecasted Transactions.* We use currency forward contracts to hedge exposures related to forecasted sales and operating expenses denominated in certain foreign currencies. These contracts are designated as cash flow hedges and in general closely match the underlying forecasted transactions in duration. The contracts are carried on the balance sheet at fair value and the effective portion of the contracts' gains and losses is recorded as other comprehensive income until the forecasted transaction occurs.

If the underlying forecasted transactions do not occur, or it becomes probable that they will not occur, the gain or loss on the related cash flow hedge is recognized immediately in earnings. For fiscal years 2006, 2005 and 2004, we did not record any gains or losses related to forecasted transactions that did not occur or became improbable.

We measure the effectiveness of hedges of forecasted transactions on at least a quarterly basis by comparing the fair values of the designated currency forward contracts with the fair values of the forecasted transactions. No ineffectiveness was recognized in earnings during fiscal 2006, 2005 and 2004.

As of April 30, 2006 the notional fair values of foreign exchange forward and foreign currency option contracts totaled \$345,067.

We do not believe that these derivatives present significant credit risks, because the counterparties to the derivatives consist of major financial institutions, and we manage the notional amount of contracts entered into with any one counterparty. We do not enter into derivative financial instruments for speculative or trading purposes.

*Use of Estimates* — The preparation of the consolidated financial statements and related disclosures are in conformity with accounting principles generally accepted in the United States of America requires management to establish accounting policies which contain estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

*Concentration of Credit Risk and Allowance for Doubtful Accounts* — Financial instruments that potentially subject us to concentrations of credit risk consist primarily of cash equivalents, short-term investments, and accounts receivable. Cash, cash equivalents, and short-term investments consist primarily of U.S. government agencies, corporate bonds, auction-rate securities and municipal bonds, cash accounts held at various banks, and money market funds held at several financial institutions. We sell our products primarily to large organizations in different industries and geographies. Credit risk is mitigated by our credit evaluation process and limited payment terms. We do not require collateral or other security to support accounts receivable. In addition, we maintain an allowance for potential credit losses. In entering into forward foreign exchange contracts, we have assumed the risk that might arise from the possible inability of counterparties to meet the terms of their contracts. The counterparties

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

to these contracts are major multinational commercial banks, and we do not expect any losses as a result of counterparty defaults.

*Comprehensive Income* — Comprehensive income is defined as the change in equity during a period from nonowner sources. Comprehensive income for the years ending April 30, 2006, 2005 and 2004 has been disclosed within the consolidated statement of stockholders' equity and comprehensive income (loss).

The components of accumulated other comprehensive income (loss) at April 30, were as follows:

	<u>2006</u>	<u>2005</u>	<u>2004</u>
Accumulated translation adjustments	\$ 367	\$ 1,283	\$1,202
Accumulated unrealized gain (loss) on derivatives	(1,751)	111	312
Accumulated unrealized loss on available-for-sale investments	(9,714)	(5,444)	(892)
Total accumulated other comprehensive income (loss)	<u>\$ (11,098)</u>	<u>\$ (4,050)</u>	<u>\$ 622</u>

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

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

	<u>Years Ended April 30</u>		
	<u>2006</u>	<u>2005</u>	<u>2004</u>
Net Income	<u>\$266,452</u>	<u>\$225,754</u>	<u>\$152,087</u>
<b>Shares (Denominator):</b>			
Weighted average common shares outstanding	371,544	361,514	347,134
Weighted average common shares outstanding subject to repurchase	(483)	(505)	(169)
Shares used in basic computation	<u>371,061</u>	<u>361,009</u>	<u>346,965</u>
Weighted average common shares outstanding subject to repurchase	483	505	169
Diluted effect of stock options	<u>16,837</u>	<u>18,898</u>	<u>19,061</u>
Shares used in diluted computation	<u>388,381</u>	<u>380,412</u>	<u>366,195</u>
<b>Net Income per Share:</b>			
Basic	<u>\$ 0.72</u>	<u>\$ 0.63</u>	<u>\$ 0.44</u>
Diluted	<u>\$ 0.69</u>	<u>\$ 0.59</u>	<u>\$ 0.42</u>

At April 30, 2006, 2005 and 2004, 8,831, 15,994, and 19,794 shares of common stock options with a weighted average exercise price of \$65.34, \$52.81, and \$47.16 respectively, were excluded from the diluted net income per share computation, as their exercise prices were greater than the average market price of the common shares for the periods presented and would therefore be antidilutive.

*Stock-Based Compensation* — We account for stock-based compensation in accordance with the provisions of APB No. 25, "Accounting for Stock Issued to Employees," and comply with the disclosure provisions of SFAS No. 123 as amended by SFAS No. 148, "Accounting for Stock-Based Compensation — Transition and

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Disclosures.* Deferred compensation recognized under APB No. 25 is amortized ratably to expense over the vesting periods. We account for stock options issued to nonemployees in accordance with the provisions of SFAS No. 123 and EITF No. 96-18 "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services" under the fair-value-based method.

We adopted the disclosure-only provisions of SFAS No. 123, and accordingly, no expense has been recognized for options granted to employees under the various option plans described under Note 7. We amortize deferred stock-based compensation ratably over the vesting periods of the applicable stock purchase rights, restricted stocks, and stock options, generally four years. Deferred stock compensation under APB No. 25 and pro forma net income (loss) under the provisions of SFAS No. 123 are adjusted to reflect cancellations and forfeitures due to employee terminations as they occur.

Had compensation expense been determined based on the fair value at the grant date for awards, consistent with the provisions of SFAS No. 123, our pro forma net income (loss) and pro forma net income (loss) per share would be as follows:

	Years Ended April 30,		
	2006	2005	2004
Net income as reported	\$266,452	\$225,754	\$152,087
Add: stock based employee compensation expense included in reported net income under APB No. 25, net of related tax effects	7,976	4,607	2,038
Deduct: total stock based compensation determined under fair value based method for all awards, net of related tax effects	(98,762)	(81,745)	(94,152)
Pro forma net income	\$175,666	\$148,616	\$ 59,973
Basic net income per share, as reported	\$ 0.72	\$ 0.63	\$ 0.44
Diluted net income per share, as reported	\$ 0.69	\$ 0.59	\$ 0.42
Basic net income per share, pro forma	\$ 0.47	\$ 0.41	\$ 0.17
Diluted net income per share, pro forma	\$ 0.45	\$ 0.39	\$ 0.16

The fair values of each option grant and shares purchased were estimated on the date of grant using the Black-Scholes option pricing model and were not remeasured as a result of subsequent stock price fluctuations. The following assumptions were used:

	Stock Option Plans			Employee Stock Purchase Plan		
	Years Ended April 30,			Years Ended April 30,		
	2006	2005	2004	2006	2005	2004
Expected Life (in years)	3.85	3.74	3.42	0.50	0.50	0.50
Risk-free interest rate	4% - 5%	3% - 4%	2%	3% - 5%	1% - 3%	1%
Volatility	66% - 69%	70% - 73%	74% - 77%	66% - 69%	70% - 73%	74% - 77%
Expected dividend	—	—	—	—	—	—

The Black-Scholes option pricing model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option pricing models require the input of highly subjective assumptions, including the expected stock price volatility. We use projected volatility rates, which are based upon historical volatility rates since our initial public offering trended into future years.

## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Statements of Cash Flows — Supplemental cash flows and noncash investing and financing activities are as follows:

	Years Ended April 30		
	2006	2005	2004
<b>Supplemental Cash Flows Information:</b>			
Income taxes paid	\$ 13,730	\$13,284	\$ 14,566
Income tax refund	4,262	12,399	13,812
Interest expense paid	1,239	97	292
<b>Noncash Investing and Financing Activities:</b>			
Conversion of evaluation inventory to equipment	21,918	10,122	7,892
Deferred stock compensation, net of reversals	26,968	154	25,382
Income tax benefit from employee stock transactions	36,596	27,829	49,535
Acquisition of property and equipment on account	4,618	—	—
Reclassification of restricted investments	241,152	—	—
Stock issued for acquisition	191,874	—	259,518
Options assumed for acquired business	38,456	—	43,094
Interest accrued for debt	44	—	—
Goodwill adjustment related to acquisitions	3,553	—	—

*Recently Issued Accounting Standards* — In November 2005, the Financial Accounting Standards Board (“FASB”) issued FASB Staff Position FSP 115-1 which addresses the determination as to when an investment is considered impaired, whether that impairment is other-than-temporary, and the measurement of an impairment loss. This FSP also includes accounting considerations subsequent to the recognition of an other-than-temporary impairment and requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. The guidance in this FSP amends Statement of Financial Accounting Standards (“SFAS”) No. 115, “Accounting for Certain Investments in Debt and Equity Securities” and APB Opinion No. 18, “The Equity Method of Accounting for Investments in Common Stock.” The guidance in FSP 115-1 shall be applied to reporting periods beginning after December 15, 2005. We are required to adopt FSP 115-1 for fiscal years beginning after May 1, 2006. We are currently evaluating the effect that the adoption of FSP 115-1 will have on our consolidated results of operations and financial condition but do not expect it to have a material impact.

In June 2005, the FASB issued SFAS No. 154 (“SFAS No. 154”), *Accounting Changes and Error Corrections: a Replacement of Accounting Principles Board Opinion No. 20 (“APB 20”) and FASB Statement No. 3*. SFAS No. 154 requires retrospective application for voluntary changes in accounting principle unless it is impracticable to do so. Retrospective application refers to the application of a different accounting principle to previously issued financial statements as if that principle had always been used. SFAS No. 154’s retrospective-application requirement replaces APB 20’s requirement to recognize most voluntary changes in accounting principle by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. This Statement defines retrospective application as the application of a different accounting principle to prior accounting periods as if that principle had always been used or as the adjustment of previously issued financial statements to reflect a change in the reporting entity. This Statement also redefines restatement as the revising of previously issued financial statements to reflect the correction of an error. The requirements are effective for accounting changes made in fiscal years beginning after December 15, 2005 and will only impact the consolidated financial statements in periods in which a change in accounting principle is made.

In November 2004, the FASB issued SFAS No. 151 “*Inventory Costs*” (SFAS No. 151). This statement amends the guidance in ARB No. 43, Chapter 4, “Inventory Pricing,” to clarify the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). SFAS No. 151 requires that those items be



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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

recognized as current-period charges. In addition, this Statement requires that allocation of fixed production overhead to costs of conversion be based upon the normal capacity of the production facilities. The provisions of SFAS No. 151 are effective for inventory cost incurred in fiscal years beginning after June 15, 2005. As such, we are required to adopt these provisions at the beginning of fiscal 2007, which begins on May 1, 2006. We do not expect the adoption of SFAS No. 151 to have a material impact on our consolidated financial statements.

In December 2004, the FASB issued SFAS No. 123R. Generally, the requirements of SFAS No. 123R are similar to those of SFAS No. 123. However, SFAS No. 123R requires companies to now recognize all share-based payments to employees, including grants of employee stock options, in their statements of operations based on the fair value of the payments. Pro forma disclosure will no longer be an alternative. The effective date of the new standard for our consolidated financial statements is the first quarter of fiscal 2007, which begins on May 1, 2006.

In March 2005, the Securities and Exchange Commission ("SEC") issued Staff Accounting Bulletin ("SAB") No. 107, which provides guidance on the implementation of Statement SFAS No. 123R, "Share-Based Payments" (SFAS No. 123R) (see discussion below). In particular, SAB No. 107 provides key guidance related to valuation methods (including assumptions such as expected volatility and expected term), the accounting for income tax effects of share-based payment arrangements upon adoption of SFAS No. 123R, the modification of employee share options prior to the adoption of SFAS No. 123R, the classification of compensation expense, capitalization of compensation cost related to share-based payment arrangements, first-time adoption of SFAS No. 123R in an interim period, and disclosures in Management's Discussion and Analysis subsequent to the adoption of SFAS No. 123R.

In November 2005, the FASB issued FSP FAS 123R-3, *Transition Election and Accounting for Tax Effects*. The guidance provides a simplified method to calculate the Additional Paid-In Capital (APIC) pool for beginning balance of excess tax benefits and the method of determining the subsequent impact on the pool of option awards that are outstanding and fully or partially vested upon the adoption of SFAS No. 123R beginning on May 1, 2006. In addition, this FSP addresses that when the alternative APIC pool calculation is used, tax benefits related to certain employee awards should be included as a cash flow from financing activities and a cash outflow from operating activities within the statements of cash flows. The FSP allows companies up to one year from the later of the adoption date of SFAS No. 123R or November 10, 2005 to evaluate the available transition alternatives and make a one-time election. We are in the process of evaluating the impact of the new method provided by this guidance.

SFAS No. 123R and its related guidance permits public companies to adopt its requirements using one of two methods: modified prospective method or modified retrospective method. We plan to adopt SFAS No. 123R using the modified prospective method, in which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS No. 123R for all share-based payments granted after the effective date and (b) based on the requirements of SFAS No. 123 for all awards granted to employees prior to the effective date of SFAS No. 123R that remain unvested on the effective date. We will recognize in our results of operations the compensation cost for stock-based awards issued after April 30, 2006 on a straight-line basis over the requisite service period for the entire award. For stock-based awards issued prior to May 1, 2006, we amortized the related compensation costs using the graded-vesting method.

As permitted by SFAS No. 123, we currently account for share-based payments to employees using the APB 25 intrinsic value method and, as such, generally recognize no compensation cost for employee stock options as grant date value equals fair value. The adoption of the SFAS No. 123R fair value method will have a significant impact on our reported results of operations because the stock-based compensation expense will be charged directly against our reported earnings. The pre-tax balance of unearned stock-based compensation to be expensed in the period fiscal 2007 through 2010 related to share-based awards unvested as of April 30, 2006, as previously calculated under the disclosure-only requirements of SFAS No. 123, is approximately \$241,000. If there are any modifications or cancellations of the underlying unvested securities, we may be required to accelerate, increase, or cancel any remaining unearned stock-based compensation expense. To the extent that we grant additional equity securities to employees or assume unvested securities in connection with any acquisitions, our stock-based compensation

## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

expense will be increased by the additional unearned compensation resulting from those additional grants or acquisitions. We anticipate that we will grant additional employee stock options and restricted stock units in fiscal 2007. The fair value of these grants cannot be predicted with certainty at this time due to the fact that the expense amount will depend on the timing of new grants, the number of new grants, changes in the market price or the volatility of our common stock. However, we currently estimate that the impact on our first fiscal quarter will be between \$0.07 — \$0.09 per share. As of May 1, 2006, the contractual life of our stock options has been shortened to seven years from ten years for options issued on or after this date, and to the extent that the shorter life changes employees' exercise behavior, it may change the expected term of an option going forward. We are not aware of any other changes in business practices and do not expect any violations of debt covenants due to the adoption of SFAS No. 123R.

**3. Balance Sheet Components***Short-term investments*

The following is a summary of investments at April 30, 2006:

	Amortized Cost	Gross Unrealized		Estimated Fair Value
		Gains	Losses	
Auction rate securities	\$ 325,608	\$ 1	\$ —	\$ 325,609
Municipal bonds	5,024	—	65	4,959
Corporate securities	4,945	—	3	4,942
Corporate bonds	469,135	9	5,339	463,805
U.S. government agencies	286,983	—	3,812	283,171
U.S. Treasuries	20,189	—	386	19,803
Money market funds	472,722	17	114	472,625
Total debt and equity securities	1,584,606	27	9,719	1,574,914
Less cash equivalents	472,224	17	114	472,127
Less short-term restricted investments	138,215	—	1,507	136,708(1)
Less long-term restricted investments	106,616	—	2,173	104,443(1)
Short-term investments	<u>\$ 867,551</u>	<u>\$ 10</u>	<u>\$5,925</u>	<u>\$ 861,636</u>

The following is a summary of investments at April 30, 2005:

	Amortized Cost	Gross Unrealized		Estimated Fair Value
		Gains	Losses	
Auction rate securities	\$ 145,803	\$ —	\$ —	\$ 145,803
Municipal bonds	22,280	—	64	22,216
Corporate securities	29	21	—	50
Corporate bonds	441,484	25	4,119	437,390
U.S. government agencies	354,108	17	3,124	351,001
U.S. Treasuries	20,187	—	224	19,963
Money market funds	125,762	—	—	125,762
Total debt and equity securities	1,109,653	63	7,531	1,102,185
Less cash equivalents	125,762	—	—	125,762
Short-term investments	<u>\$ 983,891</u>	<u>\$ 63</u>	<u>\$7,531</u>	<u>\$ 976,423</u>

## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

(1) Additional restricted cash of \$1,831 and \$3,928 are included in short-term and long-term restricted cash and investments, respectively in the accompanying Consolidated Balance Sheets.

We record net unrealized gains or losses on available-for-sale securities in stockholders' equity. Realized gains or losses are reflected in income which have not been material for all years presented. The following table shows the gross unrealized losses and fair values of our investments, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position, at April 30, 2006.

	Less Than 12 Months		12 Months or Greater		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Municipal bonds	\$ 4,019	\$ (41)	\$ 940	\$ (24)	\$ 4,959	\$ (65)
Corporate Securities	4,942	(3)	—	—	4,942	(3)
U.S. Treasuries	9,969	(130)	9,834	(256)	19,803	(386)
U.S. Government Agencies	169,401	(2,139)	113,770	(1,673)	283,171	(3,812)
Corporate bonds	252,504	(1,678)	195,531	(3,661)	448,035	(5,339)
Total	<u>\$440,835</u>	<u>\$ (3,991)</u>	<u>\$320,075</u>	<u>\$ (5,614)</u>	<u>\$760,910</u>	<u>\$ (9,605)</u>

The unrealized losses on these investments were primarily due to interest rate fluctuations. We have the ability to hold these investments until recovery of their carrying values. We also believe that we will be able to collect all principal and interest amounts due to us at maturity given the high credit quality of these investments. Accordingly, we do not consider these investments to be other-than-temporarily impaired at April 30, 2006.

*Inventories*

	2006	2005
Purchased components	\$17,231	\$15,784
Work-in-process	744	686
Finished goods	46,477	22,513
	<u>\$64,452</u>	<u>\$38,983</u>

*Property and Equipment*

	April 30,		Depreciation Life (Years)
	2006	2005	
Land	\$ 163,581	\$ 163,245	
Buildings and building improvements	186,229	121,568	10 - 40
Leasehold improvements	32,113	22,086	3 - 5
Computers, related equipment and purchased software	298,703	243,482	3
Furniture	35,223	23,795	5
Construction-in-progress	42,758	51,840	
	758,607	626,016	
Accumulated depreciation and amortization	(245,414)	(207,267)	
	<u>\$ 513,193</u>	<u>\$ 418,749</u>	

**NETWORK APPLIANCE, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**4. Commitments and Contingencies**

The following summarizes our commitments and contingencies at April 30, 2006, and the effect such obligations may have on our future periods:

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Thereafter</u>	<u>Total</u>
<b>Contractual Obligations:</b>							
Office operating lease payments(1)	\$15,466	\$15,630	\$14,942	\$12,026	\$ 9,703	\$ 20,934	\$ 88,701
Real estates lease payments(2)	—	1,252	2,147	2,147	2,147	35,766	43,459
Equipment operating lease payments(3)	7,215	6,534	4,083	50	6	—	17,888
Venture capital funding commitments(4)	381	368	356	343	331	21	1,800
Capital expenditures(5)	10,684	—	—	—	—	—	10,684
Communications and maintenance(6)	9,098	5,956	2,072	419	1	—	17,546
<b>Total Contractual Cash Obligations</b>	<u>\$42,844</u>	<u>\$29,740</u>	<u>\$23,600</u>	<u>\$14,985</u>	<u>\$12,188</u>	<u>\$ 56,721</u>	<u>\$180,078</u>
	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Thereafter</u>	<u>Total</u>
<b>Other Commercial Commitments:</b>							
Letters of credit(7)		<u>\$1,471</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 337</u>	<u>\$1,808</u>

- (1) We lease sales offices and research and development facilities throughout the U.S. and internationally. These offices are leased under operating leases which expire through fiscal 2015. We are responsible for certain maintenance costs, taxes, and insurance under these leases. Substantially all lease agreements have fixed payment terms based on the passage of time. Some lease agreements provide us with the option to renew or terminate the lease. Our future operating lease obligations would change if we were to exercise these options or if we were to enter into additional operating lease agreements. Sublease income of \$30 has been included as a reduction of the payment amounts shown in the table. Rent operating lease payments in the table exclude lease payments which are accrued as part of our 2002 restructurings (see Note 13) and include only rent lease commitments that are over one year. Total rent expense for all facilities was \$18,787, \$18,595, and \$15,405 for the years ended April 30, 2006, 2005, and 2004, respectively. Rent expense under our facility leases is recognized on a straight-line basis over the term of the lease. The difference between the amounts paid and the amounts expensed is classified as accrued liabilities or long-term obligations in the accompanying Consolidated Balance Sheets.
- (2) On December 16, 2005, we entered into financing, construction and leasing arrangements with BNP Paribas LLC ("BNP") for office space to be located on land currently owned by us in Sunnyvale, California. This arrangements requires us to lease our land to BNP for a period of 50 years to construct approximately 190,000 square feet of office space costing up to \$38,500. After completion of construction, we will pay minimum lease payments which vary based on London Interbank Offered Rate ("LIBOR") plus a spread (5.58% at April 30, 2006) on the cost of the facilities. We expect to begin paying lease payments on the completed buildings on September 2007 for a term of five years. We have the option to renew the lease for two consecutive five-year periods upon approval by BNP.
- Upon expiration (or upon any earlier termination) of the lease term, we must elect one of the following options: we may (i) purchase the building from BNP for \$38,500, (ii) if certain conditions are met, arrange for the sale of the building by BNP to a third party for an amount equal to at least \$32,725, and be liable for any deficiency

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

between the net proceeds received from the third party and \$32,725, or (iii) pay BNP a supplemental payment of \$32,725, in which event, we may recoup some or all of such payment by arranging for a sale of the building by BNP during the ensuing 2 year period.

Included in the above contractual cash obligations are (a) lease commitments of \$1,252 in fiscal 2008, \$2,147 in each of the fiscal years 2009, 2010, 2011, 2012 and \$894 in fiscal 2013, which are based on the LIBOR rate at April 30, 2006 for a term of 5 years, and (b) at the expiration or termination of the lease, a supplemental payment obligation equal to our minimum guarantee of \$32,725 in the event that we elect not to purchase or arrange for a sale of the building.

The lease also requires us to maintain specified financial covenants with which we were in compliance as of April 30, 2006. Such specified financial covenants include a maximum ratio of Total Debt to Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") and a Minimum Unencumbered Cash and Short Term Investments.

- (3) Equipment operating leases include servers and IT equipment used in our Engineering labs and data centers.
- (4) Venture capital funding commitments include a quarterly committed management fee based on a percentage of our committed funding to be payable through June 2011.
- (5) Capital expenditures include worldwide contractual commitments to purchase equipment and to construct building and leasehold improvements, which will be recorded as Property and Equipment.
- (6) We are required to pay based on a minimum volume under certain communication contracts with major telecommunication companies as well as maintenance contracts with multiple vendors. Such obligations expire in April 2010.
- (7) The amounts outstanding under these letters of credit relate to workers' compensation, a customs guarantee, a corporate credit card program, and a foreign rent guarantee.

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

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

**5. Line of Credit**

In July 1998, we negotiated a \$5,000 unsecured revolving credit facility with a domestic commercial bank. Under terms of the credit facility, which expires in December 2006, we must maintain various financial covenants, which we are in compliance. Any borrowings under this agreement bear interest at either LIBOR plus 1% or at the lender's "prime" lending rate, such rate determined at our discretion. As of April 30, 2006, the amounts allocated under the credit facility to support certain of our outstanding letters of credit amounted to \$1,471.

We also have foreign exchange facilities used for hedging arrangements with several banks that allow us to enter into foreign exchange contracts of up to \$325,000, of which \$56,146 was available at April 30, 2006.

**6. Debt**

On March 31, 2006, Network Appliance Global LTD., ("Global"), a subsidiary of the Company, entered into a loan agreement (the "Loan Agreement"), with the lenders and JPMorgan Chase Bank, National Association, as administrative agent. The following is a summary of the material terms of the loan agreement.

*Structure:* The Loan Agreement provides for term loans available in two tranches, a tranche of \$220,000 ("Tranche A") and a tranche of \$80,000 ("Tranche B"), for an aggregate borrowing of \$300,000. The full amount of

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

the term loans was advanced at the closing. The proceeds of the term loans have been used to finance a dividend from Global to the Company under the American Job Creation Act (See Note 8).

*Maturity, Amortization and Prepayment:* The Tranche A term loans are required to be paid upon the maturity of the investments securing the Tranche A term loans. The Tranche B term loans amortize over 8 quarters, commencing July 31, 2006. The Tranche A term loans and Tranche B term loans, together with accrued and unpaid interest, are due in full on the maturity date of March 31, 2008. Loan repayments of \$166,211 and \$133,789 are due in fiscal 2007 and in fiscal 2008, respectively. Global has the right to make prepayment on the loan without any premium or penalty by giving prior notice to the administrative agent.

*Interest:* Interest on the Tranche A term loans accrues at a floating rate based on the base rate in effect from time to time, 5.125% at April 30, 2006, plus a margin of up to 0.125%. Interest on the Tranche B term loans accrues at a floating rate based on the base rate in effect from time to time plus a margin based on Global's leverage ratio, ranging from 0.0% to 0.125%, or at Global's election, at LIBOR plus a margin based on Global's leverage ratio, ranging from 0.500% to 1.125%.

Interest on the term loans is payable quarterly in arrears with respect to base rate loans and at the end of an interest period in the case of LIBOR loans (or quarterly if the interest period is longer than three months).

