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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

April 28, 2005

Network Appliance Inc.

(Exact name of registrant as specified in its charter)

Delaware

0-27130

77-0307520

(State or other jurisdiction  
of incorporation)

(Commission  
File Number)

(I.R.S. Employer  
Identification No.)

495 East Java Drive, Sunnyvale, California

94089

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

(408) 822-6000

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### **Item 1.01. Entry into a Material Definitive Agreement.**

On April 28, 2005, Jeffrey Allen was elected to serve on the board of directors (the "Board") of Network Appliance, Inc. (the "Company"). Under the Company's amended and restated 1999 Stock Option Plan (the "Plan"), on the date of each annual stockholders meeting each non-employee Board member who is to continue to serve as a non-employee Board member is automatically granted a non-statutory option to purchase 15,000 shares of the Company's common stock (an "Automatic Option Grant"), provided such individual has served as a non-employee Board member for at least six (6) months as of that date. There is no limit on the number of such Automatic Option Grants any one non-employee Board member may receive over his or her period of Board service. Each Automatic Option Grant is contractually memorialized in the standard form of option agreement which the Board has approved for use under the Plan, which form is attached as an exhibit hereto. As more fully described in that form of agreement and in the Plan itself, which was previously filed with the Securities and Exchange Commission as an appendix to the Company's definitive proxy statement dated July 15, 2004, each Automatic Option Grant shall have, among others, the following features:

- Shares subject to the Automatic Option Grant shall be purchasable at an exercise price per share equal to 100% of the fair market value thereof on the option grant date.
- Each Automatic Option Grant shall carry a ten-year term measured from the option grant date.
- Each Automatic Option Grant shall be immediately exercisable for any or all of the shares covered thereby. However, any shares purchased under the option shall be subject to repurchase by the Company, at the exercise price paid per share, upon the non-employee Board member's cessation of Board service prior to vesting in those shares.
- Shares subject to the Automatic Option Grant shall vest, and the Company's repurchase right with respect to those shares shall lapse, upon the non-employee Board member's continuation in Board service through the day immediately preceding the date of the next annual stockholders meeting following the option grant date.
- A non-employee Board member (or, in the event of the non-employee Board member's death, the personal representative of the non-employee Board member's estate or the person or persons to whom the option is transferred pursuant to the non-employee Board member's will or in accordance with the laws of descent and distribution) shall have a twelve (12)-month period following the date of cessation of Board service in which to exercise each such option.
- Should the non-employee Board member cease to serve as a Board member by reason of death or permanent disability, then all shares at the time subject to the Automatic Option Grant shall immediately vest so that such option may, during the twelve (12)-month exercise period following such cessation of Board service, be exercised for all or any portion of those shares as fully-vested shares of common stock.
- The Automatic Option Grant shall, immediately upon the non-employee Board member's cessation of Board service for any reason other than death or permanent disability, terminate and cease to be outstanding with respect to any and all shares in which the non-employee Board member is not otherwise at that time vested.
- Each Automatic Option Grant shall be subject to 100% acceleration of vesting upon a change in ownership or control of the Company effected through either of the following transactions: (i) the acquisition, directly or indirectly, by any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with, the Company), of beneficial ownership (within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders; or (ii) a change in the composition of the Board over a period of thirty-six (36) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period or (B) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (A) who were still in office at the time the Board approved such election or nomination.
- Each Automatic Option Grant shall be subject to 100% acceleration of vesting upon either of the following stockholder-approved transactions to which the Company is a party: (i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction; or (ii) the sale, transfer or other disposition of all or substantially all of the Company's assets in complete liquidation or dissolution of the Company.

### **Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.**

(b) On April 29, 2005, Jeffrey Allen submitted to the Board a letter of resignation in which he resigned his position as the Company's Executive Vice President, Business Operations, effective as of June 3, 2005.

