

INTEVAC INC

FORM S-3

(Securities Registration Statement (simplified form))

Filed 03/31/97

Address	3560 BASSETT STREET SANTA CLARA, CA, 95054
Telephone	4089869888
CIK	0001001902
Symbol	IVAC
SIC Code	3559 - Special Industry Machinery, Not Elsewhere Classified
Industry	Industrial Machinery & Equipment
Sector	Industrials
Fiscal Year	12/31

INTEVAC INC

FORM S-3

(Securities Registration Statement (simplified form))

Filed 3/31/1997

Address	356O BASSETT ST SANTA CLARA, California 95054
Telephone	408-986-9888
CIK	0001001902
Industry	Computer Storage Devices
Sector	Technology
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933
INTEVAC, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

CALIFORNIA
(STATE OR OTHER
JURISDICTION OF
INCORPORATION OR
ORGANIZATION)

3559
(PRIMARY STANDARD INDUSTRIAL
CLASSIFICATION CODE NUMBER)

94-3125814
(I.R.S. EMPLOYER
IDENTIFICATION NUMBER)

3550 BASSETT STREET, SANTA CLARA, CALIFORNIA 95054 (408) 986-9888
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING
AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)

NORMAN H. POND
CHAIRMAN OF THE BOARD
PRESIDENT AND CHIEF EXECUTIVE OFFICER
INTEVAC, INC.
3550 BASSETT STREET
SANTA CLARA, CALIFORNIA 95054
(408) 986-9888
(NAME, ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,
INCLUDING AREA CODE, OF AGENT FOR SERVICE)

COPIES TO:
GARI L. CHEEVER, ESQ.
BROBECK, PHLEGER & HARRISON LLP
TWO EMBARCADERO PLACE
2200 GENG RD.
PALO ALTO, CALIFORNIA 94303
(415) 424-0160

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC:

From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. []

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. [X]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. []

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED	PROPOSED MAXIMUM OFFERING PRICE PER UNIT(1)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE(1)	AMOUNT OF REGISTRATION FEE
6-1/2% Convertible Subordinated Notes due 2004	\$57,500,000	100%	\$57,500,000	\$17,425
Common Stock, no par value.....	(2)	--	--	(3)

(1) Estimated solely for the purpose of calculating the registration fee.

(2) Such indeterminate number of shares of Common Stock as shall be required for issuance upon conversion of the Notes being registered hereunder.

(3) No additional consideration will be received for the Common Stock and, therefore, no registration fee is required pursuant to Rule 457(i).

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE SECURITIES AND EXCHANGE COMMISSION. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION STATEMENT BECOMES EFFECTIVE. THIS PROSPECTUS SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF ANY OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THESE SECURITIES IN ANY STATE IN WHICH SUCH OFFER, SOLICITATION OR SALE WOULD BE UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE SECURITIES LAWS OF ANY SUCH STATE.

SUBJECT TO COMPLETION, DATED MARCH 31, 1997

PROSPECTUS

INTEVAC, INC.

\$57,500,000

6 1/2% CONVERTIBLE SUBORDINATED NOTES DUE 2004 AND SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION THEREOF

This Prospectus relates to resales from time to time by holders of \$57,500,000 aggregate principal amount of 6 1/2% Convertible Subordinated Notes due 2004 (the "Convertible Notes") of Intevac, Inc. (the "Company") and the shares of Common Stock, no par value (the "Common Stock") of the Company issuable upon the conversion of the Convertible Notes (the "Conversion Shares"). The Convertible Notes and the Conversion Shares may be offered from time to time for the accounts of the securityholders named herein (the "Selling Securityholders"). The Convertible Notes and Conversion Shares issuable upon conversion thereof were issued in a private placement by the Company to certain institutional investors and non-U.S. investors in February and March of 1997.

The Convertible Notes will mature on March 1, 2004. Interest on the Convertible Notes will be paid semiannually on March 1 and September 1 of each year, commencing September 1, 1997. The Convertible Notes are convertible, at the option of the holder thereof, at any time after 90 days following the last date of original issuance thereof and prior to maturity, unless previously redeemed or repurchased, into shares of Common Stock at a conversion price of \$20.625 per share, subject to adjustment in certain events.

The Convertible Notes are redeemable, in whole or in part, at the option of the Company, at any time on and after March 3, 2000, at the redemption prices set forth herein together with accrued interest. The Convertible Notes do not provide for any sinking fund. Upon a Designated Event (as defined), holders of the Convertible Notes will have the right, subject to certain restrictions and conditions, to require the Company to purchase all or any part of the Convertible Notes at a purchase price equal to 101% of the principal amount thereof together with accrued and unpaid interest to the date of purchase. See "Description of Convertible Notes -- Repurchase at the Option of Holders."

The Convertible Notes are unsecured obligations of the Company and are subordinate in right of payment to all Senior Debt (as defined) of the Company. As of February 28, 1997, the Company had approximately \$2 million of indebtedness outstanding that would have constituted Senior Debt.

The Convertible Notes and the Conversion Shares may be offered by the Selling Securityholders from time to time in transactions (which may include block transactions in the case of the Conversion Shares) on any exchange or market on which such securities are listed or quoted, as applicable, in negotiated transactions, through a combination of such methods of sale, or otherwise, at fixed prices that may be changed, at market prices prevailing at the time of sale at prices related to prevailing market prices, or at negotiated prices. The Selling Securityholders may effect such transactions by selling the Convertible Notes or Conversion Shares directly or to or through broker-dealers, who may receive compensation in the form of discounts, concessions or commissions from the Selling Securityholders and/or the purchasers of the Convertible Notes or Conversion Shares for whom such broker-dealers may act as agents or to whom they may sell as principals, or both (which compensation as to a particular broker-dealer might be in excess of customary commissions). The Company will not receive any of the proceeds from the sale of the Convertible Notes or Conversion Shares by the Selling Securityholders. The Company has agreed to pay all expenses incident to the offer and sale of the Convertible Notes and Conversion Shares offered by the Selling Securityholders hereby, except that the Selling Securityholders will pay all underwriting discounts and selling commissions, if any. See "Plan of Distribution."

The Convertible Notes are currently eligible for trading on the PORTAL Market. Convertible Notes sold pursuant to this Prospectus will not remain eligible for trading on the PORTAL Market. The Common Stock is traded on the Nasdaq National Market under the symbol "IVAC."

THE CONVERTIBLE NOTES AND THE COMMON STOCK OFFERED HEREBY INVOLVE A HIGH DEGREE OF RISK. SEE "RISK FACTORS" BEGINNING ON PAGE 8. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is , 1997.

AVAILABLE INFORMATION

The Company has filed with the Securities and Exchange Commission (the "Commission") a Registration Statement under the Securities Act of 1933, as amended (the "Securities Act"), on Form S-3 (together with all amendments and exhibits thereto) with respect to the Convertible Notes and Conversion Shares offered hereby. This Prospectus does not contain all of the information set forth in the Registration Statement and the exhibits thereto, certain parts of which have been omitted in accordance with the rules and regulations of the Commission. For further information with respect to the Company, the Convertible Notes and the Common Stock offered hereby, reference is made to the Registration Statement and the exhibits thereto. Statements contained in this Prospectus regarding the contents of any contract or other document are not necessarily complete and in each instance reference is hereby made to the copy of such contract or document filed as an exhibit to the Registration Statement. Copies of the Registration Statement and the exhibits thereto may be inspected, without charge, at the principal office of the Commission located at 450 Fifth Street, N.W., Washington, D.C. 20549, the Commission's Regional Offices located at Seven World Trade Center, 13th Floor, New York, New York 10048, and at Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661, or obtained upon payment of prescribed rates from the Public Reference Section of the Commission at its principal office.

The Company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and, in accordance therewith, files reports, proxy statements and other information with the Commission. Such reports, proxy statements and other information can be inspected and copied at the public reference facilities maintained by the Commission at Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's Regional Offices located at Seven World Trade Center, 13th Floor, New York, New York 10048 and at Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. The Commission maintains a website that contains reports, proxy and information statements and other information regarding registrants that file electronically with the Commission. The address of such web site is <http://www.sec.gov>. The Company's Common Stock is listed on the Nasdaq National Market, 1735 K Street, N.W., Washington, D.C. 20006, and reports, proxy statements and other information concerning the Company can be inspected at said office.

INFORMATION INCORPORATED BY REFERENCE

The following documents filed by the Company with the Commission (File No. 000-26946) pursuant to the Exchange Act are incorporated herein by reference:

1. The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1996 (the "Form 10-K").
2. The Company's Proxy Statement for its 1996 Annual Meeting of Shareholders, dated April 15, 1996 (other than the portions thereof deemed not filed with the Commission).
3. The Company's Current Reports on Form 8-K filed on February 20, 1997 and March 11, 1997.

In addition, all reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Prospectus and prior to the termination of the offering of the securities hereby shall be deemed to be incorporated by reference in this Prospectus from the date of filing of such documents. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Prospectus to the extent that a statement contained herein or in any subsequently filed document that is also or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

The Company will provide without charge to each person, including any beneficial owner, to whom this Prospectus is delivered, upon the written or oral request of such person, a copy of any and all of the documents that are incorporated herein by reference (other than exhibits to such documents, unless such exhibits are specifically incorporated by reference into such documents). Requests for such documents should be directed to Intevac, Inc., Attn: Investor Relations, 3550 Bassett Street, Santa Clara, California 95054, telephone number: (408) 986-9888.

"Intevac" and "D-Star" are registered trademarks of the Company. This Prospectus also contains other trademarks of the Company and includes tradenames and trademarks of other companies.

PROSPECTUS SUMMARY

The following summary is qualified in its entirety by, and is subject to, the more detailed information appearing elsewhere or incorporated by reference in this Prospectus, including the information set forth under "Risk Factors." This Prospectus contains forward-looking statements which involve risks and uncertainties. The Company's actual results may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in "Risk Factors."

THE COMPANY

Intevac, Inc. ("Intevac" or the "Company") is a leading supplier of static sputtering systems and related manufacturing equipment used to manufacture thin-film disks for computer hard disk drives. Sputtering is a complex vacuum deposition process used to deposit multiple thin-film layers on a disk. The Company's primary objective is to be the industry leader in supplying disk sputtering equipment by providing disk sputtering systems which have both the highest overall performance and the lowest cost of ownership in the industry. The Company's principal product, the MDP-250B, which is the fourth generation of the Company's Magnetic Disk Processing ("MDP") system, enables disk manufacturers to achieve high coercivities, high signal-to-noise ratios, minimal disk defects, durability and uniformity, all of which are necessary in the production of high performance, high capacity disks. Additionally, the Company's static systems allow disk manufacturers to achieve low production costs through high yield, high uptime, and low acquisition, operating and facilities costs.

To leverage its expertise in thin-film disk production, the Company has acquired and intends to acquire or develop related businesses, products and technologies that enable it to expand its current product offerings. For example, in 1996 the Company completed three acquisitions, including a company that manufactures disk lubrication equipment and a company that manufactures contact stop/start test equipment for hard disk drives and components, and the Company initiated development of a disk laser-texturing product. In addition, the Company believes that its expertise and technology may have applications other than for thin-film disk manufacturing and is in the process of expanding its product offerings to other areas, such as flat panel display manufacturing equipment and electro-optical products.

Market demand for disk drives is growing rapidly, stimulated by demand for new and more powerful computers, the growing use of sophisticated network servers and the development of more memory intensive software, such as Windows NT and multimedia applications. The strong growth in unit shipments of disk drives has in turn stimulated the growth of the thin-film disk market. With the increasing demand for reliable, rapid access storage and the intense competitiveness in the disk drive industry, thin-film disk manufacturers continually seek to produce higher capacity thin-film disks at a lower cost per megabyte of storage. Traditionally, thin-film disk manufacturers used in-line systems for disk sputtering. In 1982, Varian formed a business unit to design a disk sputtering system to address certain inherent limitations of the in-line sputtering architecture. That business, acquired by the Company in 1991, developed a single disk, multiple chamber static sputtering system, similar in concept to the single wafer processing machines used by the semiconductor industry. The Company's static systems differ from in-line systems in that static sputtering provides for deposition with no relative movement between the sputtering source and the disk being coated. This provides advantages in disk uniformity and precise control of process parameters. The benefits of the static approach have caused a number of leading disk manufacturers to purchase the Company's static systems. Additionally, changing requirements in thin-film disk technology, such as the trend towards higher disk coercivity, lower flying heights, reduced stiction and the use of MR heads, as well as the production of disks in new locations, has created a need for the purchase of new sputtering systems.

The Company typically offers its static sputtering systems to both captive and merchant thin-film disk manufacturers at list prices ranging from \$2.0 million to \$3.5 million depending on configuration. Since 1991, Intevac systems have been installed for or ordered by the following customers: Akashic Memories, Fuji Electric, Hitachi, HMT Technology, IBM, Komag, MaxMedia, Mitsubishi, Seagate Technology, Sony, Stormedia, Tae Il Media Co., Trace Storage Technology and Western Digital. Based on data published by TrendFOCUS in March 1996, an independent market research firm, the Company believes it has the largest number of installed static sputtering systems worldwide. Based upon MDP shipments, the Company believes it had 99 systems installed as of December 31, 1996. The Company sells and markets its products directly in the United States, and through exclusive distributors in Japan and Korea. The Company has established a subsidiary in Singapore and a branch office in Taiwan to support customers in Southeast Asia. The Company's backlog was \$63.7 million at December 31, 1996.

THE OFFERING

Securities Offered.....	\$57,500,000 aggregate principal amount of 6 1/2% Convertible Subordinated Notes due 2004 (the "Convertible Notes"), and the Common Stock issuable upon conversion thereof (the "Conversion Shares"). The Convertible Notes and Conversion Shares may be offered from time to time for the accounts of the securityholders named herein (the "Selling Securityholders").
Maturity.....	March 1, 2004.
Interest Payment Dates.....	March 1 and September 1 of each year, commencing September 1, 1997.
Conversion.....	The Convertible Notes, unless previously redeemed or repurchased, are convertible at the option of the holder at any time after May 21, 1997 and prior to maturity into shares of Common Stock at a conversion price of \$20.625 per share, subject to adjustment in certain events. See "Description of Convertible Notes -- Conversion."
Optional Redemption.....	The Convertible Notes may be redeemed, at the Company's option, in whole or from time to time in part, on at least 15 but not more than 60 days' prior notice, at any time on and after March 3, 2000, at the redemption prices set forth herein together with accrued and unpaid interest. See "Description of Convertible Notes -- Optional Redemption."
Ranking.....	The Convertible Notes are unsecured obligations of the Company and are subordinate in right of payment to all Senior Debt (as defined) of the Company. The Convertible Notes are also structurally subordinated to all liabilities of subsidiaries of the Company. As of February 28, 1997, the Company had approximately \$2 million of indebtedness outstanding that would have constituted Senior Debt. The Indenture contains no limitation on the incurrence of Senior Debt or other liabilities by the Company or its subsidiaries. See "Description of Convertible Notes -- Subordination of Convertible Notes."
Designated Events.....	Upon a Designated Event (as defined), holders of the Convertible Notes will have the right, subject to certain restrictions and conditions, to require the Company to purchase all or any part of their Convertible Notes at a purchase price equal to 101% of the principal amount thereof together with accrued and unpaid interest thereon to the date of the purchase.

See "Description of Convertible Notes -- Repurchase at the Option of Holders."

Use of Proceeds.....	The Company will not receive any of the proceeds from the sale of the Convertible Notes or the Conversion Shares.
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SUMMARY CONSOLIDATED FINANCIAL DATA
(IN THOUSANDS, EXCEPT PER SHARE AND RATIO DATA)

	YEAR ENDED DECEMBER 31,		
	1994	1995	1996
CONSOLIDATED STATEMENTS OF INCOME DATA:			
Net revenues.....	\$20,451	\$42,882	\$88,232
Cost of net revenues.....	12,657	27,714	55,652
Gross profit.....	7,794	15,168	32,580
Operating Expenses:			
Research and development.....	3,515	2,603	8,425
Selling, general and administrative.....	2,248	4,550	8,391
Acquired in-process research and development.....	--	--	5,835 (2)
Operating income.....	2,031	8,015	9,929 (2)
Income from continuing operations.....	1,675	5,765	4,973
Income (loss) from discontinued operations.....	(267)	1,335	--
Net income.....	\$ 1,408	\$ 7,100	\$ 4,973 (2)
Income per share from continuing operations(1).....	\$ 0.16	\$ 0.54	\$ 0.39 (2)
Net income per share(1).....	\$ 0.14	\$ 0.67	\$ 0.39 (2)
Shares used in per share calculations(1).....	10,285	10,606	12,901
RATIO OF EARNINGS TO FIXED CHARGES(3):			
Actual.....	13.20x	43.39x	22.57x
Pro forma.....			2.78x
DECEMBER 31, 1996			
	ACTUAL	AS ADJUSTED (4)	
	-----	-----	
		(UNAUDITED)	
CONSOLIDATED BALANCE SHEET DATA:			
Cash, cash equivalents and short-term investments.....	\$ 938	\$ 56,026	
Working capital.....	15,847	70,935	
Total assets.....	68,085	125,585	
Long-term debt:			
6 1/2% Convertible Subordinated Notes due 2004.....	--	57,500	
Other.....	730	730	
Total shareholders' equity.....	33,736	33,736	

(1) See Note 2 of Notes to Consolidated Financial Statements in the Company's Form 10-K for an explanation of the determination of the number of shares used in computing net income per share.

(2) During 1996 the Company recorded a \$5.8 million charge related to acquisitions of in-process technology in connection with two acquisitions completed during 1996. Excluding this \$5.8 million charge, the Company's pro forma operating income and net income for 1996 would have been \$15.8 million and \$10.8 million, respectively, and pro forma net income per share would have been \$0.84.

(3) For the purpose of calculating the ratio of earnings to fixed charges, (i) earnings consist of income before income taxes, plus fixed charges and (ii) fixed charges consist of interest expense incurred and the estimated portion of rental expense deemed by the Company to be representative of the interest factor of rental payments under operating leases. The pro forma ratio of earnings to fixed charges reflects the interest expense on the Convertible Notes as if the Convertible Notes had been issued at the beginning of the respective periods presented.

(4) Adjusted to reflect the sale of \$57.5 million of Convertible Notes issued in February and March of 1997.

RISK FACTORS

In addition to the other information in this Prospectus the following risk factors should be considered carefully in evaluating the Company and its business before purchasing any Convertible Notes or Shares of Common Stock offered hereby. This contains forward-looking statements which involve risks and uncertainties. The Company's actual results may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed below.

FLUCTUATIONS IN OPERATING RESULTS

The Company's operating results have historically been subject to significant quarterly and annual fluctuations. The Company derives most of its net revenues from the sale of a relatively small number of sputtering systems. The number of systems accepted by customers in any particular quarter has varied from one to nine and, as a result, the Company's net revenues and operating results for a particular period could be materially adversely affected if an anticipated order for even one system is not received in time to permit shipment and customer acceptance during that accounting period. The Company's backlog at the beginning of a quarter may not include all system orders needed to achieve the Company's revenue objectives for that quarter. Orders in backlog are subject to cancellation, and although in some cases the Company requires a deposit on orders for its systems, such deposits may not be sufficient to cover the expenses incurred by the Company for the manufacture of the cancelled systems or fixed operating expenses associated with such systems to the date of cancellation. From time to time, in order to meet anticipated customer demand, the Company has manufactured disk sputtering systems in advance of the receipt of orders for such systems. The Company expects to continue this practice in the future. In the event that anticipated orders are not received as expected, the Company could be materially adversely affected by higher inventory levels and increased exposure to surplus and obsolete inventory write-offs. Orders may be subject to cancellation, delay, deferral or rescheduling by a customer. From the date the Company receives an order, it often takes more than six months before the net revenues from such order are recognized and even longer before final payment is received. The relatively long manufacturing cycles of many of the Company's products have caused and could cause shipments of such products to be delayed from one quarter to the next, which could materially adversely affect the Company's business, financial condition and results of operations for a particular quarter. Announcements by the Company or its competitors of new products and technologies could cause customers to defer purchases of the Company's existing systems, which would have a material adverse effect on the Company's business, financial condition and results of operations.

Installing and integrating new sputtering systems into the thin-film disk manufacturing process requires a substantial investment by a customer. Therefore, customers often require a significant number of product presentations and demonstrations, as well as substantial interaction with the Company's senior management, before making a purchasing decision. Accordingly, the Company's systems typically have a lengthy sales cycle during which the Company may expend substantial funds and management time and effort with no assurance that a sale will result. Furthermore, the Company's expense levels are based, in part, on its expectations as to future net revenues. If revenue levels are below expectations, operating results are likely to be adversely affected. Net income, if any, may be disproportionately affected by a reduction in net revenues because a proportionately smaller amount of the Company's expenses varies with its net revenues. The impact of these and other factors on the Company's revenues and operating results in any future period cannot be forecasted with certainty. Due to all of the foregoing factors, the Company expects its quarterly operating results to fluctuate significantly and may in certain quarters be below the expectations of securities analysts and investors. In such event it is likely the price of the Company's Common Stock would be materially adversely affected.

The Company believes that its operating results will continue to fluctuate on a quarterly and annual basis due to a variety of factors. These factors include the cyclicity of the thin-film disk manufacturing and disk drive industries, patterns of capital spending by customers, the timing of significant orders, order cancellations and shipment reschedulings, market acceptance of the Company's products, unanticipated delays in design, engineering or production or in customer acceptance of product shipments, changes in pricing by the Company or its competitors, the timing of product announcements or introductions by the Company or its competitors, discounts offered by the Company to sell demonstration units, the mix of systems sold, the

relative proportions of sputtering systems, system components and subassemblies, and contract research and development net revenues, the availability and cost of components and subassemblies, changes in product development costs, expenses associated with any acquisitions and exchange rate fluctuations. Over the last 8 quarters the Company's gross margin and operating income (loss) as a percentage of net revenues has fluctuated from approximately 32% to 40% of net revenues and (9)% to 21% of net revenues, respectively. The Company anticipates that its gross and operating margins will continue to fluctuate. As a result, the Company believes that period-to-period comparisons of its results of operations are not necessarily meaningful and should not be relied upon as indications of future performance.

CYCLICALITY OF THE MEDIA MANUFACTURING INDUSTRY

The Company's business depends upon capital expenditures by manufacturers of thin-film disks, including manufacturers that are opening new fabrication facilities, expanding or upgrading existing facilities or replacing obsolete equipment, which in turn depend upon the current and anticipated market demand for hard disk drives. The disk drive industry is cyclical and historically has experienced periods of oversupply. Within the past year, many media manufacturers have undertaken programs to increase capacity. In addition, Hyundai has announced plans to commence media manufacturing. This industry-wide increase in capacity may lead to a period of oversupply of thin-film disks, resulting in significantly reduced demand for thin-film disk production and for the capital equipment used in such production, including the systems manufactured and marketed by the Company. In recent years, particularly in very recent periods, the disk drive industry has experienced significant growth, which, in turn, has caused significant growth in the capital equipment industry supplying manufacturers of thin-film disks. There can be no assurance that such growth will continue. The Company anticipates that a significant portion of new orders will depend upon demand from thin-film disk manufacturers building or expanding fabrication facilities, and there can be no assurance that such demand will exist. The Company's business, financial condition and results of operations could be materially adversely affected by downturns or slowdowns in the disk drive market.

Sales of the Company's systems depend, in significant part, upon the decision of a prospective customer to replace obsolete equipment or to increase manufacturing capacity by upgrading or expanding existing manufacturing facilities or constructing new manufacturing facilities, all of which typically involve a significant capital commitment. In addition, the cyclical nature of the disk drive industry, among other factors, may cause prospective customers to postpone decisions regarding major capital expenditures, including purchases of the Company's systems. In the event customers delay the purchase of the Company's systems, the Company's business, financial condition and results of operations could be materially adversely affected.

INTENSE COMPETITION

The Company experiences intense competition worldwide from three principal competitors, Ulvac Japan, Ltd. ("Ulvac"), Balzars A.G. ("Balzars") and Anelva Corporation ("Anelva"), each of which is a large manufacturer of complex vacuum equipment and thin-film disk manufacturing systems and has sold a substantial number of thin-film disk sputtering machines worldwide. Each of Ulvac, Balzars and Anelva is a manufacturer of in-line and static systems, and each has substantially greater financial, technical, marketing, manufacturing and other resources than the Company. The Company also experiences competition from other manufacturers of in-line sputtering systems used in thin-film disk fabrication facilities as well as the manufacturers of thin-film disks that have developed the capability to manufacture their own sputtering systems. There can be no assurance that the Company's competitors will not develop enhancements to, or future generations of, competitive products that will offer superior price or performance features or that new competitors will not enter the Company's markets and develop such enhanced products. Furthermore, the failure of manufacturers of thin-film disks currently using in-line machines and manufacturers using internally developed sputtering systems to switch to static sputtering systems in the future could adversely affect the Company's ability to increase its sputtering system market share.

In addition, the Company's three principal competitors are based in foreign countries and have cost structures and system prices based on foreign currencies. Accordingly, currency fluctuations could cause the Company's dollar-priced products to be less competitive than its competitors' products priced in other currencies. Currency fluctuations could also increase the Company's cost structure relative to those of its competitors, which could make it more difficult for the Company to maintain its competitiveness.

Given the lengthy sales cycle and the significant investment required to integrate a disk sputtering system into the manufacturing process, the Company believes that once a thin-film disk manufacturer has selected a particular supplier's disk sputtering equipment, the manufacturer generally relies upon that equipment for the specific production line application and frequently will continue to purchase its other disk sputtering equipment from the same supplier. The Company expects to experience difficulty in selling to a particular customer for a significant period of time if that customer selects a competitor's disk sputtering equipment. Accordingly, competition for customers in the disk sputtering equipment industry is particularly intense, and suppliers of disk sputtering equipment may offer pricing concessions and incentives to attract new customers, which could adversely affect the Company's business, financial condition and results of operations. Because of these competitive factors, there can be no assurance that the Company will be able to compete successfully in the future.

CUSTOMER CONCENTRATION

Historically, a significant portion of the Company's revenues in any particular period have been attributable to sales to a limited number of customers. The Company's largest customers change from period to period as large thin-film disk fabrication facilities are completed and new projects are initiated. Matsubo, the Company's Japanese distributor, Seagate Technology ("Seagate") and HMT Technology accounted for 32%, 32% and 13% respectively, of the Company's total net revenues in 1996; Seagate, HMT Technology and Matsubo accounted for 40%, 20% and 17%, respectively, of the Company's total net revenues in 1995; and Trace Storage Technology ("Trace"), Matsubo, Seagate, Varian Associates and Komag accounted for 25%, 15%, 13%, 12% and 10%, respectively, of the Company's total net revenues during 1994.

The Company expects that sales of its products to relatively few customers will continue to account for a high percentage of its net revenues in the foreseeable future. For example, 64% of the Company's backlog at December 31, 1996 was represented by three customers for disk sputtering systems, with each customer representing 10% or more of the Company's backlog at December 31, 1996. None of the Company's customers has entered into a long-term agreement requiring it to purchase the Company's products. As purchases related to a particular new or expanded fabrication facility are completed, sales to that customer may decrease sharply or cease altogether. If completed contracts are not replaced on a timely basis by new orders from the same or other customers, the Company's net revenues could be adversely affected. The loss of a significant customer, any reduction in orders from any significant customer or the cancellation of a significant order from a customer, including reductions or cancellations due to customer departures from recent buying patterns, financial difficulties of a customer or market, economic or competitive conditions in the disk drive industry, could materially adversely affect the Company's business, financial condition and results of operations.

LIMITED NUMBER OF OPPORTUNITIES

The Company's business depends upon capital expenditures by manufacturers of thin-film disks, of which there are a limited number worldwide. According to a March 1996 report by TrendFOCUS, an independent market research firm, as of the end of 1995 there were 187 installed disk sputtering lines (sputtering systems and related equipment such as plating, polishing, texturing, lubrication and test equipment as well as related handling equipment) worldwide and only 14 companies in the world with five or more installed disk sputtering lines. Therefore, winning or losing an order from any particular customer could significantly affect the Company's operating results. In addition, the Company's opportunities to sell its systems are further limited by the fact that many of the manufacturers of thin-film disks have adopted an in-line approach as opposed to the Company's static approach to thin-film disk manufacturing. These manufacturers have invested significant amounts of capital in their in-line systems, and there may be significant resistance to change to a static

approach in the future. At times the Company has derived a significant proportion of its net revenues from sales of its systems to manufacturers constructing new thin-film disk fabrication facilities. The construction of new thin-film disk fabrication facilities involves extremely large capital expenditures, resulting in few thin-film disk fabrication facilities being constructed worldwide at any particular time. A substantial investment is also required by disk manufacturers to install and integrate additional thin-film disk manufacturing equipment in connection with upgrading or expanding their existing fabrication facilities. These costs are far in excess of the cost of purchasing the Company's system. The magnitude of such capital expenditures has caused certain thin-film disk manufacturers to forego purchasing significant additional thin-film disk manufacturing equipment. Consequently, only a limited number of opportunities for the Company to sell its systems may exist at any given time.

RAPID TECHNOLOGICAL CHANGE; NEW PRODUCTS

The disk drive industry in general, and the thin-film disk manufacturing industry in particular, are characterized by rapid technological change and evolving industry standards. As a result, the Company must continue to enhance its existing systems and to develop and manufacture new systems with improved capabilities. This has required and will continue to require substantial investments by the Company in research and development to advance its technologies. The failure to develop, manufacture and market new systems, or to enhance existing systems, would have a material adverse effect on the Company's business, financial condition and results of operations. In the past, the Company has experienced delays from time to time in the introduction of, and certain technical difficulties with, certain of its systems and enhancements. In addition, the Company's competitors can be expected to continue to develop and introduce new and enhanced products, any of which could cause a decline in market demand for the Company's systems or a reduction in the Company's margins as a result of intensified price competition.

Changes in the manufacturing processes for thin-film disks could also have a material adverse effect on the Company's business, financial condition and results of operations. The Company anticipates continued changes in the requirements of the disk drive industry and thin-film disk manufacturing technologies. There can be no assurance that the Company will be able to develop, manufacture and sell systems that respond adequately to such changes. In addition, the data storage industry is subject to constantly evolving technological standards. There can be no assurance that future technological innovations will not reduce demand for thin-film disks. The Company's business, financial condition and results of operations could be materially adversely affected by any trend toward technology that would replace thin-film disks as a storage medium.

The Company has expended significant amounts for research and development for its disk sputtering systems, flat panel display manufacturing equipment and other new products under development, such as disk laser-texturing equipment and electro-optical products.

The Company's success in developing and selling enhanced disk sputtering systems and other new products depends upon a variety of factors, including accurate prediction of future customer requirements, technology advances, cost of ownership, introduction of new products on schedule, cost-effective manufacturing and product performance in the field. The Company's new product decisions and development commitments must anticipate the requirements for the continuously evolving disk drive industry approximately two or more years in advance of sales. Any failure to accurately predict customer requirements and to develop new generations of products to meet those requirements would have a sustained material adverse effect on the Company's business, financial condition and results of operations. New product transitions could adversely affect sales of existing products, and product introductions could contribute to quarterly fluctuations in operating results as orders for new products commence and orders for existing products decline. There can be no assurance that the Company will be successful in selecting, developing, manufacturing and marketing new products or enhancements of existing products.

The Company conducts substantially all of its manufacturing activities at its leased facilities in Santa Clara, San Jose and Los Gatos, California. The Company's Santa Clara, San Jose and Los Gatos facilities are located in a seismically active area. A major catastrophe (such as an earthquake or other natural disaster) could result in a prolonged interruption of the Company's business.

FLAT PANEL DISPLAY MANUFACTURING EQUIPMENT RISKS

In 1996, the Company spent approximately \$5.3 million to fund the development of equipment for use in the flat panel display ("FPD") industry, approximately 59% of which was paid for by the Company's development partners. In exchange for certain development funding, the Company has granted to one of its development partners the exclusive rights to manufacture and market the Company's FPD sputtering systems in Japan. As of December 31, 1996, all of the approximately \$5.5 million advanced by the Company's development partner had been applied to qualifying costs. The Company has limited experience in the development, manufacture, sale and marketing of FPD manufacturing equipment, having sold only two rapid thermal processing ("RTP") systems to date and having not yet completed development of its FPD sputtering system. There can be no assurance that the market for FPD manufacturing equipment targeted by the Company will develop as quickly or to the degree that the Company currently anticipates, or that the Company's proposed FPD manufacturing equipment will achieve customer acceptance or that the Company will achieve any net revenues from the sale of proposed FPD manufacturing equipment. There can be no assurance that the Company will receive additional customer sponsored research and development funding in the future. The failure to receive additional customer sponsored research and development funds could result in the Company internally funding the development of such FPD manufacturing equipment and the costs of such research and development may have a material adverse effect on the Company's business, financial condition and results of operations. There can be no assurance that the Company will continue to fund research and development in the FPD area.

LEVERAGE

In connection with the sale of the Convertible Notes, the Company incurred approximately \$57.5 million in indebtedness which resulted in a substantial increase in the Company's ratio of long-term debt to total capitalization (shareholders' equity plus long-term debt) at December 31, 1996 from approximately 2.1% to approximately 63.3% on a pro forma basis. As a result of this indebtedness, the Company incurred substantial principal and interest obligations. The degree to which the Company is leveraged could have a material adverse effect on the Company's ability to obtain additional financing for working capital, acquisitions or other purposes and could make it more vulnerable to industry downturns and competitive pressures. The Company's ability to meet its debt service obligations will be dependent on the Company's future performance, which will be subject to financial, business and other factors affecting the operations of the Company, many of which are beyond its control.

