

# INTEVAC INC

## **FORM 10-Q** (Quarterly Report)

Filed 04/30/02 for the Period Ending 03/30/02

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 10-Q (Quarterly Report)

Filed 4/30/2002 For Period Ending 3/30/2002

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, DC 20549

## FORM 10-Q

(MARK ONE)

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

For the quarterly period ended March 30, 2002

OR

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

For the transition period from            to

Commission file number 0-26946

### INTEVAC, INC.

(Exact name of registrant as specified in its charter)

California  
(State or other jurisdiction of  
incorporation or organization)

94-3125814  
(IRS Employer  
Identification No.)

3560 Bassett Street  
Santa Clara, California 95054  
(Address of principal executive office, including Zip Code)

Registrant's telephone number, including area code: (408) 986-9888

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

#### APPLICABLE ONLY TO CORPORATE ISSUERS:

On March 30, 2002, 12,060,003 shares of the Registrant's Common Stock, no par value, were outstanding.

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## PART I. FINANCIAL INFORMATION

## Item 1. Financial Statements

## INTEVAC, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS  
(In thousands)

	March 30, 2002	December 31, 2001
	(Unaudited)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 14,464	\$ 18,157
Accounts receivable, net of allowances of \$227 and \$225 at March 30, 2002 and December 31, 2001	10,078	8,046
Income taxes recoverable	2,214	—
Inventories	23,222	21,691
Prepaid expenses and other current assets	711	478
	<hr/>	<hr/>
Total current assets	50,689	48,372
Property, plant and equipment, net	7,735	8,864
Investment in 601 California Avenue LLC	2,431	2,431
Debt issuance costs and other long-term assets	441	498
	<hr/>	<hr/>
Total assets	\$ 61,296	\$ 60,165
	<hr/>	<hr/>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 2,259	\$ 2,628
Accrued payroll and related liabilities	1,797	1,573
Other accrued liabilities	3,755	3,547
Customer advances	16,519	13,464
	<hr/>	<hr/>
Total current liabilities	24,330	21,212
Convertible notes	37,545	37,545
Shareholders' equity:		
Common stock, no par value	19,237	19,093
Accumulated other comprehensive income	135	122
Accumulated deficit	(19,951)	(17,807)
	<hr/>	<hr/>
Total shareholders' equity	(579)	1,408
	<hr/>	<hr/>
Total liabilities and shareholders' equity	\$ 61,296	\$ 60,165
	<hr/>	<hr/>

See accompanying notes.

**INTEVAC, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**AND COMPREHENSIVE LOSS**  
(In thousands, except per share amounts)  
(Unaudited)

	Three months ended	
	March 30, 2002	March 31, 2001
Net revenues	\$ 6,670	\$10,005
Cost of net revenues	5,707	6,605
	<u>963</u>	<u>3,400</u>
Gross profit		
Operating expenses:		
Research and development	3,129	3,496
Selling, general and administrative	1,710	1,669
	<u>4,839</u>	<u>5,165</u>
Total operating expenses		
Operating loss	(3,876)	(1,765)
Interest expense	(667)	(738)
Interest income and other, net	185	(1,292)
	<u>(4,358)</u>	<u>(3,795)</u>
Loss before income taxes		
Benefit from income taxes	(2,214)	—
	<u>(2,144)</u>	<u>(3,795)</u>
Net loss		
Other comprehensive income:		
Foreign currency translation adjustment	13	11
	<u>(2,131)</u>	<u>(3,784)</u>
Total comprehensive loss		
Basic and diluted loss per share:		
Net loss	\$ (0.18)	\$ (0.32)
Shares used in per share amounts	12,041	11,896

See accompanying notes.



**INTEVAC, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

	Three months ended	
	March 30, 2002	March 31, 2001
<b>Operating activities</b>		
Net loss	\$ (2,144)	\$ (3,795)
Adjustments to reconcile net loss to net cash and cash equivalents used in operating activities:		
Depreciation and amortization	841	1,128
Foreign currency gain	—	(1)
Unrealized loss on investments	—	2,000
Changes in assets and liabilities	(2,378)	(3,714)
Total adjustments	(1,537)	(587)
Net cash and cash equivalents used in operating activities	(3,681)	(4,382)
<b>Investing activities</b>		
Purchase of investments	—	(5,463)
Proceeds from sale of investments	—	32,277
Purchase of leasehold improvements and equipment	(169)	(582)
Net cash and cash equivalents provided by (used in) investing activities	(169)	26,232
<b>Financing activities</b>		
Proceeds from issuance of common stock	144	216
Net cash and cash equivalents provided by financing activities	144	216
Effect of exchange rate changes on cash	13	11
Net increase (decrease) in cash and cash equivalents	(3,693)	22,077
Cash and cash equivalents at beginning of period	18,157	4,616
Cash and cash equivalents at end of period	\$14,464	\$26,693
<b>Supplemental Schedule of Cash Flow Information</b>		
Cash paid for:		
Interest	\$ 1,220	\$ 1,374

See accompanying notes.

INTEVAC, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**1. Business Activities and Basis of Presentation**

Intevac, Inc.'s businesses are the design, manufacture and sale of complex capital equipment used to manufacture products such as flat panel displays and thin-film disks ("Equipment") and the development of highly sensitive electro-optical devices and systems ("Photonics").