*Guarantees and Security:* The obligations of Global under the Loan Agreement are guaranteed by Global's material subsidiaries, but not by the Company or any of its other direct subsidiaries. The Tranche A term loans are secured by certain investments totaling \$241,152 held by Global and the Tranche B term loans are secured by a pledge of accounts receivable by Global's subsidiary, Network Appliance B.V.

*Covenants and Events of Default:* The Loan Agreement requires Global to comply with a liquidity ratio and, so long as any Tranche B term loans are outstanding, a leverage ratio. Additionally, the Loan Agreement contains affirmative covenants, including reporting requirements, covenants regarding conduct of business, payment of obligations, including taxes, maintenance of properties and insurance, inspection rights, compliance with applicable law and maintenance of collateral. Further, the Loan Agreement contains negative covenants limiting the ability of Global and its subsidiaries to, among other things, incur indebtedness, grant liens, sell assets, make certain acquisitions, enter into mergers, change their business, make investments, enter into swap agreements, pay dividends, enter into transactions with affiliates, enter into restrictive agreements and prepay or amend the terms of subordinated indebtedness. The events of default under the Loan Agreement include payment defaults, misrepresentations, breaches of covenants, cross defaults with certain other indebtedness, bankruptcy events, judgments, certain ERISA events and changes of control.

As of April 30, 2006, Global is in compliance with all debt covenants as required by the Loan Agreement.

**7. Stockholders' Equity**

*Preferred Stock* — Our Board of Directors has the authority to issue up to 5,000 shares of preferred stock and to determine the price, rights, preferences, privileges, and restrictions, including voting rights, of those shares without any further vote or action by the stockholders.

*Stock Option Plans* — In September 1995, we adopted the 1995 Stock Incentive Plan (the 1995 Plan). All outstanding options issued under a previous option plan were incorporated into the 1995 Plan upon the effectiveness of our initial public offering.

Under the 1995 Plan, the Board of Directors may grant to employees, directors, and consultants options to purchase shares of our common stock. The 1995 Plan comprises three separate equity incentive programs: (i) the Discretionary Option Program under which options may be granted to eligible individuals at a fixed price per share; (ii) the Salary Investment Option Grant Program under which the company's officers and other highly compensated employees may elect to have a portion of their base salary reduced in return for stock options and (iii) the Stock Issuance Program under which eligible persons may be issued shares of Common Stock directly. Options granted

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

under the 1995 Plan generally vest at a rate of 25% on the first anniversary of the vesting commencement date and then ratably over the following 36 months. Options expire as determined by the Board of Directors, but not more than 10 years after the date of grant.

In April 1997, the Board of Directors adopted the Special Nonofficer Stock Option Plan (the Nonofficer Plan) which provides for the grant of options and the issuance of common stock under terms substantially the same as those provided under the 1995 Plan, except that the Nonofficer Plan allows only for the issuance of nonqualified options to nonofficer employees.

In August 1999, the Board of Directors adopted the 1999 Stock Option Plan (the 1999 Plan), which comprises five separate equity incentive programs: (i) the Discretionary Option Grant Program under which options may be granted to eligible individuals during the service period at a fixed price per share, (ii) the Stock Appreciation Rights Program under which eligible persons may be granted stock appreciation rights that allow individuals to receive the appreciation in Fair Market Value of the shares, (iii) the Stock Issuance Program under which eligible individuals may be issued shares of Common Stock directly; (iv) the Performance Share and Performance Unit Program under which eligible persons may be granted performance shares and performance units which result in payment to the participant only if performance goals or other vesting criteria are achieved; and (v) the Automatic Option Grant Program under which nonemployee board members automatically receive option grants at designated intervals over their period of board service.

The 1999 Plan supplements the existing 1995 Plan and Nonofficer Plan, and those plans will continue to remain in full force and effect until all available shares have been issued under each such plan. However, an Automatic Option Grant Program previously in effect under the 1995 Plan terminated as of October 26, 1999, and all automatic option grants made to nonemployee board members on or after that date will be made under the 1999 Plan.

Under the 1999 Plan, the Board of Directors may grant to employees, directors, and consultants and other independent advisors options to purchase shares of our common stock during their period of service with us. The exercise price for an incentive stock option and a nonstatutory option cannot be less than 100% of the fair market value of the common stock on the grant date. Options granted under the 1999 Plan generally vest over a four-year period. Options will have a term of 10 years after the date of grant, subject to earlier termination upon the occurrence of certain events. In fiscal 2003, the 1999 Plan was amended to increase the share reserve by an additional 14,000 shares of common stock and effect certain changes to the Automatic Option Grant Program in effect for the nonemployee members of the Board of Directors. In fiscal 2004, the 1999 Plan was amended to create the Stock Issuance Program, whereby eligible individuals may be issued shares of common stock directly, either through the issuance or immediate purchase of these shares or as a bonus for services rendered. In fiscal 2005, the 1999 Plan was amended to increase the share reserve by an additional 10,200 shares of common stock; to create the Stock Appreciation Right Program under which eligible persons may be granted stock appreciation rights that allow individuals to receive the appreciation in Fair Market Value of the shares; to create the Performance Share and Performance Unit Program under which eligible persons may be granted performance shares and performance units that result in payment to the participant only if performance goals or other vesting criteria are achieved; and to prohibit the repricing of any outstanding stock option or stock appreciation right after it has been granted or to cancel any outstanding stock option or stock appreciation right and immediately replace it with a new stock option or stock appreciation right with a lower exercise price unless approved by stockholders. In fiscal 2006, the 1999 Plan was amended to increase the share reserve by an additional 10,600 shares of common stock and limit the number of shares that may be issued pursuant to full value awards that may be granted under the Stock Issuance Program or the Performance Share and Performance Unit Program.

There have been no repricings to date under any of the plans and no stock appreciation rights have been issued. As of May 1, 2006, the contractual life of our stock options has been shortened to seven years from ten years for options issued on or after this date.

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

In fiscal 2004, under terms of the Spinnaker merger agreement we acquired Spinnaker and assumed options and restricted stock units to purchase 1,721 shares of common stock in connection with the Spinnaker 2000 Stock Plan. The Spinnaker 2000 Stock Plan has a total of 2,942 authorized shares. Outstanding options and restricted stock units were exchanged pursuant to the terms of the merger agreement. The options and restricted stock units granted under this plan generally vest at a rate of 25% on the first anniversary of the vesting commencement date and then ratably over the following 36 months. The options expire not more than 10 years from the date of grant.

In fiscal 2006, we assumed various stock option plans in connection with our Alacritus and Decru acquisitions. Pursuant to the provisions of the merger agreements, outstanding shares were exchanged under certain exchange ratios in effect at the time of each merger. Options granted under these plans generally vest at a rate of 25% on the first anniversary of the vesting commencement date and then ratably over the following 36 months. Options expire not more than 10 years after the date of grant.

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

	Shares Available for Grant	Outstanding Options	
		Number of Shares	Weighted Average Exercise Price
Balances, April 30, 2003 (52,744 options exercisable at a weighted average exercise price of \$18.97)	23,746	80,664	\$ 19.79
Assumed Spinnaker options registered	2,942	—	—
Options granted (weighted average fair value of \$8.54)	(7,884)	7,884	18.98
Assumed Spinnaker options issued (weighted average fair value of \$18.08)	(1,376)	1,376	21.78
Assumed Spinnaker restricted stock units issued (weighted average fair value of \$23.63)	(345)	345	—
Options exercised	—	(9,684)	6.79
Options expired	(33)	—	—
Options canceled	3,734	(3,734)	30.52
Balances, April 30, 2004 (54,923 options exercisable at a weighted average exercise price of \$21.98)	20,784	76,851	20.78
Additional shares reserved for plan	10,200	—	—
Options granted (weighted average fair value of \$13.28)	(12,012)	12,012	24.96
Restricted stock units granted (weighted average fair value of \$21.00)	(57)	57	—
Options exercised	—	(15,513)	10.36
Spinnaker restricted stock units exercised (weighted average fair value of \$23.63)	—	(98)	—
Options expired	(5)	—	—
Options canceled	2,986	(2,986)	31.79
Spinnaker restricted stock units canceled	18	(18)	—



NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Shares Available for Grant	Outstanding Options	
		Number of Shares	Weighted Average Exercise Price
Balances, April 30, 2005 (49,019 options exercisable at a weighted average exercise price of \$24.38)	21,914	70,305	23.24
Additional shares reserved for plan	10,600	—	—
Options granted (weighted average fair value of \$15.58)	(13,420)	13,420	30.31
Assumed Decru options registered	1,907	—	—
Assumed Alacritus options registered	79	—	—
Assumed Alacritus restricted stock units registered	43	—	—
Assumed Decru options issued (weighted average fair value of \$17.40)	(1,907)	1,907	11.86
Assumed Alacritus options issued (weighted average fair value of \$14.76)	(79)	79	26.30
Restricted stock units granted (weighted average fair value of \$37.00)	(638)	638	—
Assumed Alacritus restricted stock units issued (weighted average fair value of \$14.76)	(43)	43	—
Options exercised	—	(16,399)	12.44
Restricted stock units exercised	—	(98)	—
Options expired	(96)	—	—
Options canceled	4,165	(4,165)	35.38
Restricted stock units canceled	21	(21)	—
Balances, April 30, 2006	<u>22,546</u>	<u>65,709</u>	\$ 26.08

Additional information regarding options outstanding as of April 30, 2006 is as follows:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding at April 30, 2006	Weighted Average Remaining Contractual Life (in Years)	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$ — - \$ 0.01	1,314	3.31	\$ —	—	\$ —
0.15 - 5.00	4,268	2.28	3.48	4,071	3.61
5.01 - 10.00	4,647	5.68	9.21	3,783	9.07
10.24 - 15.00	4,696	4.07	11.84	4,546	11.84
15.21 - 20.00	10,433	6.13	17.12	8,152	16.81
20.16 - 25.00	14,689	7.06	22.05	8,663	21.51
25.64 - 30.00	6,438	9.19	28.61	778	28.80
30.88 - 35.00	8,831	8.36	32.05	2,622	31.77
36.77 - 45.00	2,582	8.30	38.45	691	42.49
46.56 - 55.00	4,625	4.08	53.50	4,624	53.50
56.94 - 122.19	3,186	4.14	89.10	3,186	89.10
\$ — - \$122.19	<u>65,709</u>	6.42	\$ 26.08	<u>41,116</u>	\$ 26.57

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Employee Stock Purchase Plan* — Under the Employee Stock Purchase Plan (ESPP), employees are entitled to purchase shares of our common stock at 85% of the fair market value at certain specified dates over a two-year period. In fiscal 2006 and 2005, the plan was amended to increase the share reserve by an additional 1,500 and 1,300 shares of common stock, respectively. Of the 17,400 shares authorized to be issued under this plan, 4,298 shares were available for issuance at April 30, 2006; 1,575, 1,598, and 1,486 shares were issued in fiscal 2006, 2005, and 2004, respectively, at a weighted average price of \$18.28, \$13.30, and \$10.62 respectively.

*Stock Issuance Program* — Under the 1995 Stock Issuance Program, certain eligible persons may be issued shares of common stock directly. During fiscal 2006 and 2005, 210 and 10 shares, respectively, of restricted stock awards were issued to certain employees. The exercise price discount from fair market value of these shares has been recorded as deferred stock compensation expense, which is being amortized ratably over its respective vesting periods, between three to four years. At April 30, 2006, 288 shares were available for future issuances under this program.

*Deferred Stock Compensation* — Deferred stock compensation is recorded for the grant of stock awards or shares of restricted stock to employees at exercise prices deemed to be less than the fair value of our common stock on the grant date. Deferred stock compensation is also recorded for retention escrow shares withheld in accordance with the merger agreement; see Note 12. Deferred stock compensation is adjusted to reflect cancellations and forfeitures due to employee terminations as they occur. We recorded \$29,855, \$1,401, and \$28,617 of deferred stock compensation in fiscal 2006, 2005 and 2004, respectively, primarily related to unvested options assumed and retention escrow shares withheld in the Spinnaker acquisition, restricted stock awards to certain employees, and the grant of stock options below fair value to certain highly compensated employees. The fiscal 2004 deferred stock compensation was higher due to unvested options assumed and retention escrow shares withheld in the Spinnaker acquisition totaling \$25,892. We reversed \$2,886, \$1,247 and \$3,235 of deferred compensation in fiscal 2006, 2005 and 2004, respectively, due to employee terminations. The reversals were primarily related to the forfeiture of unvested options assumed in acquisitions as a result of employee terminations.

We recorded \$60, \$428, and \$498 in compensation expense in fiscal 2006, 2005 and 2004, respectively, for the fair value of options granted to a member of the Board of Directors in recognition for services performed outside of the normal capacity of a board member. During fiscal 2002, 100 common shares under the 1995 Plan were granted at an exercise price of \$15.32 per share, the fair market value per share on the grant date. The option has a term of 10 years measured from the grant date, subject to earlier termination following his cessation of board service, and will vest in a series of 48 successive equal monthly installments upon his completion of each month of board service over the 48-month period measured from the grant date.

We recorded \$13,233, \$7,720 and \$3,397 in compensation expense for fiscal 2006, 2005 and 2004, respectively, primarily related to the amortization of deferred stock compensation from unvested options assumed in the Decru, Alacritus, WebManage and Spinnaker acquisitions, the retention escrow shares relative to Spinnaker, the grant of stock options to certain highly compensated employees below fair value at the date of grant and the award of restricted stock to certain employees. Based on deferred stock compensation recorded at April 30, 2006, estimated future deferred stock compensation amortization, excluding the impact of SFAS No. 123R, for fiscal 2007, 2008, 2009, and 2010 would be \$20,340, \$14,288, \$8,068, and \$6,571 respectively, and none thereafter.

*Stock Repurchase Program* — Through April 30, 2006, the Board of Directors had authorized the repurchase of up to \$650,000 in shares of our outstanding common stock. At April 30, 2006, \$405,656 remained available for future repurchases. The stock repurchase program may be suspended or discontinued at any time.

During fiscal 2006, we repurchased 17,430 shares of our common stock at an aggregate cost of \$488,908, or a weighted average price of \$28.05 per share. During fiscal 2005, we repurchased 7,713 shares of our common stock at an aggregate cost of \$192,903, or a weighted average price of \$25.01 per share. The repurchases were recorded as treasury stock and resulted in a reduction of stockholders' equity.

NETWORK APPLIANCE, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**8. Income Taxes**

Income before income taxes is as follows:

	Years Ended April 30,		
	2006	2005	2004
Domestic	\$105,274	\$ 90,469	\$ 73,991
Foreign	244,998	185,759	96,463
Total	<u>\$350,272</u>	<u>\$276,228</u>	<u>\$170,454</u>

The provision for income taxes consists of the following:

	Years Ended April 30,		
	2006	2005	2004
<b>Current:</b>			
Federal	\$56,715	\$30,367	\$ 51,687
State	6,533	8,657	536
Foreign	9,659	10,504	(8,881)
Total current	<u>72,907</u>	<u>49,528</u>	<u>43,342</u>
<b>Deferred:</b>			
Federal	3,546	2,568	(24,817)
State	7,352	(1,622)	(158)
Foreign	15	—	—
Total deferred	<u>10,913</u>	<u>946</u>	<u>(24,975)</u>
Provision for income taxes	<u>\$83,820</u>	<u>\$50,474</u>	<u>\$ 18,367</u>

The provision for income taxes differs from the amount computed by applying the statutory federal income tax rate as follows:

	Years Ended April 30,		
	2006	2005	2004
Tax computed at federal statutory rate	\$ 122,595	\$ 96,680	\$ 59,659
State income taxes, net of federal benefit	5,250	4,572	245
Federal credits	(7,824)	(2,091)	946
Non-deductible in process research and development	1,750	—	1,729
Foreign earnings in lower tax jurisdiction	(61,137)	(47,766)	(27,352)
Remittance of accumulated foreign earnings (includes state taxes of \$3,775, net of federal benefit)	22,482	—	—
Dutch ruling benefit	—	—	(16,831)
Other	704	(921)	(29)
Provision for income taxes	<u>\$ 83,820</u>	<u>\$ 50,474</u>	<u>\$ 18,367</u>

The income tax benefit associated with dispositions from employee stock transactions of \$36,596, \$27,829 and \$49,535, respectively, for fiscal 2006, 2005 and 2004, were recognized as additional paid-in capital.

**NETWORK APPLIANCE, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The components of our deferred tax assets and liabilities are as follows:

	<b>Years Ended April 30,</b>	
	<b>2006</b>	<b>2005</b>
<b>Deferred Tax Assets:</b>		
Inventory reserves and capitalization	\$ 18,825	\$ 15,572
Reserves and accruals not currently deductible	18,072	14,407
Net operating loss and credit carryforwards	449,835	379,866
Deferred stock compensation	1,907	5,567
Deferred revenue	40,977	47,261
Capitalized research and development expenditures	4,985	6,326
Investment losses	1,220	3,468
Conditional royalty	13,173	—
Other	15	1,837
<b>Gross deferred tax assets</b>	<b>549,009</b>	<b>474,304</b>
Valuation allowance	(431,187)	(363,369)
<b>Total deferred tax assets</b>	<b>117,822</b>	<b>110,935</b>
<b>Deferred Tax Liabilities:</b>		
Depreciation	(9,977)	(11,051)
Tax effect of unrealized comprehensive income	(179)	—
Acquisition intangibles	(32,289)	(5,396)
Other	(717)	(2,652)
<b>Total deferred tax liabilities</b>	<b>(43,162)</b>	<b>(19,099)</b>
<b>Net deferred tax assets</b>	<b>\$ 74,660</b>	<b>\$ 91,836</b>

Current deferred tax assets are \$48,496 and \$37,584 as of fiscal 2006 and 2005, respectively. Noncurrent net deferred tax assets for fiscal 2006 and 2005 are \$26,164 and \$54,252, respectively, and are included in other assets within the accompanying Consolidated Balance Sheets.

The Jobs Act created a one-time incentive for U.S. corporations to repatriate accumulated income earned abroad by providing an 85% dividend-received deduction for certain dividends from certain non-U.S. subsidiaries. During the fourth quarter of 2006, the Company incurred a charge of approximately \$22,482 for federal and state income taxes related to the repatriation of approximately \$405,548 of accumulated income earned by its foreign subsidiaries. As a result of this dividend, there were no significant unremitted earnings held by our foreign subsidiaries at April 30, 2006.

During fiscal 2006, our Netherlands subsidiary received a favorable tax ruling from the Netherlands tax authorities effective May 1, 2005. This new ruling replaces a previous Netherlands tax ruling that was scheduled to expire on December 31, 2005. The new ruling results in both a lower level of earnings subject to tax in the Netherlands and an extension of the expiration date to April 30, 2010. During fiscal 2004, we recognized and reported a substantial tax benefit of \$16,831 that related to the retroactive application of the original ruling.

As of April 30, 2006, our Netherlands subsidiary had a conditional royalty expense carryforward of \$51,658 that may become available for offset against future Netherlands income. The carryforward may not, however, be used to offset income under the new Netherlands tax ruling expiring April 30, 2010. The carryforward does not have an expiration date. We have established a valuation allowance against the deferred tax asset for the carryforward based upon our belief that we will not be able to utilize this attribute. In the event we are able to utilize this attribute,

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

the tax benefit of the carryforward will be accounted for as a credit to stockholders' equity of \$7,605 and as a reduction to the income tax provision of \$5,568.

We have been notified of examinations in the U.S. and several foreign tax jurisdictions. The rights to some of our intellectual property ("IP") is owned by certain of our foreign subsidiaries, and payments are made between U.S. and foreign tax jurisdictions relating to the use of this IP. Recently, some other companies have had their foreign IP arrangements challenged as part of an examination. Our management does not believe, based upon information currently known to us that the final resolution of any of our audits will have a material adverse effect upon our consolidated financial position and the results of operations and cash flows.

As of April 30, 2006, the federal and state net operating loss carryforwards for income tax purposes were approximately \$986,332 and \$603,131, respectively. The federal net operating loss carryforwards will begin to expire in fiscal 2021, and the state net operating loss carryforwards will begin to expire in fiscal 2007. As of April 30, 2006, we had federal and state credit carryforwards of approximately \$41,195 and \$48,413, respectively, available to offset future income tax liabilities. The federal and state credit carryforwards will begin to expire in fiscal 2009.

During fiscal 2005, we established a valuation allowance against certain capital loss carryforwards of approximately \$3,468 based upon our belief that we will not be able to utilize this attribute before expiration starting in fiscal 2008.

During fiscal 2004, as part of our acquisition of Spinnaker, we acquired approximately \$52,000 and \$12,000 of federal and state net operating losses, respectively, and \$2,700 of federal tax credits that were realized as deferred tax assets upon acquisition. We also established a valuation reserve of \$2,400 against a portion of the state net operating loss carryforwards of Spinnaker which if utilized will be treated as a reduction of acquired goodwill.

During fiscal 2006, as part of our acquisition of Alacritus, we acquired approximately \$6,100 of federal net operating losses and \$50 of federal tax credits that were realized as deferred tax assets upon acquisitions.

During fiscal 2006, as part of our acquisition of Decru, we acquired approximately \$32,100 of federal net operating losses and \$1,100 of federal tax credits that were realized as deferred tax assets upon acquisition. We also established valuation reserves of \$1,200 and \$1,200 against all of Decru's state net operating loss carryforwards and state tax credit carryforwards, respectively, that existed as of the acquisition date. If utilized, these attributes will be treated as a reduction of acquired goodwill.

We have provided a valuation allowance on certain of our deferred tax assets related to net operating loss carryforwards, conditional royalty carryforwards, and tax credit carryforwards attributable to the exercise of employee stock options because of uncertainty regarding their realization. The total valuation allowance for these items is approximately \$423,329 and \$357,501 at the end of fiscal 2006 and 2005, respectively. If recognized, the tax benefit of these tax credits, losses and conditional royalty will be accounted for as a credit to stockholders' equity rather than as a reduction of the income tax provision.

**9. Segment, Geographic, and Customer Information**

Under SFAS No. 131, "*Disclosures about Segments of an Enterprise and Related Information*," we operate in one reportable industry segment: the design, manufacturing, marketing, and technical support of high-performance networked storage solutions. We market our products in the United States and in foreign countries through our sales personnel and our subsidiaries. The Chief Executive Officer is our Chief Operating Decision Maker (CODM), as defined by SFAS No. 131. The CODM evaluates resource allocation decisions and operational performance based upon revenue by geographic regions. Under SFAS No. 131, we have one reportable segment as our three geographic operating segments can be aggregated into one reportable segment. For the years ended April 30, 2006, 2005, and 2004, we recorded revenue from customers throughout the U.S. and Canada, Europe, Latin America, Australia, and Asia Pacific.

## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following presents total revenues for the years ended April 30, 2006, 2005, and 2004 by geographic area and long-lived assets as of April 30, 2006 and 2005 by geographic area.

	Years Ended April 30,		
	2006	2005	2004
<b>Total Revenues:</b>			
United States	\$ 1,122,692	\$ 832,310	\$ 619,309
International	943,764	765,821	551,001
Total revenues	<u>\$ 2,066,456</u>	<u>\$ 1,598,131</u>	<u>\$ 1,170,310</u>
<b>Long-lived Assets:</b>			
United States	\$ 1,080,323	\$ 769,509	
International	147,432	27,249	
Total Long-lived Assets	<u>\$ 1,227,755</u>	<u>\$ 796,758</u>	

Total revenues above are attributed to regions based on customers' shipment locations.

International sales include export sales primarily to the United Kingdom, Germany, Japan, France, the Netherlands, Switzerland, Canada, and Australia. No single foreign country accounted for 10% or more of total revenues in fiscal 2006, 2005, and 2004.

No customer accounted for 10% or more of total revenues in fiscal 2006, 2005, and 2004.

**10. Fair Value of Financial Instruments**

The fair values of cash and cash equivalents, short-term investments, and restricted cash and investments reported in the Consolidated Balance Sheets approximate their carrying value. The fair value of short-term investments and foreign exchange contracts are carried at fair value based on quoted market prices. Other investments in equity securities are included in other assets at April 30, 2006 and 2005 with total carrying value of \$11,020 and \$1,837, which approximates their fair values. The fair value of our debt also approximates its carry value as of April 30, 2006.

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

Foreign currency forward contracts obligate us to buy or sell foreign currencies at a specified future date. Option contracts give us the right to buy or sell foreign currencies and are exercised only when economically beneficial. As of April 30, 2006, we had \$343,454 of outstanding foreign exchange contracts (including \$17,214 of option contracts) in Australian Dollars, British Pounds, Canadian Dollars, Danish Krone, European Currency Units, Israeli New Shekel, South African Rand, Swedish Krona, Swiss Francs, Japanese Yen, and Norwegian Kroner that all had remaining maturities of five months or less. As of April 30, 2005, we had \$211,019 of outstanding foreign exchange contracts (including \$11,877 of option contracts) in Australian Dollars, British Pounds, Canadian Dollars, Danish Krone, European Currency Units, Israeli New Shekel, South African Rand, Swedish Krona, and Swiss Francs, that all had remaining maturities of four months or less. For the balance sheet hedges, these contracts are adjusted to fair value at the end of each month and are included in earnings. The premiums paid on the foreign currency option contracts are recognized as a reduction to other income when the contract is entered into. For cash flow hedges, the related gains or losses are included in other comprehensive income. Gains and losses on these foreign exchange contracts are offset by losses and gains on the underlying assets and liabilities. At April 30, 2006 and 2005, the estimated notional fair values of forward foreign exchange contracts were \$345,067 and \$211,064, respectively. The fair value of foreign exchange contracts is based on prevailing financial market information.

## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**11. Employee Benefit and Incentive Compensation Plans**

We have established a 401(k) tax-deferred savings plan ("Savings Plan"). Employees meeting the eligibility requirements, as defined, may contribute specified percentages of their salaries. We contributed \$2,220, \$1,701, and \$1,326 for fiscal 2006, 2005, and 2004, respectively to the Savings Plan.

All employees of the Company are eligible to participate in the Incentive Compensation Plan ("Incentive Plan") provided that they meet certain requirements pursuant to the Incentive Plan. Incentive Plan contributions totaled \$40,361, \$29,192, and \$12,363 in fiscal 2006, 2005 and 2004.

**12. Business Combinations***Acquisition of Decru*

On August 26, 2005, we completed our acquisition of Decru, Inc. ("Decru"), a Delaware corporation that develops and sells encryption software and appliances which encrypt network data. The acquisition resulted in the issuance of approximately 8,270 shares of our common stock with a fair value of approximately \$191,874, approximately 1,907 stock options and restricted stock with a fair value of approximately \$36,142 and the payment of approximately \$54,482 in cash (of which approximately \$34,049 has been placed in escrow to secure the Decru stockholders' indemnification obligations to us pursuant to the Merger Agreement), and \$711 acquisition-related transaction costs, for a total purchase price of approximately \$283,209. The common stock issued in the acquisition was valued at \$23.20 per share using a measurement date of August 11, 2005 in accordance with EITF 99-12, *Determination of the Measurement Date for the Market Price of Acquirer Securities Issued in a Purchase Business Combinations*. The options were valued using the Black-Scholes option pricing model with the following inputs: volatility factor of 69%, expected life of 3.8 years, and risk-free interest rate of 2.9%. The historical operations of Decru were not significant. A summary of the total purchase price is as follows based on independent appraisal and management estimates:

	<u>Decru</u>
Common stock issued	\$191,874
Cash consideration	54,482
Stock options assumed	36,142
Acquisition-related transaction costs	711
	<u>\$283,209</u>

In accordance with SFAS 141, we have allocated the purchase price to the estimated tangible and intangible assets acquired and liabilities assumed, including in-process research and development, based on their estimated fair values. Goodwill of \$192,894 was generated in connection with our acquisition of Decru. Decru, a provider in storage security products, offering data protection solutions for enterprises and governments, including regulatory compliance, privacy, secure consolidation, and outsourcing. The current and future potential for this technology will enable us to help our customers manage their risk of data theft and corruption with data encryption and authentication products. In addition, Decru has an experienced and knowledgeable workforce and an existing infrastructure. These opportunities, along with the ability to leverage the Decru workforce, were significant contributing factors to the establishment of the purchase price, resulting in the recognition of a significant amount of goodwill. The fair values assigned to tangible and intangible assets acquired and liabilities assumed are based on management estimates and assumptions, and other information compiled by management, including third-party valuations that utilized established valuation techniques appropriate for the high-technology industry. Goodwill recorded as a result of this acquisition is not expected to be deductible for tax purposes. In accordance with SFAS 142, *Goodwill and Other Intangible Assets* ("SFAS 142"), goodwill is not amortized but will be reviewed at least annually for impairment. Purchased intangibles with finite lives will be amortized over their respective estimated useful lives on a straight line basis. The purchase price has been allocated as follows:

NETWORK APPLIANCE, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Purchase Price Allocation:	Decru	Amortization Period (Years)
Fair value of tangible assets acquired	\$ 16,590	
Intangible assets:		
Existing Technology — Hardware	30,100	5
Existing Technology — Software	10,600	4
Patents and Core Technology	11,800	5
Reseller Agreement and Related Relationship	320	5
Customer/Distributor Relationships	7,200	5
Non compete agreements	1,200	2
Trademarks and tradenames	4,800	6
Goodwill	192,894	
In process research and development	5,000	Expensed
Fair value of liabilities assumed	(3,087)	
Deferred stock compensation	18,549	
Accrued income taxes	(42)	
Deferred income taxes	(12,715)	
	<u>\$283,209</u>	

Useful lives are primarily based on the underlying assumptions used in the discounted cash flow models.

*Net Tangible Assets*

Decru's assets and liabilities as of August 26, 2005 were reviewed and adjusted, if required, to their estimated fair value. Included in net tangible assets acquired above is \$13,277 of cash assumed in connection with the Decru acquisition.

*Amortizable Intangible Assets*

Valuation specialists valued the identified intangible assets utilizing a discounted cash flow ("DCF") model, which uses forecasts of future revenues and expenses related to the intangible assets. We are amortizing these intangible assets over 2-6 years on a straight-line basis.

*In-process Research and Development ("IPR&D")*

Of the total purchase price, \$5,000 has been allocated to in-process research and development ("IPR&D") and was expensed in fiscal 2006. Projects that qualify as IPR&D represent those that have not yet reached technological feasibility and which have no alternative future use. Technological feasibility is established when an enterprise has completed all planning, designing, coding, and testing activities that are necessary to establish that a product can be produced to meet its design specifications including functions, features, and technical performance requirement. The value of IPR&D was determined by estimating the stage of completion and risk associated with IPR&D to determine the level of discount rate to be applied, estimating costs to develop the purchased IPR&D into commercially viable products, estimating the resulting net cash flows from the projects when completed and discounting the net cash flows to their present value based on the percentage of completion of the IPR&D projects.



## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Deferred Stock Compensation*

In accordance with FASB Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation", we recorded the intrinsic value, measured as the difference between the grant price and fair market value on the acquisition consummation date, of unvested options and restricted stock units assumed in the Decru acquisition as deferred stock compensation. Such deferred stock compensation which aggregated \$18,549 for Decru, are recorded as a separate component of stockholders' equity in the accompanying Consolidated Balance Sheets and will be amortized over the vesting term of the related options. In connection with the Decru merger, we assumed all options to purchase Decru common stock granted under the Decru, Inc. 2001 Equity Incentive Plan that were outstanding at the closing of the Merger, which options shall be exercisable for an aggregate of 1,907 shares of our Common Stock at an average price of \$11.86 per share.

*Acquisition of Alacritus*

On May 2, 2005, we acquired Alacritus, Inc., a privately held company based in Pleasanton, California, that develops and sells disk-based virtual tape library software for data protection solutions. Under terms of the agreement, we paid Alacritus \$11,000 in cash and assumed options to acquire 79 shares of common stock at an average price of \$26.37 per share and 43 shares of restricted stock units at \$0 per share. We also incurred certain transaction costs and assumed certain operating assets and liabilities. The historical operations of Alacritus were not significant.

The acquisition was accounted for under the purchase method of accounting. The total purchase price for Alacritus is summarized below:

	<u>Alacritus</u>
Cash consideration	\$11,000
Common stock issued	—
Stock options assumed	2,314
Acquisition-related transaction costs	337
	<u>\$13,651</u>

Purchase Price Allocation:	<u>Amortization Period</u>	
	<u>Alacritus</u>	<u>(Years)</u>
Fair value of tangible assets acquired	\$ 67	
Intangible assets:		
Existing/Core Technology	5,000	5
Non compete agreements	700	2
Goodwill	6,323	
Fair value of liabilities assumed	(810)	
Deferred stock compensation	1,199	
Deferred income taxes	1,172	
	<u>\$13,651</u>	

*Deferred Stock Compensation*

In accordance with FASB Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation", we recorded the intrinsic value of unvested options and restricted stock units assumed in the Alacritus acquisition as deferred stock compensation. Such deferred stock compensation which aggregated \$1,199

## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

for Alacritus are recorded as a separate component of stockholders' equity in the accompanying Consolidated Balance Sheets and will be amortized over the vesting term of the related options.

*Acquisition of Spinnaker*

On February 18, 2004, we acquired Spinnaker for approximately \$305,597 (including transaction costs of \$2,985) in an all-stock transaction, through the merger of Nagano Sub, Inc., a wholly owned subsidiary of Network Appliance, with and into Spinnaker (the Merger). The purchase price of the transaction was allocated to the acquired assets and liabilities based on their estimated fair values as of the date of the acquisition, including identifiable intangible assets, with the remaining amount being classified as goodwill. Goodwill of \$240,106 was generated in connection with our acquisition of Spinnaker. Spinnaker was a pioneer in scalable system architectures, distributed file systems, next-generation clustering technologies, and virtualization. The current and future potential for this technology will improve our products in scalability, simplicity, and total cost of ownership for enterprise storage systems. In addition, at the time of its acquisition, Spinnaker had an experienced and knowledgeable workforce and an existing infrastructure.

The total purchase price and allocation among the fair value of tangible and intangible assets and liabilities acquired in the Spinnaker transaction (including purchased in-process technology) are summarized as follows:

<b>Total Purchase Price:</b>		<u>Spinnaker</u>
Value of shares issued		\$259,518
Value of options assumed		43,094
Transaction costs		<u>2,985</u>
		<u>\$305,597</u>

  

<b>Purchase Price Allocation:</b>		<u>Amortization Period (Years)</u>
Fair value of tangible assets acquired	\$ 4,771	
Intangible assets:		
Existing Technology	17,160	5
Trademarks/Tradenames	280	3
Customer Contracts/Relationships	1,100	1.5
Covenants Not to Compete	7,610	1.5
Goodwill	240,106	
In-process R&D	4,940	Expensed
Fair value of liabilities assumed	(7,032)	
Deferred stock compensation	25,892	
Deferred income taxes	<u>10,770</u>	
	<u>\$305,597</u>	

*Goodwill Adjustment* During fiscal 2006, we adjusted goodwill by \$3,498 and \$2,061 relating to the tax benefits associated with the subsequent exercise of previously vested assumed Spinnaker and Decru options, respectively. Estimated future adjustments to goodwill related to the tax benefits associated with subsequent exercise of previously vested assumed options by previous acquisitions are approximately \$8,400, subject to future cancellations relating to employee terminations.

## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**13. Restructuring Charges**

In fiscal 2002, as a result of continuing unfavorable economic conditions and a reduction in IT spending rates, we implemented two restructuring plans, which included reductions in workforce and consolidations of facilities. As of April 30, 2006, we have no outstanding balance in our restructuring liability for the first restructuring. The second restructuring related to the closure of an engineering facility and consolidation of resources to the Sunnyvale headquarters. In the second quarter of fiscal 2006, we implemented a third restructuring plan related to the move of our global services center operations from Sunnyvale to our new flagship support center at our Research Triangle Park facility in North Carolina.

During fiscal 2006, we recorded a reduction in restructuring reserve of \$1,256 resulting from the execution of new sublease agreement for our Tewksbury facility. Our restructuring estimates are reviewed and revised periodically and may result in a substantial charge or reduction to restructuring expense should different conditions prevail than were anticipated in previous management estimates. Such estimates included various assumptions such as the time period over which the facilities will be vacant, expected sublease terms, and expected sublease rates. In addition, we also recorded a restructuring charge of \$1,140 in fiscal 2006 primarily attributed to severance-related amounts and relocation expenses related to the move of our global services center operations.

The following analysis sets forth the significant components of the restructuring reserve at April 30, 2006, 2005 and 2004:

	<u>Severance- Related Amounts</u>	<u>Facility</u>	<u>Total</u>
Reserve balance at April 30, 2003	—	4,571	4,571
Cash payments and others	—	(690)	(690)
Adjustments	—	1,327	1,327
Reserve balance at April 30, 2004	—	5,208	5,208
Cash payments and others	—	(705)	(705)
Reserve balance at April 30, 2005	\$ —	\$ 4,503	\$ 4,503
Restructuring charges	859	281	1,140
Cash payments and others	(521)	(862)	(1,383)
Recoveries	—	(1,256)	(1,256)
Reserve balance at April 30, 2006	<u>\$ 338</u>	<u>\$ 2,666</u>	<u>\$ 3,004</u>

Of the reserve balances at April 30, 2006 and 2005, \$885 and \$756, respectively, were included in other accrued liabilities and the remaining \$2,119 and \$3,747, respectively, were classified as long-term obligations. The balance of the reserve is expected to be paid by fiscal 2011.

**14. Goodwill and Purchased Intangible Assets**

We adopted SFAS No. 142, "Goodwill and Other Intangible Assets" effective May 1, 2002. We recorded goodwill and assembled workforce of \$48,212 relating to Orca and WebManage acquisitions. Under SFAS No. 142, goodwill attributable to each of our reporting units is required to be tested for impairment by comparing the fair value of each reporting unit with its carrying value. Our reporting units are the same as our operating units. On an ongoing basis, goodwill is reviewed annually for impairment (or more frequently if indicators of impairment arise). As of April 30, 2006 and 2005, respectively, there had been no impairment of goodwill and intangible assets.

During fiscal 2004, we acquired Spinnaker and recorded goodwill of \$240,106 resulting from the allocation of the purchase price. During fiscal 2006, we acquired Alacritus and Decru and recorded goodwill of \$6,323, and \$192,894, respectively, resulting from the allocation of the purchase price. During fiscal 2006, we adjusted goodwill

NETWORK APPLIANCE, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

by \$5,559 relating to the tax benefits associated with the subsequent exercise of previously vested assumed Spinnaker and Decru options. Estimated future adjustments to goodwill related to the tax benefits associated with subsequent exercise of previously vested assumed options by these acquisitions are approximately \$8,400, subject to future cancellations relating to employee terminations. See Note 12, "Business Combinations."

Intangible assets balances are summarized as follows:

	Amortization Period (Years)	April 30, 2006			April 30, 2005		
		Gross Assets	Accumulated Amortization	Net Assets	Gross Assets	Accumulated Amortization	Net Assets
(In thousands)							
<b>Intangible Assets:</b>							
Patents	5	\$ 10,040	\$ (5,448)	\$ 4,592	\$ 10,040	\$ (3,467)	\$ 6,573
Existing technology	4 - 5	91,025	(32,297)	58,728	33,525	(20,512)	13,013
Trademarks/tradenames	3 - 6	5,080	(739)	4,341	280	(111)	169
Customer Contracts/relationships	1.5 - 5	8,620	(2,380)	6,240	1,100	(885)	215
Covenants Not to Compete	1.5 - 2	9,510	(8,360)	1,150	7,610	(6,132)	1,478
Total Intangible Assets, Net		<u>\$ 124,275</u>	<u>\$ (49,224)</u>	<u>\$ 75,051</u>	<u>\$ 52,555</u>	<u>\$ (31,107)</u>	<u>\$ 21,448</u>

Amortization expense for identified intangibles is summarized below:

	Fiscal 2006	Fiscal 2005	Fiscal 2004
Patents	\$ 1,982	\$ 1,833	\$ 1,503
Existing technology	11,785	3,432	3,669
Other identified intangibles	4,350	5,900	1,229
	<u>\$ 18,117</u>	<u>\$ 11,165</u>	<u>\$ 6,401</u>

As of April 30, 2006 and 2005, our acquired patents were \$10,040, and classified under Intangible Assets in the accompanying Consolidated Balance Sheets. These patents are intended to enhance our technology base to build next-generation network-attached storage, storage area network, and fabric-attached storage systems for the benefit of our enterprise customers. The costs of such patents for use in research and development activities that have alternative future uses have been capitalized and amortized as intangible assets in accordance with SFAS No. 141. Capitalized patents are amortized over an estimated useful life of five years as research and development expenses.

Existing technology is amortized as cost of product revenue. Trademarks and tradenames are amortized over an estimated useful life of three years in sales and marketing expenses. Customer contracts and relationships are amortized over an estimated useful life of 18 months in sales and marketing expenses. Covenants not to compete are amortized over an estimated useful life of 18 months in general and administrative expenses.

## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Based on the identified intangible assets (including patents) recorded at April 30, 2006, the future amortization expense of identified intangibles for the next five fiscal years is as follows:

<u>Year Ending April,</u>	<u>Amount</u>
2007	20,708
2008	19,884
2009	17,466
2010	12,653
2011	4,073
Thereafter	267
Total	<u>\$75,051</u>

**15. Guarantees**

As of April 30, 2006, our financial guarantees consisted of standby letters of credit outstanding, bank guarantee, and restricted cash and investments which were related to loan collateral, facility lease requirements, service performance guarantees, customs and duties guarantees, VAT requirements, and workers' compensation plans. The maximum amount of potential future payments under these arrangements was \$248,719 as of April 30, 2006, of which \$246,910 was collateralized as restricted cash and investments on our Consolidated Balance Sheets, and \$1,809 were amounts outstanding under our commercial commitments (see Note 4). The maximum amount of potential future payments under these arrangements was \$5,881 as of April 30, 2005, of which, \$4,060 was collateralized as restricted cash and investment on our Consolidated Balance Sheets, and \$1,821 were amounts outstanding under our commercial commitments.

As of April 30, 2006, our notional fair values of foreign exchange forward and foreign currency option contracts totaled \$345,067. We do not believe that these derivatives present significant credit risks, because the counterparties to the derivatives consist of major financial institutions, and we manage the notional amount of contracts entered into with any one counterparty. We do not enter into derivative financial instruments for speculative or trading purposes. Other than the risk associated with the financial condition of the counterparties, our maximum exposure related to foreign currency forward and option contracts is limited to the premiums paid.

We have both recourse and nonrecourse lease financing arrangements with third-party leasing companies through pre-existing relationships with the customers. We sell our products directly to the leasing company, and the lease arrangement is made between our customer and the leasing company. Under the terms of recourse leases, which are generally three years or less, we remain liable for the aggregate unpaid remaining lease payments to the third-party leasing company in the event that any customers default. For these recourse arrangements, revenue on the sale of our product to the leasing company are deferred and recognized into income as payments to the leasing company come due. As of April 30, 2006 and 2005, the maximum recourse exposure under such leases totaled approximately \$8,443 and \$7,047, respectively. Under the terms of the nonrecourse leases we do not have any continuing obligations or liabilities. To date, we have not experienced significant losses under this lease financing program.

We do not maintain a general warranty reserve for estimated costs of product warranties at the time revenue is recognized due to our extensive product quality program and processes and because our global customer service inventories utilized to correct product failures are expensed when issued to field support.

We enter into standard indemnification agreements in the ordinary course of business. Pursuant to these agreements, we agree to defend and indemnify the other party — primarily our customers or business partners or subcontractors — for damages and reasonable costs incurred in any suit or claim brought against them alleging that our products sold to them infringe any U.S. patent, copyright, trade secret, or similar right. If a product becomes the subject of an infringement claim, we may, at our option: (i) replace the product with another noninfringing product that provides substantially similar performance; (ii) modify the infringing product so that it no longer infringes but

## NETWORK APPLIANCE, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

remains functionally equivalent; (iii) obtain the right for the customer to continue using the product at our expense and for the reseller to continue selling the product; (iv) take back the infringing product and refund to customer the purchase price paid less depreciation amortized on a straight line basis. We have not been required to make material payments pursuant to these provisions historically. We have not identified any losses that are probable under these provisions and, accordingly, we have not recorded a liability related to these indemnification provisions.

We have not recorded any liability at April 30, 2006 and 2005, respectively, related to these guarantees since the maximum amount of potential future payments under such guarantees, indemnities and warranties is not determinable, other than as described above.

**16. Subsequent Events**

On June 22, 2006, the Company entered into an asset purchase agreement with Blue Coat Systems, Inc. ("Blue Coat"). In connection with the transaction, the Company has agreed to sell to Blue Coat certain assets related to its NetCache business in exchange for consideration to consist of \$23,914 in cash and 360 shares of Blue Coat common stock. Concurrently with the execution of the asset purchase agreement, Blue Coat sold and issued to entities affiliated with Sequoia Capital preferred stock in an aggregate amount of \$42,060 pursuant to Rule 506 of Regulation D under the Securities Act of 1933, as amended. The Company and Daniel Warmenhoven, the Company's Chief Executive Officer and a member of the Company's Board of Directors, and Nicholas Moore, a member of the Company's Board of Directors, are limited partners in one of the Sequoia Capital funds that participated in Blue Coat's sale of preferred stock, and each has an interest in the participating Sequoia Capital fund that is less than 5%. In addition, Donald Valentine, the Chairman of the Board of Directors of the Company, is a general partner of Sequoia Capital. Independent directors of the Company's audit committee and investment committee approved the asset sale transaction, and Messrs Valentine, Warmenhoven and Moore recused themselves from such vote.

The Company will continue to provide existing customers support for its NetCache appliances for the duration of their support contracts, and will honor existing NetCache customer commitments. The Company considers the transaction to be immaterial to expectations for its business going forward. Revenue from NetCache accounted for 3.2% of total consolidated revenue in fiscal 2006. The asset purchase is subject to several customary conditions.

**17. Selected Quarterly Financial Data (Unaudited)**

	Year Ended April 30, 2006			
	Q1	Q2	Q3	Q4
Total revenues	\$448,403	\$483,062	\$537,031	\$597,960
Gross margins	273,486	299,092	327,024	356,859
Net income	60,120	70,718	76,393	59,221(1)
Net income per share, basic	0.16	0.19	0.21	0.16(1)
Net income per share, diluted	0.16	0.18	0.20	0.15(1)

	Year Ended April 30, 2005			
	Q1	Q2	Q3	Q4
Total revenues	\$358,421	\$375,176	\$412,706	\$451,829
Gross margin	214,958	231,161	252,134	276,796
Net income	46,862	55,329	60,127	63,436
Net income per share, basic	0.13	0.15	0.17	0.17
Net income per share, diluted	0.13	0.15	0.16	0.16

(1) Includes an income tax expense of \$22,482 associated with the foreign earnings repatriation under the Jobs Act. See Note 8.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

**Item 9A. Controls and Procedures**

**(a) Evaluation of Disclosure Controls and Procedures**

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

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

**(b) Management's Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Our internal control over financial reporting is a process designed 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. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, our management concluded that, as of April 30, 2006, our internal control over financial reporting was effective based on those criteria.

Our management's assessment of the effectiveness of our internal control over financial reporting as of April 30, 2006 has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report which is included herein.

**(c) Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) identified in connection with management's evaluation during our last fiscal quarter that have materially effected, or are reasonably likely to materially effect, our internal control over financial reporting.

**(d) Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of  
Network Appliance, Inc.:  
Sunnyvale, California

We have audited management's assessment, included in the accompanying Management's Report on Internal Control Over Financial Reporting, that Network Appliance, Inc. and its subsidiaries (the "Company") maintained effective internal control over financial reporting as of April 30, 2006, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment, and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that the Company maintained effective internal control over financial reporting as of April 30, 2006, is fairly stated, in all material respects, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Also, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of April 30, 2006, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and consolidated financial statement schedule as of and for the year ended April 30, 2006 of the Company and our report dated July 11, 2006 expressed an unqualified opinion on those financial statements and the financial statement schedule.

/s/ DELOITTE & TOUCHE LLP

San Jose, California  
July 11, 2006



**Item 9B. Other Information**

None.

**PART III**

**Item 10. Directors and Executive Officers of the Registrant**

The information required by this Item with respect to the Company's executive officers is incorporated herein by reference from the information under Item 1 of Part I of this Annual Report on Form 10-K under the section entitled "Executive Officers." The information required by this Item with respect to the Company's directors is incorporated herein by reference from the information provided under the heading "Election of Directors" in the Proxy Statement for the 2006 Annual Meeting of Stockholders which will be filed with the Commission. The information required by Item 405 of Regulation S-K is incorporated herein by reference from the information provided under the heading "Section 16(a) Beneficial Ownership Reporting Compliance" in the Proxy Statement for the 2006 Annual Meeting of Stockholders.

We have adopted a written code of ethics that applies to our Board of Directors and all of our employees, including our principal executive officer, principal financial officer and principal accounting officer. A copy of the code is available on our website at <http://www.netapp.com>.

**Item 11. Executive Compensation**

Information regarding the compensation of executive officers and directors of the Company is incorporated by reference from the information under the heading "Executive Compensation and Related Information" in our Proxy Statement for the 2006 Annual Meeting of Stockholders.

**Item 12. Security Ownership of Certain Beneficial Owners and Management**

Information regarding security ownership of certain beneficial owners and management is incorporated by reference from the information under the heading "Security Ownership of Certain Beneficial Owners and Management" in our Proxy Statement for the 2006 Annual Meeting of Stockholders.

**Item 13. Certain Relationships and Related Transactions**

Information regarding certain relationships and related transactions is incorporated by reference from the information under the caption "Employment Contracts, Termination of Employment and Change-In-Control Agreements" in our Proxy Statement for the 2006 Annual Meeting of Stockholders.

**Item 14. Principal Accountant Fees and Services**

The information required by this item is incorporated by reference from [the information under the caption "Audit Fees"] in our Proxy Statement for the 2006 Annual Meeting of Stockholders.

With the exception of the information incorporated in Items 10, 11, 12, 13, and 14 of this Annual Report of Form 10-K, Network Appliance's Proxy Statement is not deemed "filed" as part of this Annual Report on Form 10-K.

**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

(a)(1) The following consolidated financial statements of Network Appliance, Inc. are filed as part of this Form 10-K:

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets — April 30, 2006 and 2005

Consolidated Statements of Income for the years ended April 30, 2006, 2005, and 2004

Consolidated Statements of Stockholders' Equity and Comprehensive Income (Loss) for the years ended April 30, 2006, 2005, and 2004

Consolidated Statements of Cash Flows for the years ended April 30, 2006, 2005, and 2004

Notes to Consolidated Financial Statements

(a)(2) *Financial Statement Schedule*

The following financial statement schedule of the Company is filed in Part IV, Item 15(d) of this Annual Report on Form 10-K:

Schedule II — Valuation and Qualifying Accounts

All other schedules have been omitted since the required information is not present in amounts sufficient to require submission of the schedule or because the information required is included in the consolidated financial statements or notes thereto.

(a)(3) *Exhibits*

The exhibits listed in the Exhibit Index below are filed or incorporated by reference as part of this report.