SUBORDINATION AND ABSENCE OF FINANCIAL COVENANTS

The Convertible Notes are unsecured and subordinated in right of payment to all Senior Debt of the Company. As a result of such subordination, in the event of any insolvency or liquidation of the Company, the assets of the Company will be available to satisfy obligations on the Convertible Notes only after all Senior Debt has been paid in full, and there may not be sufficient assets remaining to pay amounts due on any or all of the Convertible Notes then outstanding. In addition, the subordination provisions of the Indenture prohibit payment of the Convertible Notes at maturity or earlier redemption or repurchase if, on such date, a payment default exists on Senior Debt or a notice has been given of a covenant default on Designated Senior Debt (as defined). The Convertible Notes are also structurally subordinated to all liabilities of subsidiaries of the Company. The Indenture does not prohibit or limit the incurrence of Senior Debt or the incurrence of other indebtedness and other liabilities by the Company or any of its subsidiaries. The incurrence of additional indebtedness and other liabilities by the Company or any of its subsidiaries could adversely affect the Company's ability to satisfy its obligations on the Convertible Notes. As of February 28, 1997, the Company had approximately \$2 million of outstanding indebtedness that would have constituted Senior Debt, which

indebtedness was secured by an outstanding \$2 million letter of credit. Such letter of credit was issued under the Company's \$20.0 million credit agreement with Silicon Valley Bank and Bank of Hawaii (the "Credit Agreement"). To the extent the line of credit provided for under the Credit Agreement is drawn upon, any such borrowings would constitute Senior Debt. The Company anticipates that from time to time in the future it may incur indebtedness, including Senior Debt under the Credit Agreement or otherwise. Moreover, the cash flow and consequent ability of the Company to service debt, including the Convertible Notes, may become more dependent in the future upon the earnings from the business conducted by the Company through subsidiaries and the distribution of those earnings, or upon loans or other payments of funds by those subsidiaries, to the Company. See "Description of Convertible Notes - Subordination of Convertible Notes."

The Indenture does not contain any financial performance covenants. Consequently, the Company is not required under the Indenture to meet any financial tests such as those that measure the Company's working capital, interest coverage, fixed charge coverage or net worth in order to maintain compliance with the terms of the Indenture.

MANAGEMENT OF EXPANDING OPERATIONS

The Company has recently experienced a period of rapid expansion in its operations that has placed, and could continue to place, a significant strain on the Company's management and other resources. The Company's ability to manage its expanding operations effectively will require it to continue to improve its operational, financial and management information systems, and to train, motivate and manage its employees. If the Company's management is unable to manage its expanding operations effectively, the Company's results of operations could be adversely affected.

The Company's operating results will depend in significant part upon its ability to retain and attract qualified management, engineering, manufacturing, marketing, customer support and sales personnel. Competition for such personnel is intense and the Company has had difficulties attracting such personnel, and there can be no assurance that the Company will be successful in attracting and retaining such personnel. The failure to attract and retain such personnel could make it difficult to undertake or could significantly delay the Company's research and development efforts and the expansion of its manufacturing capabilities or other activities, which could have a material adverse effect on the Company's business, financial condition and results of operations.

MANUFACTURING RISKS

The Company's systems have a large number of components and are highly complex. The Company may experience delays and technical and manufacturing difficulties in future introductions or volume production of new systems or enhancements. In addition, some of the systems built by the Company must be customized to meet individual customer site or operating requirements. The Company has limited manufacturing capacity and may be unable to complete the development or meet the technical specifications of its new systems or enhancements or to manufacture and ship these systems or enhancements in a timely manner. Such an occurrence would materially adversely affect the Company's business, financial condition and results of operations as well as its relationships with customers. In addition, the Company may incur substantial unanticipated costs early in a product's life cycle, such as increased cost of materials due to expediting charges, other purchasing inefficiencies and greater than expected installation and support costs which cannot be passed on to the customer. Any of such events could materially adversely affect the Company's business, financial condition and results of operations. Due to recent increases in demand, the average time between order and shipment of the Company's systems may increase substantially in the future. The Company's ability to quickly increase its manufacturing capacity in response to short-term increases in demand could be limited given the complexity of the manufacturing process, the lengthy lead times necessary to obtain critical components and the need for highly skilled personnel. The failure of the Company to satisfy any such short-term increases in demand and to keep pace with customer demand would lead to further extensions of delivery times, which could deter customers from placing additional orders, and could adversely affect product quality, which could have a material adverse effect on the Company's business, financial condition and results of operations.

In certain instances, the Company is dependent upon a sole supplier or a limited number of suppliers, or has qualified only a single or limited number of suppliers, for certain complex components or sub-assemblies utilized in its products. The Company has implemented a key supplier program in which it appoints certain key vendors as sole suppliers for certain parts with the goal of improving response time and reducing costs. In addition, the Company makes extensive use of suppliers serving the semiconductor equipment business, and such suppliers may choose to give priority to their semiconductor equipment customers that are much larger than the Company. Any prolonged inability to obtain adequate deliveries could require the Company to pay more for inventory, parts and other supplies, seek alternative sources of supply, delay its ability to ship its products and damage relationships with current and prospective customers. Any such delay or damage could have a material adverse effect on the Company's business, financial condition and results of operations.

ACQUISITIONS

The Company's business strategy includes acquiring related businesses, products or technologies. The Company completed three acquisitions during 1996 and expects that it may pursue additional acquisitions in the future. Any future acquisitions may result in potentially dilutive issuances of equity securities, the write-off of in process research and development, the incurrence of debt and contingent liabilities and amortization expense related to intangible assets acquired, any of which could materially adversely affect the Company's business, financial condition and results of operations. In particular, the Company will not be able to use the "pooling of interests" method of accounting, due to a shareholder being greater than a 50% holder of the Company's Common Stock prior to the Company's initial public offering, in connection with any acquisition consummated prior to November 21, 1997, and the Company will therefore be required to amortize any intangible assets acquired in connection with any additional acquisitions consummated during that period.

The Company incurred a charge to operations of \$5.8 million in the second quarter of 1996, to reflect the purchase of in-process research and development related to the acquisitions completed in the second quarter. In addition, the Company is amortizing intangible assets of approximately \$8.8 million of costs relating to the three acquisitions completed in 1996. The amortization period for such costs will be over useful lives, which range from two years to seven years. Additionally, unanticipated expenses may be incurred relating to the integration of technologies and research and development and administrative functions. Any acquisition will involve numerous risks, including difficulties in the assimilation of the acquired company's employees, operations and products, uncertainties associated with operating in new markets and working with new customers, the potential loss of the acquired company's key employees as well as the costs associated with completing the acquisition and integrating the acquired company.

RISKS ASSOCIATED WITH INTERNATIONAL SALES AND OPERATIONS

Sales to customers in countries other than the United States accounted for 41%, 20% and 40% of revenues in 1996, 1995 and 1994, respectively. The Company anticipates that international sales will continue to account for a substantial portion of net revenues in the future. In order to effectively service customers located in Singapore and the surrounding region, the Company has established sales and service operations in Singapore and Taiwan. Sales and operating activities outside of the United States are subject to certain inherent risks, including fluctuations in the value of the United States dollar relative to foreign currencies, tariffs, quotas, taxes and other market barriers, political and economic instability, restrictions on the export or import of technology, potentially limited intellectual property protection, difficulties in staffing and managing international operations and potentially adverse tax consequences. There can be no assurance that any of these factors will not have a material adverse effect on the Company's business, financial condition or results of operations. In particular, although the Company's international sales have been denominated in United States dollars, such sales and expenses may not be denominated in dollars in the future, and currency exchange fluctuations in countries where the Company does business could materially adversely affect the Company's business, financial condition and results of operations.

PATENTS AND OTHER INTELLECTUAL PROPERTY

The Company currently has 23 patents issued in the United States, and has pending patent applications in the United States and foreign countries. Of the 23 patents, seven relate to sputtering, 10 relate to RTP, one relates to lubrication systems and five relate to other areas not in Intevac's mainstream business. In addition, the Company has the right to utilize certain patents under licensing arrangements with Litton Industries, Varian Associates, Stanford University, Lawrence Livermore Laboratories and Alum Rock Technology. There can be no assurance that any of the Company's patent applications will be allowed or that any of the allowed applications will be issued as patents. There can be no assurance that any patent owned by the Company will not be invalidated, deemed unenforceable, circumvented or challenged, that the rights granted thereunder will provide competitive advantages to the Company or that any of the Company's pending or future patent applications will be issued with claims of the scope sought by the Company, if at all. Furthermore, there can be no assurance that others will not develop similar products, duplicate the Company's products or design around the patents owned by the Company. In addition, there can be no assurance that foreign patent rights, intellectual property laws or the Company's agreements will protect the Company's intellectual property rights. Failure to protect the Company's intellectual property rights could have a material adverse effect upon the Company's business, financial condition and results of operations.

There have also been substantial litigation in the technology industry regarding intellectual property rights. The Company has from time to time received claims that it is infringing third parties' intellectual property rights. In August 1993, Rockwell International Corporation ("Rockwell") sued the Federal government alleging infringement of certain patent rights with respect to the contracts the Federal government has had with a number of companies, including Intevac. The Federal government has notified Intevac that it may be liable in connection with contracts for certain products from the Company's discontinued night vision business. Although the Company believes it will have no material liability under these contracts, there can be no assurance that the resolution of the claims by Rockwell with the Federal government will not have a material adverse effect on the Company's business, operating results and financial condition. In addition, a third party has sent correspondence to a consortium, of which the Company is a party, in a proposed government sponsored research and development program claiming that the work to be done under this program may infringe patents owned by this third party. The Company and its subcontractors have reviewed the correspondence and patents and believe these claims are without merit; however, there can be no assurance that litigation will not result from such development program. There can be no assurance that other third parties will not in the future claim infringement by the Company with respect to current or future patents, trademarks or other proprietary rights relating to the Company's disk sputtering systems, flat panel display manufacturing equipment or other products. Any present or future claims, with or without merit, could be time-consuming, result in costly litigation, cause product shipment delays or require the Company to enter into royalty or licensing agreements. Such royalty or licensing agreements, if required, may not be available on terms acceptable to the Company, or at all. Any of the foregoing could have a material adverse effect upon the Company's business, operating results and financial condition.

In addition, the Company believes that one of its competitors may be infringing the Company's patent rights in connection with products currently being offered by this competitor. Although the Company has not undertaken formal legal proceedings, the Company has informed this competitor that the Company believes its patent rights are being infringed and that the Company may undertake litigation to protect its patent rights if necessary. If undertaken, such litigation could be costly, time-consuming and result in legal claims being made against the Company. This could have a material adverse effect on the Company's business, operating results and financial condition, and, in addition, there could be no assurance that the Company would ultimately prevail in any such litigation.

ENVIRONMENTAL REGULATIONS

The Company is subject to a variety of governmental regulations relating to the use, storage, discharge, handling, emission, generation, manufacture, treatment and disposal of toxic or other hazardous substances, chemicals, materials or waste. Any failure to comply with current or future regulations could result in substantial civil penalties or criminal fines being imposed on the Company, or its officers, directors or employees, suspension of production, alteration of its manufacturing process or cessation of operations. Such

regulations could require the Company to acquire expensive remediation or abatement equipment or to incur substantial expenses to comply with environmental regulations. Any failure by the Company to properly manage the use, disposal or storage of, or adequately restrict the release of, hazardous or toxic substances could subject the Company to significant liabilities.

DEPENDENCE ON KEY EMPLOYEES

The Company's operating results will depend significantly upon the continued contributions of its officers and key management, engineering, marketing, customer support and sales personnel, many of whom would be difficult to replace. The Company does not have an employment agreement with any of its employees or maintain key person life insurance with respect to any employee. The loss of any key employee could have a material adverse effect on the Company's business, financial condition and results of operations. Employees of the Company are currently required to enter into a confidentiality agreement as a condition of their employment. However, these agreements do not expressly prohibit the employees from competing with the Company after leaving its employ.

CONCENTRATION OF STOCK OWNERSHIP AND CONTROL BY EXISTING SHAREHOLDERS

Based on shares outstanding on December 31, 1996, the present directors and their affiliates and executive officers, in the aggregate, own beneficially approximately 76% of the Company's outstanding shares of Common Stock. As a result, these shareholders, acting together, would be able to effectively control all matters requiring approval by the shareholders of the Company, including the election of a majority of the directors and approval of significant corporate transactions. Assuming the Conversion of the Convertible Notes into Common Stock of the Company, based upon the ownership as of December 31, 1996, the present directors and their affiliates and executives would still own a sufficient percentage of the outstanding Voting Stock of the Company to effectively exercise control of all matters requiring approval of the shareholders.

LIMITATIONS ON REPURCHASE UPON A DESIGNATED EVENT

If a Designated Event were to occur, there can be no assurance that the Company would have sufficient financial resources, or would be able to arrange financing, to pay the repurchase price for all Convertible Notes tendered by holders thereof. The Credit Agreement may prohibit the Company from repurchasing any Convertible Notes without the consent of Silicon Valley Bank and Bank of Hawaii. Any future credit agreements or other agreements relating to other indebtedness (including other Senior Debt) to which the Company becomes a party may contain similar restrictions and provisions. If the Company does not obtain a consent to any repurchase of the Convertible Notes upon a Designated Event, the Company would remain prohibited from repurchasing the Convertible Notes. The subordination provisions of the Indenture prohibit any repurchase of Convertible Notes if, on such date, a payment default exists on Senior Debt or a notice has been given of a covenant default on Designated Senior Debt. Any failure by the Company to repurchase the Convertible Notes when required following a Designated Event would result in an Event of Default under the Indenture whether or not such repurchase is permitted by the subordination provisions of the Indenture. Any such default may, in turn, cause a default under Senior Debt of the Company. Moreover, the occurrence of a Designated Event may cause an event of default under Senior Debt of the Company. As a result, in each case, any repurchase of the Convertible Notes would, absent a waiver, be prohibited under the subordination provisions of the Indenture until the Senior Debt is paid in full. See "Description of Convertible Notes -- Repurchase at the Option of Holders."

SHARES ELIGIBLE FOR FUTURE SALE; REGISTRATION RIGHTS

Sales of substantial amounts of the Company's Common Stock in the public market could adversely affect the market price of the Company's Common Stock, the Convertible Notes and the Company's ability to raise additional capital at a price favorable to the Company. Based on the beneficial ownership of the Company's Common Stock, executive officers, directors and certain shareholders holding an aggregate of 9,908,501 shares of Common Stock have entered into or otherwise have become subject to lockup

agreements (the "Lockup Agreements") in connection with the offering of the Convertible Notes and Conversion Shares in February and March of 1997, pursuant to which shares may not be offered, sold or otherwise disposed of without the prior written consent of Salomon Brothers Inc until May 21, 1997. Of the shares covered by the Lockup Agreements, 9,717,115 are "restricted" shares within the meaning of Rule 144 adopted under the Securities Act (the "Restricted Shares"). Such shares will be eligible for sale pursuant to Rule 144 upon the expiration of the Lockup Agreements, subject to certain volume limitations under Rule 144. The Holders of 8,680,000 of the Restricted Shares also have the right to require the Company to register such shares for sale to the public under agreements with the Company. See "Description of Capital Stock -- Registration Rights."

The Company has registered under the Securities Act an aggregate of 2,133,667 shares of Common Stock reserved for issuance under the Company's 1995 Stock Option/Stock Issuance Plan (and predecessor plan), and the Employee Stock Purchase Plan (collectively, the "Stock Plans"), thus permitting the sale of such shares by non-affiliates in the public market without restriction under the Securities Act. The shares registered include shares issuable upon exercise of options to purchase 1,265,942 shares that were issued and outstanding at December 31, 1996, of which options to purchase approximately 167,438 shares were exercisable and immediately saleable. The remainder of these shares will become exercisable and saleable at various dates through December 2001 pursuant to monthly and annual vesting.

ABSENCE OF PUBLIC MARKET FOR THE CONVERTIBLE NOTES; VOLATILITY OF CONVERTIBLE NOTE AND COMMON STOCK PRICES

The Convertible Notes are currently eligible for trading on the PORTAL Market. The Convertible Notes sold pursuant to this Prospectus will not remain eligible for trading on the PORTAL Market. The Company does not intend to list the Convertible Notes on any national securities exchange or on The Nasdaq Stock Market. There can be no assurance that an active trading market for the Convertible Notes will develop or, if one does develop, that it will be maintained. If an active trading market for the Convertible Notes fails to develop or be sustained, the trading price of such Convertible Notes could be adversely affected and holders of the Convertible Notes may experience difficulty in reselling the Convertible Notes or may be unable to sell them at all. If a public trading market develops for the Convertible Notes, future trading prices of the Convertible Notes will depend upon various factors such as changes in prevailing interest rates or changes in perceptions of the Company's creditworthiness. Changes in such factors could cause the market price of the Convertible Notes to fluctuate significantly. The trading price of the Convertible Notes could also be significantly affected by the market price of the Common Stock, which may be subject to wide fluctuations in response to a variety of factors, including quarterly variations in operating results, announcements of developments related to the Company's business, its customers or its competitors, changes in the Company's relationships with customers and suppliers, developments in patents or other intellectual property rights, acquisitions, failure to meet securities analysts' expectations, or general conditions in the computer, disk drive or thin-film media manufacturing industries or changes in government regulation and general economic and market conditions. In addition, in recent years the stock market in general, and the market for small capitalization and high technology stocks in particular, has experienced extreme price fluctuations that have often been unrelated to the operating performance of affected companies. Such fluctuations also could adversely affect the market price of the Company's Common Stock.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth the Company's consolidated ratio of earnings to fixed charges for the periods shown.

	FISCAL YEAR ENDED DECEMBER 31, 1992	FISCAL YEAR ENDED DECEMBER 31, 1993	FISCAL YEAR ENDED DECEMBER 31, 1994	FISCAL YEAR ENDED DECEMBER 31, 1995	FISCAL YEAR ENDED DECEMBER 31, 1996
Ratio of earnings to fixed charges	11.12x	N/A	13.20x	43.39x	22.57x

For purposes of calculating the ratio of earnings to fixed charges, (i) earnings consist of consolidated income before income taxes, plus fixed charges and (ii) fixed charges consist of interest expense incurred and the estimated portion of rental expense deemed by the Company to be representative of the interest factor of rental payments under operating leases. For the year ended December 31, 1993, the deficiency of earnings from continuing operations before income taxes to cover fixed charges was \$9,000.

USE OF PROCEEDS

The Company will not receive any proceeds from the sale by the Selling Securityholders of the Convertible Notes or the Conversion Shares.

DIVIDEND POLICY

In August 1995, the Company paid a cash dividend of \$0.495 on each share of Common Stock outstanding as of the August 25, 1995 record date. The Company currently anticipates that it will retain its earnings, if any, for use in the operation of its business and does not expect to pay cash dividends on its capital stock in the foreseeable future. The Credit Agreement prohibits the payment of cash dividends on the Company's capital stock.

SELLING SECURITYHOLDERS

The Convertible Notes were originally issued by the Company in a private placement and were resold by the initial purchasers thereof to qualified institutional buyers (within the meaning of Rule 144A under the Securities Act) or other institutional accredited investors (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) in transactions exempt from registration under the Securities Act, and in sales outside the United States to persons other than U.S. persons in reliance upon Regulation S under the Securities Act. The Convertible Notes and the Conversion Shares that may be offered pursuant to this Prospectus will be offered by the Selling Securityholders.

Prior to any use of this Prospectus in connection with an offering of the Convertible Notes and/or the Conversion Shares, this Prospectus will be supplemented to set forth the name and number of shares beneficially owned by the Selling Securityholder intending to sell such Convertible Notes and/or Conversion Shares, and the number of Convertible Notes and/or Conversion Shares to be offered. The Prospectus Supplement will also disclose whether any Selling Securityholder selling in connection with such Prospectus Supplement has held any position or office with, been employed by or otherwise has a material relationship with, the Company or any of its affiliates during the three (3) years prior to the date of the Prospectus Supplement.

DESCRIPTION OF CAPITAL STOCK

The authorized capital stock of the Company consists of 50,000,000 shares of Common Stock, no par value, and 10,000,000 shares of Preferred Stock, no par value.

COMMON STOCK

As of December 31, 1996, there were 12,448,537 shares of Common Stock outstanding that were held of record by approximately 700 shareholders, assuming no exercise after December 31, 1996 of outstanding stock options. The holders of Common Stock are entitled to one vote per share on all matters to be voted upon by the shareholders. Subject to preferences that may be applicable to any outstanding Preferred Stock, the holders of Common Stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the Board of Directors out of funds legally available therefor. See "Dividend Policy." In the event of the liquidation, dissolution or winding up of the Company, the holders of Common Stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of Preferred Stock, if any, then outstanding. The Common Stock has no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the Common Stock. All outstanding shares of Common Stock are fully paid and nonassessable, and the shares of Common Stock to be issued upon completion of this offering will be fully paid and nonassessable.

UNDESIGNATED PREFERRED STOCK

The Company's Articles of Incorporation authorizes 10,000,000 shares of Preferred Stock. The Board of Directors has the authority to issue the Preferred Stock in one or more series and to fix the price, rights, preferences, privileges and restrictions thereof, including dividend rights, dividend rates, conversion rights, voting rights, terms of redemption, redemption prices, liquidation preferences and the number of shares constituting any series or the designation of such series, without further vote or action by the shareholders. The issuance of Preferred Stock may have the effect of delaying, deferring or preventing a change in control of the Company without further action by the shareholders and may adversely affect the voting and other rights of the holders of Common Stock. The issuance of Preferred Stock with voting and conversion rights may adversely affect the voting power of the holders of Common Stock, including the loss of voting control to others.

ARTICLES OF INCORPORATION AND BYLAWS

The Articles of Incorporation authorize the issuance of Preferred Stock on terms that the Board of Directors has the authority to fix at the time of issuance. The Articles and Bylaws provide for the elimination of cumulative voting. The Bylaws also require that any action taken by shareholders must be effected at a duly called annual or special meeting of shareholders and may not be affected by written consent without a meeting. These provisions of the Articles of Incorporation and Bylaws could discourage potential acquisition proposals and could delay or prevent a change in control of the Company. These provisions are also intended to enhance the likelihood of continuity and stability in the composition of the Board of Directors and in the policies formulated by the Board of Directors and to discourage certain types of transactions that may involve an actual or threatened change of control of the Company. These provisions are designed to reduce the vulnerability of the Company to an unsolicited acquisition proposal. The provisions, alone or in combination, could have the effect of discouraging others from making tender offers for the Company's shares and, as a consequence, they also may inhibit fluctuations in the market price of the Company's shares that could result from actual or rumored takeover attempts. Such provisions also may have the effect of preventing changes in the management of the Company.

REGISTRATION RIGHTS

Holders of approximately 8,680,000 shares of Common Stock (the "Registrable Stock") are entitled to certain rights with respect to the registration of such shares under the Securities Act. Under the terms of an agreement between the Company and the holders of the Registrable Stock, if the Company proposes to

register any of its securities under the Securities Act, either for its own account or the account of other security holders exercising registration rights, those holders are entitled to notice of registration and are entitled to include shares of Registrable Stock therein. These registration rights have been waived with respect to the registration herein of the Convertible Notes and Common Stock issuable upon conversion thereof. The holders of a majority of Registrable Stock may also require the Company to file up to two registration statements under the Securities Act at its expense with respect to their Registrable Stock, and the Company is required to use its best efforts to effect that registration. Further, those shareholders may require the Company to file additional registration statements on Form S-3. These registration rights are subject to certain conditions and limitations, among them the right of the underwriters of an offering to limit the number of shares included in that registration.

TRANSFER AGENT AND REGISTRAR

The Transfer Agent and Registrar for the Common Stock is Boston EquiServe Limited Partnership.

DESCRIPTION OF CONVERTIBLE NOTES

GENERAL

The Convertible Notes were issued pursuant to an Indenture dated as of February 15, 1997 (the "Indenture"), between the Company and State Street Bank and Trust Company of California, N.A., as trustee (the "Trustee"). The following summary of certain provisions of the Indenture and the Registration Agreement does not purport to be complete and is qualified in its entirety by reference to the Indenture and the Registration Agreement, including the definitions therein of certain terms used below. The definitions of certain terms used in the following summary are set forth below under "-- Certain Definitions." References in this section to the "Company" are solely to Intevac, Inc., a California corporation, and not to any subsidiary.

The Convertible Notes are unsecured obligations of the Company, subordinated in right of payment to all Senior Debt of the Company to the extent set forth in the Indenture. The Indenture does not limit the amount of other indebtedness or securities that may be issued by the Company or any of its subsidiaries, or contain any other financial covenants.

The Convertible Notes are currently eligible for trading in the PORTAL Market. Convertible Notes sold pursuant to this Prospectus will not remain eligible for trading on the PORTAL Market.

PRINCIPAL, MATURITY AND INTEREST

The Convertible Notes will bear interest from February 25, 1997, at the rate per annum of 6 1/2% and will mature on March 1, 2004.

Interest on the Convertible Notes is payable semiannually on March 1 and September 1 of each year (each an "Interest Payment Date"), commencing on September 1, 1997, to holders of record at the close of business on the February 15 or August 15 (each a "Regular Record Date") immediately preceding such Interest Payment Date. Interest is computed on the basis of a 360-day year comprised of twelve 30-day months.

Interest on the Convertible Notes accrues from the most recent date to which interest has been paid or, if no interest has been paid, from February 25, 1997.

The Convertible Notes are payable both as to principal and interest at the office or agency of the Company maintained for such purpose within the City and State of New York or, at the option of the Company, payment of interest may be made by check mailed to the holders of the Convertible Notes at their respective addresses set forth in the register of holders of Convertible Notes; provided that a holder of Convertible Notes with an aggregate principal amount in excess of \$2,000,000 will be paid by wire transfer in immediately available funds at the election of the holder. Until otherwise designated by the Company, the Company's office or agency in New York will be the office of the Trustee or its agent maintained for such purpose. The Convertible Notes are issued in registered form, without coupons, and in denominations of \$1,000 and integral multiples thereof.

OPTIONAL REDEMPTION

The Convertible Notes will be redeemable at the option of the Company, in whole or in part (in any integral multiple of \$1,000), at any time on and after March 3, 2000, upon not less than 15 nor more than 60 days' prior notice by mail at the following redemption prices (expressed as percentages of the principal amount), if redeemed during the 12-month period beginning March 1 of the years indicated (March 3, 2000 to February 28, 2001, in the case of the first such period):

YEAR	REDEMPTION PRICE
2000	103.714%
2001	102.786%
2002	101.857%
2003	100.929%

and 100% at March 1, 2004, in each case together with accrued interest to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on an Interest Payment Date).

If less than all of the Convertible Notes are to be redeemed at any time, selection of Convertible Notes for redemption will be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Convertible Notes are listed, or, if the Convertible Notes are not so listed, on a pro rata basis, provided that no Convertible Notes of \$1,000 or less shall be redeemed in part. Notice of redemption will be mailed by first class mail at least 15 but not more than 60 days before the redemption date to each holder of Convertible Notes to be redeemed at its registered address. If any Convertible Note is to be redeemed in part only, the notice of redemption that relates to such Convertible Note shall state the portion of the principal amount thereof to be redeemed. If a portion of a holder's Convertible Notes are selected for partial redemption and such holder converts a portion of such Convertible Notes, such converted portion shall be deemed to be taken from the portion selected for redemption. A new Convertible Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original Convertible Note. On and after the redemption date, interest ceases to accrue on Convertible Notes or portions of them called for redemption.

MANDATORY REDEMPTION

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Convertible Notes.

REPURCHASE AT THE OPTION OF HOLDERS

Upon the occurrence of a Designated Event, each holder of Convertible Notes will have the right to require the Company to repurchase all or any part (equal to \$1,000 or an integral multiple thereof) of such holder's Convertible Notes pursuant to the offer described below (the "Designated Event Offer") at a purchase price equal to 101% of the principal amount thereof, together with accrued and unpaid interest thereon to the Designated Event Payment Date (the "Designated Event Payment"). Within 30 days following any Designated Event, the Company will mail a notice to each holder stating: (1) that the Designated Event Offer is being made pursuant to the covenant entitled "Designated Event" and that all Convertible Notes tendered will be accepted for payment; (2) the purchase price and the purchase date, which shall be no earlier than 30 days nor later than 40 days from the date such notice is mailed (the "Designated Event Payment Date"); (3) that any Convertible Notes not tendered will continue to accrue interest; (4) that, unless the Company defaults in the payment of the Designated Event Payment, all Convertible Notes accepted for payment pursuant to the Designated Event Offer shall cease to accrue interest after the Designated Event Payment Date; (5) that holders electing to have any Convertible Notes purchased pursuant to a Designated Event Offer will be required to surrender the Convertible Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Convertible Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Designated Event Payment Date; (6) that holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Designated Event Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the holder, the principal amount of Convertible Notes delivered for purchase, and a statement that such holder is withdrawing his election to have such Convertible Notes purchased; and (7) that holders whose Convertible Notes are being purchased only in part will be issued new Convertible Notes equal in principal amount to the unpurchased portion of the Convertible Notes surrendered, which unpurchased portion must be equal to \$1,000 in principal amount or an integral multiple thereof.

The Company will comply with the requirements of Rules 13e-4 and 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of the Convertible Notes in connection with a Designated Event.

On the Designated Event Payment Date, the Company will, to the extent lawful, (1) accept for payment Convertible Notes or portions thereof tendered pursuant to the Designated Event Offer, (2) deposit with the Paying Agent an amount equal to the Designated Event Payment in respect of all Convertible Notes or portions thereof so tendered and (3) deliver or cause to be delivered to the Trustee the Convertible Notes so accepted together with an Officers' Certificate stating the Convertible Notes or portions thereof tendered to

the Company. The Paying Agent will promptly mail to each holder of Convertible Notes so accepted payment in an amount equal to the purchase price for such Convertible Notes, and the Trustee will promptly authenticate and mail to each holder a new Convertible Note equal in principal amount to any unpurchased portion of the Convertible Notes surrendered, if any; provided, that each such new Convertible Note will be in a principal amount of \$1,000 or an integral multiple thereof. The Company will publicly announce the results of the Designated Event Offer on or as soon as practicable after the Designated Event Payment Date.

Except as described above with respect to a Designated Event, the Indenture does not contain any other provisions that permit the holders of the Convertible Notes to require that the Company repurchase or redeem the Convertible Notes in the event of a takeover, recapitalization or similar restructuring.

The Designated Event purchase feature of the Convertible Notes may in certain circumstances make more difficult or discourage a takeover of the Company, and, thus, the removal of incumbent management. The Designated Event purchase feature, however, is not the result of management's knowledge of any specific effort to accumulate the Company's stock or to obtain control of the Company by means of a merger, tender offer, solicitation or otherwise, or part of a plan by management to adopt a series of antitakeover provisions. Instead, the Designated Event purchase feature was a result of negotiations between the Company and the Initial Purchasers in the original offering of the Convertible Notes by the Company in February and March of 1997. Management has no present intention to engage in a transaction involving a Designated Event, although it is possible that the Company could decide to do so in the future. Subject to the limitations on mergers, consolidations and sale of assets described herein, the Company could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Designated Event under the Indenture, but that could increase the amount of indebtedness (including Senior Debt) outstanding at such time or otherwise affect the Company's capital structure or credit ratings. The payment of the Designated Event Payment is subordinated to the prior payment of Senior Debt as described under "-- Subordination of Convertible Notes" below.

If a Designated Event were to occur, there can be no assurance that the Company would have sufficient financial resources, or would be able to arrange financing, to pay the repurchase price for all Convertible Notes tendered by holders thereof. The Company's Credit Agreement may prohibit the Company from repurchasing any Convertible Notes. Any future credit agreements or other agreements relating to other indebtedness (including other Senior Debt) to which the Company becomes a party may contain similar restrictions and provisions. If the Company does not obtain such a consent or repay the Convertible Notes upon a Designated Event, the Company would remain prohibited from repurchasing the Convertible Notes. The subordination provisions of the Indenture prohibit any repurchase of Convertible Notes if, on such date, a payment default exists on Senior Debt or a notice has been given of a covenant default on Designated Senior Debt. Any failure by the Company to repurchase the Convertible Notes when required following a Designated Event would result in an Event of Default under the Indenture whether or not such repurchase is permitted by the subordination provisions of the Indenture. Any such default may, in turn, cause a default under Senior Debt of the Company. Moreover, the occurrence of a Designated Event may cause an event of default under Senior Debt of the Company. As a result, in each case, any repurchase of the Convertible Notes would, absent a waiver, be prohibited under the subordination provisions of the Indenture until the Senior Debt is paid in full.

A "Designated Event" will be deemed to have occurred upon a Change of Control or a Termination of Trading.

A "Change of Control" will be deemed to have occurred when: (i) any "person" or "group" (as such terms are used in Section 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of shares representing more than 50% of the combined voting power of the then outstanding securities entitled to vote generally in elections of directors of the Company ("Voting Stock"), (ii) the Company consolidates with or merges into any other corporation, or any other corporation merges into the Company, and, in the case of any such transaction, the outstanding Common Stock of the Company is reclassified into or exchanged for any other property or security, unless the shareholders of the Company immediately before such transaction own, directly or indirectly immediately following such transaction, at least a majority of the combined voting power of the outstanding voting securities of the corporation resulting from such transaction in substantially the same proportion as their

ownership of the Voting Stock immediately before such transaction, (iii) the Company conveys, transfers or leases all or substantially all of the assets of the Company, unless such conveyance, transfer or lease is to a corporation and the shareholders of the Company immediately before such conveyance, transfer or lease own, directly or indirectly immediately following such transaction, at least a majority of the combined voting power of the corporation to which such assets are so conveyed, transferred or leased in the same proportion as their ownership of the Voting Stock immediately before such transaction, or (iv) any time the Continuing Directors do not constitute a majority of the Board of Directors of the Company (or, if applicable, a successor corporation to the Company); provided, that a Change of Control shall not be deemed to have occurred if at least 90% of the consideration (excluding cash payments for fractional shares) in the transaction or transactions constituting the Change of Control consists of shares of common stock that are, or upon issuance will be, traded on a United States national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States.

The definition of Change of Control includes a phrase relating to the conveyance, transfer or lease of "all or substantially all" of the assets of the Company. Although there is a developing body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a holder of Convertible Notes to require the Company to repurchase such Convertible Notes as a result of a conveyance, transfer or lease of less than all of the assets of the Company to another person or group may be uncertain.

"Continuing Directors" means, as of any date of determination, any member of the Board of Directors of the Company who (i) was a member of such Board of Directors on the date of the Indenture or (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board at the time of such nomination or election.

A "Termination of Trading" will be deemed to have occurred if the Common Stock (or other common stock into which the Convertible Notes are then convertible) is neither listed for trading on a United States national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States.