(d) On April 28, 2005, based on the recommendation of the Company's Nominating/Corporate Governance Committee, the Board elected Jeffrey Allen to fill the newly created vacancy on the Board (see Item 5.03 below). There are no arrangements or understandings between Mr. Allen and the Company or any other persons, pursuant to which he was selected as a director. There are no transactions, or proposed transactions, since the beginning of the Company's last fiscal year to which the Company was or is to be a party, in which Mr. Allen has a direct or indirect material interest. Mr. Allen is expected to become a member of the Company's newly formed Acquisitions Committee.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On April 28, 2005, the Board amended the Company's bylaws to increase the number of authorized directors on the Board from nine (9) to ten (10).

**Item 9.01. Financial Statements and Exhibits.**

(c) Exhibits.

3.2 Certificate of Amendment to Bylaws of the Company.

10.1 Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan.

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**SIGNATURES**

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

May 4, 2005

Network Appliance Inc.

By: /s/ Steven J. Gomo

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

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Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
3.2	Certificate of Amendment to Bylaws of the Company
10.1	Form of Stock Option Agreement approved for use under the Company's amended and restated 1999 Stock Option Plan

**CERTIFICATE OF AMENDMENT**  
**TO THE BYLAWS OF**  
**NETWORK APPLIANCE, INC.**

The undersigned, Leslie Paulides, hereby certifies that she is the duly appointed, qualified, and acting Vice President, Finance and Corporate Controller of Network Appliance, Inc., a Delaware corporation (the "Company"), and that on April 28, 2005 the Board of Directors of the Company adopted the following resolution pursuant to Article III, Section 1 of the Company's Bylaws:

**I. Increase in the Number of Directors**

**WHEREAS:** The Board deems it advisable and in the best interests of the Company and its stockholders to increase the number of authorized directors on the Board from nine (9) to ten (10); and

**WHEREAS:** Article III, Section 1 of the Bylaws of the Company states, in relevant part:

"The number of directors of this corporation that shall constitute the whole Board shall be determined by resolution of the Board of Directors; provided, however, that no decrease in the number of directors shall have the effect of shortening the term of an incumbent director."

**NOW, THEREFORE, BE IT RESOLVED:** That the number of authorized directors on the Board be, and hereby is, increased from nine (9) to ten (10)."

IN WITNESS WHEREOF, the undersigned has hereunto set her hand this 4th day of May, 2005.

/s/ Leslie Paulides

Leslie Paulides  
Vice President, Finance and Corporate Controller

## NETWORK APPLIANCE, INC.

AUTOMATIC STOCK OPTION AGREEMENTRECITALS

A. The Corporation has implemented an automatic option grant program under the Plan pursuant to which eligible non-employee members of the Board will automatically receive special option grants at periodic intervals over their period of Board service in order to provide such individuals with a meaningful incentive to continue to serve as members of the Board.

B. Optionee is an eligible non-employee Board member, and this Agreement is executed pursuant to, and is intended to carry out the purposes of, the Plan in connection with the automatic grant of an option to purchase shares of Common Stock under the Plan.

C. All capitalized terms in this Agreement shall have the meaning assigned to them in the attached Appendix.

**NOW, THEREFORE**, it is hereby agreed as follows:

**1. Grant of Option.** The Corporation hereby grants to Optionee, as of the Grant Date, a Non-Statutory Option to purchase up to the number of Option Shares specified in the Grant Notice. The Option Shares shall be purchasable from time to time during the option term specified in Paragraph 2 at the Exercise Price.

**2. Option Term.** This option shall have a term of ten (10) years measured from the Grant Date and shall accordingly expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5, 6 or 7.

**3. Limited Transferability.**

(a) This option may be assigned in whole or in part during Optionee's lifetime to one or more members of Optionee's family or to a trust established for the exclusive benefit of one or more such family members, to the extent such assignment is in connection with the Optionee's estate plan, or to Optionee's former spouse pursuant to a domestic relations order. The assigned portion shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such assignment. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment.

(b) Should Optionee die while holding this option, then this option shall be transferred in accordance with Optionee's will or the laws of inheritance. However, Optionee may designate one or more persons as the beneficiary or beneficiaries of this option, and this option shall, in accordance with such designation, automatically be transferred to such beneficiary or beneficiaries upon Optionee's death while holding this option. Such beneficiary or beneficiaries shall take the transferred option subject to all the terms and conditions of this Agreement, including (without limitation) the limited time period during which this option may, pursuant to Paragraph 5, be exercised following Optionee's death.

