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

Form 10-Q

(Mark One)

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

For the quarterly period ended January 1, 2012

OR

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

For the transition period from _____ to _____

Commission file number 000-25711

EXTREME NETWORKS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	**77-0430270**
[State or other jurisdiction of incorporation or organization]	**[I.R.S Employer Identification No.]**
3585 Monroe Street, Santa Clara, California	**95051**
[Address of principal executive office]	**[Zip Code]**

Registrant's telephone number, including area code: (408) 579-2800

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 x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No o

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

Large accelerated filer	o	Accelerated filer	x
Non-accelerated filer	o (Do not check if a smaller reporting company)	Smaller reporting company	o

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

The number of shares of the Registrant's Common Stock, $.001 par value, outstanding at January 30, 2012 was 93,425,598.

EXTREME NETWORKS, INC.

FORM 10-Q
QUARTERLY PERIOD ENDED JANUARY 1, 2012

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EXTREME NETWORKS, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)
(Unaudited)

	January 1, 2012	July 3, 2011
ASSETS		
Current assets:		
Cash and cash equivalents	$ 49,419	$ 49,972
Short-term investments	34,250	41,357
Accounts receivable, net of allowances of $1,050 at January 1, 2012 and $1,412 at July 3, 2011	39,025	33,689
Inventories, net	21,392	21,583
Deferred income taxes	711	681
Prepaid expenses and other current assets, net	4,611	10,132
Assets held for sale	17,057	—
Total current assets	166,465	157,414
Property and equipment, net	24,660	41,877
Marketable securities	62,771	55,648
Intangible assets	4,179	4,906
Other assets, net	10,171	11,128
Total assets	$ 268,246	$ 270,973
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 16,347	$ 15,092
Accrued compensation and benefits	13,022	13,723
Restructuring liabilities	710	3,183
Accrued warranty	2,651	2,640
Deferred revenue, net	31,308	29,613
Deferred distributors revenue, net of deferred cost of sales to distributors	14,491	16,552
Other accrued liabilities	12,276	19,050
Total current liabilities	90,805	99,853
Deferred revenue, less current portion	7,563	7,360
Deferred income taxes	124	93
Other long-term liabilities	974	2,381
Commitments and contingencies (Note 4)		
Stockholders' equity:		
Convertible preferred stock, $.001 par value, issuable in series, 2,000,000 shares authorized; none issued	—	—
Common stock, $.001 par value, 750,000,000 shares authorized; 133,034,590 and 93,409,285 shares issued and outstanding, respectively, at January 1, 2012 and 132,147,451 and 92,522,146 shares issued and outstanding, respectively, at July 3, 2011	133	132
Treasury stock, 39,625,305 shares at January 1, 2012 and July 3, 2011	(149,666)	(149,666)
Additional paid-in-capital	967,438	963,565
Accumulated other comprehensive income	1,634	3,703
Accumulated deficit	(650,759)	(656,448)
Total stockholders' equity	168,780	161,286
Total liabilities and stockholders' equity	$ 268,246	$ 270,973

See accompanying notes to unaudited condensed consolidated financial statements.

EXTREME NETWORKS, INC.

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

	Three Months Ended		Six Months Ended	
	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010
Net revenues:				
Product	$ 68,094	$ 70,334	$ 131,307	$ 139,547
Service	14,718	14,797	30,399	29,421
Total net revenues	82,812	85,131	161,706	168,968
Cost of revenues:				
Product	30,821	30,893	60,299	61,723
Service	5,723	6,257	11,603	12,428
Total cost of revenues	36,544	37,150	71,902	74,151
Gross profit:				
Product	37,273	39,441	71,008	77,824
Service	8,995	8,540	18,796	16,993
Total gross profit	46,268	47,981	89,804	94,817
Operating expenses:				
Sales and marketing	22,734	25,087	44,855	49,993
Research and development	11,082	12,028	23,490	24,889
General and administrative	7,954	5,963	14,224	12,548
Restructuring charge, net of reversal	437	—	1,392	—
Litigation settlement	—	(4,200)	—	(4,200)
Total operating expenses	42,207	38,878	83,961	83,230
Operating income	4,061	9,103	5,843	11,587
Interest income	342	332	635	661
Interest expense	(38)	(29)	(75)	(59)
Other income (expense)	(39)	117	17	(158)
Income before income taxes	4,326	9,523	6,420	12,031
Provision for income taxes	219	594	731	390
Net income	$ 4,107	$ 8,929	$ 5,689	$ 11,641
Basic and diluted net income per share:				
Net income per share - basic	$ 0.04	$ 0.10	$ 0.06	$ 0.13
Net income per share - diluted	$ 0.04	$ 0.10	$ 0.06	$ 0.13
Shares used in per share calculation - basic	93,247	90,878	92,978	90,592
Shares used in per share calculation - diluted	94,118	91,274	94,056	90,942

See accompanying notes to unaudited condensed consolidated financial statements.

EXTREME NETWORKS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended	
	January 1, 2012	December 26, 2010
Cash flows from operating activities:		
Net income	$ 5,689	$ 11,641
Adjustments to reconcile net income to net cash provided by operating activities:		
Decrease in accrued investment income	1,539	1,479
Depreciation	2,602	3,148
Amortization of intangible assets	1,030	1,031
Change in value / loss on value of UBS option to put securities	—	2,429
Auction rate securities mark to market, trading gain	—	(2,429)
Provision for doubtful accounts receivable, net of reversals	(72)	30
Excess and obsolete inventory	474	(100)
Deferred income taxes	(30)	(569)
Loss on retirement of assets	—	109
Stock-based compensation	3,176	2,485
Unrealized foreign exchange gain	(649)	(1,157)
Changes in operating assets and liabilities, net		
Accounts receivable	(5,263)	(4,793)
Inventories	(282)	(2,294)
Prepaid expenses and other assets	6,172	(4,886)
Accounts payable	828	(2,434)
Accrued compensation and benefits	(701)	1,447
Restructuring liabilities	(2,449)	(1,677)
Accrued warranty	11	(359)
Deferred revenue, net	1,898	2,943
Deferred distributors revenue, net of cost of sales to distributors	(2,061)	(1,239)
Other accrued liabilities	(7,579)	7,397
Other long-term liabilities	(379)	(2,605)
Net cash provided by operating activities	3,954	9,597
Cash flows used in investing activities:		
Capital expenditures	(2,011)	(2,407)
Purchases of investments	(34,015)	(70,147)
Proceeds from maturities of investments and marketable securities	13,889	11,800
Proceeds from sales of investments and marketable securities	18,192	45,481
Net cash used in investing activities	(3,945)	(15,273)
Cash flows provided by financing activities:		
Proceeds from issuance of common stock	698	273
Net cash provided by financing activities	698	273
Foreign currency effect on cash	(1,260)	337
Net decrease in cash and cash equivalents	(553)	(5,066)
Cash and cash equivalents at beginning of period	49,972	51,944
Cash and cash equivalents at end of period	$ 49,419	$ 46,878

See accompanying notes to the unaudited condensed consolidated financial statements.

EXTREME NETWORKS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

1. Basis of Presentation

The unaudited condensed consolidated financial statements of Extreme Networks, Inc. (referred to as the "**Company**" or "**Extreme Networks**") included herein have been prepared under the rules and regulations of the Securities and Exchange Commission ("**SEC**"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted under such rules and regulations. The condensed consolidated balance sheet at July 3, 2011 was derived from audited financial statements as of that date but does not include all disclosures required by generally accepted accounting principles for complete financial statements. These interim financial statements and notes should be read in conjunction with the Company's audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended July 3, 2011.

The unaudited condensed consolidated financial statements reflect all adjustments, consisting only of normal recurring adjustments that, in the opinion of management, are necessary for a fair presentation of the results of operations and cash flows for the interim periods presented and the financial condition of Extreme Networks at January 1, 2012. The results of operations for the three and six months ended January 1, 2012 are not necessarily indicative of the results that may be expected for fiscal 2012 or any future periods.

Reclassification

The Company revised its previously reported Statement of Cash Flows for the six month period ended December 26, 2010 to reclassify accrued interest income and amortization related to its investments, resulting in an increase of $2.9 million in cash flows provided by operating activities and an increase of $2.9 million in cash flows used in investing activities. The Company also made other conforming changes to the Statement of Cash Flows for the six months ended December 26, 2010. These revisions had no effect on previously reported Statements of Operations or Stockholders' Equity and were not material to the Company's financial statements taken as a whole.

2. Summary of Significant Accounting Principles

Revenue Recognition

The Company derives the majority of its revenue from sales of its networking equipment and from service fees related to maintenance service contracts, professional services, and training for its products. The Company defers recognition of revenue on all sales to its stocking distributors until the distributors sell the product, as evidenced by monthly "sales-out" reports that the distributors provide. The Company generally recognizes product revenue from its value-added resellers, non-stocking distributors and end-user customers at the time of shipment, provided that persuasive evidence of an arrangement exists, delivery has occurred, the price of the product is fixed or determinable, and collection of the sales proceeds is reasonably assured. In instances where the criteria for revenue recognition are not met, revenue is deferred until all criteria have been met. Revenue from service obligations under service contracts is deferred and recognized on a straight-line basis over the contractual service period. Service contracts typically range from one to two years.

Under the accounting standards for multiple-element revenue arrangements, when the Company's sales arrangements contain multiple elements, such as products, software licenses, maintenance agreements, and/or professional services, the Company determines the standalone selling price for each element based on a selling price hierarchy. Under the selling price hierarchy, the selling price for each deliverable is based on the Company's vendor-specific objective evidence ("VSOE"), which is determined by a substantial majority of the Company's historical standalone sales transactions for a product or service falling within a narrow range. If VSOE is not available due to a lack of standalone sales transactions or lack of pricing within a narrow range, then third party evidence ("TPE"), as determined by the standalone pricing of competitive vendor products in similar markets, is used, if available. TPE typically is difficult to establish due to the proprietary differences of competitive products and difficulty in obtaining reliable competitive standalone pricing information. When neither VSOE nor TPE is available, the Company determines its best estimate of standalone selling price ("ESP") for a product or service and does so by considering several factors including, but not limited to, the 12-month historical median sales price, sales channels, geography, gross margin objectives, competitive product pricing, and product lifecycle. In consideration of all relevant pricing factors, the Company applies management judgment to determine the Company's best estimate of selling price through consultation with and formal approval by the Company's management for all products and services for which neither VSOE nor TPE is available. Generally the standalone selling price of services is determined using VSOE and the standalone selling price of other deliverables is determined by using ESP. The Company regularly reviews VSOE, TPE and ESP for all of its products and services and maintains internal controls over the establishment and updates of these estimates.

EXTREME NETWORKS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

Under software revenue recognition accounting standards, the Company continues to recognize revenue for software using the residual method for its sale of standalone software products, including software upgrades, and for the sale of software that is not essential to the functionality of the hardware with which it is sold. After allocation of the relative selling price to each element of the arrangement, the Company recognizes revenue in accordance with the Company's policies for product, software, and service revenue recognition.

Available-for-Sale Securities

The following is a summary of available-for-sale securities (in thousands):

	Amortized Cost	Fair Value	Unrealized Holding Gains	Unrealized Holding Losses
January 1, 2012				
Money market funds	$ 29,766	$ 29,766	$ —	$ —
U.S. corporate debt securities	89,658	89,545	141	(255)
U.S. government agency securities	7,488	7,476	1	(13)
	$ 126,912	$ 126,787	$ 142	$ (268)
Classified as:				
Cash equivalents	$ 29,766	$ 29,766	$ —	$ —
Short-term investments	34,207	34,250	51	(9)
Marketable securities	62,939	62,771	91	(259)
	$ 126,912	$ 126,787	$ 142	$ (268)

	Amortized Cost	Fair Value	Unrealized Holding Gains	Unrealized Holding Losses
July 3, 2011				
Money market funds	$ 30,405	$ 30,405	$ —	$ —
U.S. corporate debt securities	89,004	89,249	287	(43)
U.S. government agency securities	7,746	7,756	13	(3)
	$ 127,155	$ 127,410	$ 300	$ (46)
Classified as:				
Cash equivalents	$ 30,405	$ 30,405	$ —	$ —
Short-term investments	41,245	41,357	114	(1)
Marketable securities	55,505	55,648	186	(45)
	$ 127,155	$ 127,410	$ 300	$ (46)

The amortized cost and estimated fair value of available-for-sale investments in debt securities at January 1, 2012, by contractual maturity, were as follows (in thousands):

	Amortized Cost	Fair Value
Due in 1 year or less	$ 34,207	$ 34,250
Due in 1-2 years	43,643	43,585
Due in 2-5 years	19,296	19,186
Due in more than 5 years	—	—
Total investments in available for sale debt securities	$ 97,146	$ 97,021

The Company considers highly liquid investments with maturities of three months or less at the date of purchase to be cash equivalents. Investments with maturities of greater than three months, but less than one year at the balance sheet date are

classified as Short Term Investments. Investments with maturities of greater than one year at balance sheet date are classified as Marketable Securities. Except for direct obligations of the United States government, securities issued by agencies of the United States government, and money market funds, the Company diversifies its investments by limiting its holdings with any individual issuer.

Investments include available-for-sale investment-grade debt securities that the Company carries at fair value. The Company accumulates unrealized gains and losses on the Company's available-for-sale debt securities, net of tax, in accumulated other comprehensive income in the stockholders' equity section of its balance sheets. Such an unrealized gain or loss does not reduce net income for the applicable accounting period. If the fair value of an available-for-sale debt instrument is less than its amortized cost basis, an other-than-temporary impairment is triggered in circumstances where (1) the Company intends to sell the instrument, (2) it is more likely than not that the Company will be required to sell the instrument before recovery of its amortized cost basis, or (3) the Company does not expect to recover the entire amortized cost basis of the instrument (that is, a credit loss exists). If the Company intends to sell or it is more likely than not that the Company will be required to sell the available-for-sale debt instrument before recovery of its amortized cost basis, the Company recognizes an other-than-temporary impairment in earnings equal to the entire difference between the debt instruments' amortized cost basis and its fair value. For available-for-sale debt instruments that are considered other-than-temporarily impaired due to the existence of a credit loss, if the Company does not intend to sell and it is not more likely than not that the Company will be required to sell the instrument before recovery of its remaining amortized cost basis (amortized cost basis less any current-period credit loss), the Company separates the amount of the impairment into the amount that is credit related and the amount due to all other factors. The credit loss component is recognized in earnings and is the difference between the debt instrument's amortized cost basis and the present value of its expected future cash flows. The remaining difference between the debt instrument's fair value and the present value of future expected cash flows is due to factors that are not credit related and is recognized in other comprehensive income. As of January 1, 2012 and July 3, 2011, the Company did not have other-than-temporary impairment on its investment securities.

The following table presents the Company's investments' gross unrealized losses and fair values, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position.

	Less than 12 months		12 months or more		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
January 1, 2012:						
U.S. corporate debt securities	$ 39,391	$ (249)	$ 7,184	$ (6)	$ 46,575	$ (255)
U.S. government agency securities	$ 4,972	$ (13)	$ —	$ —	$ 4,972	$ (13)
	$ 44,363	$ (262)	$ 7,184	$ (6)	$ 51,547	$ (268)

The Company determines the basis of the cost of a security sold or the amount reclassified out of accumulated other comprehensive income into earnings using the specific identification method. During the three and six months ended January 1, 2012, realized gains or losses recognized on the sale of investments were not significant. As of January 1, 2012, there were twenty-seven out of fifty-one investment securities that had unrealized losses. The unrealized gains / (losses) on the Company's investments were caused by interest rate fluctuations. Substantially all of the Company's available-for-sale investments are investment grade government and corporate debt securities that have maturities of less than 3 years.

Fair Value of Financial Instruments

The Company recognizes certain financial instruments at fair value on a recurring basis. The following table presents the Company's fair value hierarchy for those instruments:

EXTREME NETWORKS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

January 1, 2012:	Level 1	Level 2	Total
		(In thousands)	
Assets			
Investments:			
Federal agency notes	$ —	$ 7,476	$ 7,476
Money market funds	29,766	—	29,766
Corporate notes/bonds	—	89,545	89,545
Total	29,766	97,021	126,787
Liabilities			
Foreign currency forward contracts	—	42	42
Total	$ —	$ 42	$ 42

July 3, 2011:	Level 1	Level 2	Total
		(In thousands)	
Assets			
Investments:			
Federal agency notes	$ —	$ 7,756	$ 7,756
Money market funds	30,405	—	30,405
Corporate notes/bonds	—	89,248	89,248
Total	30,405	97,004	127,409
Liabilities			
Foreign currency forward contracts	—	37	37
Total	$ —	$ 37	$ 37

Level 2 investment valuations are based on inputs such as quoted market prices, dealer quotations or valuations provided by alternative pricing sources supported by observable inputs. These generally include U.S. government and sovereign obligations, most government agency securities, investment-grade corporate bonds, and state, municipal and provincial obligations. As of January 1, 2012 and July 3, 2011, the Company had no assets or liabilities classified within Level 3.

Inventory, Net

Inventory is stated at the lower of cost or market. Cost is computed using standard cost, which approximates actual cost, on a first-in, first-out basis. The Company reduces the carrying value of inventory based on excess and obsolete inventories which are primarily determined by age of inventory and future demand forecasts. At the point of the loss recognition, a new, lower-cost basis for that inventory is established, and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis. Any written down or obsolete inventory subsequently sold has not had a material impact on gross profit for any of the periods disclosed. Inventories at January 1, 2012 and July 3, 2011, respectively, were (in thousands):

	January 1, 2012	July 3, 2011
Inventory, gross	$ 22,503	$ 26,487
Less: Write down for excess and obsolete inventory	1,111	4,904
Inventory, net	$ 21,392	$ 21,583

Long-lived assets

Long-lived assets include property and equipment, intangible assets, and service inventory which the Company holds to support customers who have purchased service contracts with a hardware replacement element. Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets or asset groups may not be recoverable. If such facts and circumstances exist, the Company assesses the recoverability of the long-lived assets by comparing the projected undiscounted net cash flows associated with the related asset or group of assets over their remaining lives against their respective carrying amounts. Impairments, if any, are based on the excess of the carrying amount

over the fair value of those assets. There was no impairment of long-lived assets during the three and six months ended January 1, 2012 and December 26, 2010.

On September 23, 2010, the Company entered into an Option Agreement with Trumark Companies LLC ("Trumark"), under which the Company granted Trumark an option (the "Option") to purchase half of its corporate headquarters campus in Santa Clara, California (First Property), at a price of $24.0 million. The Option expires on December 18, 2012, provided that Trumark continues to make the required Option payments. As of January 1, 2012, the Company had received $1.0 million of Option payments from Trumark, which were classified as a deferred gain and included in other current liabilities on the condensed consolidated balance sheet. If Trumark exercises the Option, the closing on this transaction will occur within thirty days after the exercise date. As of January 1, 2012, the assets associated with the proposed transaction were classified as "assets held for sale" on the condensed consolidated balance at a net book value of $17.1 million, which was the lesser of the fair value (less cost to sell) or carrying amount of the assets. In addition, as of January 1, 2012, the Company ceased recognizing depreciation expense on the assets held for sale.

Intangible assets

The following tables summarize the components of gross and net intangible asset balances (in thousands):

	Weighted Average Remaining Amortization Period	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
January 1, 2012:				
Patents	7.6 years	$ 1,800	$ 528	$ 1,272
License Agreements	6.8 years	8,443	5,630	2,813
Other Intangibles	0.7 years	324	230	94
		$ 10,567	$ 6,388	$ 4,179

	Weighted Average Remaining Amortization Period	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
July 3, 2011:				
Patents	7.7 years	$ 1,800	$ 387	$ 1,413
License Agreements	6.5 years	8,140	4,788	3,352
Other Intangibles	1.2 years	324	183	141
		$ 10,264	$ 5,358	$ 4,906

Amortization expense was $0.5 million and $0.5 million for the three months ended January 1, 2012 and December 26, 2010, respectively. Amortization expense was $1.0 million and $1.0 million for the six months ended January 1, 2012 and December 26, 2010, respectively. Amortization expense expected to be recorded for each of the next five years is as follows (in thousands):

For the fiscal year ending:	
Remaining in fiscal 2012	$ 703
2013	1,183
2014	552
2015	255
2016	214
Thereafter	1,272
Total	$ 4,179

Deferred Revenue, Net

Deferred revenue, net represents amounts for (i) deferred services revenue (support arrangements, professional services

and training), and (ii) deferred product revenue net of the related cost of revenues when the revenue recognition criteria have not been met. Product revenue includes shipments to end-users and value-add resellers. The following table summarizes deferred revenue, net at January 1, 2012 and July 3, 2011, respectively (in thousands):

	January 1, 2012	July 3, 2011
Deferred services	$ 37,669	$ 36,025
Deferred product		
Deferred revenue	1,706	1,984
Deferred cost of sales	(504)	(1,036)
Deferred product revenue, net	1,202	948
Balance at end of period	38,871	36,973
Less: current portion	31,308	29,613
Non-current deferred revenue, net	$ 7,563	$ 7,360

The Company offers renewable support arrangements, including extended warranty contracts, to its customers that range generally from one to two years. Deferred support revenue is included within deferred revenue, net within the deferred services category above. The change in the Company's deferred support revenue balance in relation to these arrangements was as follows (in thousands):

	Three Months Ended		Six Months Ended	
	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010
Balance beginning of period	$ 35,730	$ 35,417	$ 35,802	$ 36,193
New support arrangements	15,960	18,237	30,560	31,730
Recognition of support revenue	(14,274)	(14,782)	(28,946)	(29,051)
Balance end of period	37,416	38,872	37,416	38,872
Less current portion	29,853	31,727	29,853	31,727
Non-current deferred revenue	$ 7,563	$ 7,145	$ 7,563	$ 7,145

Deferred Distributors Revenue, Net of Deferred Cost of Sales to Distributors

At the time of shipment to distributors, the Company records a trade receivable at the contractual discount to list selling price since there is a legally enforceable obligation from the distributor to pay it currently for product delivered, the Company relieves inventory for the carrying value of goods shipped since legal title has passed to the distributor, and the Company records deferred revenue and deferred cost of sales in "Deferred distributors revenue, net of deferred cost of sales to distributors" in the liability section of its consolidated balance sheets. The following table summarizes deferred distributors revenue, net of deferred cost of sales to distributors at January 1, 2012 and July 3, 2011, respectively (in thousands):

	January 1, 2012	July 3, 2011
Deferred revenue	$ 19,156	$ 22,454
Deferred cost of sales	(4,665)	(5,902)
Total deferred distributors revenue, net of deferred cost of sales to distributors	$ 14,491	$ 16,552

Guarantees and Product Warranties

The Company's standard hardware warranty period is typically 12 months from the date of shipment to end-users. For certain access products, the Company offers a lifetime hardware warranty commencing on the date of shipment from the Company and ending five years following the Company's announcement of the end of sale of such product. The following table summarizes the activity related to the Company's product warranty liability during the three and six months ended January 1, 2012 and December 26, 2010, respectively (in thousands):

EXTREME NETWORKS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

	Three Months Ended		Six Months Ended	
	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010
Balance beginning of period	$ 2,702	$ 2,794	$ 2,640	$ 3,169
New warranties issued	1,589	1,653	3,237	2,944
Warranty expenditures	(1,640)	(1,636)	(3,226)	(3,302)
Balance end of period	$ 2,651	$ 2,811	$ 2,651	$ 2,811

In the normal course of business to facilitate sales of the Company's products, the Company indemnifies the Company's resellers and end-user customers with respect to certain matters. The Company has agreed to hold the customer harmless against losses arising from a breach of intellectual property infringement or other claims made against certain parties. These agreements may limit the time within which an indemnification claim can be made and the amount of the claim. It is not possible to estimate the maximum potential amount under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. Historically, payments made by the Company under these agreements have not had a material impact on the Company's operating results or financial position.