REGISTRATION RIGHTS

Pursuant to the Registration Agreement, the Company has agreed for the benefit of the holders of the Convertible Notes and Common Stock issued upon conversion thereof that are, in either case, Registrable Securities, that it will, at its cost, use all reasonable efforts to keep the Shelf Registration Statement of which this Prospectus is a part, continuously effective under the Securities Act until the earlier of (a) February 20, 2000, (b) the date on which all of the Convertible Notes or the Common Stock issuable upon conversion thereof may be sold by non-affiliates of the Company pursuant to paragraph (k) of Rule 144 (or any successor provision) promulgated by the Commission under the Securities Act or (c) the date as of which all the Convertible Notes or the Common Stock issuable upon conversion thereof have been sold pursuant to such Shelf Registration Statement (the "Shelf Registration Period"). The Company shall have the right, however, to defer the use of the prospectus which will be a part of the Shelf Registration Statement, as more fully described below. The Registration Statement and this Prospectus which forms a part thereof have been filed by the Company with the Commission pursuant to the Registration Agreement and is a "Shelf Registration Statement" within the meaning of this paragraph.

The Company will provide or cause to be provided to each holder of the Convertible Notes, or the Common Stock issuable upon conversion of the Convertible Notes, copies of this Prospectus, and take certain other actions as are required to permit unrestricted resales of the Convertible Notes or the Common Stock issuable upon conversion of the Convertible Notes. A

holder of Convertible Notes or the Common Stock issuable upon conversion of the Convertible Notes that sells such securities pursuant to this Prospectus is required to be named as a selling security holder herein and to deliver a copy of this Prospectus to purchasers, will be subject to certain of the civil liability provisions under the Securities Act in connection with such sales and will be bound by the provisions of the Registration Agreement that are applicable to such holder (including certain indemnification and contribution rights or obligations).

At least four business days prior to any intended resale of the Convertible Notes or the Common Stock issuable upon conversion thereof, the holder thereof must notify the Company of such intention and provide such information with respect to such holder and the specifics of the intended resale as may be required to amend this Prospectus (a holder giving such notice, a "Notice Holder"). Within three Business days after the foregoing notice is provided by a Notice Holder, the Company will either (i) notify such Notice Holder that resales may proceed or file any amendment to the Shelf Registration Statement or supplement to this Prospectus needed to ensure that those documents, among other things, comply with the Securities Act, cause any such amendment to be declared effective and notify such Notice Holder thereof or (ii) notify such Notice Holder of the Company's election to defer resales until further notice (a "Deferral Period") under certain circumstances relating to issuance of a stop order by the Commission, suspension of qualification under state law, accuracy of this Prospectus, pending corporate developments, public filings with the Commission and similar events. If the Company elects the option described in clause (i) of the preceding sentence, such Notice Holder may resell Convertible Notes or the Common Stock issuable upon conversion thereof pursuant to this Prospectus for a period of 45 days (with respect to such Notice Holder, a "Selling Period") from the date notice of such election is given and, if the Company elects the option described in clause (ii) of the preceding sentence, such Notice Holder may resell such securities for a Selling Period that commences at the end of the Deferral Period. The Company may also defer until further notice a Notice Holder's existing Selling Period upon the occurrence of the events described in clause (ii) of the second preceding sentence; provided that upon receipt of such further notice, such Selling Period shall be extended by the number of days elapsed prior to deferral. The Company may not defer Selling Periods more than one time in any three month period or three times in any twelve month period and no deferral shall exceed 30 days. The Company will pay all expenses of the Shelf Registration Statement, provide to each registered holder of Convertible Notes copies of this Prospectus, notify each such registered holder when the Shelf Registration Statement has become effective and take certain other actions as are required to permit, subject to the foregoing, unrestricted resales of the Convertible Notes and the Common Stock issuable upon conversion thereof.

In the event a stop order is issued by the Commission prior to the end of the Shelf Registration Period or Selling Periods have been deferred more frequently or for longer periods than are described above, the Company has agreed to pay liquidated damages to all Notice Holders of Convertible Notes and of Common Stock issuable upon conversion thereof for so long as such event has occurred and is continuing. Further, if such event continues for a period in excess of 30 days, the Company has agreed to pay liquidated damages to all holders of Convertible Notes and Common Stock issued upon conversion thereof which are, in either case, Registrable Securities, without regard to whether such holder is a Notice Holder, for so long as such event has occurred and is continuing. Liquidated damages shall be calculated, with respect to Convertible Notes held by a holder, at a rate of one-half of one percent (50 basis points) per annum of the aggregate principal amount of such Convertible Notes and, with respect to shares of Common Stock held by a holder and issued upon conversion of Convertible Notes, the same percentage of the aggregate principal amount of Convertible Notes that were converted into such shares. Liquidated damages will not accrue as to any Convertible Notes or Common Stock issuable upon the conversion thereof from and after the earlier of (i) the date such Convertible Notes or Common Stock are no longer Registrable Securities and (ii) the expiration of the Shelf Registration Period. In addition, liquidated damages will not accrue as to any Convertible Notes or Common Stock issuable upon the conversion thereof represented by the Unrestricted Global Note (as defined in the Indenture) provided that such securities

are not subject to limitations on transfer under U.S. federal or state securities laws and there shall have been at least six months during which the Shelf Registration Statement was effective and available for effecting resales of the Convertible Notes and the Common Stock issuable upon conversion thereof.

"Registrable Securities" means the Convertible Notes and shares of Common Stock issued upon conversion thereof, excluding any such securities that, and any such securities the predecessors of which, were previously sold pursuant to a registration statement or Rule 144 under the Securities Act.

CONVERSION

The holder of any Convertible Note will have the right, exercisable at any time after May 21, 1997 and prior to maturity, to convert the principal amount thereof (or any portion thereof that is an integral multiple of \$1,000) into shares of Common Stock at the conversion price set forth on the cover page of this Offering Memorandum, subject to adjustment as described below (the "Conversion Price"), except that if a Convertible Note is called for redemption, the conversion right will terminate at the close of business on the Business Day immediately preceding the date fixed for redemption. Except as described below, no adjustment will be made on conversion of any Convertible Notes for interest accrued thereon or for dividends on any Common Stock issued. If Convertible Notes not called for redemption are converted after a record date for the payment of interest and prior to the next succeeding Interest Payment Date, such Convertible Notes must be accompanied by funds equal to the interest payable on such succeeding Interest Payment Date on the principal amount so converted. No fractional shares will be issued upon conversion but a cash adjustment will be made for any fractional interest.

The Conversion Price is subject to adjustment upon the occurrence of certain events, including: (i) the issuance of shares of Common Stock as a dividend or distribution on the Common Stock; (ii) the subdivision or combination of the outstanding Common Stock; (iii) the issuance to substantially all holders of Common Stock of rights or warrants to subscribe for or purchase Common Stock (or securities convertible into Common Stock) at a price per share less than the then current market price per share (determined as set forth below); (iv) the distribution of shares of capital stock of the Company (other than Common Stock), evidences of indebtedness or other assets (excluding dividends in cash, except as described in clause (v) below) to all holders of Common Stock; (v) the distribution, by dividend or otherwise, of cash to all holders of Common Stock in an aggregate amount that, together with the aggregate of any other distributions of cash that did not trigger a Conversion Price adjustment to all holders of its Common Stock within the 12 months preceding the date fixed for determining the shareholders entitled to such distribution and all Excess Payments in respect of each tender offer or other negotiated transaction by the Company or any of its Subsidiaries for Common Stock concluded within the preceding 12 months not triggering a Conversion Price adjustment, exceeds 15% of the product of the current market price per share on the date fixed for the determination of shareholders entitled to receive such distribution times the number of shares of Common Stock outstanding on such date; (vi) payment of an Excess Payment in respect of a tender offer or other negotiated transaction by the Company or any of its Subsidiaries for Common Stock, if the aggregate amount of such Excess Payment, together with the aggregate amount of cash distributions made within the preceding 12 months not triggering a Conversion Price adjustment and all Excess Payments in respect of each tender offer or other negotiated transaction by the Company or any of its Subsidiaries for Common Stock concluded within the preceding 12 months not triggering a Conversion Price adjustment, exceeds 15% of the product of the current market price per share on the expiration of such tender offer times the number of shares of Common Stock outstanding on such date; and (vii) the distribution to substantially all holders of Common Stock of rights or warrants to subscribe for securities (other than those securities referred to in clause (iii) above). In the event of a distribution to substantially all holders of Common Stock of rights to subscribe for additional shares of the Company's capital stock (other than those securities referred to in clause (iii) above), the Company may, instead of making any adjustment in the Conversion Price, make proper provision so that each holder of a Convertible Note who converts such Convertible Note after the record date for such distribution and prior to the expiration or redemption of such rights shall be entitled to receive upon such conversion, in addition to shares of Common Stock, an appropriate number of such rights. The Indenture also provides that if rights, warrants or options expire unexercised the Conversion Price will be readjusted to take into account the actual

number of such warrants, rights or options which were exercised. No adjustment of the Conversion Price will be made until cumulative adjustments amount to one percent or more of the Conversion Price as last adjusted.

The Indenture provides that, if the Company implements a shareholder rights plan, such rights plan must provide that upon conversion of the Convertible Notes the holders will receive, in addition to the Common Stock issuable upon such conversion, such rights (whether or not such rights have separated from the Common Stock at the time of such conversion).

If the Company reclassifies or changes its outstanding Common Stock, or consolidates with or merges into any person or transfers or leases all or substantially all its assets, or is a party to a merger that reclassifies or changes its outstanding Common Stock, the Convertible Notes will become convertible into the kind and amount of securities, cash or other assets which the holders of the Convertible Notes would have owned immediately after the transaction if the holders had converted the Convertible Notes immediately before the effective date of the transaction.

In the Indenture, the "current market price" per share of Common Stock on any date shall be deemed to be the average of the Daily Market Prices (as defined in the Indenture) for the shorter of (i) 30 consecutive business days ending on the last full trading day on the exchange or market referred to in determining such Daily Market Prices prior to the time of determination (as defined in the Indenture) or (ii) the period commencing on the date next succeeding the first public announcement of the issuance of such rights or warrants or such distribution through such last full trading day prior to the time of determination.

"Excess Payment" means the excess of (A) the aggregate of the cash and fair market value of other consideration paid by the Company or any of its Subsidiaries with respect to the shares acquired in the tender offer or other negotiated transaction over (B) the market value of such acquired shares after giving effect to the completion of the tender offer or other negotiated transaction.

The Company from time to time may to the extent permitted by law reduce the Conversion Price by any amount for any period of at least 20 days, in which case the Company shall give at least 15 days' notice of such reduction, if the Board of Directors has made a determination that such reduction would be in the best interests of the Company, which determination shall be conclusive. The Company may, at its option, make such reductions in the Conversion Price, in addition to those set forth above, as the Board of Directors deems advisable to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. See "Certain Federal Income Tax Considerations."

SUBORDINATION OF CONVERTIBLE NOTES

The Convertible Notes are subordinated in right of payment to all Senior Debt. As of February 28, 1997, the Company had approximately \$2 million of outstanding indebtedness that would have constituted Senior Debt. Such indebtedness is secured by a \$2 million letter of credit that was issued under the Company's \$20.0 million Credit Agreement. To the extent the line of credit provided for under the Credit Agreement is drawn upon, any such borrowings would constitute Senior Debt. In addition, the Convertible Notes are structurally subordinated to all indebtedness and other liabilities (including trade payables and lease obligations) of the Company's Subsidiaries, as any right of the Company to receive any assets of its Subsidiaries upon their liquidation or reorganization (and the consequent right of the Holders of the Convertible Notes to participate in those assets) will be effectively subordinated to the claims of that Subsidiary's creditors (including trade creditors and lessors), except to the extent that the Company itself is recognized as a creditor of such Subsidiary, in which case the claims of the Company would still be subordinate to any security interest in the assets of such Subsidiary and any indebtedness of such Subsidiary senior to that held by the Company. The Indenture does not restrict the amount of Senior Debt or other indebtedness or liabilities which may be incurred by the Company or any Subsidiary of the Company.

The payment of the principal of, premium, if any, or interest or liquidated damages, if any, on or any other amounts due on the Convertible Notes are subordinated in right of payment to the prior payment in full of all Senior Debt of the Company. No payment on account of principal of, redemption of, interest on, liquidated damages on or any other amounts due on the Convertible Notes (including, without limitation, any

Designated Event Payments), and no redemption, purchase or other acquisition of the Convertible Notes (including, without limitation, pursuant to a Designated Event Offer) may be made unless (i) full payment of amounts then due on all Senior Debt have been made or duly provided for pursuant to the terms of the instrument governing such Senior Debt, and (ii) at the time for, or immediately after giving effect to, any such payment, redemption, purchase or other acquisition, there shall not exist under any Senior Debt or any agreement pursuant to which any Senior Debt has been issued, any default which shall not have been cured or waived and which shall have resulted in the full amount of such Senior Debt being declared due and payable. In addition, the Indenture provides that if any of the holders of any issue of Designated Senior Debt notify (the "Payment Blockage Notice") the Company and the Trustee that a default has occurred giving the holders of such Designated Senior Debt or the Representative of such holders the right to accelerate the maturity thereof, no payment on account of principal of, redemption of, interest on, liquidated damages on or any other amounts due on the Convertible Notes (including, without limitation, any Designated Event Payments), and no purchase, redemption or other acquisition of the Convertible Notes (including, without limitation, pursuant to a Designated Event Offer) will be made for the period (the "Payment Blockage Period") commencing on the date notice is received and ending on the earlier of (A) the date on which such event of default shall have been cured or waived or (B) 180 days from the date notice is received. Notwithstanding the foregoing (but subject to the provisions contained in the first sentence of this paragraph), unless the holders of such Designated Senior Debt or the Representative of such holders shall have accelerated the maturity of such Designated Senior Debt, the Company may resume payments on the Convertible Notes after the end of such Payment Blockage Period. Not more than one Payment Blockage Notice may be given in any consecutive 360-day period, irrespective of the number of defaults with respect to Senior Debt during such period.

Upon any distribution of its assets in connection with any dissolution, winding-up, liquidation or reorganization of the Company or acceleration of the principal amount due on the Convertible Notes because of an Event of Default, all Senior Debt must be paid in full before the holders of the Convertible Notes are entitled to any payments whatsoever.

If payment of the Convertible Notes is accelerated because of an Event of Default, the Company or the Trustee shall promptly notify the holders of Senior Debt or the Representative(s) of such holders for such Senior Debt of the acceleration. The Company may not pay the Convertible Notes until five days after such holders or Representative(s) of such holders of Senior Debt receive notice of such acceleration and, thereafter, may pay the Convertible Notes only if the subordination provisions of the Indenture otherwise permit payment at that time.

As a result of these subordination provisions, in the event of the Company's insolvency, holders of the Convertible Notes may recover ratably less than general creditors of the Company.

MERGER, CONSOLIDATION OR SALE OF ASSETS

The Indenture provides that the Company may not consolidate or merge with or into (whether or not the Company is the surviving corporation) any person, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets unless (i) (a) the Company is the surviving or continuing corporation or (b) the person formed by or surviving any such consolidation or merger (if other than the Company) or the person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Company is a corporation organized or existing under the laws of the United States, any state thereof or the District of Columbia; (ii) the entity or person formed by or surviving any such consolidation or merger (if other than the Company) assumes all the Obligations of the Company, pursuant to a supplemental indenture in a form reasonably satisfactory to the Trustee, under the Convertible Notes and the Indenture; (iii) such sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the Company's properties or assets shall be as an entirety or substantially as an entirety to one person and such person shall have assumed all the obligations of the Company, pursuant to a supplemental indenture in a form reasonably satisfactory to the Trustee, under the Convertible Notes and the Indenture; (iv) immediately after such transaction no Default or Event of Default exists; and (v) the Company or such person shall have delivered to the Trustee an Officers' Certificate and an

Opinion of Counsel, each stating that such transaction and the supplemental indenture comply with the Indenture and that all conditions precedent in the Indenture relating to such transaction have been satisfied.

PAYMENTS FOR CONSENT

Neither the Company nor any of its Subsidiaries will, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any holder of any Convertible Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Convertible Notes unless such consideration is offered to be paid or agreed to be paid to all holders of the Convertible Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

REPORTS

Whether or not required by the rules and regulations of the Commission, so long as any Convertible Notes are outstanding, the Company will file with the Commission and, if requested by any holders of Convertible Notes, furnish to such holders of Convertible Notes all quarterly and annual financial information required to be contained in a filing with the Commission on Forms 10-Q and 10-K, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual consolidated financial statements only, a report thereon by the Company's independent auditors.

EVENTS OF DEFAULT AND REMEDIES

The Indenture provides that each of the following constitutes an Event of Default: (i) default for 30 days in the payment when due of interest on the Convertible Notes; (ii) default in payment when due of principal on the Convertible Notes; (iii) default in the payment of the Designated Event Payment in respect of the Convertible Note on the date therefor, whether or not such payment is prohibited by the subordination provisions of the Indenture; (iv) failure to provide timely notice of a Designated Event; (v) failure by the Company for 60 days after notice to comply with any other covenants and agreements contained in the Indenture or the Convertible Notes; (vi) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company or any of its Subsidiaries (or the payment of which is guaranteed by the Company or any of its Subsidiaries), whether such indebtedness or guarantee now exists or is created after the date on which the Convertible Notes were first authenticated and issued, which default (a) is caused by a failure to pay when due principal or interest on such indebtedness within the grace period provided in such indebtedness (which failure continues beyond the longer of any applicable grace period or 30 days) (a "Payment Default") or (b) results in the acceleration of such indebtedness prior to its express maturity and, in each case, the principal amount of any such indebtedness, together with the principal amount of any other such indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$10 million or more; (vii) failure by the Company or any Subsidiary of the Company to pay final judgments (other than any judgment as to which a reputable insurance company has accepted full liability) aggregating in excess of \$10 million, which judgments are not stayed within 60 days after their entry; and (viii) certain events of bankruptcy or insolvency with respect to the Company or any of its Material Subsidiaries.

If any Event of Default occurs and is continuing, the Trustee or the holders of at least 25% in principal amount of the then outstanding Convertible Notes may declare all the Convertible Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, with respect to the Company or any Material Subsidiary, all outstanding Convertible Notes will become due and payable without further action or notice. Holders of the Convertible Notes may not enforce the Indenture or the Convertible Notes except as provided in the Indenture. Subject to certain limitations, holders of a majority in principal amount of the then outstanding Convertible Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from holders of the Convertible Notes notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their interest.

The holders of a majority in aggregate principal amount of the Convertible Notes then outstanding by notice to the Trustee may on behalf of the holders of all of the Convertible Notes waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of the Designated Event Payment or interest on, or the principal of, the Convertible Notes.

The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required, upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

TRANSFER AND EXCHANGE

A holder may transfer or exchange Convertible Notes in accordance with the Indenture. The Registrar and the Trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a holder to pay any taxes and fees required by law or permitted by the Indenture. The Company is not required to exchange or register the transfer of (i) any Convertible Note for a period of 15 days next preceding any selection of Convertible Notes to be redeemed, (ii) any Convertible

Note or portion thereof selected for redemption or (iii) any Convertible Note or portion thereof surrendered for repurchase (and not withdrawn) in connection with a Designated Event.

The registered holder of a Convertible Note will be treated as the owner of it for all purposes.

AMENDMENT, SUPPLEMENT AND WAIVER

Except as provided in the next succeeding paragraph, the Indenture or the Convertible Notes may be amended or supplemented with the consent of the holders of at least a majority in principal amount of the then outstanding Convertible Notes (including consents obtained in connection with a tender offer or exchange offer for Convertible Notes), and any existing default or compliance with any provision of the Indenture or the Convertible Notes may be waived with the consent of the holders of a majority in principal amount of the then outstanding Convertible Notes (including consents obtained in connection with a tender offer or exchange offer for Convertible Notes).

Without the consent of each holder affected, an amendment or waiver may not (with respect to any Convertible Notes held by a nonconsenting holder of Convertible Notes) (i) reduce the amount of Convertible Notes whose holders must consent to an amendment, supplement or waiver, (ii) reduce the principal of or change the fixed maturity of any Convertible Note or alter the provisions with respect to the redemption of the Convertible Notes, (iii) reduce the rate of or change the time for payment of interest on any Convertible Note, (iv) waive a default in the payment of principal of or interest on any Convertible Notes (except a rescission of acceleration of the Convertible Notes by the holders of at least a majority in aggregate principal amount of the Convertible Notes and a waiver of the payment default that resulted from such acceleration), (v) make any Convertible Note payable in money other than that stated in the Convertible Notes, (vi) make any change in the provisions of the Indenture relating to waivers of past Defaults or the rights of holders of Convertible Notes to receive payments of principal of or interest on the Convertible Notes, (vii) waive a redemption payment with respect to any Convertible Note, (viii) impair the right to convert the Convertible Notes into Common Stock, (ix) modify the conversion or subordination provisions of the Indenture in a manner adverse to the holders of the Convertible Notes or (x) make any change in the foregoing amendment and waiver provisions.

Without the consent of any holder of Convertible Notes, the Company and the Trustee may amend or supplement the Indenture or the Convertible Notes to cure any ambiguity, defect or inconsistency, to provide for uncertificated Convertible Notes in addition to or in place of certificated Convertible Notes, to provide for the assumption of the Company's obligations to holders of the Convertible Notes in the case of a merger or consolidation, to make any change that would provide any additional rights or benefits to the holders of the Convertible Notes or that does not adversely affect the legal rights under the Indenture of any such holder, or to comply with requirements of the Commission in order to qualify, or maintain the qualification of, the Indenture under the Trust Indenture Act.

CONCERNING THE TRUSTEE

An affiliate of the Trustee is also the transfer agent for the Company's Common Stock.

The holders of a majority in principal amount of the then outstanding Convertible Notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee, subject to certain exceptions. The Indenture provides that, in case an Event of Default shall occur (which shall not be cured), the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent man in the conduct of his own affairs. Subject to such provisions, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any holder of Convertible Notes, unless such holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

CERTAIN DEFINITIONS

Set forth below are certain defined terms used in the Indenture. Reference is made to the Indenture for a full disclosure of all such terms, as well as any other capitalized terms used herein, for which no definition is provided.

"Capital Stock" means any and all shares, interests, participations, rights or other equivalents (however designated) of equity interests in any entity, including, without limitation, corporate stock and partnership interests.

"Default" means any event that is or, with the passage of time or the giving of notice or both, would be an Event of Default.

"Designated Senior Debt" means any Senior Debt which, at the date of determination, has an aggregate principal amount outstanding of, or commitments to lend up to, at least \$10.0 million and is specifically designated by the Company in the instrument evidencing or governing such Senior Debt as "Designated Senior Debt" for purposes of the Indenture.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect from time to time.

"Guarantee" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any indebtedness.

"Indebtedness" means, with respect to any person, all obligations, whether or not contingent, of such person (i)(a) for borrowed money (including, but not limited to, any indebtedness secured by a security interest, mortgage or other lien on the assets of such person which is (1) given to secure all or part of the purchase price of property subject thereto, whether given to the vendor of such property or to another, or (2) existing on property at the time of acquisition thereof), (b) evidenced by a note, debenture, bond or other written instrument, (c) under a lease required to be capitalized on the balance sheet of the lessee under GAAP or under any lease or related document (including a purchase agreement) which provides that such person is contractually obligated to purchase or to cause a third party to purchase such leased property, (d) in respect of letters of credit, bank guarantees or bankers' acceptances, (e) with respect to Indebtedness secured by a mortgage, pledge, lien, encumbrance, charge or adverse claim affecting title or resulting in an encumbrance to which the property or assets of such person are subject, whether or not the obligation secured thereby shall have been assumed or guaranteed by or shall otherwise be such person's legal liability, (f) in respect of the balance of deferred and unpaid purchase price of any property or assets, (g) under interest rate, currency or credit swap agreements, cap, floor and collar agreements, spot and forward contracts and similar agreements and arrangements; (ii) with respect to any obligation of others of the type described in the preceding clause (i) or under clause (iii) below assumed by or guaranteed in any manner by such person or in effect guaranteed by such person through an agreement to purchase (including, without limitation, "take or pay" and similar arrangements), contingent or otherwise (and the obligations of such person under any such assumptions, guarantees or other such arrangements); and (iii) any and all deferrals, renewals, extensions, refinancings and refundings of, or amendments, modifications or supplements to, any of the foregoing.

"Material Subsidiary" means any Subsidiary of the Company which is "significant subsidiary" as defined in Rule 1-02(w) of Regulation S-X under the Securities Act and the Exchange Act (as such Regulation is in effect on the date hereof).

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Representative" means the trustee, agent or representative (if any) for an issue of Senior Debt.

"Senior Debt" means the principal of, premium, if any, interest and liquidated damages, if any, on, and fees, costs and expenses in connection with, and other amounts due on, Indebtedness of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed or guaranteed by the Company, unless, in the instrument creating or evidencing or pursuant to which Indebtedness is outstanding, it is expressly provided that such Indebtedness is not senior in right of payment to the Convertible Notes. Senior Debt includes, with respect to the obligations described above, interest accruing, pursuant to the terms of such Senior Debt, on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not post-filing interest is allowed in such proceeding, at the rate specified in the instrument governing the relevant obligation. Notwithstanding anything to the contrary in the foregoing, Senior Debt shall not include: (a) Indebtedness of or amounts owed by the Company for compensation to employees, or for goods, services or materials purchased in the ordinary course of business; (b) Indebtedness of the Company to a Subsidiary of the Company or (c) any liability for Federal, state, local or other taxes owed or owing by the Company.

"Subsidiary" means any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by any person or one or more of the other Subsidiaries of that person or a combination thereof.

CERTAIN FEDERAL INCOME TAX CONSIDERATIONS

The following is a general discussion of certain United States federal income tax considerations relevant to holders of the Convertible Notes. This discussion is based upon the Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations, Internal Revenue Service ("IRS") rulings and judicial decisions now in effect all of which are subject to change (possibly with retroactive effect) or different interpretations. This discussion does not purport to deal with all aspects of federal income taxation that may be relevant to a particular investor's decision to purchase the Convertible Notes, and it is not intended to be wholly applicable to all categories of investors, some of which, such as dealers in securities, banks, insurance companies, tax-exempt organizations and non-United States persons, may be subject to special rules. In addition, this discussion is limited to persons that purchase the Convertible Notes pursuant to this Prospectus and hold the Convertible Notes as a "capital asset" within the meaning of Section 1221 of the Code.

ALL PROSPECTIVE PURCHASERS OF THE CONVERTIBLE NOTES ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE CONVERTIBLE NOTES AND THE COMMON STOCK.

INTEREST INCOME

A holder of a Convertible Note will generally be required to report as income for federal income tax purposes interest earned on the Convertible Note in accordance with the holder's method of tax accounting. A holder of a Convertible Note using the accrual method of accounting for tax purposes is required to include interest in ordinary income as such interest accrues, while a cash basis holder must include interest in income when payments are received (or made available for receipt).

CONVERSION OF CONVERTIBLE NOTES INTO COMMON STOCK

In general, no gain or loss will be recognized for federal income tax purposes on a conversion of the Convertible Notes into shares of Common Stock. However, cash paid in lieu of a fractional share of Common Stock will likely result in taxable gain (or loss), which will be capital gain or loss, to the extent that the amount of such cash exceeds (or is exceeded by) the portion of the adjusted basis of the Convertible Note allocable to such fractional share. The adjusted basis of shares of Common Stock received on conversion will equal the adjusted basis of the Convertible Note converted, reduced by the portion of adjusted basis allocated to any fractional share of Common Stock exchanged for cash. The holding period of an investor in the Common Stock received on conversion will include the period during which the converted Convertible Notes were held.

The conversion price of the Convertible Notes is subject to adjustment under certain circumstances. See "Description of Convertible Notes -- Conversion." Section 305 of the Code and the Treasury Regulations issued thereunder may treat the holders of the Convertible Notes as having received a constructive distribution, resulting in ordinary income (subject to a possible dividends received deduction in the case of corporate holders) to the extent of the Company's then current and/or accumulated earnings and profits, if and to the extent that certain adjustments in the conversion price that may occur in limited circumstances (particularly an adjustment to reflect a taxable dividend to holders of Common Stock) increase the proportionate interest of a holder of Convertible Notes in the fully diluted Common Stock, whether or not such holder ever exercises its conversion privilege. Moreover, if there is not a full adjustment to the conversion price of the Convertible Notes to reflect a stock dividend or other event increasing the proportionate interest of the holders of outstanding Common Stock in the assets or earnings and profits of the Company, then such increase in the proportionate interest of the holders of the Common Stock generally will be treated as a distribution to such holders, taxable as ordinary income (subject to a possible dividends received deduction in the case of corporate holders) to the extent of the Company's then current and/or accumulated earnings.

MARKET DISCOUNT

Investors acquiring Convertible Notes pursuant to this Prospectus should note that the resale of those Convertible Notes may be adversely affected by the market discount provisions of sections 1276 through 1278 of the Code. Under the market discount rules, if a holder of a Convertible Note purchases it at market discount (i.e., at a price below its stated redemption at maturity) in excess of a statutorily-defined de minimis amount and thereafter recognizes gain upon a disposition or retirement of the Convertible Note, then the lesser of the gain recognized or the portion of the market discount that accrued on a ratable basis (or, if elected, on a constant interest rate basis) generally will be treated as ordinary income at the time of the disposition. Moreover, any market discount on a Convertible Note may be taxable to an investor to the extent of appreciation at the time of certain otherwise non-taxable transactions (e.g., gifts). Any accrued market discount not previously taken into income prior to a conversion of a Convertible Note, however, should carry over to the Common Stock received on conversion and be treated as ordinary income upon a subsequent disposition of such Common Stock to the extent of any gain recognized on such disposition. In addition, absent an election to include market discount in income as it accrues, a holder of a market discount debt instrument may be required to defer a portion of any interest expense that otherwise may be deductible on any indebtedness incurred or maintained to purchase or carry such debt instrument until the holder disposes of the debt instrument in a taxable transaction.

SALE, EXCHANGE OR RETIREMENT OF CONVERTIBLE NOTES

Each holder of Convertible Notes generally will recognize gain or loss upon the sale, exchange, redemption, repurchase, retirement or other disposition of those Convertible Notes measured by the difference (if any) between (i) the amount of cash and the fair market value of any property received (except to the extent that such cash or other property is attributable to the payment of accrued interest not previously included in income, which amount will be taxable as ordinary income) and (ii) the holder's adjusted tax basis in those Convertible Notes (including any market discount previously included in income by the holder). Any such gain or loss recognized on the sale, exchange, redemption, repurchase, retirement or other disposition of a Convertible Note should be capital gain or loss (except as discussed under "-- Market Discount" above), and would be long-term capital gain or loss if the Convertible Note had been held for more than one year at the time of the sale or exchange. An investor's initial basis in a Convertible Note will be the cash price paid therefor. Each holder of Common Stock into which the Convertible Notes are converted, in general, will recognize gain or loss upon the sale, exchange, redemption or other disposition of the Common Stock measured under rules similar to those described above for the Convertible Notes. However, special rules may apply to redemptions of Common Stock which may result in different treatment.

BACK-UP WITHHOLDING

A holder of Convertible Notes or Common Stock may be subject to "back-up withholding" at a rate of 31% with respect to certain "reportable payments," including interest payments, dividend payments and, under certain circumstances, principal payments on the Convertible Notes. These back-up withholding rules apply if the holder, among other things, (i) fails to furnish a social security number or other taxpayer identification number ("TIN") certified under penalties of perjury within a reasonable time after the request therefor, (ii) furnishes an incorrect TIN, (iii) fails to report properly interest or dividends, or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN furnished is the correct number and that the holder is not subject to back-up withholding. A holder who does not provide the Company with its correct TIN also may be subject to penalties imposed by the IRS. Any amount withheld from a payment to a holder under the back-up withholding rules is creditable against the holder's federal income tax liability, provided the required information is furnished to the IRS. Back-up withholding will not apply, however, with respect to payments made to certain holders, including corporations, tax-exempt organizations and certain foreign persons, provided their exemption from back-up withholding is properly established.

The Company will report to the holders of Convertible Notes and Common Stock and to the IRS the amount of any "reportable payments" for each calendar year and the amount of tax withheld, if any, with respect to such payments.

PLAN OF DISTRIBUTION

Pursuant to a Registration Agreement dated as of February 15, 1997 (the "Registration Agreement") between the Company and the initial purchasers named therein entered into in connection with the offering of the Convertible Notes, the Registration Statement of which this Prospectus forms a part was filed with the Commission covering the resale of the Convertible Notes and the Common Stock issuable upon conversion of the Notes (the "Securities"). The Company has agreed to use all reasonable efforts to keep the Registration Statement effective until February 15, 2000 (or such earlier date when the holders of the Securities are able to sell all such Securities immediately without restriction pursuant to Rule 144(k) under the Securities Act or any successor rule thereto or otherwise). The Company will be permitted to suspend the use of this Prospectus (which is a part of the Registration Statement) in connection with sales of Securities by holders during certain periods of time under certain circumstances relating to pending corporate developments and public filings with the Commission and similar events. The specific provisions relating to the registration rights described above are contained in the Registration Rights Agreement, and the foregoing summary is qualified in its entirety by reference to the provisions of such agreement.

Sales of the Convertible Notes and the Conversion Shares may be effected by or for the account of the Selling Securityholders from time to time in transactions (which may include block transactions in the case of the Conversion Shares) on any exchange or market on which such securities are listed or quoted, as applicable, in negotiated transactions, through a combination of such methods of sale, or otherwise, at fixed prices that may be changed, at market prices prevailing at the time of sale, at prices related to prevailing market prices, or at negotiated prices. The Selling Securityholders may effect such transactions by selling the Convertible Notes or Conversion Shares directly to purchasers, through broker-dealers acting as agents for the Selling Securityholders, or to broker-dealers who may purchase Convertible Notes or Conversion Shares as principals and thereafter sell the Convertible Notes or Conversion Shares from time to time in transactions (which may include block transactions in the case of the Conversion Shares) on any exchange or market on which such securities are listed or quoted, as applicable, in negotiated transactions, through a combination of such methods of sale, or otherwise. In effecting sales, broker-dealers engaged by Selling Securityholders may arrange for other broker-dealers engaged by Selling Securityholders to participate. Such broker-dealers, if any, may receive compensation in the form of discounts, concessions or commissions from the Selling Securityholders and/or the purchasers of the Convertible Notes or Conversion Shares for whom such broker-dealers may act as agents or to whom they may sell as principals, or both (which compensation as to a particular broker-dealer might be in excess of customary commissions).