Systems sold by the Equipment Division are typically used to deposit highly engineered thin-films of material on a substrate, or to modify the characteristics and properties of thin-films already deposited on a substrate. Systems manufactured by the Equipment Division generally utilize proprietary manufacturing techniques and processes and operate under high levels of vacuum. The systems are designed for high-volume continuous operation and use precision robotics, computerized controls and complex software programs to fully automate and control the production process. Products manufactured with these systems include cell phone color displays, automotive displays, computer monitors and disks for computer hard disk drives. The Equipment Division has also designed ultra high vacuum automated equipment for Photonics to be used for the future manufacture of low-cost low-light-level cameras.

The Photonics Division is developing electro-optical devices and systems that permit highly sensitive detection of photons in the visible and short wave infrared portions of the spectrum. This development work is aimed at creating new products for both military and industrial applications. Products include Laser Illuminated Viewing and Ranging ("LIVAR®") systems for positive target identification at long range, low-cost low-light-level cameras for use in security and military applications and photodiodes for use in high-speed fiber optic systems.

The financial information at March 30, 2002 and for the three-month periods ended March 30, 2002 and March 31, 2001 is unaudited, but includes all adjustments (consisting only of normal recurring accruals) that the Company considers necessary for a fair presentation of the financial information set forth herein, in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial information, the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, it does not include all of the information and footnotes required by U.S. GAAP for annual financial statements. For further information, refer to the Consolidated Financial Statements and footnotes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenue and expenses during the reporting period. Actual results inevitably will differ from those estimates, and such differences may be material to the financial statements.

The Company evaluates the collectibility of trade receivables on an ongoing basis and provides reserves against potential losses when appropriate.

The results for the three-month period ended March 30, 2002 are not considered indicative of the results to be expected for any future period or for the entire year.

## INTEVAC, INC.

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

## 2. Inventories

The components of inventory consist of the following:

	March 30, 2002	December 31, 2001
	(in thousands)	
Raw materials	\$ 5,664	\$ 5,659
Work-in-progress	9,187	11,962
Finished goods	8,371	4,070
	<u>\$23,222</u>	<u>\$21,691</u>

Finished goods inventory consists of completed units at customer sites undergoing installation and acceptance testing.

## 3. Net Income (Loss) Per Share

The following table sets forth the computation of basic and diluted earnings per share:

	Three months ended	
	March 30, 2002	March 31, 2001
	(in thousands)	
Numerator:		
Numerator for basic earnings per share — loss available to common stockholders	(2,144)	(3,795)
Effect of dilutive securities:		
6 1/2% convertible notes(1)	<u>—</u>	<u>—</u>
Numerator for diluted earnings per share — loss available to common stockholders after assumed conversions	<u>\$ (2,144)</u>	<u>\$ (3,795)</u>
Denominator:		
Denominator for basic earnings per share — weighted-average shares	12,041	11,896
Effect of dilutive securities:		
Employee stock options(2)	<u>—</u>	<u>—</u>
6 1/2% convertible notes(1)	<u>—</u>	<u>—</u>
Dilutive potential common shares	<u>—</u>	<u>—</u>
Denominator for diluted earnings per share — adjusted weighted-average shares and assumed conversions	<u>12,041</u>	<u>11,896</u>

(1) Diluted EPS for the three-month periods ended March 30, 2002 and March 31, 2001 exclude “as converted” treatment of the convertible notes as their inclusion would be anti-dilutive. The number of “as converted” shares excluded for the three-month periods ended March 30, 2002 and March 31, 2001 was 1,820,364 and 1,999,758, respectively.

(2) Diluted EPS for the three-month periods ended March 30, 2002 and March 31, 2001 exclude the effect of employee stock options as their inclusion would be anti-dilutive. The number of employee stock option shares excluded for the three-month periods ended March 30, 2002 and March 31, 2001 was 59,882 and 173,590, respectively.



## INTEVAC, INC.

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

## 4. Segment Reporting

*Segment Description*

Intevac, Inc. has two reportable operating segments: Equipment and Photonics. The Company's Equipment Division sells complex capital equipment used in the manufacturing of flat panel displays and thin-film disks. The Company's Photonics Division is developing devices and systems utilizing electron sources that permit highly sensitive detection of photons in the visible and the short-wave infrared spectrum.

Included in corporate activities are general corporate expenses less an allocation of corporate expenses to operating units equal to 1% of net revenues.

*Business Segment Net Revenues*

	Three months ended	
	March 30, 2002	March 31, 2001
	(in thousands)	
Equipment	\$4,935	\$ 7,932
Photonics	1,735	2,073
Total	\$6,670	\$10,005

*Business Segment Profit & Loss*

	Three months ended	
	March 30, 2002	March 31, 2001
	(in thousands)	
Equipment	\$(2,651)	\$ (563)
Photonics	(698)	(662)
Corporate activities	(527)	(540)
Operating loss	(3,876)	(1,765)
Interest expense	(667)	(738)
Interest income	74	581
Other income and expense, net	111	(1,873)
Loss before income taxes	\$(4,358)	\$(3,795)

*Geographic Area Net Trade Revenues*

	Three months ended	
	March 30, 2002	March 31, 2001
	(in thousands)	
United States	\$4,237	\$ 3,101
Far East	2,133	6,704
Europe	300	60
Rest of World	—	140
Total	\$6,670	\$10,005