**4. Exercisability/Vesting.**

(a) This option shall be immediately exercisable for any or all of the Option Shares, whether or not the Option Shares are at the time vested in accordance with the Vesting Schedule, and shall remain so exercisable until the Expiration Date or sooner termination of the option term under Paragraph 5, 6 or 7.

(b) Optionee shall, in accordance with the Vesting Schedule set forth in the Grant Notice, vest in the Option Shares in one or more installments over his or her period of Board service. Vesting in the Option Shares may be accelerated pursuant to the provisions of Paragraph 5, 6 or 7. In no event, however, shall any additional Option Shares vest following Optionee's cessation of service as a Board member.

**5. Cessation of Board Service.** Should Optionee's service as a Board member cease while this option remains outstanding, then the option term specified in Paragraph 2 shall terminate (and this option shall cease to be outstanding) prior to the Expiration Date in accordance with the following provisions:

(a) Should Optionee cease to serve as a Board member for any reason (other than death or Permanent Disability) while this option is outstanding, then the period during which this option may be exercised shall be reduced to a twelve (12)-month period measured from the date of such cessation of Board service, but in no event shall this option be exercisable at any time after the Expiration Date. During such limited period of exercisability, this option may not be exercised in the aggregate for more than the number of Option Shares (if any) in which Optionee is vested on the date of his or her cessation of Board service. Upon the earlier of (i) the expiration of such twelve (12)-month period or (ii) the specified Expiration Date, the option shall terminate and cease to be exercisable with respect to any vested Option Shares for which the option has not been exercised.

(b) Should Optionee die during the twelve (12)-month period following his or her cessation of Board service and hold this option at the time of his or her death, then the personal representative of Optionee's estate or the person or persons to whom the option is transferred pursuant to Optionee's will or the laws of inheritance or the designated beneficiary or beneficiaries of this option (as the case may be) shall have the right to exercise this option for any or all of the Option Shares in which Optionee is vested at the time of Optionee's cessation of Board service (less any Option Shares purchased by Optionee after such cessation of Board service but prior to death). Any such right to exercise this option shall terminate, and this option shall accordingly cease to be exercisable for such vested Option Shares, upon the earlier of (i) the expiration of the twelve (12)-month period measured from the date of Optionee's cessation of Board service or (ii) the specified Expiration Date.

(c) Should Optionee cease service as a Board member by reason of death or Permanent Disability, then any Option Shares at the time subject to this option but not otherwise vested shall vest in full so that this option may be exercised for any or all of the Option Shares as fully vested shares of Common Stock at any time prior to the earlier of (i) the expiration of the twelve (12)-month period measured from the date of Optionee's cessation of Board service or (ii) the specified Expiration Date, whereupon this option shall terminate and cease to be outstanding.

(d) Upon Optionee's cessation of Board service for any reason other than death or Permanent Disability, this option shall immediately terminate and cease to be outstanding with respect to any and all Option Shares in which Optionee is not otherwise at that time vested in accordance with the normal Vesting Schedule or the special vesting acceleration provisions of Paragraphs 6 and 7 below.

## **6. Corporate Transaction.**

(a) In the event of a Corporate Transaction effected during Optionee's period of Board service, any Option Shares at the time subject to this option but not otherwise vested shall automatically vest so that this option shall, immediately prior to the specified effective date for that Corporate Transaction, become exercisable for all of the Option Shares as fully vested shares of Common Stock and may be exercised for any or all of those vested shares. Immediately following the consummation of the Corporate Transaction, this option shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation or its parent company.

(b) If this option is assumed in connection with a Corporate Transaction, then this option shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction, and appropriate adjustments shall also be made to the Exercise Price, provided the aggregate Exercise Price shall remain the same.

**7. Change in Control.** In the event of a Change in Control effected during Optionee's period of Board service, any Option Shares at the time subject to this option but not otherwise vested shall automatically vest so that this option shall, immediately prior to the effective date of that Change in Control, become exercisable for all of the Option Shares as fully vested shares of Common Stock and may be exercised for any or all of those vested shares. This option shall remain exercisable for such fully vested Option Shares until the earliest to occur of (i) the specified Expiration Date or (ii) the sooner termination of this option in accordance with Paragraph 5 or 6.