The Selling Securityholders and any broker-dealers, agents or underwriters that participate with the Selling Securityholders in the distribution of the Convertible Notes or Conversion Shares may be deemed to be "underwriters" within the meaning of the Securities Act. Any commissions paid or any discounts or concessions allowed to any such persons, and any profits received on the resale of the Notes or Conversion Shares offered hereby and purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act.

At the time a particular offering of the Convertible Notes and/or the Conversion Shares is made and to the extent required, the aggregate principal amount of Convertible Notes and number of Conversion Shares being offered, the name or names of the Selling Securityholders, and the terms of the offering, including the name or names of any underwriters, broker-dealers or agents, any discounts, concessions or commissions and other terms constituting compensation from the Selling Securityholders, and any discounts, concessions or commissions allowed or reallocated or paid to broker-dealers, will be set forth in an accompanying Prospectus Supplement.

Pursuant to the Registration Agreement, the Company has agreed to pay all expenses incident to the offer and sale of the Convertible Notes and/or the Conversion Shares offered by the Selling Securityholders hereby, except that the Selling Securityholders will pay all underwriting discounts and selling commissions, if any. The Company has agreed to indemnify the Selling Securityholders against certain liabilities, including liabilities under the Securities Act, and to contribute to payments the Selling Securityholders may be required to make in respect thereof.

To comply with the securities laws of certain jurisdictions, if applicable, the Convertible Notes and Conversion Shares offered hereby will be offered or sold in such jurisdictions only through registered or licensed brokers or dealers.

Under applicable rules and regulations under the Exchange Act, any person engaged in a distribution of the Convertible Notes or the Conversion Shares may be limited in its ability to engage in market activities with respect to such Convertible Note or Conversion Shares. In addition and without limiting the foregoing, each Selling Securityholder will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, which provisions may limit the timing of purchase and sales of any of the Convertible Notes and Conversion Shares by the Selling Securityholders. The foregoing may affect the marketability of the Convertible Notes and the Conversion Shares.

LEGAL MATTERS

The validity of the securities offered hereby will be passed upon for the Company by Brobeck, Phleger & Harrison LLP, Palo Alto, California. As of the date of this Prospectus, partners of and other attorneys employed by Brobeck, Phleger, Harrison LLP beneficially owned 13,700 shares of the Common Stock.

EXPERTS

The consolidated financial statements of Intevac, Inc. appearing in Intevac, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 1996, have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon included therein and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given upon the authority of such firm as experts in accounting and auditing.

NO PERSON HAS BEEN AUTHORIZED IN CONNECTION WITH THE OFFERING MADE HEREBY TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATION OTHER THAN AS CONTAINED OR INCORPORATED BY REFERENCE IN THIS PROSPECTUS, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE COMPANY. THIS PROSPECTUS DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, ANY OF THE SECURITIES OFFERED HEREBY BY ANY PERSON IN ANY JURISDICTION IN WHICH OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFERING OR SOLICITATION, NEITHER THE DELIVERY OF THIS PROSPECTUS NOR ANY SALE MADE HEREUNDER SHALL UNDER ANY CIRCUMSTANCES, IMPLY THAT THE INFORMATION CONTAINED IN THIS PROSPECTUS OR ANY DOCUMENT INCORPORATED BY REFERENCE HEREIN IS CORRECT AS OF ANY DATE SUBSEQUENT TO THE DATE HEREOF OR THEREOF.

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\$ 57,500,000

INTEVAC, INC.

6 1/2% Convertible Subordinated
Notes due 2004
And
Shares of Common Stock
Issuable upon Conversion Thereof

PROSPECTUS

, 1997

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth the costs and expenses payable by the Registrant in connection with the sale and distribution of the securities being registered. All amounts are estimated except the SEC registration fee and the Nasdaq Listing Application Fee.

SEC Registration Fee.....	\$17,425
Nasdaq Listing Application Fee.....	17,500
Accounting Fees.....	10,000
Legal Fees and Expenses.....	25,000
Printing and Engraving.....	5,000
Miscellaneous.....	2,075
Total.....	\$77,000

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 317 of the California Corporations Code authorizes a corporation's Board of Directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement of expenses incurred) arising under the Securities Act of 1933, as amended, Article V of the Amended and Restated Articles of Incorporation of the Registrant and Article VI of the Company's Bylaws provide for indemnification of the Company's directors, officers and other agents to the maximum extent permitted by the California Corporations Code. Pursuant to the foregoing, the Company has entered into an Indemnification Agreement with each of its directors, officers and certain controlling persons. The Company also maintains a directors and officers insurance policy. The form of Underwriting Agreement filed as Exhibit 1.1 to Registration Statement No. 33-97806 provides for indemnification by the Underwriters of the Registrant, its directors and executive officers and other persons for certain liabilities arising under the Act.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Exhibits

Set forth below is a list of exhibits that are being filed with this Registration Statement:

Exhibit Number	Exhibit
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4.1	Specimen Common Stock Certificate (Incorporated by reference from Exhibit 4.2 to Registration Statement No. 33-97806).
4.2	Indenture, dated as of February 15, 1997, between the Company and State Street Bank and Trust Company of California, N.A. as Trustee, including the form of Convertible Notes.
4.3	Registration Agreement, dated as of February 15, 1997, among the Company, Salomon Brothers Inc, Robertson, Stephens & Company LLC and Hambrecht & Quist LLC.
5.1	Opinion of Brobeck, Phleger & Harrison LLP, including consent.
12.1	Statement re computation of ratios.
23.1	Consent of Ernst & Young LLP, Independent Auditors.
23.2	Consent of Brobeck, Phleger & Harrison LLP (See Exhibit 5.1).
24	Power of Attorney (See page II-3).
25.1	Statement of Eligibility and Qualification Under the Trust Indenture Act of 1939 of State Street Bank and Trust Company of California, N.A. as Trustee, on Form T-1.

ITEM 17. UNDERTAKINGS

A. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offering therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

B. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the Registrant pursuant to the provisions described on Item 15 above, or otherwise, the Registrant has been advised that in the

opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act, and is therefore, unenforceable. In the event that a claim for indemnification

against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

C. The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(a) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(b) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(c) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Intevac, Inc. certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunder duly authorized, in the City of Santa Clara, State of California, on this 31st day of March, 1997.

INTEVAC, INC.

By: /s/ CHARLES B. EDDY III

Charles B. Eddy III
Vice President, Finance and Administration,
Chief Financial Officer, Treasurer
and Secretary (Principal Financial and
Accounting Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Norman H. Pond and Charles B. Eddy III, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-3, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

Signature -----	Title -----	Date ----
/s/ NORMAN H. POND ----- (Norman H. Pond)	Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer)	March 31, 1997
/s/ CHARLES B. EDDY III ----- (Charles B. Eddy III)	Vice President, Finance and Administration, Chief Financial Officer, Treasurer and Secretary (Principal Financial and Accounting Officer)	March 31, 1997
/s/ EDWARD DURBIN ----- (Edward Durbin)	Director	March 31, 1997
/s/ DAVID N. LAMBETH ----- (David N. Lambeth)	Director	March 31, 1997
/s/ H. JOSEPH SMEAD ----- (H. Joseph Smead)	Director	March 31, 1997
/s/ ROBERT D. HEMPSTEAD ----- (Robert D. Hempstead)	Director	March 31, 1997

EXHIBIT INDEX

EXHIBIT NUMBER -----	DESCRIPTION -----
4.1	Specimen Common Stock Certificate (Incorporated by reference from Exhibit 4.2 to Registration Statement No. 33-97806).
4.2	Indenture, dated as of February 15, 1997, between the Company and State Street Bank and Trust Company of California, N.A. as Trustee, including the form of Convertible Notes.
4.3	Registration Agreement, dated as of February 15, 1997, among the Company, Salomon Brothers Inc, Robertson, Stephens & Company LLC and Hambrecht & Quist LLC.
5.1	Opinion of Brobeck, Phleger & Harrison LLP, including consent.
12.1	Statement re computation of ratios.
23.1	Consent of Ernst & Young LLP, Independent Auditors.
23.2	Consent of Brobeck, Phleger & Harrison LLP (See Exhibit 5.1).
24	Power of Attorney (See page II-3).
25.1	Statement of Eligibility and Qualification Under the Trust Indenture Act of 1939 of State Street Bank and Trust Company of California, N.A. as Trustee, on Form T-1.

EXHIBIT 4.2

INTEVAC, INC.

AND

STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A.

AS TRUSTEE

6 1/2% CONVERTIBLE SUBORDINATED NOTES DUE 2004

INDENTURE

DATED AS OF FEBRUARY 15, 1997

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INDENTURE dated as of February 15, 1997 between Intevac, Inc., a California corporation (the "Company") and State Street Bank and Trust Company of California, N.A., a national banking association organized and existing under the laws of the United States of America, as Trustee (the "Trustee").

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Noteholders of the Company's 6-1/2% Convertible Subordinated Notes due 2004 (the "Securities"):

ARTICLE I

Definitions and Incorporation by Reference

SECTION 1.1. Definitions.

"Affiliate" of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities or by agreement or otherwise.

"Agent" means any Registrar, Paying Agent, Conversion Agent or co-registrar.

"Board of Directors" means the Board of Directors of the Company or any authorized committee of the Board.

"Board Resolution" means a copy of a resolution of the Board of Directors certified by the Secretary or an Assistant Secretary of the Company to be in full force and effect on the date of such certification and delivery to the Trustee.

"Business Day" means any day that is not a Legal Holiday.

"Capital Stock" means any and all shares, interests, participations, rights or other equivalents (however designated) of equity interests in any entity, including, without limitation, corporate stock and partnership interests.

"Change of Control" means any event where: (i) any "person" or "group" (as such terms are used in Section 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of shares representing more than 50% of the combined voting power of the then-outstanding securities entitled to vote generally in elections of directors of the Company ("Voting Stock"), (ii) the Company consolidates with or merges into any

other corporation, or any other corporation merges into the Company, and, in the case of any such transaction, the outstanding Common Stock of the Company is reclassified into or exchanged for any other property or security, unless the shareholders of the Company immediately before such transaction own, directly or indirectly immediately following such transaction, at least a majority of the combined voting power of the outstanding voting securities of the corporation resulting from such transaction in substantially the same proportion as their ownership of the Voting Stock immediately before such transaction, (iii) the Company conveys, transfers or leases all or substantially all of its assets to any person, unless such conveyance, transfer or lease is to a corporation and the shareholders of the Company immediately before such conveyance, transfer or lease own, directly or indirectly immediately following such transaction, at least a majority of the combined voting power of the corporation to which such assets are so conveyed, transferred or leased in the same proportion as their ownership of the Voting Stock immediately before such transaction, or (iv) any time the Continuing Directors do not constitute a majority of the Board of Directors of the Company (or, if applicable, a successor corporation to the Company); provided, that a Change of Control shall not be deemed to have occurred if at least 90% of the consideration (excluding cash payments for fractional shares) in the transaction or transactions constituting the Change of Control consists of shares of common stock that are, or upon issuance will be, traded on a United States national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States.

"Common Stock" means the common stock of the Company as the same exists at the date of the execution of this Indenture or as such stock may be constituted from time to time.

"Company" means the party named as such above until a successor replaces it in accordance with Article VI and thereafter means the successor.

"Continuing Directors" means, as of any date of determination, any member of the Board of Directors of the Company who (i) was a member of such Board of Directors on the date of this Indenture or (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such board at the time of such nomination or election.

"Custodian" means State Street Bank and Trust Company of California, N.A., as custodian with respect to the Global Securities, or any successor entity thereto.

"Daily Market Price" means the price of a share of Common Stock on the relevant date, determined (a) on the basis of the last reported sale price regular way of the Common Stock as reported on the NNM, or if the Common Stock is not then listed on the NNM, as reported on such national securities exchange upon which the Common Stock is listed, or (b) if there is no such reported sale on the day in question, on the basis of the average of the closing bid and asked quotations regular way as so reported, or (c) if the Common Stock is not listed on the NNM or on any national securities exchange, on the basis of the average of the high bid and low asked quotations regular way on the day in question in the over-the-counter market as reported by the National

Association of Securities Dealers Automated Quotation System, or if not so quoted, as reported by National Quotation Bureau, Incorporated, or a similar organization.

"Default" means any event that is, or with the passage of time or the giving of notice or both, would be an Event of Default.

"Depository" means The Depository Trust Company, its nominees and their respective successors.

"Designated Event" means the occurrence of a Change of Control or a Termination of Trading.

"Designated Senior Debt" means any Senior Debt which, at the date of determination, has an aggregate principal amount outstanding of, or commitments to lend up to, at least \$10.0 million and is specifically designated by the Company in the instrument evidencing or governing such Senior Debt as "Designated Senior Debt" for purposes of this Indenture (provided, that such instrument may place limitations and conditions on the right of such Senior Debt to exercise the rights of Designated Senior Debt).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excess Payment" means the excess of (A) the aggregate of the cash and fair market value of other consideration paid by the Company or any of its Subsidiaries with respect to the shares acquired in a tender offer or other negotiated transaction over (B) the Daily Market Price on the Trading Day immediately following the completion of such tender offer or other negotiated transaction multiplied by the number of acquired shares.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States, which are in effect from time to time.

"Guarantee" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness.

"Indebtedness" means, with respect to any person, all obligations, whether or not contingent, of such person (i)(a) for borrowed money (including, but not limited to, any indebtedness secured by a security interest, mortgage or other lien on the assets of such person which is (1) given to secure all or part of the purchase price of property subject thereto, whether given to the vendor of such property or to another, or (2) existing on property at the time of acquisition thereof), (b) evidenced by a note, debenture, bond or other written instrument, (c) under a lease required to be capitalized on

the balance sheet of the lessee under GAAP or under any lease or related document (including a purchase agreement) which provides that such person is contractually obligated to purchase or to cause a third party to purchase such leased property, (d) in respect of letters of credit, bank guarantees or bankers' acceptances, (e) with respect to Indebtedness secured by a mortgage, pledge, lien, encumbrance, charge or adverse claim affecting title or resulting in an encumbrance to which the property or assets of such person are subject, whether or not the obligation secured thereby shall have been assumed or guaranteed by or shall otherwise be such person's legal liability, (f) in respect of the balance of the deferred and unpaid purchase price of any property or assets, and (g) under interest rate, currency or credit swap agreements, cap, floor and collar agreements, spot and forward-contracts and similar agreements and arrangements; (ii) with respect to any obligation of others of the type described in the preceding clause (i) or under clause (iii) below assumed by or guaranteed in any manner by such person or in effect guaranteed by such person through an agreement to purchase (including, without limitation, "take or pay" and similar arrangements), contingent or otherwise (and the obligations of such person under any such assumptions, guarantees or other such arrangements); and (iii) any and all deferrals, renewals, extensions, refinancings and refundings of, or amendments, modifications or supplements to, any of the foregoing.

"Indenture" means this Indenture as amended from time to time.

"Initial Purchasers" means Salomon Brothers Inc, Hambrecht & Quist LLC and Robertson, Stephens & Company LLC.

"Issuance Date" means the date on which the Securities are first authenticated and issued.

"Liquidated Damages" means any liquidated damages payable pursuant to the Registration Agreement.

"Material Subsidiary" means any Subsidiary of the Company which at the date of determination is a "significant subsidiary" as defined in Rule 1-02(w) of Regulation S-X under the Securities Act and the Exchange Act (as such Regulation is in effect on the date hereof).

"Noteholder" or "holder" means a person in whose name a Security is registered.

"NNM" means the Nasdaq Stock Market's National Market.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Offering Memorandum" means the Offering Memorandum relating to the Securities dated February 20, 1997.

"Officers' Certificate" means a certificate signed by two Officers, one of whom must be the Chairman of the Board, the President, the Chief Financial Officer, the Treasurer or a Vice-President of the Company. See Sections 12.04 and 12.05 hereof.

"Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee. See Sections 12.04 and 12.05 hereof.

"person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"principal" of a debt security means the principal of the security plus the premium, if any, on the security.

"Registration Agreement" means the Registration Agreement relating to the Securities dated February 15, 1997, between the Company and the Initial Purchasers.

"Representative" means the trustee, agent or representative (if any) for an issue of Senior Debt.

"Restricted Period" means the period of 40 consecutive days beginning on and excluding the later of (i) the day on which Securities are first offered to persons other than distributors (as defined in Regulation S) in reliance on Regulation S and (ii) the last original issuance date of the Securities.

"SEC" means the Securities and Exchange Commission.

"Securities" means the Securities described in the preamble above that are issued, authenticated and delivered under this Indenture.

"Securities Act" means the Securities Act of 1933, as amended.

"Senior Debt" means the principal of, premium, if any, interest and liquidated damages, if any, on, and fees, costs and expenses in connection with, and other amounts due on Indebtedness of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed or guaranteed by the Company, unless, in the instrument creating or evidencing or pursuant to which Indebtedness is outstanding, it is expressly provided that such Indebtedness is not senior in right of payment to the Securities. Senior Debt includes, with respect to the obligations described above, interest accruing, pursuant to the terms of such Senior Debt, on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not post-filing interest is allowed in such proceeding, at the rate specified in the instrument governing the relevant obligation. Notwithstanding anything to the contrary in the foregoing, Senior Debt shall not include: (a) Indebtedness of or amounts owned by the Company for compensation to employees, or for goods, services or materials purchased in the ordinary course of business; (b) Indebtedness of the Company to a Subsidiary of the Company; or (c) any liability for Federal, state, local or other taxes owed or owing by the Company.

"Shelf Registration Statement" shall have the meaning set forth in the Registration Agreement.

"Subsidiary" means any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by any person or one or more of the other Subsidiaries of that person or a combination thereof.

"Termination of Trading" will be deemed to have occurred if the Common Stock (or other common stock into which the Securities are then convertible) is neither listed for trading on a United States national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States.

"TIA" means the Trust Indenture Act of 1939 (15 U.S. Code Section Section 77aaa-77bbbb) as in effect on the date of execution of this Indenture.

"Trading Day" shall mean (A) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national securities exchange, a day on which the New York Stock Exchange or such other national securities exchange is open for business, (B) if the applicable security is quoted on the NNM, a day on which trades may be made thereon or (C) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York or the State of California are authorized or obligated by law or executive order to close.

"Trustee" means the party named as such above until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor.

"Trust Officer" means any officer or assistant officer of the Trustee assigned by the Trustee to administer this Indenture.

SECTION 1.02. Other Definitions.

	Defined in Term Section -----
"144A Global Security"	2.01
"Agent Members"	2.01
"Bankruptcy Custodian"	8.01
"Bankruptcy Law"	8.01
"Cedel"	2.01
"Commencement Date"	3.08
"Conversion Agent"	2.03
"Conversion Date"	5.02
"Conversion Price"	5.01
"Conversion Shares"	5.06(c)
"Current Market Price"	5.06(f)

"Designated Event Offer"	4.08
"Designated Event Payment"	4.08
"Designated Event Payment Date"	3.08
"Distribution Date"	5.06
"Distribution Record Date"	5.06
"Euroclear"	2.01
"Event of Default"	8.01
"Global Security"	2.01
"Legal Holiday"	12.07
"Non-Global Purchasers"	2.01
"Offer Amount"	3.08
"Officer"	12.10
"Paying Agent"	2.03
"Payment Blockage Notice"	6.02
"Payment Blockage Period"	6.02
"Payment Default"	8.01
"Purchase Agreement"	2.01
"Purchase Date"	5.06
"QIBs"	2.01
"Registrar"	2.03
"Regulation S"	2.01
"Regulation S Global Security"	2.01
"Restricted Securities"	2.01
"Rights"	5.06
"Rule 144A"	2.01
"Tender Period"	3.08

SECTION 1.03. Incorporation by Reference of Trust Indenture Act. Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

"indenture securities" means the Securities;

"indenture security holder" means a Noteholder;

"indenture to be qualified" means this Indenture;

"indenture trustee" or "institutional trustee" means the Trustee; and

"obligor" on the Securities means the Company or any other obligor on the Securities.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA have the meanings so assigned to them.

SECTION 1.04. Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP consistently applied;
- (c) "or" is not exclusive;
- (d) words in the singular include the plural, and words in the plural include the singular; and
- (e) provisions apply to successive events and transactions.

ARTICLE II.

The Securities

SECTION 2.01. Form and Dating. The Securities and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A which is hereby incorporated in and expressly made a part of this Indenture.

The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). The Company shall furnish any such legend not contained in Exhibit A to the Trustee in writing. Each Security shall be dated the date of its authentication. The terms and provisions of the Securities set forth in Exhibit A are part of the terms of this Indenture and to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

(a) Global Securities. The Securities are being offered and sold by the Company pursuant to a Purchase Agreement relating to the Securities, dated February 20, 1997, among the Company and the Initial Purchasers (the "Purchase Agreement").

Securities offered and sold either (i) in reliance on Regulation S under the Securities Act ("Regulation S"), as provided in the Purchase Agreement, shall be issued in the form of one or more permanent global securities in definitive, fully registered form without interest coupons with the Global Securities Legend set forth in Exhibit A

hereto (the "Regulation S Global Security") (provided that during the Restricted Period any sale or transfer of a beneficial interest in the Regulation S Global Security shall be subject to the provisions of the Restricted Securities Legend set forth in Exhibit A hereto as if such legend was set forth on the Regulation S Global Security, and that from and after the end of the Restricted Period any such sale or transfer of a beneficial interest in the Regulation S Global Security shall not be subject to the provisions of the Restricted Securities Legend set forth in Exhibit A hereto) or (ii) to Qualified Institutional Buyers ("QIBs") in reliance on Rule 144A under the Securities Act ("Rule 144A"), as provided in the Purchase Agreement, shall be issued in the form of one or more permanent global Securities in definitive, fully registered form without interest coupons with the Restricted Securities Legend and the Global Securities Legend set forth in Exhibit A hereto (the "144A Global Security") (such 144A Global Security, together with the Regulation S Global Security, a "Global Security"). The Global Securities shall be deposited on behalf of the purchasers of the Securities represented thereby with the Trustee as Custodian for the Depository, and registered in the name of the Depository or a nominee of the Depository (and, in the case of a Regulation S Global Security, for the accounts of designated agents holding on behalf of the Euroclear System ("Euroclear") or Cedel Bank, societe anonyme ("Cedel")), duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee as hereinafter provided in this Article II. The 144A Global Security shall bear the Restricted Securities Legend set forth on Exhibit A unless removed in accordance with the provisions of this Section or Section 2.06(b) hereof.

(b) Book-Entry Provisions. This Section 2.01(b) shall apply only to a Global Security deposited with or on behalf of the Depository.

The Company shall execute and the Trustee shall, in accordance with this Section 2.01(b) and the written order of the Company, authenticate and deliver initially one or more Global Securities that (i) shall be registered in the name of Cede & Co. or other nominee of such Depository and (ii) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instructions or held by the Trustee as Custodian for the Depository pursuant to a FAST Balance Certificate Agreement between the Depository and the Trustee.

Members of, or participants in, the Depository ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository or by the Trustee as the Custodian of the Depository or under such Global Security, and the Depository or its nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices of such Depository governing the exercise of the rights of a holder of a beneficial interest in any Global Security.

(c) Certificated Securities. Except as provided in Section 2.10, owners of beneficial interests in Global Securities will not be entitled to receive physical delivery of certificated Securities. Purchasers of Securities who are not QIBs and did not purchase Securities sold in reliance on Regulation S under the Securities Act (referred to herein as the "Non-Global Purchasers") will

receive certificated Securities bearing the Restricted Securities Legend set forth in Exhibit A hereto ("Restricted Securities"). Restricted Securities will bear the Restricted Securities Legend set forth on Exhibit A unless removed in accordance with Section 2.06(b) hereof. Restricted Securities may be exchanged for a beneficial interest in a Global Security in accordance with the 2.06(a) hereof.

After a transfer of any Securities during the period of the effectiveness of a Shelf Registration Statement with respect to the Securities, all requirements pertaining to legends on such Security will cease to apply, the requirements requiring any such Security issued to certain holders to be issued in global form will cease to apply, and a certificated Security without legends will be available to the holder of such Securities.

SECTION 2.02. Execution and Authentication. Two Officers shall sign the Securities for the Company by manual or facsimile signature. The Company's seal shall be reproduced on the Securities.

If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid.

A Security shall not be valid until authenticated by the manual signature of an authorized officer of the Trustee. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

Upon a written order of the Company signed by two Officers, the Trustee shall authenticate the Securities for original issue up to an aggregate principal amount of \$50,000,000 (or \$57,500,000 if the over-allotment set forth in Section 2 of the Purchase Agreement is exercised in full by the Initial Purchasers). The aggregate principal amount of Securities outstanding at any time shall not exceed such aggregate amount of \$57,500,000 except as provided in Section 2.07.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate.

SECTION 2.03. Registrar, Paying Agent and Conversion Agent. The Company shall maintain in the Borough of Manhattan, City of New York, State of New York (i) an office or agency where Securities may be presented for registration of transfer or for exchange ("Registrar"), (ii) an office or agency where Securities may be presented for payment ("Paying Agent") and (iii) an office or agency where Securities may be presented for conversion ("Conversion Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may appoint the Registrar, the Paying Agent and the Conversion Agent. The Company may appoint one or more co-registrars, one or more additional paying agents and one or more additional conversion agents in such other locations as it shall determine; provided that no such designation shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan,

The City of New York, State of New York, for such purposes. The term "Paying Agent" includes any additional paying agent and the term "Conversion Agent" includes any additional conversion agent. The Company may change any Paying Agent, Registrar, co-registrar or Conversion Agent without prior notice to any Noteholder. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such. The Company or any of its Affiliates may act as Paying Agent, Registrar, co-registrar or Conversion Agent. The Company initially appoints the Trustee as Paying Agent, Registrar, Conversion Agent and Custodian and the Trustee hereby accepts such appointments and each of the corporate trust office of the Trustee in Los Angeles, California and the office or agency of the Trustee in the Borough of Manhattan, The City of New York, State of New York (which shall initially be State Street Bank and Trust Company, N.A., an Affiliate of the Trustee located at 61 Broadway, Concourse Level, Corporate Trust Window, New York, New York 10006), shall be considered as one such office or agency of the Company for the aforesaid purposes.

SECTION 2.04. Paying Agent to Hold Money in Trust. The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Noteholders or the Trustee all money held by the Paying Agent for the payment of principal, interest or Liquidated Damages on the Securities, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any money disbursed by it. Upon payment over to the Trustee, the Paying Agent (if other than the Company or an Affiliate of the Company) shall have no further liability for the money. If the Company or an Affiliate of the Company acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Noteholders all money held by it as Paying Agent.

SECTION 2.05. Noteholder. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Noteholders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee on or before each interest payment date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Noteholders.

SECTION 2.06. Transfer and Exchange. Where Securities are presented to the Registrar or a co-registrar with a request to register a transfer or to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Company shall issue and the Trustee shall authenticate Securities at the Registrar's request. No service charge shall be made for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer tax or similar governmental charge payable upon exchanges pursuant to Sections 2.10, 3.06, 3.08, 5.02 or 11.05 hereof).

The Company shall not be required (i) to register the transfer of or exchange Securities during a period beginning at the opening of business 15 days before the day of any selection of Securities for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, or

(ii) to exchange or register the transfer of any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part or (iii) to register the transfer of or exchange Securities submitted for repurchase (and not withdrawn) under Section 4.08 hereof.

(a) Notwithstanding any provision to the contrary herein, so long as a Global Security remains outstanding and is held by or on behalf of the Depository, transfers of a Global Security, in whole or in part, or of any beneficial interest therein, shall only be made in accordance with Section 2.01(b) and this Section 2.06.

Except for transfers or exchanges made in accordance with any of clauses (i) through (v) of this Section 2.06(a), transfers of a Global Security shall be limited to transfers of such Global Security in whole, but not in part, to nominees of the Depository or to a successor of the Depository or such successor's nominee.

(i) 144A Global Security to Regulation S Global Security. If the owner of a beneficial interest in the 144A Global Security wishes at any time to transfer such interest to a person who wishes to acquire the same in the form of a beneficial interest in the Regulation S Global Security, such transfer may be effected only in accordance with the provisions of this clause (i) and clause (v) below and subject to the Applicable Procedures. Upon receipt by the Trustee, as Registrar, of (A) an order given by the Depository or its authorized representative directing that a beneficial interest in the Regulation S Global Security in a specified principal amount be credited to a specified Agent Member's account and that a beneficial interest in the 144A Global Security in an equal principal amount be debited from another specified Agent Member's account and (B) a Regulation S Certificate in the form attached as Exhibit B hereto, satisfactory to the Trustee and duly executed by the owner of such beneficial interest in the 144A Global Security or his attorney duly authorized in writing, then the Trustee, as Registrar but subject to clause (v) below, shall reduce the principal amount of the 144A Global Security and increase the principal amount of the Regulation S Global Security by such specified principal amount.

(ii) Regulation S Global Security to 144A Global Security. If the owner of a beneficial interest in the Regulation S Global Security wishes at any time to transfer such interest to a person who wishes to acquire the same in the form of a beneficial interest in the 144A Global Security, such transfer may be effected only in accordance with this clause

(ii) and subject to the Applicable Procedures. Upon receipt by the Trustee, as Registrar, of (A) an order given by the Depository or its authorized representative directing that a beneficial interest in the 144A Global Security in a specified principal amount be credited to a specified Agent Member's account and that a beneficial interest in the Regulation S Global Security in an equal principal amount be debited from another specified Agent Member's account and (B) if such transfer is to occur during the Restricted Period, a Rule 144A Securities Certificate in the form attached as Exhibit C hereto, satisfactory to the Trustee and duly executed by the owner of such beneficial interest in the Regulation S Global Security or his attorney duly authorized in writing, then the Trustee, as Registrar, shall reduce the

principal amount of the Regulation S Global Security and increase the principal amount of the 144A Global Security by such specified principal amount.

(iii) Global Security to Restricted Security. If an owner of a beneficial interest in a Global Security deposited with the Depositary or with the Trustee as Custodian for the Depositary wishes at any time to transfer its interest in such Global Security to a person who is required to take delivery thereof in the form of a Restricted Security, such owner may, subject to the rules and procedures of Euroclear or Cedel, if applicable, and the Depositary, cause the exchange of such interest for one or more Restricted Securities of any authorized denomination or denominations and of the same aggregate principal amount at maturity. Upon receipt by the Trustee, as Registrar, of instructions from Euroclear or Cedel, if applicable, and the Depositary directing the Trustee, as Registrar, to authenticate and deliver one or more Restricted Securities of the same aggregate principal amount at maturity as the beneficial interest in the Global Security to be exchanged, such instructions to contain the name or names of the designated transferee or transferees, the authorized denomination or denominations of the Restricted Securities to be so issued and appropriate delivery instructions and, if so requested by the Trustee or the Company, certification by the owner of such beneficial interest stating that the person transferring such interest in such Global Security reasonably believes that the person acquiring the Restricted Securities for which such interest is being exchanged is an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and is acquiring such Restricted Securities having an aggregate principal amount of not less than \$250,000 for its own account or for one or more accounts as to which the transferee exercises sole investment discretion, then the Trustee, or Registrar, as the case may be, will instruct the Depositary to reduce or cause to be reduced such Global Security by the aggregate principal amount at maturity of the beneficial interest therein to be exchanged and to debit or cause to be debited from the account of the person making such transfer the beneficial interest in the Global Security that is being transferred, and concurrently with such reduction and debit the Company shall execute, and the Trustee shall authenticate and deliver, one or more Restricted Securities of the same aggregate principal amount at maturity in accordance with the instructions referred to above. Notwithstanding the foregoing provisions of this Section 2.6(a)(iii), no transfer of a beneficial interest in the Regulation S Global Security shall be made to a Non-Global Purchaser in the form of Restricted Security during the Restricted Period.

(iv) Restricted Security to either a Global Security or Restricted Security. If a holder of a Restricted Security wishes at any time to transfer such Restricted Security to a person who is required to take delivery thereof in the form of beneficial interest in a Global Security or a Restricted Security, such holder may, subject to the restrictions on transfer set forth herein and in such Restricted Security, cause the exchange of such Restricted Security for either a beneficial interest in a Global Security or for one or more Restricted Securities of any authorized denomination or denominations and of the same aggregate principal amount at maturity. Upon receipt by the Trustee, as Registrar, of (1) such Restricted Security, duly endorsed as provided herein, (2) instructions from such holder directing the Trustee, as Registrar, either to (i) credit to a specified Agent Member's account the specified principal amount of the beneficial interest so transferred or (ii) authenticate and deliver one or more Restricted Securities of the same aggregate principal amount at maturity as the Restricted Security to be exchanged (such instructions to contain the name or

names of the designated transferee or transferees and the amount or amounts of the authorized denomination or denominations) and (3) the Assignment Form and Certificate of Transfer with the applicable box checked on the reverse of the Restricted Security by the transferor, then the Trustee, as Registrar, shall cancel or cause to be canceled such Restricted Security and concurrently therewith, the Trustee shall either (x) increase the size of the respective Global Security, and credit the specified Agent Member's account with the specified amount of the beneficial interest so transferred or (y) the Company shall execute, and the Trustee shall authenticate and deliver, one or more Restricted Securities of the same aggregate principal amount at maturity, in accordance with the instructions referred to above.

(v) Other Exchanges. In the event that a Global Security is exchanged for Securities in definitive registered form pursuant to Section 2.10 prior to the effectiveness of a Shelf Registration Statement with respect to such Securities, such Securities may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of clause (iii) above.

The Company shall use its best efforts to cause the Depository to ensure that, until the expiration of the Restricted Period, beneficial interests in the Regulation S Global Security may be held only in or through accounts maintained at the Depository by Euroclear or CEDEL (or by Agent Members acting for the account thereof), and no person shall be entitled to effect any transfer or exchange that would result in any such interest being held otherwise than in or through such an account; provided that this clause

(2)(a)(v) shall not prohibit any transfer or exchange of such an interest in accordance with clause (ii) or (iii) above.

(a) Except in connection with a Shelf Registration Statement contemplated by and in accordance with the terms of the Registration Agreement, if Securities are issued upon the registration of transfer, exchange or replacement of Securities bearing the Restricted Securities Legend set forth in Exhibit A hereto, or if a request is made to remove such Restricted Securities Legend on the Securities, the Securities so issued shall bear the Restricted Securities Legend, or the Restricted Securities Legend shall not be removed, as the case may be, unless there is delivered to the Company such satisfactory evidence, as may be reasonably required by the Company, that neither the legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A, Rule 144 or Regulation S under the Securities Act or, with respect to Restricted Securities, that such Securities are not "restricted" within the meaning of Rule 144 under the Securities Act. Upon provision to the Company of such satisfactory evidence, the Trustee, at the written direction of the Company, shall authenticate and deliver Securities that do not bear the legend.