**INTEVAC, INC.**

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

**5. Income Taxes**

The Company accrued a \$2.2 million tax benefit for the three-month period ended March 30, 2002. This resulted from recent federal tax law changes that allow losses incurred in 2001 and 2002 to be carried back 5 years. The Company paid federal income taxes of approximately \$5.1 million for 1996 and \$0.9 million for 1997. The Company believes that at least \$2.2 million of taxes paid are recoverable based on the loss incurred in 2001 and that additional taxes may also be recoverable, but the amount will not be determined and recorded until the Company files its 2001 federal income tax return either in the second or third quarter of 2002. For the three months ended March 31, 2001, the Company did not accrue a tax benefit due to the inability at that time to realize additional refunds from loss carry-backs. The Company's \$16.5 million deferred tax asset is fully offset by a \$16.5 million valuation allowance, resulting in a net deferred tax asset of zero at March 30, 2002.

**6. Capital Transactions**

During the three-month period ending March 30, 2002, Intevac sold stock to its employees under the Company's Employee Stock Purchase Plan. A total of 56,381 shares were issued for which the Company received \$144,000.

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

*This Quarterly Report on Form 10-Q contains forward-looking statements which involve risks and uncertainties. Words such as "believes," "expects," "anticipates" and the like indicate forward-looking statements. The Company's actual results may differ materially from those discussed in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, the risk factors set forth elsewhere in this Quarterly Report on Form 10-Q under "Certain Factors Which May Affect Future Operating Results" and in other documents the Company files from time to time with the Securities and Exchange Commission, including the Company's Annual Report on Form 10-K filed in March 2002, Form 10-Q's and Form 8-K's.*

#### Critical Accounting Policies and Estimates

Management's discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP"). We review the accounting policies we use in reporting our financial results on a regular basis. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosures of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates, including those related to revenue recognition, accounts receivable, inventories, income taxes, warranty obligations, long-lived assets, contingencies and litigation. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities. Results may differ from these estimates due to actual outcomes being different from those on which we based our assumptions. These estimates and judgments are reviewed by management on an ongoing basis. The Audit Committee and our auditors review significant estimates and judgements prior to the public release of our financial results.

Our significant accounting policies are described in Note 2 to the consolidated financial statements included in Item 8 of the Company's Annual Report on Form 10-K. We believe the following critical accounting policies affect the more significant judgments and estimates made in the preparation of our consolidated financial statements.

**Revenue Recognition** — Intevac recognizes revenue using the guidance from SEC Staff Accounting Bulletin No. 101 "Revenue Recognition in Financial Statements." Intevac's revenue recognition policy requires that there be persuasive evidence of a sales contract, that the price is fixed, that product title has transferred, that product payment is not contingent on any factors and is reasonably assured, and that the Company has completed all the material tasks and deliverables required by the contract.

Revenues for systems are recognized upon customer acceptance. For large deposition and RTP systems shipped through a distributor, revenue is typically recognized after the distributor has accepted the system at Intevac's factory and the system has been shipped. For large deposition and RTP systems sold direct to end customers, revenue is recognized after installation and acceptance of the system at the customer site. When the Company believes that there may be higher than normal end-user installation and acceptance issues for systems shipped through a distributor, such as when the first unit of a newly designed system is delivered, then the Company defers revenue recognition until the distributor's customer has also accepted the system. Revenues for technology upgrades, spare parts, consumable and prototype products built by the Photonics Division are generally recognized upon shipment. Service and maintenance contract revenue, which to date has been insignificant, is recognized ratably over applicable contract periods or as the service is performed.

The Company performs best efforts research and development work under various research contracts. Revenue on these contracts is recognized in accordance with contract terms, typically as costs are incurred. Typically, for each contract, the Company commits to perform certain research and development efforts up to an agreed upon amount. In connection with these contracts, the Company receives funding on an incremental basis up to a ceiling. Some of these contracts are cost sharing in nature, where Intevac is reimbursed for a portion of the total costs expended. In addition, the Company has, from time to time, negotiated with a third party to fund a portion of the Company's costs in return for a joint interest to the Company's rights at the end



of the contract. In the event a particular contract over-runs its agreed upon amount, the Company may be liable for the additional costs.

*Inventories* — Intevac makes provisions for potentially excess and obsolete inventory based on backlog and forecasted demand. However, order backlog is subject to revisions, cancellations, and rescheduling. Actual demand will inevitably differ from forecasted demand due to a number of factors. For example, the thin-film disk industry has suffered from over-capacity and poor financial results, which has led to industry consolidation. Consolidation can lead to the availability of used equipment that competes at very low prices with the Company's products. Financial stress and consolidation in the Company's customer base can also lead to the cancellation of orders for products after the Company has incurred substantial costs related to those orders. Such problems have resulted, and may continue to result, in excess and obsolete inventory, and the provision of related reserves.

*Warranty* — The Company's standard warranty is twelve months from customer acceptance. During this warranty period any necessary non-consumable parts are supplied and installed. A provision for the estimated warranty cost is recorded at the time revenue is recognized.