<b>Exhibit No</b>	<b>Description</b>
2.1(7)	Agreement and Plan of Merger of Network Appliance, Inc. (a Delaware corporation) and Network Appliance, Inc. (a California corporation).
2.2(10)	Agreement and Plan of Merger dated as of November 3, 2003, by and among Network Appliance, Inc., Nagano Sub, Inc., and Spinnaker Networks, Inc.
2.3(10)	Amendment to Merger Agreement, dated as of February 9, 2004, by and among Network Appliance, Inc., Nagano Sub, Inc., and Spinnaker Networks, Inc.
2.4(16)	Agreement and Plan of Merger and Reorganization, dated as of June 15, 2005, by and among Network Appliance Inc., Dolphin Acquisition Corp, and Decru, Inc.
3.1(7)	Certificate of Incorporation of the Company.
3.2(7)	Bylaws of the Company.
3.3(18)	Certificate of Amendment to the Bylaws of the Company.
4.1(7)	Reference is made to Exhibits 3.1 and 3.2.
10.1(16)*	The Company's amended and Restated Employee Stock Purchase Plan.
10.2(16)*	The Company's Amended and Restated 1995 Stock Incentive Plan.
10.3(2)	The Company's Special Non-Officer Stock Option Plan.
10.4(8)*	The Company's Amended and Restated 1999 Stock Incentive Plan.
10.5†(3)	OEM Distribution and License Agreement, dated October 27, 1998, by and between Dell Products L.P. and the Company.
10.6(4)	OEM Distribution and License Agreement, dated November 6, 1998, by and between Fujitsu Limited and the Company.
10.15†(6)	Patent Cross License Agreement dated December 11, 2000, by and between Intel Corporation and the Company.
10.16(1)*	Form of Indemnification Agreement entered into between the Company and its directors and officers.

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<b>Exhibit No</b>	<b>Description</b>
10.17(9)	Short Form Termination of Operative Documents, dated April 24, 2002, by and between BNP Leasing Corporation and the Company.
10.18(11)*	Spinnaker Networks, Inc. 2000 Stock Plan.
10.19(14)*	Alacritus, Inc. 2005 Stock Plan.
10.20(13)*	The Company's Fiscal Year 2005 Incentive Compensation Plan.
10.21(15)*	The Company's Deferred Compensation Plan.
10.22(23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1995 Stock Option Plan.
10.23 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1995 Stock Option Plan (Chairman of the Board or any Board Committee Chairperson).
10.24 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1995 Stock Option Plan (Restricted Stock Agreement).
10.25 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan (Restricted Stock Unit Agreement).
10.26 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan.
10.27 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan (Change of Control).
10.28 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan (China).
10.29 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan (Non-Employee Director Automatic Stock Option — Annual).
10.30 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan (Non-Employee Director Automatic Stock Option — Initial).
10.31 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan (France).
10.32 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan (India).
10.33 (23)	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan (United Kingdom).
10.34(19)	Form of Stock Option Grant Notice and Option Agreement under the Decru, Inc. Amended and Restated 2001 Equity Incentive Plan and the 2001 Equity Incentive Plan filed under Attachment II.
10.35(19)	Form of Stock Option Grant Notice and Option Agreement under the Decru, Inc. 2001 Equity Incentive Plan and the 2001 Equity Incentive Plan filed under Attachment II.
10.36(19)	Form of Early Exercise Stock Purchase Agreement under the Decru, Inc. 2001 Equity Incentive Plan.
10.37(19)	Form of Restricted Stock Bonus Grant Notice and Agreement under the Decru, Inc. 2001 Equity Incentive Plan.
10.38(20)	Asset Purchase Agreement dated June 20, 2003, by and between Auspex Systems, Inc. and the Company.
10.39(21)	Purchase and Sale Agreement dated July 27, 2004 by and between Cisco Systems, Inc. and the Company.
10.40(22)	Closing Certificate and Agreement, dated December 15, 2005, by and between BNP Leasing Corporation and the Company.
10.41(22)	Construction Management Agreement, dated December 15, 2005, by and between BNP Leasing Corporation and the Company.
10.42(22)	Lease Agreement, dated December 15, 2005, by and between BNP Leasing Corporation and the Company.
10.43(22)	Purchase Agreement, dated December 15, 2005, by and between BNP Leasing Corporation and the Company.

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Exhibit No	Description
10.44(22)	Ground Lease, dated December 15, 2005, by and between BNP Leasing Corporation and the Company.
10.45	Loan Agreement, dated March 31, 2006, by and between the Lenders party hereto and JP Morgan Chase Bank and Network Appliance Global Ltd.
21.1	Subsidiaries of the Company.
23.1	Consent of Deloitte & Touche LLP.
24.1	Power of Attorney (see signature page).
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.

- (1) Previously filed as an exhibit to the Company's Registration Statement on Form S-1 (No. 33-97864).
- (2) Previously filed as an exhibit with the Company's Annual Report on Form 10-K dated July 23, 1997.
- (3) Previously filed as an exhibit with the Company's Quarterly Report on Form 10-Q dated December 11, 1998.
- (4) Previously filed as an exhibit with the Company's Quarterly Report on Form 10-Q dated March 11, 1999.
- (5) Previously filed as an exhibit with the Company's Quarterly Report on Form 10-Q dated December 11, 2000.
- (6) Previously filed as an exhibit with the Company's Quarterly Report on Form 10-Q dated March 12, 2001.
- (7) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated December 4, 2001.
- (8) Previously filed as an exhibit with the Company's Proxy Statement dated July 15, 2004.
- (9) Previously filed as an exhibit with the Company's Annual Report on Form 10-K dated June 28, 2002.
- (10) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated February 27, 2004.
- (11) Previously filed as an exhibit with the Company's Form S-8 registration statement dated March 1, 2004.
- (12) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated May 4, 2005.
- (13) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated May 18, 2005.
- (14) Previously filed as an exhibit to the Company's Form S-8 registration statement dated June 2, 2005.
- (15) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated July 7, 2005.
- (16) Previously filed as an exhibit to the Company's Proxy Statement dated July 8, 2005.
- (17) Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q dated September 2, 2005.
- (18) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated May 19, 2006.
- (19) Previously filed as an exhibit to the Company's Form S-8 registration statement dated September 2, 2005.
- (20) Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q dated September 3, 2003.
- (21) Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q dated August 31, 2004.
- (22) Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q dated March 7, 2006.
- (23) Previously filed as an exhibit to the Company's Annual Report on Form 10-K dated July 8, 2005.

† Specified portions of this agreement have been omitted and have been filed separately with the Commission pursuant to a request for confidential treatment.

\* Identifies management plan or compensatory plan or arrangement.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on July 11, 2006.

NETWORK APPLIANCE, INC.

By: /s/ DANIEL J. WARMENHOVEN

Daniel J. Warmenhoven  
Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Daniel J. Warmenhoven and Steven J. Gomo, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated:

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ DANIEL J. WARMENHOVEN</u> Daniel J. Warmenhoven	Chief Executive Officer, Director (Principal Executive Officer)	July 11, 2006
<u>/s/ DONALD T. VALENTINE</u> Donald T. Valentine	Chairman of the Board, Director	July 11, 2006
<u>/s/ STEVEN J. GOMO</u> Steven J. Gomo	Executive Vice President of Finance and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	July 11, 2006
<u>/s/ ALAN EARHART</u> Alan Earhart	Director	July 11, 2006
<u>/s/ CAROL A. BARTZ</u> Carol A. Bartz	Director	July 11, 2006
<u>/s/ NICHOLAS G. MOORE</u> Nicholas G. Moore	Director	July 11, 2006

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<u>Signature</u>	<u>Title</u>	<u>Date</u>
<hr/> <i>/s/</i> MARK LESLIE Mark Leslie	Director	July 11, 2006
<hr/> <i>/s/</i> ROBERT T. WALL Robert T. Wall	Director	July 11, 2006
<hr/> <i>/s/</i> DR. SACHIO SEMMOTO Dr. Sachio Semmoto	Director	July 11, 2006
<hr/> <i>/s/</i> GEORGE T. SHAHEEN George T. Shaheen	Director	July 11, 2006
<hr/> <i>/s/</i> JEFFRY R. ALLEN Jeffry R. Allen	Director	July 11, 2006
<hr/> <i>/s/</i> EDWARD KOZEL Edward Koziel	Director	July 11, 2006

SCHEDULE II.

NETWORK APPLIANCE, INC.  
VALUATION AND QUALIFYING ACCOUNTS  
Years Ended April 30, 2006, 2005 and 2004  
(In thousands)

Description	Balance at Beginning of Period	Additions Charged (Credited) to Costs and Expenses	Reductions and Write-offs	Balance at End of Period
Allowance for doubtful accounts:				
2006	\$ 5,445	\$ 46	\$ 3,111	\$ 2,380
2005	\$ 5,071	\$ 1,110	\$ 736	\$ 5,445
2004	\$ 5,355	\$ (259)	\$ 25	\$ 5,071

## EXHIBIT INDEX

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2.3(10)	Amendment to Merger Agreement, dated as of February 9, 2004, by and among Network Appliance, Inc., Nagano Sub, Inc., and Spinnaker Networks, Inc.
2.4(16)	Agreement and Plan of Merger and Reorganization, dated as of June 15, 2005, by and among Network Appliance Inc., Dolphin Acquisition Corp, and Decru, Inc.
3.1(7)	Certificate of Incorporation of the Company.
3.2(7)	Bylaws of the Company.
3.3(18)	Certificate of Amendment to the Bylaws of the Company.
4.1(7)	Reference is made to Exhibits 3.1 and 3.2.
10.1(16)*	The Company's amended and Restated Employee Stock Purchase Plan.
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21.1	Subsidiaries of the Company.
23.1	Consent of Deloitte & Touche LLP.
24.1	Power of Attorney (see signature page).
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.

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- (1) Previously filed as an exhibit to the Company's Registration Statement on Form S-1 (No. 33-97864).
  - (2) Previously filed as an exhibit with the Company's Annual Report on Form 10-K dated July 23, 1997.
  - (3) Previously filed as an exhibit with the Company's Quarterly Report on Form 10-Q dated December 11, 1998.
  - (4) Previously filed as an exhibit with the Company's Quarterly Report on Form 10-Q dated March 11, 1999.
  - (5) Previously filed as an exhibit with the Company's Quarterly Report on Form 10-Q dated December 11, 2000.
  - (6) Previously filed as an exhibit with the Company's Quarterly Report on Form 10-Q dated March 12, 2001.
  - (7) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated December 4, 2001.
  - (8) Previously filed as an exhibit with the Company's Proxy Statement dated July 15, 2004.
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- (9) Previously filed as an exhibit with the Company's Annual Report on Form 10-K dated June 28, 2002.
  - (10) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated February 27, 2004.
  - (11) Previously filed as an exhibit with the Company's Form S-8 registration statement dated March 1, 2004.
  - (12) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated May 4, 2005.
  - (13) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated May 18, 2005.
  - (14) Previously filed as an exhibit to the Company's Form S-8 registration statement dated June 2, 2005.
  - (15) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated July 7, 2005.
  - (16) Previously filed as an exhibit to the Company's Proxy Statement dated July 8, 2005.
  - (17) Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q dated September 2, 2005.
  - (18) Previously filed as an exhibit with the Company's Current Report on Form 8-K dated May 19, 2006.
  - (19) Previously filed as an exhibit to the Company's Form S-8 registration statement dated September 2, 2005.
  - (20) Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q dated September 3, 2003.
  - (21) Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q dated August 31, 2004.
  - (22) Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q dated March 7, 2006.
  - (23) Previously filed as an exhibit to the Company's Annual Report on Form 10-K dated July 8, 2005.
- † Specified portions of this agreement have been omitted and have been filed separately with the Commission pursuant to a request for confidential treatment.
- \* Identifies management plan or compensatory plan or arrangement.



LOAN AGREEMENT

dated as of

March 31, 2006

among

NETWORK APPLIANCE GLOBAL LTD., as the Borrower

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

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

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Exhibit B-3	— Form of Opinion of Loan Parties' Dutch Counsel
Exhibit B-4	— Form of Opinion of Loan Parties' Cyprus Counsel
Exhibit C	— List of Closing Documents
Exhibit D	— Form of Subsidiary Guaranty
Exhibit E	— Form of Pledge Agreement
Exhibit F	— Form of Control Agreement
Exhibit G	— Margin Requirements
Exhibit H	— Form of Compliance Certificate

LOAN AGREEMENT dated as of March 31, 2006, among NETWORK APPLIANCE GLOBAL LTD., as the Borrower, the LENDERS party hereto, and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Administrative Agent.

The parties hereto agree as follows:

## ARTICLE I

### Definitions

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

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

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

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

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

“Affected Foreign Subsidiary” means any Subsidiary to the extent such Subsidiary acting as a Subsidiary Guarantor would be prohibited by applicable law.

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

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

“Applicable Percentage” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined at any time based upon the percentage obtained by dividing such Lender’s Term Loan Exposure by the sum of the outstanding principal amount of all Loans.

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“Applicable Rate” means, for any day, with respect to any ABR Loan or Eurodollar Loan, as the case may be, 0.125% in the case of Eurodollar Tranche A Term Loans, 0% in the case of ABR Tranche A Term Loans and, in the case of Tranche B Term Loans, the applicable rate per annum set forth below under the caption “Tranche B Term Loans ABR Spread” or “Tranche B Term Loans Eurodollar Spread”, as the case may be, based upon the Leverage Ratio as reflected in the then most recently delivered Financials:

PRICING LEVEL	LEVERAGE RATIO	TRANCHE B TERM LOANS EURODOLLAR SPREAD	TRANCHE B TERM LOANS ABR SPREAD
I	□ 2.25 to 1.0	1.125%	0.125%
II	<2.25 to 1.0 but □ 2.0 to 1.0	0.875%	0%
III	<2.0 to 1.0 but □ 1.5 to 1.0	0.625%	0%
IV	<1.5 to 1.0	0.500%	0%

For purposes of the foregoing,

(i) if at any time the Borrower fails to deliver the Financials required under Section 5.01(a) or 5.01(b) on or before the date such Financials are due, Pricing Level I shall be deemed applicable for the period commencing five (5) Business Days after such required date of delivery and ending on the date on which such Financials are actually delivered, after which the Pricing Level shall be determined in accordance with the table above as applicable;

(ii) adjustments, if any, to the Pricing Level then in effect shall be effective on the date the Administrative Agent has received the applicable Financials (it being understood and agreed that each change in Pricing Level shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change); and

(iii) each determination of the Applicable Rate made by the Administrative Agent in accordance with the foregoing shall, if reasonably determined, be conclusive and binding on the Borrower and each Lender.

Notwithstanding the foregoing, Pricing Level III shall be deemed to be applicable until the Administrative Agent’s receipt of the applicable Financials for the fiscal year ended April 28, 2006 and adjustments to the Pricing Level then in effect shall thereafter be effected in accordance with the preceding provisions.

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



“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

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

“Borrower” means Network Appliance Global Ltd., an exempted company incorporated with limited liability under the laws of Bermuda.

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

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

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

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

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

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive

(whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Tranche A Term Loans or Tranche B Term Loans.

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

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

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

“Commissionaires” means the Subsidiaries and Affiliates of the Dutch Pledgor party to commissionaire agreements with the Dutch Pledgor pursuant to which such Subsidiaries or Affiliates agree to act as commissionaires for the Dutch Pledgor.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Tranche A Term Loans and/or Tranche B Term B Loans hereunder on the Effective Date. The amount of each Lender’s Commitment is set forth on Schedule 2.01. The aggregate amount of the Lenders’ Commitments is \$300,000,000. After advancing the Loans on the Effective Date, each reference to a Lender’s Commitment shall refer to that Lender’s Applicable Percentage of the Loans.

“Consolidated EBITDA” means, with reference to any period, the sum of the following: (a) Consolidated Net Income for such period, *plus* (b) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of (i) Consolidated Interest Expense for such period, (ii) expense for taxes paid or accrued during such period, (iii) all amounts attributable to depreciation and amortization during such period, (v) extraordinary non-cash charges incurred other than in the ordinary course of business during such period, and (vi) nonrecurring extraordinary non-cash restructuring charges, *minus* (c) without duplication and to the extent included in determining such Consolidated Net Income, extraordinary non-cash gains realized other than in the ordinary course of business; all calculated for the Borrower and its Subsidiaries in accordance with GAAP on a consolidated basis.

“Consolidated Interest Expense” means, with reference to any period, the interest expense (including without limitation interest expense under Capital Lease Obligations that is

treated as interest in accordance with GAAP) of the Borrower and its Subsidiaries calculated on a consolidated basis for such period with respect to (a) all outstanding Indebtedness of the Borrower and its Subsidiaries allocable to such period in accordance with GAAP and (b) Swap Agreements (including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers acceptance financing and net costs under interest rate Swap Agreements to the extent such net costs are allocable to such period in accordance with GAAP).

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

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

“Consolidated Total Indebtedness” means, at any time, the aggregate Indebtedness of the Borrower and its Subsidiaries calculated on a consolidated basis as of such time.

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

“Control Agreement” means the Tri-Party Control Agreement of even date herewith in the form of Exhibit F by and among the Borrower, the Administrative Agent and J.P. Morgan Securities Inc. (as amended, restated, supplemented or otherwise modified from time to time).

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

“Determination Date” shall mean (i) so long as no Event of Default has occurred and is continuing, the last Business Day of each successive two week period, beginning on April 10, 2006 and (ii) if an Event of Default has occurred and is continuing, any date as the Administrative Agent may elect in its sole discretion.

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

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

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

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

“Dutch Pledge Agreement” means the Dutch Pledge of Receivables of even date herewith by the Dutch Pledgor in favor of the Administrative Agent (as amended, restated, supplemented or otherwise modified from time to time).

“Dutch Pledgor” means Network Appliance B.V., a company organized under the laws of the Netherlands.

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

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

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

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

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

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

“ERISA Event” means (1) with respect to the Parent and any Domestic Subsidiary, (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the

Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Parent or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Parent or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Parent or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Parent or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA and (2) with respect to the Borrower and any Foreign Subsidiary that is a Loan Party, (a) the occurrence of an event which is comparable to any of the events described in the foregoing clause (1) in respect of such Person or the Foreign Benefit Plan or Foreign Pension Plan of such Person, (b) the institution by the relevant Governmental Authority of proceedings to terminate or appoint a trustee to administer any Foreign Benefit Plan or Foreign Pension Plan in respect of such Person; (c) any event or condition which might constitute grounds for the termination of, or the appointment of a trustee to administer, any Foreign Benefit Plan or Foreign Pension Plan of such Person; or (d) the partial or complete withdrawal of the Parent or any of its ERISA Affiliates from any Foreign Benefit Plan or Foreign Pension Plan.

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

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

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

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

by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

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

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

“Foreign Benefit Plan” means any employee benefit plan as defined in Section 3(3) of ERISA which is maintained or contributed to for the benefit of the employees of the Parent or any of its ERISA Affiliates, but which is not covered by ERISA pursuant to Section 4(b)(4) of ERISA.

“Foreign Lender” means any Lender that is incorporated or organized under the laws of a jurisdiction other than (a) Bermuda or (b) the United States of America, any State thereof or the District of Columbia.

“Foreign Pension Plan” means any employee pension benefit plan (as defined in Section 3(2) of ERISA) which (i) is maintained or contributed to for the benefit of employees of the Parent or any of its ERISA Affiliates, (ii) is not covered by ERISA pursuant to Section 4(b)(4) thereof and (iii) under applicable local law, is required to be funded through a trust or other funding vehicle.

“Foreign Subsidiary” means any Subsidiary which is not a Domestic Subsidiary.

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

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

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term

Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

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

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

“Hostile Acquisition” means (a) the acquisition of the Equity Interests of a Person through a tender offer or similar solicitation of the owners of such Equity Interests which has not been approved (prior to such acquisition) by the board of directors (or any other applicable governing body) of such Person or by similar action if such Person is not a corporation and (b) any such acquisition as to which such approval has been withdrawn.

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

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

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

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

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

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

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

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



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

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

“Liquidity Ratio” means the ratio, determined as of the end of each fiscal quarter of the Borrower, of (i) current assets minus the aggregate amount of cash and other investments subject to any Lien (including without limitation Liens created under the Collateral Documents) minus the aggregate amount of inventory minus the aggregate amount of intercompany accounts receivable due and owing from any Subsidiary or Affiliate, in each case determined as of the end of such fiscal quarter on a consolidated basis for the Borrower in accordance with GAAP to (ii) current liabilities minus the aggregate amount of intercompany accounts payable due and owing to any Subsidiary or Affiliate minus the aggregate amount of any deferred revenue, in each case determined as of the end of such fiscal quarter on a consolidated basis for the Borrower in accordance with GAAP.

“Loans” means the Tranche A Term Loans and the Tranche B Term Loans.

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

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

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

“Material Indebtedness” means Indebtedness (other than the Loans), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$20,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

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

percent (5%) of the Borrower's Consolidated Total Assets as of such date.

“Maturity Date” means March 31, 2008.

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

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

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

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

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

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

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

“Permitted Acquisition” means any acquisition (whether by purchase, merger, consolidation or otherwise but excluding in any event a Hostile Acquisition) or series of related acquisitions by the Borrower or any Subsidiary of all or substantially all the assets of, or more than fifty percent (50%) of the Equity Interests in, a Person or division or line of business of a Person if, at the time of and immediately after giving effect thereto, (a) no Default has occurred and is continuing or would arise after giving effect thereto, (b) such Person or division or line of business is engaged in the same or a similar line of business as the Borrower and the Subsidiaries or a line of business reasonably related thereto, (c) all actions required to be taken with respect to such acquired or newly formed Subsidiary under Section 5.09 shall have been taken, (d) the Borrower and the Subsidiaries are in compliance, on a pro forma basis reasonably acceptable to the Administrative Agent after giving effect to such acquisition (without giving effect to any cost savings), with the covenants contained in Section 6.10 recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available, as if such acquisition (and any related incurrence or repayment of Indebtedness, with any new Indebtedness being deemed to be amortized over the applicable testing period in accordance with its terms) had occurred on the first day of each relevant period for testing such compliance and the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer of the Borrower to such effect, together with all relevant financial information, statements and

projections reasonably requested by the Administrative Agent and (e) in the case of an acquisition or merger involving the Borrower or a Subsidiary, the Borrower or such Subsidiary is the surviving entity of such merger and/or consolidation.

“Permitted Encumbrances” means:

- (a) Liens imposed by law for Taxes or other governmental charges that are not yet due or are being contested in compliance with Section 5.04;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, landlord’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere in any material respect with the ordinary conduct of business of the Borrower or any Subsidiary;
- (g) leases or subleases granted to other Persons and not interfering in any material respect with the business of the lessor or sublessor;
- (h) Liens arising from precautionary Uniform Commercial Code filings or similar filings relating to operating leases;
- (i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection within the importation of goods;
- (j) Liens on insurance proceeds securing the premium of financed insurance proceeds;
- (k) Liens on cash collateral to secure letters of credit, bank guarantees and banker’s acceptances and Swap Agreements;
- (l) licenses of intellectual property in the ordinary course of business;

(m) any interest or title of a lessor or sublessor under any lease of real property or personal property; and

(n) other Liens on assets (excluding Collateral) securing Indebtedness or other obligations not prohibited hereunder in an aggregate amount not to exceed \$10,000,000 at any time outstanding;

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

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a rating of "A-2" (or better) from S&P or "P-2" (or better) from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof or any other country which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940 to the extent such money market fund is governed thereby, (ii) are rated AA by S&P and Aa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000;

(f) investments described in Exhibit G, with a valuation percentage of greater than 0%; and

(g) investments made pursuant to a cash management investment policy approved by the board of directors of the Person making such investment and as in effect on the Effective Date, as such policy may be amended or otherwise modified from time to time with the written consent of the Administrative Agent.

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

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

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

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

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

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

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

“Required Lenders” means, at any time, Lenders having Term Loan Exposures representing more than 50% of the total Term Loan Exposures at such time.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower.

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

“S&P” means Standard & Poor’s.

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

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

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

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

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

“Subsidiary” means any subsidiary of the Borrower.

“Subsidiary Guarantor” means the Dutch Pledgor, Network Appliance Holding & Manufacturing B.V., a company organized under the laws of the Netherlands, NetApp Holdings Limited, a company organized under the laws of Cyprus, each other Material Subsidiary (other than Affected Foreign Subsidiaries) and any other Subsidiary that becomes a party to a Subsidiary Guaranty (including pursuant to a joinder or supplement thereto). The Subsidiary Guarantors on the Effective Date are identified as such in Schedule 3.01 hereto.

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

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

“Swap Obligations” of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

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

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

“Tranche A Term Loans” means the loans made by the Lenders to the Borrower pursuant to Section 2.01(a).

“Tranche A Term Loan Commitment” means, with respect to each Lender, the commitment of such Lender to make Tranche A Term Loans hereunder on the Effective Date. The amount of each Lender’s Tranche A Term Loan Commitment is set forth on Schedule 2.01. The aggregate amount of the Lenders’ Tranche A Term Loan Commitments is \$220,000,000.

“Tranche B Term Loans” means the loans made by the Lenders to the Borrower pursuant to Section 2.01(b).

“Tranche B Term Loan Commitment” means, with respect to each Lender, the commitment of such Lender to make Tranche B Term Loans hereunder on the Effective Date. The amount of each Lender’s Tranche B Term Loan Commitment is set forth on Schedule 2.01. The aggregate amount of the Lenders’ Tranche B Term Loan Commitments is \$80,000,000.