Other Accrued Liabilities

The following are the components of other accrued liabilities (in thousands):

	January 1, 2012	July 3, 2011
Accrued income taxes	$ 701	$ 897
Accrued general and administrative costs	2,001	5,373
Accrued research and development costs	1,601	1,734
Accrued in-transit inventory and freight	1,250	2,777
Accrued marketing development funds	2,459	2,492
Deferred gain on assets held for sale	1,002	—
Other accrued liabilities	3,262	5,777
Total	$ 12,276	$ 19,050

3. Share-Based Compensation

Share-based compensation recognized in the condensed consolidated financial statements by line item caption is as follows (dollars in thousands):

	Three Months Ended		Six Months Ended	
	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010
Cost of product revenue	$ 135	$ 41	$ 291	$ 233
Cost of service revenue	30	6	144	150
Sales and marketing	323	388	819	960
Research and development	280	(119)	752	492
General and administrative	513	60	1,170	650
Total share-based compensation expense	$ 1,281	$ 376	$ 3,176	$ 2,485

During the three and six months ended January 1, 2012 and December 26, 2010, the Company did not capitalize any stock-based compensation expense in inventory, as the amounts were immaterial.

The weighted-average grant-date per share fair value of options granted during the three months ended January 1, 2012 and December 26, 2010 were $1.54 and $1.39, respectively. The weighted-average estimated per share fair value of shares purchased under the Company’s 1999 Employee Stock Purchase Plan (“ESPP”) during the three months ended January 1, 2012

and December 26, 2010 were $1.03 and $0.96, respectively.

The weighted-average grant-date per share fair value of options granted during the six months ended January 1, 2012 and December 26, 2010 were $1.66 and $1.39, respectively. The weighted-average estimated per share fair value of shares purchased under the Company's 1999 Employee Stock Purchase Plan ("ESPP") during the six months ended January 1, 2012 and December 26, 2010 were $0.99 and $0.94, respectively.

The following table summarizes the activity for stock options for the six months ended January 1, 2012:

	Number of Shares (000's)	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value ($ 000's)
Options outstanding at July 3, 2011	9,132	$ 4.01		
Granted	2,233	$ 3.28		
Exercised	(229)	$ 2.08		$ 253
Canceled	(1,342)	$ 5.48		
Options outstanding at January 1, 2012	9,794	$ 3.69		
Exercisable at January 1, 2012	5,666	$ 4.01	$ 4.81	$ 852
Vested and expected to vest at January 1, 2012	9,330	$ 3.71	$ 5.40	$ 1,019

The following table summarizes the activity for restricted stock units ("RSUs") for the six months ended January 1, 2012:

	Number of Shares (000's)	Weighted-Average Grant-Date Fair Value	Aggregate Fair Market Value ($ 000's)
Unvested at July 3, 2011	1,870	$ 2.79	
Granted	494	$ 3.00	
Vested	(558)	$ 2.89	$ 1,616
Canceled	(196)	$ 3.11	
Unvested at January 1, 2012	1,610	$ 2.78	

The fair value of each option award and ESPP is estimated on the date of grant using the Black-Scholes-Merton option valuation model with the weighted average assumptions noted in the following table. The expected term of options granted is derived from historical data on employee exercise and post-vesting employment termination behavior. The expected term of ESPP represents the contractual life of the ESPP purchase period. The risk-free rate based upon the estimated life of the option and ESPP is based on the U.S. Treasury yield curve in effect at the time of grant. Expected volatility is based on both the implied volatilities from traded options on the Company's stock and historical volatility on the Company's stock.

	Stock Option Plan		Employee Stock Purchase Plan		Stock Option Plan		Employee Stock Purchase Plan	
	Three Months Ended		Three Months Ended		Six Months Ended		Six Months Ended	
	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010
Expected life	5 yrs	4 yrs	0.25 yrs	0.24 yrs	5 yrs	4 yrs	0.25 yrs	0.24 yrs
Risk-free interest rate	1.00%	1.27%	0.04%	0.18%	1.09%	1.27%	0.04%	0.17%
Volatility	61%	59%	79%	54%	59%	59%	70%	57%
Dividend yield	—%	—%	—%	—%	—%	—%	—%	—%

The Company is required to estimate the expected forfeiture rate and only recognize expense on a straight-line method for those shares expected to vest.

4. Commitments, Contingencies and Leases

Purchase Commitments

The Company currently has arrangements with contract manufacturers and suppliers for the manufacture of its products. The arrangements allow them to procure long lead-time component inventory on the Company's behalf based upon a rolling production forecast provided by it. The Company is obligated to the purchase of long lead-time component inventory that its contract manufacturer procures in accordance with the forecast, unless the Company gives notice of order cancellation outside of applicable component lead-times. As of January 1, 2012, the Company had non-cancelable commitments to purchase approximately $32.0 million of such inventory.

Legal Proceedings

The Company may from time to time be party to litigation arising in the course of its business, including, without limitation, allegations relating to commercial transactions, business relationships or intellectual property rights. Such claims, even if not meritorious, could result in the expenditure of significant financial and managerial resources. Litigation in general, and intellectual property and securities litigation in particular, can be expensive and disruptive to normal business operations. Moreover, the results of legal proceedings are difficult to predict.

In accordance with applicable accounting guidance, the Company records accruals for certain of its outstanding legal proceedings, investigations or claims when it is probable that a liability will be incurred and the amount of loss can be reasonably estimated. The Company evaluates, at least on a quarterly basis, developments in legal proceedings, investigations or claims that could affect the amount of any accrual, as well as any developments that would result in a loss contingency to become both probable and reasonably estimable. When a loss contingency is not both probable and reasonably estimable, the Company does not record a loss accrual. However, if the loss (or an additional loss in excess of any prior accrual) is at least a reasonable possibility and material, then the Company would disclose an estimate of the possible loss or range of loss, if such estimate can be made, or disclose that an estimate cannot be made. The assessment whether a loss is probable or a reasonable possibility, and whether the loss or a range of loss is estimable, involves a series of complex judgments about future events. Even if a loss is reasonably possible, the Company may not be able to estimate a range of possible loss, particularly where (i) the damages sought are substantial or indeterminate, (ii) the proceedings are in the early stages, or (iii) the matters involve novel or unsettled legal theories or a large number of parties. In such cases, there is considerable uncertainty regarding the ultimate resolution of such matters, including the amount of any possible loss, fine or penalty. Accordingly, for current proceedings, the Company is currently unable to estimate any reasonably possible loss or range of possible loss. However, an adverse resolution of one or more of such matters could have a material adverse effect on the Company's results of operations in a particular quarter or fiscal year.

Intellectual Property Litigation

On April 20, 2007, the Company filed suit against Enterasys Networks in the United States District Court for the Western District of Wisconsin, Civil Action No. 07-C-0229-C. The complaint alleged willful infringement of U.S. Patents Nos. 6,104,700, 6,678,248, and 6,859,438, and sought injunctive relief against Enterasys' continuing sale of infringing goods and monetary damages. Enterasys responded to the complaint on May 30, 2007, and also filed counterclaims alleging infringement of three U.S. patents owned by Enterasys. On April 9, 2008, the Court dismissed Enterasys' counterclaims on one of its patents with prejudice. On May 5, 2008, the Court granted the Company's motion for summary judgment, finding that it does not infringe Enterasys' two remaining patents and dismissing all of Enterasys' remaining counterclaims with prejudice. On May 30, 2008, a jury found that Enterasys infringed all three of the Company's patents and awarded it damages in the amount of $0.2 million. The Court also ruled in the Company's favor on Enterasys' challenge to the validity of the Company's patents. On October 29, 2008, the Court denied Enterasys' post-trial motion for judgment as a matter of law, and granted Extreme Network's motion for a permanent injunction against Enterasys. The injunction order permanently enjoins Enterasys from manufacturing, using, offering to sell, selling in the U.S. and importing into the U.S. the Enterasys products accused of infringing Extreme Network's three patents. On March 16, 2009, the Court also denied Enterasys' motion for a new trial, but granted Enterasys' motion for a stay of the injunction pending appeal. On April 17, 2009, Enterasys filed its notice of appeal and on May 1, 2009, the Company filed its cross appeal. On September 30, 2010, the U.S. Court of Appeals for the Federal Circuit upheld the jury verdict of infringement by Enterasys of the Company's patents and the Districts Court's summary judgment of non-infringement by the Company of Enterasys' '727 patent. The Federal Circuit reversed the judgment of non-infringement by the Company of Enterasys '181 patent, holding that the District Court Judge applied an incorrect claim construction and reversed the District Court's denial of the Company's request for attorneys' fees as premature. On November 4, 2011, a jury returned a verdict of non-infringement by the Company of the '181 patent and found the patent to be valid. Post trial motions are pending. The Company intends to defend the lawsuit vigorously, but, due to the inherent uncertainties of litigation, it cannot predict the ultimate outcome of the matter at this time.

On June 21, 2005, Enterasys filed suit against Extreme and Foundry Networks, Inc. (“Foundry”) in the United States

District Court for the District of Massachusetts, Civil Action No. 05-11298 DPW. The complaint alleges willful infringement of U.S. Patent Nos. 5,251,205; 5,390,173; 6,128,665; 6,147,995; 6,539,022; and 6,560,236, and seeks: a) a judgment that the Company willfully infringes each of the patents; (b) a permanent injunction from infringement, inducement of infringement and contributory infringement of each of the six patents; (c) damages and a “reasonable royalty” to be determined at trial; (d) treble damages; (e) attorneys' fees, costs and interest; and (f) equitable relief at the Court's discretion. Petitions for reexamination were filed challenging five of the patents at issue to the U.S. Patent and Trademark Office, and a stay of the case was entered. Following the reexamination proceedings, Enterasys withdrew its allegations of infringement as to two of the patents, U.S. Patent Nos. 6,539,022 and 6,560,236. The stay was lifted on May 21, 2010, and the Court held claim construction hearings in December 2010. Fact discovery is ongoing. No trial date has been set. The Company intends to defend the lawsuit vigorously, but, due to the inherent uncertainties of litigation, it cannot predict the ultimate outcome of the matter at this time.

On October 31, 2011, Chrimar Systems, Inc. dba CMS Technologies, and Chrimar Holding Company filed suit against the Company, Cisco Systems, Inc., Cisco Consumer Products LLC. Cisco-Linksys LLC, Hewlett-Packard Company, 3Com Corporation and Avaya, Inc. in the United States District Court for the District of Delaware, Civil Action No. 11-1050 ("the Delaware action"). The complaint alleges infringement of U.S. Patent No. 7,457,250. The Delaware action has been stayed pursuant to 28 USC Section 1659(a) pending final determination of the International Trade Commission action described below, based on the fact that the allegations in both cases relate to the same patent. The Company intends to defend the lawsuit vigorously, but, due to the inherent uncertainties of litigation, it cannot predict the ultimate outcome of the matter at this time.

On November 1, 2011, Chrimar filed a complaint with the International Trade Commission, pursuant to Section 337 of the Tariff Act of 1930, as amended, alleging that the Company imports into the United States, sells for importation and/or sells within the United States after importation of products and/or systems infringing U.S. Patent No. 7,457,250 patent, the same patent asserted in the Delaware action. On December 2, 2011, the International Trade Commission instituted an investigation of these allegations ("the ITC action"). The complaint in the ITC action seeks a permanent order excluding from entry into the United States all infringing articles that are manufactured, imported or sold by the Company that infringe U.S. Patent No. 7,457,250. A hearing has been set at the International Trade Commission on August 27-31, 2012.The Company intends to defend the ITC action vigorously, but, due to the inherent uncertainties of litigation, it cannot predict the ultimate outcome of the matter at this time.

Other Legal Matters

Beginning on July 6, 2001, purported securities fraud class action complaints were filed in the United States District Court for the Southern District of New York. The cases were consolidated and the litigation is now captioned as In re Extreme Networks, Inc. Initial Public Offering Securities Litigation, Civ. No. 01-6143 (SAS) (S.D.N.Y.), related to In re Initial Public Offering Securities Litigation, 21 MC 92 (SAS) (S.D.N.Y.). The operative amended complaint names us as defendants; six of the Company's present and former officers and/or directors, including its former CEO; and several investment banking firms that served as underwriters of its initial public offering and October 1999 secondary offering. The complaint alleges liability under Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, on the grounds that the registration statement for the offerings did not disclose that: (1) the underwriters had agreed to allow certain customers to purchase shares in the offerings in exchange for excess commissions paid to the underwriters; and (2) the underwriters had arranged for certain customers to purchase additional shares in the aftermarket at predetermined prices. Similar allegations were made in other lawsuits challenging over 300 other initial public offerings and follow-on offerings conducted in 1999 and 2000. The cases were consolidated for pretrial purposes. The parties to the lawsuits have reached a settlement, which was approved by the Court on October 6, 2009. Extreme Networks is not required to make any cash payments in the settlement. The Court subsequently entered a final judgment of dismissal. Certain objectors appealed the judgment. Subsequently, the District Court ruled that all objectors lacked standing to appeal. One of the objectors appealed that ruling. In January 2012, the Court dismissed the pending appeal and the case has concluded. The Company has no financial liability associated with the settlement.

Indemnification Obligations

Subject to certain limitations, the Company may be obligated to indemnify its current and former directors, officers and employees. These obligations arise under the terms of its certificate of incorporation, its bylaws, applicable contracts, and Delaware and California law. The obligation to indemnify, where applicable, generally means that the Company is required to pay or reimburse, and in certain circumstances the Company has paid or reimbursed, the individuals’ reasonable legal expenses and possibly damages and other liabilities incurred in connection with these matters. It is not possible to estimate the maximum potential amount under these indemnification agreements due to the limited history of these claims. The cost to defend the

Company and the named individuals could have a material adverse effect on its consolidated financial position, results of operations and cash flows in the future. Recovery of such costs under its directors and officers insurance coverage is uncertain.

5. Comprehensive Income and Accumulated Other Comprehensive Income

Comprehensive Income

Comprehensive income was as follows (in thousands):

	Three Months Ended		Six Months Ended	
	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010
Net income	$ 4,107	$ 8,929	$ 5,689	$ 11,641
Other comprehensive income:				
Change in unrealized gain (loss) on investments:	63	(356)	(380)	5
Foreign currency translation adjustments				
Beginning balance	2,588	2,214	3,449	954
Ending balance	1,760	2,305	1,760	2,305
Foreign currency translation adjustments change	(828)	91	(1,689)	1,351
Total comprehensive income	$ 3,342	$ 8,664	$ 3,620	$ 12,997

6. Income Taxes

The Company recorded an income tax provision of $0.2 million and $0.6 million for the three months ended January 1, 2012 and December 26, 2010, respectively. The Company recorded an income tax provision of $0.7 million and $0.4 million for the six months ended January 1, 2012 and December 26, 2010, respectively. The income tax provision for the three months ended January 1, 2012 consisted primarily of taxes on foreign income and U.S. state income taxes, partially offset by a benefit for the release of an unrecognized tax benefit due to the expiration of the statute of limitations. The income tax provision for the three months ended December 26, 2010 consisted primarily of taxes on foreign income and U.S. state income taxes. The income tax provision for the six months ended January 1, 2012 consisted primarily of taxes on foreign income and U.S. state income taxes, partially offset by a benefit for the release of an unrecognized tax benefit due to the expiration of the statute of limitations. The income tax provision for the six months ended December 26, 2010 consisted primarily of taxes on foreign income and U.S. state income taxes, partially offset by a reversal of previously recorded deferred tax liabilities. The income tax provisions for both fiscal years were calculated based on the results of operations for the three and six month periods ended January 1, 2012 and December 26, 2010, and may not reflect the annual effective rate.

The Company recognizes deferred tax assets and liabilities based on the differences between the financial statement carrying amounts and the tax bases of assets and liabilities. Significant management judgment is required in determining the Company's deferred tax assets and liabilities and any valuation allowance recorded against the Company's net deferred tax assets. The Company makes an assessment of the likelihood that its net deferred tax assets will be recovered from future taxable income, and to the extent that recovery is not believed to be likely, a valuation allowance is established.

The Company has a full valuation allowance against its U.S. net deferred tax assets. The valuation allowance was calculated by assessing both negative and positive evidence when measuring the need for a valuation allowance. Evidence, such as operating results during the most recent three year period was given more weight than the Company's expectations of future profitability, which are inherently uncertain. The Company's U.S. losses during those periods represented sufficient negative evidence to require a full valuation allowance against its U.S. federal and state net deferred tax assets. The valuation allowance will be evaluated periodically and can be reversed partially or totally if business results have sufficiently improved to support realization of the Company's U.S. deferred tax assets.

The Company had unrecognized tax benefits of approximately $25.7 million as of January 1, 2012. The future impact of the unrecognized tax benefit of $25.7 million, if recognized, is as follows: approximately $0.8 million would affect the effective tax rate, and approximately $24.9 million would result in adjustments to deferred tax assets and corresponding adjustments to the valuation allowance. It is reasonably possible that the amount of unrealized tax benefits could decrease by approximately $0.3 million during the next twelve months due to the expiration of the statute of limitations in certain foreign

jurisdictions.

Estimated interest and penalties related to the underpayment of income taxes are classified as a component of tax expense in the Condensed Consolidated Statement of Operations and were immaterial for both the three and six month periods ended January 1, 2012. Accrued interest and penalties were approximately $0.2 million and $0.2 million as of January 1, 2012 and December 26, 2010, respectively.

In general, the Company's U.S. federal income tax returns are subject to examination by tax authorities for fiscal years 1998 and beyond. State income tax returns are subject to examination for fiscal years 2001 and beyond.

7. Net Income Per Share

Basic net income per share is calculated by dividing net income by the weighted average number of common shares outstanding during the period and excludes any dilutive effects of options and stock awards. Diluted net income per share is calculated by dividing net income by the weighted average number of common shares used in the basic earnings per share calculation plus the dilutive effect of options, stock awards and ESPP.

The following table presents the calculation of basic and diluted net income per share (in thousands, except per share data):

	Three Months Ended		Six Months Ended	
	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010
Net income	$ 4,107	$ 8,929	$ 5,689	$ 11,641
Weighted-average shares used in per share calculation – basic	93,247	90,878	92,978	90,592
Incremental shares using the treasury stock method:				
Stock options	282	361	299	316
Unvested restricted awards	471	35	645	34
Employee Stock Purchase Plan	118	—	134	—
Weighted-average share used in per share calculation – diluted	$ 94,118	$ 91,274	$ 94,056	$ 90,942
Net income per share – basic	$ 0.04	$ 0.10	$ 0.06	$ 0.13
Net income per share – diluted	$ 0.04	$ 0.10	$ 0.06	$ 0.13

Potentially dilutive common shares from employee incentive plans are determined by applying the treasury stock method to the assumed exercise of outstanding stock options, the assumed vesting of outstanding restricted stock units, and the assumed issuance of common stock under the stock purchase plan. Weighted stock options outstanding with an exercise price higher than the Company's average stock price for the periods presented are excluded from the calculation of diluted net income per share since the effect of including them would have been anti-dilutive due to the net income position of the Company during the periods presented. For the three and six months ended January 1, 2012, the Company excluded 8.8 million and 8.7 million outstanding weighted average stock options, respectively, from the calculation of diluted earnings per common share. The Company excluded 7.3 million outstanding weighted average stock options from the calculation of diluted earnings per common share in both the three and six months ended December 26, 2010.

8. Restructuring Liabilities

In fiscal 2011, the Company implemented restructuring plans, involving among other things, a reduction of its worldwide workforce. The associated restructuring costs consisted of cash severance and termination benefits. Termination benefits include outplacement services, health insurance coverage, and legal costs. During the three and six months ended January 1, 2012, the Company recognized additional restructuring charges of approximately $0.6 million and $1.6 million, respectively, consisting of cash severance. The Company did not have restructuring charges during the three and six months ended December 26, 2010.

Activity with respect to restructuring liabilities in the three and six months ended January 1, 2012 is as follows (in thousands):

	Three Months Ended	Six Months Ended
	January 1, 2012	January 1, 2012
Balance at beginning of period	$ 1,753	$ 3,183
Period charges	637	1,628
Period reversals	(200)	(236)
Period payments	(1,480)	(3,865)
Balance at end of period	$ 710	$ 710

9. Foreign Exchange Forward Contracts

The Company uses derivative financial instruments to manage exposures to foreign currency. The Company's objective for holding derivatives is to use the most effective methods to minimize the impact of these exposures. The Company does not enter into derivatives for speculative or trading purposes. The Company records all derivatives on the balance sheet as Other Assets, net at fair value. Changes in the fair value of derivatives are recognized in earnings as Other Income (Expense). The Company enters into foreign exchange forward contracts to mitigate the effect of gains and losses generated by the foreign currency forecasted transactions related to certain operating expenses and remeasurement of certain assets and liabilities denominated in Japanese Yen, the Euro, the Swedish Krona, the Indian Rupee and the British Pound. These derivatives do not qualify as hedges. At January 1, 2012, these forward foreign currency contracts had a notional principal amount of $16.4 million and an immaterial unrealized loss on foreign exchange contracts. These contracts have maturities of less than 60 days. Changes in the fair value of these foreign exchange forward contracts are offset largely by remeasurement of the underlying assets and liabilities.

Foreign currency transaction gains and losses were a $0.1 million loss for the three months ended January 1, 2012, and a $0.1 million gain for the three months ended December 26, 2010. Foreign currency transaction gains and losses were an immaterial loss for the six months ended January 1, 2012, and a $0.2 million loss for the six months ended December 26, 2010.

10. Disclosure about Segments of an Enterprise and Geographic Areas

Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision makers with respect to the allocation of resources and performance.

The Company operates in one segment, the development and marketing of network infrastructure equipment. The Company conducts business globally and is managed geographically. Revenue is attributed to a geographical area based on the location of the customers. The Company operates in three geographical areas: Americas, which includes the United States, Canada, Mexico, Central America and South America; EMEA, which includes Europe, Middle East and Africa; and APAC which includes Asia Pacific, South Asia and Japan. Prior to the first quarter of fiscal 2012, South America was included as part of EMEA. Revenue by geographical area (as presented in the table below) for the quarter ended September 26, 2010 has been adjusted to reflect this change.

Information regarding geographic areas is as follows (in thousands):

	Three Months Ended				Six Months Ended			
	January 1, 2012	December 26, 2010	$ Change	% Change	January 1, 2012	December 26, 2010	$ Change	% Change
Net Revenues:								
Americas	$ 36,801	$ 30,842	$ 5,959	19.3 %	$ 70,246	$ 62,908	$ 7,338	11.7 %
Percentage of net revenue	44.4%	36.2%			43.4%	37.2%		
EMEA	32,428	37,191	(4,763)	(12.8)%	63,314	71,079	(7,765)	(10.9)%
Percentage of net revenue	39.2%	43.7%			39.2%	42.1%		
APAC	13,583	17,098	(3,515)	(20.6)%	28,146	34,981	(6,835)	(19.5)%
Percentage of net revenue	16.4%	20.1%			17.4%	20.7%		
Total net revenues	$ 82,812	$ 85,131	$ (2,319)	(2.7)%	$ 161,706	$ 168,968	$ (7,262)	(4.3)%

The level of sales to any one customer may vary from period to period; however, the Company expects that significant

customer concentration will continue for the foreseeable future. One customer accounted for 12.3% of the Company's revenue in the second quarter of fiscal 2012. Three customers accounted for 13.4%, 12.5%, and 10.0% of the Company's revenue in the second quarter of fiscal 2011.

Two customers accounted for 11.4% and 12.1% of the Company's revenue in the first six months of fiscal 2012. Three customers accounted for 13.6%, 11.5%, and 11.2% of the Company's revenue in the first six months of fiscal 2011.

Substantially all of the Company’s assets as of January 1, 2012 and December 26, 2010 were attributable to its Americas operations.

11. Subsequent Events

On January 18, 2012, the Company received an additional option payment of $0.5 million from Trumark in connection with the proposed sale of the First Property (see Note 2, *“Long-Lived Assets”*), bringing the total option payments received from Trumark to $1.5 million.

On January 25, 2012, Company entered into new agreement with Trumark, under which it granted Trumark an option to purchase the remaining portion of the Company's corporate campus (Second Property). Under the new agreement, Trumark will have until December 28, 2012 to exercise the option to purchase the Second Property for a total purchase price of $24.5 million, and in the meantime, Trumark will make certain payments to the Company in order to keep the option in effect. If Trumark exercises the option, the closing on the Second Property transaction will occur within thirty days after such exercise. However, Trumark has the right to extend the closing by up to six months to meet certain city regulatory requirements. The assets associated with the Second Property transaction were considered to be assets held for use and were included in property and equipment, net on the condensed consolidated balance sheet as of January 1, 2012.