## Results of Operations

### *Three Months Ended March 30, 2002 and March 31, 2001*

*Net revenues.* Net revenues consist primarily of sales of equipment used to manufacture flat panel displays, equipment used to manufacture thin-film disks, related equipment and system components, and contract research and development related to the development of electro-optical devices and systems. Net revenues decreased by 33% to \$6.7 million for the three months ended March 30, 2002 from \$10.0 million for the three months ended March 31, 2001. Net revenues from Equipment decreased to \$4.9 million for the three months ended March 30, 2002 from \$7.9 million for the three months ended March 31, 2001. The decrease in Equipment revenue was the result of decreased shipments of flat panel manufacturing equipment and of disk equipment spare parts. Equipment revenues included the sale of a MDP 200 modular add-on system that was integrated with a previously delivered MDP 250 disk manufacturing system. Net revenues from Photonics decreased to \$1.7 million for the three months ended March 30, 2002 from \$2.1 million for the three months ended March 31, 2001. The decrease in Photonics net revenues was the result of lower research and development contract revenues in the three-month period ended March 30, 2002, partially offset by revenue from the sale of two Model 120 LIVAR Cameras.

International sales decreased by 65% to \$2.4 million for the three months ended March 30, 2002 from \$6.9 million for the three months ended March 31, 2001. The decrease in international sales was due to a reduction in net revenues from disk manufacturing equipment and from flat panel manufacturing equipment. International sales constituted 37% of net revenues for the three months ended March 30, 2002 and 69% of net revenues for the three months ended March 31, 2001.

*Backlog.* The Company's backlog of orders for its products was \$27.3 million at March 30, 2002 and \$46.0 million at March 31, 2001. The reduction was primarily due to a lower backlog of flat panel deposition systems, five of which were taken to revenue in the fourth quarter of 2001. The Company includes in backlog the value of purchase orders for its products that have scheduled delivery dates.

*Gross margin.* Cost of net revenues consists primarily of purchased materials, fabrication, assembly, test and installation labor and overhead, customer-specific engineering costs, warranty costs, royalties, provisions for inventory reserves, scrap and costs attributable to contract research and development. Gross margin decreased to 14.4% for the three months ended March 30, 2002 from 34.0% for the three months ended March 31, 2001.

Equipment gross margins decreased to 15.5% for the three-month period ended March 30, 2002 from 45.0% for the three-month period ended March 31, 2001. Equipment margins decreased primarily due to a reduction in shipments of technology upgrades and high initial costs to complete Intevac's first MDP 200 system. Photonics gross margins increased to 11.3% during the three months ended March 30, 2002 from (8.1%) during the three months ended March 31, 2001. Photonics gross margins in the first quarter of 2002

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were favorably impacted by the shipment of 2 LIVAR® camera systems and by the mix of sales derived from fully funded research and development contracts versus cost-shared research and development contracts.

*Research and development.* Research and development expense consists primarily of prototype materials, salaries and related costs of employees engaged in ongoing research, design and development activities for flat panel manufacturing equipment, disk manufacturing equipment, and research by the Photonics Division. Company funded research and development expense decreased to \$3.1 million for the three months ended March 30, 2002 from \$3.5 million for the three months ended March 31, 2001, representing 46.9% and 34.9%, respectively, of net revenue. This decrease was primarily the result of reduced spending for development of flat panel manufacturing equipment, partially offset by increased spending for photonics.

Research and development expenses do not include costs of \$1.3 million and \$2.1 million, respectively, for the three-month periods ended March 30, 2002 and March 31, 2001 related to contract research and development performed by the Company's Photonics business. These expenses are included in cost of net revenues.

Research and development expenses also do not include costs of \$0.1 million in each of the three-month periods ended March 30, 2002 and March 31, 2001, reimbursed under the terms of various research and development cost sharing agreements.

*Selling, general and administrative.* Selling, general and administrative expense consists primarily of selling, marketing, customer support, production of customer samples, financial, travel, management, legal and professional services and bad debt expense. Domestic sales are made by the Company's direct sales force, whereas international sales are made by distributors and representatives that provide services such as sales, installation, warranty and customer support. The Company also has a subsidiary in Singapore to support customers in Southeast Asia.

Selling, general and administrative expense was \$1.7 million for the both the three-month periods ended March 30, 2002 and March 31, 2001, representing 25.6% and 16.7%, respectively, of net revenue.

*Interest expense.* Interest expense consists primarily of interest on the Company's convertible notes. Interest expense was \$0.7 million in both of the three-month periods ended March 30, 2002 and March 31, 2001.

*Interest income and other, net.* Interest income and other, net totaled \$0.2 million and (\$1.3) million for the three months ended March 30, 2002 and March 31, 2001, respectively. Interest income and other, net in 2002 consisted of \$0.2 million of interest and dividend income on investments. Interest income and other, net in 2001 consisted of \$0.7 million of interest and dividend income on investments offset by the establishment of a reserve related to the Company's \$2.0 million investment in commercial paper issued by Pacific Gas and Electric Company, which had filed for reorganization under Chapter 11 of the US Bankruptcy Code in early 2001.