**8. Adjustment in Option Shares.** Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Exercise Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

**9. Shareholder Rights.** The holder of this option shall not have any shareholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Exercise Price and become a holder of record of the purchased shares.

## **10. Manner of Exercising Option.**

(a) In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Optionee (or any other person or persons exercising the option) must take the following actions:

(i) To the extent the option is exercised for vested Option Shares, execute and deliver to the Corporation a Notice of Exercise for the Option Shares for which the option is exercised. To the extent this option is exercised for unvested Option Shares, execute and deliver to the Corporation a Purchase Agreement for those unvested Option Shares.

(ii) Pay the aggregate Exercise Price for the purchased shares in one or more of the following forms:

(A) cash or check made payable to the Corporation,

(B) shares of Common Stock held by Optionee (or any other person or persons exercising the option) for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date, or

(C) to the extent the option is exercised for vested Option Shares, through a special sale and remittance procedure pursuant to which Optionee (or any other person or persons exercising the option) shall concurrently provide irrevocable instructions (I) to a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (II) to the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

(iii) Furnish to the Corporation appropriate documentation that the person or persons exercising the option (if other than Optionee) have the right to exercise this option.

(b) Except to the extent the sale and remittance procedure is utilized in connection with the option exercise, payment of the Exercise Price must accompany the Notice of Exercise (or the Purchase Agreement) delivered to the Corporation in connection with the option exercise.

(c) As soon after the Exercise Date as practical, the Corporation shall issue to or on behalf of Optionee (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto. To the extent any such Option Shares are unvested, the certificates for those Option Shares shall be endorsed with an appropriate legend evidencing the Corporation's repurchase rights and may be held in escrow with the Corporation until such shares vest.

(d) In no event may this option be exercised for any fractional shares.

**11. No Impairment of Rights.** This Agreement shall not in any way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise make changes in its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets. In addition, this Agreement shall not in any way be construed or interpreted so as to affect adversely or otherwise impair the right of the Corporation or the shareholders to remove Optionee from the Board at any time in accordance with the provisions of applicable law.

## **12. Compliance with Laws and Regulations.**

(a) The exercise of this option and the issuance of the Option Shares upon such exercise shall be subject to compliance by the Corporation and Optionee with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange (or the Nasdaq National Market, if applicable) on which the Common Stock may be listed for trading at the time of such exercise and issuance.

(b) The inability of the Corporation to obtain approval from any regulatory body having authority deemed by the Corporation to be necessary to the lawful issuance and sale of any Common Stock pursuant to this option shall relieve the Corporation of any liability with respect to the non-

issuance or sale of the Common Stock as to which such approval shall not have been obtained. The Corporation, however, shall use its best efforts to obtain all such approvals.

**13. Successors and Assigns.** Except to the extent otherwise provided in Paragraph 3 or 6, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Corporation and its successors and assigns and Optionee, Optionee's assigns, the legal representatives, heirs and legatees of Optionee's estate and any beneficiaries of this option designated by Optionee.

**14. Notices.** Any notice required to be given or delivered to the Corporation under the terms of this Agreement shall be in writing and addressed to the Corporation at its principal corporate offices. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line on the Grant Notice. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

**15. Construction.** This Agreement and the option evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the terms of the Plan.

**16. Governing Law.** The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of California without resort to that State's conflict-of-laws rules.

## EXHIBIT I

### NOTICE OF EXERCISE

I hereby notify Network Appliance, Inc. (the "Corporation") that I elect to purchase \_\_\_ shares of the Corporation's Common Stock (the "Purchased Shares") at the option exercise price of \$\_\_\_ per share (the "Exercise Price") pursuant to that certain option (the "Option") granted to me under the Corporation's 1999 Stock Option Plan on \_\_, \_\_.