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

This quarterly report on Form 10-Q, including the following sections, contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including in particularly, our expectations regarding market demands, customer requirements and the general economic environment, and future results of operations, and other statements that include words such as "may" "expect" or "believe" . These forward-looking statements involve risks and uncertainties. We caution investors that actual results may differ materially from those projected in the forward-looking statements as a result of certain risk factors identified in the section entitled "Risk Factors" in this Report, our Quarterly Report on Form 10-Q for the first quarter of fiscal 2012, our Annual Report on Form 10-K for the fiscal year ended July 3, 2011, and other filings we have made with the Securities and Exchange Commission. These risk factors, include, but are not limited to: fluctuations in demand for our products and services; a highly competitive business environment for network switching equipment; our effectiveness in controlling expenses; the possibility that we might experience delays in the development or introduction of new technology and products; customer response to our new technology and products; the timing of any recovery in the global economy; risks related to pending or future litigation; and a dependency on third parties for certain components and for the manufacturing of our products.

Business Overview

We are a leading provider of network infrastructure equipment and services for enterprises, data centers, and service providers. We were incorporated in California in May 1996 and reincorporated in Delaware in March 1999. Our corporate headquarters are located in Santa Clara, California. We develop and sell network infrastructure equipment to our enterprise, data center and telecommunications service provider customers.

We conduct our sales and marketing activities on a worldwide basis through a distribution channel utilizing distributors, resellers and our field sales organization. We primarily sell our products through an ecosystem of channel partners who combine our Ethernet products with their offerings to create compelling information technology solutions for end user customers. We utilize our field sales organization to support our channel partners and to sell direct to end-user customers, including some large global accounts. Our customers include businesses, hospitals, schools, hotels, telecommunications companies and government agencies around the world.

We outsource the majority of our manufacturing and supply chain management operations as part of our strategy to maintain global manufacturing capabilities and to reduce our costs. We conduct quality assurance, manufacturing engineering, document control and test development at our main campus in Santa Clara, California. This approach enables us to reduce fixed costs and to flexibly respond to changes in market demand

The market for network infrastructure equipment is highly competitive and dominated by a few large companies. The current economic climate has further driven consolidation of vendors within the Ethernet networking market and with vendors from adjacent markets, including storage, security, wireless and voice applications. We believe that the underpinning technology for all of these adjacent markets is Ethernet. As a result, independent Ethernet switch vendors are being acquired or merged with larger, adjacent market vendors to enable them to deliver complete and broad solutions. As a result, we believe that, as an independent Ethernet switch vendor, we must provide products that, when combined with the products of our large strategic partners, create compelling solutions for end user customers. Our approach is to focus on the intelligence and automation layer that spans our hardware products and that facilitates end-to-end solutions, as opposed to positioning Extreme Networks as a low-cost-vendor with point products.

We believe that continued success in our marketplace is dependent upon a variety of factors that includes, but is not limited to, our ability to design, develop and distribute new and enhanced products employing leading-edge technology. During the first quarter of fiscal 2012, we began shipping our new Summit X670, our next-generation data center top-of-rack switch. During the second quarter of fiscal 2012, we delivered our BlackDiamond BD-X data center core switch as well as the E4G Cell Site router to initial beta customers; delivered the latest version of our ExtremeXOS operating system, version 12.7, and the latest version of the Ridgeline network and service management platform.

Results of Operations

During the second quarter of fiscal 2012, we achieved the following results:

- Net revenues of $82.8 million compared to net revenues of $85.1 million in the second quarter of fiscal 2011.
- Total gross margin of 56% of net revenues compared to 56% in the second quarter of fiscal 2011.
- Operating income of $4.1 million compared to operating income of $9.1 million in the second quarter of fiscal 2011.

- Net income of $4.1 million compared to net income of $8.9 million in the second quarter of fiscal 2011.

During the six months ended January 1, 2012, we experienced the following results:

- Net revenues of $161.7 million compared to net revenues of $169.0 million in the first six months of fiscal 2011.
- Total gross margin of 56% of net revenues compared to 56% in the first six months of fiscal 2011.
- Operating income of $5.8 million compared to operating income of $11.6 million in the first six months of fiscal 2011.
- Net income of $5.7 million compared to net income of $11.6 million in the first six months of fiscal 2011.
- Cash provided by operating activities of $4.0 million for the six months ending January 1, 2012 compared to cash provided by operating activities of $9.6 million for the six months ending December 26, 2010.
- Cash and cash equivalents, short-term investments and marketable securities decreased by $0.6 million in the six months ended January 1, 2012 to $146.4 million from $147.0 million as of July 3, 2011, primarily as a result of cash used in operating activities.

We operate in three regions: Americas, which includes the United States, Canada, Mexico, Central America and South America; EMEA, which includes Europe, Middle East, and Africa; and APAC which includes Asia Pacific, South Asia and Japan. Prior to the first quarter of fiscal 2012, South America was included as part of EMEA. Revenue by geographical area (as presented in the table below) for the three and six months ended December 26, 2010 has been adjusted to reflect this change. The following table presents the total net revenue geographically for the three and six months ended January 1, 2012 and December 26, 2010 (in thousands):

	Three Months Ended				Six Months Ended			
	January 1, 2012	December 26, 2010	$ Change	% Change	January 1, 2012	December 26, 2010	$ Change	% Change
Net Revenues:								
Americas	$ 36,801	$ 30,842	$ 5,959	19.3 %	$ 70,246	$ 62,908	$ 7,338	11.7 %
Percentage of net revenue	44.4%	36.2%			43.4%	37.2%		
EMEA	32,428	37,191	(4,763)	(12.8)%	63,314	71,079	(7,765)	(10.9)%
Percentage of net revenue	39.2%	43.7%			39.2%	42.1%		
APAC	13,583	17,098	(3,515)	(20.6)%	28,146	34,981	(6,835)	(19.5)%
Percentage of net revenue	16.4%	20.1%			17.4%	20.7%		
Total net revenues	$ 82,812	$ 85,131	$ (2,319)	(2.7)%	$ 161,706	$ 168,968	$ (7,262)	(4.3)%

Net Revenues

The following table presents net product and service revenues for the three and six months ended January 1, 2012 and December 26, 2010, respectively (dollars in thousands):

	Three Months Ended				Six Months Ended			
	January 1, 2012	December 26, 2010	$ Change	% Change	January 1, 2012	December 26, 2010	$ Change	% Change
Net Revenue:								
Product	$ 68,094	$ 70,334	$ (2,240)	(3.2)%	$ 131,307	$ 139,547	$ (8,240)	(5.9)%
Percentage of net revenue	82.2%	82.6%			81.2%	82.6%		
Service	14,718	14,797	(79)	(0.5)%	30,399	29,421	978	3.3 %
Percentage of net revenue	17.8%	17.4%			18.8%	17.4%		
Total net revenue	$ 82,812	$ 85,131	$ (2,319)	(2.7)%	$ 161,706	$ 168,968	$ (7,262)	(4.3)%

Product revenue decreased by $2.2 million, or 3% in the three months ended January 1, 2012, and decreased by $8.2 million or 6% in the six months ended January 1, 2012, compared to the corresponding periods of fiscal 2011. The decrease in product revenue was primarily caused by lower volume, particularly in the EMEA and APAC regions. In the first half of fiscal 2011, product revenue in these geographic regions included significant sales to certain large enterprise customers. We did not experience the same level of sales to this EMEA and APAC customer base in the first two quarters of fiscal 2012, partly due to the inherent long sales cycle and the sporadic timing of sales to these customers, as well as the impact of the challenging

macroeconomic environment in Europe. The decline in product sales volume in EMEA and APAC was partially offset by continuing product sales growth in the Americas region.

Service revenue was flat in the three months ended January 1, 2012, and increased by $1.0 million or 3% in the six months ended January 1, 2012, compared to the corresponding periods of fiscal 2011. The increase in service revenue in the first half of fiscal 2012 was primarily due to our continuing stable levels of service contract renewals on our increasing installed base, resulting in higher service revenue from the amortization of contracts initiated in the first six months of fiscal 2012 and in the prior fiscal year.

Cost of Revenues and Gross Profit

The following table presents the gross profit on product and service revenues and the gross profit percentage of product and service revenues for the three and six months ended January 1, 2012 and December 26, 2010 (in thousands):

	Three Months Ended				Six Months Ended			
	January 1, 2012	December 26, 2010	$ Change	% Change	January 1, 2012	December 26, 2010	$ Change	% Change
Gross profit:								
Product	$ 37,273	$ 39,441	$ (2,168)	(5.5)%	$ 71,008	$ 77,824	$ (6,816)	(8.8)%
Percentage of product revenue	54.7%	56.1%			54.1%	55.8%		
Service	8,995	8,540	455	5.3 %	18,796	16,993	1,803	10.6 %
Percentage of service revenue	61.1%	57.7%			61.8%	57.8%		
Total gross profit	$ 46,268	$ 47,981	$ (1,713)	(3.6)%	$ 89,804	$ 94,817	$ (5,013)	(5.3)%
% of Total Revenue	55.9%	56.4%			55.2%	56.1%		

Cost of product revenue includes costs of raw materials, amounts paid to third-party contract manufacturers, costs related to warranty obligations, charges for excess and obsolete inventory, royalties under technology license agreements, and internal costs associated with manufacturing overhead, including management, manufacturing engineering, quality assurance, development of test plans, and document control. We outsource substantially all of our manufacturing and supply chain management operations, and we conduct quality assurance, manufacturing engineering, document control and distribution. Accordingly, a significant portion of our cost of product revenue consists of payments to our primary contract manufacturer, Alpha Networks, located in Hsinchu, Taiwan and Dongguan, China. In addition, we source our wireless product line from Motorola and resell most of the products under the Extreme Networks, Inc. brand.

Product gross profit decreased by $2.2 million and product gross margin decreased to 55% from 56% in the three months ended January 1, 2012 compared to the corresponding period of fiscal 2011. In the six months ended January 1, 2012, product gross profit decreased by $6.8 million and product gross margin decreased to 54% from 56%, compared to the corresponding period of fiscal 2011. The decreases in product gross profit and gross margin were primarily due to the decrease in product revenue in the three and six months ended January 1, 2012 compared to the same periods in fiscal 2011, unfavorable profit impact from product mix shifts, and to a lesser degree, increased sales discounts.

Cost of service revenue consists primarily of labor, overhead, repair and freight costs and the cost of spares used in providing support under customer service contracts. Service gross profit increased by $0.5 million and $1.8 million in the three and six months ended January 1, 2012, respectively. The increase in gross profit in the second quarter of fiscal 2012 was primarily due to favorable impact from lower labor and service product costs. The increase in gross profit in the six months ended January 1, 2012 was primarily attributable to the increase in service revenue, combined with lower labor and service inventory costs.

Service gross margin improved to 61% from 58% in the three months ended January 1, 2012, and improved to 62% from 58% in the six months ended January 1, 2012, compared to the corresponding periods of fiscal 2011. The improvement in service gross margin was primarily due to a reduction in labor costs resulting from headcount reduction and other cost-reduction measures, as well as lower costs of service inventory resulting from product mix shifts.

Operating Expenses

The following table presents operating expenses and operating income (in thousands, except percentages):

	Three Months Ended				Six Months Ended			
	January 1, 2012	December 26, 2010	$ Change	% Change	January 1, 2012	December 26, 2010	$ Change	% Change
Sales and marketing	$ 22,734	$ 25,087	$ (2,353)	(9.4)%	$ 44,855	$ 49,993	$ (5,138)	(10.3)%
Research and development	11,082	12,028	(946)	(7.9)%	23,490	24,889	(1,399)	(5.6)%
General and administrative	7,954	5,963	1,991	33.4 %	14,224	12,548	1,676	13.4 %
Restructuring, net	437	—	437	100.0 %	1,392	—	1,392	100.0 %
Litigation settlement	—	(4,200)	4,200	(100.0)%	—	(4,200)	4,200	(100.0)%
Total operating expenses	$ 42,207	$ 38,878	$ 3,329	8.6 %	$ 83,961	$ 83,230	$ 731	0.9 %
Operating income	$ 4,061	$ 9,103	$ (5,042)	(55.4)%	$ 5,843	$ 11,587	$ (5,744)	(49.6)%

The following table highlights our operating expenses and operating income as a percentage of net revenues:

	Three Months Ended		Six Months Ended	
	January 1, 2012	December 26, 2010	January 1, 2012	December 26, 2010
Sales and marketing	27.5%	29.5 %	27.7%	29.6 %
Research and development	13.4%	14.1 %	14.5%	14.7 %
General and administrative	9.6%	7.0 %	8.8%	7.4 %
Restructuring, net	0.5%	— %	0.9%	— %
Litigation settlement	—%	(4.9)%	—%	(2.5)%
Total operating expenses	51.0%	45.7 %	51.9%	49.3 %
Operating income	4.9%	10.7 %	3.6%	6.9 %

Sales and Marketing Expenses

Sales and marketing expenses consist of salaries, commissions and related expenses for personnel engaged in marketing and sales functions, as well as trade shows and promotional expenses. Sales and marketing expenses in the three months ended January 1, 2012 decreased by $2.4 million, or 9%, compared to the corresponding period of fiscal 2011. The decrease in sales and marketing expenses was primarily due to a decrease of $1.3 million in employee-related expenses. Other significant decreases in sales and marketing expenses in the second quarter of fiscal 2012 included a decrease of $0.4 million in both commission expense and professional fees, and a decrease of $0.3 million in both travel and IT expenses.

Sales and marketing expenses for the six months ended January 1, 2012 decreased by $5.1 million, or 10%, compared to the corresponding period of fiscal 2011. The decrease in sales and marketing expenses was primarily due to a decrease of $2.4 million in employee-related expenses resulting from headcount reduction and a decrease of $0.9 million in commission expense due to the combined impact of headcount reduction and lower revenue in the first six months of fiscal 2012 compared to the same period in fiscal 2011. Other decreases in sales and marketing expenses in the six months ended January 1, 2012, primarily reflected the effects of cost-cutting measures, including a decrease of $0.7 million in both professional services and supplies expenses, and a decrease of $0.6 million in travel expenses.

Research and Development Expenses

Research and development expenses consist primarily of salaries and related personnel expenses, consultant fees and prototype expenses related to the design, development, and testing of our products. Research and development expenses for the three months ended January 1, 2012 decreased by $0.9 million, or 8%, compared to the corresponding period of fiscal 2011. The decrease in research and development expenses was primarily due to a decrease of $1.7 million in employee-related costs, partially offset by an increase of $0.7 million in engineering project expenses.

Research and development expenses for the six months ended January 1, 2012 decreased by $1.4 million, or 6%, compared to the corresponding period of fiscal 2011. The decrease in research and development expenses was primarily due to a decrease of $2.6 million in employee-related and contract labor costs resulting from headcount reduction, and a decrease of $0.6 million in supplies and equipment costs, partially offset by an increase of $1.5 million in engineering project expenses.

General and Administrative Expenses

General and administrative expenses for the three months ended January 1, 2012 increased by $2.0 million, or 33%, compared to the corresponding period of fiscal 2011. The increase in general and administrative expenses was primarily due to an increase of $1.8 million in legal expenses, largely attributable to expenses incurred in connection with the trial of a lawsuit during the second quarter and costs associated with a new lawsuit.

General and administrative expenses for the six months ended January 1, 2012 increased by $1.7 million, or 13%, compared to the corresponding period of fiscal 2011. The increase in general and administrative expenses was primarily due to increases of $1.9 million in legal expenses and $0.7 million in accounting-related services, partially offset by a net decrease of $1.3 million in employee-related expenses resulting from headcount reduction.

Restructuring, Net

In fiscal 2011, we implemented restructuring plans, involving among other things, a reduction of our worldwide workforce. The associated restructuring costs primarily consisted of cash severance, termination benefits and asset impairments. During the three and six months ended January 1, 2012, we recognized additional restructuring charges of approximately $0.6 million and $1.6 million, respectively, primarily consisting of cash severance. As of January 1, 2012, we had $0.7 million of restructuring liabilities remaining, which we anticipate paying by the end of fiscal 2012.

Interest Income

The change in interest income in the three and six months ended January 1, 2012, compared to the corresponding period of fiscal 2011 was insignificant.

Interest Expense

The decrease in interest expense in both the three and six months ended January 1, 2012, compared to the corresponding period of fiscal 2011 was insignificant.

Other Income / (Expense), Net

Other expense, net increased by approximately $0.2 million in the second quarter of fiscal 2012, and other income, net increased by $0.2 million in the six months ended January 1, 2012 compared to the corresponding periods of fiscal 2011. The changes in other income and expense primarily resulted from net realized and unrealized gains from the settlement of accounts receivable and accounts payable transactions and from the translation of certain assets and liabilities denominated in foreign currencies into U.S. dollars.

Provision (Benefit) for Income Taxes

We recorded an income tax provision of $0.2 million and $0.6 million for the three months ended January 1, 2012 and December 26, 2010, respectively. We recorded an income tax provision of $0.7 million and $0.4 million for the six months ended January 1, 2012 and December 26, 2010, respectively. The income tax provision for the three months ended January 1, 2012 consisted primarily of taxes on foreign income and U.S. state income taxes, partially offset by a benefit for the release of an unrecognized tax benefit due to the expiration of statute of limitations. The income tax benefit for the three months ended December 26, 2010 consisted primarily of taxes on foreign income and U.S. state income taxes. The income tax provision for the six months ended January 1, 2012 consisted primarily of taxes on foreign income and U.S. state income taxes, partially offset by a benefit for the release of an unrecognized tax benefit due to the expiration of the statute of limitations. The income tax provision for the six months ended December 26, 2010 consisted primarily of taxes on foreign income and U.S. state income taxes, partially offset by a reversal of previously recorded deferred tax liabilities. The income tax provisions for both fiscal years were calculated based on the results of operations for the three and six month periods ended January 1, 2012 and December 26, 2010, and may not reflect the annual effective rate.

We have provided a full valuation allowance for our U.S. net deferred tax assets after assessing both negative and positive evidence when measuring the need for a valuation allowance. For the current quarter, evidence such as operating losses during the most recent three-year period was given more weight than our expectations of future profitability which are inherently uncertain. Accordingly, we believe that there is sufficient negative evidence to maintain a full valuation allowance against our U.S. federal and state net deferred tax assets. This valuation allowance will be evaluated periodically and can be reversed partially or totally if business results have sufficiently improved to support realization of our U.S. deferred tax assets.

Critical Accounting Policies and Estimates

Our unaudited condensed consolidated financial statements and the related notes included elsewhere in this report are prepared in accordance with accounting principles generally accepted in the United States. The preparation of these unaudited

condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, costs and expenses, and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. In many instances, we could have reasonably used different accounting estimates, and in other instances changes in the accounting estimates are reasonably likely to occur from period to period. Accordingly, actual results could differ significantly from the estimates made by our management. On an ongoing basis, we evaluate our estimates and assumptions. To the extent that there are material differences between these estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected.

As discussed in Part II, Item 7, *"Management's Discussion and Analysis of Financial Condition and Results of Operations"* of our Annual Report on Form 10-K for the year ended July 3, 2011, we consider the following accounting policies to be the most critical in understanding the judgments that are involved in preparing our consolidated financial statements:

- *Share-Based Compensation*
- *Revenue Recognition*
- *Inventory Valuation*
- *Long Lived Assets*
- *Allowance for Doubtful Accounts*
- *Deferred Tax Valuation Allowance*
- *Accounting for Uncertainty in Income Taxes*
- *Legal Contingencies*

There have been no changes to our critical accounting policies since the filing of our last Annual Report on Form 10-K.

Recently Issues Accounting Pronouncements

In May 2011, the FASB issued ASU No. 2011-04, *Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in GAAP and IFRSs*. This ASU represents the converged guidance of the FASB and the International Accounting Standards Board ("IASB") on fair value measurement and is intended to result in common requirements for measuring fair value and for disclosing information about fair value measurements, including a consistent meaning of the term "fair value." The amendments in ASU 2011-04 are effective for public entities for interim and fiscal year beginning after December 15, 2011, and should be applied prospectively. Early adoption is not permitted for public entities. The guidance is limited to enhanced disclosures, and it is not expected to have a material impact on our financial statements.

In June 2011, the FASB issued ASU No. 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income*. This ASU increases the prominence of other comprehensive income ("OCI") in the financial statements and provides companies two options for presenting OCI, which until now has typically been placed within the statement of shareholders' equity and comprehensive income (loss). One option allows an OCI statement to be included with the net income statement, and together the two will make a statement of total comprehensive income. Alternatively, companies may present an OCI statement separate from the net income statement; however, the two statements will have to appear consecutively within a financial report. This ASU does not affect the types of items that are reported in OCI, nor does it affect the calculation or presentation of earnings per share. For public entities, the amendments are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. Our adoption of this standard is not expected to have a material impact on our financial statements.

Liquidity and Capital Resources

The following summarizes information regarding our cash, investments, and working capital (in thousands):

	January 1, 2012	July 3, 2011
Cash and cash equivalent	$ 49,419	$ 49,972
Short-term investments	34,250	41,357
Marketable securities	62,771	55,648
Total cash and investments	$ 146,440	$ 146,977
Working capital	$ 75,660	$ 57,561

As of January 1, 2012, our principal sources of liquidity consisted of cash, cash equivalents and investments of $146.4 million and net accounts receivable of $39.0 million. Historically, our principal uses of cash have consisted of the purchase of finished goods inventory from our contract manufacturers, payroll and other operating expenses related to the development and marketing of our products and purchases of property and equipment. We believe that our $146.4 million of cash and cash equivalents and investments at January 1, 2012 will be sufficient to fund our operating requirements for at least the next 12 months. Our future capital requirements will depend on many factors, including our rate of revenue growth, the expansion of our sales and marketing activities, the timing and extent of our expansion into new territories, the timing of introductions of new products and enhancements to existing products and the continuing market acceptance of our products. In the future, we may seek additional equity or debt financing, however, such additional funds may not be available on terms favorable to us or at all.

Key Components of Cash Flows and Liquidity

A summary of the sources and uses of cash and cash equivalents is as follows (in thousands):

	Six Months Ended	
	January 1, 2012	December 26, 2010
Net cash provided by operating activities	$ 3,954	$ 9,597
Net cash used in investing activities	(3,945)	(15,273)
Net cash provided by financing activities	698	273
Foreign currency effect on cash	(1,260)	337
Net decrease in cash and cash equivalents	$ (553)	$ (5,066)

Net Cash Used In Operating Activities

Cash from operations in the first half of fiscal 2012 was $4.0 million, a decrease of $5.6 million compared to the corresponding period of fiscal 2011. The decrease in operating cash flow was primarily due a lower net income, partially offset by changes in assets and liabilities. Significant changes in assets and liabilities in the first half of fiscal 2012 included (i) decreases in accounts payable and accrued liabilities primarily due to timing of payments, as well as the impact of non-recurring payments of $4.7 million in connection with the settlement of lawsuits and cash severance payments of approximately $3.9 million; (ii) an increase in accounts receivable primarily due to sequential quarterly revenue growth in the first two quarters of fiscal 2012, and timing of cash collections; and (iii) a decrease in deferred revenue primarily attributable to timing of service contract renewals and amortization of contracts initiated in prior periods.

Net Cash Used In Investing Activities

We used $3.9 million in investing activities in the six months ended January 1, 2012, comprised of $34.0 million used to purchase investment securities and $2.0 million used to purchase property and equipment, partially offset by proceeds of $32.1 million from the sale and maturities of investments.

Net Cash Provided by Financing Activities

Cash flow provided by financing activities in the six months ended January 1, 2012 was $0.7 million, comprised of proceeds from the exercise of stock options and purchases of shares of our common stock under the ESPP, offset by taxes paid on vested and released stock awards.

Contractual Obligations

Non-cancelable inventory purchase commitments represent the purchase of long lead-time component inventory that our contract manufacturers procure in accordance with our forecast. Inventory purchase commitments were $32.0 million as of

January 1, 2012, an increase of $6.0 million from $26.0 million as of July 3, 2011. We did not have material commitments for capital expenditures as of January 1, 2012.

As of January 1, 2012, we had $0.8 million of income tax liabilities for which we were unable to reasonably estimate the timing of settlement.

Off-Balance Sheet Arrangements

We did not have any off-balance sheet arrangements as of January 1, 2012.

Capital Resources and Financial Condition

As of January 1, 2012, in addition to $49.4 million in cash and cash equivalents, we had $34.3 million invested in short-term and $62.8 million invested in long-term marketable investments for a total cash and cash equivalents, short-term investments and marketable securities of $146.4 million. We believe that our current cash and cash equivalents, short-term investments, marketable securities and future operations will enable us to meet our working capital requirements for at least the next 12 months.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Sensitivity

The primary objective of our investment activities is to preserve principal while at the same time maximize the income we receive from our investments without significantly increasing risk. Some of the securities that we have invested in may be subject to market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the prevailing interest rate later rises, the principal amount of our investment will probably decline. To minimize this risk, we maintain our portfolio of cash equivalents and short-term investments in a variety of securities, including commercial paper, other non-government debt securities and money market funds.