*Provision for (benefit from) income taxes.* The Company accrued a \$2.2 million tax benefit for the three-month period ended March 30, 2002. This resulted from recent federal tax law changes that allow losses incurred in 2001 and 2002 to be carried back 5 years. The Company paid federal income taxes of approximately \$5.1 million for 1996 and \$0.9 million for 1997. The Company believes that at least \$2.2 million of taxes paid are recoverable based on the loss incurred in 2001 and that additional taxes may also be recoverable, but the amount will not be determined and recorded until the Company files its 2001 federal income tax return either in the second or third quarter of 2002. For the three months ended March 31, 2001, the Company did not accrue a tax benefit due to the inability at that time to realize additional refunds from loss carry-backs.

## Liquidity and Capital Resources

The Company's operating activities used cash of \$3.7 million during the three months ended March 30, 2002. The cash used was due primarily to the net loss incurred and increases in receivables and inventory, which were partially offset by increased customer advances and depreciation and amortization. In the three

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months ended March 31, 2001, the Company's operating activities used cash of \$4.4 million due primarily to increased inventory and the net loss incurred by the Company.

The Company's investing activities used cash of \$0.2 million for the three months ended March 30, 2002 as a result of the purchase of fixed assets. In the three months ended March 31, 2001, the Company's investing activities provided cash of \$26.2 million as a result of the net sale of investments. During the three months ended March 31, 2001, the Company converted the majority of its short-term investments into cash or cash equivalents.

The Company's financing activities provided cash of \$0.1 million and \$0.2 million for the three-month periods ended March 30, 2002 and March 31, 2001, respectively, as the result of the sale of the Company's stock to its employees through the Company's employee benefit plans.

Intevac has incurred operating losses each year since 1998 and the Company cannot predict with certainty when it will return to profitability. We anticipate generating positive cash flow during the 2002 fiscal year, but that is dependent on continued growth in the business and our continued ability to obtain advances from our customers. Additionally, as of March 30, 2002 we had \$37.5 million of outstanding Convertible Notes, which mature in March 2004. We do not currently have the funds available to repay the debt and there can be no assurance that the Company will be able to restructure the debt or secure additional equity and/or debt financing to redeem the Convertible Notes on terms favorable to the Company and its shareholders, if the Convertible Notes are not converted by their holders into Intevac common stock prior to their maturity.

### **Certain Factors Which May Affect Future Operating Results**

*\$37.5 Million of convertible notes are outstanding and will mature in 2004.*

In connection with the sale of \$57.5 million of its 6 1/2% Convertible Subordinated Notes Due 2004 (the "Convertible Notes") in February 1997, Intevac incurred a substantial increase in the ratio of long-term debt to total capitalization (shareholders' equity plus long-term debt). At each noteholder's option, the Convertible Notes may be exchanged, prior to maturity, into Intevac common shares at a price of \$20.625 per share, which is substantially above current market price. During 2001 and 1999 Intevac spent a total of \$11.9 million to repurchase \$20.0 million of the Convertible Notes. The \$37.5 million of the Convertible Notes that remain outstanding as of March 30, 2002 commit Intevac to substantial principal and interest obligations that are significantly in excess of the Company's \$14.5 million cash balance at March 30, 2002. Intevac may, from time to time, repurchase and retire additional Convertible Notes prior to their maturity date.

The degree to which Intevac is leveraged could have an adverse effect on Intevac'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. Intevac's ability to meet its debt service obligations will be dependent on Intevac's future performance, which will be subject to financial, business and other factors affecting the operations of Intevac, many of which are beyond its control. In the event that the Company's noteholders do not choose to exchange their Convertible Notes for Intevac common stock prior to the Convertible Notes' 2004 maturity date, the Company will be required to repay the Convertible Notes at maturity. If this is the case, then there can be no assurance that the Company will have generated sufficient cash from operations to repay the Convertible Notes without raising additional capital through the sale of additional debt or equity. Additionally, there can be no assurance that the Company will be able to secure additional equity and/or debt financing on terms favorable to the Company and its shareholders, or at all.

*The majority of Intevac's new products address new and emerging markets.*

Intevac has invested heavily in the development of products that address new markets. The Equipment Division has developed a flexible deposition tool and a rapid thermal processing tool to address growing segments of the flat panel display equipment market that are intended to displace products offered by competing manufacturers. The Photonics Division's LIVAR target identification system and low-cost low-light level camera products are designed to offer significantly improved capability relative to any products currently offered in the marketplace. Additionally, the Photonics Division is entering a new market for the

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Company with its photodiodes for fiber optic communication systems. Failure of these products to perform as intended or to successfully penetrate these new markets and develop into profitable product lines will have an adverse effect on Intevac's business.

*Demand for capital equipment is cyclical.*

Intevac sells capital equipment to capital intensive industries, which manufacture and sell commodity products such as flat panel displays and disk drives. These industries operate with high fixed costs. When demand for these commodity products exceeds capacity, then demand for new capital equipment such as Intevac's tends to be amplified. When supply of these commodity products exceeds capacity, then demand for new capital equipment such as Intevac's tends to be depressed. The cyclical nature of the capital equipment industry means that in some years sales of new systems by the Company will be unusually high, and that in other years sales of new systems by the Company will be severely depressed. Failure to anticipate or respond quickly to the industry business cycle could have an adverse effect on Intevac's business.