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

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

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

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

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

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

## ARTICLE II

### The Credits

SECTION 2.01. Commitments and Loans. (a) Subject to the terms and conditions set forth herein, each Lender agrees to make Tranche A Term Loans to the Borrower on the Effective Date in an aggregate principal amount equal to such Lender’s Tranche A Term Loan Commitment. Amounts repaid in respect of Tranche A Term Loans may not be reborrowed.



(b) Subject to the terms and conditions set forth herein, each Lender agrees to make Tranche B Term Loans to the Borrower on the Effective Date in an aggregate principal amount equal to such Lender's Tranche B Term Loan Commitment. Amounts repaid in respect of Tranche B Term Loans may not be reborrowed.

SECTION 2.02. Loans and Borrowings. (a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

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

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of seventy-five (75) Eurodollar Borrowings outstanding.

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

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

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

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

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

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

SECTION 2.04. Repayment of Tranche A Term Loans. To the extent not previously repaid, the Borrower shall repay Tranche A Term Loans in full in cash on the Maturity Date.

SECTION 2.05. Repayment and Amortization of Tranche B Term Loans. The Borrower shall repay Tranche B Term Loans in installments on the end of last day of each April, July, October, and January (commencing with July 31, 2006), with the amount of each such principal installment to equal \$10,000,000. To the extent not previously repaid, all unpaid Tranche B Term Loans shall be paid in full in cash by the Borrower on the Maturity Date.

SECTION 2.06. Intentionally Omitted.

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

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

rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

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

(b) To make an election pursuant to this Section (an "Interest Election Request"), the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or teletype to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

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

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

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

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

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

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

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

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

SECTION 2.09. Termination of Commitments. The Commitments shall terminate on the Effective Date in accordance with Section 4.01.

SECTION 2.10. Repayment of Loans; Evidence of Debt. (a) To the extent not previously repaid in accordance herewith, the Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date.

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

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

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

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

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

(b) If as of any Determination Date, and for any reason, the aggregate outstanding principal amount of the Tranche A Term Loans exceeds the value (on a margin-adjusted basis based on the requirements described on Exhibit G, as amended, restated, supplemented or otherwise modified from time to time by the Administrative Agent with the consent of the Borrower) of Liquid Investments of the Borrower maintained with the Administrative Agent (or an Affiliate thereof) and pledged to the Administrative Agent for the benefit of the relevant Holders of Secured Obligations pursuant to the Collateral Documents (the “Pledged Investments”), then the Borrower shall, within five (5) Business Days of the determination of such excess, make a mandatory prepayment of the Tranche A Term Loans in an amount equal to such excess. Furthermore, (i) upon the maturity of each Pledged Investment, the Borrower shall, within five (5) Business Days of such maturity, make a mandatory prepayment of the Tranche A Term Loans in an amount equal to the amount of the Pledged Investment so matured and (ii) all interest and cash dividends received by Borrower on any Pledged Investment shall be deposited in an escrow account described in the following sentence and applied as a prepayment of the Tranche A Term Loans upon the expiration of an Interest Period to be continued for a Tranche A Term Loan for which the underlying Pledged Investment is not maturing. Notwithstanding the foregoing, so long as no Default has occurred and is then continuing and at the Borrower’s option, the Administrative Agent shall hold any such prepayment to be applied to Eurodollar Loans in escrow (either (x) in an account under the sole dominion and control of the Administrative Agent or (y) in an account maintained with the Administrative Agent or an Affiliate thereof and in respect of which the Borrower has executed and delivered the Pledge Agreement and the Control Agreement or other Collateral Documents in form and substance reasonably satisfactory to the Administrative Agent) for the benefit of the Lenders and shall release such amounts upon the expiration of the Interest Periods applicable to any such Eurodollar Loans being prepaid (it being understood and agreed that interest shall continue to accrue on the Obligations until such time as such prepayments are released from escrow and applied to reduce the Obligations); provided, however, that upon the occurrence of a Default, such escrowed amounts may be applied to Eurodollar Loans without regard to the expiration of any Interest Period and the Borrower shall make all payments under Section 3.4 resulting therefrom.

(c) The Borrower shall notify the Administrative Agent by telephone (confirmed by email to [deborah.a.turner@jpmchase.com](mailto:deborah.a.turner@jpmchase.com) and [victor.perez@jpmchase.com](mailto:victor.perez@jpmchase.com) or such other email addresses as are specified by the Administrative Agent to the Borrower from time to time) of any prepayment hereunder (other than a mandatory prepayment in accordance with paragraph (b) of this Section) (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each prepayment of a

Borrowing shall be applied to the Loans included in the prepaid Borrowing, and in the case of Tranche B Term Loans, in the inverse order of maturity. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13.

SECTION 2.12. Fees. (a) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(b) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent. Fees paid shall not be refundable under any circumstances.

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

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

(c) [Intentionally Omitted].

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

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

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

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

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

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

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

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

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

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

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

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

(c) A certificate of a Lender setting forth in reasonable detail the calculation of the amount or amounts necessary to compensate such Lender or its holding company, as the case

may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

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

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

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



pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the calculation of the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

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

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

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

SECTION 2.18. Payments Generally; Allocation of Proceeds; Sharing of Set-offs. (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 3:00 p.m., New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) Any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower) or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, such funds shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements under the Loan Documents, including amounts then due under the Loan Documents to the Administrative Agent from the Borrower or any other Loan Party (other than in connection with Swap Obligations), second, to pay any fees or expense reimbursements then due under the Loan Documents to the Lenders from the Borrower or any other Loan Party (other than in connection with Swap Obligations), third, to pay interest then due and payable on the relevant Loans secured by such Collateral ratably, fourth, to prepay principal on the relevant Loans secured by such Collateral ratably (with amounts applied to the relevant Loans applied to installments of such Loans in inverse order of maturity), fifth, to payment of any amounts owing with respect to Swap Obligations, and sixth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by any Loan Party. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

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

(d) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender

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

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

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

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

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

SECTION 2.20. Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from a Loan Party hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent's main New York City office on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of each Loan Party in respect of any sum due to any Lender or the Administrative Agent hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Administrative Agent (as the case may be) of any sum adjudged to be so due in such other currency such Lender or the Administrative Agent (as the case may be) may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to the Lender or the Administrative Agent, as the case may be, in the specified currency, each Loan Party party hereto agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Administrative Agent, as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to any Lender or the Administrative Agent, as the case may be, in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 2.18, such Lender or the Administrative Agent, as the case may be, agrees to remit such excess to the Borrower.

## ARTICLE III

### Representations and Warranties

The Borrower represents and warrants to the Lenders that:

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

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

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

SECTION 3.04. Financial Condition: No Material Adverse Change. (a) The Borrower has heretofore furnished to the Lenders the (i) audited consolidated financial statements of the Parent and the Dutch Pledgor as of and for the fiscal year ended 2005, reported on, in the case of the Parent, by Deloitte & Touche LLP and, in the case of the Dutch Pledgor, by Deloitte & Touche LLP, independent public accountants, respectively and (ii) the consolidated balance sheet and statements of income, stockholders equity and cash flows of the Parent, the Borrower and the Dutch Pledgor as of and for the subsequent fiscal quarters and the portion of the fiscal year ended 2006, certified by their respective chief financial officer, principal accounting officer, financial controller or corporate treasurer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Parent, the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since April 30, 2005, there has been no material adverse change in the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries, taken as a whole.

SECTION 3.05. Properties and Insurance. (a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes. The Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

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

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

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

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

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

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

SECTION 3.08. Investment and Holding Company Status. Neither the Borrower nor any of its Subsidiaries is (a) an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a “holding company” as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

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

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

SECTION 3.11. Disclosure. To the extent not previously disclosed pursuant to the Parent’s filings with the Securities and Exchange Commission on or prior to the Effective Date, the Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which the Parent, the Borrower or any of their respective Affiliates is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the written reports, financial statements, certificates or other written information furnished by or on behalf of the Parent or the Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so

furnished) contains any material misstatement of fact or, when taken together with the Parent's filings with the Securities and Exchange Commission, omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information or results, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 3.12. No Default. No Default has occurred and is continuing.

#### ARTICLE IV

##### Conditions

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

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

(b) The Administrative Agent shall have received the favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Appleby Spurling Hunter, Wilson Sonsini Goodrich & Rosati, Kennedy Van der Laan and Chrissy Demetriades & Co, counsels for the Loan Parties, substantially in the forms of Exhibit B-1, B-2, B-3 and B-4, and covering such other matters relating to the Loan Parties, this Agreement or the Transactions as the Required Lenders shall reasonably request. The Borrower hereby requests such counsels to deliver such opinions.

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

(d) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the Chief Executive Officer or a Financial Officer or a member of the board of directors of the Borrower, confirming compliance with the conditions set forth in paragraphs (f) and (g) of this Section 4.01.



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

(f) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct on and as of the date of such Loans.

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

The Borrowing on the Effective Date shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (f) and (g) of this Section. The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 3:00 p.m., New York City time, on March 31, 2006 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

## ARTICLE V

### Affirmative Covenants

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

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

(a) within 150 days after the end of each fiscal year of the Borrower, the audited consolidated balance sheet and related statements of operations, shareholders' equity and cash flows of the Parent and the Dutch Pledgor as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Deloitte & Touche LLP, or other independent public accountants of recognized international standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Parent, the Borrower, the Dutch Pledgor and their respective consolidated subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, the unaudited consolidated balance sheet and related statements of operations, shareholders' equity and cash flows of each of the Parent, the Borrower and the Dutch Pledgor as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the

figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of the Borrower's Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Parent, the Borrower and their respective consolidated subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a compliance certificate of a Financial Officer of the Borrower in the form of Exhibit H hereto (i) certifying as to whether a Default has occurred and is continuing and, if a Default has occurred and is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.10 and setting forth the computations necessary to determine the Applicable Rate and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

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

(e) within 15 days after the end of each calendar month, a detailed description of the Dutch Pledgor's accounts receivable (prepared in a manner reasonably acceptable to the Administrative Agent), together with a summary specifying the name, address, other contact information and balance due for each account debtor in respect of such accounts, and any other information reasonably requested by the Administrative Agent in connection therewith, all certified by one of the Borrower's Financial Officers or their designee, which may include Parent's Assistant Treasurer, as presenting fairly in all material respects the description of such receivables; and

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

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

Borrower shall provide paper copies to the Administrative Agent of the compliance certificates required by Section 5.01(c). Notwithstanding the foregoing, the Borrower shall deliver paper copies of any financial statement referred to in Section 5.01 to the Administrative Agent if the Administrative Agent requests the Borrower to furnish such paper copies until written notice to cease delivering such paper copies is given by the Administrative Agent.

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

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

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

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

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

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

SECTION 5.06. Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made in all material respects and sufficient to prepare financial statements

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

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

SECTION 5.08. Use of Proceeds. The proceeds of the Loans will be used to fund a dividend to Parent in accordance with Section 965 of the Code. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

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

SECTION 5.10. Collateral. (a) The Borrower will cause Liquid Investments of the Borrower in an aggregate amount of not less than the then outstanding principal amount of the Tranche A Term Loans (on a margin-adjusted basis based on the requirements described on Exhibit G, as amended, restated supplemented or otherwise modified from time to time by the Administrative Agent with the consent of the Borrower) to be subject at all times (subject to the 5-Business Day period for mandatory prepayment set forth in Section 2.11(b)) to first priority, perfected Liens (subject only to Relevant Permitted Liens) in favor of the Administrative Agent for the benefit of the relevant Holders of Secured Obligations to secure the Secured Obligations in respect of Tranche A Term Loans and the Secured Obligations in respect of Swap Agreements

in accordance with the terms and conditions of the Collateral Documents and to take all such actions reasonably requested by the Administrative Agent in connection therewith.

(b) The Borrower will cause the Dutch Pledgor (and, to the extent requested by the Administrative Agent after the occurrence and during the continuation of an Event of Default, the Commissionaires) to grant first priority perfected Liens, subject only to Relevant Permitted Liens, on its accounts receivable and related assets in favor of the Administrative Agent for the benefit of the relevant Holders of Secured Obligations to secure the Secured Obligations in respect of the Tranche B Term Loans and the Secured Obligations in respect of Swap Agreements in accordance with the terms and conditions of the Dutch Pledge Agreement and the other Collateral Documents and to take all such actions reasonably requested by the Administrative Agent in connection therewith. Furthermore, the Borrower will not permit the Dutch Pledgor, any of the Dutch Pledgor's Subsidiaries and the Commissionaires to amend or otherwise modify (in any respect materially adverse to such Holders of Secured Obligations or the liens granted to the Administrative Agent in connection with such accounts receivable and related assets) the systems, structure and process (as in effect on, and disclosed to the Administrative Agent prior to, the Effective Date) applicable to the origination and collection of such accounts and related assets of the Dutch Pledgor, such Subsidiaries and such Commissionaires. This clause (b) shall cease to apply upon the repayment in full in cash of the Secured Obligations in respect of the Tranche B Term Loans.

(c) The Borrower further agrees to deliver, and (so long as the Secured Obligations in respect of the Tranche B Term Loans are not repaid in full in cash) cause (i) its applicable Material Subsidiaries and (ii) in the event an Event of Default has occurred and is continuing, the Commissionaires to deliver, in each case to the Administrative Agent all such Collateral Documents as are requested by the Administrative Agent, together with appropriate corporate resolutions and other corporate documentation (including, to the extent requested by the Administrative Agent, legal opinions and such other documents as shall be reasonably requested to perfect the Liens under the Collateral Documents) in each case in form and substance reasonably satisfactory to the Administrative Agent and its counsel, and in a manner that the Administrative Agent shall be reasonably satisfied that the Administrative Agent has a first priority perfected pledge of or charge over the Collateral related thereto, subject only to Relevant Permitted Liens.

## ARTICLE VI

### Negative Covenants

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

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

- (a) the Secured Obligations and any other Indebtedness created under the Loan Documents;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 to the Disclosure Letter and extensions, renewals and replacements of any such Indebtedness that do not increase the then outstanding principal amount thereof;

(c) Indebtedness of (i) any Loan Party to any other Loan Party, (ii) any Subsidiary to any Loan Party, (iii) any Subsidiary that is not a Loan Party to any other Subsidiary that is not a Loan Party and (iv) any Loan Party to any Subsidiary that is not a Loan Party, if permitted under Section 6.04(d);

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

(e) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvements of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets (and additions, accessions, parts, improvement and attachments thereto and the proceeds thereof) prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the then outstanding principal amount thereof; provided that (i) such Indebtedness is incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed \$25,000,000 at any time outstanding; and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;

(f) Indebtedness of any Person that becomes a Subsidiary after the date hereof; provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (ii) the aggregate principal amount of Indebtedness permitted by this clause (f) shall not exceed \$10,000,000 at any time outstanding and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;

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

(h) Subordinated Indebtedness in an aggregate principal amount not to exceed \$20,000,000 at any time outstanding;

(i) Indebtedness in respect of Swap Agreements permitted under Section 6.05; and

(j) other Indebtedness in an aggregate principal amount not exceeding \$20,000,000 at any time outstanding.

SECTION 6.02. Liens. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now

owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02 to the Disclosure Letter; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) Liens on fixed or capital assets (and additions, accessions, parts, improvements and attachments thereto and the proceeds thereof) acquired, constructed or improved by the Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Subsidiary;

(e) customary bankers' Liens and rights of setoff arising by operation of law or contract and incurred on deposits made in the ordinary course of business; and

(f) Liens created under the Collateral Documents.

SECTION 6.03. Fundamental Changes and Sales of Assets. (a) The Borrower will not, and will not permit any Subsidiary to, merge into, consolidate with, or otherwise be acquired by, any other Person, or permit any other Person to merge into, consolidate with, or otherwise be acquired by, it, or sell, transfer, lease or otherwise dispose (including pursuant to a Sale and Leaseback Transaction) of (in one transaction or in a series of transactions) any of its assets (other than (1) sales, leases, transfers or other dispositions of inventory in the ordinary course of business, (2) sales or dispositions of obsolete, damaged or worn-out or surplus equipment disposed of in the ordinary course of business, (3) non-exclusive licenses of intellectual property, (4) the granting of Liens permitted under Section 6.02, (5) the surrender or

waiver of litigation rights or settlement, release or surrender of tort or other litigation claims of any kind, and (6) dispositions of cash and cash equivalents), or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or here-after acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) the Borrower and its Subsidiaries may enter into and consummate Permitted Acquisitions, (ii) any Subsidiary may merge into a Loan Party in a transaction in which the surviving entity is such Loan Party (provided that any such merger involving the Borrower must result in the Borrower as the surviving entity), (iii) any wholly owned Subsidiary may merge into or consolidate with any wholly owned Subsidiary in a transaction in which the surviving entity is a wholly owned Subsidiary and no Person other than the Borrower or a wholly owned Subsidiary receives any consideration, provided that if any such merger described in this clause (iii) shall involve a Loan Party, the surviving entity of such merger shall be a Loan Party, (iv) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to a Loan Party or any wholly owned Subsidiary pursuant to a transaction not otherwise prohibited under this Agreement, (v) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (vi) the Borrower or any Subsidiary may otherwise sell, transfer, lease or dispose (including pursuant to a Sale and Leaseback Transaction) of its assets (other than all or substantially all of the assets of the Dutch Pledgor) so long as the assets sold or disposed by the Borrower and its Subsidiaries in any fiscal year do not exceed, in the aggregate, \$20,000,000.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto.

(c) The Borrower will not, and will not permit any of its Subsidiaries to, change its fiscal year to end on a day other than as such fiscal year end is currently determined or change the Borrower's method of determining fiscal quarters.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, except:

(a) Permitted Investments;

(b) Permitted Acquisitions;

(c) investments by the Borrower existing on the date hereof in the capital stock of its Subsidiaries;



(d) investments, loans or advances made by the Borrower to any Subsidiary and made by any Subsidiary to the Borrower or any other Subsidiary (provided that (A) not more than an aggregate of \$10,000,000 in investments, loans, advances or capital contributions (other than payments of commissions to Commissionaires) may be made and remain outstanding, during the term of this Agreement, by Loan Parties to Persons which are not Loan Parties, (B) not more than an aggregate of \$50,000,000 in payments of commissions may be outstanding at any time during the term of this Agreement by Loan Parties to Commissionaires and (C) payments to Commissionaires for value added taxes owed by such Commissionaire for receivables transferred to the Dutch Pledgor may be made);

(e) Guarantees constituting Indebtedness permitted by Section 6.01;

(f) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(g) receivables owing to the Borrower or a Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided that such trade terms may include such concessionary trade terms as the Borrower or any such Subsidiary deems reasonable under the circumstances;

(h) investments consisting of Equity Interests, obligations, securities or other property received in settlement of delinquent accounts in the ordinary course of business and owing to the Borrower or any Subsidiary or in satisfaction of judgments;

(i) investments in payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(j) loans or advances to employees made in the ordinary course of business of the Borrower or a Subsidiary not exceeding \$2,000,000 in the aggregate outstanding at any one time;

(k) Guarantees by the Borrower and the Subsidiaries of leases entered into by any Subsidiary as lessee;

(l) investments in the form of Swap Agreements permitted under Section 6.05;

(m) investments consisting of deposit and securities accounts maintained in the ordinary course of business;

(n) investments acquired by Borrower or any of its Subsidiaries (i) in exchange for any other investment held by Borrower or such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such investment, or (ii) as a result of a foreclosure by Borrower or any of its Subsidiaries with respect to any secured investment or other transfer of title with respect to any secured investment in default;

(o) Indebtedness permitted under Section 6.01(c)(i), (ii) or (iii); and

(p) other investments in an aggregate amount, as valued at the time each such investment is made, not exceeding \$15,000,000 in the aggregate for all such investments made from and after the Effective Date.

SECTION 6.05. Swap Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests or Subordinated Indebtedness of the Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

SECTION 6.06. Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except (a) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its capital stock, (b) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, (c) the Borrower may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans for current or former management, directors or employees of the Borrower and its Subsidiaries and (d) Borrower may declare and pay the dividend contemplated by Section 5.08.

SECTION 6.07. Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly owned Subsidiaries not involving any other Affiliate, (c) any Restricted Payment permitted by Section 6.06, any Indebtedness permitted by Section 6.01 and any investment permitted by Section 6.04, (d) to pay customary fees and reimburse out-of-pocket expenses of directors or (e) as set forth on the Disclosure Letter.

SECTION 6.08. Restrictive Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.08 to the Disclosure Letter (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of assets or of a Subsidiary pending such sale, provided such restrictions and conditions apply only to such assets or such Subsidiary that

are to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases, licenses, joint venture agreements and other agreements entered into in the ordinary course of business restricting the assignment thereof.

SECTION 6.09. Subordinated Indebtedness and Amendments to Subordinated Indebtedness Documents. The Borrower will not, and will not permit any Subsidiary to, directly or indirectly voluntarily prepay, defease or in substance defease, purchase, redeem, retire or otherwise acquire, any Subordinated Indebtedness or any Indebtedness from time to time outstanding under the Subordinated Indebtedness Documents. Furthermore, the Borrower will not, and will not permit any Subsidiary to, amend the Subordinated Indebtedness Documents or any document, agreement or instrument evidencing any Indebtedness incurred pursuant to the Subordinated Indebtedness Documents (or any replacements, substitutions, extensions or renewals thereof) or pursuant to which such Indebtedness is issued where such amendment, modification or supplement provides for the following or which has any of the following effects:

- (a) increases the overall principal amount of any such Indebtedness or increases the amount of any single scheduled installment of principal or interest;
- (b) shortens or accelerates the date upon which any installment of principal or interest becomes due or adds any additional mandatory redemption provisions;
- (c) shortens the final maturity date of such Indebtedness or otherwise accelerates the amortization schedule with respect to such Indebtedness;
- (d) increases the rate of interest accruing on such Indebtedness;
- (e) provides for the payment of additional fees or increases existing fees;

(f) amends or modifies any financial or negative covenant (or covenant which prohibits or restricts the Borrower or any Subsidiary from taking certain actions) in a manner which is more onerous or more restrictive in any material respect to the Borrower or such Subsidiary or which is otherwise materially adverse to the Borrower, any Subsidiary and/or the Lenders or, in the case of any such covenant, which places material additional restrictions on the Borrower or such Subsidiary or which requires the Borrower or such Subsidiary to comply with more restrictive financial ratios or which requires the Borrower to better its financial performance, in each case from that set forth in the existing applicable covenants in the Subordinated Indebtedness Documents or the applicable covenants in this Agreement; or

(g) amends, modifies or adds any affirmative covenant in a manner which (i) when taken as a whole, is materially adverse to the Borrower, any Subsidiary and/or the Lenders or (ii) is more onerous than the existing applicable covenant in the Subordinated Indebtedness Documents or the applicable covenant in this Agreement.

SECTION 6.10. Financial Covenants.

(a) The Borrower will not permit the Liquidity Ratio to be less than 1.0 to 1.0.

(b) The Borrower will not permit the Leverage Ratio to be greater than 2.5 to 1.0; provided that this Section 6.10(b) shall cease to apply upon the repayment in full in cash of the Tranche B Term Loans.

## ARTICLE VII

### Events of Default

If any of the following events ("Events of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days;

(c) any written representation or warranty made or deemed made by or on behalf of any Loan Party in or in connection with Agreement or any other Loan Document or any amendment or modification thereof or waiver thereunder, or in any written report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) (i) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to the Borrower's existence), 5.08, 5.09 or 5.10 or in Article VI or (ii) any Loan Document shall for any reason not be or shall cease to be in full force and effect or is declared to be null and void, or the Borrower or any Subsidiary takes any action for the purpose of terminating, repudiating or rescinding any Loan Document or any of its obligations thereunder or any Lien in favor of the Administrative Agent under the Loan Documents shall not have the priority contemplated by the Loan Documents, subject to Relevant Permitted Liens;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of the Required Lenders);

(f) the Borrower or any Subsidiary shall fail to make any payment of principal or interest in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace period;

(g) with respect to any Material Indebtedness, any event or condition occurs that results in such Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Parent, the Borrower or any Material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent, the Borrower or any Material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Parent, the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent, the Borrower or any Material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Parent, the Borrower or any Material Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$40,000,000 (to the extent not covered by a creditworthy insurer) shall be rendered against the Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor holding a judgment in excess of \$40,000,000 to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the reasonable opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; or

(m) a Change in Control shall occur;

then, and in every such event (other than an event with respect to the Parent or the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take the following actions, at the same or different times: declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Secured Obligations accrued under the Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Parent or the Borrower described in clause (h) or (i) of this Article, the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Secured Obligations accrued under the Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the Uniform Commercial Code (as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests under any of the Collateral Documents) and the Netherlands Civil Code.

## ARTICLE VIII

### The Administrative Agent

Each of the Lenders hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth herein, the Administrative Agent

shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Parent, the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent..

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for one or more of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank.

Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder.

None of the Lenders, if any, identified in this Agreement as a Syndication Agent or Co-Documentation Agent shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to the relevant Lenders in their respective capacities as Syndication Agent or Co-Documentation Agents, as applicable, as it makes with respect to the Administrative Agent in the preceding paragraph.

Except with respect to the exercise of setoff rights of any Lender, in accordance with Section 9.08, the proceeds of which are applied in accordance with this Agreement, each Lender agrees that it will not take any action, nor institute any actions or proceedings, against the Borrower or with respect to any Loan Document, without the prior written consent of the Required Lenders or, as may be provided in this Agreement or the other Loan Documents, with the consent of the Administrative Agent.