The valuation of our investment portfolio is subject to uncertainties that are difficult to predict. Factors that may impact its valuation include changes to credit ratings of the securities, discount rates and ongoing strength and quality of market credit and liquidity. If the current market conditions deteriorate further, or the anticipated recovery in market values does not occur, we may be required to record impairment charges in future quarters.

The following table presents the amounts of our cash equivalents, short-term investments and marketable securities that are subject to market risk by range of expected maturity and weighted-average interest rates as of January 1, 2012. This table does not include money market funds because those funds are generally not subject to market risk.

	Maturing in				
	Three months or less	Three months to one year	Greater than one year	Total	Fair Value
			(In thousands)		
Included in short-term investments	$ 12,755	$ 21,495	—	$ 34,250	$ 34,250
Weighted average interest rate	1.08%	1.15%	—		
Included in marketable securities	—	—	$ 62,771	$ 62,771	$ 62,771
Weighted average interest rate	—	—	0.99%		

The following tables present hypothetical changes in fair value of the financial instruments held at January 1, 2012 that are sensitive to changes in interest rates:

Unrealized gain given a decrease in interest rate of X bps		Fair value as of October 2, 2011 (In thousands)	Unrealized loss given an increase in interest rate of X bps	
(100 bps)	(50 bps)		100 bps	50 bps
$1,246	$619	$97,021	$(1,216)	$(612)

Exchange Rate Sensitivity

Currently, substantially all of our sales and the majority of our expenses are denominated in United States dollars and, as a result, we have experienced no significant foreign exchange gains and losses to date. While we conduct some sales

transactions and incur certain operating expenses in foreign currencies and expect to continue to do so, we do not anticipate that foreign exchange gains or losses will be significant, in part because of our foreign exchange risk management process discussed below.

Foreign Exchange Forward Contracts

We enter into foreign exchange forward contracts to mitigate the effect of gains and losses generated by the foreign currency forecasted transactions related to certain operating expenses and remeasurement of certain assets and liabilities denominated in Japanese Yen, the Euro, the Swedish Krona, the Indian Rupee and the British Pound. These derivatives do not qualify as hedges. At January 1, 2012, these forward foreign currency contracts had a notional principal amount of $16.4 million and an immaterial unrealized loss on foreign exchange contracts. These contracts have maturities of less than 60 days. Changes in the fair value of these foreign exchange forward contracts are offset largely by remeasurement of the underlying assets and liabilities. We record all derivatives on the balance sheet at fair value. Changes in the fair value of derivatives are recognized in earnings as Other Income (Expense).

Foreign currency transaction gains and losses were a $0.1 million loss for the three months ended January 1, 2012, and a $0.1 million gain for the three months ended December 26, 2010. Foreign currency transaction gains and losses were an immaterial loss for the six months ended January 1, 2012, and a $0.2 million loss for the six months ended December 26, 2010.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are controls and procedures designed to reasonably assure that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934 as amended, such as this Report, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and to reasonably assure that such information is accumulated and communicated to our management, including the Chief Executive Officer ("CEO") and the Interim Chief Financial Officer ("Interim CFO"), as appropriate to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our CEO and Interim CFO, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this Report. Based on this evaluation, our CEO and Interim CFO concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Report.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting. There are inherent limitations in the effectiveness of any system of internal control, including the possibility of human error and the circumvention or overriding of controls. Accordingly, even effective internal controls can provide only reasonable assurances with respect to financial statement preparation. Further because of changes in conditions, the effectiveness of internal control may vary over time.

We assessed the effectiveness of our internal control over financial reporting as of the end of the period covered by this Report. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework.

Based on our assessment using those criteria, we concluded that, as of the end of the period covered by this Report, our internal control over financial reporting is effective.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended January 1, 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including the CEO and Interim CFO, does not expect that our disclosure controls or our internal control over financial reporting will prevent or detect all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Our controls and procedures are designed to provide reasonable assurance that our control system's objective will be met and our CEO and Interim CFO have concluded that our disclosure controls and procedures are effective at the reasonable assurance level. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be

considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within Extreme Networks have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part on certain assumptions about the likelihood of future events. Projections of any evaluation of the effectiveness of controls in future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures. Notwithstanding these limitations, our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives. Our CEO and Interim CFO have concluded that our disclosure controls and procedures are, in fact, effective at the “reasonable assurance” level.

PART II. Other Information

Item 1. Legal Proceedings

For information regarding litigation matters that we deem significant, refer to Part I, Item 3, Legal Proceedings of our Annual Report on Form 10-K for the fiscal year ended July 3, 2011 and Note 4 to our Notes to Condensed Consolidated Financial Statements, included in Part I, Item 1 of this Report which are incorporated herein by reference.

Item 1A. Risk Factors

In addition to the other information set forth in this Report, you should carefully consider the factors discussed in Part I, Item 1A. “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended July 3, 2011, which to our knowledge have not materially changed. Those risks, which could materially affect our business, financial condition or future results, are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may adversely affect our business, financial condition and/or operating results.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds – Not applicable

Item 3. Defaults Upon Senior Securities – Not applicable

Item 4. Mine Safety Disclosure - Not Applicable

Item 5. Other Information

The date of our next annual meeting will be March 21, 2012.

Item 6. Exhibits

(a) Exhibits:

Exhibit Number	Description of Document	Incorporated by Reference			Filed Herewith
		Form	Filing Date	Number	
10.1	Resignation Agreement and General Release of Claims, dated September 13, 2011, between Extreme Networks, Inc. and Justin DiMacchia.	8-K	9/15/2011	10.1	
10.2	Letter Agreement, dated September 13, 2011, between Extreme Networks, Inc. and James Judson.	8-K	9/15/2011	10.2	
10.3	Offer Letter Agreement, dated September 13, 2011, between Extreme Networks, Inc. and Margaret Echerd.	8-K	9/15/2011	10.3	
10.4	Form of Indemnity Agreement for directors and officers.	8-K	10/24/2011	99.1	
10.5	Option Agreement, dated January 16, 2012, between Extreme Networks, Inc. and Trumark Companies, LLC.				X
10.6	Amendment to the Option Agreement dated September 17, 2010, between Extreme Networks, Inc. and Trumark Companies, LLC				X
31.1	Section 302 Certification of Chief Executive Officer				X
31.2	Section 302 Certification of Interim Chief Financial Officer				X
32.1	Section 906 Certification of Chief Executive Officer				X
32.2	Section 906 Certification of Interim Chief Financial Officer				X
101.INS	XBRL Instance Document.*				
101.SCH	XBRL Taxonomy Extension Schema Document.*				
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.*				
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.*				
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.*				
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document*				

* Pursuant to Rule 406T of Regulation S-T, these interactive data files are furnished and not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, as amended; are deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, as amended; and otherwise are not subject to liability under these sections.

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 thereunto duly authorized.

EXTREME NETWORKS, INC.
(Registrant)

/s/ JAMES T. JUDSON

JAMES T. JUDSON
Interim Vice President and Chief Financial Officer

February 7, 2012

OPTION AGREEMENT

THIS OPTION AGREEMENT ("**Agreement**") is entered into as of January 16, 2012, by and between Extreme Networks, Inc., a Delaware corporation ("**Owner**"), and Extreme Depot LLC, a Delaware limited liability company ("**Developer**"), in the context of the following facts and circumstances:

A. Owner holds fee title to certain real property containing approximately 16 acres of land, located in the City of Santa Clara, County of Santa Clara, State of California, commonly known as 3515-3585 Monroe Street and more fully described in **Exhibit A** (the "**Property**").

B. Pursuant to that certain Option Agreement entered into as of September 17, 2010, by and between Owner and Trumark Companies LLC, a California limited liability company (**"Trumark"**), as amended by that certain First Amendment to Option Agreement dated November 11, 2010, as amended by that certain Second Amendment to Option Agreement dated January 14, 2011, as amended by that certain Third Amendment to Option Agreement dated January 31, 2011, as amended by that certain Fourth Amendment to Option Agreement dated February 10, 2011, and as amended by that certain Fifth Amendment to Option Agreement dated concurrently herewith (collectively, the "**Eastern Village Option Agreement**"), Owner granted Trumark an Option to purchase the eastern portion of the Property containing approximately 8.0 acres of land (the "**Eastern Village Parcel**"). Trumark subsequently assigned its rights and interest under the Eastern Village Option Agreement to Developer.

C. Developer wishes to acquire an option to purchase the western portion of the Property containing approximately 8.0 acres of land (referred to herein as either the "**Western Village Parcel**" or the "**Option Parcel**"). The general location of the Eastern Village Parcel and the Western Village Parcel are shown on the diagram attached hereto as **Exhibit A-1**.

D. Owner is willing to grant Developer such an option, and to sell the Option Parcel to Developer, expressly conditioned upon the approval and filing of a final subdivision map or parcel map in accordance with California's Subdivision Map Act, and further subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **OPTION TO PURCHASE**. Owner grants to Developer, and Developer accepts from Owner, the exclusive right and option (the "**Option**") to purchase the Option Parcel on the terms and conditions set forth in this Agreement.

1.1 **Memorandum of Option**. Concurrently with the execution and delivery of this Agreement, Owner and Developer shall execute, acknowledge and deliver to Escrow Holder (defined in Section 4.1) a Memorandum of Option ("**Memorandum**") in the form attached to this Agreement as **Exhibit B**. The Memorandum will be held by Escrow Holder and remain unrecorded unless Developer timely delivers the Due Diligence Approval Notice pursuant to Section 4.2(a) and timely delivers the Second Payment pursuant to Section 4.2(b), at which time Escrow Holder shall immediately record the Memorandum in the Official Records of Santa Clara County.

1.2 **Quit Claim Deed**. Also concurrently with the execution and delivery of this

Agreement, Developer will execute, acknowledge and deliver to Escrow Holder a Quit Claim Deed ("**Quit Claim**") in the form attached hereto as **Exhibit C**. The Quit Claim will be held by Escrow Holder and remain unrecorded unless and until this Agreement terminates for any reason. Within five (5) business days after either party (the "**Terminating Party**") gives written notice to the other party (the "**Non-Terminating Party**") and Escrow Holder of such termination, Escrow Holder shall record the Quit Claim in the Official Records of Santa Clara County unless the Non-Terminating Party provides written notice to Escrow Holder and the Terminating Party prior to the expiration of such five (5) business day period that it disputes such termination and the grounds therefor.

1.3 **Escrow and Closing Agreement**. Following the exercise of the Option by Developer, the parties shall close the transaction through that certain Escrow Instructions and Closing Agreement (the "**Escrow and Closing Agreement**") attached hereto as **Exhibit D**, to be executed and delivered by Owner and Developer as set forth in Section 4.4.

1.4 **Independent Consideration**. Contemporaneously with the execution and delivery of this Agreement, Developer has paid to Owner as further consideration for this Agreement and providing the Option, in cash, the sum of One Thousand Dollars ($1,000.00) (the "**Independent Consideration**"), in addition to the Option Payments set forth in Section 4 and independent of any other consideration provided hereunder, which Independent Consideration is fully earned by Owner and is non-refundable under any circumstances.

2. **PURCHASE PRICE**. The purchase price for the Option Parcel will be Twenty Four Million Five Hundred Thousand and 00/100 Dollars ($24,500,000.00) (the "**Purchase Price**"); provided, however, if the “Closing” on Developer’s acquisition of the Eastern Village Parcel under the Eastern Village Option Agreement occurs prior to, or concurrently with, the Closing on the Option Property under this Agreement, then the Purchase Price for the Option Property shall be Forty Eight Million Five Hundred Thousand and No/100 Dollars ($48,500,000.00) minus the purchase price paid to Owner for the Eastern Village Parcel.

3. **OPTION PERIOD DEFINITIONS; CLOSING DATE**. In addition to capitalized terms that are defined elsewhere in this Agreement, the following terms shall have the definitions given below:

3.1 "**Effective Date**" shall mean the last date that both Owner and Developer have executed this Agreement as indicated below their signatures at the end of this document.

3.2 "**First Option Period**" or "**Due Diligence Period**" shall mean the thirty (30) day period that starts the day after the Effective Date.

3.3 "**Second Option Period**" shall mean the period that starts the day after the end of the First Option Period and ends on July 18, 2012.

3.4 "**Third Option Period**" shall mean the day after the end of the Second Option Period and ends on December 18, 2012.

3.5 "**Option Term**" shall mean the period of time during which Developer shall

have the right to exercise the Option. The Option Term initially shall expire at the end of the First Option Period; provided, however, that Developer shall have the right to extend the Option Term pursuant to Section 4, so that it expires at the end of the Second Option Term or the Third Option Term, as applicable. Notwithstanding the foregoing, however, and superseding anything to the contrary in this Agreement, the Option Term shall automatically terminate without further notice thirty (30) days after the date that the Final Discretionary Approvals have been obtained (as defined in Section 7.8).

3.6 "**Option Exercise Notice**" shall mean a written notice delivered by Developer to Owner and Escrow Holder prior to the expiration of the Option Term (as such term may be extended pursuant to this Agreement), by which Developer notifies Owner of its intent to exercise its Option and to become irrevocably committed to complete the Closing, as further set forth in Section 4.4.

3.7 "**Closing**" shall mean the recordation of the grant deed from Owner pursuant to which fee title to the Option Parcel is transferred to the Developer under the Escrow and Closing Agreement.

3.8 "**Closing Date**" shall mean the date that is thirty (30) days after the delivery by Developer of the Option Exercise Notice; provided, however, that if the Final Subdivision Map (defined in Section 7.1(a)(ii) below) is not recorded with the Office of the Recorder of Santa Clara County at least ten (10) days prior to said Closing Date, then Developer shall have the right to extend the Closing Date as described in Section 4.5.

3.9 "**Day**" shall mean calendar day (including weekends and holidays), and "month" shall mean calendar month; provided, however, that if the end of any time period or the deadline for any performance obligation falls on a Saturday, Sunday, or bank holiday, then the time period or deadline shall be extended to the next calendar day that is not a Saturday, Sunday or bank holiday.

3.10 "**Option Schedule**" shall mean a schedule of dates setting forth the specific calendar dates for each Option Period, the Closing Date and the Closing Extensions, which Option Schedule shall be prepared by Developer consistent with the provisions of this Agreement, initialed by Developer and delivered to Owner within five (5) days after the Effective Date. If Owner approves of the Option Schedule, Owner will initial the Option Schedule and provide Developer with a copy of the fully initialed Option Schedule. Once initialed by both parties, the Option Schedule shall be attached to this Agreement as **Exhibit E** and shall be deemed incorporated into this Agreement by this reference.

4. **OPTION PAYMENTS; EXERCISE OF OPTION**. Developer's Option rights under this Agreement shall be subject to the following terms and conditions, time being strictly of the essence:

4.1 **First Option Period**. Within two (2) business days after the Effective Date, Developer shall deliver to First American Title Company ("**Escrow Holder**" or "**Title Company**"), whose address is 1737 North First Street, Suite 500, San Jose, CA 95112, Attention: Dian Blair One Hundred Thousand Dollars ($100,000.00) in good funds ("**First Payment**").

(a) The First Payment shall be deposited by Escrow Holder in an interest-bearing account with a federally insured state or national bank located in California.

(b) All interest accrued on the First Payment shall be credited to Owner as part of the consideration for the execution of this Agreement and for Developer's opportunity to investigate the Option Parcel during the First Option Period. Owner shall provide Escrow Holder with its Federal Tax Identification Number and such other information as Escrow Holder may request in connection with establishing the account.

Subject to Section 4.9 below, if Developer, in its sole discretion, does not extend the Option Term beyond the First Option Period as provided in Section 4.2, then this Agreement and the rights of Developer hereunder shall terminate as of the end of the First Option Period. In such event, Escrow Holder shall return the First Option Payment to Developer, shall pay all interest accrued thereon to Owner, and shall return the unrecorded Memorandum and Quit Claim to Owner.

4.2 **Second Option Period**. Developer shall have the right to extend the Option Term through the end of the Second Option Period, provided that Developer does the following prior to the end of the First Option Period:

(a) Developer shall deliver to Owner the Due Diligence Approval Notice as described in Section 6.4(a); and

(b) Developer shall deliver to Escrow Holder the sum of Four Hundred Thousand Dollars ($400,000.00) in good funds ("**Second Payment**"), together with written instructions to Escrow Holder to immediately release the First Payment and the Second Payment (and all interest accrued thereon) to Owner.

Subject to Section 4.9 below, if Developer does not extend the Option Term beyond the Second Option Period as provided in Section 4.3, or does not exercise the Option prior to the end of the Second Option Period, then this Agreement and the rights of Developer hereunder shall terminate as of the end of the Second Option Period. In such event, Escrow Holder shall record the Quit Claim within two business days after either party notifies the other party and Escrow Holder of such termination, and Owner shall retain the First Payment and the Second Payment (and interest accrued thereon), subject to Section 9 with respect to any Event of Owner's Default and the other terms and provisions of this Agreement.

4.3 **Third Option Period**. Developer shall have the right to extend the Option Term through the end of the Third Option Period, provided that prior to the expiration of the Second Option Period, Developer shall deliver to Escrow Holder the sum of Five Hundred Thousand Dollars ($500,000.00) in good funds ("**Third Payment**"), together with written instructions to Escrow Holder to immediately release the Third Payment to Owner.

Subject to Section 4.9 below, if Developer does not exercise the Option prior to the end of the Third Option Period, then this Agreement and the rights of Developer hereunder shall terminate as of the end of the Third Option Period. In such event, Escrow Holder shall record the Quit Claim within two business days after either party notifies the other party and Escrow Holder of such termination, and Owner shall retain the First Payment, the Second Payment and the Third Payment

(and interest accrued thereon), subject to Section 9 with respect to any Event of Owner's Default and the other terms and provisions of this Agreement.

4.4 **Exercise of Option**. Developer may exercise its Option only by satisfying all of the following conditions prior to the termination of the Option Term:

(a) Developer shall deliver to Owner and Escrow Holder the Option Exercise Notice, specifying that Developer is irrevocably committed to complete the close of escrow (the "**Closing**") for the acquisition of the Option Parcel on or before the Closing Date (as may be extended pursuant to this Agreement);

(b) Developer shall execute two originals of the Escrow and Closing Agreement and deliver the same to Owner; and

(c) Developer shall deliver to Escrow Holder the sum of One Hundred Thousand and No/100 Dollars ($100,000.00) in good funds ("**Exercise Payment**"), together with written instructions to Escrow Holder to immediately release the Exercise Payment to Owner.

Upon Developer's delivery of the Option Exercise Notice and the Escrow and Closing Agreement, Owner shall also execute and deliver the Escrow and Closing Agreement, and Escrow Holder shall then distribute one fully executed original of the Escrow and Closing Agreement to each party. Thereafter, the parties shall proceed to complete the Closing in accordance with the terms and conditions of the Escrow and Closing Agreement.

4.5 **Extension of Closing Date.** If the Final Subdivision Map (defined in Section 7.1(a)(ii) below) is not recorded with the Office of the Recorder of Santa Clara County at least ten (10) days prior to the scheduled Closing Date, then Developer shall have the right to extend the Closing Date for up to six (6) one month periods (each, an "**Extension Period**"), provided that Developer does the following prior to the then-scheduled Closing Date (as extended by any prior Extension Periods):

(a) at least ten (10) days prior to the then-scheduled Closing Date (as extended by any prior Extension Periods), Developer shall deliver to Owner and Escrow Holder a written notice specifying the dates of the Extension Period(s) being requested; and

(b) at least one (1) business day prior to the then-scheduled Closing Date (as extended by any prior Extension Periods) Developer shall deliver to Escrow Holder the sum of One Hundred Fifty Thousand Dollars ($150,000.00) in good funds for each Extension Period (each, an "**Extension Payment**"), together with written instructions to Escrow Holder to immediately release the Extension Payment to Owner.

Subject to Section 4.9 below, if Developer exercises the Option but fails to complete the Closing prior to the Closing Date (as may be extended pursuant to this Section) for any reason (including the failure of the Final Subdivision Map to be recorded), other than because of an Event of Owner's Default, then this Agreement and the rights of Developer hereunder shall terminate as of the Closing Date. In such event, Escrow Holder shall record the Quit Claim within two business days after either party notifies the other party and Escrow Holder of such termination subject to

the terms and conditions of Section 1.2 above. Further, in such event, subject to Section 9 with respect to any Event of Owner's Default, Owner shall retain (i) the First Payment, the Second Payment, the Third Payment, the Exercise Payment, to the extent such payments have been made by Developer, and all interest accrued thereon (collectively, the "**Option Payments**"); and (ii) the Extension Payments, to the extent such payments have been made by Developer.

4.6 **Application of Payments**.

(a) Subject to Section 9 with respect to any Event of Owner's Default, each of the Option Payments shall be nonrefundable from and after the commencement of the Second Option Period, and shall be deemed fully earned when released to Owner, in consideration for (i) Owner's execution and delivery of this Agreement, (ii) Owner's granting of the Option to Developer, (iii) Developer's opportunity to determine the feasibility of the Option Parcel for Developer's purposes during the First Option Period, (iv) Developer's rights to pursue the Entitlements during the Option Term, and (v) Owner's agreement not to market the Option Parcel for sale or lease to any other parties during the term of this Agreement.

(b) Subject to Section 9 with respect to any Event of Owner's Default, each of the Extension Payments shall be nonrefundable, and shall be deemed fully earned when released to Owner in consideration for (i) Owner's agreement to extend the Closing Date, (ii) additional costs and expenses of carrying the Option Parcel during the Extension Periods, including amounts incurred for taxes, insurance, utilities, maintenance, security, and the like, and (iii) the "lost opportunity" to earn interest on the Purchase Price or to otherwise invest the Purchase Price for the benefit of Owner.

(c) If Developer timely exercises the Option and proceeds to acquire the Option Parcel on or before the Closing Date pursuant to the Escrow and Closing Agreement, the aggregate amount of the Option Payments and the Extension Payments (but not any interest thereon) shall be applied as a credit against the Purchase Price at the Closing.

4.7 **Procedures upon Termination**. If this Agreement terminates prior to the Closing for any reason (other than an Event of Owner's Default), then in addition to all other applicable provisions of this Agreement with respect to termination of this Agreement, the following shall apply:

(a) Each party shall promptly execute and deliver to Escrow Holder such documents as Escrow Holder may reasonably require to evidence such termination;

(b) Escrow Holder shall return all documents to the respective parties who delivered such documents to Escrow (unless otherwise specified in this Agreement);

(c) Within two (2) business days after either party gives written notice to the other party and Escrow Holder of such termination, Escrow Holder shall record the Quit Claim in the Official Records of Santa Clara County subject to the terms and conditions of Section 1.2 above;

(d) Developer and Owner shall each pay one-half (A) of Escrow Holder's

escrow cancellation fees, if any;

(e) Developer shall return to Owner all Due Diligence Documents (defined in Section 6.1) in Developer's possession or control;

(f) Developer shall transfer, deliver and assign to Owner on a non-exclusive basis, without representation and warranty, and to the extent assignable (provided Developer must use commercially reasonable efforts when contracting with third parties to allow assignment to Owner pursuant to this Section 4.8(f)), any and all right, title and interest in and to any inspection reports, due diligence reports, plans, specifications, drawings, surveys, permits, and other tangible and intangible property prepared by, or for, Developer and related to the Property; and

(g) Neither party shall have any further rights or obligations under this Agreement, except that the provisions of this Agreement setting forth indemnity obligations or setting forth confidentiality obligations shall continue to apply after termination of this Agreement.