*The Equipment Business is subject to rapid technical change.*

Intevac's ability to remain competitive requires substantial investments in research and development. The failure to develop, manufacture and market new systems, or to enhance existing systems, will have an adverse effect on Intevac's business. From time to time in the past, Intevac has experienced delays in the introduction of, and technical difficulties with, some of its systems and enhancements. Intevac's future success in developing and selling equipment will depend 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. Intevac's new product decisions and development commitments must anticipate continuously evolving industry requirements significantly in advance of sales. Any failure to accurately predict customer requirements and to develop new generations of products to meet those requirements would have an adverse effect on Intevac's business.

*Our products are complex, constantly evolving and are often designed and manufactured to individual customer requirements that require additional engineering.*

Intevac's Equipment Division products have a large number of components and are highly complex. Intevac 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 Intevac must be customized to meet individual customer site or operating requirements. Intevac has limited manufacturing capacity and engineering resources and may be unable to complete the development, manufacture and shipment of its products, or to meet the required technical specifications for its products in a timely manner. Such delays could lead to rescheduling of orders in backlog, or in extreme situations, to cancellation of orders. In addition, Intevac may incur substantial unanticipated costs early in a product's life cycle, such as increased engineering, manufacturing, installation and support costs which may not be able to be passed on to the customer. In some instances, Intevac is dependent upon a sole supplier or a limited number of suppliers for complex components or sub-assemblies utilized in its products. Any of these factors could adversely affect Intevac's business.

*The Photonics Business does not yet generate significant revenues from product sales.*

To date the activities of the Photonics Division have concentrated on the development of its technology and prototype products that demonstrate this technology. Revenues have been derived primarily from research and development contracts funded by the United States Government and its contractors. The Company continues to develop standard Photonics products for sale to military and commercial customers. The Photonics Division will require substantial further investment in sales and marketing, in product development and in additional production facilities to support the planned transition to volume sales of Photonics products to military and commercial customers. There can be no assurance that the Company will succeed in these activities and generate significant sales of products based on its Photonics technology.

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*The sales of our Equipment products are dependent on substantial capital investment by our customers.*

The purchase of Intevac's systems, along with the purchase of other related equipment and facilities, requires extremely large capital expenditures by our customers. These costs are far in excess of the cost of the Intevac systems alone. The magnitude of such capital expenditures requires that our customers have access to large amounts of capital and that they be willing to invest that capital over long periods of time to be able to purchase our equipment. Some of our customers may not be willing, or able, to make the magnitude of capital investment required.

*Rapid increases in areal density are reducing the number of thin-film disks required per disk drive.*

Over the past few years the amount of data that can be stored on a single thin-film computer disk has been increasing at approximately 100% per year. Although the number of disk drives produced has continued to increase each year, the growth in areal density has resulted in a reduction in the number of disks required per disk drive. TrendFocus, a market research firm specializing in the disk drive industry, projects that the number of thin-film disks used worldwide declined in 2001 from 2000 levels and are expected to remain at the same level in 2002. Without a significant technological change or an increase in the number of disks required, Intevac's disk equipment sales are largely limited to upgrades of existing systems, rather than capacity expansion or system replacement.

*Our competitors are large and well financed and competition is intense.*

Intevac experiences intense competition in the Equipment Division. For example, Intevac's equipment products experience competition worldwide from competitors including Anelva Corporation, Ulvac Japan, Ltd. and Unaxis Holdings, Ltd., each of which have sold substantial numbers of systems worldwide. Anelva, Ulvac and Unaxis all have substantially greater financial, technical, marketing, manufacturing and other resources than Intevac. There can be no assurance that Intevac'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 Intevac's markets and develop such enhanced products.

Given the lengthy sales cycle and the significant investment required to integrate equipment into the manufacturing process, Intevac believes that once a manufacturer has selected a particular supplier's equipment for a specific application, that manufacturer generally relies upon that supplier's equipment and frequently will continue to purchase any additional equipment for that application from the same supplier. Accordingly, competition for customers in the equipment industry is intense, and suppliers of equipment may offer substantial pricing concessions and incentives to attract new customers or retain existing customers.

*Intevac's business is dependent on its intellectual property.*

There can be no assurance that:

- any of Intevac's pending or future patent applications will be allowed or that any of the allowed applications will be issued as patents, or
- any patent owned by Intevac will not be invalidated, deemed unenforceable, circumvented or challenged, or
- the rights granted under our patents will provide competitive advantages to Intevac, or
- any of Intevac's pending or future patent applications will be issued with claims of the scope sought by Intevac, if at all, or
- others will not develop similar products, duplicate Intevac's products or design around the patents owned by Intevac, or
- patent rights, intellectual property laws or Intevac's agreements will adequately protect Intevac's intellectual property rights.

Failure to adequately protect Intevac's intellectual property rights could have an adverse effect upon Intevac's business.

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From time to time Intevac has received claims that it is infringing third parties' intellectual property rights. There can be no assurance that third parties will not in the future claim infringement by Intevac with respect to current or future patents, trademarks, or other proprietary rights relating to Intevac's disk sputtering systems, flat panel 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 Intevac to enter into royalty or licensing agreements. Such royalty or licensing agreements, if required, may not be available on terms acceptable to Intevac, or at all. Any of the foregoing could have an adverse effect upon Intevac's business.

*Our operating results fluctuate significantly.*

Over the last nine quarters Intevac's operating loss as a percentage of net revenues has fluctuated between approximately (59%) and (1%) of net revenues. Over the same period sales per quarter have fluctuated between \$23.6 million and \$5.9 million. Intevac anticipates that its sales and operating margins will continue to fluctuate. As a result, period-to-period comparisons of its results of operations are not necessarily meaningful and should not be relied upon as indications of future performance.