Concurrently with the delivery of this Exercise Notice to the Corporation, I shall hereby pay to the Corporation the Exercise Price for the Purchased Shares in accordance with the provisions of my agreement with the Corporation (or other documents) evidencing the Option and shall deliver whatever additional documents may be required by such agreement as a condition for exercise. Alternatively, I may utilize the special broker-dealer sale and remittance procedure specified in my agreement to effect payment of the Exercise Price for any Purchased Shares in which I am vested at the time of exercise of the Option.

\_\_\_\_\_, \_\_\_\_\_  
Date

Optionee \_\_\_\_\_

Address: \_\_\_\_\_

Print name in exact manner it is to appear on the stock certificate: \_\_\_\_\_

Address to which certificate is to be sent, if different from address above: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

### APPENDIX

The following definitions shall be in effect under the Agreement:

A. **Agreement** shall mean this Automatic Stock Option Agreement.

B. **Board** shall mean the Corporation's Board of Directors.

C. **Change in Control** shall mean a change in ownership or control of the Corporation effected through either of the following transactions:

(i) the acquisition, directly or indirectly, by any person or related group of persons (other than the Corporation or a person that directly or indirectly controls, is controlled by, or is under common control with, the Corporation) of beneficial ownership (within the meaning of Rule 13d-3 of the 1934 Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities pursuant to a tender or exchange offer made directly to the Corporation's shareholders, or

(ii) a change in the composition of the Board over a period of thirty-six (36) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period or (B) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (A) who were still in office at the time the Board approved such election or nomination.

D. **Common Stock** shall mean shares of the Corporation's common stock.

E. **Code** shall mean the Internal Revenue Code of 1986, as amended.

F. **Corporate Transaction** shall mean either of the following shareholder-approved transactions to which the Corporation is a party:

(i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or

(ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.

G. **Corporation** shall mean Network Appliance, Inc., a California corporation, and any successor corporation to all or substantially all of the assets or voting stock of Network Appliance, Inc. which shall by appropriate action adopt the Plan.

H. **Exercise Date** shall mean the date on which the option shall have been exercised in accordance with Paragraph 10 of the Agreement.

I. **Exercise Price** shall mean the exercise price per share as specified in the Grant Notice.

J. **Expiration Date** shall mean the date on which the option expires as specified in the Grant Notice.

K. **Fair Market Value** per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(i) If the Common Stock is at the time traded on the Nasdaq National Market, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as the price is reported by the National Association of Securities Dealers on the Nasdaq National Market and published in The Wall Street Journal. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange which serves as the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange and published in The Wall Street Journal. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

L. **Grant Date** shall mean the date of grant of the option as specified in the Grant Notice.

M. **Grant Notice** shall mean the Notice of Grant of Automatic Stock Option accompanying the Agreement, pursuant to which Optionee has been informed of the basic terms of the option evidenced hereby.

N. **1934 Act** shall mean the Securities Exchange Act of 1934, as amended.

O. **Non-Statutory Option** shall mean an option not intended to satisfy the requirements of Code Section 422.

P. **Notice of Exercise** shall mean the notice of exercise in the form of Exhibit I.

Q. **Option Shares** shall mean the number of shares of Common Stock subject to the option.

R. **Optionee** shall mean the person to whom the option is granted as specified in the Grant Notice.

S. **Permanent Disability** shall mean the inability of Optionee to perform his or her usual duties as a member of the Board by reason of any medically determinable physical or mental impairment which is expected to result in death or has lasted or can be expected to last for a continuous period of twelve (12) months or more.

T. **Plan** shall mean the Corporation's 1999 Stock Option Plan.

U. **Purchase Agreement** shall mean the stock purchase agreement (in form and substance satisfactory to the Corporation) which grants the Corporation the right to repurchase, at the Exercise Price, any and all unvested Option Shares held by Optionee at the time of Optionee's cessation of Board service and which precludes the sale, transfer or other disposition of any purchased Option Shares while those shares are unvested and subject to such repurchase right.

V. **Stock Exchange** shall mean the American Stock Exchange or the New York Stock Exchange.

W. **Vesting Schedule** shall mean the vesting schedule specified in the Grant Notice, pursuant to which the Option Shares will vest in one or more installments over the Optionee's period of Board service, subject to acceleration in accordance with the provisions of the Agreement.