4.8 **Failure to Close; Liquidated Damages**. IF DEVELOPER PROVIDES THE OPTION EXERCISE NOTICE PRIOR TO EXPIRATION OF THE OPTION TERM AND THEREAFTER THE PURCHASE OF THE OPTION PARCEL IS NOT CONSUMMATED ON OR BEFORE THE CLOSING DATE FOR ANY REASON OTHER THAN AN EVENT OF OWNER'S DEFAULT, THE PARTIES AGREE THAT OWNER SHALL BE RELEASED FROM OWNER'S OBLIGATION TO SELL THE OPTION PARCEL TO DEVELOPER AND OWNER SHALL RETAIN AS LIQUIDATED DAMAGES THE OPTION PAYMENTS AND THE EXTENSION PAYMENTS THAT HAVE BEEN PROPERLY RELEASED TO OWNER, WHICH THE PARTIES AGREE IS A REASONABLE SUM CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE, INCLUDING THE DIFFICULTY OR IMPRACTICALITY OF DETERMINING THE ACTUAL DAMAGES TO OWNER. OWNER'S RETAINING SUCH AMOUNTS AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY UNDER CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO OWNER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. SUCH LIQUIDATED DAMAGES SHALL BE OWNER'S EXCLUSIVE REMEDY FOR SUCH DEFAULT, AND OWNER SHALL ACCEPT SAID LIQUIDATED DAMAGES IN PLACE OF ANY OTHER RIGHTS OR REMEDIES IT MAY HAVE AGAINST DEVELOPER INCLUDING, BUT NOT LIMITED TO, ANY RIGHT TO SPECIFIC PERFORMANCE OR OTHER DAMAGES. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL NOT APPLY TO OWNER'S RIGHTS TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES PURSUANT TO THIS AGREEMENT, NOR WAIVE OR AFFECT OWNER'S RIGHTS AND DEVELOPER'S INDEMNITY OBLIGATIONS UNDER OTHER SECTIONS OF THIS AGREEMENT.

Owner's Initials: _____ Developer's Initials _____

4.9 **Effective Date of Termination.** Notwithstanding the terms and provisions of this Agreement, in the event that Developer fails to take any action in a timely manner as required pursuant to this Agreement, and such failure would cause the termination of this Agreement pursuant to the terms hereof, Owner hereby acknowledges and agrees that this Agreement shall

not terminate unless and until (a) Owner has provided written notice to Developer of the required action to be taken, and (b) Developer fails to take the required action within three (3) business days after receipt of written notice from Owner.

5. **TITLE**.

5.1 **Delivery of Title Report**. Within five (5) business days after the Effective Date, the parties shall request the Title Company to deliver to Developer a Title Report issued by the Title Company together with copies of all documents of record and referenced exceptions (the "**Title Report**") covering the Property showing all matters affecting title to the Property. Within ten (10) days after the Effective Date, Owner shall provide to Developer any title surveys in Owner's possession. All such documents shall be delivered without representation or warranty as to their completeness or accuracy, except as expressly set forth in the Escrow and Closing Agreement, If desired by Developer, Developer shall, at Developer's sole cost and expense, order a new survey or update the existing surveys (the existing surveys, the updated existing survey or a new survey, as applicable, are referred to herein as the. "**Survey**"), prepared by a. surveyor licensed by the State of California, which Survey shall be certified by such surveyor for the benefit of Developer, Owner and the Title Company.

5.2 **Title Review**. Developer will have until the date that is fifteen (15) days before the expiration of the Due Diligence Period to review the Title Report, Survey, and all supporting documents, and to give Owner written notice of any items disapproved by Developer.

(a) Any, exceptions shown in the Title Report and any matters shown on the Survey not disapproved in writing by Developer prior to such time shall be deemed approved.

(b) Owner will have ten (10) days after receipt of Developer's written disapproval notice to either (i) remove such disapproved item from record title and notify Developer in writing of such removal; (ii) notify Developer in writing of Owner's agreement to remove such disapproved item from record title prior to the Closing (whether by payment, bonding over a mechanics' lien, or otherwise); or (iii) notify Developer in writing that Owner does not agree to be obligated to remove such disapproved item from record title (although Owner may, in its sole discretion, make reasonable efforts to remove such item, without having an obligation to do so).

(c) If Owner fails do any of the items listed in (b) above, then Owner shall be deemed to have not agreed to be obligated to remove any of the disapproved items.

(d) Developer will, by not later than the expiration of the Due Diligence Period, either withdraw Developer's objections to those title matters that Owner has not removed or agreed to be obligated to remove, or terminate this Agreement upon written notice to Owner and Escrow Holder.

(e) If Developer fails to notify Owner of its election to either withdraw such objections or terminate this Agreement, and Developer nevertheless delivers the Due Diligence Approval Notice described in Section 6.4, such failure shall be deemed Developer’s election to waive such objections and accept such exceptions as Permitted Exceptions.

5.3 **Permitted Exceptions**. The following shall be "Permitted Exceptions": (I) the lien of non-delinquent general and special real property taxes and assessments; (ii) all standard pre-printed exceptions and exclusions shown on the Title Report; (iii) all matters and exceptions of record approved or deemed approved by Developer pursuant to Section 5.2; (iv) the Memorandum, the CC&R's created by the parties pursuant to Section 7.3 (if any), documents recorded in connection with the Entitlements, or other documents contemplated by this Agreement; (v) any other matters affecting title to the Option Parcel created by or with the consent of Developer; and (vi) all matters that would be disclosed by an inspection or survey of the Property. Notwithstanding the preceding sentence, Section 5.2 above, or any other provision of this Agreement to the contrary, in no event shall the Permitted Exceptions include, nor shall Developer be required to provide any objection to, any of the following (collectively, "**Monetary Liens**"): (a) any mortgage, deed of trust, or other instrument securing any financial obligation of any party other than Developer; (b) abstracts of judgments, mechanics' liens or similar liens or encumbrances which require any monetary payment to satisfy and release or remove, except to the extent caused by Developer; (c) the lien of any delinquent taxes or assessments; and (d) any notices of default, foreclosure notices, or similar notices reflecting any action being taken to assert or foreclosure upon any lien or encumbrance.

5.4 **Covenant by Owner**. Owner represents, warrants and covenants to Developer that from and after the Effective Date, Owner shall not cause or permit any new matters or items to be recorded against title to the Property, other than the Permitted Exceptions or items that the Owner can, and does, remove from title prior to the Closing.

5.5 **Owner's Obligation to Remove**. Owner, at its sole cost and expense, shall be obligated to remove or release, on or before the Closing Date, any matter which is not a Permitted Exception, including, without limitation, (a) any matter where, pursuant to Section 5.2 above, Owner has agreed, to remove; (b) any Monetary Liens; and (c) any additional title encumbrances or exceptions (whether or not such constitute Monetary Liens) which are created on the Property by Owner following the end of the Due Diligence Period without the consent of Developer.

5.6 **Title Insurance**. Upon the Closing, Developer shall be obligated at its cost to cause the Title Company to issue to Developer an ALTA standard coverage owner's policy of title insurance, with regional exceptions ("**Title Policy**"), with total liability not to exceed the amount of the Purchase Price, insuring that fee simple title to the Option Parcel is vested in Developer, subject only to the Permitted Exceptions. Developer shall have the right to purchase any available extended coverage or title endorsements as Developer may determine in Developer's reasonable discretion, at Developer's own cost.

6. **FEASIBILITY REVIEW OF OPTION PARCEL**. Throughout the Option Term, Developer shall have the right to inspect, study and review the Option Parcel as outlined below:

6.1 **Due Diligence Documents**. Within five (5) days after the Effective Date and to the extent in Owner's possession or control, Owner shall deliver or otherwise make available to Developer the Due Diligence Documents set forth in **Exhibit F** (the "**Due Diligence Documents**"). Developer shall have until the end of the Due Diligence Period to review and approve the Due Diligence Documents. Developer shall treat all Due Diligence Documents as confidential in accordance with the provisions of Section 14.

(a) Within ten (10) days following the Effective Date, and as part of the Due Diligence Documents, Owner shall deliver to Developer a statutory Natural Hazards Disclosure Statement as required under California Civil Code 1103 and other statutory disclosures (the "**Statutory Report**"). Developer agrees that the delivery of the Statutory Report shall be sufficient compliance for the legal exemption under Civil Code Section 1103.4.

(b) Notwithstanding any other provision of this Agreement, Owner shall not have any liability, obligation, or responsibility of any kind with respect to the following: (i) the content or accuracy of any report, study, opinion, or conclusion of any soils, toxic, environmental, or other engineer or other person or entity who has examined the Option Parcel or any aspect thereof, and (ii) the content or accuracy of any information released to Developer by an engineer or planner in connection with any development of the Option Parcel, or (iii) the content or accuracy of any Due Diligence Documents delivered to Developer by Owner.

6.2 **Inspection of Option Parcel**.

(a) Developer shall have the right to commence Developer's physical and environmental inspection and testing of the Option Parcel (collectively, the "**Developer's Inspections**") immediately after Developer's and Owner's execution of this Agreement, and shall complete Developer's Inspections prior to the expiration of the Due Diligence Period. Developer acknowledges that Developer's Inspections may include (and Developer has or will have conducted) such surveys and inspections, and made such percolation, geologic, environmental and soils tests and other studies of the Option Parcel as Developer shall, in Developer's sole discretion, deem necessary or advisable as a condition precedent to Developer's purchase of the Option Parcel and to determine the physical and environmental characteristics of the Option Parcel and its suitability for Developer's intended use.

(b) Developer's Inspections shall be conducted during normal business hours at times mutually acceptable to Developer and Owner.

(c) Notwithstanding anything contained herein to the contrary, no invasive or destructive testing shall be done without the Owner's prior written consent, which consent may be withheld or conditioned in Owner's sole and absolute discretion. Any request for invasive or destructive testing shall be based upon the recommendation of Developer's expert and a written report (a copy of which shall be delivered to Owner) that includes a description of the general nature and scope of the proposed testing, the protective measures to be utilized to avoid or minimize any damage to the Property, the activities proposed to restore any anticipated damage, the contractor(s) to be conducting such testing (and a description of their qualifications and licensing), those portions of the Option Parcel to be affected by such testing, and the proposed schedule for conducting such testing.

(d) Prior to commencement of any of Developer's Inspections or other activities on the Option Parcel, Developer shall obtain or cause its consultants to obtain, at no cost to Owner, a policy of commercial general liability insurance covering any and all liability of Developer and Owner with respect to or arising out of any of such activities. Such policy of insurance shall be an occurrence policy and shall have liability limits of not less than Three Million Dollars ($3,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property

damage liability. Such insurance policy shall name Owner and such other parties as Owner shall designate as additional insureds.

(e) In performing Developer's Inspections on or about the Property, Developer and its agents, contractors or invitees shall: (i) comply with all reasonable procedures imposed by Owner and with any and all laws, ordinances, rules, and regulations applicable to the Option Parcel; (ii) not engage in any activities that would violate any permit, license, or environmental law or regulation; (iii) promptly pay when due all costs incurred in connection with Developer's Inspections; (iv) cause no damage to the Property except to the extent minimally necessary to perform Developer's Inspections (provided, however, this subsection shall in no way limit Developer's other obligations set forth in this Agreement); and (v) perform Developer's Inspections in such a way as to avoid any disturbance to Owner except to the extent minimally necessary.

(f) Owner may, but shall not be obligated to, have a representative of Owner present during any of Developer's Inspections.

6.3 **Indemnity by Developer**. Developer shall protect, indemnify, defend and hold the Property, Owner and Owner's officers, directors, shareholders, fiduciaries, employees, invitees, agents and contractors free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "**Liabilities**"), to the extent caused by Developer's Inspections, including repairing any and all damage to any portion of the Property, and including abating any contamination caused by any Hazardous Material (defined in Section 8.2) to the extent caused or exacerbated by Developer's Inspections. However, Developer shall not be liable for any Liabilities arising from the existence of any pre-existing Hazardous Materials that are merely discovered by Developer, or for any Liabilities based on Owner's active negligence or willful misconduct. The provisions of this Section 6.3 shall survive the Closing or the termination of this Agreement, as applicable.

6.4 **Delivery of Due Diligence Approval Notice; Right to Terminate**.

(a) Assuming that Developer approves of the Due Diligence Documents and the results of Developer's Inspections, and if Developer determines that the Option Parcel is suitable for Developer's intended purposes, Developer shall deliver to Owner, prior to the expiration of the Due Diligence Period, a written notice (the "**Due Diligence Approval Notice**") stating that Developer is satisfied with the all Due Diligence Documents and the results of Developer's Inspections of the physical and environmental condition of the Option Parcel, without exceptions, qualifications or conditions.

(b) Subject to Section 4.9 above, if for any reason (or for no reason) Developer fails to deliver to Owner the Due Diligence Approval Notice, without exceptions, qualifications or conditions, prior to the expiration of the Due Diligence Period, then this Agreement and the rights of Developer hereunder shall terminate as of the end of the Due Diligence Period as provided in Section 4.1, and the provisions of Section 4.7 shall apply.

7. **ENTITLEMENTS**.

7.1 **Entitlements to be Obtained by Developer**. The City of Santa Clara has

processed an amendment to the General Plan which has changed the land use designation for the Property to "Transit-Oriented Mixed Use" (or such other applicable designation). Owner hereby acknowledges and agrees that Developer has applied and is in the process of pursuing all additional entitlements to the extent necessary for the development of the Option Parcel for residential and commercial purposes consistent with such land use designation and the Approved Conceptual Plan (the "**Entitlements**"). Except as otherwise provided herein, all costs and expenses associated with the Entitlements shall be borne by Developer, as further described in Section 7.7.

(a) As used in this Agreement, the term "Entitlements" may include, to the extent necessary for the development of the Option Parcel for residential and commercial purposes consistent with such land use designation as determined by Developer in its reasonable discretion or as otherwise required by City, final approvals by the City of the following:

(i) An Amendment to the City's Zoning Ordinance, to change the zoning for the Property to "Planned Development/Transit-Oriented Mixed Use" as described in Santa Clara City Code ("**SCCC**") Section 18.22.110 et seq. (the "**PD Zoning**"), including a development plan for the entire Property (the "**Development Plan**") as described in SCCC 18.54.060, which when approved by the City shall become a part of the zoning district for the Property, and which shall be based on the Approved Conceptual Plan;

(ii) A tentative subdivision map (the "**Tentative Subdivision Map**") and a final subdivision map (the "**Final Subdivision Map**") satisfying the requirements of California Government Code Sections 66410 to 66499 (the "**Subdivision Map Act**" or "**SMA**") and Chapter 17.05 of the SCCC, and approved by Owner pursuant to Section 7.3 below, to divide the Property into two separate legal parcels, such that the Western Village Parcel legally can be sold separate and apart from the Eastern Village Parcel;

(iii) If Developer plans to develop for-sale housing on the Option Parcel, a project-specific subdivision map to further subdivide the Option Parcel into separate residential lots or units (the "**Residential Map**"); provided, however, that if the City will not allow Developer to apply for two separate maps as described herein, Developer may include the residential unit subdivision mapping for the Option Parcel as part of the Tentative Subdivision Map and the Final Subdivision Map;

(iv) Drawings and specifications (the "**Improvement Plans**") conforming to the City's Standard Design Criteria, Details and Standard Plans and Specifications and any other requirements of the City Engineer, and approved by Owner pursuant to Section 7.4 below, for the construction of public and private onsite and offsite improvements (the "**Subdivision Improvements**"), to the extent required by the City as a condition of approval of the Tentative Subdivision Map, Final Subdivision Map or pursuant to City ordinance;

(v) A development agreement (the "**Development Agreement**") satisfying the requirements of Chapter 17.10 of the SCCC, and approved pursuant to Section 7.5 below; and

(vi) A project level Environmental Impact Report ("**EIR**") under

the California Environmental Quality Act ("**CEQA**"), as described in Section 7.6 below.

(b) Owner hereby acknowledges that the Residential Map and the Final Map may be processed concurrently.

(c) Subject to the conditions and limitations hereinafter set forth, Owner shall reasonably cooperate with Developer's efforts to obtain the Entitlements, at no material out-of-pocket cost to Owner and in all matters requiring the Owner's agreement or consent pursuant to this Section 7.1, shall not unreasonably withhold, condition or delay its agreement or consent provided such Entitlement does not have a material negative impact on the future development of the Eastern Village Parcel in accordance with the Approved Conceptual Plan (a "**Negative Impact on Eastern Village Parcel**"). For purposes of this Agreement, a matter shall not be deemed to have a Negative Impact on Eastern Village Parcel if Developer has acquired the Eastern Village Parcel. Without limiting the foregoing, Owner agrees to co-sign (with Developer) all applications for the Entitlements (other than the Residential Map), and have its authorized representative attend meetings, sign further documents, and do all further acts reasonably requested by Developer in order to obtain the Entitlements. Developer shall provide Owner with reasonable advance notice (but not less than 48 hours prior notice) of all material meetings with City representatives in connection with the Entitlements so as to allow Owner an opportunity to attend such meetings where appropriate. Developer shall also use reasonable efforts to provide Owner with a copy of all material written communications between Developer and the City relating to the Entitlements, and a copy of all documents submitted to the City.

(d) Developer acknowledges that even with Owner's cooperation and Developer's diligent efforts, it may not be possible or economically feasible to obtain the Entitlements as contemplated by this Agreement on or before the final expiration of the Option Term, and that Developer is proceeding under this Agreement at its sole risk.

(e) Developer acknowledges and agrees that approval by Owner of any plans, drawings, specifications, agreements, applications or other documents shall be solely for the purpose of fulfilling Owner's obligations and protecting Owner's interests under this Agreement, and shall not be deemed to be a representation or warranty by Owner as to the legality, sufficiency, or advisability of any aspect of the same.

(f) Notwithstanding anything to the contrary in this Article 7, in processing the Entitlements for the Option Parcel, Developer shall not process or seek approval of any Entitlements for the Option Parcel that would prohibit Owner from receiving any of the benefits of the Post Closing Lease (as defined in the Escrow and Closing Agreement).

7.2 **Conceptual Plan**.

(a) The parties hereby acknowledge and approve the conceptual plan attached hereto as **Exhibit G**, and that for all purposes of the Agreement, the plan attached hereto as **Exhibit G** shall constitute the "**Approved Conceptual Plan**" pursuant to the Agreement, except as modified in accordance with the terms and provisions of this Agreement.

(b) No material changes may be made to the Approved Conceptual Plan

(or the Entitlements based thereon) without first obtaining the written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed. For purposes of this Agreement, any of the following shall be deemed to be a material change in the Approved Conceptual Plan:

(i) Any change in building types or uses on the Option Parcel, if such change would affect the building types or uses to be developed in the future on the Eastern Village Parcel;

(ii) Any increase or decrease in the residential units (or range of residential units) on the Option Parcel by 10% or more of the number of units shown on the original Approved Conceptual Plan, if such change would affect the number of residential units that could be (or must be) constructed in the future on the Eastern Village Parcel;

(iii) Any increase or decrease in the square footage of the Option Parcel (and the Eastern Village Parcel) by 5% or more from the square footage shown on the Land Survey (as defined in the Eastern Village Option Agreement) (and any resulting increase or decrease in the Purchase Price as a result of such change);

(iv) Any increase in the square footage of required retail or other commercial space within the Eastern Village Parcel by more than 10%, above the amount shown in the Approved Conceptual Plan;

(v) Any change in the location, configuration or ownership of the access points and access driveways serving the Eastern Village Parcel; or

(vi) Any new or modified requirement regarding improvements (other than underground utility facilities) to be constructed, or land to be dedicated on the Eastern Village Parcel prior to the re-development of the Eastern Village Parcel for residential and commercial purposes.

(c) Non-material changes, additional details, and additional elements consistent with this Agreement may be made to the original Approved Conceptual Plan (or the Entitlements based thereon) from time to time, either upon the request of the City or the request of Developer, subject to the prior written approval of Owner if (i) the Eastern Village Option Agreement has been terminated, and (ii) the changes relate to the Eastern Village Parcel, which approval shall not be unreasonably withheld, conditioned or delayed. For purposes of this Agreement, non-material changes to the original Approved Conceptual Plan (or the Entitlements based thereon) shall include those changes that would have a lesser impact than those material changes identified in Section 7.2(b) above.

(d) If the original Approved Conceptual Plan is changed in accordance with the foregoing provisions, then the approved changes shall be incorporated into the Approved Conceptual Plan and from that point forward the term "**Approved Conceptual Plan**" shall mean the Conceptual Plan as so changed; provided, however, that the original Approved Conceptual Plan will be used to determine whether any subsequent changes are material (i.e., materiality is

based on the cumulative changes from the original Approved Conceptual Plan, not incremental changes).

(e) The Approved Conceptual Plan shall establish the essential elements of the agreement between the parties regarding the overall development of the Property. All Entitlements, further actions and further agreements between the parties must be consistent with such Approved Conceptual Plan in all material respects, except to the extent required by the City and not having a Negative Impact on the Eastern Village Parcel.

7.3 **Subdivision Maps**. In connection with the processing of the Entitlements, Developer shall submit a complete application to the City for the Tentative Subdivision Map and the Residential Map.

(a) The parties anticipate that the City's approval of the Tentative Subdivision Map and the Final Subdivision Map will be subject to a number of conditions of approval (the "**Map Conditions**"), which may include the following:

(i) The establishment of all public and private easements reasonably necessary for the development and operation of the Property, including the recordation of cross-easements and/or covenants, conditions and restrictions (collectively, "**CC&R's**") if any joint access roads, utility facilities or improvements will need to be maintained by both parties in perpetuity (provided, however, that in no event shall Owner agree to any cross-parking easements).

(ii) Approval by the City of the Improvement Plans.

(iii) Execution by the parties of a Development Agreement.

(b) The form of the Tentative Subdivision Map, the Final Subdivision Map, the Map Conditions and any CC&R's shall be subject to the written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed. In connection with the foregoing, the parties hereby acknowledge and agree that, (i) the Tentative Subdivision Map and Map Conditions shall be consistent in all material respects with the Approved Conceptual Plan and the other provisions of this Agreement; (ii) the Final Subdivision Map shall be consistent in all material respects with the Tentative Subdivision Map; (iii) the Map Conditions shall be Acceptable Conditions as defined below; and (iv) the CC&R's shall be in a customary form with commercially reasonable terms and conditions.

(c) As used in this Agreement, the term "**Acceptable Conditions**" shall mean any of the following:

(i) Exactions, requirements, standards, or other conditions of development or construction, to the extent that such conditions are then being imposed by the City on all other similar projects pursuant to the then-applicable written ordinances, policies, standards or design guidelines of the City; or

(ii) Conditions for which Developer agrees in writing to be solely

responsible, including all direct and indirect costs of complying with the same.

(d) Following approval of the Tentative Subdivision Map, the Map Conditions and the CC&R's (if applicable), Developer shall complete all Map Conditions that are required to be satisfied prior to the final approval and recordation of the Final Subdivision Map to the extent that such Map Conditions relate, in whole or in part, to the development of the Option Parcel. Subject to the satisfaction of the foregoing obligations, Developer shall use commercially reasonable efforts to cause the Final Subdivision Map to be recorded as soon as reasonably possible.

7.4 **Subdivision Improvements**. The Developer shall engage one or more design professionals to prepare a set of Improvement Plans for the Subdivision Improvements.

(a) As used in this Agreement, the term "Subdivision Improvements" may include the following to the extent shown on the Approved Conceptual Plan, or as otherwise required by the City in connection with the development of the Option Parcel and then applicable City ordinances and not having a Negative Impact on the Eastern Village Parcel:

(i) Street or access driveway improvements within the Property (including curbs, gutters, sidewalks, street lights, landscaping and signage), including improvements that are required to be made to the Eastern Village Parcel as part of the reconfiguration of the Property into two parcels;

(ii) The main lines of public utilities and related facilities serving the Property (including joint trench, water, sanitary sewer, and storm drainage);

(iii) Fencing, gates, and/or other security systems to protect the Eastern Village Parcel from unauthorized entrance or use by contractors, residents, or invitees of the project on the Option Parcel;

(iv) Off-site improvements, such as utility improvements serving the Property (including, if required by the City, any “upsizing” of such improvements to accommodate anticipated future development of the Eastern Village Parcel or other properties in the area) and traffic improvements along the adjacent public streets (including, if required by the City, re-striping or re-working intersections, or installing or improving signals);

(v) On-site improvements serving both the Option Parcel and the Eastern Village Parcel, if required by the City, such as storm drain catch basins and backflow prevention devices, transformers and transformer vaults, and water reclamation areas; and

(vi) Any other improvements or dedications of land applicable to the Option Parcel, to the extent required by the City, as a Map Condition for the Final Subdivision Map.

(b) Intentionally Omitted.

(c) Prior to Developer's acquisition of the Eastern Village Parcel, the Improvement Plans shall be subject to the written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed. If the Improvement Plans are consistent with the then-applicable City ordinances and requirements and do not have a Negative Impact on the Eastern Village Parcel, then Owner shall not be allowed to withhold its approval to the Improvement Plans. From and after the acquisition of the Eastern Village Parcel, Owner shall have no further right to approve the Improvement Plans.