*Operating costs in northern California are high.*

Intevac's operations are located in Santa Clara, California. The cost of living in northern California is extremely high, which increases both the cost of doing business and the cost and difficulty of recruiting new employees. Intevac's operating results depend in significant part upon its ability to effectively manage costs and to retain and attract qualified management, engineering, marketing, manufacturing, customer support, sales and administrative personnel. The failure to control costs and to attract and retain qualified personnel could have an adverse effect on Intevac's business.

*Business interruptions could adversely affect our business.*

Intevac's operations are vulnerable to interruption by fire, earthquake, power loss, telecommunications failure and other events beyond our control. Additionally, the costs of electricity and natural gas have increased significantly. Any further cost increases will impact the Company's ability to achieve profitability.

*A majority of our sales are to international customers.*

Sales and operating activities outside of the United States are subject to 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. Intevac earns a significant portion of its revenue from international sales, and there can be no assurance that any of these factors will not have an adverse effect on Intevac's business.

Intevac generally quotes and sells its products in US dollars. However, in some cases, Intevac has quoted and sold its products in Japanese Yen. In those cases Intevac may enter into foreign currency contracts in an effort to reduce the overall risk of currency fluctuations to Intevac's business. However, there can be no assurance that the offer and sale of products denominated in foreign currencies, and the related foreign currency hedging activities will not adversely affect Intevac's results of operations.

Intevac's two principal competitors for disk sputtering equipment are based in foreign countries and have cost structures based on foreign currencies. Accordingly, currency fluctuations could cause Intevac's products to be more, or less, competitive than its competitors' products. Currency fluctuations will decrease, or increase, Intevac's cost structure relative to those of its competitors, which could impact Intevac's competitive position.



### *Intevac's stock price is volatile.*

Intevac's stock price has experienced both significant increases in valuation, and significant decreases in valuation, over short periods of time. Intevac believes that factors such as announcements of developments related to Intevac's business, fluctuations in Intevac's operating results, failure to meet securities analysts' expectations, general conditions in the disk drive and thin-film media manufacturing industries and the worldwide economy, announcements of technological innovations, new systems or product enhancements by Intevac or its competitors, fluctuations in the level of cooperative development funding, acquisitions, changes in governmental regulations, developments in patents or other intellectual property rights and changes in Intevac's relationships with customers and suppliers could cause the price of Intevac's Common Stock to continue to fluctuate substantially. 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 which have often been unrelated to the operating performance of affected companies. Any of these factors could adversely affect the market price of Intevac's Common Stock.

### *Intevac routinely evaluates acquisition candidates and other diversification strategies.*

Intevac has completed multiple acquisitions as part of its efforts to expand and diversify its business. For example, Intevac's business was initially acquired from Varian Associates in 1991. Additionally, Intevac acquired its current gravity lubrication, CSS test equipment and rapid thermal processing product lines in three acquisitions. Intevac also acquired its RPC electron beam processing business in late 1997, and subsequently closed this business. Intevac intends to continue to evaluate new acquisition candidates and diversification strategies. 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, and the potential loss of the acquired company's key employees. Additionally, unanticipated expenses, difficulties and consequences may be incurred relating to the integration of technologies, research and development, and administrative functions. Any future acquisitions may result in potentially dilutive issuance of equity securities, acquisition related write-offs and the assumption of debt and contingent liabilities. Any of the above factors could adversely affect Intevac's business.

### *Intevac uses hazardous materials.*

Intevac is subject to a variety of governmental regulations relating to the use, storage, discharge, handling, emission, generation, manufacture, treatment and disposal of toxic or otherwise 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 Intevac or its officers, directors or employees, suspension of production, alteration of its manufacturing process or cessation of operations. Such regulations could require Intevac to acquire expensive remediation or abatement equipment or to incur substantial expenses to comply with environmental regulations. Any failure by Intevac to properly manage the use, disposal or storage of, or adequately restrict the release of, hazardous or toxic substances could subject Intevac to significant liabilities.

### *A majority of the Common Stock outstanding is controlled by the directors and executive officers of Intevac.*

Based on the shares outstanding on March 30, 2002, the current directors and their affiliates and executive officers, in the aggregate, beneficially own a majority of the outstanding shares of Common Stock. These shareholders, acting together, are able to effectively control all matters requiring approval by the shareholders of Intevac, including the election of a majority of the directors and approval of significant corporate transactions. The Company's officers and directors also hold 7% of the outstanding Convertible Notes.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

*Interest rate risk.* The table below presents principal amounts and related weighted-average interest rates by year of maturity for the Company’s debt obligations.

	2002	2003	2004	2005	2006	Beyond	Total	Fair Value
				(in thousands)				
Long-term debt								
Fixed rate	—	—	\$37,545	—	—	—	\$37,545	\$20,697
Average rate	6.50%	6.50%	6.50%	—	—	—		

*Foreign exchange risk.* From time to time, the Company enters into foreign currency forward exchange contracts to economically hedge certain of its anticipated foreign currency transaction, translation and re-measurement exposures. The objective of these contracts is to minimize the impact of foreign currency exchange rate movements on the Company’s operating results. At March 30, 2002, the Company did not have foreign currency forward exchange contracts.