The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

In its capacity, the Administrative Agent is a "representative" of the Holders of Secured Obligations within the meaning of the term "secured party" as defined in the New York Uniform Commercial Code. Each Lender authorizes the Administrative Agent to enter into each of the Collateral Documents to which it is a party and to take all action contemplated by such



documents. Each Lender agrees that no Holder of Secured Obligations (other than the Administrative Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Administrative Agent for the benefit of the relevant Holders of Secured Obligations upon the terms of the Collateral Documents. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the relevant Holders of Secured Obligations any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the relevant Holders of Secured Obligations. The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Commitments and payment and satisfaction of all of the Secured Obligations (other than contingent indemnity obligations and Secured Obligations in respect of Swap Agreements) at any time arising under or in respect of this Agreement or the Loan Documents or the transactions contemplated hereby or thereby; (ii) as permitted by, but only in accordance with, the terms of the applicable Loan Document; or (iii) if approved, authorized or ratified in writing by the Required Lenders, unless such release is required to be approved by all of the Lenders hereunder. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant hereto. Upon any sale or transfer of assets constituting Collateral which is permitted pursuant to the terms of any Loan Document, or consented to in writing by the Required Lenders or all of the Lenders, as applicable, and upon at least five Business Days' prior written request by the Borrower to the Administrative Agent, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Administrative Agent for the benefit of the relevant Holders of Secured Obligations herein or pursuant hereto upon the Collateral that was sold or transferred; provided, however, that (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent's opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Secured Obligations or any Liens upon (or obligations of the Borrower or any Subsidiary in respect of) all interests retained by the Borrower or any Subsidiary, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral.

The Administrative Agent is hereby authorized to execute and deliver any documents necessary or appropriate to create and perfect the rights of pledge for the benefit of the relevant Holders of Secured Obligations, including a right of pledge with respect to the assets and other interests of the Dutch Pledgor (including without limitation the Dutch Pledge Agreement, a "Dutch Pledge"). Without prejudice to the provisions of this Agreement and the other Loan Documents, the parties hereto acknowledge and agree with the creation of parallel debt obligations of the Borrower or any relevant Subsidiary as will be described in any Dutch Pledge (the "Parallel Debt"), including that any payment received by the Administrative Agent in respect of the Parallel Debt will — conditionally upon such payment not subsequently being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, preference, liquidation or similar laws of general application — be deemed a satisfaction of a pro

rata portion of the corresponding amounts of the Secured Obligations, and any payment to the Holders of Secured Obligations in satisfaction of the Secured Obligations shall — conditionally upon such payment not subsequently being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, preference, liquidation or similar laws of general application — be deemed as satisfaction of the corresponding amount of the Parallel Debt. The parties hereto acknowledge and agree that, for purposes of a Dutch Pledge, any resignation by the Administrative Agent is not effective until its contractual relationship under the Parallel Debt, including all of its rights and obligations thereunder, is transferred to the successor Administrative Agent.

## ARTICLE IX

### Miscellaneous

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at 495 East Java Drive, Sunnyvale, California 94089, Attention of Steve Gomo, Chief Financial Officer (Telecopy No. (408) 822-4412), with a copy to 495 East Java Drive, Sunnyvale, California 94089, Attention of Christopher Afarian (Telecopy No. (408) 822-4455);

(ii) if to the Administrative Agent, to JPMorgan Chase Bank, National Association, 10 South Dearborn, 19<sup>th</sup> Floor, Chicago, Illinois 60603, Attention of Deborah Turner (Telecopy No. (312) 385-7096), with a copy to JPMorgan Chase Bank, National Association, 560 Mission Street, 18<sup>th</sup> Floor, San Francisco, California 94105, Attention of Alex McKindra (Telecopy No. (415) 315-8483) and JPMorgan Chase Bank, National Association, 277 Park Avenue, 16<sup>th</sup> Floor, New York, New York 10172, Attention of Anthony Galea (Telecopy No. (866) 682-7113); and

(iii) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other

communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (ii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iii) change Section 2.18(c) or (d) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (iv) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder or (v) release all or substantially all of the Subsidiary Guarantors from, their respective obligations under the Subsidiary Guaranty or release all or substantially all of the Collateral, without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent or any Lender, including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent or any Lender, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the

Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) The Borrower shall indemnify the Administrative Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability of the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory to the extent any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, the Loan Documents or any agreement or instrument contemplated thereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors

and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of the Administrative Agent and (so long as no Event of Default has occurred and is continuing or the assignment is to a Person other than a Lender, an Affiliate of a Lender or an Approved Fund) upon consultation with the Borrower.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Loans of any Class, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless the Administrative Agent otherwise consents;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its affiliates, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the term "Approved Fund" has the following meaning:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.07(b), 2.18(e) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and

directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(d) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.15 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 2.17 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.17(e) and (f) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the

Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the Secured Obligations now or hereafter existing held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmaturred. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Immunity. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or their respective properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to



the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law. The Borrower irrevocably designates and appoints the Parent as its authorized agent, to accept and acknowledge on its behalf, service of any and all process which may be served in any suit, action or proceeding of the nature referred to in Section 9.09(b) in any federal or New York State court sitting in New York City. Said designation and appointment shall be irrevocable by the Borrower until all Loans, all interest thereon and all other amounts payable by the Borrower hereunder and under the other Loan Documents shall have been paid in full in accordance with the provisions hereof and thereof. The Borrower hereby consents to process being served in any suit, action or proceeding of the nature referred to in Section 9.09(b) in any federal or New York State court sitting in New York City by service of process upon the Parent as provided in this Section 9.09(d). The Borrower irrevocably waives, to the fullest extent permitted by law, all claim of error by reason of any such service in such manner and agrees that such service shall be deemed in every respect effective service of process upon the Borrower in any such suit, action or proceeding and shall, to the fullest extent permitted by law, be taken and held to be valid and personal service upon and personal delivery to the Borrower. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(e) To the extent that the Borrower may be or become entitled to claim for itself or its property any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under the Loan Documents.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a need to know basis to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and their respective obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or any agreement contemplated by clause (f) of this Section or (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower, the Parent, any Subsidiary or their respective business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

**ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER**

**AND ITS AFFILIATES, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES) AND ITS SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.**

SECTION 9.13. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

NETWORK APPLIANCE GLOBAL LTD., as the Borrower

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

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, individually as  
a Lender and as Administrative Agent

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

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SCHEDULE 2.01  
COMMITMENTS

<u>LENDER</u>	<u>TRANCHE A TERM LOAN COMMITMENT</u>	<u>TRANCHE B TERM LOAN COMMITMENT</u>	<u>TOTAL COMMITMENT</u>
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION	\$220,000,000	\$ 80,000,000	\$300,000,000

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EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the “Assignor”) and [*Insert name of Assignee*] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (as amended, the “Loan Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
  
2. Assignee: \_\_\_\_\_  
[and is an Affiliate/Approved Fund of [*identify Lender*]<sup>1</sup>]
  
3. Borrower(s): Network Appliance Global Ltd.
  
4. Administrative Agent: JPMorgan Chase Bank, National Association, as the administrative agent under the Loan Agreement

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<sup>1</sup> Select as applicable.

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5. Loan Agreement: The Loan Agreement dated as of March 31, 2006 among Network Appliance Global Ltd., the Lenders parties thereto and JPMorgan Chase Bank, National Association, as Administrative Agent

6. Assigned Interest:

Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans <sup>2</sup>
\$	\$	%
\$	\$	%
\$	\$	%

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

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

Title:

ASSIGNEE

[NAME OF ASSIGNEE]

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

Title:

<sup>2</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

Consented to and Accepted:

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION, as Administrative  
Agent

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



[\_\_\_\_\_]<sup>1</sup>STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it satisfies the requirements, if any, specified in the Loan Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

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<sup>1</sup> Describe Loan Agreement at option of Administrative Agent.

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2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT B-1  
FORM OF OPINION OF BORROWER'S BERMUDA COUNSEL  
[ATTACHED]

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EXHIBIT B-2  
FORM OF OPINION OF LOAN PARTIES' U.S. COUNSEL  
[ATTACHED]

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EXHIBIT B-3  
FORM OF OPINION OF LOAN PARTIES' DUTCH COUNSEL  
[ATTACHED]

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EXHIBIT B-4  
FORM OF OPINION OF LOAN PARTIES' CYPRUS COUNSEL  
[ATTACHED]

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EXHIBIT C

LIST OF CLOSING DOCUMENTS

**NETWORK APPLIANCE GLOBAL LTD.**

**CREDIT FACILITIES**

March 31, 2006

LIST OF CLOSING DOCUMENTS<sup>1</sup>

**A. LOAN DOCUMENTS**

1. Loan Agreement (the "Loan Agreement") by and among Network Appliance Global Ltd., an exempted company incorporated with limited liability under the laws of Bermuda (the "Borrower"), the institutions from time to time parties thereto as Lenders (the "Lenders") and JPMorgan Chase Bank, National Association, in its capacity as Administrative Agent for itself and the other Lenders (the "Administrative Agent"), evidencing term loan facilities to the Borrower from the Lenders in an aggregate principal amount of \$300,000,000.

EXHIBITS

Exhibit A	—	Form of Assignment and Assumption
Exhibit B-1	—	Form of Opinion of Borrower's Bermuda Counsel
Exhibit B-2	—	Form of Opinion of Loan Parties' U.S. Counsel
Exhibit B-3	—	Form of Opinion of Loan Parties' Dutch Counsel
Exhibit B-4	—	Form of Opinion of Loan Parties' Cyprus Counsel
Exhibit C	—	List of Closing Documents
Exhibit D	—	Form of Subsidiary Guaranty
Exhibit E	—	Form of Pledge Agreement
Exhibit F	—	Form of Control Agreement
Exhibit G	—	Margin Requirements
Exhibit H	—	Form of Compliance Certificate

2. Disclosure Letter executed by the Borrower in favor of the Administrative Agent and the Lenders.

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<sup>1</sup> Each capitalized term used herein and not defined herein shall have the meaning assigned to such term in the above-defined Loan Agreement. Items appearing in **bold** and *italics* shall be prepared and/or provided by the Loan Parties and/or Loan Parties' counsel

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3. Guaranty executed by the initial Subsidiary Guarantors (collectively with the Borrower, the "Loan Parties") in favor of the Administrative Agent.
4. Pledge Agreement executed by the Borrower in favor of the Administrative Agent.
5. Tri-Party Control Agreement executed by the Borrower, the Administrative Agent and J.P. Morgan Securities Inc.
6. Dutch Pledge of Receivables executed by the Dutch Pledgor in favor of the Administrative Agent.

#### B. CORPORATE DOCUMENTS

7. *Certificate of a Director, Secretary, Assistant Secretary or other duly appointed and authorized officer of each Loan Party certifying (i) that there have been no changes in the Certificate of Incorporation or other charter document of such Loan Party, as attached thereto and as certified as of a recent date by the Registrar of Companies or Secretary of State (or analogous governmental entity) of the jurisdiction of its incorporation or organization, since the date of the certification thereof by such registrar of companies or secretary of state, (ii) the Memorandum and Articles of Incorporation, By-Laws or other applicable organizational or constitutional document, as attached thereto, of such Loan Party as in effect on the date of such certification, (iii) resolutions of the Board of Directors or other governing body of such Loan Party authorizing the execution, delivery and performance of each Loan Document to which it is a party, and (iv) the names and true signatures of the incumbent officers of each Loan Party authorized to sign the Loan Documents to which it is a party, and (in the case of the Borrower) authorized to request a Borrowing under the Loan Agreement.*
8. *Good Standing Certificate for each Loan Party from the Registrar of Companies or Secretary of State (or analogous governmental entity) of the jurisdiction of its organization.*



**C. OPINIONS**

9. *Opinion of Appleby Spurling Hunter, Bermuda counsel for the Borrower.*
10. *Opinion of Wilson Sonsini Goodrich & Rosati, U.S. counsel for the Loan Parties.*
11. *Opinion of Kennedy Van der Laan, Dutch counsel for the Loan Parties.*
12. *Opinion of Chrysses Demetriades & Co, Cyprus counsel for the Loan Parties.*

**D. CLOSING CERTIFICATES AND MISCELLANEOUS**

13. *A Certificate signed by a member of the Board of Directors (including without limitation the Financial Officer) of the Borrower certifying the following: (i) all of the representations and warranties of the Borrower set forth in the Loan Agreement are true and correct and (ii) no Default has occurred and is then continuing.*

EXHIBIT D  
FORM OF SUBSIDIARY GUARANTY  
GUARANTY

THIS GUARANTY (as amended, restated, supplemented or otherwise modified from time to time, this "Guaranty") is made as of the 31st day of March, 2006, by and among each of the undersigned (the "Initial Guarantors") and along with any additional Subsidiaries of the Borrower which become parties to this Guaranty by executing a supplement hereto in the form attached as Annex I, the "Guarantors") in favor of the Administrative Agent, for the ratable benefit of the Holders of Secured Obligations (as defined below), under the Loan Agreement referred to below.

WITNESSETH

WHEREAS, NETWORK APPLIANCE GLOBAL LTD., an exempted company incorporated with limited liability under the laws of Bermuda (the "Borrower"), the institutions from time to time parties thereto as lenders (the "Lenders"), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, in its capacity as contractual representative (the "Administrative Agent") for itself and the other Lenders, have entered into a certain Loan Agreement dated as of March 31, 2006 (as the same may be amended, modified, supplemented and/or restated, and as in effect from time to time, the "Loan Agreement"), providing, subject to the terms and conditions thereof, for extensions of credit and other financial accommodations to be made by the Lenders to the Borrower;

WHEREAS, it is a condition precedent to the extension of credit by the Lenders under the Loan Agreement that each of the Guarantors (constituting all of the Subsidiaries of the Borrower required to execute this Guaranty pursuant to Section 5.09 of the Loan Agreement) execute and deliver this Guaranty, whereby each of the Guarantors shall guarantee the payment when due of all Secured Obligations; and

WHEREAS, in consideration of the direct and indirect financial and other support that the Borrower has provided, and such direct and indirect financial and other support as the Borrower may in the future provide, to the Guarantors, and in order to induce the Lenders and the Administrative Agent to enter into the Loan Agreement, each of the Guarantors is willing to guarantee the Secured Obligations of the Borrower;

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

SECTION 1. Definitions. Terms defined in the Loan Agreement and not otherwise defined herein have, as used herein, the respective meanings provided for therein.

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SECTION 2. Representations, Warranties and Covenants. Each of the Guarantors represents and warrants that:

(A) It is a corporation, partnership or limited liability company duly and properly incorporated or organized, as the case may be, validly existing and (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation, organization or formation and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except to the extent that the failure to have such authority could not reasonably be expected to have a Material Adverse Effect.

(B) It (to the extent applicable) has the requisite power and authority and legal right to execute and deliver this Guaranty and to perform its obligations hereunder. The execution and delivery by each Guarantor of this Guaranty and the performance by each of its obligations hereunder have been duly authorized by proper proceedings, and this Guaranty constitutes a legal, valid and binding obligation of such Guarantor, respectively, enforceable against such Guarantor, respectively, in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(C) Neither the execution and delivery by it of this Guaranty, nor the consummation by it of the transactions herein contemplated, nor compliance by it with the provisions hereof will (i) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on it or its articles or certificate of incorporation (or equivalent charter documents), limited liability company or partnership agreement, certificate of partnership, articles or certificate of organization, by-laws, or operating agreement or other management agreement, as the case may be, or the provisions of any indenture, material instrument or material agreement to which the Borrower or any of its Subsidiaries is a party or is subject, or by which it, or its property, is bound, or (ii) conflict with, or constitute a default under, or result in, or require, the creation or imposition of any Lien in, of or on its property pursuant to the terms of, any such indenture, material instrument or material agreement (other than any Loan Document). No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority, or any subdivision thereof, which has not been obtained by it, is required to be obtained by it in connection with the execution, delivery and performance by it of, or the legality, validity, binding effect or enforceability against it of, this Guaranty.

In addition to the foregoing, each of the Guarantors covenants that, so long as any Lender has any Commitment outstanding under the Loan Agreement or any amount payable under the Loan Agreement or any other Guaranteed Obligations (as defined below) shall remain unpaid, it will, and, if necessary, will enable the Borrower to, fully comply with those covenants and agreements of the Borrower applicable to such Guarantor set forth in the Loan Agreement.

SECTION 3. The Guaranty. Each of the Guarantors hereby unconditionally guarantees, jointly with the other Guarantors and severally, the full and punctual payment and performance when due (whether at stated maturity, upon acceleration or otherwise) of the Secured Obligations, including, without limitation, (i) the principal of and interest on each Loan made to the Borrower pursuant to the Loan Agreement, (ii) all obligations of the Borrower owing to any Lender or any affiliate of any Lender under any Swap Agreement, (iii) all other amounts payable by the Borrower or any of its Subsidiaries under the Loan Agreement, any Swap Agreement and the other Loan Documents and (iv) the punctual and faithful performance, keeping, observance, and fulfillment by the Borrower of all of the agreements, conditions, covenants, and obligations of the Borrower contained in the Loan Documents (all of the foregoing being referred to collectively as the "Guaranteed Obligations" and the holders from time to time of the Guaranteed Obligations being referred to collectively as the "Holder of Secured Obligations"). Upon (x) the failure by the Borrower or any of its Affiliates, as applicable, to pay punctually any such amount or perform such obligation, and (y) such failure continuing beyond any applicable grace or notice and cure period, each of the Guarantors agrees that it shall forthwith on demand pay such amount or perform such obligation at the place and in the manner specified in the Loan Agreement, any Swap Agreement or the relevant Loan Document, as the case may be. Each of the Guarantors hereby agrees that this Guaranty is an absolute, irrevocable and unconditional guaranty of payment and is not a guaranty of collection.

SECTION 4. Guaranty Unconditional. The obligations of each of the Guarantors hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

- (A) any extension, renewal, settlement, indulgence, compromise, waiver or release of or with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations, whether (in any such case) by operation of law or otherwise, or any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations;
- (B) any modification or amendment of or supplement to the Loan Agreement, any Swap Agreement or any other Loan Document, including, without limitation, any such amendment which may increase the amount of, or the interest rates applicable to, any of the Secured Obligations guaranteed hereby;
- (C) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any collateral securing the Guaranteed Obligations or any part thereof, any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof, or any nonperfection or invalidity of any direct or indirect security for the Guaranteed Obligations;

(D) any change in the corporate, partnership or other existence, structure or ownership of the Borrower or any other guarantor of any of the Guaranteed Obligations, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower or any other guarantor of the Guaranteed Obligations, or any of their respective assets or any resulting release or discharge of any obligation of the Borrower or any other guarantor of any of the Guaranteed Obligations;

(E) the existence of any claim, setoff or other rights which the Guarantors may have at any time against the Borrower, any other guarantor of any of the Guaranteed Obligations, the Administrative Agent, any Holder of Secured Obligations or any other Person, whether in connection herewith or in connection with any unrelated transactions; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(F) the enforceability or validity of the Guaranteed Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto or with respect to any collateral securing the Guaranteed Obligations or any part thereof, or any other invalidity or unenforceability relating to or against the Borrower or any other guarantor of any of the Guaranteed Obligations, for any reason related to the Loan Agreement, any Swap Agreement, any other Loan Document, or any provision of applicable law, decree, order or regulation of any jurisdiction purporting to prohibit the payment by the Borrower or any other guarantor of the Guaranteed Obligations, of any of the Guaranteed Obligations or otherwise affecting any term of any of the Guaranteed Obligations;

(G) the failure of the Administrative Agent to take any steps to perfect and maintain any security interest in, or to preserve any rights to, any security or collateral for the Guaranteed Obligations, if any;

(H) the election by, or on behalf of, any one or more of the Holders of Secured Obligations, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code;

(I) any borrowing or grant of a security interest by the Borrower, as debtor-in-possession, under Section 364 of the Bankruptcy Code;

(J) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims of the Holders of Secured Obligations or the Administrative Agent for repayment of all or any part of the Guaranteed Obligations;

(K) the failure of any other guarantor to sign or become party to this Guaranty or any amendment, change, or reaffirmation hereof; or

(L) any other act or omission to act or delay of any kind by the Borrower, any other guarantor of the Guaranteed Obligations, the Administrative Agent, any Holder of

Secured Obligations or any other Person or any other circumstance whatsoever which might, but for the provisions of this Section 4, constitute a legal or equitable discharge of any Guarantor's obligations hereunder except as provided in Section 5.

SECTION 5. Discharge Only Upon Payment In Full: Reinstatement In Certain Circumstances. Each of the Guarantors' obligations hereunder shall remain in full force and effect until all Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) shall have been paid in full in cash. If at any time any payment of the principal of or interest on any Loan or any other amount payable by the Borrower or any other party under the Loan Agreement, any Swap Agreement or any other Loan Document is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, each of the Guarantors' obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time. The parties hereto acknowledge and agree that each of the Guaranteed Obligations shall be due and payable in the same currency as such Guaranteed Obligation is denominated but if currency control or exchange regulations are imposed in the country which issues such currency with the result such currency (the "Original Currency") no longer exists or the relevant Guarantor is not able to make payment in such Original Currency, then all payments to be made by such Guarantor hereunder in such currency shall instead be made when due in dollars in an amount equal to the Dollar Amount (as of the date of payment) of such payment due, it being the intention of the parties hereto that each Guarantor takes all risks of the imposition of any such currency control or exchange regulations. As used herein, "Dollar Amount" of any currency means the equivalent in such currency of such amount of dollars, most recently calculated by the Administrative Agent on the basis of the arithmetical mean of the buy and sell spot rates of exchange of the Administrative Agent for such currency on the London market.

SECTION 6. General Waivers: Additional Waivers.

(A) General Waivers. Each of the Guarantors irrevocably waives acceptance hereof, presentment, demand or action on delinquency, protest, the benefit of any statutes of limitations and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against the Borrower, any other guarantor of the Guaranteed Obligations, or any other Person.

(B) Additional Waivers. Notwithstanding anything herein to the contrary, each of the Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives:

(i) any right it may have to revoke this Guaranty as to future indebtedness under the Loan Documents;

(ii) (a) notice of acceptance hereof; (b) notice of any loans or other financial accommodations made or extended under the Loan Documents or the creation or existence of any Guaranteed Obligations; (c) notice of the amount of the Guaranteed Obligations, subject, however, to each Guarantor's right to make inquiry of

Administrative Agent and Holders of Secured Obligations to ascertain the amount of the Guaranteed Obligations at any reasonable time; (d) notice of any adverse change in the financial condition of the Borrower or of any other fact that might increase such Guarantor's risk hereunder; (e) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents; (f) notice of any Default or Event of Default; and (g) all other notices (except if such notice is specifically required to be given to such Guarantor hereunder or under the Loan Documents) and demands to which each Guarantor might otherwise be entitled;

(iii) its right, if any, to require the Administrative Agent and the other Holders of Secured Obligations to institute suit against, or to exhaust any rights and remedies which the Administrative Agent and the other Holders of Secured Obligations has or may have against, the other Guarantors or any third party, or against any Collateral provided by the other Guarantors, or any third party; and each Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and indefeasibly paid) of the other Guarantors or by reason of the cessation from any cause whatsoever of the liability of the other Guarantors in respect thereof;

(iv) (a) any rights to assert against the Administrative Agent and the other Holders of Secured Obligations any defense (legal or equitable), set-off, counterclaim, or claim which such Guarantor may now or at any time hereafter have against the other Guarantors or any other party liable to the Administrative Agent and the other Holders of Secured Obligations; (b) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Guaranteed Obligations or any security therefor; (c) any defense such Guarantor has to performance hereunder, and any right such Guarantor has to be exonerated, arising by reason of: the impairment or suspension of the Administrative Agent's and the other Holders of Secured Obligations' rights or remedies against the other Guarantors; the alteration by the Administrative Agent and the other Holders of Secured Obligations of the Guaranteed Obligations; any discharge of the other Guarantors' obligations to the Administrative Agent and the other Holders of Secured Obligations by operation of law as a result of the Administrative Agent's and the other Holders of Secured Obligations' intervention or omission; or the acceptance by the Administrative Agent and the other Holders of Secured Obligations of anything in partial satisfaction of the Guaranteed Obligations; and (d) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Guarantor's liability hereunder; and

(v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Administrative Agent and the other Holders of Secured Obligations; or (b) any election by the Administrative Agent and the other Holders of Secured Obligations under Section 1111(b) of Title 11 of the United States

Code entitled "Bankruptcy", as now and hereafter in effect (or any successor statute), to limit the amount of, or any collateral securing, its claim against the Guarantors.

**SECTION 7. Subordination of Subrogation; Subordination of Intercompany Indebtedness.**

(A) Subordination of Subrogation. Until the Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) have been indefeasibly paid in full in cash, the Guarantors (i) shall have no right of subrogation with respect to such Guaranteed Obligations and (ii) waive any right to enforce any remedy which the Holders of Secured Obligations or the Administrative Agent now have or may hereafter have against the Borrower, any endorser or any guarantor of all or any part of the Guaranteed Obligations or any other Person, and, until the Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) have been indefeasibly paid in full in cash, the Guarantors waive any benefit of, and any right to participate in, any security or collateral given to the Holders of Secured Obligations and the Administrative Agent to secure the payment or performance of all or any part of the Guaranteed Obligations or any other liability of the Borrower to the Holders of Secured Obligations. Should any Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights, each Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off that such Guarantor may have to the indefeasible payment in full in cash of the Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until the Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) are indefeasibly paid in full in cash. Each Guarantor acknowledges and agrees that this subordination is intended to benefit the Administrative Agent and the other Holders of Secured Obligations and shall not limit or otherwise affect such Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Administrative Agent, the other Holders of Secured Obligations and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 7(a).