(d) Although not part of the Subdivision Improvements as defined in this Agreement, Developer acknowledges and agrees that Developer shall be solely responsible for the demolition of the existing buildings on the Option Parcel and the off-haul of all debris associated therewith, as well as any grading and site work needed to prepare the Option Parcel for the development of Developer's project.

(e) Developer shall be solely responsible for executing any public improvement agreements, deferred improvement agreements, and/or subdivision improvement agreements required by the City as a Map Condition for the development of the Option Parcel or in connection with the Subdivision Improvements, for providing all certificates of insurance, bonds or other improvement security, and for fulfilling all other obligations of the Developer as and when required by such agreement(s). Developer shall be solely responsible for ensuring that all such Subdivision Improvements are constructed by licensed contractors, in a good and workmanlike manner, and free from any defects.

(f) In addition to the foregoing, to the extent Developer performs any Subdivision Improvement construction work on or about the Option Parcel prior to the Close of Escrow, Developer and its contractors, invitees and agents shall: (i) comply with all reasonable procedures imposed by Owner and with any and all laws, ordinances, rules, and regulations applicable to the Property; (ii) not engage in any activities that would violate any permit, license, or environmental law or regulation; (iii) promptly pay when due all costs incurred in connection with the construction work; (iv) cause no damage to the Property except to the extent minimally necessary to perform the construction work (provided, however, this subsection shall in no way limit Developer's other obligations set forth in this Agreement); and (v) perform the construction work in such a way as to avoid any disturbance to Owner or Owner's rights following the closing under the Post Closing Lease, except to the extent minimally necessary. If Developer needs to access the Property in order to satisfy Developer's obligations under this Section 7, then Developer and Owner shall enter into a mutually agreed upon license agreement setting forth the terms and conditions in which Developer, its contractors, invitees, and agents, may enter onto the Property.

(g) Developer shall protect, indemnify, defend and hold the Property, Owner and Owner's officers, directors, shareholders, fiduciaries, employees, invitees, agents and contractors free and harmless from and against any and all Liabilities (as defined in Section 6.3) to the extent resulting from the Subdivision Improvement construction work, including repairing any and all damage to any portion of the Property, but excluding any Liabilities resulting from Owner's own active negligence or willful misconduct.

(h) The provisions of this Section 7.4 shall survive the Closing or the termination of this Agreement, as applicable; provided that if the Agreement is terminated prior to

the Closing, then only the provisions of Section 7.4(g) shall survive such termination.

7.5 **Development Agreement**. Developer shall submit an application to the City for the approval and execution of a development agreement as authorized by California Government Code Sections 65854 et seq. (the "**Development Agreement**").

(a) The Development Agreement shall establish the parties' respective vested rights to develop the Property consistent with the PD Zoning (and the related Development Plan approved by the City), the Tentative Subdivision Map, the Final Subdivision Map and the ordinances, policies and standards of the City in effect as of the date of the Development Agreement. Such vested rights shall include the right (but not the obligation) to construct the project specific residential and commercial buildings within the Property.

(b) Developer shall negotiate for a Development Agreement term that is customary and reasonable for similar developments within the City; provided, however, that Developer shall not be required to negotiate for a term that imposes additional or increased exactions on the developer or the Project.

(c) If the City requires that the Development Agreement include requirements for the parties to provide below-market rate housing, such obligation shall be allocated to the parties pro-rata, based on the number of residential units on each Parcel, unless otherwise agreed by the parties in their reasonable discretion.

(d) If in the Development Agreement the City imposes a cost or requires an improvement on the Eastern Village Parcel in order to develop the Eastern Village Parcel for residential purposes and such cost or improvement would reasonably have been imposed on the Eastern Village Parcel if it was developed as a stand-alone project in accordance with the City's General Plan, then such cost or improvement shall not be deemed to have a Negative Impact on the Eastern Village Parcel. Furthermore, in the event that the Development Agreement, or any of the terms imposed pursuant thereto, would have a Negative Impact on Eastern Village Parcel, Developer shall have the right to compensate Owner in a manner that offsets such impact in a commercially reasonable manner (the **"Compensation**"); provided, however, that if Developer exercises such right of offset, such Compensation shall not be due so long as the Eastern Village Option Agreement has not terminated. In the event that the Eastern Village Option Agreement terminates, then the Compensation shall be paid in accordance with the agreement of the parties. Upon the closing of the transaction under the Eastern Village Option Agreement, any obligation to pay the Compensation shall automatically terminate and be deemed null and void. In the event of a dispute relating to the validity or interpretation of this Section 7.5(d), then such dispute shall be resolved in the manner provided in Exhibit H attached hereto.

(e) The parties shall attempt to limit the requirement for commercial space as much as possible, and to include provisions that allow for the broadest possible uses of any required commercial space, such as community sales or leasing offices, live-work units, community recreational facilities, and so forth.

(f) The form of the Development Agreement shall be subject to the

written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed. If the Development Agreement is consistent with the approved Tentative Subdivision Map and Map Conditions, the provisions of this Paragraph 7.5, and then-applicable City ordinances and requirements and does not have a Negative Impact on Eastern Village Parcel, then Owner shall not be allowed to withhold its approval to the Development Agreement.

7.6 **Environmental Approvals**. Developer shall apply for and use commercially reasonable and diligent efforts to pursue all necessary environmental approvals required by CEQA or the City in connection with the Entitlements, including an initial study, project description, and EIR, to the extent necessary for the development of the Option Parcel for residential and commercial purposes. To the greatest extent possible, Developer shall use commercially reasonable efforts to pursue all Entitlement applications concurrently, so that one set of environmental review documents can be utilized for all applicable Entitlements.

7.7 **Payment of Costs**. Developer shall pay for all direct and indirect costs of obtaining the Entitlements and constructing the Subdivision Improvements (collectively, the "**Entitlement Costs**").

(a) As used herein, the term "Entitlement Costs" shall mean and include the following:

(i) All costs related to the preparation of the applications and submittals to the City (including fees for design and engineering professionals);

(ii) Application fees, inspection fees, and cost reimbursements payable to the City;

(iii) Fees for traffic and noise studies, archaeological and biological surveys, soils report, engineering geology and/or seismic safety report, storm drain study, electric load survey, and all other investigations and tests required by the City;

(iv) Community outreach and public relations expenses;

(v) Developer's legal fees, accounting fees, consulting fees, and other similar fees;

(vi) Development fees, utility connection fees, construction taxes, building permit fees, inspection fees, bond costs, and street opening permit fees for the Subdivision Improvements;

(vii) Hard construction costs, including labor, supervision, materials, liability insurance, bonds, and builders' risk insurance.

(b) As used herein, the term "Entitlement Costs" shall not include the following:

(i) Owner's legal fees, brokerage fees, and other consulting fees incurred directly by Owner;

(ii) Costs to provide a preliminary title report as required by the City (which title report and underlying title documents shall be provided by Owner to Developer during the Due Diligence Period); and

(iii) Any fees, costs or expenses set forth in Section 7.7(a) above that are incurred by Owner without the prior written consent of Developer.

(c) As a material part of the consideration for this Agreement, Developer acknowledges and agrees that except for the costs described above in this Section 7.7(b), Owner shall not be liable for any costs, improvements or obligations associated with the recordation of the Final Subdivision Map, the satisfaction of the Map Conditions, or the construction of the Subdivision Improvements, whether payable directly to Developer or indirectly through a City-administered reimbursement agreement, even though the Eastern Village Parcel may be benefited from the foregoing items.

(d) Developer shall protect, indemnify, defend and hold the Property, Owner and Owner's officers, directors, shareholders, fiduciaries, employees, invitees, agents and contractors free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "Liabilities") to the extent resulting from (i) the recordation of the Final Subdivision Map, the satisfaction of the Map Conditions required to be performed by the Developer pursuant to this Agreement, or the construction of the Subdivision Improvements, or (ii) the processing of the Entitlements or any appeals or litigation brought by third parties associated with the Entitlements, except for any Liabilities caused by Owner's own active negligence or willful misconduct.

(e) The provisions of this Section 7.7 shall survive the Closing or the termination of this Agreement, as applicable; provided that if the Agreement is terminated prior to the Closing, then only the provisions of Section 7.7(d) shall survive such termination.

7.8 **Final Discretionary Approvals; Extension of Closing Date**.

(a) As used in this Agreement, the term "**Final Discretionary Approvals**" shall mean that (i) the City has approved the PD Zoning (and Development Plan), the Tentative Subdivision Map, the tentative Residential Map, and the Development Agreement, and (ii) the applicable challenge and appeal periods for such approvals have elapsed, or if a challenge or appeal has been made, then such challenge or appeal has been resolved in a manner that is reasonably satisfactory to Developer.

(b) As stated in Section 3.6, the Option Term shall automatically terminate thirty (30) days after the date that the Final Discretionary Approvals have been obtained, notwithstanding the fact that the then-applicable Option Period may extend past such date. Therefore, if Developer fails to exercise its Option as provided in Section 4.4 within thirty (30) days after the date that the Final Discretionary Approvals have been obtained, this Agreement shall

automatically terminate.

(c) If Developer does exercise its Option in a timely manner, but the Final Subdivision Map has not been recorded at least ten (10) days prior to the scheduled Closing Date, then Owner shall not be obligated to complete the Closing unless Developer extends the Closing Date (as provided in Section 4.5 above) to a date that is at least ten (10) days after the date that the Final Subdivision Map has been recorded. THE PARTIES ACKNOWLEDGE AND AGREE THAT IT IS AN EXPRESS, NON-WAIVABLE CONDITION OF THIS AGREEMENT THAT PRIOR TO THE CLOSING, THE FINAL SUBDIVISION MAP MUST BE APPROVED AND FILED WITH THE SANTA CLARA COUNTY RECORDER IN ACCORDANCE WITH THE SUBDIVISION MAP ACT.

(d) If, following the expiration of all available Extension Periods, the Final Subdivision Map has not been recorded and/or the Closing has not been completed, then this Agreement shall automatically terminate as provided in Section 4.6

7.9 **Approval Process**. If any provision of this Agreement calls for Owner's approval, then the following procedures shall apply:

(a) Developer shall give Owner written notice of the specific approval being requested, which notice shall include copies of all relevant plans, submittals, applications, agreements, and other documents. Within ten (10) days after receiving such request, Owner shall give Developer written notice of either (i) Owner's approval of the matter in question; or (ii) Owner's disapproval, together with a reasonably detailed explanation of the reasons for Owner's disapproval. Upon any such disapproval, the parties shall meet and confer as necessary to try to resolve any differences of opinion, and Developer may repeat the foregoing process as often as necessary until Developer shall have obtained Owner's written approval of the matter in question. If such approval is to be in Owner's reasonable discretion, then Owner shall not withhold its approval provided it does not result in a Negative Impact on the Eastern Village Parcel and is consistent with the terms of this Agreement.

(b) If Owner fails to provide any response to Developer’s request with the required ten (10) day period, Developer shall give Owner a second written notice with a copy of the first notice attached, which second notice shall state in at least 12 point bold type at the top of the document: **"SECOND NOTICE — FAILURE TO RESPOND WITHIN 10 DAYS SHALL CONSTITUTE A DEFAULT"**. Owner's failure to provide a written response as described in Section 7.9(a) within such second ten (10) day period shall be deemed Owner's approval of such request made by Developer.

8. **REPRESENTATIONS AND WARRANTIES**.

8.1 **Developer's Representations and Warranties**. Developer represents and warrants to Owner that as of the date of this Agreement the following statements are true:

(a) Organization; Authority. Developer is duly organized, validly existing and in good standing under the laws of the state of its organization. Developer is authorized to

transact business in California, and has full power and authority to enter into and perform this Agreement in accordance with its terms. The persons executing this Agreement have been duly authorized to do so on behalf of Developer.

(b) Authorization; Validity. The execution and delivery of this Agreement by Developer and Developer's consummation of the transactions contemplated by this Agreement have been duly and validly authorized. Assuming the valid execution and delivery of this Agreement by Developer, this Agreement constitutes a legal, valid and binding agreement of Developer enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and the exercise of judicial discretion in accordance with general principles of equity.

(c) Bankruptcy. Developer has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Developer's creditors; and (iii) suffered the appointment of a receiver to take possession of all or substantially all of Developer's assets.

(d) Purchase Funds: Restricted Persons. All funds to be used by Developer as payment of the Purchase Price at Closing are from sources operating under, and in compliance with, all federal, state and local statutes and regulations and are free of all liens and claims of lien. Neither Developer nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

8.2 **Representations and Warranties by Owner**. Owner represents and warrants to Developer that as of the date of this Agreement the following statements are true:

(a) Organization; Authority. Owner is duly organized, validly existing and in good standing under the laws of the state of its organization. Owner is authorized to transact business in California, and has full power and authority to enter into and perform this Agreement in accordance with its terms. The persons executing this Agreement have been duly authorized to do so on behalf of Owner.

(b) Authorization; Validity. The execution and delivery of this Agreement by Owner and Owner's consummation of the transactions contemplated by this Agreement have been duly and validly authorized. Assuming the valid execution and delivery of this Agreement by Developer, this Agreement constitutes a legal, valid and binding agreement of Owner enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and the exercise of judicial discretion in accordance with general principles of equity.

(c) Foreign Investment and Real Property Tax Act. Owner is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code, or under any comparable state statutes which are applicable to this transaction.

(d) Bankruptcy. Owner has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Owner's creditors; or (iii) suffered the appointment of a receiver to take possession of all or substantially all of Owner's assets.

(e) Litigation and other Proceedings. To the Best of Owner's Knowledge, Owner has not received written notice of any pending litigation, claim, or proceeding against or relating to Owner or the Option Parcel that would be binding on Developer after the Closing or materially and adversely impact Developer's use, ownership and operation of the Option Parcel.

(f) Condemnation Proceedings. To the Best of Owner's Knowledge, Owner has not received written notice of any pending or threatened condemnation or eminent domain proceedings that would affect the Option Parcel, or any part thereof.

(g) Hazardous Materials. To the Best of Owner's Knowledge, (i) there are no Hazardous Materials located on or under the Option Parcel, and (ii) the Option Parcel is not in violation, nor has been or is currently under investigation for violation, of any environmental requirements relating to the Option Parcel, including without limitation soil and groundwater.

The term "**Hazardous Material(s)**" shall mean any hazardous or toxic substance, material or regulated waste which is or becomes regulated by any local governmental agency, the State of California, or the United Stated Federal Government. The term "Hazardous Material(s)" includes petroleum products, asbestos, PCB's and all other materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Environmental Protection Agency, the California Water Quality Control Board and the California Department of Health Services.

The term "**Hazardous Material Law**" shall mean any statute, law, ordinance, or regulation of any governmental body or agency which regulates the use, storage, release or disposal of any Hazardous Material.

(h) No Contracts for the Property. To the Best of Owners Knowledge, no contract of sale or lease is in force with respect to the Option Parcel that will remain in effect after the Close of Escrow.

(i) All Costs Have Been Paid. All costs and expenses incurred by those engaged by Owner in connection with construction or improvements to the Option Parcel, up to and including the Agreement Date, have been paid.

(j) No Default on Taxes, etc. To the Best of Owner's Knowledge, Owner is not delinquent in any payment of any taxes, principal and interest on assessment districts' bonds or other encumbrances or obligations with respect to the Option Parcel.

(k) Compliance. Owner has received no notices from governmental

authorities pertaining to violations of law or governmental regulations with respect to the Option Parcel with which Owner has not fully complied or corrected.

(l) No Commitments. Prior to the Effective Date, Owner has not made any commitments to any governmental authority relating to the Option Parcel which would impose any obligations upon Developer to make any contributions of money or land or to install or maintain any improvements.

The term "**Best of Owner's Knowledge**" shall mean and refer to, and shall be limited to, the current, actual knowledge of Bill Hunt, Owner's Facilities Manager, without having conducted or being under any obligation to conduct any independent inquiry or inspection. The foregoing designation is intended to limit and quantify the Owner's knowledge and under no circumstances shall Bill Hunt have any personal liability whatsoever.

All of Owner's representations and warranties contained herein, or in any of the documents delivered in connection with the Closing, are subject to any disclosures made in writing by Owner to Developer and any and all information contained in the Due Diligence Documents.

8.3 **Developer's Remedies for Breach Prior to Closing**.

(a) If at or prior to the Closing, (i) Developer shall become aware (whether through its own efforts, by written notice from Owner or any other third party) that any of the representations or warranties made herein by Owner are untrue, inaccurate or incorrect in a material manner and shall give Owner notice thereof at or prior to the Closing, or (ii) Owner shall become aware that a representation or warranty made herein by Owner is untrue, inaccurate or incorrect in a material manner, including as a result of any subsequent acts, actions, notifications or events, then Owner shall give Developer notice thereof at or prior to the Closing, and Owner may elect, by written notice to Developer to delay the Closing Date for up to thirty (30) days (with no charge to Developer for any Extension Payment) in order to attempt to cure or correct such untrue, inaccurate or incorrect representation or warranty.

(b) If the events making such representation or warranty untrue, inaccurate or incorrect in a material manner are not cured or corrected by Owner on or before the Closing Date (as may have been extended to permit such cure), then Developer shall have the right to elect, as its sole and exclusive remedy, to (i) to terminate this Agreement by notice given to Owner on or before the then scheduled Closing Date and receive a refund of the Option Payments (and any Extension Payments), or (ii) waive such right and proceed with the Closing, in which case Owner shall have no liability with regard to such matter.

(c) By Closing, (i) Owner shall have no liability whatsoever for any breach of a representation or warranty for which Developer had actual or constructive knowledge as of the Closing; and (ii) Developer shall be deemed to have waived any and all claims relating to the matters set forth under this Section 8.3 effective as of the Closing.

(d) "Constructive knowledge" includes, but is not limited to, (i) any information contained in the Due Diligence Documents, (ii) any other information obtained by Developer as part of Developer's Investigations, and (iii) any other information to which Owner has

provided Developer.

(e) Subject to Section 4.8(g), the provisions of this Section 8.3 shall survive the Closing.

8.4 **Developer's Remedies for Breach After Closing**. If after Closing, Developer just becomes aware of a breach by Owner of Section 8.2 or Section 8.3(a)(ii), then the following provisions shall apply:

(a) Notwithstanding anything else to the contrary in this Agreement, all liability of Owner for breach of Section 8.2 or Section 8.3(a)(ii) shall terminate if no suit is filed within six (6) months following the Closing.

(b) Further, Owner's liability for such breach shall be limited to Developer's actual, verifiable damages for out-of-pocket expenses associated with correcting or curing the matter that is the subject of the representation or warranty, not to exceed a total of $1,000,000.00; provided, however, that unless the total of said out-of-pocket expenses is greater than $50,000.00, Developer shall have no right to make a claim based on any breach of Owner's representations and warranties, and Developer hereby waives the same.

9. **OWNER'S DEFAULT AND DEVELOPER'S REMEDIES**.

9.1 **Event of Owner's Default**. Owner shall be deemed to be in default under this Agreement (an "**Event of Owner's Default**") only if Owner shall fail to perform any other material obligation under this Agreement or under the Escrow and Closing Agreement, which failure is not cured within thirty (30) days after written notice from Developer to Owner specifying the nature of such failure and the steps required to cure such failure; provided, however, that if Owner cannot reasonably cure such failure within said thirty (30) day period, Owner shall not be in default hereunder if Owner promptly commences the actions necessary to cure such failure, and diligently pursues completion thereof. In either event, the Closing Date shall be extended during such cure period if necessary for Owner to complete the cure, without charge to Developer for any Extension Payment for such period of time. Notwithstanding the foregoing, in the event that Owner fails to cure any such default within sixty (60) days after written notice from Developer to Owner, notwithstanding Owner's diligent efforts, then Developer shall have the rights set forth in Section 9.2(a) below.

9.2 **Remedies for Owner's Default**. In the Event of Owner's Default, Developer shall have any one of the following rights and remedies (and no others):

(a) Developer shall have the right to terminate this Agreement by notice to Owner, in which event (i) the Option Payments (and, if applicable, the Extension Payments) shall be fully refundable to Developer, and (ii) all obligations of the, parties under this Agreement shall terminate except for the obligations that survive the termination of this Agreement; or

(b) Developer shall have the right to waive the breach or default and proceed to Closing in accordance with the provisions of this Agreement without reduction of the

Purchase Price; or

(c) Developer may seek specific performance for Owner's failure to execute and deliver the documents necessary to convey the Option Parcel to Developer, in which event Developer shall only be entitled to purchase the Option Parcel for the Purchase Price and shall not be entitled to any monetary damages, whether styled as consequential, actual, delay, compensatory, punitive or otherwise, and Developer hereby waives all rights to the same to the fullest extent permitted by law; provided, if it is determined that the remedy of specific performance is not available to Developer, then Developer may seek the remedy set forth in Paragraph 9.2(a).

(d) If the remedy of specific performance in Section 9.2(c) is not available to Purchaser because of the nature of the Event of Owner's Default, then Developer shall have the right to terminate this Agreement by notice to Owner, in which event (I) the Option Payments (and, if applicable, the Extension Payments) shall be fully refundable to Developer, (ii) Purchaser shall be allowed to seek actual damages for Developer's actual out-of-pocket third-party costs and expenses associated with processing the Entitlements and performing Developer's due diligence of the Property, and its attorneys' fees and costs, and (iii) all obligations of the parties under this Agreement shall terminate except for the obligations that survive the termination of this Agreement.

Nothing in this Section 9.2 shall limit Developer's rights to attorneys' fees or costs recoverable by Developer under this Agreement.

10. **POST-CLOSING CONSTRUCTION**. If the Post Closing Lease is entered into by the parties at the Closing, Developer shall not commence any construction on the Option Parcel that will disrupt Owner’s use of the Option Parcel in accordance with the Post Closing Lease.

11. **COMMISSIONS**. Developer and Owner each represent and warrant to the other that they have not dealt with any real estate broker, agent, finder, or other party who could claim a right to any commissions, finder's fees or brokerage fees arising out of the transactions contemplated by this Agreement, other than CB Richard Ellis ("**Owner's Broker**"). Owner shall pay Owner's Broker a commission at the Closing, pursuant to a separate agreement between Owner's Broker and Owner. Each party shall indemnify and hold the other party harmless from and against any and all liabilities, claims, demands, damages, costs and expenses, including reasonable attorneys' fees and court costs, in connection with claims for any commissions, finders' fees or brokerage fees arising out of each such party's conduct or the inaccuracy of the foregoing representation and/or warranty of such party. The provisions of this Section 11 shall survive the Closing.

12. **DAMAGE OR DESTRUCTION: CONDEMNATION**.

12.1 **Destruction of Buildings**. The parties acknowledge that Developer plans to remove the existing buildings located on the Option Parcel and re-develop the Option Parcel for residential and commercial purposes. Therefore, Developer shall NOT have the right to terminate this Agreement, receive a refund of any Option Payments or Extension Payments, or receive a reduction in the Purchase Price or an assignment of any insurance proceeds received by, receivable by, or paid to Owner, in the event of a casualty, damage or destruction of all or any portion of the Option Parcel.

12.2 **Condemnation**. If, prior to the Closing Date, all or any portion of the Option Parcel is subject to an actual or threatened taking by a public authority, by the power of eminent domain or otherwise (a "**taking**"), Owner shall immediately advise Developer of the same in writing and Developer shall have the right, exercisable by giving written notice to Owner within ten (10) days after Developer's receipt of written notice of such taking from Owner, either to (i) terminate this Agreement (whereupon all Option Payments and Extension Payments, as applicable, shall be immediately returned to Developer and neither party shall have any further liability or obligation hereunder, or (ii) to accept that applicable portion of the Option Parcel subject to such taking and to receive (a) a ratable reduction in the Purchase Price (calculated on a square foot basis) based on the square footage of the Option Parcel that is subject to the taking in question, and (b) an assignment of all of Owner's rights to any condemnation award payable by reason of such taking, to the extent any such award exceeds the reduction in the Purchase Price pursuant to subsection (a) above. If Developer elects to proceed under clause (ii) above, Owner shall not compromise, settle or adjust any claims to such award without Developer's prior written consent. Notwithstanding anything to the contrary in this Paragraph 12.2, if the taking relates in any way to the Entitlements or the Subdivision Map sought by Developer pursuant to this Agreement, then Developer shall NOT have the right to terminate this Agreement, receive a refund of any Option Payments or Extension Payments, receive a reduction in the Purchase Price or an assignment of any condemnation proceeds received by, receivable by, or paid to Owner, in the event of such taking of all or any portion of the Option Parcel.