(b) The Trustee shall have no responsibility for any actions taken or not taken by the Depository.

SECTION 2.07. Replacement Securities. If the holder of a Security claims that the Security has been lost, destroyed or wrongfully taken or if such Security is mutilated and is surrendered to the Trustee, the Company shall issue and the Trustee shall authenticate a replacement

Security if the Trustee's and the Company's requirements are met. If required by the Trustee or the Company, an indemnity bond must be sufficient in the judgment of both to protect the Company, the Trustee, any Agent or any authenticating agent from any loss which any of them may suffer if a Security is replaced. The Company may charge for its expenses in replacing a Security.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be redeemed or purchased by the Company pursuant to Article III hereof or converted into shares of Common Stock pursuant to Article V hereof, the Company in its discretion may, instead of issuing a new Security, pay, redeem, purchase or convert such Security, as the case may be.

Every replacement Security is an additional obligation of the Company.

SECTION 2.08. Outstanding Securities. The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, and those described in this Section as not outstanding.

If a Security is replaced, paid, redeemed, or purchased or converted pursuant to Section 2.07 hereof, it ceases to be outstanding unless, in the case of a replaced Security, the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If Securities are considered paid under Section 4.01 hereof, they cease to be outstanding and interest on them ceases to accrue.

A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

SECTION 2.09. Treasury Securities. In determining whether the Noteholders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or an Affiliate of the Company shall be considered as though they are not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which a Trust Officer knows are so owned shall be so disregarded.

SECTION 2.10. Temporary Securities: Exchange of Global Security for Certificated Securities.

(a) Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities in exchange for temporary Securities.

(b) Other than any transfer of a beneficial interest in a Global Security pursuant to Section 2.06(a)(iii), a Global Security deposited with the Depository or with the Trustee as Custodian for the Depository pursuant to Section 2.01 shall be transferred to the beneficial owners thereof in the form of certificated securities only if such transfer complies with

Section 2.06 and (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for such Global Security or if at any time such Depository ceases to be a "clearing agency" registered under the Exchange Act and a successor Depository is not appointed by the Company within 90 days of such notice, or (ii) an Event of Default has occurred and is continuing.

(c) Any Global Security that is transferable to the beneficial owners thereof in the form of certificated Securities pursuant to this Section 2.10 shall be surrendered by the Depository to the Trustee to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate principal amount at maturity of Securities of authorized denominations in the form of certificated Securities. Any portion of a Global Security transferred pursuant to this Section shall be executed, authenticated and delivered only in denominations of \$1,000 and any integral multiple thereof and registered in such names as the Depository shall direct. Any Securities in the form of certificated Securities delivered in exchange for an interest in the Global Security shall, except as otherwise provided by Section 2.06(b), bear the Restricted Securities Legend set forth in Exhibit A hereto.

(d) Prior to any transfer pursuant to Section 2.10(b), the registered holder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Indenture or the Securities.

(e) In the event of the occurrence of either of the events specified in Section 2.10(b), the Company will promptly make available to the Trustee a reasonable supply of certificated Securities in definitive form without interest coupons.

SECTION 2.11. Cancellation. The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, Paying Agent and Conversion Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, redemption, purchase, conversion, exchange or payment. The Trustee shall promptly cancel all Securities surrendered for registration of transfer, redemption, purchase, conversion, exchange, payment, replacement or cancellation and shall destroy all canceled Securities unless the Company otherwise directs. The Company may not issue new Securities to replace Securities that it has paid or that have been delivered to the Trustee for cancellation or that any holder has converted.

SECTION 2.12. Defaulted Interest or Liquidated Damages. If the Company fails to make a payment of interest or Liquidated Damages on the Securities, it shall pay such defaulted interest or Liquidated Damages plus any interest payable on the defaulted interest or Liquidated Damages, in any lawful manner. It may pay such defaulted interest or Liquidated Damages, plus any such interest payable on them, to the persons who are Noteholders on a subsequent special record

date. The Company shall fix any such record date and payment date. At least 15 days before any such record date, the Company shall mail to Noteholders a notice that states the record date, payment date, and amount of such interest or Liquidated Damages to be paid.

ARTICLE III

Redemption

SECTION 3.01. Notices to Trustee. If the Company elects to redeem Securities pursuant to Section 3.07 hereof, it shall notify the Trustee of the redemption date and the principal amount of Securities to be redeemed. The Company shall give each notice provided for in this Section 3.01 at least 20 days before the redemption date (unless a shorter notice period shall be satisfactory to the Trustee).

SECTION 3.02. Selection of Securities to be Redeemed. If less than all the Securities are to be redeemed, the Trustee shall select the Securities to be redeemed by a method that complies with the requirements of the principal national securities exchange, if any, on which the Securities are listed, or, if the Securities are not so listed, on a pro rata basis. The Trustee shall make the selection not more than 60 days and not less than 15 days before the redemption date from Securities outstanding not previously called for redemption. The Trustee may select for redemption portions of the principal of Securities that have denominations larger than \$1,000. Securities and portions of them it selects shall be in amounts of \$1,000 or integral multiples of \$1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be called for redemption.

If any Security selected for partial redemption is converted in part after such selection, the converted portion of such Security shall be deemed (so far as may be) to be the portion to be selected for redemption. The Securities (or portions thereof) so selected shall be deemed duly selected for redemption for all purposes hereof, notwithstanding that any such Security is converted in whole or in part before the mailing of the notice of redemption. Upon any redemption of less than all the Securities, the Company and the Trustee may treat as outstanding any Securities surrendered for conversion during the period 15 days next preceding the mailing of a notice of redemption and need not treat as outstanding any Security authenticated and delivered during such period in exchange for the unconverted portion of any Security converted in part during such period.

SECTION 3.03. Notice of Redemption. At least 15 days but not more than 60 days before a redemption date, the Company shall mail a notice of redemption to each holder whose Securities are to be redeemed at such holder's registered address.

The notice shall identify the Securities to be redeemed and shall state:

- (a) the redemption date;

(b) the redemption price;

(c) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the redemption date, upon cancellation of such Security, a new Security or Securities in principal amount equal to the unredeemed portion will be issued in the name of the holder thereof;

(d) the name and address of the Paying Agent;

(e) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price plus accrued interest and Liquidated Damages, if any;

(f) that, unless the Company defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, by law or otherwise, interest and Liquidated Damages, if any, on Securities called for redemption ceases to accrue on and after the redemption date; and

(g) the paragraph of the Securities pursuant to which the Securities called for redemption are being redeemed.

Such notice shall also state the current Conversion Price and the date on which the right to convert such Securities or portions thereof into Common Stock of the Company will expire.

At the Company's request, the Trustee shall give notice of redemption in the Company's name and at its expense.

SECTION 3.04. Effect of Notice of Redemption. Once notice of redemption is mailed, Securities called for redemption become due and payable on the redemption date at the price set forth in the Security.

SECTION 3.05. Deposit of Redemption Price. On or before the redemption date, the Company shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued interest and Liquidated Damages, if any, up to but not including the redemption date on all Securities to be redeemed on that date (subject to the right of holders of record on the relevant record date to receive interest and Liquidated Damages, if any, due on an interest payment date) unless theretofore converted into Common Stock pursuant to the provisions hereof. The Trustee or the Paying Agent shall return to the Company any money not required for that purpose.

SECTION 3.06. Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall issue and the Trustee shall authenticate for the holder at the expense of the Company a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

SECTION 3.07. Optional Redemption. The Company may redeem all or any portion of the Securities, upon the terms and at the redemption prices set forth in each of the Securities. Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Section 3.01 through 3.06 hereof.

SECTION 3.08. Designated Event Offer.

(a) In the event that, pursuant to Section 4.08 hereof, the Company shall commence a Designated Event Offer, the Company shall follow the procedures in this Section 3.08.

(b) The Designated Event Offer shall remain open for a period specified by the Company which shall be no less than 30 calendar days and no more than 40 calendar days following its commencement on the date of the mailing of notice in accordance with Section 4.08(b) hereof (the "Commencement Date"), except to the extent that a longer period is required by applicable law (the "Tender Period"). Upon the expiration of the Tender Period (the "Designated Event Payment Date"), the Company shall purchase the principal amount of Securities required to be purchased pursuant to Section 4.08 hereof (the "Offer Amount").

(c) If the Designated Event Payment Date is on or after an interest payment record date and on or before the related interest payment date, any accrued interest and Liquidated Damages, if any, to the related interest payment date will be paid to the person in whose name a Security is registered at the close of business on such record date, and no additional interest or Liquidated Damages, if any, will be payable to Noteholders who tender Securities pursuant to the Designated Event Offer.

(d) The Company shall provide the Trustee with written notice of the Designated Event Offer at least 10 Business Days before the Commencement Date.

(e) On or before the Commencement Date, the Company or the Trustee (at the request and expense of the Company) shall send, by first class mail, a notice to each of the Noteholders, which shall govern the terms of the Designated Event Offer and shall state:

(i) that the Designated Event Offer is being made pursuant to this Section 3.08 and Section 4.08 hereof and that all Securities tendered will be accepted for payment;

(ii) the purchase price (as determined in accordance with Section 4.08 hereof), the length of time the Designated Event Offer will remain open and the Designated Event Payment Date;

(iii) that any Security or portion thereof not tendered or accepted for payment will continue to accrue interest and, if applicable, Liquidated Damages;

(iv) that, unless the Company defaults in the payment of the Designated Event Payment, any Security or portion thereof accepted for payment pursuant to the Designated

Event Offer shall cease to accrue interest or Liquidated Damages, if any, after the Designated Event Payment Date;

(v) that Noteholders electing to have a Security or portion thereof purchased pursuant to any Designated Event Offer will be required to surrender the Security, with the form entitled "Option of Noteholder To Elect Purchase" on the reverse of the Security completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Designated Event Payment Date;

(vi) that Noteholders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Designated Event Payment Date, or such longer period as may be required by law, a letter or a telegram, telex, facsimile transmission (receipt of which is confirmed and promptly followed by a letter) setting forth the name of the Noteholder, the principal amount of the Security or portion thereof the Noteholder delivered for purchase and a statement that such Noteholder is withdrawing his election to have the Security or portion thereof purchased; and

(vii) that Noteholders whose Securities are being purchased only in part will be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered, which unpurchased portion must be equal to \$1,000 in principal amount or an integral multiple thereof.

In addition, the notice shall contain all instructions and materials that the Company shall reasonably deem necessary to enable such Noteholders to tender Securities pursuant to the Designated Event Offer.

(f) On or prior to the Designated Event Payment Date, the Company shall irrevocably deposit with the Trustee or a Paying Agent in immediately available funds an amount equal to the Offer Amount to be held for payment in accordance with the terms of this Section 3.08. On the Designated Event Payment Date, the Company shall, to the extent lawful, (i) accept for payment the Securities or portions thereof tendered pursuant to the Designated Event Offer, (ii) deliver or cause to be delivered to the Trustee Securities so accepted and (iii) deliver to the Trustee an Officers' Certificate stating such Securities or portions thereof have been accepted for payment by the Company in accordance with the terms of this Section 3.08. The Paying Agent shall promptly (but in any case not later than five calendar days after the Designated Event Payment Date) mail or deliver to each tendering Noteholder an amount equal to the purchase price of the Securities tendered by such Noteholder, and the Trustee shall promptly authenticate and mail or deliver to such Noteholders a new Security equal in principal amount to any unpurchased portion of the Security surrendered, if any; provided, that each new Security shall be in a principal amount of \$1,000 or an integral multiple thereof. Any Securities not so accepted shall be promptly mailed or delivered by or on behalf of the Company to the holder thereof. The Company will publicly announce the results of the Designated Event Offer on, or as soon as practicable after, the Designated Event Payment Date.

(g) The Designated Event Offer shall be made by the Company in compliance with all applicable provisions of the Exchange Act, and all applicable tender offer rules promulgated thereunder, and shall include all instructions and materials that the Company shall reasonably deem necessary to enable such Noteholders to tender their Securities.

SECTION 3.09. Conversion Arrangement on Underwritten Call for Redemption. In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities by an arrangement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Trustee in trust for the holders, on or before the date fixed for redemption, an amount not less than the applicable redemption price, together with interest accrued to (but excluding) the date fixed for redemption, of such Securities. Notwithstanding anything to the contrary contained in this Article 3, the obligation of the Company to pay the redemption price of such Securities, together with interest accrued to (but excluding) the date fixed for redemption, shall be deemed to be satisfied and discharged to the extent such amount is so paid by the purchasers. If such an agreement is entered into, a copy of which will be filed with the Trustee prior to the date fixed for redemption, any Securities not duly surrendered for conversion by the holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such holders and (notwithstanding anything to the contrary contained in Article 5) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the date fixed for redemption (and the right to convert any such Securities shall be deemed to have been extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it in the same manner as it would monies deposited with it by the Company for the redemption of Securities. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities between the Company and such purchasers to which the Trustee has not consented in writing, including the costs and expenses incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

ARTICLE IV

Covenants

SECTION 4.01. Payment of Securities. The Company shall pay the principal of, premium, if any, and interest and Liquidated Damages, if any, on the Securities on the dates and in the manner provided in the Securities. Principal, premium, if any, interest and Liquidated Damages, if any, shall be considered paid on the date due if the Paying Agent (other than the Company or an Affiliate of the Company) holds on that date money designated for and sufficient to pay all principal, premium, if any, interest and Liquidated Damages, if any, then due and such Paying Agent is not

prohibited from paying such money to the Noteholders on that date pursuant to the terms of this Indenture. To the extent lawful, the Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Liquidated Damages (without regard to any applicable grace period) at the rate borne by the Securities, compounded semiannually. The Company shall also pay all Liquidated Damages, if any, in the manner, on the dates and in the amounts set forth in the Registration Agreement.

SECTION 4.02. SEC Reports. Whether or not required by the rules and regulations of the SEC, so long as any Securities are outstanding, the Company will file with the SEC and the Trustee, and if requested by any holders of Securities, the Trustee shall furnish to the holders of Securities all quarterly and annual financial information required to be contained in a filing with the SEC on Forms 10-Q and 10-K, including a "Management's Discussion and Analysis of Financial Conditions and Results of Operations" and, with respect to annual information only, a report thereon by the Company's certified independent accountants.

SECTION 4.03. Compliance Certificate. The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officers' Certificate stating that a review of the activities of the Company and its subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under, and complied with the covenants and conditions contained in, this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of such Officer's knowledge the Company has kept, observed, performed and fulfilled each and every covenant, and complied with the covenants and conditions contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions hereof (or if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which such Officer may have knowledge) and that to the best of such Officer's knowledge no event has occurred and remains in existence by reason of which payments on account of the principal or of interest or Liquidated Damages, if any, on the Securities are prohibited.

One of the Officers signing such Officers' Certificate shall be either the Company's principal executive officer, principal financial officer or principal accounting officer.

The Company will, so long as any of the Securities are outstanding, deliver to the Trustee, forthwith upon becoming aware of:

- (a) any Default, Event of Default or default in the performance of any covenant, agreement or condition contained in this Indenture; or
- (b) any event of default under any other mortgage, indenture or instrument as that term is used in Section 8.01(f), an Officers' Certificate specifying such Default, Event of Default or default.

Immediately upon the occurrence of any event giving rise to Liquidated Damages in respect of any of the Securities in accordance with Section 11 of the form thereof or the termination of any such

Liquidated Damages, the Company shall give the Trustee notice of such Liquidated Damages or termination thereof, of the interest rate borne by the Securities after giving effect to such Liquidated Damages or termination thereof and of the event giving rise to such Liquidated Damages or termination thereof (such notice to be contained in an Officers' Certificate), and prior to receipt of such Officers' Certificate the Trustee shall be entitled to assume that no such Liquidated Damages or termination thereof has occurred, as the case may be.

SECTION 4.04. Stay, Extension and Usury Law. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 4.05. Corporate Existence. Except as provided in Article VII hereof, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate, partnership or other existence of each Subsidiary of the Company in accordance with the respective organizational documents of each Subsidiary and the rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries; provided, however, that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any Subsidiary, if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries taken as a whole and that the loss thereof is not adverse in any material respect to the Noteholders.

SECTION 4.06. Maintenance of Properties. The Company will cause all properties used or useful in the conduct of its business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent the Company from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any Subsidiary and not disadvantageous in any material respect to the holders.

SECTION 4.07. Payment of Taxes and Other Claims. The Company will pay or discharge, or cause to be paid or discharged, before the same may become delinquent, (i) all taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, (ii) all claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon the property of the Company or any Subsidiary, and (iii) all stamps and other duties, if any, which may be imposed by

the United States or any political subdivision thereof or therein in connection with the issuance, transfer, exchange or conversion of any Securities or with respect to this Indenture; provided, however, that, in the case of clauses (i) and (ii), the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (A) if the failure to do so will not, in the aggregate, have a material adverse impact on the Company, or (B) if the amount, applicability or validity is being contested in good faith by appropriate proceedings.

SECTION 4.08. Designated Event. (a) Upon the occurrence of a Designated Event, each holder of Securities shall have the right, in accordance with this Section 4.08 and Section 3.08 hereof, to require the Company to repurchase all or any part (equal to \$1,000 or an integral multiple thereof) of such holder's Securities pursuant to the terms of Section 3.08 (the "Designated Event Offer") at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest and Liquidated Damages thereon to the Designated Event Payment Date (the "Designated Event Payment").

(b) Within 30 days following any Designated Event, the Company shall mail to each holder the notice provided by Section 3.08(e).

SECTION 4.09. Delivery of Certain Information. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a holder of a Security that is a "restricted security" under Rule 144 or the holder of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such holder of Securities that are "restricted securities" under Rule 144 or such holder of shares of Common Stock issued upon conversion thereof, or to a prospective purchaser of any such security designated by any such holder, to the extent required to permit compliance by such holder with Rule 144A under the Securities Act (or any successor provision thereto) in connection with the resale of any such security; provided, however, that the Company shall not be required to furnish such information in connection with any request made on or after the date which is three years (or such shorter period under Rule 144(k) under the Securities Act or any successor rule) from the later of (i) the date such a security (or any such predecessor security) was last acquired from the Company or (ii) the date such a security (or any such predecessor security) was last acquired from an "affiliate" of the Company within the meaning of Rule 144 under the Securities Act (or any successor provision thereto). "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

SECTION 4.10. Resale of Certain Securities. During the period beginning on the last date of original issuance of the Securities and ending on the date that is three years from such date (or such shorter period under Rule 144(k) under the Securities Act or any successor rule), the Company will not, and will use reasonable efforts not to permit any of its subsidiaries or other "affiliates" (as defined under Rule 144 under the Securities Act or any successor provision thereto) controlled by the Company to, resell (i) any Securities which constitute "restricted securities" under Rule 144 or (ii) any securities into which the Securities have been converted under this Indenture which constitute "restricted securities" under Rule 144, that in either case have been reacquired by any of them. The

Trustee shall have no responsibility in respect of the Company's performance of its agreement in the preceding sentence.

SECTION 4.11. Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE V

Conversion

SECTION 5.01. Conversion Privilege. A holder of a Security may convert the principal amount thereof (or any portion thereof that is an integral multiple of \$1,000) into fully paid and nonassessable shares of Common Stock of the Company at any time after 90 days following the Issuance Date and prior to the close of business (New York time) on the maturity date of the Security at the Conversion Price then in effect, except that, with respect to any Security called for redemption, such conversion right shall terminate at the close of business (New York time) on the Business Day immediately preceding the redemption date (unless the Company shall default in making the redemption payment when it becomes due, in which case the conversion price shall terminate on the date such default is cured). A Security in respect of which a holder has delivered an "Option of Noteholder to Elect Purchase" form set forth on Exhibit A hereto exercising the option of such holder to require the Company to purchase such Security may be converted only if the notice of exercise is withdrawn as provided in accordance with Section 3.08 hereof. The number of shares of Common Stock issuable upon conversion of a Security is determined by dividing the principal amount of the Security converted by the conversion price in effect on the Conversion Date (the "Conversion Price").

The initial Conversion Price is stated in paragraph 10 of the Securities and is subject to adjustment as provided in this Article V.

Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of it. A holder of Securities is not entitled to any rights of a holder of Common Stock until such holder of Securities has converted such Securities into Common Stock, and only to the extent that such Securities are deemed to have been converted into Common Stock under this Article 5.

SECTION 5.02. Conversion Procedure. To convert a Security, a holder must satisfy the requirements in paragraph 10 of the Securities. The date on which the holder satisfies all of those requirements is the conversion date (the "Conversion Date"). As soon as practicable after the Conversion Date, the Company shall deliver to the holder through the Conversion Agent a certificate for the number of whole shares of Common Stock issuable upon the conversion and a check for any fractional share determined pursuant to Section 5.03. If the Security submitted for conversion bears or is subject to the provisions of the Restricted Security Legend, the Common Stock issuable upon conversion thereof shall bear the legend set forth on Exhibit D hereto, unless and to the extent the

restrictions contained in such legend no longer apply to such Common Stock. The person in whose name the certificate is registered shall become the shareholder of record on the Conversion Date and, as of such date, such person's rights as a Noteholder with respect to the converted Security shall cease; provided, however, that no surrender of a Security on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the person entitled to receive the shares of Common Stock upon such conversion as the shareholder of record of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person entitled to receive such shares of Common Stock as the shareholder of record thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; provided further, however, that such conversion shall be at the Conversion Price in effect on the date that such Security shall have been surrendered for conversion, as if the stock transfer books of the Company had not been closed.

No payment or adjustment will be made for accrued and unpaid interest on a converted Security or for dividends or distributions on shares of Common Stock issued upon conversion of a Security, but if any holder surrenders a Security for conversion after the close of business on the record date for the payment of an installment of interest and prior to the opening of business on the next interest payment date, then, notwithstanding such conversion, the interest payable on such interest payment date shall be paid to the holder of such Security on such record date. In such event, unless such Security has been called for redemption on or prior to such interest payment date, such Security, when surrendered for conversion, must be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such interest payment date on the portion so converted.

If a holder converts more than one Security at the same time, the number of whole shares of Common Stock issuable upon the conversion shall be based on the total principal amount of Securities converted.

Upon surrender of a Security that is converted in part, the Trustee shall authenticate for the holder a new Security equal in principal amount to the unconverted portion of the Security surrendered.

SECTION 5.03. Fractional Shares. The Company will not issue fractional shares of Common Stock upon conversion of a Security. In lieu thereof, the Company will pay an amount in cash based upon the Daily Market Price of the Common Stock on the Trading Day prior to the date of conversion.

SECTION 5.04. Taxes on Conversion. The issuance of certificates for shares of Common Stock upon the conversion of any Security shall be made without charge to the converting Noteholder for such certificates or for any tax in respect of the issuance of such certificates, and such certificates shall be issued in the respective names of, or in such names as may be directed by, the holder or holders of the converted Security; provided, however, that in the event that certificates for shares of Common Stock are to be issued in a name other than the name of the holder of the Security converted, such Security, when surrendered for conversion, shall be accompanied by an instrument of

transfer, in form satisfactory to the Company, duly executed by the registered holder thereof or his duly authorized attorney; and provided further, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificates in a name other than that of the holder of the converted Security, and the Company shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid or is not applicable.

SECTION 5.05. Company to Provide Stock. The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, solely for the purpose of issuance upon conversion of Securities as herein provided, a sufficient number of shares of Common Stock to permit the conversion of all outstanding Securities for shares of Common Stock.

All shares of Common Stock which may be issued upon conversion of the Securities shall be duly authorized, validly issued, fully paid and nonassessable when so issued.

SECTION 5.06. Adjustment of Conversion Price. The Conversion Price shall be subject to adjustment from time to time as follows:

(a) In case the Company shall (1) pay a dividend in shares of Common Stock to holders of Common Stock, (2) make a distribution in shares of Common Stock to holders of Common Stock, (3) subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock or (4) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, the Conversion Price in effect immediately prior to such action shall be adjusted so that the holder of any Security thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which he would have owned immediately following such action had such Securities been converted immediately prior thereto. Any adjustment made pursuant to this subsection (a) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination.

(b) In case the Company shall issue rights or warrants to substantially all holders of Common Stock entitling them (for a period commencing no earlier than the record date for the determination of holders of Common Stock entitled to receive such rights or warrants and expiring not more than 45 days after such record date) to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share less than the Current Market Price (as determined pursuant to subsection (f) below) of the Common Stock on such record date, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to such record date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding on such record date, plus the number of shares of Common Stock which the aggregate offering price of the offered shares of Common Stock (or the aggregate conversion price of the convertible securities so offered) would purchase at such

Current Market Price, and of which the denominator shall be the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock offered (or into which the convertible securities so offered are convertible). Such adjustments shall become effective immediately after such record date.

(c) In case the Company shall distribute to all holders of Common Stock shares of any class of Capital Stock of the Company other than Common Stock, evidences of indebtedness or other assets (other than cash dividends out of current or retained earnings), or shall distribute to substantially all holders of Common Stock rights or warrants to subscribe for securities (other than those Securities referred to in subsection (b) above), then in each such case the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the date of such distribution by a fraction of which the numerator shall be the Current Market Price (determined as provided in subsection (f) below) of the Common Stock on the record date mentioned below less the then fair market value (as determined by the Board of Directors, whose determination shall be conclusive evidence of such fair market value and described in a Board Resolution) of the portion of the assets so distributed or of such subscription rights or warrants applicable to one share of Common Stock, and of which the denominator shall be such Current Market Price of the Common Stock. Such adjustment shall become effective immediately after the record date for the determination of the holders of Common Stock entitled to receive such distribution. Notwithstanding the foregoing, in case the Company shall issue rights or warrants to subscribe for additional shares of the Company's capital stock (other than those referred to in subsection (b) above) ("Rights") to substantially all holders of Common Stock, the Company may, in lieu of making any adjustment pursuant to this Section 5.06, make proper provision so that each holder of a Security who converts such Security (or any portion thereof) after the record date for such distribution and prior to the expiration or redemption of the Rights shall be entitled to receive upon such conversion, in addition to the shares of Common Stock issuable upon such conversion (the "Conversion Shares"), a number of Rights to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to the holders of Rights of separate certificates evidencing such Rights (the "Distribution Date"), the same number of Rights to which a holder of a number of shares of Common Stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of and applicable to the Rights; and (ii) if such conversion occurs after the Distribution Date, the same number of Rights to which a holder of the number of shares of Common Stock into which the principal amount of the Security so converted was convertible immediately prior to the Distribution Date would have been entitled on the Distribution Date in accordance with the terms and provisions of and applicable to the Rights. In the event the Company implements a shareholder rights plan, such rights plan must provide that upon conversion of the Securities the holders will receive, in addition to the Common Stock issuable upon such conversion, such rights (whether or not such rights have separated from the Common Stock at the time of such conversion).

(d) In case the Company shall, by dividend or otherwise, at any time distribute to all holders of its Common Stock cash (including any distributions of cash out of current or retained earnings of the Company but excluding any cash that is distributed as part of a distribution requiring a Conversion Price adjustment pursuant to paragraph (c) of this Section) in an aggregate amount that,

together with the sum of (x) the aggregate amount of any other distributions to all holders of its Common Stock made in cash plus (y) all Excess Payments, in each case made within the 12 months preceding the date fixed for determining the shareholders entitled to such distribution (the "Distribution Record Date") and in respect of which no Conversion Price adjustment pursuant to paragraphs (c) or (e) of this Section or this paragraph (d) has been made, exceeds 15% of the product of the Current Market Price per share (determined as provided in paragraph (f) of this Section) of the Common Stock on the Distribution Record Date multiplied by the number of shares of Common Stock outstanding on the Distribution Record Date (excluding shares held in the treasury of the Company), the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying such Conversion Price in effect immediately prior to the effectiveness of the Conversion Price reduction contemplated by this paragraph (d) by a fraction of which the numerator shall be the Current Market Price per share (determined as provided in paragraph (f) of this Section) of the Common Stock on the Distribution Record Date less the amount of such cash and other consideration (including any Excess Payments) so distributed applicable to one share of Common Stock (equal to the aggregate amount of such cash and other consideration (including any Excess Payments) divided by the number of shares of Common Stock outstanding on the Distribution Record Date) and the denominator shall be such Current Market Price per share (determined as provided in paragraph (f) of this Section) of the Common Stock on the Distribution Record Date, such reduction to become effective immediately prior to the opening of business on the day following the Distribution Record Date.

(e) In case a tender offer or other negotiated transaction made by the Company or any Subsidiary of the Company for all or any portion of the Common Stock shall be consummated, if an Excess Payment is made in respect of such tender offer or other negotiated transaction and the amount of such Excess Payment, together with the sum of (x) the aggregate amount of all Excess Payments plus (y) the aggregate amount of all distributions to all holders of the Common Stock made in cash (including any distributions of cash out of current or retained earnings of the Company), in each case made within the 12 months preceding the date of payment of such current negotiated transaction consideration or expiration of such current tender offer, as the case may be (the "Purchase Date"), and as to which no adjustment pursuant to paragraph (c) or paragraph (d) of this Section or this paragraph (e) has been made, exceeds 15% of the product of the Current Market Price per share (determined as provided in paragraph (f) of this Section) of the Common Stock on the Purchase Date multiplied by the number of shares of Common Stock outstanding (including any tendered shares but excluding any shares held in the treasury of the Company or any Subsidiary of the Company) on the Purchase Date, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying such Conversion Price in effect immediately prior to the effectiveness of the Conversion Price reduction contemplated by this paragraph (e) by a fraction of which the numerator shall be the Current Market Price per share (determined as provided in paragraph (f) of this Section) of the Common Stock on the Purchase Date less the amount of such Excess Payments and such cash distributions, if any, applicable to one share of Common Stock (equal to the aggregate amount of such Excess Payments and such cash distributions divided by the number of shares of Common Stock outstanding on the Purchase Date) and the denominator shall be such Current Market Price per share (determined as provided in paragraph (f) of this Section) of the Common Stock on the

Purchase Date, such reduction to become effective immediately prior to the opening of business on the day following the Purchase Date.

(f) The "Current Market Price" per share of Common Stock on any date shall be deemed to be the average of the Daily Market Prices for the shorter of (i) 30 consecutive Business Days ending on the last full Trading Day on the exchange or market referred to in determining such Daily Market Prices prior to the time of determination or (ii) the period commencing on the date next succeeding the first public announcement of the issuance of such rights or such warrants or such other distribution or such negotiated transaction through such last full Trading Day on the exchange or market referred to in determining such Daily Market Prices prior to the time of determination.

(g) In any case in which this Section 5.06 shall require that an adjustment be made immediately following a record date for an event, the Company may elect to defer, until such event, issuing to the holder of any Security converted after such record date the shares of Common Stock and other Capital Stock of the Company issuable upon such conversion over and above the shares of Common Stock and other Capital Stock of the Company issuable upon such conversion only on the basis of the Conversion Price prior to adjustment; and, in lieu of the shares the issuance of which is so deferred, the Company shall issue or cause its transfer agents to issue due bills or other appropriate evidence of the right to receive such shares.

SECTION 5.07. No Adjustment. No adjustment in the Conversion Price shall be required until cumulative adjustments amount to 1% or more of the Conversion Price as last adjusted; provided, however, that any adjustments which by reason of this Section 5.07 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article V shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be. No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest. No adjustment need be made for a change in the par value or no par value of the Common Stock.

SECTION 5.08. Other Adjustments. (a) In the event that, as a result of an adjustment made pursuant to Section 5.06 above, the holder of any Security thereafter surrendered for conversion shall become entitled to receive any shares of Capital Stock of the Company other than shares of its Common Stock, thereafter the Conversion Price of such other shares so receivable upon conversion of any Securities shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this Article V.

(b) In the event that shares of Common Stock are not delivered after the expiration of any of the rights or warrants referred to in Section 5.06(b) and Section 5.06(c) hereof, the Conversion Price shall be readjusted to the Conversion Price which would otherwise be in effect had the adjustment made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered.

SECTION 5.09. Adjustments for Tax Purposes. The Company may, at its option, make such reductions in the Conversion Price, in addition to those required by Section 5.06 above, as it determines to be advisable in order that any stock dividend, subdivision of shares, distribution of rights to purchase stock or securities or distribution of securities convertible into or exchangeable for stock made by the Company to its shareholders will not be taxable to the recipients thereof

SECTION 5.010. Adjustments by the Company. The Company from time to time may, to the extent permitted by law, reduce the Conversion Price by any amount for any period of at least 20 days, in which case the Company shall give at least 15 days' notice of such reduction in accordance with Section 5.11, if the Board of Directors has made a determination that such reduction would be in the best interests of the Company, which determination shall be conclusive.

SECTION 5.011. Notice of Adjustment. Whenever the Conversion Price is adjusted, the Company shall promptly mail to Noteholders at the addresses appearing on the Registrar's books a notice of the adjustment and file with the Trustee an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence of the correctness of such adjustment.

SECTION 5.012. Notice of Certain Transactions. In the event that:

- (1) the Company takes any action which would require an adjustment in the Conversion Price;
- (2) the Company takes any action that would require a supplemental indenture pursuant to Section 5.13; or
- (3) there is a dissolution or liquidation of the Company;

a holder of a Security may wish to convert such Security into shares of Common Stock prior to the record date for or the effective date of the transaction so that he may receive the rights, warrants, securities or assets which a holder of shares of Common Stock on that date may receive. Therefore, the Company shall mail to Noteholders at the addresses appearing on the Registrar's books and the Trustee a notice stating the proposed record or effective date, as the case may be. The Company shall mail the notice at least 15 days before such date; however, failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in clause (1), (2) or (3) of this Section 5.12.