(B) Subordination of Intercompany Indebtedness. Each Guarantor agrees that any and all claims of such Guarantor against the Borrower or any other Guarantor hereunder (each an "Obligor") with respect to any "Intercompany Indebtedness" (as hereinafter defined), any endorser, obligor or any other guarantor of all or any part of the Guaranteed Obligations, or against any of its properties shall be subordinate and subject in right of payment to the prior payment, in full and in cash, of all Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements); provided that, as long as no Event of Default has occurred and is continuing, such Guarantor may receive payments of principal and interest from any Obligor with respect to Intercompany Indebtedness. Notwithstanding any right of any Guarantor to ask, demand, sue for, take or receive any payment from any Obligor, all



rights, liens and security interests of such Guarantor, whether now or hereafter arising and howsoever existing, in any assets of any other Obligor shall be and are subordinated to the rights of the Holders of Secured Obligations and the Administrative Agent in those assets. No Guarantor shall have any right to possession of any such asset or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until all of the Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) shall have been fully paid and satisfied (in cash) and all financing arrangements pursuant to any Loan Document have been terminated. If all or any part of the assets of any Obligor, or the proceeds thereof, are subject to any distribution, division or application to the creditors of such Obligor, whether partial or complete, voluntary or involuntary, and whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding, or if the business of any such Obligor is dissolved or if substantially all of the assets of any such Obligor are sold, then, and in any such event (such events being herein referred to as an “Insolvency Event”), any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any indebtedness of any Obligor to any Guarantor (“Intercompany Indebtedness”) shall be paid or delivered directly to the Administrative Agent for application on any of the Guaranteed Obligations, due or to become due, until such Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) shall have first been fully paid and satisfied (in cash). Should any payment, distribution, security or instrument or proceeds thereof be received by the applicable Guarantor upon or with respect to the Intercompany Indebtedness after any Insolvency Event and prior to the satisfaction of all of the Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) and the termination of all financing arrangements pursuant to any Loan Document among the Borrower and the Holders of Secured Obligations, such Guarantor shall receive and hold the same in trust, as trustee, for the benefit of the Holders of Secured Obligations and shall forthwith deliver the same to the Administrative Agent, for the benefit of the Holders of Secured Obligations, in precisely the form received (except for the endorsement or assignment of the Guarantor where necessary), for application to any of the Guaranteed Obligations, due or not due, and, until so delivered, the same shall be held in trust by the Guarantor as the property of the Holders of Secured Obligations. If any such Guarantor fails to make any such endorsement or assignment to the Administrative Agent, the Administrative Agent or any of its officers or employees is irrevocably authorized to make the same. Each Guarantor agrees that until the Guaranteed Obligations (other than the contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) have been paid in full (in cash) and satisfied and all financing arrangements pursuant to any Loan Document among the Borrower and the Holders of Secured Obligations have been terminated, except as otherwise permitted by the Loan Agreement, no Guarantor will assign or transfer to any Person (other than the Administrative Agent) any claim any such Guarantor has or may have against any Obligor.

SECTION 8. Contribution with Respect to Guaranteed Obligations.

(A) To the extent that any Guarantor shall make a payment under this Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) satisfied by such Guarantor Payment in the same proportion as such Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) and termination of the Loan Agreement, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(B) As of any date of determination, the "Allocable Amount" of any Guarantor shall be equal to the maximum amount of the claim which could then be recovered from such Guarantor under this Guaranty without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(C) This Section 8 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 8 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Guaranty.

(D) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

(E) The rights of the indemnifying Guarantors against other Guarantors under this Section 8 shall be exercisable upon the full and indefeasible payment of the Guaranteed Obligations (other than contingent indemnity obligations and Guaranteed Obligations in respect of Swap Agreements) in cash and the termination of the Loan Agreement.

SECTION 9. Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Borrower under the Loan Agreement, any Swap Agreement or any other Loan Document is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of the Loan Agreement, any Swap Agreement or any other Loan Document shall nonetheless be payable by each of the Guarantors hereunder forthwith on demand by the Administrative Agent.

SECTION 10. Notices. All notices, requests and other communications to any party hereunder shall be given in the manner prescribed in Article IX of the Loan Agreement with respect to the Administrative Agent at its notice address therein and with respect to any Guarantor, in care of the Borrower at the address of the Borrower set forth in the Loan Agreement or such other address or telecopy number as such party may hereafter specify for such purpose by notice to the Administrative Agent in accordance with the provisions of such Article IX.

SECTION 11. No Waivers. No failure or delay by the Administrative Agent or any other Holder of Secured Obligations in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Guaranty, the Loan Agreement, any Swap Agreement and the other Loan Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 12. Successors and Assigns. This Guaranty is for the benefit of the Administrative Agent and the other Holders of Secured Obligations and their respective successors and permitted assigns; provided, that no Guarantor shall have any right to assign its rights or obligations hereunder without the consent of the Required Lenders, and any such assignment in violation of this Section 12 shall be null and void; and in the event of an assignment of any amounts payable under the Loan Agreement, any Swap Agreement or the other Loan Documents in accordance with the respective terms thereof, the rights hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty shall be binding upon each of the Guarantors and their respective successors and assigns.

SECTION 13. Changes in Writing. Other than in connection with the addition of additional Subsidiaries, which become parties hereto by executing a supplement hereto in the form attached as Annex I, neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by each of the Guarantors and the Administrative Agent with the consent of the Required Lenders under the Loan Agreement.

SECTION 14. GOVERNING LAW. THIS GUARANTY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

SECTION 15. CONSENT TO JURISDICTION; SERVICE OF PROCESS; JURY TRIAL; IMMUNITY.

(A) CONSENT TO JURISDICTION. EACH GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN THE CITY OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR

RELATING TO THIS GUARANTY AND EACH GUARANTOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY GUARANTOR IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY ANY GUARANTOR AGAINST THE ADMINISTRATIVE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE ADMINISTRATIVE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS GUARANTY OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN THE CITY OF NEW YORK.

(B) EACH GUARANTOR WHICH IS A FOREIGN SUBSIDIARY (A "FOREIGN GUARANTOR") IRREVOCABLY DESIGNATES AND APPOINTS THE BORROWER, AS ITS AUTHORIZED AGENT, TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF, SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUIT, ACTION OR PROCEEDING OF THE NATURE REFERRED TO IN CLAUSE (A) ABOVE. SAID DESIGNATION AND APPOINTMENT SHALL BE IRREVOCABLE BY EACH SUCH FOREIGN GUARANTOR UNTIL ALL GUARANTEED OBLIGATIONS PAYABLE BY SUCH FOREIGN GUARANTOR HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS SHALL HAVE BEEN PAID IN FULL IN ACCORDANCE WITH THE PROVISIONS HEREOF AND THEREOF. EACH FOREIGN GUARANTOR HEREBY CONSENTS TO PROCESS BEING SERVED IN ANY SUIT, ACTION OR PROCEEDING OF THE NATURE REFERRED TO IN CLAUSE (A) ABOVE BY SERVICE OF PROCESS UPON THE BORROWER AS PROVIDED IN THIS CLAUSE (B); PROVIDED THAT, TO THE EXTENT LAWFUL AND POSSIBLE, NOTICE OF SAID SERVICE UPON SUCH AGENT SHALL BE MAILED BY REGISTERED OR CERTIFIED AIR MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE BORROWER OR TO ANY OTHER ADDRESS OF WHICH SUCH FOREIGN GUARANTOR SHALL HAVE GIVEN WRITTEN NOTICE TO THE ADMINISTRATIVE AGENT (WITH A COPY THEREOF TO THE BORROWER). EACH FOREIGN GUARANTOR IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL CLAIM OF ERROR BY REASON OF ANY SUCH SERVICE IN SUCH MANNER AND AGREES THAT SUCH SERVICE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON SUCH FOREIGN GUARANTOR IN ANY SUCH SUIT, ACTION OR PROCEEDING AND SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, BE TAKEN AND HELD TO BE VALID AND PERSONAL SERVICE UPON AND PERSONAL DELIVERY TO SUCH FOREIGN GUARANTOR. NOTHING HEREIN WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(C) WAIVER OF JURY TRIAL. EACH GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER AND FURTHER WAIVES ANY RIGHT TO INTERPOSE ANY COUNTERCLAIM (OTHER THAN ANY COMPULSORY COUNTERCLAIM) RELATED TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY IN SUCH ACTION.

(D) TO THE EXTENT THAT ANY GUARANTOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER FROM SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OF A JUDGMENT, EXECUTION OR OTHERWISE), EACH GUARANTOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS GUARANTY.

SECTION 16. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guaranty.

SECTION 17. Taxes, Expenses of Enforcement, etc.

(A) Taxes.

(i) All payments by any Guarantor to or for the account of any Lender, the Administrative Agent or any other Holder of Secured Obligations hereunder or under any promissory note shall be made free and clear of and without deduction for any and all Taxes (other than Excluded Taxes). If any Guarantor shall be required by law to deduct any Taxes (other than Excluded Taxes) from or in respect of any sum payable hereunder to any Lender, the Administrative Agent or any other Holder of Secured Obligations, (a) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 17(A)) such Lender, the Administrative Agent or any other Holder of Secured Obligations (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (b) such Guarantor shall make such deductions, (c) such Guarantor shall pay the full amount deducted to the relevant authority in accordance with applicable law and (d) such Guarantor shall furnish to the Administrative Agent the original copy of a receipt evidencing payment thereof within thirty (30) days after such payment is made.

(ii) In addition, the Guarantors hereby agree to pay any present or future stamp or documentary taxes and any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or under any promissory note or from the execution or delivery of, or otherwise with respect to, this Guaranty or any promissory note (“Other Taxes”).

(iii) The Guarantors hereby agree to indemnify the Administrative Agent, each Lender and any other Holder of Secured Obligations for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed on amounts payable under this Section 17(A)) paid by the Administrative Agent, such Lender or such other Holder of Secured Obligations and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. Payments due under this indemnification shall be made within thirty (30) days of the date the Administrative Agent, such Lender or such other Holder of Secured Obligations makes demand therefor.

(iv) By accepting the benefits hereof, each Lender agrees that it will comply with Section 2.17(e) of the Loan Agreement.

(B) Expenses of Enforcement, Etc. Subject to the terms of the Loan Agreement, after the occurrence and during the continuance of an Event of Default under the Loan Agreement, the Lenders shall have the right at any time to direct the Administrative Agent to commence enforcement proceedings with respect to the Guaranteed Obligations. The Guarantors agree to reimburse the Administrative Agent and the other Holders of Secured Obligations for any reasonable costs and out-of-pocket expenses (including reasonable attorneys’ fees and time charges of attorneys for the Administrative Agent and the other Holders of Secured Obligations, which attorneys may be employees of the Administrative Agent or the other Holders of Secured Obligations) paid or incurred by the Administrative Agent or any other Holder of Secured Obligations in connection with the collection and enforcement of amounts due under the Loan Documents, including without limitation this Guaranty. The Administrative Agent agrees to distribute payments received from any of the Guarantors hereunder to the other Holders of Secured Obligations on a pro rata basis for application in accordance with the terms of the Loan Agreement.

SECTION 18. Setoff. At any time after all or any part of the Guaranteed Obligations have become due and payable (by acceleration or otherwise), each Holder of Secured Obligations (including the Administrative Agent) may, without notice to any Guarantor and regardless of the acceptance of any security or collateral for the payment hereof, appropriate and apply in accordance with the terms of the Loan Agreement toward the payment of all or any part of the Guaranteed Obligations (i) any indebtedness due or to become due from such Holder of Secured Obligations or the Administrative Agent to any Guarantor, and (ii) any moneys, credits or other property belonging to any Guarantor, at any time held by or coming into the possession of such Holder of Secured Obligations (including the Administrative Agent) or any of their respective affiliates.

SECTION 19. Financial Information. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower and any and all endorsers and/or other Guarantors of all or any part of the Guaranteed Obligations, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, that diligent inquiry would reveal, and each Guarantor hereby agrees that none of the Holders of Secured Obligations (including the Administrative Agent) shall have any duty to advise such Guarantor of information known to any of them regarding such condition or any such circumstances. In the event any Holder of Secured Obligations (including the Administrative Agent), in its sole discretion, undertakes at any time or from time to time to provide any such information to a Guarantor, such Holder of Secured Obligations (including the Administrative Agent) shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which such Holder of Secured Obligations (including the Administrative Agent), pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to such Guarantor.

SECTION 20. Severability. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 21. Merger. This Guaranty represents the final agreement of each of the Guarantors with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Guarantor and any Holder of Secured Obligations (including the Administrative Agent).

SECTION 22. Headings. Section headings in this Guaranty are for convenience of reference only and shall not govern the interpretation of any provision of this Guaranty.

SECTION 23. Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from any Guarantor hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent's main New York City office on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of each Guarantor in respect of any sum due hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by any Holder of Secured Obligations (including the Administrative Agent), as the case may be, of any sum adjudged to be so due in such other currency such Holder of Secured Obligations (including the Administrative Agent), as the case may be, may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Holder of Secured Obligations (including the Administrative Agent), as the case may be, in the specified currency, each

Guarantor agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Holder of Secured Obligations (including the Administrative Agent), as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to any Holder of Secured Obligations (including the Administrative Agent), as the case may be, in the specified currency and (b) amounts shared with other Holders of Secured Obligations as a result of allocations of such excess as a disproportionate payment to such other Holder of Secured Obligations under Section 2.18 of the Loan Agreement, such Holder of Secured Obligations (including the Administrative Agent), as the case may be, agrees, by accepting the benefits hereof, to remit such excess to such Guarantor.

Remainder of Page Intentionally Blank.



IN WITNESS WHEREOF, each of the Initial Guarantors has caused this Guaranty to be duly executed by its authorized officer as of the day and year first above written.

[INITIAL GUARANTORS TO COME]

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

Acknowledged and Agreed  
as of the date first written above:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Administrative Agent

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

ANNEX I TO GUARANTY

Reference is hereby made to the Guaranty (the "Guaranty") made as of the 31st day of March, 2006 by and among [INITIAL GUARANTORS] (the "Initial Guarantors") and along with any additional Subsidiaries of the Borrower, which become parties thereto and together with the undersigned, the "Guarantors") in favor of the Administrative Agent, for the ratable benefit of the Holders of Secured Obligations, under the Loan Agreement. Capitalized terms used herein and not defined herein shall have the meanings given to them in the Guaranty. By its execution below, the undersigned [NAME OF NEW GUARANTOR], a [corporation] [partnership] [limited liability company], agrees to become, and does hereby become, a Guarantor under the Guaranty and agrees to be bound by such Guaranty as if originally a party thereto. By its execution below, the undersigned represents and warrants as to itself that all of the representations and warranties contained in Section 2 of the Guaranty are true and correct in all respects as of the date hereof.

IN WITNESS WHEREOF, [NAME OF NEW GUARANTOR], a [corporation] [partnership] [limited liability company] has executed and delivered this Annex I counterpart to the Guaranty as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[NAME OF NEW GUARANTOR]

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

EXHIBIT E  
FORM OF PLEDGE AGREEMENT



**PLEDGE AGREEMENT**

THIS PLEDGE AGREEMENT (this "Agreement") is made as of the 31st day of March, 2006, by NETWORK APPLIANCE GLOBAL LTD., an exempted company incorporated with limited liability under the laws of Bermuda (the "undersigned" or the "Borrower"), in favor of the Administrative Agent, for the ratable benefit of the Holders of Secured Obligations, under the Loan Agreement referred to below. Terms defined in the Loan Agreement (as hereinafter defined) and not otherwise defined herein have, as used herein, the respective meanings provided for therein.

WITNESSETH

WHEREAS, the Borrower, the institutions from time to time parties thereto as lenders (the "Lenders"), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, individually and in its capacity as contractual representative (the "Administrative Agent") for itself and the other Lenders, have entered into a certain Loan Agreement dated as of March 31, 2006 (as the same may be amended, modified, supplemented and/or restated, and as in effect from time to time, the "Loan Agreement"), providing, subject to the terms and conditions thereof, for extensions of credit and other financial accommodations to be made by the Lenders to the Borrower;

WHEREAS, it is a condition precedent to the extension of credit by the Lenders under the Loan Agreement that the undersigned execute and deliver this Agreement as security for certain of its obligations under the Loan Agreement; and

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

In consideration of one or more loans, or other financial accommodations extended by the Lenders (including the Administrative Agent in its individual capacity), the undersigned and the Administrative Agent agree as follows:

**1. Definitions.**

"Account Assets" means all Deposits, Securities, securities entitlements and any other assets held in trust, or in any custody, subcustody, safekeeping, investment management accounts, or other

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accounts of the undersigned with the Administrative Agent or any other custodian, trustee or Clearing System or held by any Intermediary (all of which shall be considered “financial assets” under the UCC).

“Clearing System” means the Depository Trust Company (“DTC”) and such other clearing or safekeeping system that may from time to time be used in connection with transactions relating to or the custody of any Securities, and any depository for any of the foregoing.

“Collateral” means: (i) the Deposits, Securities and Account Assets (as defined below) that are listed on Exhibit A; (ii) all additions to, and proceeds, renewals, investments, reinvestments and substitutions of, the foregoing, whether or not listed on Exhibit A; (iii) all certificates, receipts and other instruments evidencing any of the foregoing.

“Deposits” means the deposits of the undersigned with the Administrative Agent (whether or not held in trust, or in any custody, subcustody, safekeeping, investment management accounts, or other accounts of the undersigned with the Administrative Agent).

“Liabilities” means all Secured Obligations in respect of the Tranche A Term Loans and the Swap Agreements, whether now existing or hereafter incurred or acquired, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, primary or secondary, sole, joint, several or joint and several, secured or unsecured, arising by operation of law or otherwise arising in connection with the Collateral, this Agreement or any other Liability Document and all related costs and expenses incurred by the Administrative Agent.

“Liability Document” means any Loan Document or any other instrument, agreement or document evidencing, governing or delivered in connection with the Liabilities.

“Securities” means the stocks, bonds and other instruments and securities, whether or not held in trust or in any custody, subcustody, safekeeping, investment management accounts or other accounts of the undersigned with the Administrative Agent or any other custodian, trustee or Clearing System or held by any party as a financial intermediary or securities intermediary (the “Intermediary”).

“UCC” means the Uniform Commercial Code in effect in the State of New York. Unless the context otherwise requires, all terms used in this Agreement which are defined in the UCC will have the meanings stated in the UCC.

## **2. Grant of Security Interest.**

As security for the payment of all the Liabilities, the undersigned pledges to the Administrative Agent and grants to the Administrative Agent, in each case for the ratable benefit of the Holders of Secured Obligations in respect of the Liabilities, a security interest in and a right of setoff against, the Collateral.

## **3. Agreements of the Undersigned and Rights of the Administrative Agent.**

The undersigned agrees as follows and irrevocably authorizes, upon the occurrence and during the continuance of an Event of Default (as defined in Section 7 below), the Administrative Agent to exercise the rights listed below, at its option, for its own benefit, either in its own name or in the name of the undersigned, and appoints the Administrative Agent as its attorney-in-fact to take all action permitted under this Agreement.

(a) **Deposits:** The Administrative Agent may: (i) renew the Deposits on terms and for periods the Administrative Agent deems appropriate; (ii) demand, collect, and receive payment of any

monies or proceeds due or to become due under the Deposits; (iii) execute any instruments required for the withdrawal or repayment of the Deposits; (iv) in all respects deal with the Deposits as the owner.

(b) **Securities:** The Administrative Agent may: (i) transfer to the account of the Administrative Agent any Securities whether in the possession of, or registered in the name of, any Clearing System or held otherwise; (ii) transfer to the account of the Administrative Agent with any Federal Reserve Administrative Agent any Securities held in book entry form with any such Federal Reserve Administrative Agent; and (iii) transfer to the name of the Administrative Agent or its nominee any Securities registered in the name of the undersigned and held by the Administrative Agent and complete and deliver any necessary stock powers or other transfer instruments.

The undersigned grants to the Administrative Agent an irrevocable proxy to vote any and all Securities and give consents, waivers and ratifications in connection with those Securities after the occurrence and during the continuance of an Event of Default.

All payments, distributions and dividends in securities, property or cash shall be paid directly to and, at the discretion of the Administrative Agent, retained by the Administrative Agent and held by it, until applied as provided in this Agreement, as additional Collateral; provided that interest on Deposits and Securities and cash dividends on Securities shall be applied in accordance with Section 2.11(b) of the Loan Agreement.

(c) **General:** The Administrative Agent may, in its name, or in the name of the undersigned: (i) execute and file financing statements under the UCC or any other filings or notices necessary or desirable to create, perfect or preserve its security interest, all without notice (except as required by applicable law and not waivable) and without liability except to account for property actually received by it and (ii) after the occurrence and during the continuance of an Event of Default (x) demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable with respect to, any item of the Collateral (but shall be under no obligation to do so); (y) make any notification (to the issuer of any certificate or Security, or otherwise, including giving any notice of exclusive control to the Intermediary) or take any other action in connection with the perfection or preservation of its security interest or any enforcement of remedies, and retain any documents evidencing the title of the undersigned to any item of the Collateral; (iv) issue entitlement orders with respect to any of the Collateral to any Intermediary without the consent of the undersigned.

The undersigned agrees that it will not file or permit to be filed any financing or like statement with respect to the Collateral in which the Administrative Agent is not named as the sole secured party, consent or be a party to any securities account control agreement or other similar agreement with any Intermediary (an "Account Control Agreement") to which the Administrative Agent is not also a party or sell, assign, or otherwise dispose of, grant any option with respect to, or pledge, or otherwise encumber the Collateral. At the reasonable request of the Administrative Agent the undersigned agrees to do all other things which the Administrative Agent may deem necessary or advisable in order to perfect and preserve the security interest and to give effect to the rights granted to the Administrative Agent under this Agreement or enable the Administrative Agent to comply with any applicable laws or regulations. Notwithstanding the foregoing, subject to compliance with any mandatory legal requirements placed upon it to the contrary, the Administrative Agent does not assume any duty with respect to the Collateral and is not required to take any action to collect, preserve or protect its or the undersigned's rights in any item of the Collateral. The undersigned releases the Administrative Agent and agrees to hold the Administrative Agent harmless from any claims, causes of action and demands at any time arising with respect to this Agreement, the use or disposition of any item of the Collateral or any action taken or omitted to be taken by the Administrative Agent with respect thereto, subject to Administrative Agent's compliance with such mandatory legal

requirements and other than claims, causes of action and demands arising from the gross negligence or willful misconduct of Administrative Agent.

The rights granted to the Administrative Agent pursuant to this Agreement are in addition to the rights granted to the Administrative Agent in any custody, investment management, trust, Account Control Agreement or similar agreement. In case of conflict between the provisions of this Agreement and of any other such agreement, the provisions of this Agreement will prevail.

**4. Application to Tranche A Term Loans.** Upon the maturity of each item of Collateral or the receipt by Borrower of any interest on Deposits and Securities and cash dividends on Securities, the Borrower hereby directs the Administrative Agent to make a mandatory prepayment (in accordance with and subject to Sections 2.11 and 2.16 of the Loan Agreement) of the Tranche A Term Loans in an amount equal to the amount of such item of Collateral so matured or the interest or cash dividends so received.

**5. Value of the Collateral.**

The undersigned agrees that at all times the aggregate value of the Collateral may not be less than the amount required under Section 5.10 of the Loan Agreement, subject to the grace period set forth therein. The undersigned will supplement the Collateral to the extent necessary to ensure compliance with this provision.

**6. Currency Conversion.**

For calculation purposes, any currency in which the Collateral is denominated (the "Collateral Currency") will be converted into the currency of the Liabilities (the "Liability Currency") at the spot rate of exchange for the purchase of the Liability Currency with the Collateral Currency quoted by the Administrative Agent at such place as the Administrative Agent deems appropriate (or, if no such rate is quoted on any relevant date, estimated by the Administrative Agent on the basis of the Administrative Agent's last quoted spot rate) or another prevailing rate that the Administrative Agent reasonably deems more appropriate.

**7. Representations and Warranties.**

The undersigned represents and warrants: (a) the undersigned is the sole owner of the Collateral; (b) the Collateral is free of all encumbrances except for the security interest in favor of the Administrative Agent created by this Agreement or any other Loan Document and except for Relevant Permitted Liens; (c) no authorizations, consents or approvals and no notice to or filing with any governmental authority or regulatory body is required for the execution and delivery of this Agreement; (d) the execution, delivery and performance of this Agreement will not violate any provisions of applicable law, regulation or order and will not result in the breach of, or constitute a default, or require any consent under, any agreement, instrument or document to which the undersigned is a party or by which it or any of its property may be bound or affected; (e) the Securities are not subject to any restrictions or limitations relating to a holding period, manner of sale, volume limitation, public information or notice requirements; and (f) it is duly organized and validly existing under the laws of the jurisdiction of its organization, it has full power and authority to execute, deliver and perform this Agreement, the execution, delivery and performance have been duly authorized, will not conflict with any provisions of its governing instruments and the Agreement is a legal, valid and binding obligation of the undersigned, enforceable against it in accordance with its terms.

**8. Event of Default.**

If an Event of Default under the Loan Agreement (an “Event of Default”) shall occur and be continuing, then, the Administrative Agent will be entitled to exercise any of the rights and remedies under this Agreement.

#### **9. Remedies.**

The Administrative Agent will have the rights and remedies under the UCC and the other rights granted to the Administrative Agent under this Agreement, and, without limiting the foregoing, but subject to the occurrence and continuance of an Event of Default, without notice or demand, to sell, redeem, offset, setoff, debit, charge or otherwise dispose of or liquidate into cash any such Collateral and/or to apply it or the proceeds thereof to repay any of the Liabilities in accordance with Section 2.18 of the Loan Agreement (regardless of whether any such Liabilities are contingent, unliquidated or unmatured or whether the Administrative Agent has any other recourse to the undersigned or any other Loan Party or any other collateral or assets). The Administrative Agent may exercise its rights without regard to any premium or penalty from liquidation of any Collateral and without regard to the undersigned’s basis or holding period for any Collateral.