13. **NOTICES**. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service, or (iii) upon confirmation by the recipient of successful transmission if sent via email or facsimile transmittal, and addressed as follows:

To Developer:	To Owner:
Laura O'Brien Extreme Depot LLC c/o Trumark Companies LLC 4185 Blackhawk Plaza Circle Suite 200 Danville, CA 94506 Phone: (925) 309-2502 Fax: (925) 648-3130 Email: lobrien@trumark-co.com	Diane Honda VP, General Counsel and Secretary Extreme Networks, Inc. 3585 Monroe Street Santa Clara, California 95051 Phone: (408) 579-3056 Fax: (408) 579-3029 Email: dhonda@extremenetworks.com
With a copy to: Jason G. Kliewer Extreme Depot LLC c/o Trumark Companies LLC 4185 Blackhawk Plaza Circle Suite 200 Danville, CA 94506 Phone: (925) 788-1990 x 2 Fax: (925) 788-1991 Email: jkliewer@trumark-co.com	With a copy to: James E. Anderson, Esq. DLA Piper LLP (US) 2000 University Avenue East Palo Alto, CA 94303 Phone: (650) 833-2078 Email:. jim.anderson©dlapiper.com Fax: (650) 687-1158
With a copy to: Sonia A. Lister, Esq. Jackson, DeMarco, Tidus & Peckenpaugh 2030 Main Street, Suite 1200 Irvine, CA 92614 Phone: (949) 851-7408 Fax: (949) 752-0597 Email: SLister@jdtplaw.com	And a copy to: Greg Poncetta Keith Zaky CB Richard Ellis 225 W. Santa Clara Street, Suite 1050 San Jose, CA95113 Email:Greq.Poncettacbre.com; Keith.Zakvacbre.com Fax: (408) 437-3170
And a copy to: c/o Resmark Equity Partners, LLC 10880 Wilshire Boulevard, Suite 1420 Los Angeles, California 90024 Attn: Robert N. Goodman Fax No.: (310) 474-8440 Phone No.: (310) 474-8400 Email: rgoodman@resmarkllc.com	And a copy to: Dian Blair First American Title Company North First Street, Suite 500 San Jose, CA 95112 Email: dblair@firstam.com Fax: (408) 451-7836

Either party may from time to time change its address by written notice to the other party in accordance with the foregoing.

14. **CONFIDENTIALITY**. Each party agrees to keep this Agreement and all information related to the Property, the intended development and the transaction contemplated herein strictly confidential, and shall not disclose any information or make any statements relating thereto without the prior written consent of the other party, except (a) to the extent reasonably required to process the Entitlements, or (b) to the extent such disclosures may be necessary to permit each party to comply with applicable laws and rules of any exchange upon which a party's shares may be traded, or (c) to obtain financing necessary or desirable in connection with the consummation of the

transaction contemplated herein. Notwithstanding the foregoing, (i) Developer shall have the right to disclose information relating to the Option Parcel and the condition thereof to Developer's representatives, attorneys, employees, officers, directors, consultants, advisors, and prospective lenders as needed in furtherance of the purposes of this Agreement, and (ii) the terms of this Section shall expire and be of no further force or effect from and after the date of Closing.

15. **Assignment**.

15.1 **No Assignment before Discretionary Approvals**. Owner has entered into this Agreement with Developer because, in Owner's opinion, Developer has the reputation and ability to significantly contribute to the viability and success of the transaction contemplated herein. Accordingly, until such time that Developer obtains the Final Discretionary Approvals, this Agreement may not be assigned by Developer.

15.2 **Consent to Assignment**. After such time that Developer obtains the Final Discretionary Approvals, this Agreement may not be assigned without Owner's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided that Owner is given notice of the requested assignment not later than fifteen (15) days prior to the scheduled Closing Date.

15.3 **Permitted Assignment**. Notwithstanding Sections 15.1 and 15.2 above, Developer shall have the right, without Owner's consent, to (a) assign this Agreement or take title to the Property in the name of Trumark, [Extreme Depot II, LLC], a Delaware limited liability company, or a wholly owned affiliate of Developer; and (b) enter into an agreement to assign this Agreement to a third party who is not a wholly owned affiliate of Developer, provided that the closing of such assignment occurs after Developer obtains the Final Discretionary Approvals and Developer obtains Owner's consent pursuant to Section 15.2 above.

15.4 **Conditions to Assignment**. Owner's consent to any such assignment shall not release or relieve Developer from any liabilities, obligations, claims or other matters arising under this Agreement prior to the date of such assignment. Any permitted assignee of Developer's rights or obligations hereunder shall, as a condition to the effectiveness of any assignment, expressly assume in writing all of Developer's obligations under this Agreement, and agree in writing to be bound by the terms of this Agreement.

15.5 **Binding on Successors**. Except as set forth in the preceding sentence, this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

16. **MISCELLANEOUS**.

16.1 **Attorneys' Fees**. If any action or proceeding is commenced by either party to enforce their rights under this Agreement, to interpret this Agreement or to collect damages as a result of the breach of any of the provisions of this Agreement, the prevailing party in such action or proceeding, including any bankruptcy, insolvency or appellate proceedings, shall be entitled to recover all reasonable costs and expenses, including reasonable attorneys' fees, expenses and

court costs, in addition to any other relief awarded by the court.

16.2 **Waiver of Trial by Jury**. TO THE EXTENT PERMITTED OR HEREAFTER PERMITTED BY APPLICABLE LAW, OWNER AND DEVELOPER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH OR RELATED TO, THE DEALINGS OF THE PARTIES WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

16.3 **Governing Law; Severability**. The performance and interpretation of this Agreement shall be governed by the laws of the State of California.

16.4 **Severability**. If any provision or any word, term, clause or part of any provision of this Agreement shall be held invalid for any reason, the same shall be ineffective, but the remainder of this Agreement and of the provision shall not be affected and shall remain in full force and effect.

16.5 **Other Documents**. The parties agree to execute any and all other documents necessary and desirable to carry out the true intent and purpose of this Agreement.

16.6 **Time of the Essence**. Time is of the essence as to this Agreement and every provision hereof.

16.7 **Entire Agreement**. This Agreement contains the entire agreement of the parties hereto respecting the right granted to Developer to purchase the Option Parcel. This Agreement supersedes all prior and contemporaneous agreements, contracts and discussions of the parties, whether written or oral, between Owner and Developer with respect to the right to purchase the Option Parcel. Any modifications to this Agreement must be in writing signed by all of the parties. The recitals and exhibits to this Agreement are incorporated herein as if fully set forth herein.

16.8 **Waiver**. No waiver by Developer or Owner of any of the terms or conditions of this Agreement or any of their respective rights under this Agreement shall be effective unless such waiver is in writing and signed by the party charged with the waiver.

16.9 **Interpretation**. This Agreement shall not be strictly construed against either party, but shall be construed as if all parties prepared this Agreement jointly upon the advice of their respective legal counsel. The word "including" as used herein shall mean "including without limitation" unless otherwise specifically stated.

16.10 **Counterparts**. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together constitute one (1) instrument. Executed counterparts that are delivered by email or fax shall be deemed originals for the purpose of establishing the Effective Date of this Agreement, but any party delivering a signed counterpart by

email or fax shall also deliver the original hard copy as soon as reasonably practicable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the respective dates set forth below.

Owner:	Developer:
Extreme Networks, Inc. a Delaware corporation	Extreme Depot LLC, a a Delaware limited liability company
By: _____	By: _____
Name:_____	Name: _____
Its: _____	Its: _____
Date: _____	Date: _____

Exhibit A

Legal Description of Property

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

Being a portion of that certain 24.740 acre parcel as shown on that certain Record of Survey filed in Book 447 of Maps, at page 33, Santa Clara County Records, described as follows:

Beginning at the Northwest corner of said 24.740 acre parcel; thence from said point of beginning along the Northerly line of said 24.470 acre parcel N. 89° 25' 00" E. 995.17 feet; thence leaving said Northerly line S. 0° 10' 00" W. 705.02 feet to a point In the Southerly line of said 24.740 acre parcel; thence along said Southerly line the following courses: S. 89° 25' 00" W. 181.82 feet; S. 2.00 feet and S. 89° 25' 00" W. 760.70 feet; thence leaving said Southerly line along a tangent curve to the right, with a radius of 50.00 feet, through a central angle of 90° 34' 33" for an arc length of 79.4 feet to a point in the Westerly line of said 24.470 acre parcel; thence along said Westerly line N. 0° 00' 27" W. 656.49 feet to the point of beginning.

APN: 216-25-006

Exhibit A-1

Diagram of Western Village Parcel and Eastern Village Parcel

(See Next Page for Diagram)

Exhibit B

Form of Memorandum of Agreement

(See Next Page for Form)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Extreme Depot LLC
c/o Trumark Companies LLC
1185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506
Attention: Ms. Laura O'Brien

_____

Above Space for Recorder's Use Only

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION (this "**Memorandum**") is executed as of the _____ day of _____, 20____ by and between Extreme Networks, Inc., a Delaware corporation ("**Owner**"), and Extreme Depot LLC, a Delaware limited liability company ("**Developer**").

RECITALS

A. Owner is the owner of certain real property located in the City of Santa Clara, County of Santa Clara ("**County**"), State of California, more particularly described on Schedule "1" attached hereto (the "**Land**").

B. Owner and Developer have entered into that certain Option Agreement dated _____ (the "**Option Agreement**"). Pursuant to the Option Agreement, Owner has granted to Developer an option to purchase a portion of the Land, upon the terms and conditions set forth therein. All initially capitalized terms used herein but not otherwise defined shall have the meaning set forth in the Option Agreement.

C. Upon Developer's exercise of the Option, Owner and Developer shall execute the Escrow and Closing Agreement. For purposes of this Memorandum, the Option Agreement and the Escrow and Closing Agreement shall be referred to herein collectively as the "**Option Documents**".

D. Owner and Developer desire to execute this Memorandum and cause the same to be recorded in the Official Records of Santa Clara, California (the "**Official Records**") for the purpose of memorializing the Option Documents and to provide third parties with notice of the Option Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Developer hereby acknowledge and agree as follows:

1. Pursuant to the Option Agreement and this Memorandum, Owner has granted to Developer, and Developer has accepted from Owner, an option to purchase a portion of the Land upon the terms and conditions set forth in the Option Agreement.

2. Upon the exercise of the Option, Owner shall sell the Land to Developer and Developer shall acquire the Land from Owner, on the terms and provisions set forth in the Option Documents.

3. The sole purpose of this Memorandum is to give notice of the Option Documents and all of their terms, covenants and conditions to the same extent as if the Option Documents were fully set forth herein, and this Memorandum is subject to all of the terms, conditions and provisions of the Option Documents.

4. This Memorandum shall automatically terminate and be of no further force or effect upon the earlier to occur of the following: (a) the termination of the Option Documents, (b) the recordation of a grant deed conveying fee title to the Property to Developer, (c) upon the execution, and recordation in the Official Records of Santa Clara County, California, of a quitclaim deed from Developer relinquishing its rights under the Option Documents, or (d) September 30, 2013.

This Memorandum may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum on the day and year first written above.

OWNER:

EXTREME NETWORKS, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

DEVELOPER:

EXTREME DEPOT LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Schedule "1"

Legal Description of the Property

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

Being a portion of that certain 24.740 acre parcel as shown on that certain Record of Survey filed in Book 447 of Maps, at page 33, Santa Clara County Records, described as follows:

Beginning at the Northwest corner of said 24.740 acre parcel; thence from said point of beginning along the Northerly line of said 24.470 acre parcel N. 89° 25' 00" E. 995.17 feet; thence leaving said Northerly line S. 0° 10' 00" W. 705.02 feet to a point In the Southerly line of said 24.740 acre parcel; thence along said Southerly line the following courses: S. 89° 25' 00" W. 181.82 feet; S. 2.00 feet and S. 89° 25' 00" W. 760.70 feet; thence leaving said Southerly line along a tangent curve to the right, with a radius of 50.00 feet, through a central angle of 90° 34' 33" for an arc length of 79.4 feet to a point in the Westerly line of said 24.470 acre parcel; thence along said Westerly line N. 0° 00' 27" W. 656.49 feet to the point of beginning.

APN: 216-25-006

STATE OF CALIFORNIA

COUNTY OF __

On __, __, before me, __

(here insert name and title of the officer)

personally appeared ____
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: __

(SEAL)

STATE OF CALIFORNIA

COUNTY OF __

On __, __, before me, __

(here insert name and title of the officer)

personally appeared ____
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: __

(SEAL)

Exhibit C

Form of Quit Claim Deed

(See Next Page for Form)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO:

_____
_____
_____
Attn:_____

_____
APN: 216-25-006 (Above Space for Recorder's Use Only)

QUITCLAIM DEED

The undersigned declares:
Documentary Transfer Tax is $0
Consideration less than $100

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, EXTREME DEPOT LLC, a Delaware limited liability company ("Grantor"), hereby remises, releases and quitclaims to EXTREME NETWORKS, INC., a Delaware corporation ("Grantee"), all of its right, title and interest in and to that certain real property located in the City of Santa Clara, County of Santa Clara, State of California, more particularly described on Schedule "1" attached hereto (the "Land").

The purpose of this quitclaim is to relinquish any and all rights that Grantor has to the Land pursuant to that certain **[(a)]** Option Agreement dated _____, 2011 between Grantor and Grantee; **[and (b) that certain Escrow and Closing Agreement dated
between Grantor and Grantee.]**

DATED:_____ EXTREME DEPOT LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Schedule "1"

Legal Description of the Land

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

Being a portion of that certain 24.740 acre parcel as shown on that certain Record of Survey filed in Book 447 of Maps, at page 33, Santa Clara County Records, described as follows:

Beginning at the Northwest corner of said 24.740 acre parcel; thence from said point of beginning along the Northerly line of said 24.470 acre parcel N. 89° 25' 00" E. 995.17 feet; thence leaving said Northerly line S. 0° 10' 00" W. 705.02 feet to a point In the Southerly line of said 24.740 acre parcel; thence along said Southerly line the following courses: S. 89° 25' 00" W. 181.82 feet; S. 2.00 feet and S. 89° 25' 00" W. 760.70 feet; thence leaving said Southerly line along a tangent curve to the right, with a radius of 50.00 feet, through a central angle of 90° 34' 33" for an arc length of 79.4 feet to a point in the Westerly line of said 24.470 acre parcel; thence along said Westerly line N. 0° 00' 27" W. 656.49 feet to the point of beginning.

APN: 216-25-006

STATE OF CALIFORNIA

COUNTY OF __

On __, __, before me, __

(here insert name and title of the officer)

personally appeared ____
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: __

(SEAL)

STATE OF CALIFORNIA

COUNTY OF __

On __, __, before me, __

(here insert name and title of the officer)

personally appeared ____
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: __

(SEAL)

Exhibit D

Form of Escrow and Closing Agreement

(See Next Page for Form)

ESCROW AND CLOSING AGREEMENT

This Escrow and Closing Agreement (this "**Agreement**"), is made by and between Extreme Networks, Inc., a Delaware corporation ("**Owner**"), and Extreme Depot LLC, a Delaware limited liability company ("**Developer**").

RECITALS

A. Owner holds fee title to certain real property containing approximately 16 acres of land, located in the City of Santa Clara, County of Santa Clara, State of California, commonly known as 3515-3585 Monroe Street (the "**Property**").

B. Owner has entered into that certain Option Agreement dated as of _____, 2011 (the "**Option Agreement**") pursuant to which Owner granted Developer an option (the "**Option**") to purchase the western portion of the Property containing approximately 8.0 acres of land (referred to herein as the "**Option Parcel**"). The general location of the Option Parcel is more specifically described in **Exhibit One** attached to this Agreement.

C. Developer is now exercising its Option, and is now irrevocably committed to complete the close of escrow (the "**Closing**") for the acquisition of the Option Parcel on or before the Closing Date as described below.

D. Upon the execution and delivery of this Agreement by Developer, both Owner and Developer shall become committed to complete the Closing in accordance with the terms and conditions of this Agreement. All terms not defined herein shall have the meanings given in the Option Agreement.

TERMS AND CONDITIONS OF CLOSING

1. Purchase Price. The total purchase price for the Option Parcel (the "Purchase Price") **is [Twenty Four Million Five Hundred Thousand and 00/100 ($24,500,000.00)]**, which amount shall be payable as follows:

1.1 Option Payments. On or before the date of this Agreement, Developer has deposited with Escrow Holder, and Escrow Holder has released to Owner, a total of _____ in Option Payments under the Option Agreement. The Option Payments shall be applied as a credit against the Purchase Price at the Closing (defined below).

1.2 The Final Payment. On or before the Closing Date, Developer shall deposit with Escrow Holder the remainder of the Purchase Price in the amount of _____ ($_____), subject to adjustments for all closing costs and prorations allocated to Developer under Sections 3 and 4 of this Agreement (collectively, the "Final Payment").

2. Escrow.

2.1 Opening of Escrow. The Developer and Owner have opened an escrow account, Order Number _____(the "**Escrow**") with First American Title Company, whose address is 1737 North First Street, Suite 500, San Jose, CA 95112, Attention: Dian Blair (the

"**Escrow Holder**" or "**Title Company**"). Within one (1) business day after the date of the Agreement, Developer and Owner shall deposit an executed copy of this Agreement with the Escrow Holder, and shall request that Escrow Holder execute this Agreement where indicated on the last page hereof.

2.2 Escrow Instructions. Owner and Developer agree that Sections 1 through 7 inclusive of this Agreement shall constitute joint escrow instructions to Escrow Holder. Owner and Developer agree to prepare and execute supplemental instructions consistent with the terms of this Agreement and the Option Agreement, as may be requested by Escrow Holder in order to close the transaction in accordance with the terms of this Agreement and the Option Agreement. Should said supplemental instructions fail to be executed as required, Escrow Holder shall be and is hereby directed to close escrow pursuant to custom in accordance with the terms and conditions of Sections 1 through 7 inclusive of this Agreement.

3. Closing.

3.1 Closing Date. The Closing shall be deemed to occur upon the transfer of all consideration to the parties entitled thereto, and the recording of the grant deed transferring title to the Option Parcel (the "**Grant Deed**"). The form of the Grant Deed shall be substantially in the attached hereto as **Exhibit Two**.

(a) The Closing shall occur on or before _____ (the "**Closing Date**"), unless the Closing Date is extended pursuant to Section 4.6 or any other provision of the Option Agreement. The Extension Payments shall be applied as a credit against the Purchase Price at the Closing.

(b) Notwithstanding anything to the contrary contained herein, Owner shall have no right or obligation to complete the Closing, unless and until the final Subdivision Map has been approved and filed with the Santa Clara County Recorder in accordance with the California Subdivision Map Act. If for any reason the final Subdivision Map has not been recorded prior to the Closing Date, as extended for the maximum period of time allowed under the Option Agreement, then this Agreement and the Option Agreement shall terminate in accordance with the provisions of the Option Agreement.

(c) Owner shall have no obligation to extend the Closing Date, except as expressly provided in the Option Agreement, time being strictly of the essence.

3.2 Closing Costs. Closing costs shall be allocated as follows:

(a) The parties agree to share closing costs as follows:

(i) Owner shall pay for (i) County documentary transfer tax; (ii) the Escrow Holder's fees; (iii) the premium for the standard coverage Title Policy; and (iv) such other costs as are customarily paid by sellers of commercial real property in Santa Clara, California.

(ii) Developer shall pay for (i) the recording fees for the grant deed and any other recorded documents; (ii) the premium for any extended title coverage and any endorsements requested by Developer; and (iii) such other costs as are customarily paid by buyers of commercial real property in Santa Clara,

California.

(b) In addition, Developer and Owner shall each pay 50% of any city conveyance taxes associated with the transfer of the Option Parcel.

(c) At the Closing, Owner shall pay a real estate brokerage commission to CB Richard Ellis in an amount calculated pursuant to a separate agreement between Owner and Owner's Broker. Owner's Broker shall submit a demand to Escrow Holder prior to the Closing Date, for payment of such commission out of Escrow.

(d) All other closing costs shall be shared as customary in Santa Clara County.

3.3 Delivery and Possession. Owner shall deliver possession of the Option Parcel to Developer at the Closing, free and clear of any occupants or tenancies, and subject only to the Permitted Exceptions. ***[Insert if Owner elects to lease back the Property pursuant to the terms of the Post Closing Lease:*** Notwithstanding the foregoing, Owner has requested, and Developer has agreed, to lease the Property on the terms and provisions of that certain Lease attached hereto as **Exhibit Three** (the "**Post Closing Lease**").]

4. Prorations and Adjustments. Escrow Holder shall make the following prorations at the Closing:

4.1 Generally. If any expenses are not determinable on the Closing, at the earliest possible opportunity following the Closing but in no event later than six (6) months after the Closing with respect to all matters other than those set forth in Section 4.2 (which shall be reconciled pursuant to Section 4.2), Owner and Developer shall make any interim and final adjustments. In addition, if any item to be pro-rated herein (other than those set forth in Section 4.2) is not specifically allocable to the Option Parcel only, the amount allocated to the Option Parcel and the Eastern Village Parcel shall be reasonably and in good faith estimated by the Developer and Owner based on all relevant factors, such as the square footage of the Option Parcel and the Eastern Village Parcel, the square footage of any buildings located thereon, and the use or lack thereof of such buildings by Owner prior to the Closing.

4.2 Taxes.

(a) All property taxes, bonds and assessments shall be prorated at the Closing. If property taxes, bonds and assessments are not determinable on the Closing, such shall be reconciled within sixty (60) days after accurate information is obtained by the parties. The parties are informed that following the Closing the assessor for Santa Clara County ("**Assessor**") will separately assess the Option Parcel and the Eastern Village Parcel; provided, however, the timing for the completion of those assessments is unknown and may be completed 12 months or more following the Closing. Accordingly, prior to such time, the precise amount of real property taxes and assessments allocable to the Option Parcel and the Eastern Village Parcel cannot be determined. As a result, Developer and Owner have agreed to estimate the amount of property taxes allocated to the Option Parcel as of the Closing, which amounts will be subject to reconciliation after Closing.

(b) For purposes of prorating taxes, bonds and assessments pertaining to the Option Parcel as of the Closing, the parties have determined the approximate

percentage of the Property being transferred to Developer. Using these estimated percentages, Developer and Owner have calculated _____ percent (_____%) of the current installment of taxes, bonds and assessments is to be allocated for the Option Parcel ("**Estimated Tax Percentage**"), which amount shall be prorated between Developer and Owner at the Closing subject to reconciliation in accordance with subsection (d) below.

(c) As a condition to recordation of the Subdivision Map, the property taxes for the Property are required to be pre-paid by Owner ("**Prepaid Taxes**"). Using the same method of estimation as described in subsection (b) above, Developer and Owner agree that at Closing, through Escrow, Owner shall be reimbursed by Developer for the Prepaid Taxes in an amount equal to the Estimated Tax Percentage, which amount shall be subject to reconciliation following the Closing in accordance with subsection (d) below.

(d) At such time that the Assessor determines the assessed values of the Option Parcel and the Eastern Village Parcel (which shall reflect the sale contemplated by the Option Agreement and be effective as of the Closing) ("**Final Assessment**"), and the deadline for all possible appeals of such Final Assessment has lapsed ("**Appeals Period**"), then Owner shall prepare and deliver to Developer a final reconciliation ("**Reconciliation**") comparing the prorated amounts of the property taxes, bonds and assessments pro-rated pursuant to this Section and the Prepaid Taxes (collectively, the "**Estimated Taxes**") paid by Developer and Owner at the Closing to those amounts that would have been paid by Developer and Owner if the Assessor's Final Assessment had been available as of the Closing Date. There shall be an adjustment between Owner and Developer for any over or under payment of such Estimated Taxes, with payment to Owner or Developer, as the case may require, within thirty (30) days after Owner's delivery of the Reconciliation to Developer. Notwithstanding anything to the contrary contained herein, Developer acknowledges and agrees that commencing from and after the Closing Date Developer shall pay annual real property taxes with respect to the Option Parcel in an amount not less than the Purchase Price multiplied by the real property tax rate imposed by the County of Santa Clara, plus all special assessments allocated to the Option Parcel.