SECTION 5.013. Effect of Reclassifications, Consolidations, Mergers or Sales on Conversion Privilege. If any of the following shall occur, namely:

- (i) any reclassification or change of outstanding shares of Common Stock issuable upon conversion of Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation or merger to which the Company is a party other than a merger in which the Company is the continuing corporation and which does not result in any reclassification of, or change (other than a change in name, or par value, or from par value to no par

value, or from no par value to par value or as a result of a subdivision or combination) in, outstanding shares of Common Stock or (iii) any sale or conveyance of all or substantially all of the property or business of the Company as an entirety, then the Company, or such successor or purchasing corporation, as the case may be, shall, as a condition precedent to such reclassification, change, consolidation, merger, sale or conveyance, execute and deliver to the Trustee a supplemental indenture in form satisfactory to the Trustee providing that the holder of each Security then outstanding shall have the right to convert such Security into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reclassification, change, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock deliverable upon conversion of such Security immediately prior to such reclassification, change, consolidation, merger, sale or conveyance. Such supplemental indenture shall provide for adjustments of the Conversion Price which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Price provided for in this Article V. The foregoing, however, shall not in any way affect the right a holder of a Security may otherwise have, pursuant to clause (ii) of the last sentence of subsection (c) of Section 5.06, to receive Rights upon conversion of a Security. If, in the case of any such consolidation, merger, sale or conveyance, the stock or other securities and property (including cash) receivable thereupon by a holder of Common Stock includes shares of stock or other securities and property of a corporation other than the successor or purchasing corporation, as the case may be, in such consolidation, merger, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing. The provision of this Section 5.13 shall similarly apply to successive consolidations, mergers, sales or conveyances.

In the event the Company shall execute a supplemental indenture pursuant to this Section 5.13, the Company shall promptly file with the Trustee an Officers' Certificate briefly stating the reasons therefor, the kind or amount of shares of stock or securities or property (including cash) receivable by holders of the Securities upon the conversion of their Securities after any such reclassification, change, consolidation, merger, sale or conveyance and any adjustment to be made with respect thereto.

SECTION 5.014. Trustee's Disclaimer. The Trustee has no duty to determine when an adjustment under this Article V should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of the correctness of any such adjustment, and shall be protected in relying upon the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 5.11. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the Company's failure to comply with any provisions of this Article V.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 5.13, but may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 5.13.

ARTICLE VI

Subordination

SECTION 6.01. Agreement to Subordinate. The Company, for itself and its successors, and each Noteholder, by his acceptance of Securities, agree that the payment of the principal of, premium, if any, or interest or Liquidated Damages on or any other amounts due on the Securities is subordinated in right of payment, to the extent and in the manner stated in this Article VI, to the prior payment in full of all existing and future Senior Debt.

SECTION 6.02. No Payment on Securities if Senior Debt in Default. Anything in this Indenture to the contrary notwithstanding, no payment on account of principal of, premium, if any, or interest or Liquidated Damages, if any, or any other amounts due on the Securities (including, without limitation, any Designated Event Payments), and no redemption, purchase, or other acquisition of the Securities (including, without limitation, pursuant to a Designated Event Offer), shall be made by or on behalf of the Company (i) unless full payment of amounts then due for principal and interest and of all other amounts then due on all Senior Debt has been made or duly provided for pursuant to the terms of the instrument governing such Senior Debt, (ii) if, at the time of such payment, redemption, purchase or other acquisition, or immediately after giving effect thereto, there shall exist under any Senior Debt, or any agreement pursuant to which any Senior Debt is issued, any default, which default shall not have been cured or waived and which default shall have resulted in the full amount of such Senior Debt being declared due and payable or (iii) if, at the time of such payment, redemption, purchase or other acquisition, the Trustee shall have received written notice from the holders of Designated Senior Debt or a Representative of such holders (a "Payment Blockage Notice") that there exists under such Designated Senior Debt, or any agreement pursuant to which such Designated Senior Debt is issued, any default, which default shall not have been cured or waived, permitting the holders thereof to declare any amounts of such Designated Senior Debt due and payable, but only for the period (the "Payment Blockage Period") commencing on the date of receipt of the Payment Blockage Notice and ending (unless earlier terminated by notice given to the Trustee by the Representative of the holders of such Designated Senior Debt) on the earlier of (a) the date on which such event of default shall have been cured or waived or (b) 180 days from the receipt of the Payment Blockage Notice. Notwithstanding the provisions described in the immediately preceding sentence (other than in clauses (i) and (ii)), unless the holders of such Designated Senior Debt or the Representative of such holders shall have accelerated the maturity of such Designated Senior Debt, the Company may resume payments on the Securities after the end of such Payment Blockage Period. Not more than one Payment Blockage Notice may be given in any consecutive 360-day period, irrespective of the number of defaults with respect to Senior Debt during such period.

In the event that, notwithstanding the provisions of this Section 6.02, payments are made by or on behalf of the Company in contravention of the provisions of this Section 6.02, such payments shall be held by the Trustee, any Paying Agent or the holders, as applicable, in trust for the benefit of, and shall be paid over to and delivered to the holders of Senior Debt or the Representative under the

indenture or other agreement (if any) pursuant to which any instruments evidencing any Senior Debt may have been issued for application to the payment of all Senior Debt ratably according to the aggregate amounts remaining unpaid to the extent necessary to pay all Senior Debt in full in accordance with the terms of such Senior Debt, after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt.

The Company shall give prompt written notice to the Trustee and any Paying Agent of any default or event of default under any Senior Debt or under any agreement pursuant to which any Senior Debt may have been issued. The Trustee and the Paying Agent may assume that all payments have been made with respect to all Senior Debt unless the Trustee or the Paying Agent, as the case may be, has received written notice that payment has not been made and three

(3) Business Days have expired.

SECTION 6.03. Distribution on Acceleration of Securities; Dissolution and Reorganization: Subrogation of Securities.

(a) If the Securities are declared due and payable because of the occurrence of an Event of Default, the Company shall give prompt written notice to the holders of all Senior Debt or to the trustee(s) for such Senior Debt of such acceleration. The Company may not pay the principal of or interest or Liquidated Damages on or any other amounts due on the Securities until five Business Days after such holders or trustee(s) of Senior Debt receive such notice and, thereafter, the Company may pay the principal of or interest or Liquidated Damages on or any other amounts due on the Securities only if the provisions of this Article VI permit such payment.

(b) Upon (i) any acceleration of the principal amount due on the Securities because of an Event of Default or (ii) any direct or indirect distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or any other dissolution, winding up, liquidation or reorganization of the Company):

(1) the holders of all Senior Debt shall first be entitled to receive payment in full of the principal thereof, the interest thereon and any other amounts due thereon before the holders are entitled to receive payment on account of the principal of or interest and Liquidated Damages on or any other amounts due on the Securities;

(2) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in this Article with respect to the Securities, to the payment in full without diminution or modification by such plan of all Senior Debt), to which the holders or the Trustee would be entitled except for the provisions of this Article, shall be paid by the liquidating trustee or agent or other person making such a payment or distribution, directly to the holders of Senior Debt (or Representative acting on their behalf), ratably according to the aggregate amounts remaining unpaid

on account of the principal of or interest on and other amounts due on the Senior Debt held or represented by each, to the extent necessary to make payment in full of all Senior Debt remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt; and

(3) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in this Article with respect to the Securities, to the payment in full without diminution or modification by such plan of Senior Debt), shall be received by the Trustee or the holders before all Senior Debt is paid in full, such payment or distribution shall be held in trust for the benefit of, and be paid over to upon request by a holder of the Senior Debt, the holders of the Senior Debt remaining unpaid (or their Representative acting on their behalf), ratably as aforesaid, for application to the payment of such Senior Debt until all such Senior Debt shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt.

Subject to the payment in full of all Senior Debt, the holders shall be subrogated to the rights of the holders of Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Debt until the principal of and interest and Liquidated Damages on the Securities shall be paid in full and, for purposes of such subrogation, no such payments or distributions to the holders of Senior Debt of cash, property or securities which otherwise would have been payable or distributable to holders shall, as among the Company, its creditors other than the holders of Senior Debt, and the holders, be deemed to be a payment by the Company to or on account of the Senior Debt, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the holders, on the one hand, and the holders of Senior Debt, on the other hand.

Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall (i) impair, as between the Company and its creditors other than the holders of Senior Debt, the obligation of the Company, which is absolute and unconditional, to pay to the holders the principal of, and interest and Liquidated Damages on, the Securities as and when the same shall become due and payable in accordance with the terms of the Securities, (ii) affect the relative rights of the holders and creditors of the Company other than holders of Senior Debt or, as between the Company and the Trustee, the obligations of the Company to the Trustee, or (iii) prevent the Trustee or the holders from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Debt in respect of cash, property and securities of the Company received upon the exercise of any such remedy.

Upon distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 9.01 hereof, and the holders shall be entitled to rely upon a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee or to the holders for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of

the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article. The Trustee, however, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt. Nothing contained in this Article or elsewhere in this Indenture, or in any of the Securities, shall prevent the good faith application by the Trustee of any moneys which were deposited with it hereunder, prior to its receipt of written notice of facts which would prohibit such application, for the purpose of the payment of or on account of the principal of, or interest and Liquidated Damages on, the Securities unless, prior to the date on which such application is made by the Trustee, the Trustee shall be charged with actual notice under Section 6.03(d) hereof of the facts which would prohibit the making of such application.

(c) The provisions of this Article shall not be applicable to any cash, properties or securities received by the Trustee or by any holder when received as a holder of Senior Debt and nothing in Section 9.11 hereof or elsewhere in this Indenture shall deprive the Trustee or such holder of any of its rights as such holder of Senior Debt.

(d) The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment of money to or by the Trustee in respect of the Securities pursuant to the provisions of this Article. The Trustee, subject to the provisions of Section 9.01 hereof, shall be entitled to assume that no such fact exists unless the Company or any holder of Senior Debt or any Representative therefor has given written notice thereof to the Trustee. Notwithstanding the provisions of this Article or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any fact which would prohibit the making of any payment of moneys to or by the Trustee in respect of the Securities pursuant to the provisions in this Article, unless, and until three Business Days after, the Trustee shall have received written notice thereof from the Company or any holder or holders of Senior Debt or from any Representative therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 9.01 hereof, shall be entitled in all respects conclusively to assume that no such facts exist; provided that if on a date not less than three Business Days immediately preceding the date upon which, by the terms hereof, any such moneys may become payable for any purpose (including, without limitation, the principal of or interest and Liquidated Damages on any Security), the Trustee shall not have received with respect to such moneys the notice provided for in this Section 6.03(d), then anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date.

The Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a person representing himself to be a holder of Senior Debt (or a Representative on behalf of such holder) to establish that such notice has been given by a holder of Senior Debt (or a Representative on behalf of any such holder or holders). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article, the Trustee may request such person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior

Debt held by such person, the extent to which such person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such person under this Article, and, if such evidence is not furnished, the Trustee may defer any payment to such person pending judicial determination as to the right of such person to receive such payment; nor shall the Trustee be charged with knowledge or the curing or waiving of any default of the character specified in Section 6.02 hereof or that any event or any condition preventing any payment in respect of the Securities shall have ceased to exist, unless and until the Trustee shall have received written notice to such effect.

(e) The provisions of this Section 6.03 applicable to the Trustee shall (unless the context requires otherwise) also apply to any Paying Agent for the Company.

SECTION 6.04. Reliance by Holders of Senior Debt on Subordination Provisions. Each holder of any Security by his acceptance thereof acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration for each holder of any Senior Debt, whether such Senior Debt was created or acquired before or after the issuance of the Securities, to acquire and continue to hold, or to continue to hold, such Senior Debt, and such holder of Senior Debt shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Debt. Notice of any default in the payment of any Senior Debt, except as expressly stated in this Article, and notice of acceptance of the provisions hereof are hereby expressly waived. Except as otherwise expressly provided herein, no waiver, forbearance or release by any holder of Senior Debt under such Senior Debt or under this Article shall constitute a release of any of the obligations or liabilities of the Trustee or holders of the Securities provided in this Article.

SECTION 6.05. No Waiver of Subordination Provisions. Except as otherwise expressly provided herein, no right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Debt may, at any time and from time to time, without the consent of, or notice to, the Trustee or the holders of the Securities, without incurring responsibility to the holders of the Securities and without impairing or releasing the subordination provided in this Article VI or the obligations hereunder of the holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding; (ii) sell, exchange, release or otherwise dispose of any property pledged, mortgaged or otherwise securing Senior Debt; (iii) release any person liable in any manner for the collection of Senior Debt; and (iv) exercise or refrain from exercising any rights against the Company or any other person.

SECTION 6.06. Trustee's Relation to Senior Debt. The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article in respect of any Senior Debt at any time held by it, to the same extent as any holder of Senior Debt, and nothing in Section 9.11 hereof or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants and obligations, as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not owe any fiduciary duty to the holders of Senior Debt but shall have only such obligations to such holders as are expressly set forth in this Article.

Each holder of a Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes, including, in the event of any dissolution, winding up or liquidation or reorganization under any applicable bankruptcy law of the Company (whether in bankruptcy, insolvency or receivership proceedings or otherwise), the timely filing of a claim for the unpaid balance of such holder's Securities in the form required in such proceedings and the causing of such claim to be approved. If the Trustee does not file a claim or proof of debt in the form required in such proceedings prior to 30 days before the expiration of the time to file such claims or proofs, then any holder or holders of Senior Debt or their Representative or Representatives shall have the right to demand, sue for, collect, receive and receipt for the payments and distributions in respect of the Securities which are required to be paid or delivered to the holders of Senior Debt as provided in this Article and to file and prove all claims therefor and to take all such other action in the name of the holders or otherwise, as such holders of Senior Debt or Representative thereof may determine to be necessary or appropriate for the enforcement of the provisions of this Article.

SECTION 6.07. Other Provisions Subject Hereto. Except as expressly stated in this Article, notwithstanding anything contained in this Indenture to the contrary, all the provisions of this Indenture and the Securities are subject to the provisions of this Article. However, nothing in this Article shall apply to or adversely affect the claims of, or payment to, the Trustee pursuant to Section 9.07. Notwithstanding the foregoing, the failure to make a payment on account of principal of or interest or Liquidated Damages on the Securities by reason of any provision of this Article VI shall not be construed as preventing the occurrence of an Event of Default under Section 8.01.

SECTION 6.08. Certain Conversions and Repurchases Deemed Payment. For the purposes of this Article only, (i) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article V shall not be deemed to constitute a payment or distribution on account of the principal of or premium or interest (including Liquidated Damages, if any) on Securities or on account of the purchase or other acquisition of Securities, and (ii) the payment, issuance or delivery of cash (except in satisfaction of fractional shares pursuant to Section 5.03), property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of the principal of such Security. For the purposes of this Section, the term "junior securities" means (a) shares of any stock of any class of the Company and securities into

which the Securities are convertible pursuant to Article V and (b) securities of the Company which are subordinated in right of payment to all Senior Debt which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Senior Debt and the holders of the Securities, the right, which is absolute and unconditional, of the holder of any Security to convert such Security in accordance with Article V.

ARTICLE 7.

Successors

SECTION 7.01. Merger, Consolidation or Sale of Assets. The Company may not consolidate or merge with or into any person (whether or not the Company is the surviving entity), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets unless:

(a) the Company is the surviving corporation or the person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(b) the person formed by or surviving any such consolidation or merger (if other than the Company) or the person to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made assumes all the Obligations of the Company, pursuant to a supplemental indenture in a form reasonably satisfactory to the Trustee, under the Securities and the Indenture;

(c) any such sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the Company's properties or assets shall be as an entirety or substantially as an entirety to one person and such person assumes all the Obligations of the Company, pursuant to a supplemental indenture in a form reasonably satisfactory to the Trustee, under the Securities and the Indenture;

(d) immediately after such transaction no Default or Event of Default exists; and

(e) the Company or such person shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such transaction and the supplemental indenture comply with the Indenture and that all conditions precedent in the Indenture relating to such transaction have been satisfied.

SECTION 7.02. Successor Corporation Substituted. Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company in accordance with Section 7.01 hereof, the successor person formed by such consolidation or into or with which the Company is merged or the person to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor person has been named as the Company herein; provided, however, that the predecessor Company in the case of a sale, assignment, transfer, lease, conveyance or other disposition shall not be released from the obligation to pay the principal of and interest and Liquidated Damages on the Securities.

ARTICLE VIII

Defaults and Remedies

SECTION 8.01. Events of Default. An "Event of Default" occurs if:

- (a) the Company defaults in the payment of interest or Liquidated Damages on any Security when the same becomes due and payable, and the Default continues for a period of 30 days after the date due and payable;
- (b) the Company defaults in the payment of the principal of any Security when the same becomes due and payable at maturity, upon redemption or otherwise;
- (c) the Company defaults in the payment of the Designated Event Payment when the same becomes due and payable, whether or not such payment may be prohibited by Article VI;
- (d) the Company fails to provide timely notice of any Designated Event in accordance with Section 4.08;
- (e) the Company fails to observe or perform any other covenant or agreement contained in this Indenture or the Securities required by it to be performed and the Default continues for a period of 60 days after the receipt of written notice from the Trustee to the Company or from the holders of 25% in aggregate principal amount of the then outstanding Securities to the Company and the Trustee stating that such notice is a "Notice of Default";
- (f) there is a default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any Subsidiary of the Company (or the payment of which is guaranteed by the Company or any Subsidiary of the Company), whether such Indebtedness or guarantee now exists or is created after the Issuance Date, which default (i) is caused by a failure to pay when due principal of or interest on such Indebtedness within the grace period provided for in such Indebtedness (which failure continues beyond any applicable grace period) (a "Payment Default") or

(ii) results in the acceleration of such Indebtedness prior to its express maturity (without such acceleration being rescinded or annulled) and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there is a Payment Default or the maturity of which has been so accelerated, aggregates \$10 million or more;

(g) a final non-appealable judgment or final non-appealable judgments (other than any judgment as to which a reputable insurance company has accepted full liability) for the payment of money are entered by a court or courts of competent jurisdiction against the Company or any Subsidiary of the Company and remain undischarged for a period (during which execution shall not be effectively stayed) of 60 days, provided that the aggregate of all such judgments exceeds \$10 million;

(h) the Company or any Material Subsidiary pursuant to or within the meaning of any Bankruptcy Law: (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case in which it is the debtor, (iii) consents to the appointment of a Bankruptcy Custodian of it or for all or substantially all of its property, (iv) makes a general assignment for the benefit of its creditors, or (v) makes the admission in writing that it generally is unable to pay its debts as the same become due; or

(i) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (i) is for relief against the Company or any Material Subsidiary of the Company in an involuntary case, (ii) appoints a Bankruptcy Custodian of the Company or any Material Subsidiary of the Company or for all or substantially all of its property, and the order or decree remains unstayed and in effect for 60 days or (iii) orders the liquidation of the Company or any Material Subsidiary of the Company, and the order or decree remains unstayed and in effect for 60 days.

The term "Bankruptcy Law" means Title 11, U.S. Code or any similar Federal or state law for the relief of debtors. The term "Bankruptcy Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

SECTION 8.02. Acceleration. If an Event of Default (other than an Event of Default specified in clauses (h) and (i) of Section 8.01 hereof) occurs and is continuing, the Trustee by notice to the Company, or the Noteholders of at least 25% in principal amount of the then- outstanding Securities by notice to the Company and the Trustee, may declare all the Securities to be due and payable. Upon such declaration, the principal of, premium, if any, and accrued and unpaid interest and Liquidated Damages on the Securities shall be due and payable immediately. If an Event of Default specified in clause (h) or (i) of Section 8.01 hereof occurs, such an amount shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Noteholder. The Noteholders of a majority in aggregate principal amount of the then-outstanding Securities by notice to the Trustee may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree, if all amounts payable to the Trustee pursuant to Section 9.07 hereof have been paid and if all existing Events of Default have been cured or waived except nonpayment of principal or interest and Liquidated Damages that has become due solely because of the acceleration.

SECTION 8.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal or interest and Liquidated Damages on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Noteholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

SECTION 8.04. Waiver of Past Defaults. The Noteholders of a majority in aggregate principal amount of the then-outstanding Securities by notice to the Trustee may waive an existing Default or Event of Default and its consequences except a continuing Default or Event of Default in the payment of the Designated Event Payment or the principal of, or interest or Liquidated Damages on, any Security. When a Default or Event of Default is waived, it is cured and ceases; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 8.05. Control by Majority. The Noteholders of a majority in principal amount of the then-outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, is unduly prejudicial to the rights of other Noteholders, or would involve the Trustee in personal liability.

SECTION 8.06. Limitation on Suits. A Noteholder may pursue a remedy with respect to this Indenture or the Securities only if:

- (a) the Noteholder gives to the Trustee notice of a continuing Event of Default;
- (b) the Noteholders of at least 25% in principal amount of the then-outstanding Securities make a request to the Trustee to pursue the remedy;
- (c) such Noteholder or Noteholders offer to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (e) during such 60-day period the Noteholders of a majority in principal amount of the then-outstanding Securities do not give the Trustee a direction inconsistent with the request.

A Noteholder may not use this Indenture to prejudice the rights of another Noteholder or to obtain a preference or priority over another Noteholder.

SECTION 8.07. Rights of Noteholders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Noteholder of a Security to receive payment of principal and interest and Liquidated Damages on the Security, on or after the respective due dates expressed in the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the Noteholder made pursuant to this Section.

SECTION 8.08. Collection Suit by Trustee. If an Event of Default specified in Section 8.01 (a), (b) or (c) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal and interest and Liquidated Damages remaining unpaid on the Securities and interest on overdue principal and interest and Liquidated Damages and such further amount as shall be sufficient to cover the costs and, to the extent lawful, expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 8.09. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Noteholders allowed in any judicial proceedings relative to the Company, its creditors or its property. Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Noteholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Noteholder thereof, or to authorize the Trustee to vote in respect of the claim of any Noteholder in any such proceeding.

SECTION 8.10. Priorities. If the Trustee collects any money pursuant to this Article, it shall pay out the money in the following order:

First: to the Trustee for amounts due under Section 9.07 hereof;

Second: to the holders of Senior Debt to the extent required by Article VI;

Third: to the Noteholders, for amounts due and unpaid on the Securities for principal and interest and Liquidated Damages, ratably, according to the amounts due and payable on the Securities for principal and interest and Liquidated Damages, respectively; and

Fourth: to the Company.

Except as otherwise provided in Section 2.12 hereof, the Trustee may fix a record date and payment date for any payment to Noteholders made pursuant to this Section.

SECTION 8.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs,

including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a holder pursuant to Section 8.07 hereof, or a suit by Noteholders of more than 10% in principal amount of the then-outstanding Securities.

ARTICLE IX.

Trustee

SECTION 9.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others and (ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and, if required by the terms hereof, conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that: (i) this paragraph does not limit the effect of paragraph (b) of this Section 9.01; (ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts and (iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 8.05 hereof.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 9.01. No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(e) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

SECTION 9.02. Rights of Trustee.

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it (unless other evidence be herein specifically prescribed) may require an Officers' Certificate or an Opinion of Counsel, or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and nominees and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(e) The Trustee shall not be charged with knowledge of any Event of Default under subsection (d), (e), (f), (g), (h) or (i) of Section 8.01 unless either (1) a Trust Officer assigned to its Corporate Trust Department shall have actual knowledge thereof, or (2) the Trustee shall have received notice thereof in accordance with Section 12.02 hereof from the Company or any holder.

SECTION 9.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or an Affiliate with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Sections 9.10 and 9.11 hereof.

SECTION 9.04. Trustee's Disclaimer. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement of the Company in the Indenture or any statement in the Securities other than its authentication.

SECTION 9.05. Notice of Defaults. If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Noteholders a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment on any Security, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of Noteholders.

SECTION 9.06. Reports by Trustee to Noteholders. Within 60 days after the reporting date stated in Section 12.10, the Trustee shall mail to Noteholders a brief report dated as of such reporting date that complies with TIA Section 313(a) if and to the extent required by such Section 313(a). The Trustee also shall comply with TIA Section 313(b)(2). The Trustee shall also transmit by mail all reports as required by TIA Section 313(c).

A copy of each report at the time of its mailing to Noteholders shall be filed with the SEC and each stock exchange on which the Securities are listed. The Company shall notify the Trustee when the Securities are listed on any stock exchange or automated quotation system.

SECTION 9.07. Compensation and Indemnity. The Company shall pay to the Trustee from time to time reasonable compensation for its services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable disbursements, expenses and advances incurred or made by it. Such disbursements and expenses may include the reasonable disbursements, compensation and expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee and its officers, directors, employees and agents against any loss or liability incurred by it except as set forth in the next paragraph. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees, disbursements and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through negligence, bad faith or wilful misconduct.

To secure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except money or property held in trust to pay principal and interest and Liquidated Damages on particular Securities.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 8.01(h) or (i) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

The provisions of this Section 9.07 shall survive the termination of this Indenture, as provided by Section 10.01 hereof.

SECTION 9.08. Replacement of Trustee. A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

The Trustee may resign by so notifying the Company. The Noteholders of a majority in principal amount of the then-outstanding Securities may remove the Trustee by so notifying the Trustee and the Company. The Company may remove the Trustee if:

- (a) the Trustee fails to comply with Section 9.10 hereof, unless the Trustee's duty to resign is stayed as provided in TIA Section 310(b);
- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a Bankruptcy Custodian or public officer takes charge of the Trustee or its property, or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Noteholders of a majority in principal amount of the then-outstanding Securities may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Noteholders of at least 10% in principal amount of the then-outstanding Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 9.10 hereof, unless the Trustee's duty to resign is stayed as provided in TIA Section 310(b), any Noteholder who has been a bona fide holder of a Security for at least six months may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, the Company shall promptly pay all amounts due and payable to the retiring Trustee, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Noteholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 9.07 hereof. Notwithstanding the resignation or replacement of the Trustee pursuant to this Section 9.08, the Company's obligations under Section 9.07 hereof shall continue for the benefit of the retiring Trustee with respect to expenses and liabilities incurred by it prior to such resignation or replacement.

SECTION 9.09. Successor Trustee by Merger, Etc. If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

SECTION 9.10. Eligibility; Disqualification. This Indenture shall always have a Trustee who satisfies the requirements of TIA Section 310(a) (1) and (5). The Trustee (or if the Trustee is a member of a bank holding system, its bank holding company) shall always have a combined capital and surplus as stated in Section 12.10 hereof. The Trustee is subject to TIA Section 310(b).

SECTION 9.11. Preferential Collection of Claims Against Company. The Trustee is subject to TIA Section 311(a), excluding any credit or relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

SECTION 9.12. Sections Applicable to Registrar, Paying Agent and Conversion Agent. The term "Trustee" as used in Sections 6.3, 9.1, 9.2, 9.3, 9.4 and 9.7 hereof shall (unless the context requires otherwise) be construed as extending to and including the Trustee acting in its capacity, if any, as Registrar, Paying Agent and Conversion Agent.

ARTICLE 10.

Discharge of Indenture

SECTION 10.01. Termination of Company's Obligation. This Indenture shall cease to be of further effect (except that the Company's obligations under Sections 9.07 and 10.02 hereof shall survive) when all outstanding Securities theretofore authenticated and issued have been delivered to the Trustee for cancellation and the Company has paid all sums payable hereunder.

Thereupon, the Trustee upon request of the Company, shall acknowledge in writing the discharge of the Company's obligations under this Indenture, except for those surviving obligations specified above.

SECTION 10.02. Repayment to Company. The Trustee and the Paying Agent shall promptly pay to the Company upon request any excess money or securities held by them at any time.

The Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest or Liquidated Damages that remains unclaimed for two years after the date upon which such payment shall have become due; provided, however, that the Company shall have first caused notice of such payment to the Company to be mailed to each Noteholder entitled thereto no less than 30 days prior to such payment. After payment to the Company, the Trustee and the Paying Agent shall have no further liability with respect to such money and Noteholders entitled to the money must look to the Company for payment as general creditors unless any applicable abandoned property law designates another person.

ARTICLE XI

Amendments, Supplements and Waivers

SECTION 11.01. Without Consent of Noteholders. The Company and the Trustee may amend or supplement this Indenture or the Securities without the consent of any Noteholder:

- (a) to cure any ambiguity, defect or inconsistency;
- (b) to comply with Sections 5.13 and 7.01 hereof;
- (c) to provide for uncertificated Securities in addition to certificated Securities;
- (d) to make any change that does not adversely affect the legal rights hereunder of any Noteholder;
- (e) to qualify this Indenture under the TIA or to comply with the requirements of the SEC in order to maintain the qualification of the Indenture under the TIA; or
- (f) to make any change that provides any additional rights or benefits to the holders of Securities.

An amendment under this Section may not make any change that adversely affects the rights under Article VI of any holder of Senior Debt then outstanding unless the holders of such Senior Debt (or any group or Representative thereof authorized to give a consent) consent to such change.

SECTION 11.02. With Consent of Noteholders. Subject to Section 8.07 hereof, the Company and the Trustee may amend or supplement this Indenture or the Securities with the written consent (including consents obtained in connection with any tender or exchange offer for Securities) of the Noteholders of at least a majority in principal amount of the then-outstanding Securities. Subject to Sections 8.04 and 8.07 hereof, the Noteholders of a majority in principal amount of the Securities then outstanding may also by their written consent (including consents obtained in connection with any tender offer or exchange offer for Securities) waive any existing Default as provided in Section 8.04 or waive compliance in a particular instance by the Company with any provision of this Indenture or the Securities. However, without the consent of each Noteholder affected, an amendment, supplement or waiver under this Section may not (with respect to any Securities held by a nonconsenting Noteholder):

- (a) reduce the amount of Securities whose Noteholders must consent to an amendment, supplement or waiver;
- (b) reduce the rate of or change the time for payment of interest on any Security;

- (c) reduce the principal of or change the fixed maturity of any Security or alter the redemption provisions with respect thereto;
- (d) make any Security payable in money other than that stated in the Security;
- (e) make any change in Section 8.04, 8.07 or 11.02 hereof (this sentence);
- (f) waive a default in the payment of principal of, premium, if any, or interest or Liquidated Damages on, any Security (other than as provided in Section 8.04);
- (g) waive a redemption payment payable on any Security;
- (h) make any change that impairs the right of Noteholders to convert Securities into Common Stock of the Company; or
- (i) modify the conversion or subordination provisions set forth in Article V and Article VI, respectively, in a manner adverse to the holders of the Securities.

To secure a consent of the Noteholders under this Section 11.02, it shall not be necessary for the Noteholders to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

An amendment under this Section may not make any change that adversely affects the rights under Article VI of any holder of Senior Debt then outstanding unless the holders of such Senior Debt (or any group or Representative thereof authorized to give a consent) consent to such change.

Neither the Company nor any of its Subsidiaries shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any holder of Securities or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Securities unless such consideration is offered to be paid or agreed to be paid to all holders of the Securities that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

After an amendment, supplement or waiver under this Section becomes effective, the Company shall mail to Noteholders a notice briefly describing the amendment or waiver.

SECTION 11.03. Compliance with Trust Indenture Act. Every amendment to this Indenture or the Securities shall be set forth in a supplemental indenture that complies with the TIA as then in effect.

SECTION 11.04. Revocation and Effect of Consents. Until an amendment, supplement or waiver becomes effective, a consent to it by a Noteholder of a Security is a continuing consent by the Noteholder and every subsequent Noteholder of a Security or portion of a Security that evidences the same debt as the consenting Noteholder's Security, even if notation of the consent is not made on

any Security. However, any such Noteholder or subsequent Noteholder may revoke the consent as to such Noteholder's Security or portion of a Security if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officers' Certificate certifying that the Noteholders of the requisite principal amount of Securities have consented to the amendment, supplement or waiver.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Noteholders entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then notwithstanding the provisions of the immediately preceding paragraph, those persons who were Noteholders at such record date (or their duly designated proxies), and only those persons, shall be entitled to consent to such amendment, supplement or waiver or to revoke any consent previously given, whether or not such persons continue to be Noteholders after such record date. No consent shall be valid or effective for more than 90 days after such record date unless consents from Noteholders of the principal amount of Securities required hereunder for such amendment or waiver to be effective shall have also been given and not revoked within such 90-day period.

After an amendment, supplement or waiver becomes effective it shall bind every Noteholder, unless it is of the type described in any of clauses (a) through (i) of Section 11.02 hereof. In such case, the amendment or waiver shall bind each Noteholder who has consented to it and every subsequent Noteholder that evidences the same debt as the consenting Noteholder's Security.

SECTION 11.05. Notation on or Exchange of Securities. The Trustee may place an appropriate notation about an amendment or waiver on any Security thereafter authenticated. The Company in exchange for all Securities may issue and the Trustee shall authenticate new Securities that reflect the amendment or waiver.

SECTION 11.06. Trustee Protected. The Trustee shall sign all supplemental indentures, except that the Trustee may, but need not, sign any supplemental indenture that adversely affects its rights. As a condition to executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trust created by this Indenture, the Trustee shall be entitled to receive (in addition to those documents required by Section 12.04), and (subject to Section 315 of the TIA) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture.

ARTICLE XII

Miscellaneous

SECTION 12.01. Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with another provision which is deemed to be incorporated in this Indenture by the TIA, the incorporated provision shall control.

SECTION 12.02. Notices. Any notice or communication by the Company or the Trustee to the other is duly given if in writing and delivered in person or mailed by first-class mail or overnight delivery to the other's address stated in Section 12.10 hereof. The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to a Noteholder shall be mailed by first-class mail or overnight delivery to his address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Noteholders, it shall mail a copy to the Trustee and each Agent at the same time.

All other notices or communications shall be in writing.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice as required by the Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

SECTION 12.03. Communication by Noteholders with Other Noteholders. Noteholders may communicate pursuant to TIA Section 312(b) with other Noteholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA Section 312(c).

SECTION 12.04. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 12.05. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than pursuant to Section 4.03) shall include:

- (a) a statement that the person signing such certificate or rendering such opinion has read such covenant or condition;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of such person, such person has made such examination or investigation as is necessary to enable such person to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

SECTION 12.06. Rules by Trustee and Agents. The Trustee may make reasonable rules for action by, or a meeting of, the Noteholders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 12.07. Legal Holidays. A "Legal Holiday" is a Saturday, a Sunday or a day on which banking institutions in the State of New York or the State of California are not required to be open. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest or Liquidated Damages shall accrue for the intervening period. If any other operative date for purposes of this Indenture shall occur on a Legal Holiday then for all purposes the next succeeding day that is not a Legal Holiday shall be such operative date.