In connection with the exercise of its remedies, the Administrative Agent may sell in the Borough of Manhattan, New York City, or elsewhere, in one or more sales or parcels, at the price as the Administrative Agent deems best, for cash or on credit or for other property, for immediate or future delivery, any item of the Collateral, at any broker’s board or at public or private sale, in any reasonable manner permissible under the UCC (except that, to the extent permissible under the UCC, the undersigned waives any requirements of the UCC) and the Administrative Agent or anyone else may be the purchaser of the Collateral and hold it free from any claim or right including, without limitation, any equity of redemption of the undersigned, which right the undersigned expressly waives. The Administrative Agent may in its sole discretion elect to conduct any sale (and related offers) of any Collateral in such a manner as to avoid the need for registration or qualification thereof under any Federal or state securities laws, that such conduct may include restrictions (including as to potential purchasers) and other requirements (such as purchaser representations) which may result in prices or other terms less favorable than those which might have been obtained through a public sale not subject to such restrictions and requirements and that any offer and sale so conducted shall be deemed to have been made in a commercially reasonable manner.

In connection with the exercise of its remedies, the Administrative Agent may also, in its sole discretion: (i) convert any part of the Collateral Currency into the Liability Currency; (ii) hold any monies or proceeds representing the Collateral in a cash collateral account in the Liability Currency or other currency that the Administrative Agent reasonably selects; (iii) invest such monies or proceeds on behalf of the undersigned; and (iv) apply any portion of the Collateral, first, to all costs and expenses of the Administrative Agent, second, to the payment of interest on the Liabilities and any fees or commissions to which the Administrative Agent may be entitled, third, to the payment of principal of the Liabilities, whether or not then due, and fourth, to the undersigned.

The undersigned will pay to the Administrative Agent all expenses (including reasonable attorneys’ fees and legal expenses incurred by the Administrative Agent and the allocated costs of its in-house counsel) in connection with the exercise of any of the Administrative Agent’s rights or obligations under this Agreement or the Liability Documents. The undersigned will take any action reasonably requested by the Administrative Agent to allow it to sell or dispose of the Collateral. Notwithstanding that the Administrative Agent may continue to hold Collateral and regardless of the value of the Collateral, the undersigned will remain liable for the payment in full of any unpaid balance of the Liabilities.

#### **10. Jurisdiction.**



The undersigned consents to the non-exclusive jurisdiction of the State and Federal courts sitting in the City of New York and agrees that suit may be brought against the undersigned in those courts or in any other jurisdiction where the undersigned or any of its assets may be found, and the undersigned irrevocably submits to the jurisdiction of those courts. The undersigned consents to the service of process by mailing copies of process to the Parent at its most recent mailing address in the records of the Administrative Agent. The undersigned further agrees that any action or proceeding brought against the Administrative Agent may be brought only in a New York State or United States Federal court sitting in New York County. To the extent that the Borrower may be or become entitled to claim for itself or its property any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations hereunder or under the other Liability Documents.

The undersigned agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit or proceeding in such state and hereby waives any defense on the basis of an inconvenient forum. Nothing herein shall affect the right of the Administrative Agent to serve legal process in any other manner permitted by law or affect the right of the Administrative Agent to bring any action or proceeding against the undersigned or its property in the courts of any other jurisdiction.

**11. Waiver of Jury Trial.**

**THE UNDERSIGNED AND THE BANK EACH WAIVE ANY RIGHT TO JURY TRIAL.**

**12. Notices.**

Unless otherwise agreed in writing, notices may be given to the Administrative Agent and the undersigned in accordance with Section 9.01 of the Loan Agreement.

**13. Miscellaneous.**

(a) The Administrative Agent may assign any of the Collateral and any of its interests in this Agreement (and may assign the Liabilities to any party) in accordance with the Loan Agreement and will be fully discharged from all responsibility as to the assigned Collateral. That assignee will have all the obligations, powers and rights of the Administrative Agent hereunder, but only as to the assigned Collateral.

(b) No amendment or waiver of any provision of this Agreement nor consent to any departure by the undersigned will be effective unless it is in writing and signed by the undersigned and the Administrative Agent and will be effective only in that specific instance and for that specific purpose. No failure on the part of the Administrative Agent to exercise, and no delay in exercising, any right will operate as a waiver or preclude any other or further exercise or the exercise of any other right.

(c) The rights and remedies in this Agreement are cumulative and not exclusive of any rights and remedies which the Administrative Agent may have under law or under other agreements or arrangements with the undersigned or any other Loan Party.

(d) The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement is not valid or enforceable in whole or in part in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability without in any manner

affecting the validity or enforceability in any other jurisdiction or the remaining provisions of this Agreement.

(e) The term "undersigned" will include the heirs, executors, administrators, assigns and successors of the undersigned.

(f) The undersigned hereby waives presentment, notice of dishonor and protest of all instruments included in or evidencing the Liabilities or the Collateral and any other notices and demands, whether or not relating to those instruments.

(g) **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

NETWORK APPLIANCE GLOBAL LTD.

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

Address for notices:

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

Telecopier:  
Telephone:

ACCEPTED:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

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

Address for notices to the  
Administrative Agent:

JPMorgan Chase Bank, National Association  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn:  
Telecopier:  
Telephone:

## DESCRIPTION OF THE COLLATERAL

## 1. Deposits

Type of Deposit (CD, TD, etc.)	Location (NY, IBF-NY, etc.)	Contract or Certificate No.	Issue or Opening Date	Maturity Date	Principal Amount
None					

## 2. Stocks, Bonds and Other Instruments and Securities

Nature of Security or Obligation	Name of Issuer	Number of Units		Face Amount (if Applicable)	Certificate Number	
Quantity	Issuer	Cpn	Yld	Value	Cost	
2,865,000	Bear Stearns	6.500	3.005	05/03/04	5/1/2006	3,082,883.25
3,400,000	Pitney Bowes	5.875	2.957	11/05/04	5/1/2006	3,556,230.00
5,000,000	Citicorp	5.750	3.412	01/07/05	5/10/2006	5,163,650.00
2,000,000	American General (A)	6.100	3.218	10/26/04	5/22/2006	2,096,140.00
3,000,000	Federal Home Loan Bank	2.180	2.152	03/10/04	6/2/2006	3,001,875.00
3,000,000	Abbott Laboratories	5.625	3.117	11/13/03	7/1/2006	3,215,250.00
4,000,000	Prudential Ins	6.375	3.929	03/10/05	7/23/2006	4,140,640.00
3,000,000	JPMC BANK NEW YORK	5.625	3.226	11/12/03	8/15/2006	3,215,790.00
4,000,000	Fannie Mae	2.550	2.550	02/24/04	8/24/2006	4,000,000.00
2,315,000	Lehman Brothers	7.500	3.292	02/06/04	9/1/2006	2,600,045.95
5,000,000	American Express	5.500	3.448	05/18/04	9/12/2006	5,253,700.00
1,000,000	Coca Cola	2.500	2.714	11/07/03	9/15/2006	993,850.00
5,000,000	Federal Home Loan Bank	2.510	2.510	03/22/04	9/22/2006	5,000,000.00
5,000,000	General Electric Credit Corp	2.750	2.717	11/28/03	9/25/2006	5,004,750.00
3,000,000	Freddie Mac	3.000	3.000	09/29/04	9/29/2006	3,000,000.00
5,000,000	US Treasury	2.625	2.409	11/26/03	11/15/2006	5,032,812.50
3,000,000	Eli Lilly Co.	8.375	3.940	12/08/03	12/1/2006	3,464,820.00
3,100,000	Fleet Boston	4.875	3.870	03/03/05	12/1/2006	3,156,203.00
5,000,000	Federal Home Loan Bank	3.500	3.500	01/25/05	1/25/2007	5,000,000.00
5,050,000	Toyota Motor Credit	2.700	3.122	11/22/04	1/30/2007	5,003,186.50
5,300,000	ASIF Global	2.500	3.548	02/15/05	1/30/2007	5,192,039.00
5,000,000	US Treasury	3.125	3.264	01/31/05	1/31/2007	4,985,937.50
5,000,000	Freddie Mac	2.375	2.501	04/12/04	2/15/2007	4,981,950.00
5,000,000	Freddie Mac	2.375	3.509	06/15/04	2/15/2007	4,850,950.00
2,500,000	International Lease	5.750	3.509	11/05/04	2/15/2007	2,636,575.00
7,000,000	Federal Home Loan Bank	3.375	3.420	01/24/05	2/23/2007	6,993,420.00
5,000,000	Citicorp	5.000	3.119	04/22/04	3/6/2007	5,289,600.00
4,000,000	General Electric Credit Corp	5.375	3.501	11/16/04	3/15/2007	4,185,000.00
5,000,000	General Electric Credit Corp	5.375	3.732	01/28/05	3/15/2007	5,183,550.00
6,000,000	Pfizer Inc.	2.500	3.923	04/06/05	3/15/2007	5,836,680.00
3,500,000	BP Capital	2.625	3.885	04/26/05	3/15/2007	3,417,680.00

Quantity	Issuer	Cpn	Yld	Value	Maturity	Cost
5,000,000	Morgan Stanley Dean Witter	5.800	3.655	11/24/04	4/1/2007	5,269,350.00
5,000,000	Fannie Mae	2.820	3.155	04/28/04	4/19/2007	4,950,000.00
5,000,000	General Electric Credit Corp	5.000	3.776	01/18/05	6/15/2007	5,153,900.00
5,000,000	Wal Mart	4.375	3.376	11/16/04	7/12/2007	5,137,950.00
2,000,000	Wal Mart	4.375	3.639	01/21/05	7/12/2007	2,037,560.00
5,000,000	Fannie Mae	3.410	4.161	07/28/05	8/30/2007	4,921,650.00
3,000,000	Bank One NA	4.125	3.274	10/20/04	9/1/2007	3,076,020.00
5,000,000	Chevron Texaco	3.500	3.065	09/24/04	9/17/2007	5,066,600.00
5,000,000	CIT Group	5.750	4.082	01/28/05	9/25/2007	5,235,250.00
3,250,000	Federal Farm Credit Bank	3.280	3.952	04/20/05	9/27/2007	3,196,862.50
5,000,000	Freddie Mac	3.500	3.916	05/19/05	10/19/2007	4,949,500.00
5,000,000	US Treasury	3.000	3.056	11/15/04	11/15/2007	4,991,462.50
3,000,000	General Electric Credit Corp	4.250	4.138	05/25/05	1/15/2008	3,009,000.00
3,000,000	Lehman Brothers	4.000	3.883	01/24/05	1/22/2008	3,010,680.00
10,000,000	HBOS PLC	3.800	4.096	05/25/05	1/30/2008	9,920,200.00
3,000,000	Canadian Imp Bank Comm	3.800	4.470	08/08/05	2/1/2008	2,950,170.00
1,000,000	BANK OF NEW YORK	3.800	4.006	06/03/05	2/1/2008	994,450.00
5,000,000	US Treasury	3.375	3.459	02/15/05	2/15/2008	4,987,282.00
3,000,000	Federal Home Loan Bank	3.900	3.900	02/25/05	2/25/2008	3,000,000.00
7,000,000	Monumental Global Funding	3.850	4.144	06/15/05	3/3/2008	6,943,720.00
5,000,000	American Honda Finance	4.250	4.261	07/14/05	3/11/2008	4,998,500.00
4,100,000	Lehman Brothers	6.500	4.537	07/13/05	4/15/2008	4,338,251.00
10,000,000	ANZ National Bank	4.265	4.174	07/13/05	5/16/2008	10,026,400.00
5,000,000	Fannie Mae	4.500	4.500	07/21/05	7/21/2008	5,000,000.00
3,000,000	Federal Farm Credit Bank	4.600	4.600	08/25/05	8/25/2008	3,000,000.00
<b>241,380,000</b>						<b>244,699,966</b>

**3. All Assets Held or To Be Held in the Following Custody or Subcustody Accounts, Safekeeping Accounts, Investment Management Accounts and/or other account with Intermediary:**

Type of Account	Account Number	Entity/Location
Securities Account	36064111	J.P. Morgan Securities Inc.

EXHIBIT G  
FORM OF CONTROL AGREEMENT  
**TRI-PARTY CONTROL AGREEMENT**  
**("Control Agreement")**  
Date: March 31, 2006

Re: Pledge of Collateral described in attached Pledge Agreement (the "**Pledge**")

The undersigned ("**Debtor**") has granted to JPMORGAN CHASE BANK, National Association, as Administrative Agent ("**Secured Party**") a security interest in Collateral held in account number 36064111 (such account or any successor accounts, collectively, the "**Securities Account**") to secure indebtedness owing to Secured Party in connection with that certain Loan Agreement dated as of March 31, 2006 by and among the Debtor, the Lenders party thereto and the Secured Party (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). J.P. MORGAN SECURITIES INC., or any affiliate including JPMORGAN CHASE BANK, National Association (Capital Markets Department) ("**Securities Intermediary**") represents to Secured Party as follows: (a) The Collateral described in the Pledge is a complete and accurate statement of the Securities Account and all of the listed Collateral has been endorsed to Securities Intermediary or in blank. (b) The Securities Account and the rights of Debtor in the account are valid and legally binding obligations of the Securities Intermediary. (c) On the date of this Control Agreement, Securities Intermediary does not know of any claim to or interest in the Securities Account other than the interests of Debtor and Secured Party.

Debtor irrevocably directs Securities Intermediary to make all notations in Security Intermediary's records pertaining to the Securities Account that are necessary or appropriate to reflect the above Pledge, to move Collateral from the existing Securities Account to establish a new Securities Account, with a new account number, for the purpose of holding the Collateral, if need be, and to style the Securities Account to read:

"JPMORGAN CHASE BANK, NATIONAL ASSOCIATION — Collateral Account for Network Appliance Global Ltd."

or any abbreviations made by Securities Intermediary for operational purposes.

Debtor irrevocably instructs Securities Intermediary to follow only instructions received from the Secured Party, furnished in writing, without further consent of Debtor concerning (1) the payment or reinvestment of dividends or distributions and (2) the redemption, transfer, sale or any other disposition or transaction concerning the Collateral or the income and principal proceeds, substitutions and reinvestment of Collateral. However, until further notice from Secured Party, (i) Debtor may receive all income, including dividends and interest (but not stock splits, stock dividends, cash equity distributions, liquidating distributions or other non cash principal disbursements) from either Securities Intermediary or Secured Party, and (ii) Debtor may originate trading instructions to the Securities Intermediary to make substitutions for and additions to the Collateral, all of which are Collateral to be held in the Securities Account subject to the Pledge in favor of Secured Party. Without the prior written consent of Secured Party, no withdrawal of Collateral from the Securities Account by Debtor will be permitted under any circumstances, except for prepayments required under the Loan Agreement and (if permitted by this Control Agreement and then only until further notice by Secured Party) distributions of income or substitution of new Collateral of equal or greater value. Any additional securities delivered to the Securities Account and noted on Security Intermediary's records to reflect the Pledge will be subject to the Pledge without any further documentation. Any distribution privileges granted to Debtor may be revoked in writing solely by Secured Party if an Event of Default (as defined in the Loan Agreement) has occurred and is continuing.

Debtor also irrevocably authorizes and directs Securities Intermediary to send all notices, statements and all other communications concerning the Collateral or the Securities Account, in addition to Debtor, to the following address or any other address Secured Party may specify in writing:

Attn: Alex McKindra  
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
560 Mission Street  
18<sup>th</sup> Floor  
San Francisco, California 94105  
Telecopy No. (415) 315-8483

Secured Party may exercise its rights under the Pledge, this Control Agreement or other loan documents without any further consent of Debtor or any other person. Securities Intermediary is directed to follow all of Secured Party's instructions without investigating the reason for any action taken by the Secured Party or the existence of any default. Secured Party's signature alone will be sufficient authority for the exercise of any rights by Secured Party and a receipt from Secured Party alone will be a full release and discharge for Securities Intermediary. Except as otherwise permitted above with respect to distributions of income to Debtor, checks for all or any part of the Collateral will be payable only to the order of Secured Party if, when and in such amounts as may be requested by Secured Party.

Neither Securities Intermediary nor any of its respective partners, trustees, officers, employees or affiliates will breach any duty to Debtor if it complies in good faith with the instructions contained in this Control Agreement or fails to comply with any contrary or inconsistent instructions that may

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subsequently be issued by the Debtor. The Debtor further holds harmless and indemnifies each of them against any claim, loss, cost or expense arising out of any actions or omissions taken by any person in reliance on or compliance with the instructions and authorizations contained in this Control Agreement except for any claim, loss, cost or expense arising from such person's gross negligence or willful misconduct. The instructions contained in this Control Agreement may be revoked and the terms of this Control Agreement may be amended by Debtor only if Securities Intermediary receives (i) Secured Party's written consent to the revocation or amendment, or (ii) Secured Party's written notification that the Pledge has been terminated. The rights and powers granted to Secured Party in this Control Agreement are powers coupled with an interest and will neither be affected by the bankruptcy of Debtor nor by the lapse of time.

Securities Intermediary agrees to hold the Collateral and the Securities Account (including any free credit balances) for and on behalf of the Secured Party and as bailee in possession for Secured Party. Securities Intermediary subordinates any liens, claims or rights it may have against the Securities Account or any Collateral carried in the Securities Account in favor of Secured Party except for its standard commission or fee and any unsettled trades. Securities Intermediary will not agree to comply with any third party orders or instructions concerning the Securities Account without the prior written consent of Secured Party.

All items of income including dividends, interest and other income, gain, expense and loss recognized in the Securities Account must be reported by Securities Intermediary or Secured Party in the name and tax identification number of Debtor.

This Control Agreement benefits the Secured Party and its successors and assigns and is binding on Debtor and Securities Intermediary and their respective successors and assigns. This Control Agreement is governed by, and construed in accordance with, the laws of the State of New York, which shall also be deemed to be Securities Intermediary's jurisdiction. This Control Agreement is intended to be "an agreement" within the meaning of Section 8-110(e) of the New York Uniform Commercial Code.

[Signature Page Follows]

**This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.**

**There are no unwritten oral agreements between the parties.**

DEBTOR:

NETWORK APPLIANCE GLOBAL LTD.

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

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

SECURED PARTY: JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

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

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

ACCEPTED AND AGREED TO BY SECURITIES INTERMEDIARY:

J.P. MORGAN SECURITIES INC., or any affiliate including  
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (Capital Markets Department)

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

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

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

EXHIBIT G  
MARGIN REQUIREMENTS

Type of Security	Remaining Maturity/ S&P/ Moody's Rating	Valuation Percentage	Ratio Level
<b>JPMorgan Certificates of Deposit (Must be through JPMorgan)</b>		100%	1.00x
<b>US Treasury Treasuries</b>	Less than 1 year	99%	1.01x
	More than 1 year less than 5 years	98%	1.02x
	More than 5 years less than 10 years	97%	1.03x
	Over 10 years	96%	1.04x
<b>US Agency Securities</b>	Less than 1 year	99%	1.01x
	More than 1 year less than 5 years	98%	1.02x
	More than 5 years less than 10 years	97%	1.03x
	Over 10 years less than 30 years	96%	1.04x
<b>USD Commercial Paper</b>	A1/P1 Less than or equal to 270 days	95%	1.05x
<b>Money Market Funds (Must be through JPMorgan)</b>	US Gov't	95%	1.05x
	Treasury Plus	95%	1.05x
	Cash Management	90%	1.11x
	100% US Treasury	95%	1.05x
	Federal Money Market	95%	1.05x
<b>Medium Term Notes, Corporate Bonds, Corporate</b>	AAA	95%	1.05x
<b>Debentures, Floating Rate Notes, and Auction</b>	AA	93%	1.08x
<b>Rate Securities</b>	A (with Maturity less than 3 months)	90%	1.11x
	A (with Maturity more than 3 months)	80%	1.25x
<b>Other (Bankers Acceptances, Eurodollar deposits, Time Deposits, Repurchase Agreements, Sovereign &amp; Supranational Issuers)</b>		0%	NM



EXHIBIT H  
FORM OF COMPLIANCE CERTIFICATE

To: The Lenders parties to the  
Loan Agreement Described Below

This Compliance Certificate is furnished pursuant to that certain Loan Agreement dated as of March 31, 2006 (as amended, modified, renewed or extended from time to time, the "Agreement") among Network Appliance Global Ltd. (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, National Association, as Administrative Agent for the Lenders. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected \_\_\_ of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower and its Subsidiaries during the accounting period covered by the attached financial statements [**for quarterly financial statements add:** and such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes];
3. The examinations described in paragraph 2 did not disclose, except as set forth below, and I have no knowledge of (i) the existence of any condition or event which constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate or (ii) any change in GAAP or in the application thereof that has occurred since the date of the audited financial statements referred to in Section 3.04 of the Agreement; and
4. Schedule I attached hereto sets forth financial data and computations evidencing the Borrower's compliance with Section 6.10 of the Agreement and sets forth the computations necessary to determine the Applicable Rate, all of which data and computations are true, complete and correct.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, (i) the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event or (ii) the change in GAAP or the application thereof and the effect of such change on the attached financial statements:

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The foregoing certifications, together with the computations set forth in Schedule I hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_ day of \_\_\_, \_\_\_.

NETWORK APPLIANCE GLOBAL LTD.

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

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

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

SCHEDULE I

Compliance as of \_\_\_\_\_, \_\_\_\_\_ with  
Provisions of \_\_\_\_\_ and \_\_\_\_\_ of  
the Agreement  
and Borrower's Applicable Rate Calculation

**SUBSIDIARIES OF THE COMPANY****SUBSIDIARIES:**

Network Appliance Ltd. (U.K.)  
Network Appliance SAS (France)  
Network Appliance Srl. (Italy)  
Network Appliance GmbH (Germany)  
Network Appliance FSC Incorporated (Barbados)  
Network Appliance KK (Japan)  
Network Appliance Ltd. (Ireland)  
Network Appliance GmbH (Switzerland)  
Network Appliance BV (Netherlands)  
Network Appliance GesmbH (Austria)  
Network Appliance SL (Spain)  
Network Appliance Global Ltd. (Bermuda)  
Network Appliance Denmark ApS  
Network Appliance (Australia) Pty Ltd  
Network Appliance Mexico S de RL de CV  
Network Appliance Singapore Private Ltd.  
Network Appliance (Malaysia) Sdn Bhd  
Network Appliance Systems (India) Private Ltd.  
Network Appliance Argentina  
Network Appliance (Brasil) Ltda.  
Network Appliance Canada Ltd.  
Network Appliance (Belgium) BVBA  
Network Appliance Israel Ltd.  
Network Appliance Poland Sp. z.o.o.  
Network Appliance Federal Systems, Inc. (California)  
Network Appliance South Africa (Pty) Limited  
Network Appliance Sweden AB.  
Network Appliance Finland Oy  
Network Appliance Financial Solutions, Inc. (Delaware)  
Nagano Sub, Inc. (Delaware)  
Spinnaker Networks, Inc. (Delaware)  
Spinnaker Networks, LLC (Delaware)  
Network Appliance Luxembourg S.a.r.l.  
Alacritus, Inc. (Delaware)  
Decru, Inc. (Delaware)  
Decru BV (Netherlands)  
NetApp Holding Ltd. (Cyprus)  
Network Appliance Holding & Manufacturing BV NAHM (Netherlands)  
Network Appliance Norway AS  
Network Appliance Limited (Thailand)  
Decru Ltd. (U.K.)

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement Nos. 333-25277, 333-40307, 333-32318, 333-41348, 333-53776, 333-57378, 333-73982, 333-100837, 333-109627, 333-113200, 333-119640, 333-125448, 333-128098 and 333-133564 on Form S-8 of our reports relating to the financial statements and financial statement schedule of Network Appliance, Inc. and management's report on the effectiveness of internal control over financial reporting dated July 11, 2006, appearing in this Annual Report on Form 10-K of Network Appliance, Inc. for the year ended April 30, 2006.

/s/ DELOITTE & TOUCHE LLP  
San Jose, California  
July 11, 2006

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

I, Daniel J. Warmenhoven, certify that:

- 1) I have reviewed this annual report on Form 10-K of Network Appliance, Inc.;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13(a)-15(f) and 15(d)-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ DANIEL J. WARMENHOVEN

Daniel J. Warmenhoven  
*Chief Executive Officer*

Date: July 11, 2006

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

I, Steven J. Gomo, certify that:

- 1) I have reviewed this annual report on Form 10-K of Network Appliance, Inc.;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13(a)-15(f) and 15(d)-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/ STEVEN J. GOMO

Steven J. Gomo

*Executive Vice President of Finance  
and Chief Financial Officer*

*(Principal Financial Officer and Principal  
Accounting Officer)*

Date: July 11, 2006

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Daniel J. Warmenhoven, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Network Appliance, Inc., on Form 10-K for the fiscal year ended April 30, 2006 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 Annual Report on Form 10-K fairly presents in all material respects the financial condition and results of operations of Network Appliance, Inc.

/s/ DANIEL J. WARMENHOVEN

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Daniel J. Warmenhoven

*Chief Executive Officer*

Date: July 11, 2006



**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Steven J. Gomo, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Network Appliance, Inc., on Form 10-K for the fiscal year ended April 30, 2006 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 Annual Report on Form 10-K fairly presents in all material respects the financial condition and results of operations of Network Appliance, Inc.

/s/ STEVEN J. GOMO

Steven J. Gomo

*Executive Vice President of Finance  
and Chief Financial Officer*

*(Principal Financial Officer and Principal  
Accounting Officer)*

Date: July 11, 2006