(e) Following the Closing, Developer and Owner agree to deliver copies of any property assessments or related notices received from the County for the Option Parcel to the other party. Such obligation shall cease following the expiration of the Appeals Period.

(f) Until the Assessor delivers a Final Assessment, Developer and Owner agree that a portion of the real property taxes, bonds and assessments pertaining to Property shall be paid by Developer in an amount equal to the Estimated Tax Percentage. Any such payments shall be subject to reconciliation in accordance with subsection (d).

(g) The provisions of this Section 4.2 shall survive the Closing and recordation of the Deed.

(h) Notwithstanding the foregoing provisions of this Section 4.2, to the extent that Developer or its affiliate is acquiring the Eastern Village Parcel concurrently with the Close of Escrow for the Option Parcel pursuant to this Agreement, then the provisions relating to allocation of property taxes, bonds and assessments between the Option Parcel and the Eastern Village Parcel shall not be applicable.

4.3 Utilities Costs. Any and all utility costs shall be prorated at the Closing.

Owner shall be entitled to all deposits presently in effect with the utility providers, it being understood that Developer and Owner shall cooperate to ensure that there is no disruption in services and Developer is obligated to make its own arrangements for deposits with said utility providers.

4.4 Calculations. All prorations shall be calculated as of the Closing Date on the basis of the actual days of the month in which the Closing occurs. Such date shall be an income and expense day for Developer, although Developer acknowledges that the Option Parcel does not produce any rental income. Owner shall be responsible for all expenses of the Option Parcel applicable to the period prior to the Closing and Developer shall be responsible for all expenses applicable to the period from and after the Closing.

5. Deliveries at Closing.

5.1 Owner's Deliveries. At least one (1) business day prior to the Closing Date, Owner shall deposit with Escrow Holder all of the following:

(i) the fully executed and acknowledged Grant Deed, together with a separate, off-record transfer tax declaration signed by Owner, in statutory form;

(ii) Owner's supplemental escrow instructions as described in Section 2.2 above, if necessary to enable Escrow Holder to close the Escrow in accordance with the terms of this Agreement and the Option Agreement,

(iii) an affidavit or affidavits satisfying the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and a California Form 593-C Real Estate Withholding Certificate;

(iv) an executed and acknowledged counterpart of the CC&R's, if any;

(v) an Estimated Closing Statement for Owner, prepared by Escrow Holder consistent with this Agreement and approved by Owner shortly before the Closing Date;

(vi) completed W-9 form for Owner;

(vii) a copy of a resolution or authorization of the governing board of the Owner, confirming the board's approval of the sale of the Option Parcel and delivery of the Grant Deed;

(viii) an owner's title affidavit, in the substantially the form attached hereto as **Exhibit Four**;

(ix) an executed Lease; and

(x) any other documents, records, or agreements expressly called for hereunder that have not previously been delivered.

5.2 Developer's Deliveries. At least one (1) business day prior to the Closing

Date, Developer shall deposit with Escrow Holder all of the following:

(i) the Final Payment, as described in Section 1;

(ii) an executed and acknowledged counterpart of the CC&R's, if any; by Developer;

(iii) a preliminary change of ownership report (PCOR) signed

(iv) Developer's supplemental escrow instructions as described in Section 2.2 above, if necessary to enable Escrow Holder to close the Escrow in accordance with the terms of this Agreement and the Option Agreement;

(v) a copy of a resolution or authorization of the governing board of the Developer, confirming the board's approval of the purchase of the Option Parcel and acceptance of the Grant Deed;

(vi) an Estimated Closing Statement for Developer, prepared by Escrow Holder consistent with this Agreement and approved by Developer shortly before the Closing Date;

(vii) an executed Lease; and

(viii) any other documents, records, agreements, or funds expressly called for hereunder that have not previously been delivered.

6. Title. Title to the Option Parcel shall be insured by an ALTA owner's policy of title insurance (the "**Title Policy**") issued by the Title Company in the amount of the Purchase Price, insuring that the Option Parcel is a legally subdivided parcel of real property pursuant to the final recorded Subdivision Map, and insuring that title to the Option Parcel is vested in Developer, subject only to the Permitted Exceptions.

7. Closing Procedures. When (and only when) both parties have delivered the items described in Section 5, and Title Company is prepared to issue the Title Policy described in Section 6, Escrow Holder shall proceed to complete the Closing in accordance with the following:

7.1 Escrow Holder's Duties. Escrow Holder shall do the following:

(a) Record the Grant Deed and, if applicable, the CC&R's, in the Official Records of Santa Clara County, in that order, and file the PCOR with the recorder.

(b) From the Final Payment deposited with Escrow Holder, pay the real estate commission to the Owner's Broker, make the other payments and disbursements described in this Agreement and the Option Agreement, and pay the balance to Owner, all as more specifically set forth in Developers and Owners respective approved Settlement Statements.

(c) Deliver to each of Owner and Developer, a conformed copy of the recorded and filed documents, and a copy of all other documents delivered through this escrow as described above.

(d) Cause the Title Company to deliver the Owner's Title Policy to Developer.

(e) File Owner's affidavit, the PCOR, and the transfer tax declaration as appropriate.

(f) Take all other actions as may be necessary or appropriate to complete this transaction in accordance with this Agreement and the Option Agreement.

7.2 Reporting Person. To the extent that this transaction involves the sale of "reportable real estate" within the meaning of U.S. Treasury Regulations Section 1.6045-4, Escrow Agent is designated as "the real estate reporting person" within the meaning of such regulation and shall make all reports to the federal government as required by the same.

8. Exchange Contingency. Developer and Owner agree to cooperate with the other party, at no additional cost or expense to such other party, in a manner reasonably necessary to enable either party to comply with the rules regarding deferral of recognition of income from like-kind exchanges under federal and state tax rules as to any Option Parcel or properties designated by such party. Each party shall execute such documents and perform such other actions as reasonably requested by the other party, provided that in all events neither party shall bear or incur no expense or liability with regard to any additional actions necessitated to be taken by it in cooperating with the other party with regard to such exchange, provided further that nothing herein shall be deemed to require either party to become a record holder of any interest in any other properties. Nothing contained in this Section 8 shall delay Closing.

9. As-Is.

9.1 Developer's Review of the Option Parcel and Related Matters. Developer stipulates and agrees that Developer has had, prior to entering into this Agreement, ample opportunity to perform such inspections, investigations, surveys, and tests of the Option Parcel, and reviews of all such materials concerning the Option Parcel, as Developer has deemed proper, in its sole discretion, including, without limitation, with respect to building condition and building systems, soils tests, Hazardous Materials analysis, geological and/or engineering studies and related studies, and that Developer is fully satisfied with all aspects of the Option Parcel and its condition and suitability for Developer's intended use thereof, including, without limitation, the Entitlements for the Option Parcel and the availability of all permits, licenses, and the like necessary for Developer's intended development and use of the Option Parcel.

9.2 As Is. Developer acknowledges and agrees that, subject to the representations, warranties, covenants and other obligations of Owner in this Agreement, the Option Agreement or in any document, instrument executed at Closing or otherwise in connection herewith by Owner, (i) the Option Parcel is to be purchased by Developer "as is" and with all faults in its then-existing physical condition as of the Closing, after such inspection, analysis, examination and investigation as Developer deems desirable or necessary in its sole discretion, without any implied or express warranty or representation whatsoever by Owner as to physical condition, land use approvals or entitlements, utilities, title, leases, rents, revenues, income, expenses, operation, zoning or other regulation, compliance with law, suitability or fitness for particular purposes, or any other matter whatsoever, except as expressly set forth in this Agreement and the Option Agreement; (ii) the Closing hereunder will be deemed acceptance by Developer of the Option Parcel in its then

existing "as is" condition, with all faults, (iii) neither Owner nor any of Owner's employees, agents or representatives has made any warranties, representations or agreements by or on behalf of Owner not expressly set forth in the Option Agreement as to any matters concerning the Option Parcel, including without limitation the present use or condition of the Option Parcel, the suitability of the Option Parcel for Developer's intended use thereof, or the presence or absence of Hazardous Materials in, on, or under the Option Parcel. Developer agrees that Owner shall have no obligation whatsoever to repair or make improvements to the Option Parcel, and that Developer shall have no offset or other rights against Owner relating to same. Without limiting the generality of the foregoing, Developer agrees that Owner shall have no responsibility for costs, improvements, or obligations associated with the recordation of the Subdivision Map, the satisfaction of the Map Conditions, or the construction of the Subdivision Improvements, as more specifically set forth in Section 7.7 of the Option Agreement.

9.3 Release. Without limiting the generality of Section 9.2 above, from and after the Closing, Developer hereby expressly waives, releases, and relinquishes any and all claims, causes of action, rights, and remedies Developer may now or hereafter have against Owner, and the affiliates, directors, officers, attorneys, employees, managers, members, and agents of Owner, whether known or unknown, with respect to the following:

(a) Any past, present, or future presence, existence, or removal of Hazardous Materials on, under, or about the Option Parcel or with respect to any past, present, or future violations of any Hazardous Materials Laws with respect to the Option Parcel, including (i) any and all rights Developer may now or hereafter have to seek contribution from Owner under Section 113(D)(i) of the Comprehensive Environmental Response, Compensation and Liability, Act of 1980 (CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U. S.C.A. §9613), as the same may be further amended or replaced by any similar law, rule, or regulation, (ii) any and all rights Developer may now or hereafter have against Owner under any present or future Hazardous Materials Law, (iii) any and all claims, whether known or unknown, now or hereafter existing, under Section 107 of CERCLA (42 U. S.C.A. §9607), and (iv) any and all claims, whether known or unknown, based on nuisance, trespass or any other common law or statutory provisions through which liability for the existence, release or disposal of Hazardous Materials may attach.

(b) Any other condition related to the Option Parcel, including any construction defects; the salability or utility of the Option Parcel; or the suitability of the Option Parcel any purpose whatsoever.

Notwithstanding the foregoing, in no event shall the foregoing release relieve the Owner of any obligations for a breach of the representations, warranties or covenants set forth in this Agreement, the Option Agreement or in any document, instrument executed at Closing or otherwise in connection herewith by Owner, or for the intentional misconduct or fraud by Owner. In connection with the release provided above, from and after the Closing Developer hereby relinquishes and waives all rights conferred upon Developer by the provisions of Section 1542 of the California Civil Code, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER, MUST

HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR"

The waivers and releases by Developer herein contained shall survive the Closing and the recordation of the Grant Deed and shall not be deemed merged into the Grant Deed upon its recordation.

Developer Initials: _____

10. Continuing Obligations. The parties hereby acknowledge and confirm that certain indemnity obligations and other obligations set forth in the Option Agreement shall survive the Closing (and not be merged into the Grant Deed), including the indemnity obligations and other covenants contained in Sections 6.3, 7.4, 7.7, 8.3, 10 and 11 of the Option Agreement.

11. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

Exhibit One Legal Description
Exhibit Two Grant Deed
Exhibit Three Lease
Exhibit Four Owner's Title Affidavit

12. Effect of Inconsistency. In the event of any conflict or inconsistency between the terms of the Option Agreement and the terms of this Escrow and Closing Agreement, the latter shall control. Unless expressly modified hereby, the terms of the Option Agreement shall remain in full force and effect.

13. Defaults. Any default by Developer under this Agreement prior to the Closing shall be subject to the liquidated damage provision set forth in Section 4.9 of the Option Agreement. Any default by Owner under this Agreement shall be subject to the default and remedy provisions set forth in Section 9 of the Option Agreement.

[Signatures appear on next page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the respective dates set forth below.

Owner:	Developer:
Extreme Networks, Inc. a Delaware corporation	Extreme Depot LLC, a Delaware limited liability company
By: _____	By: _____
Name:_____	Name: _____
Its: _____	Its: _____
Date: _____	Date: _____

AGREEMENT BY ESCROW HOLDER:

Sections 1 through 7 inclusive of this Agreement are accepted and agreed:

First American Title Insurance Company

By:_____
Authorized Escrow Officer

Exhibit One

Legal Description

Exhibit Two

Grant Deed

Exhibit Three

Lease

Exhibit Four

Owner’s Title Affidavit

Exhibit E

Option Schedule

Effective Date: _____
First Option Term ends: _____
Second Option Term ends: _____
Third Option Term ends: _____

Closing Date: TBD (based on date of Option Exercise Notice)
Closing Extension Date(s): TBD

Exhibit F

List of Due Diligence Documents

The Due Diligence Documents shall include the following, to the extent currently existing and in Owner's possession or control:

1. Property condition reports for the Option Parcel and the improvements thereon, including reports concerning Hazardous Materials, structural components of the building, the HVAC system, and other building systems.

2. Plans and specifications for the Option Parcel and the improvements thereon, including plans and specifications for the building and the utility facilities serving the Option Parcel.

3. Permits and other governmental approvals, including building permits, planning approvals, and environmental permits.

The Due Diligence Documents shall also include a Statutory Report as described in Section 6.1(a) of the Option Agreement.

Exhibit G

Approved Conceptual Plan

(See Next Page for Diagram)

Exhibit H

Arbitration of Disputes

A. The parties shall attempt to resolve any disputes arising out of or in relation to Section 7.5(d) of this Amendment by discussing the dispute in good faith. To the extent that they cannot be resolved by mutual consultation, any and all disputes arising out of or relating to the validity or interpretation of Section 7.5(d) of this Amendment, including, without limitation, this arbitration clause, shall be solely and finally settled by binding arbitration in Santa Clara County, California (or such other location as the parties shall agree) administered by and in accordance with the then-existing Rules of Practice and procedure of Judicial Arbitration and Mediation Services/Endispute ("JAMS"), to the extent that such Rules of Practice and procedure are not inconsistent with this Exhibit H including matters relating to enforceability, performance or remedies for breach. However, notwithstanding the foregoing, the parties shall not be prohibited from seeking interim, provisional remedies in the Superior Court of Santa Clara County (including an action for a temporary or preliminary injunction).

B. By written notice to the other party, either party may demand that a disputed matter be submitted to arbitration. In the demand notice, the party shall specify the nature of the dispute. Within thirty (30) days after the delivery of such notice, Owner and Developer shall agree upon an arbitrator from the list of retired judges and justices at JAMS. If the parties fail to agree on an arbitrator within such thirty (30) day period, then the parties shall direct JAMS to provide a list of three (3) prospective arbitrators knowledgeable in the field that is the subject of the dispute. Within ten (10) days after the delivery of such list, each of Owner and Developer may strike one (1) name from the list, and the remaining panelist shall serve as the designated arbitrator. If a party shall fail to strike a name from the list within such ten (10) day period, then the other party shall select the designated arbitrator from the remaining two (2) names. If the parties strike the same name from the list, then JAMS shall provide the name of an additional prospective arbitrator, and the procedure set forth in the preceding two (2) sentences shall be repeated until a single arbitrator has been selected. The arbitrator shall permit such discovery, as the arbitrator deems appropriate under the circumstances and may admit or exclude evidence in the arbitrator's sole discretion.

C. The arbitrator shall decide the dispute or claim in accordance with the then-existing Rules of Practice and Procedure of JAMS. Judgment upon the arbitral award may be entered in any court having jurisdiction over the parties or their assets. No party shall take any dispute or claim subject to arbitration hereunder to any court until an arbitration decision has been made, except that any party shall have the right to institute any legal action seeking provisional relief pending final adjudication by arbitration.

D. The arbitrator shall apportion to each party all costs (including attorneys' fees) incurred in conducting the arbitration in accordance with what the arbitrator deems just and equitable under the circumstances.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF

DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED I N THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Owner: _____ Developer: _____

FIFTH AMENDMENT
TO
OPTION AGREEMENT

THIS FIFTH AMENDMENT TO OPTION AGREEMENT (this "Amendment" or the "Fifth Amendment") is entered into as of this 16th day of January, 2012, by and between EXTREME NETWORKS, INC., a Delaware corporation ("Owner"), and EXTREME DEPOT LLC, a Delaware limited liability company ("Developer"), on the basis of the following facts, understandings and agreements. For purposes of this Amendment, Owner and Developer may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Owner and Trumark Companies LLC, a California limited liability company ("Trumark") entered into that certain Option Agreement dated September 17, 2010 (the "Original Agreement"), as amended by that certain First Amendment to Option Agreement dated November 11, 2010, as amended by that certain Second Amendment to Option Agreement dated January 14, 2011, as amended by that certain Third Amendment to Option Agreement dated January 31, 2011, and as amended by that certain Fourth Amendment to Option Agreement (the "Fourth Amendment") dated February 10, 2011 (as so amended, the "Agreement"). All capitalized terms used herein shall have the same meanings given such terms in the Agreement.

B. Trumark subsequently assigned its rights under the Agreement to Developer as provided in the Fourth Amendment.

C. Concurrently herewith, Developer and Owner have executed that certain Option Agreement ("Remainder Parcel Option Agreement"), pursuant to which Owner has granted Developer an option to acquire the Remainder Parcel, and agreed to sell the Remainder Parcel to Developer, subject to the terms and conditions set forth in such agreement.

D. Owner and Developer now desire to amend the Agreement as set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged and accepted, Owner and Developer agree as follows:

1. Purchase Price. If the "Closing" on Developer's acquisition of the Remainder Parcel under the Remainder Parcel Option Agreement occurs prior to, or concurrently with, the Closing on the Option Property under the Agreement, then the Purchase Price for the Option Property shall be Forty Eight Million Five Hundred Thousand and No/100 Dollars ($48,500,000.00) minus the purchase price paid to Owner for the Remainder Parcel.

2. Entitlements.

(a) Section 7.5(b) of the Original Agreement is hereby amended and restated as follows:

"(b) Developer shall negotiate for a Development Agreement term that is customary and reasonable for similar developments within the City; provided, however, that Developer shall not be required to negotiate for a term that imposes additional or increased exactions on the developer or the Project."

(b) Section 7.5(d) of the Original Agreement is hereby deleted in its entirety and of no further force or effect.

(c) Owner hereby acknowledges that Section 4.3(a)(i) of the Agreement has been satisfied in full.

(d) Owner further acknowledges and agrees that Section 4(c) of the Fourth Amendment is hereby deleted in its entirety and of no further force or effect.

(e) Owner hereby acknowledges that the Residential Map and the Final Map may be processed concurrently.

3. Post Closing Construction. Section 10 of the Original Agreement shall automatically terminate upon the Closing under the Remainder Parcel Option Agreement; provided, however, that if Owner exercises its right to lease back the Remainder Parcel pursuant to the Remainder Parcel Option Agreement, Section 10 shall be effective during the term of such lease and shall terminate concurrently with the termination of the lease.

4. Prorations. The following shall be added as Section 4.2(h) to the Escrow and Closing Agreement:

"(h) Notwithstanding the foregoing provisions of this Section 4.2, to the extent that Developer or its affiliate is acquiring the Remainder Parcel concurrently with the Close of Escrow for the Option Parcel pursuant to this Agreement, then the provisions relating to allocation of property taxes, bonds and assessments between the Option Parcel and the Remainder Parcel shall not be applicable."

5. Effective Date of Termination. Notwithstanding the terms and provisions of the Agreement, in the event that Developer fails to take any action in a timely manner as required pursuant to the Agreement, and such failure would cause the termination of the Agreement pursuant to the terms thereof, Owner hereby acknowledges and agrees that the Agreement shall not terminate unless and until (a) Owner has provided written notice to Developer of the required action to be taken, and (b) Developer fails to take the required action within three (3) business days after receipt of written notice from Owner.

6. Representations and Warranties.

(a) Section 8.3(a) of the Original Agreement shall be amended and restated in its entirety as follows:

"(a) If at or prior to the Closing, (i) Developer shall become aware (whether through its own efforts, by written notice from Owner or any other third party) that any of the representations or warranties made herein by Owner are untrue, inaccurate or incorrect in a material manner and shall give Owner notice thereof at or prior to the Closing, or (ii) Owner shall become aware that a representation or warranty made herein by Owner is untrue, inaccurate or incorrect in a material manner, including as a result of any subsequent acts, actions, notifications or events, then Owner shall give Developer notice thereof at or prior to the Closing, and Owner may elect, by written notice to Developer to delay the Closing Date for up to thirty (30) days (with no charge to Developer for any Extension Payment) in order to attempt to cure or correct such untrue, inaccurate or incorrect representation or warranty."

(b) Section 8.4 of the Original Agreement shall be amended and restated in its entirety as follows:

"8.4 Developer's Remedies for Breach After Closing. If after Closing, Developer just becomes aware of a breach by Owner of Section 8.2 or Section 8.3(a)(ii), then the following provisions shall apply:

(a) Notwithstanding anything else to the contrary in this Agreement, all liability of Owner for a breach of Section 8.2 or Section 8.3(a)(ii) shall terminate if no suit is filed within six (6) months following the Closing.

(b) Further, Owner's liability for such breach shall be limited to Developer's actual, verifiable damages for out-of-pocket expenses associated with correcting or curing the matter that is the subject of the representation or warranty, not to exceed a total of $1,000,000.00; provided, however, that unless the total of said out-of-pocket expenses is greater than $50,000.00, Developer shall have no right to make a claim based on any breach of Owner's representations and warranties, and Developer hereby waives the same."

7. Notices. Any notices sent to Developer pursuant to Section 13 of the Agreement shall also be sent to Resmark Equity Partners, 10880 Wilshire Boulevard, Suite 1420, Los Angeles, California 90024, Attention: Mr. Robert N. Goodman.

8. Effective Date. This Amendment shall become effective on the date that Developer delivers the Due Diligence Appraisal Notice pursuant to the Remainder Parcel Option Agreement. In the event that Developer fails to deliver the Due Diligence Approval Notice in a timely manner, then this Amendment (after the expiration of all notice and cure periods) shall automatically terminate and be of no further force and effective.

9. Miscellaneous. This Amendment shall be determined as to its validity, construction, effect and enforcement under the laws of the State of California. The parties agree that the Agreement, as amended hereby, remains in full force and effect, enforceable in accordance with its terms. This Amendment may be executed and delivered in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Amendment. Owner and each individual signing this Amendment on behalf of Owner represents and warrants that they are duly authorized to sign on behalf of and to bind Owner and that this Amendment is a duly authorized, binding and enforceable obligation of Owner. Developer and each individual signing this Amendment on behalf of Developer represents and warrants that they are duly authorized to sign on behalf of and to bind Developer and that this Amendment is a duly authorized, binding and enforceable obligation of Developer.

[signatures on next page]

IN WITNESS WHEREOF, the Developer and Owner hereto have executed this Amendment as of the day and year first above written.

"Developer"

EXTREME DEPOT LLC, a Delaware limited liability company

BY: Trumark Companies LLC, a California limited liability company, its managing member

By: _____
Name: _____
Title: _____

BY: Trumark Companies LLC, a California limited liability company, its managing member

By: _____
Name: _____
Title: _____

"Owner"

EXTREME NETWORKS, INC., a Delaware corporation

By:_____
Name: _____
Title:_____

By:_____
Name: _____
Title:_____

Exhibit 31.1

SECTION 302 CERTIFICATION OF OSCAR RODRIGUEZ
AS CHIEF EXECUTIVE OFFICER

I, Oscar Rodriguez, certify that:

1. I have reviewed this Form 10-Q of Extreme Networks, 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer 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 function):
    (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.

Dated: February 7, 2012

/s/ OSCAR RODRIGUEZ

Oscar Rodriguez

President and Chief Executive Officer

Exhibit 31.2

SECTION 302 CERTIFICATION OF JAMES T. JUDSON
AS INTERIM CHIEF FINANCIAL OFFICER

I, James T. Judson, certify that:

1. I have reviewed this Form 10-Q of Extreme Networks, 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer 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 function):

   (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.

Dated: February 7, 2012

/s/ JAMES T. JUDSON

James T. Judson

Interim Chief Financial Officer

Exhibit 32.1

CERTIFICATION OF OSCAR RODRIGUEZ AS CHIEF EXECUTIVE OFFICER, PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Extreme Networks, Inc. (the "**Company**") on Form 10-Q for the period ended January 1, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, in the capacities and on the date specified below, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ OSCAR RODRIGUEZ

Oscar Rodriguez
President and Chief Executive Officer
February 7, 2012

Exhibit 32.2

CERTIFICATION OF JAMES T. JUDSON AS INTERIM CHIEF FINANCIAL OFFICER, PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Extreme Networks, Inc. (the "**Company**") on Form 10-Q for the period ended January 1, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, in the capacities and on the date specified below, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ JAMES T. JUDSON

James T. Judson
Interim Chief Financial Officer
February 7, 2012