SECTION 12.08. No Recourse Against Others. A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Noteholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

SECTION 12.09. Counterparts. This Indenture may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 12.10. Variable Provisions. "Officer" means the Chairman of the Board, the President, any Vice-President (whether or not designated by a number or a word or words added before or after the title "Vice President"), the Chief Financial Officer, the Treasurer, the Secretary, any Assistant Treasurer or any Assistant Secretary of the Company.

The first certificate pursuant to Section 4.03 hereof shall be for the fiscal year ending on December 31, 1997.

The reporting date for Section 9.06 hereof is March 15 of each year. The first reporting date is March 15, 1998.

The Trustee (or if the Trustee is a member of a bank holding company system, its bank holding company) shall always have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition.

The Company's address for purposes of the Indenture is:

Chief Financial Officer
Intevac, Inc.
3550 Bassett Street
Santa Clara, California 95054
Telephone Number: (408) 986-9888 Telefax Number: (408) 988-8145

The Trustee's address is:

State Street Bank and Trust Company of California, N.A. 725 South Figueroa Street
Suite 3100
Los Angeles, California 90017
Attention: Corporate Trust Department Telephone Number: (213) 362-7334 Telefax Number: (213) 362-7357

The Company or the Trustee may change its address for purposes of this Indenture by written notice to the other.

SECTION 12.11. GOVERNING LAW. THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN THIS INDENTURE AND THE SECURITIES, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF.

SECTION 12.12. No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or an Affiliate. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 12.13. Successors. All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

SECTION 12.14. Severability. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 12.15. Table of Contents, Headings, Etc. The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of the date first written above.

**INTEVAC, INC.,
AS COMPANY,**

By: /s/ Norman Pond

*Name: Norman Pond
Title: CEO*

**STATE STREET BANK AND TRUST COMPANY OF
CALIFORNIA, N.A., AS TRUSTEE,**

By: /s/ Joni Frederick

*Name: Joni Frederick
Title: Assistant Vice President*

EXHIBIT A

FORM OF CONVERTIBLE SUBORDINATED NOTE

[FORM OF FACE OF NOTE]

[Global Securities Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

[Restricted Securities Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED PRIOR TO THE THIRD ANNIVERSARY (OR SUCH SHORTER PERIOD AS MAY THEN BE APPLICABLE UNDER THE SECURITIES ACT) OF THE ISSUANCE HEREOF (OR ANY PREDECESSOR SECURITY HERETO) OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (3) IN AN OFFSHORE TRANSACTION IN

ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), AND, IF SUCH TRANSFER IS BEING EFFECTED PRIOR TO THE EXPIRATION OF THE "40 DAY RESTRICTED PERIOD" (WITHIN THE MEANING OF RULE 903 (c)(3) OF REGULATION S UNDER THE SECURITIES ACT), A CERTIFICATE WHICH MAY BE OBTAINED FROM THE COMPANY OR TRUSTEE IS DELIVERED BY THE TRANSFEROR TO THE COMPANY AND THE TRUSTEE, (4) TO AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2),(3) OR (7) UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY) THAT IS ACQUIRING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND A CERTIFICATE IN THE FORM ATTACHED TO THIS SECURITY IS DELIVERED BY THE TRANSFEROR TO THE COMPANY AND THE TRUSTEE (PROVIDED THAT CERTAIN HOLDERS SPECIFIED IN THE INDENTURE MAY NOT TRANSFER THIS SECURITY PURSUANT TO THIS CLAUSE (4) PRIOR TO THE EXPIRATION OF THE "40 DAY RESTRICTED PERIOD" (WITHIN THE MEANING OF RULE 903 (c)(3) OF REGULATION S UNDER THE SECURITIES ACT)), (5) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT, OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR OTHER JURISDICTIONS. AN INSTITUTIONAL ACCREDITED INVESTOR HOLDING THIS SECURITY AGREES THAT IT WILL FURNISH TO THE COMPANY AND THE TRUSTEE SUCH CERTIFICATES AND OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE TO CONFIRM THAT ANY TRANSFER BY IT OF THIS SECURITY COMPLIES WITH THE FOREGOING RESTRICTIONS. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A OR (2) AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2),(3) OR (7) UNDER THE SECURITIES ACT AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION OR (3) A NON-U.S. PERSON OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (o)(2) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT.

No. _____ Cusip No.

INTEVAC, INC.

6-1/2% CONVERTIBLE SUBORDINATED NOTE DUE 2004

Intevac, Inc., a California corporation (the "Company") for value received promises to pay to _____ or registered assigns, the principal sum [indicated on Schedule A hereof]* [of _____ Dollars]** on March 1, 2004 at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York, State of New York, and to pay interest on said principal sum at the rate of 6 1/2% per annum, as more specifically described on the reverse hereof.

Interest Payment Dates: March 1 and September 1, commencing September 1, 1997. Record Dates: February 15 and August 15.

Reference is hereby made to the further provisions of this Convertible Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

* Applicable to Global Securities only.

** Applicable to certificated Securities only.

IN WITNESS WHEREOF, Intevac, Inc. has caused this Convertible Note to be signed manually or by facsimile by its duly authorized Officers and a facsimile of its corporate seal to be affixed hereto or imprinted hereon.

Dated: _____

INTEVAC, INC.

By: _____

By: _____

[Seal]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the 6 1/2% Convertible Subordinated Notes due 2004 described in the within-mentioned Indenture.

State Street Bank and Trust Company of California, N.A., as Trustee

By: _____ Authorized Officer

INTEVAC, INC.

6-1/2% Convertible Subordinated Note Due 2004

1. Interest. INTEVAC, INC., a California corporation (the "Company"), is the issuer of the 6-1/2% Convertible Subordinated Notes due 2004 (the "Convertible Notes"), of which this Convertible Note is a part. The Company promises to pay interest on the Convertible Notes in cash semiannually on each March 1 and September 1, commencing on September 1, 1997, to holders of record on the immediately preceding February 15 and August 15.

Interest on the Convertible Notes will accrue from the most recent date to which interest has been paid or duly provided for, or if no interest has been paid or duly provided for, from February 25, 1997 until payment of said principal sum has been made or duly provided for. Interest will be computed on the basis of a 360-day year of twelve 30-day months. To the extent lawful, the Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest or Liquidated Damages (without regard to any applicable grace period) at the rate borne by the Convertible Notes, compounded annually.

2. Method of Payment. The Company will pay interest and Liquidated Damages on the Convertible Notes (except defaulted interest) to the persons who are registered holders of the Convertible Notes at the close of business on the record date for the next interest payment date even though Convertible Notes are canceled after the record date and on or before the interest payment date. The Noteholder hereof must surrender Convertible Notes to a Paying Agent to collect principal payments. The Company will pay principal and interest and Liquidated Damages in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may pay principal and interest and Liquidated Damages by check payable in such money. It may mail a check for interest or Liquidated Damages to a holders' registered address; provided that a holder of Convertible Notes with an aggregate principal amount in excess of \$2,000,000 will be paid by wire transfer in immediately available funds at the election of the holder.

3. Paying Agent and Registrar. The Trustee will act initially as Paying Agent, Registrar and Conversion Agent. The Company may change any Paying Agent, Registrar, co-registrar or Conversion Agent without prior notice. The Company or any of its Affiliates may act in any such capacity.

4. Indenture. The Company issued the Convertible Notes under an indenture, dated as of February 15, 1997 (the "Indenture"), between the Company and State Street Bank and Trust Company of California, N.A., as Trustee. The terms of the Convertible Notes include those stated in the Indenture and those incorporated into the Indenture from the Trust Indenture Act of 1939 (15 U.S. Code Sections 77aaa- 77bbb) as in effect on the date of the Indenture. The Convertible Notes are subject to, and qualified by, all such terms, certain of which are summarized hereon, and Noteholders are referred to the Indenture and such Act for a statement of such terms. The Convertible Notes are general unsecured obligations of the Company limited to an aggregate principal amount at maturity of

\$57,500,000. The Indenture does not limit the ability of the Company or any of its Subsidiaries to incur indebtedness or to grant security interests or liens in respect of their assets.

5. Optional Redemption. The Convertible Notes are not redeemable at the Company's option prior to March 3, 2000. Thereafter, the Convertible Notes will be subject to redemption at the option of the Company, in whole or from time to time in part (in any integral multiple of \$1,000), on any date on or prior to maturity at the following redemption prices (expressed as percentages of the principal amount), if redeemed during the 12-month period beginning March 1 of the years indicated (March 3, 2000 to February 28, 2001, in the case of the first such period):

Year ----	Redemption Price -----
2000	103.714%
2001	102.786%
2002	101.857%
2003	100.929%

and at 100% at March 1, 2004, in each case together with accrued interest and Liquidated Damages to the redemption date (subject to the right of holders of record on the relevant record date to receive interest and Liquidated Damages, if any, due on an interest payment date). On or after the redemption date, interest and Liquidated Damages will cease to accrue on the Convertible Notes, or portion thereof, called for redemption.

6. Notice of Redemption. Notice of redemption will be mailed at least 15 days but not more than 60 days before the redemption date to each holder of the Convertible Notes to be redeemed at his address of record. The Convertible Notes in denominations larger than \$1,000 may be redeemed in part but only in integral multiples of \$1,000. In the event of a redemption of less than all of the Convertible Notes, the Convertible Notes will be chosen for redemption by the Trustee in accordance with the Indenture. Unless the Company defaults in making such redemption payment, or the Paying Agent is prohibited from making such payment pursuant to the Indenture, by law or otherwise, interest and Liquidated Damages cease to accrue on the Convertible Notes or portions of them called for redemption on and after the redemption date.

If this Convertible Note is redeemed subsequent to a record date with respect to any interest payment date specified above and on or prior to such interest payment date, then any accrued interest or Liquidated Damages will be paid to the person in whose name this Convertible Note is registered at the close of business on such record date.

7. Mandatory Redemption. The Company will not be required to make mandatory redemption payments with respect to the Convertible Notes. There are no sinking fund payments with respect to the Convertible Notes.

8. Repurchase at Option of Holder. If there is a Designated Event, the Company shall be required to offer to purchase on the Designated Event Payment Date all outstanding Convertible Notes at a purchase price equal to 101% of the principal amount thereof on the date of purchase, plus accrued and unpaid interest and Liquidated Damages, if any, to the Designated Event Payment Date. Holders of Convertible Notes that are subject to an offer to purchase will be mailed a Designated Event Offer from the Company prior to any related Designated Event Payment Date and may elect to have such Convertible Notes or portions thereof in authorized denominations purchased by completing the form entitled "Option of Noteholder To Elect Purchase" appearing below. Noteholders have the right to withdraw their election by delivering a written notice of withdrawal to the Company or the Paying Agent in accordance with the terms of the Indenture.

9. Subordination. The payment of the principal of, interest and Liquidated Damages, if any, on or any other amounts due on the Convertible Notes is subordinated in right of payment to all existing and future Senior Debt of the Company, as described in the Indenture. Each Noteholder, by accepting a Convertible Note, agrees to such subordination and authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and appoints the Trustee as its attorney-in-fact for such purpose.

10. Conversion. The holder of any Convertible Note has the right, exercisable at any time after 90 days following the Issuance Date and prior to the close of business on the Convertible Note's maturity, to convert the principal amount thereof (or any portion thereof that is an integral multiple of \$1,000) into shares of Common Stock at the initial Conversion Price of \$20.625 per share, subject to adjustment under certain circumstances, except that if a Convertible Note is called for redemption, the conversion right will terminate at the close of business (New York time) on the Business Day immediately preceding the date fixed for redemption.

To convert a Convertible Note, a holder must (1) complete and sign a notice of election to convert substantially in the form set forth below, (2) surrender the Convertible Note to a Conversion Agent, (3) furnish appropriate endorsements or transfer documents if required by the Registrar or Conversion Agent and (4) pay any transfer or similar tax, if required. Upon conversion, no adjustment or payment will be made for interest or dividends, but if any Noteholder surrenders a Convertible Note for conversion after the close of business on the record date for the payment of an installment of interest and prior to the opening of business on the next interest payment date, then, notwithstanding such conversion, the interest payable on such interest payment date will be paid to the registered holder of such Convertible Note on such record date. In such event, such Convertible Note, when surrendered for conversion, must be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such interest payment date on the portion so converted, unless such Security has been called for redemption on or prior to such interest payment date. The number of shares of Common Stock issuable upon conversion of a Convertible Note is determined by dividing the principal amount of the Convertible Note converted by the Conversion Price in effect on the Conversion Date. No fractional shares will be issued upon conversion but a cash adjustment will be made for any fractional interest.

A Convertible Note in respect of which a holder has delivered an "Option of Noteholder to Elect Purchase" form appearing below exercising the option of such holder to require the Company to purchase such Convertible Note may be converted only if the notice of exercise is withdrawn as provided above and in accordance with the terms of the Indenture. The above description of conversion of the Convertible Notes is qualified by reference to, and is subject in its entirety by, the more complete description thereof contained in the Indenture.

11. Registration Agreement. The holder of the Convertible Notes is entitled to the benefits of the Registration Agreement, dated February 15, 1997, among the Company and the Initial Purchasers (the "Registration Agreement"). Such benefits include the right of the holder to receive Liquidated Damages in the event of a failure on the part of the Company to comply with certain covenants pertaining to registration and availability of a prospectus for resale, as provided in the Registration Agreement.

12. Denominations Transfer, Exchange. The Convertible Notes are in registered form, without coupons, in denominations of \$1,000 and integral multiples of \$1,000. The transfer of Convertible Notes may be registered, and Convertible Notes may be exchanged, as provided in the Indenture. The Registrar may require a Noteholder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Company is not required to exchange or register the transfer of (i) any Convertible Note for a period of 15 days next preceding any selection of Convertible Notes to be redeemed, (ii) any Convertible Note or portion thereof selected for redemption or (iii) any Convertible Note or portion thereof surrendered for repurchase (and not withdrawn) in connection with a Designated Event.

13. Persons Deemed Owners. Except as provided in paragraph 2 of this Convertible Note, the registered Noteholder of a Convertible Note may be treated as its owner for all purposes.

14. Unclaimed Money. If money for the payment of principal or interest and Liquidated Damages remains unclaimed for two years, the Trustee and the Paying Agent shall pay the money back to the Company at its request. After that, Noteholders of Convertible Notes entitled to the money must look to the Company for payment, unless an abandoned property law designates another person, and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

15. Defaults and Remedies. The Convertible Notes shall have the Events of Default as set forth in Section 8.01 of the Indenture. Subject to certain limitations in the Indenture, if an Event of Default occurs and is continuing, the Trustee by notice to the Company or the Noteholders of at least 25% in aggregate principal amount of the then-outstanding Convertible Notes by notice to the Company and the Trustee may declare all the Convertible Notes to be due and payable immediately, except that in the case of an Event of Default arising from certain events of bankruptcy or insolvency, Convertible Notes shall become due and payable immediately without further action or notice. Upon acceleration as described in either of the preceding sentences, the subordination provisions of the Indenture preclude any payment being made to Noteholders for at least 5 Business Days after holders of Senior Debt receive notice of such acceleration except as otherwise provided in the Indenture.

The Noteholders of a majority in principal amount of the Convertible Notes then outstanding by written notice to the Trustee may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of principal or interest or Liquidated Damages that has become due solely because of the acceleration. Noteholders may not enforce the Indenture or the Convertible Notes except as provided in the Indenture. Subject to certain limitations, Noteholders of a majority in principal amount of the then-outstanding Convertible Notes issued under the Indenture may direct the Trustee in its exercise of any trust or power. The Company must furnish compliance certificates to the Trustee annually. The above description of Events of Default and remedies is qualified by reference to, and subject in its entirety by, the more complete description thereof contained in the Indenture.

16. **Amendments, Supplements and Waivers.** Subject to certain exceptions, the Indenture or the Convertible Notes may be amended or supplemented with the consent of the Noteholders of at least a majority in principal amount of the then-outstanding Convertible Notes (including consents obtained in connection with a tender offer or exchange offer for Convertible Notes), and any existing default may be waived with the consent of the Noteholders of a majority in principal amount of the then-outstanding Convertible Notes, including consents obtained in connection with a tender offer or exchange offer for Convertible Notes. Without the consent of any Noteholder, the Indenture or the Convertible Notes may be amended, among other things, to cure any ambiguity, defect or inconsistency, to provide for assumption of the Company's obligations to Noteholders in the case of a merger, consolidation or sale or transfer of all or substantially all of the Company's properties or assets pursuant to Article VII of the Indenture, to make any change that would provide any additional rights or benefits to Noteholders or that does not adversely affect the legal rights under the Indenture of any Noteholder, to qualify the Indenture under the TIA, or to comply with the requirements of the SEC in order to maintain the qualification of the Indenture under the TIA.

17. **Trustee Dealings with the Company.** The Trustee, in its individual or any other capacity, may become the owner or pledgee of the Convertible Notes and may otherwise deal with the Company or an Affiliate with the same rights it would have, as if it were not Trustee, subject to certain limitations provided for in the Indenture and in the TIA. Any Agent may do the same with like rights.

18. **No Recourse Against Others.** A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Convertible Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Noteholder, by accepting a Convertible Note, waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Convertible Notes.

19. **Governing Law.** THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THE CONVERTIBLE NOTES WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF.

20. Authentication. The Convertible Notes shall not be valid until authenticated by the manual signature of an authorized officer of the Trustee or an authenticating agent.

21. Abbreviations. Customary abbreviations may be used in the name of a Noteholder or an assignee, such as: TEN COM (for tenants in common), TENANT (for tenants by the entireties), JT TEN (for joint tenants with right of survivorship and not as tenants in common), CUST (for Custodian), and U/G/M/A (for Uniform Gifts to Minors Act).

22. Definitions. Capitalized terms not defined in this Convertible Note have the meaning given to them in the Indenture.

The Company will furnish to any Noteholder of the Convertible Notes upon written request and without charge a copy of the Indenture and the Registration Agreement. Request may be made to:

Investor Relations
Intevac, Inc.
3550 Bassett Street
Santa Clara, California 95054
Telephone Number: (408) 986-9888

ASSIGNMENT AND CERTIFICATE OF TRANSFER FORM

To assign this Convertible Note, fill in the form below:

(I) or (we) assign and transfer this Convertible Note to

(Insert assignee's social security or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ agent to transfer this Convertible Note on the books of the Company. The agent may substitute another to act for him.

Your Signature: _____

(Sign exactly as your name appears on the other side of this Convertible Note)

Date: _____

Signature Guarantee:*** _____

*** Signature must be guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

In connection with any transfer of any of the Convertible Notes other than pursuant to a registration statement evidenced by this certificate occurring prior to the date that is three years (or such shorter period as may be provided pursuant to Rule 144(k) or any successor thereof under the Securities Act) after the later of the date of original issuance of such Convertible Notes and the last date, if any, on which such Convertible Notes were owned by the Company or any Affiliate of the Company, the undersigned confirms that such Convertible Notes are being transferred:

CHECK ONE BOX BELOW

- (1) to the Company; or
- (2) pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or
- (3) pursuant to and in compliance with Regulation S under the Securities Act of 1933; or
- (4) to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933) that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter can be obtained from the Trustee); or
- (5) pursuant to an exemption from registration under the Securities Act of 1933 provided by Rule 144 thereunder.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Convertible Notes evidenced by this certificate in the name of any person other than the registered holder thereof, provided, however, that if box (3), (4) or (5) is checked, the Trustee may require, prior to registering any such transfer of the Convertible Notes such legal opinions, certifications and other information as the Company has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933.

Signature

Signature Guarantee:*

Signature

* Signature must be guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

OPTION OF NOTEHOLDER TO ELECT PURCHASE

If you want to elect to have this Convertible Note or a portion thereof repurchased by the Company pursuant to Section 3.08 or 4.08 of the Indenture, check the box: []

If the purchase is in part, indicate the portion (\$1,000 or any integral multiple thereof) to be purchased:

Your Signature: _____ (Sign exactly as your name appears on the other side of this Convertible Note)

Date: _____

Signature Guarantee: * _____

* Signature must be guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

ELECTION TO CONVERT

To: Intevac, Inc.

The undersigned owner of this Convertible Note hereby irrevocably exercises the option to convert this Convertible Note, or the portion below designated, into Common Stock of Intevac, Inc. in accordance with the terms of the Indenture referred to in this Convertible Note, and directs that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

The undersigned agrees to be bound by the terms of the Registration Agreement relating to the Common Stock issuable upon conversion of the Convertible Notes.

Date: _____

In whole _____ or Portion of Convertible Note
to be converted (\$1,000 or
any integral multiple thereof):
\$ _____

Your Signature: _____ (Sign exactly as your name appears on the other side of this
Convertible Note)

Please print or typewrite name and address, including zip code, and Social Security or other identifying number

Signature Guarantee: * _____

* Signature must be guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

EXHIBIT B

REGULATION S CERTIFICATE

State Street Bank and Trust Company of California, N.A. 725 South Figueroa
Suite 3100
Los Angeles, California 90017
Attention: Corporate Trust Department

Re: 6-1/2% Convertible Subordinated Notes due 2004 of Intevac, Inc. (the "Securities")

Reference is made to the Indenture, dated as of February 15, 1997 (the "Indenture"), between Intevac, Inc. (the "Company") and State Street Bank and Trust Company of California, N.A., as Trustee. Terms used herein and defined in the Indenture or in Regulation S or Rule 144 under the U.S. Securities Act of 1933 (the "Securities Act") are used herein as so defined.

This certificate relates to U.S. \$ _____ principal amount of Securities, which are evidenced by the following certificate(s) (the "Specified Securities"):

CUSIP No(s). _____

CERTIFICATE No(s). _____

The person in whose name this certificate is executed below (the "Undersigned") hereby certifies that either (i) it is the sole beneficial owner of the Specified Securities or (ii) it is acting on behalf of all the beneficial owners of the Specified Securities and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the "Owner". If the Specified Securities are represented by a Global Security, they are held through the Depository or an Agent Member in the name of the Undersigned, as or on behalf of the Owner. If the Specified Securities are not represented by a Global Security, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Securities be transferred to a person (the "Transferee") who will take delivery in the form of a Regulation S Security. In connection with such transfer, the Owner hereby certifies that, unless such transfer is being effected pursuant to an effective registration statement under the Securities Act, it is being effected in accordance with Rule 904 or Rule 144 under the Securities Act and with all applicable securities laws of the states of the United States and other jurisdictions. Accordingly, the Owner hereby further certifies as follows:

(1) Rule 904 Transfers. If the transfer is being effected in accordance with Rule 904:

(A) the Owner is not a distributor of the Securities, an affiliate of the Company or any such distributor or a person acting on behalf of any of the foregoing;

(B) the offer of the Specified Securities was not made to a person in the United States;

(C) either:

a. at the time the buy order was originated, the Transferee was outside the United States or the Owner and any person acting on its behalf reasonably believed that the Transferee was outside the United States, or

b. the transaction is being executed in, on or through the facilities of the Eurobond market, as regulated by the Association of International Bond Dealers, or another designated offshore securities market and neither the Owner nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States;

(D) no directed selling efforts have been made in the United States by or on behalf of the Owner or any affiliate thereof;

(E) if the Owner is a dealer in securities or has received a selling concession, fee or other remuneration in respect of the Specified Securities, and the transfer is to occur during the Restricted Period, then the requirements of Rule 904(c)(1) have been satisfied; and

(F) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

(2) Rule 144 Transfers. If the transfer is being effected pursuant to Rule 144:

(A) the transfer is occurring after a holding period of at least two years (computed in accordance with paragraph (d) of Rule 144) (or such shorter period under Rule 144 or any successor rule) has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and is being effected in accordance with the applicable amount, manner of sale and notice requirements of paragraphs (e), (f) and (h) of Rule 144; or

(B) the transfer is occurring after a period of at least three years (or such shorter period under Rule 144 or any successor rule) has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Initial Purchasers.

Dated: _____

(Print the name of the Undersigned, as such term is defined in the second paragraph of this certificate.)

By: _____ Name:

Title:

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

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EXHIBIT C

RULE 144A SECURITIES CERTIFICATE

State Street Bank and Trust Company of California, N.A. 725 South Figueroa
Suite 3100
Los Angeles, California 90017
Attention: Corporate Trust Department

Re: 6-1/2% Convertible Subordinated Notes due 2004 of Intevac, Inc. (the "Securities")

Reference is made to the Indenture, dated as of February 15, 1997 (the "Indenture"), between Intevac, Inc. (the "Company") and State Street Bank and Trust Company of California, N.A., as Trustee. Terms used herein and defined in the Indenture or in Regulation S or Rule 144 under the U.S. Securities Act of 1933 (the "Securities Act") are used herein as so defined.

This certificate relates to U.S. \$ _____ principal amount of Securities, which are evidenced by the following certificate(s) (the "Specified Securities"):

CUSIP No(s). _____

CERTIFICATE No(s). _____

The person in whose name this certificate is executed below (the "Undersigned") hereby certifies that either (i) it is the sole beneficial owner of the Specified Securities or (ii) it is acting on behalf of all the beneficial owners of the Specified Securities and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the "Owner". If the Specified Securities are represented by a Global Security, they are held through the Depository or an Agent Member in the name of the Undersigned, as or on behalf of the Owner. If the Specified Securities are not represented by a Global Security, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Securities be transferred to a person (the "Transferee") who will take delivery in the form of a Restricted Security. In connection with such transfer, the Owner hereby certifies that, unless such transfer is being effected pursuant to an effective registration statement under the Securities Act, it is being effected in accordance with Rule 144A or Rule 144 under the Securities Act and all applicable securities laws of the states of the United States and other jurisdictions. Accordingly, the Owner hereby further certifies as:

(1) Rule 144A Transfers. If the transfer is being effected in accordance with Rule 144A:

(A) the Specified Securities are being transferred to a person that the Owner and any person acting on its behalf reasonably believe is a "qualified institutional buyer" within the meaning of Rule 144A, acquiring for its own account or for the account of a qualified institutional buyer; and

(B) the Owner and any person acting on its behalf have taken reasonable steps to ensure that the Transferee is aware that the Owner may be relying on Rule 144A in connection with the transfer; and

(2) Rule 144 Transfers. If the transfer is being effected pursuant to Rule 144:

(A) the transfer is occurring after a holding period of at least two years (computed in accordance with paragraph (d) of Rule 144) (or such shorter period under Rule 144 or any successor rule) has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and is being effected in accordance with the applicable amount, manner of sale and notice requirements of paragraphs (e), (f) and (h) of Rule 144; or

(B) the transfer is occurring after a period of at least three years (or such shorter period under Rule 144 or any successor rule) has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Initial Purchasers.

Dated: _____

(Print the name of the Undersigned, as such term is defined in the second paragraph of this certificate.)

By: _____ Name:

Title:

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned must be stated.)

EXHIBIT D

RESTRICTIVE LEGEND FOR COMMON STOCK

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED PRIOR TO THE THIRD ANNIVERSARY (OR SUCH SHORTER PERIOD AS MAY THEN BE APPLICABLE UNDER THE SECURITIES ACT) OF THE ISSUANCE HEREOF (OR ANY PREDECESSOR SECURITY HERETO) OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (3) IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (4) TO AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) (1), (2), (3) OR (7) UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY) THAT IS ACQUIRING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND A CERTIFICATE IN THE FORM ATTACHED TO THIS SECURITY IS DELIVERED BY THE TRANSFEROR TO THE COMPANY AND THE TRANSFER AGENT, (5) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT, OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR OTHER JURISDICTIONS. AN INSTITUTIONAL ACCREDITED INVESTOR HOLDING THIS SECURITY AGREES THAT IT WILL FURNISH TO THE COMPANY AND THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE TO CONFIRM THAT ANY TRANSFER BY IT OF THIS SECURITY COMPLIES WITH THE FOREGOING RESTRICTIONS. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A OR (2) AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) (1), (2), (3) OR (7) UNDER THE SECURITIES ACT AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND

NOT FOR DISTRIBUTION OR (3) A NON-U.S. PERSON OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (o)(2) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT."

EXHIBIT 4.3

INTEVAC, INC.

6 1/2 % CONVERTIBLE SUBORDINATED NOTES DUE 2004

REGISTRATION AGREEMENT

New York, New York

February 15, 1997

**SALOMON BROTHERS INC
HAMBRECHT & QUIST LLC
ROBERTSON STEPHENS & COMPANY LLC**

c/o Salomon Brothers Inc
Seven World Trade Center
New York, New York 10048

Ladies and Gentlemen:

Intevac, Inc., a California corporation (the "Company"), proposes to issue and sell (such issuance and sale, the "Initial Placement") to you (the "Initial Purchasers"), upon the terms set forth in a purchase agreement dated February 20, 1997 (the "Purchase Agreement"), \$50,000,000 principal amount (plus an additional \$7,500,000 principal amount to cover over-allotments, if any) of its 6 1/2% Convertible Subordinated Notes due 2004 (the "Securities"). The Securities will be convertible into shares of Common Stock, no par value (the "Common Stock"), of the Company at the conversion price set forth in the Final Memorandum. As an inducement to you to enter into the Purchase Agreement and in satisfaction of a condition to your obligations thereunder, the Company agrees with you, (i) for your benefit and (ii) for the benefit of the holders from time to time of the Securities or the Common Stock issuable upon conversion of the Securities (including you) (each of the foregoing, a "Holder" and together, the "Holders"), as follows:

1. Definitions. Capitalized terms used herein without definition shall have the respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following capitalized terms shall have the following meanings:

"Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Affiliate" of any specified person means any other person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such specified person. For purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such person whether by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Business Day" means any day that is neither a Saturday or a Sunday nor a day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

"Closing Date" has the meaning set forth in the Purchase Agreement.

"Commission" means the Securities and Exchange Commission.

"Damages Accrual Period" has the meaning set forth in Section 2(c) hereof.

"Damages Payment Date" has the meaning set forth in Section 2(c) hereof.

"Event" has the meaning set forth in Section 2(c) hereof.

"Event Date" has the meaning set forth in Section 2(c) hereof.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Final Memorandum" has the meaning set forth in the Purchase Agreement.

"Holder" has the meaning set forth in the preamble hereto.

"Indenture" means the Indenture relating to the Securities, dated as of February 15, 1997, between the Company and State Street Bank and Trust Company of California, N.A., as trustee, as the same may be amended from time to time in accordance with the terms thereof.

"Initial Placement" has the meaning set forth in the preamble hereto.

"Liquidated Damages" has the meaning set forth in Section 2(c) hereof.

"Majority Holders" means the Holders of a majority of the then outstanding aggregate principal amount of Securities registered under a Shelf Registration Statement; provided, that Holders of Common Stock issued upon conversion of Securities shall be deemed to be Holders of the aggregate principal amount of Securities from which such Common Stock was converted.

"Managing Underwriters" means the Underwriter or Underwriters that shall administer an Underwritten Offering.

"Notice Holder" has the meaning set forth in Section 2(b) hereof.

"Prospectus" means the prospectus included in any Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Securities or Common Stock issuable upon conversion thereof, covered by such Shelf Registration Statement, and all amendments and supplements to such prospectus, including post-effective amendments.

"Record Date" has the meaning set forth in Section 2(c) hereof.

"Record Holder" has the meaning set forth in Section 2(c) hereof.

"Registrable Securities" shall mean the Securities and shares of Common Stock issued upon conversion thereof, excluding any such securities that, and any such securities the predecessors of which, were previously sold pursuant to a registration statement of the Company filed under the Act or pursuant to Rule 144 promulgated under the Act.

"Securities" has the meaning set forth in the preamble hereto.

"Selling Confirmation" means, with respect to a Notice Holder and a Selling Notice given by such Notice Holder, a written notice given by the Company to such Notice Holder instructing and notifying such Notice Holder that the Shelf Registration Statement and Prospectus may be used during the applicable Selling Period to effect the transactions described in such Selling Notice, that the Company is then-currently in compliance with Section 3(b) and that the Company reaffirms the consent granted pursuant to Section 3(f).

"Selling Notice" has the meaning set forth in Section 2(b) hereof.

"Selling Period" means, with respect to a Notice Holder and a Selling Notice given by such Notice Holder, a period of forty- five calendar days commencing on the date such Notice Holder receives a Selling Confirmation in respect of the transactions described in such Selling Notice; provided, that the Company may defer existing Selling Periods in accordance with Section 3(c)(2).

"Shelf Registration" means a registration effected pursuant to Section 2 hereof.

"Shelf Registration Period" has the meaning set forth in Section 2(a) hereof.

"Shelf Registration Statement" means a "shelf" registration statement of the Company pursuant to the provisions of Section 2 hereof (including additional registration statements filed pursuant to Section 3(d)) which covers some or all of the Securities and the Common Stock issuable upon conversion thereof, as applicable, on an appropriate form under Rule 415 promulgated under the Act, or any similar rule that may be adopted by the Commission, and all amendments and supplements to such registration statement, including

post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"Trustee" means the trustee with respect to the Securities under the Indenture.

"Underwriter" means any underwriter of Securities or Common Stock issuable upon conversion thereof in connection with an offering thereof under a Shelf Registration Statement.

"Underwritten Offering" means an offering in which the Securities or Common Stock are sold to an Underwriter or with the assistance of an Underwriter for reoffering to the public.

2. Shelf Registration; Suspension of Use of Prospectus; Liquidated Damages.

(a) The Company shall prepare and file with the Commission, as soon as practicable but in any event on or prior to the date sixty (60) days following the Closing Date, a Shelf Registration Statement under the Act registering the resale from time to time by Holders thereof of all of the Registrable Securities. The Shelf Registration Statement shall permit resales of Registered Securities by Holders in the manner or manners designated by them (including, without limitation, one or more Underwritten Offerings) from time to time, which shall be set forth in such Shelf Registration Statement. The Company shall cause the Shelf Registration Statement to be declared effective under the Act as soon as practicable but in any event on or prior to the date ninety (90) days following the Closing Date and to keep the Shelf Registration Statement continuously effective under the Act until the earlier of (i) the third anniversary of the last date of original issuance of the Securities (ii) the date on which the Securities or Common Stock issuable upon conversion thereof may be sold by non-affiliates of the Company pursuant to paragraph (k) of Rule 144 (or any successor provision) promulgated by the Commission and (iii) such date as of which all the Securities or the Common Stock issuable upon conversion thereof have been sold pursuant to the Shelf Registration Statement (the period ending at such earlier date, the "Shelf Registration Period").

(b) Each Holder of Registrable Securities agrees that if such Holder wishes to sell its Registrable Securities pursuant to the Shelf Registration Statement and the Prospectus, it will do so only in accordance with this Section 2(b). Each Holder of Registrable Securities agrees to give written notice to the Company at least four Business Days prior to any intended resale of Registrable Securities under the Shelf Registration Statement, which notice shall specify the date on which such Holder intends to begin such distribution and such information with respect to such Holder and the intended distribution as may be reasonably required to amend the Shelf Registration Statement or supplement the Prospectus with respect to such intended distribution (each Holder providing the notice described in this sentence and with respect to which the related Selling Period is continuing or has been deferred, a "Notice Holder"; each such notice, a "Selling Notice"). As soon as practicable after the date a Selling

Notice is received by the Company, and in any event within three Business Days after such date, the Company shall either:

- (i) (A) provide a Selling Confirmation to such Notice Holder or (B) file a supplement to the Prospectus or a post-effective amendment to the Shelf Registration Statement as required by Section 3(b), cause any such amendment to become effective and immediately provide a Selling Confirmation to such Notice Holder; or
- (ii) in the event of the happening of any event or circumstance of the kind described in Section 3(c)(2)(i), 3(c)(2)(ii), 3(c)(2)(iii)(y) or 3(c)(2)(iv) hereof, the Company shall deliver to such Notice Holder the notice required by Section 3(c)(2) and notify the holder that the consent granted pursuant to Section 3(f) is suspended until further notice.

Each such Notice Holder may sell all or any Registrable Securities pursuant to the Shelf Registration Statement and the Prospectus only during the Selling Period commencing with the earlier of (x) the date on which such Notice Holder receives a Selling Confirmation and (y) the fourth Business Day after the related Selling Notice has been received by the Company; provided that in the event the Company elects to take the actions permitted by Section 2(b)(ii), the commencement of the Selling Period shall be deferred until such later date as the Company delivers a Selling Confirmation. A Notice Holder shall not sell any Registrable Securities pursuant to the Shelf Registration Statement or the Prospectus after the expiration of the applicable Selling Period without giving a new Selling Notice pursuant to Section 2(b) hereof and receiving a new Selling Confirmation. Notwithstanding the foregoing, the Company shall not under any circumstances be entitled to exercise its right under this paragraph to defer the commencement of a Selling Period or its right under Section 3(c)(2) to defer existing Selling Periods, in the aggregate, more than one time in any three month period or three times in any twelve month period, and the period in which a Selling Period is deferred shall not exceed thirty (30) days. In no event shall the Company be permitted to extend the period during which the commencement of any such Selling Period is deferred (whether pursuant to this paragraph or Section 3(c)(2) from and after the date a Notice Holder provides a Selling Notice to the Company in accordance with this Section 2(b) (a "Deferral Period") beyond such thirty (30) day period.

In the event the Company elects to take the actions described in Section 2(b)(ii), the Company will, at such time as it is in compliance with Section 3(b) and as use of the Prospectus may be resumed, immediately provide Selling Confirmations to all Notice Holders.

(c) The parties hereto agree that the Holders of the Registrable Securities will suffer damages, and that it would not be feasible to ascertain the extent of such damages with precision, if (i) the Shelf Registration statement has not been filed on or prior to the date sixty (60) days following the Closing Date, (ii) the Shelf Registration Statement has not been declared effective under the Securities Act on or before the date ninety (90) days following the Closing Date, (iii) prior to the end of the Shelf Registration Period, the Commission shall have

issued a stop order suspending the effectiveness of the Shelf Registration Statement or proceedings have been initiated with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Act, (iv) the aggregate number of days in any one Deferral Period exceeds the periods permitted pursuant to Section 2(b) hereof or (v) the number of Deferral Periods exceeds the number permitted pursuant to Section 2(b) hereof (each of the events of a type described in any of the foregoing clauses (i) through (v) are individually referred to herein as an "Event"; and the date sixty (60) days following the Closing Date in the case of clause (i), the date ninety (90) days following the Closing Date in the case of clause (ii), the date on which the effectiveness of the Shelf Registration Statement has been suspended or proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Act have been commenced in the case of clause (iii), the date on which the duration of a Deferral Period exceeds the periods permitted by Section 2(b) hereof in the case of clause (iv), and the date of the commencement of a Deferral Period that causes the limit on the number of Deferral Periods under Section 2(b) hereof to be exceeded in the case of clause (v), are referred to herein as an "Event Date"). Events shall be deemed to continue until the date of the termination of such Event, which shall be the following date with respect to the respective types of Events: the date the Registration Statement is filed in the case of an Event of the type described in clause (i), the date the Registration Statement is declared effective under the Act in the case of an Event described in clause (ii), the date that all stop orders suspending effectiveness of the Shelf Registration Statement have been removed and the proceedings initiated with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Act have terminated, as the case may be, in the case of Events of the types described in clause (iii), termination of the Deferral Period which caused the aggregate number of days in any one Deferral Period to exceed the number permitted by Section 2(b) to be exceeded in the case of Events of the type described in clause (iv), and termination of the Deferral Period the commencement of which caused the number of Deferral Periods permitted by Section 2(b)(ii) to be exceeded in the case of Events of the type described in clause (v).

Accordingly, upon the occurrence of any Event and until such time as there are no Events which have occurred and are continuing (a "Damages Accrual Period"), commencing on the Event Date on which such Damages Accrual Period began, the Company agrees to pay, as liquidated damages, and not as a penalty, an additional amount (the "Liquidated Damages"): (A) to each Holder of Registrable Securities that is a Notice Holder, accruing at a rate equal to one-half of one percent per annum (50 basis points) on (s) where such Registrable Securities are Securities, the aggregate principal amount of such Securities held by such Notice Holder and (t) where such Registrable Securities are shares of Common Stock issued upon conversion of Securities, the aggregate

principal amount of Securities that were converted into such shares and (B) if the Damages Accrual Period continues for a period in excess of thirty days from the Event Date, from and after the end of such thirty day period until such time as there are no Events which have occurred and are continuing, to each Holder of Registrable Securities (whether or not a Notice Holder), accruing at a rate equal to one-half of one percent per annum (50 basis points) on (u) where such Registrable Securities are Securities, the aggregate principal amount of such Securities held by such Holder and (v) where such Registrable Securities are shares of Common Stock issued upon conversion of Securities, the aggregate principal amount of Securities that were converted into such shares. Notwithstanding the foregoing, no Liquidated Damages shall accrue under clause (A) of the preceding sentence during any period for which Liquidated Damages accrue under clause (B) of the preceding sentence or as to any Securities or shares of Common Stock from and after the earlier of (x) the date such securities are no longer Registrable Securities, and (y) the expiration of the Shelf Registration Period. In addition, Liquidated Damages will not accrue as to any Securities or Common Stock issuable upon the conversion thereof represented by the Unrestricted Global Note (as defined in the Indenture) provided that such securities are not subject to limitations on transfer under United States federal or state securities laws and there shall have been at least six months during which the Shelf Registration Statement was effective and the Prospectus included therein was available for effecting resales of the Securities and the Common Stock issuable upon conversion thereof. The rate of accrual of the Liquidated Damages with respect to any period shall not exceed the rate provided for in this paragraph notwithstanding the occurrence of multiple concurrent Events.

Liquidated Damages due on any Securities or Common Stock shall be payable on each Interest Payment Date on the Securities occurring (or if there are no Securities outstanding, which would have occurred) during the Damages Accrual Period and on the Interest Payment Date immediately following (or which would have followed) the termination of such Period (a "Damages Payment Date"). The Company shall pay the Liquidated Damages due on any Securities by depositing with the Trustee under the Indenture, in trust, for the benefit of the Holders of Securities or Common Stock or Notice Holders, as the case may be, entitled thereto, at least one Business Day prior to the applicable Damages Payment Date, sums sufficient to pay the Liquidated Damages accrued or accruing since the last preceding Damages Payment Date to such Damages Payment Date. The Liquidated Damages shall be paid on each Damages Payment Date to the Holders of record of the Registrable Securities (the "Record Holders") on the 15th day of February or 15th day of August (each a "Record Date") immediately preceding such Damages Payment Date by wire transfer of immediately available funds to the accounts specified by them or by mailing checks to their registered addresses as they appear in the Securities register or stock transfer books of the Company, if no such accounts have been specified on or before the applicable Regular Record Date. The Trustee shall be entitled, on behalf of the Holders of Securities, Common Stock and Notice Holders, to seek any available remedy for the enforcement of this Agreement, including for the payment of such Liquidated Damages.

Notwithstanding the foregoing, the parties agree that the sole remedy payable for a violation of the terms of this Agreement with respect to which Liquidated Damages are expressly provided shall be such Liquidated Damages. Nothing shall preclude a Notice Holder or Holder of Registrable Securities from pursuing or obtaining specific performance or other equitable relief with respect to any violation of this Agreement for which liquidated damages are not expressly provided by this Agreement.

All of the Company's obligations set forth in this Section 2(c) which are outstanding with respect to any Registrable Securities at the time such security ceases to be a

Registrable Security shall survive until such time as all such obligations with respect to such security have been satisfied in full (notwithstanding termination of the Agreement).

The parties hereto agree that the Liquidated Damages provided for in this Section 2(c) constitute a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities (other than the Initial Purchasers) by reason of the failure of the Shelf Registration Statement to be filed or declared effective or unavailable (absolutely or as a practical matter) for effecting resales of Registrable Securities, as the case may be, in accordance with the provisions hereof.

3. Registration Procedures. In connection with any Shelf Registration Statement, the following provisions shall apply:

(a) The Company shall furnish to you, prior to the filing thereof with the Commission, a copy of any Shelf Registration Statement, and each amendment thereof and each amendment or supplement, if any, to the Prospectus included therein and shall use its best efforts to reflect in each such document, when so filed with the Commission, such comments as Salomon Brothers Inc reasonably may propose.

(b) The Company shall ensure that (i) any Shelf Registration Statement and any amendment thereto and any Prospectus forming part thereof and any amendment or supplement thereto comply in all material respects with the Act and the rules and regulations thereunder, (ii) any Shelf Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) any Prospectus forming part of any Shelf Registration Statement, and any amendment or supplement to such Prospectus, does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided that no representation or agreement is made hereby with respect to information with respect to you or any Holder required to be included in any Shelf Registration Statement or Prospectus pursuant to the Act or the rules and regulations thereunder or provided by you, any Holder, or any Managing Underwriter specifically for inclusion in any Shelf Registration Statement or Prospectus.

(c) (1) The Company shall advise you and the Holders and, if requested by you or any such Holder, confirm such advice in writing:

(i) when a Shelf Registration Statement and any amendment thereto has been filed with the Commission and when the Shelf Registration Statement or any post-effective amendment thereto has become effective; and

(ii) of any request by the Commission for amendments or supplements to the Shelf Registration Statement or the Prospectus included therein or for additional information.

(2) During any Selling Period, during the deferral of any Selling Period and within three Business Days of receipt by the Company of any Selling Notice, the Company shall notify you and the Notice Holders and, if requested by you or any such Notice Holder, confirm such notification in writing:

(i) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of any proceedings for that purpose;

(ii) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities included in any Shelf Registration Statement for sale in any jurisdiction or the initiation or threat of any proceeding for such purpose;

(iii) of (x) the suspension of the use of the Prospectus pursuant to Section 2(b) hereof or (y) of the happening of any event that requires the making of any changes in the Shelf Registration Statement or the Prospectus so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading; and

(iv) of the determination by the Company, in its judgment, that it is advisable to suspend use of the Prospectus for valid business reasons (not including avoidance of the Company's obligations hereunder) including, among other things, the acquisition or divestiture of assets, public filings with the Commission, pending corporate developments and similar events;

which notice shall be accompanied by an instruction to defer the use of the Prospectus until the Company delivers a Selling Confirmation whereupon any existing Selling Period shall be deferred and shall recommence upon delivery of the aforementioned Selling Confirmation; provided, that such Selling Period shall be extended by the number of days elapsed in such period prior to such deferral.

(d) The Company shall use its best efforts to obtain the withdrawal of any order suspending the effectiveness of any Shelf Registration Statement at the earliest possible time, and in any event shall within thirty (30) days of any such order amend the Shelf Registration Statement in a manner reasonably expected to obtain the withdrawal of such order, or file an additional Shelf Registration Statement covering all of the Registrable Securities (whereupon references herein to the Shelf Registration Statement shall be deemed to include reference to such additional filing).

(e) The Company shall furnish to each Holder of Securities or the Common Stock issued upon conversion thereof included within the coverage of any Shelf Registration

Statement, without charge, at least one copy of such Shelf Registration Statement and any post-effective amendment thereto, including financial statements and schedules, and, if the Holder so requests in writing, all exhibits (including those incorporated by reference).

(f) The Company shall, during the Shelf Registration Period, deliver to each Holder of Securities or the Common Stock issued upon conversion thereof included within the coverage of any Shelf Registration Statement, without charge, as many copies of the Prospectus (including each preliminary Prospectus) included in such Shelf Registration Statement and any amendment or supplement thereto as such Holder may reasonably request; and, except during such periods as the Company shall have suspended the use of the Prospectus pursuant to Section 2(b) or 3(c)(2), the Company consents to the use of the Prospectus or any amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Securities or the Common Stock issued upon conversion thereof covered by the Prospectus or any amendment or supplement thereto.

(g) Prior to any offering of Securities or the Common Stock issued upon conversion thereof pursuant to any Shelf Registration Statement, the Company shall register or qualify or cooperate with the Holders of Securities or the Common Stock issued upon conversion thereof included therein and their respective counsel in connection with the registration or qualification of such Securities or Common Stock for offer and sale under the securities or blue sky laws of such jurisdictions as any such Holders reasonably request in writing and do any and all other acts or things necessary or advisable to enable the offer and sale in such jurisdictions of the Securities and the Common Stock issued upon conversion thereof covered by such Shelf Registration Statement; provided, however, that the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to general service of process or to taxation in any such jurisdiction where it is not then so subject.

(h) The Company shall cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Securities or the Common Stock issued upon conversion thereof to be sold pursuant to any Shelf Registration Statement free of any restrictive legends and in such denominations and registered in such names as Holders may request prior to sales of Securities or the Common Stock issued upon conversion thereof pursuant to such Shelf Registration Statement.

(i) Upon the occurrence of any event contemplated by paragraph (c)(2)(iii) above, the Company shall promptly prepare a post-effective amendment to any Shelf Registration Statement or an amendment or supplement to the related Prospectus or file any other required document so that, as thereafter delivered (when and as permitted pursuant to Section 2(b)) to purchasers of the Securities or the Common Stock issued upon conversion thereof included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(j) The Company shall use its best efforts to cause The Depository Trust Company ("DTC") on the first Business Day following the effective date of any Shelf Registration Statement hereunder or as soon as possible thereafter to remove (i) from any existing CUSIP number assigned to the Securities any designation indicating that the Securities are "restricted securities", which efforts shall include delivery to DTC of a letter executed by the Company substantially in the form of Exhibit A hereto and (ii) any other stop or restriction on DTC's system with respect to the Securities. In the event the Company is unable to cause DTC to take the actions described in the immediately preceding sentence, the Company shall take such actions as Salomon Brothers Inc may reasonably request to provide, as soon as practicable, a CUSIP number for the Securities registered under such Shelf Registration Statement and to cause such CUSIP number to be assigned to the Securities (or to the maximum aggregate principal amount of the Securities to which such number may be assigned). Upon compliance with the foregoing requirements of this Section

3(j), the Company shall provide the Trustee with printed certificates for such Securities, in a form eligible for deposit with DTC.

(k) The Company shall use its best efforts to comply with all applicable rules and regulations of the Commission and shall make generally available to its security holders as soon as practicable after the effective date of the applicable Shelf Registration Statement an earnings statement satisfying the provisions of Section 11(a) of the Act and Rule 158 promulgated by the Commission thereunder.

(l) The Company shall cause the Indenture to be qualified under the Trust Indenture Act in a timely manner.

(m) The Company may require each Holder of Securities or the Common Stock issued upon conversion thereof to be sold pursuant to any Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of such Securities or Common Stock as may, from time to time, be required by the Act and the rules and regulations promulgated thereunder, and the obligations of the Company to any Holder hereunder shall be expressly conditioned on the compliance of such Holder with such request.

(n) The Company shall, if requested, use its best efforts to promptly incorporate in a Prospectus supplement or post-effective amendment to a Shelf Registration Statement (i) such information as the Majority Holders or, if the Securities or Common Stock are being sold in an Underwritten Offering, as the Managing Underwriters and the Majority Holders reasonably agree should be included therein and provide to the Company in writing for inclusion in the Shelf Registration Statement or Prospectus, and (ii) such information as a Holder may provide from time to time to the Company in writing for inclusion in a Prospectus or any Shelf Registration Statement concerning such Holder and the distribution of such Holder's Securities and Common Stock and, in either case, shall make all required filings of such Prospectus supplement or post-effective amendment as soon as notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment.

(o) The Company shall enter into such agreements (including underwriting agreements) and take all other appropriate actions in order to expedite or facilitate the registration or the disposition of the Securities or the Common Stock issuable upon conversion thereof, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain indemnification provisions and procedures no less favorable to the Holders than those set forth in Section 5 (or such other provisions and procedures acceptable to the Majority Holders and the Managing Underwriters, if any, with respect to all parties to be indemnified pursuant to Section 5 from Holders of Securities or the Common Stock issuable upon conversion thereof to the Company).

(p) The Company shall (i) make reasonably available for inspection by the Holders of Securities or the Common Stock issued upon conversion thereof to be registered under a Shelf Registration Statement, any Underwriter participating in any disposition pursuant to such Shelf Registration Statement, and any attorney, accountant or other agent retained by the Holders or any such Underwriter all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries; (ii) cause the Company's officers, directors and employees to supply all relevant information reasonably requested by the Holders or any such Underwriter, attorney, accountant or agent in connection with any such Shelf Registration Statement as is customary for similar due diligence examinations; provided, however, that any information that is designated in writing by the Company, in its sole discretion, as confidential at the time of delivery of such information shall be kept confidential by the Holders or any such Underwriter, attorney, accountant or agent, unless disclosure thereof is made in connection with a court proceeding or required by law, or such information has become available to the public generally or through a third party without an accompanying obligation of confidentiality; (iii) make such representations and warranties to the Holders of Securities or the Common Stock issued upon conversion thereof registered thereunder and the Underwriters, if any, in form, substance and scope as are customarily made by issuers to Underwriters and covering matters including, but not limited to, those set forth in the Purchase Agreement; (iv) obtain opinions of counsel to the Company and updates thereof (which counsel and opinions, in form, scope and substance, shall be reasonably satisfactory to the Managing Underwriters, if any) addressed to each selling Holder and the Underwriters, if any, covering such matters as are customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by such Holders and Underwriters; (v) obtain "cold comfort" letters and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Shelf Registration Statement), addressed to each selling Holder of Securities or the Common Stock issued upon conversion thereof registered thereunder (provided such Holder furnishes the accountants with such representations as the accountants customarily require in similar situations) and the Underwriters, if any, in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with primary underwritten offerings; and (vi) deliver such documents and certificates as may be reasonably requested by the Majority Holders and the Managing Underwriters, if any, including those to evidence

compliance with Section 3(i) and with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company. The foregoing actions set forth in clauses (iii), (iv), (v) and (vi) of this Section 3(p) shall be performed at (A) the effectiveness of such Shelf Registration Statement and each post-effective amendment thereto and (B) each closing under any underwriting or similar agreement as and to the extent required thereunder.

4. Registration Expenses. The Company shall bear all expenses incurred in connection with the performance of its obligations under Sections 2 and 3 hereof and shall reimburse the Holders for the reasonable fees and disbursements of one firm or counsel designated by the Majority Holders to act as counsel for the Holders in connection therewith (which shall be Wilson Sonsini Goodrich & Rosati, PC, unless and until an alternate designation is made by the majority Holders).

5. Indemnification and Contribution.

(a) (i) In connection with any Shelf Registration Statement, the Company agrees to indemnify and hold harmless each Holder of Securities or Common Stock issued upon conversion thereof covered thereby (including the Initial Purchasers), the directors, officers, employees and agents of each such Holder and each person who controls any such Holder within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement as originally filed or in any amendment thereof, or in any preliminary Prospectus or Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any case to the extent that any such loss, claim, damage or liability arises out of or is based upon (A) any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any such Holder or any Initial Purchaser specifically for inclusion therein, (B) use of a Shelf Registration Statement or the related Prospectus during a period when a stop order has been issued in respect of such Shelf Registration or any proceedings for that purpose have been initiated or use of a Prospectus when use of such Prospectus has been deferred pursuant to Section 2(b); provided, further, in each case, that the Company delivered prior notice, and the Holders have received such prior notice, in accordance with Section 6(c) hereof of such stop order, initiation of proceedings or deferral or (C) if the Holder fails to deliver a Prospectus or the then current Prospectus. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

(ii) The Company also agrees to indemnify or contribute to Losses, as provided in Section 5(d), of any Underwriters of Securities or the Common Stock issued upon conversion thereof registered under a Shelf Registration Statement, their officers and directors and each person who controls such Underwriters on substantially the same basis as that of the indemnification of the Initial Purchasers and the selling Holders provided in this Section 5(a) and shall, if requested by any Holder, enter into an underwriting agreement reflecting such agreement, as provided in Section 3(o) hereof.

(b) Each Holder of Securities or Common Stock issued upon conversion thereof covered by a Shelf Registration Statement (including the Initial Purchasers) severally agrees to indemnify and hold harmless (i) the Company, (ii) each of its directors, (iii) each of its officers who signs such Shelf Registration Statement and (iv) each person who controls the Company within the meaning of either the Act or the Exchange Act to the same extent as the foregoing indemnity from the Company to each such Holder, but only with reference to written information relating to such Holder furnished to the Company by or on behalf of such Holder specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any such Holder may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 5 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel (and local counsel) if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice

of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party; provided further, that the indemnifying party shall not be responsible for the fees and expenses of more than one separate counsel (together with appropriate local counsel) representing all the indemnified parties under paragraph (a)(i), paragraph (a)(ii) or paragraph (b) above. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding.

(d) In the event that the indemnity provided in paragraph

(a) or (b) of this Section 5 is unavailable to or insufficient to hold harmless an indemnified party for any reason, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall have a joint and several obligation to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) (collectively "Losses") to which such indemnified party may be subject in such proportion as is appropriate to reflect the relative benefits received by such indemnifying party, on the one hand, and such indemnified party, on the other hand, from the Initial Placement and the Shelf Registration Statement which resulted in such Losses; provided, however, that in no case shall the Initial Purchasers be responsible, in the aggregate, for any amount in excess of the purchase discount or commission applicable to such Security, as set forth on the cover page of the Final Memorandum (unless such Initial Purchaser shall also be an Underwriter, in which case, such Initial Purchaser shall also be responsible for amounts pursuant to the remainder of this sentence), nor shall any Underwriter be responsible for any amount in excess of the underwriting discount or commission applicable to the Securities and Common Stock issued upon conversion thereof purchased by such Underwriter under the Shelf Registration Statement which resulted in such Losses. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the indemnifying party and the indemnified party shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of such indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the sum of (x) the total net proceeds from the Initial Placement (before deducting expenses) as set forth on the cover page of the Final Memorandum and

(y) the total amount of additional interest which the Company was not required to pay as a result of registering the Securities and Common Stock issued upon conversion thereof covered by the Shelf Registration Statement which resulted in such Losses. Benefits received by the Initial Purchasers shall be deemed to be equal to the total purchase discounts and commissions as set forth on the cover page of the Final Memorandum, and benefits received by any other Holders shall be deemed to be equal to the value of receiving Securities or the Common Stock issuable upon conversion thereof registered under the Act. Benefits received by any Underwriter shall be deemed to be equal to the total underwriting

discounts and commissions, as set forth on the cover page of the Prospectus forming a part of the Shelf Registration Statement which resulted in such Losses. Relative fault shall be determined by reference to whether any alleged untrue statement or omission relates to information provided by the indemnifying party, on the one hand, or by the indemnified party, on the other hand. The parties agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 5, each person who controls a Holder within the meaning of either the Act or the Exchange Act and each director, officer, employee and agent of such Holder shall have the same rights to contribution as such Holder, and each person who controls the Company within the meaning of either the Act or the Exchange Act, each officer of the Company who shall have signed the Shelf Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

(e) The provisions of this Section 5 will remain in full force and effect, regardless of any investigation made by or on behalf of any Holder or the Company or any of the officers, directors or controlling persons referred to in Section 5 hereof, and will survive the sale by a Holder of Securities covered by a Shelf Registration Statement.

6. Miscellaneous.

(a) No Inconsistent Agreements. The Company has not, as of the date hereof, entered into nor shall it, on or after the date hereof, enter into, any agreement with respect to its Securities that is inconsistent with the rights granted to the Holders herein or otherwise conflicts with the provisions hereof.

(b) Amendments and waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Majority Holders; provided that, with respect to any matter that directly or indirectly affects the rights of the Initial Purchasers hereunder, the Company shall obtain the written consent of the Initial Purchasers against which such amendment, qualification, supplement, waiver or consent is to be effective. Notwithstanding the foregoing (except the foregoing proviso), a waiver or consent to departure from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose Securities are being sold pursuant to a Shelf Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by the Majority Holders, determined on the basis of Securities being sold rather than registered under such Shelf Registration Statement.

(c) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand- delivery, first-class mail, telex, telecopier, or air courier guaranteeing overnight delivery:

(i) if to you, initially at the address set forth in the Purchase Agreement;

(ii) if to any other Holder, at the most current address given by such Holder to the Company in accordance with the provisions of this Section 6 (c), which address initially is, with respect to each Holder, the address of such Holder maintained by the Registrar under the Indenture, with a copy in like manner to Salomon Brothers Inc; and

(iii) if to the Company, initially at its address set forth in the Purchase Agreement.

All such notices and communications shall be deemed to have been duly given when received, if delivered by hand or air courier, and when sent, if sent by first-class mail, telex or telecopier.

The Initial Purchasers or the Company by notice to the other may designate additional or different addresses for subsequent notices or communications.

(d) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including, without the need for an express assignment or any consent by the Company thereto, subsequent Holders. The Company hereby agrees to extend the benefits of this Agreement to any Holder and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

(e) Counterparts. This agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(f) Headings. The headings in this agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(g) Governing Law. This agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in said State, without regard to the conflicts of law rules thereof.

(h) Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such

provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

(i) Securities Held by the Company, etc. Whenever the consent or approval of Holders of a specified percentage of principal amount of Securities or the Common Stock issuable upon conversion thereof is required hereunder, Securities or the Common Stock issued upon conversion thereof held by the Company or its Affiliates (other than subsequent Holders of Securities or the Common Stock issued upon conversion thereof if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

Please confirm that the foregoing correctly sets forth the agreement between the Company and you.

Very truly yours,
INTEVAC, INC.

/s/ Charles Eddy

Name: Charles Eddy
Title: CFO

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

SALOMON BROTHERS INC
HAMBRECHT & QUIST LLC
ROBERTSON STEPHENS & COMPANY LLC

By: Salomon Brothers Inc

/s/ Richard Gullivan

Name: Richard Gullivan
Title: Vice President

EXHIBIT A

**FORM OF LETTER TO BE PROVIDED BY ISSUER TO
THE DEPOSITORY TRUST COMPANY**

The Depository Trust Company
7 Hanover Square, 23rd Floor
New York, NY 10004

Re: 6 1/2% Convertible Subordinated Notes due 2004 (the "Securities") of Intevac, Inc. (the "Issuer")

Ladies and Gentlemen:

Please be advised that the Securities and Exchange Commission has declared effective a Registration Statement on Form S-3 under the Securities Act of 1933, as amended, with regard to all of the Securities referenced above. Accordingly, there is no longer any restriction as to whom such Securities may be sold and any restrictions on the CUSIP designation are no longer appropriate and may be removed. I understand that upon receipt of this letter, DTC will remove any stop or restriction on its system with respect to this issue.

As always, please do not hesitate to call if we can be of further assistance.

Very truly yours,

Authorized Officer

A-1

Exhibit 5.1

[LETTERHEAD OF BROBECK, PHLEGER & HARRISON LLP]

March 31, 1997

Intevac, Inc.
3550 Bassett Street
Santa Clara, CA 95054

Re: Intevac, Inc.
Registration Statement on Form S-3

Ladies and Gentlemen:

At your request, we have examined the Registration Statement on Form S-3 (the "Registration Statement"), in the form being filed with the Securities and Exchange Commission in connection with the registration under the Securities Act of 1933, as amended, of \$57,500,000 aggregate principal amount of 6 1/2% Convertible Subordinated Notes due 2004 (the "Notes"), and such indeterminate number of shares of Common Stock, no par value (the "Common Stock"), of Intevac, Inc., a California corporation (the "Company"), as may be required for issuance upon conversion of the Notes (the "Conversion Shares"). The Notes and the Conversion Shares are to be offered and sold by certain securityholders of the Company (the "Selling Securityholders").

We have examined instruments, documents, and records which we deemed relevant and necessary for the basis of our opinion hereinafter expressed. In such examination, we have assumed the following: (a) the authenticity of original documents and the genuineness of all signatures; (b) the conformity to the originals of all documents submitted to us as copies; and (c) the truth, accuracy, and completeness of the information, representations, and warranties contained in the records, documents, instruments, and certificates we have reviewed.

Based on such examination, we are of the opinion that the Notes have been duly authorized and are binding obligations of the Company entitled to the benefits of the Indenture dated as of February 15, 1997 between the Company and State Street Bank and Trust Company of California, N.A. as Trustee. We are of the further opinion that the Conversion Shares have been duly authorized and, when issued by the Company upon conversion of the Notes in accordance with the Indenture, will be legally issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the above referenced Registration Statement and to the use of our name under the caption "Legal Matters" in the Registration Statement and in the Prospectus included therein, and any amendment or supplement thereto. In giving such consent, we do not consider that we are "experts" within the meaning of such term as used in the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission issued thereunder, with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

Very truly yours,

/s/ Brobeck, Phleger & Harrison LLP

BROBECK, PHLEGER & HARRISON LLP

EXHIBIT 12.1

COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES

	FISCAL YEAR ENDED DECEMBER 31, 1992	FISCAL YEAR ENDED DECEMBER 31, 1993	FISCAL YEAR ENDED DECEMBER 31, 1994	FISCAL YEAR ENDED DECEMBER 31, 1995	FISCAL YEAR ENDED DECEMBER 31, 1996
Income (loss) before income taxes and minority interest....	4,036	(9)	2,501	8,944	11,323
Fixed charges(1).....	399	288	205	211	525
 Total earnings and fixed charges.....	4,435	279	2,706	9,155	11,848
Fixed charges.....	399	288	205	211	525
Ratio of earnings to fixed charges(2).....	11.12x	N/A	13.20x	43.39x	22.57x
	=====	=====	=====	=====	=====

(1) Fixed charges consist of interest expense incurred and the estimated portion of rental expense deemed by the Company to be representative of the interest factor of rental payments under operating leases.

(2) For the year ended December 31, 1993, the deficiency of earnings from continuing operations before income taxes to cover fixed charges was \$9,000.

EXHIBIT 23.1

CONSENT OF ERNST AND YOUNG LLP, INDEPENDENT AUDITORS

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3) and related Prospectus of Intevac, Inc. and to the incorporation by reference therein of our report dated January 20, 1997, with respect to the consolidated financial statements and schedule of Intevac, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 1996, filed with the Securities and Exchange Commission.

ERNST & YOUNG LLP

San Jose, California
March 25, 1997

EXHIBIT 25.1

**FORM T-1
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**STATEMENT OF ELIGIBILITY UNDER THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE**

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(B)(2)

**STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA,
NATIONAL ASSOCIATION**

(Exact name of trustee as specified in its charter)

UNITED STATES

(Jurisdiction of incorporation or organization if not a U.S. national bank)

06-1143380

(IRS Employer Identification No.)

725 SOUTH FIGUEROA STREET, SUITE 3100, LOS ANGELES, CALIFORNIA 90017

(Address of principal executive offices)

90017

(Zip code)

**STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A.
725 SOUTH FIGUEROA STREET, SUITE 3100, LOS ANGELES, CALIFORNIA, 90017
213-362-7338**

(Name, address and telephone number of agent for service)

INTEVAC, INC.

(Exact Name of Obligor as specified in its charter)

CALIFORNIA

(State or other jurisdiction of incorporation or organization)

94-3125814

(IRS Employer Identification No.)

3550 BASSETT STREET, SANTA CLARA, CALIFORNIA

(Address of principal executive offices)

95054

(Zip code)

6 1/2% CONVERTIBLE SUBORDINATED NOTE DUE 2004

(Title of the indenture securities)

GENERAL

Item 1. General Information.

(a) The trustee is subject to the supervision of the Comptroller of the Currency, Western District Office, 50 Fremont Street, Suite 3900, San Francisco, CA 94105-2292.

(b) The trustee is authorized to exercise corporate trust powers.

Item 2. Affiliation with the obligor.

The trustee is not affiliated with the obligor.

No responses are included for Items 3-15 of this form T-1 because the obligor is not in default on securities issued under indentures under which State Street Bank and Trust Company of California, N.A. is trustee.

Item 16. List of Exhibits

1. Articles of Association of State Street Bank and Trust Company of California, National Association.*
2. Certificate of Corporate Existence (with fiduciary powers) from the Comptroller of the Currency, Administrator of National Banks.*
3. Authorization of the Trustee to exercise fiduciary powers (included in Exhibits 1 and 2; no separate instrument).
4. By-laws of State Street Bank and Trust Company of California, National Association.*
5. Consent of State Street Bank and Trust Company of California, National Association required by Section 321(b) of the Act.*
6. Consolidated Report of Income at the close of business December 31, 1996, Federal Financial Institutions Examination Council, Consolidated Reports of Condition and Income for A Bank With Domestic Offices Only and Total Assets of Less Than \$100 Million - FFIEC 034.

* The indicated documents have been filed as exhibits with corresponding exhibit numbers to the Form T-1 of Oasis Residential, Inc., filed pursuant to Section 305(b)(2) of the Act, filed with the Securities and Exchange Commission on November 18, 1996 (Registration No. 033-90488), and are incorporated herein by reference.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, the trustee, State Street Bank and Trust Company of California, National Association, organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Los Angeles, and State of California, on the 31st day of March, 1997.

STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, NATIONAL ASSOCIATION

By /s/ Joni Frederick

Joni Frederick
Assistant Vice President

End of Filing

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