**PART II. OTHER INFORMATION****Item 1. Legal Proceedings**

On June 12, 1996 two Australian Army Black Hawk Helicopters collided in midair during nighttime maneuvers. Eighteen Australian servicemen perished and twelve were injured. The Company was named as a defendant in a lawsuit related to this crash. The lawsuit was filed in Stamford, Connecticut Superior Court on June 10, 1999 by Mark Durkin, the administrator of the estates of the deceased crewmembers, the injured crewmembers and the spouses of the deceased and/or injured crewmembers. Included in the suit's allegations are assertions that the crash was caused by defective night vision goggles. The suit names three US manufacturers of military night vision goggles, of which Intevac was one. The suit also names the manufacturer of the pilot's helmets, two manufacturers of night vision system test equipment and the manufacturer of the helicopter. The suit claims damages for 13 personnel killed in the crash, 5 personnel injured in the crash and spouses of those killed or injured. It is known that the Australian Army established a Board of Inquiry to investigate the accident and that the Board of Inquiry concluded that the accident was not caused by defective night vision goggles.

On July 27, 2000 the Connecticut Superior Court disallowed the defendants' motion to dismiss the lawsuit. That decision was appealed to the Connecticut Supreme Court. On October 30, 2001 the Connecticut Supreme Court reversed the Superior Court's decision and remanded the case to the trial court with the direction to grant the defendants' motions to dismiss the suit subject to conditions already agreed to by the defendants. These conditions agreed to by the defendants include (1) consenting to jurisdiction in Australia; (2) accepting service of process in connection with an action in Australia; (3) making their personnel and records available for litigation in Australia; (4) waiving any applicable statutes of limitation in Australia up to six months from the date of dismissal of this action or for such other reasonable time as may be required as a condition of dismissing this action; (5) satisfying any judgement that may be entered against them in Australia; and (6) consenting to the reopening of the action in Connecticut in the event the above conditions are not met as to any proper defendant in the action. The plaintiffs have not commenced litigation against the Company in Australia. Any such action could expose Intevac to further risk, plus the expense and uncertainties of defending the matter in a distant foreign jurisdiction.

On June 12, 2001 the Company filed a complaint in Santa Clara County Superior Court, State of California, against Intarsia Corporation. The complaint related to Intarsia's cancellation of an order for a customized sputtering system and sought damages of at least \$3.3 million. On July 26, 2001 Intarsia filed a cross-complaint against the Company in the Santa Clara County Superior Court. On August 14, 2001, the Company filed a demurrer to the cross-complaint, and on October 11, 2001, Intarsia filed an amended cross-complaint. The amended cross-complaint included allegations of fraud, negligent misrepresentation, breach of contract and breach of covenant of good faith and fair dealing, and sought damages in the amount of \$349,000 plus additional relief as may have been deemed appropriate by the court. On February 1, 2002 the Company and Intarsia agreed to resolve the matter. The terms of the settlement did not materially effect the Company's financial results.

**Item 2. Changes in Securities**

None.

**Item 3. Defaults upon Senior Securities**

None.

**Item 4. Submission of Matters to a Vote of Security-Holders**

None.

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Item 5. Other Information

None.

Item 6. Exhibits and Reports on Form 8-K

(a) The following exhibits are filed herewith:

Exhibit Number	Description
3.2	Revised Bylaws of the Registrant
10.10	Compensation Package for Kevin Fairbairn, dated January 24, 2002

(b) *Reports on Form 8-K:*

None.

**SIGNATURES**

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

INTEVAC, INC.

Date: April 26, 2002

By: /s/ KEVIN FAIRBAIRN

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Kevin Fairbairn  
President, Chief Executive Officer and Director  
(Principal Executive Officer)

Date: April 26, 2002

By: /s/ CHARLES B. EDDY III

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

EXHIBIT INDEX

Exhibit	Description
3.2	Revised Bylaws of the Registrant
10.10	Compensation Package for Kevin Fairbairn, dated January 24, 2002.

EXHIBIT 3.2

BYLAWS

OF

INTEVAC, INC.

Revised Bylaws Adopted February 8, 2002

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**BYLAWS**  
**OF**  
**INTEVAC, INC.**

**ARTICLE I**

**OFFICES**

Section 1. **PRINCIPAL OFFICES.** The Board of Directors shall fix the location of the principal executive office of the corporation at any place within or outside the State of California. If the principal executive office is located outside this state, and the corporation has one or more business offices in this state, the Board of Directors shall fix and designate a principal business office in the State of California.

Section 2. **OTHER OFFICES.** The Board of Directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.

**ARTICLE II**

**MEETINGS OF SHAREHOLDERS**

Section 1. **PLACE OF MEETINGS.** Meetings of shareholders shall be held at any place within or outside the State of California designated by the Board of Directors. In the absence of any such designation, shareholders' meetings shall be held at the principal executive office of the corporation.

Section 2. **ANNUAL MEETING.** The annual meeting of shareholders shall be held each year on such date and at a time designated by the Board of Directors. At each annual meeting Directors shall be elected, and any other proper business may be transacted.

Section 3. **SPECIAL MEETING.** A special meeting of the shareholders may be called at any time by the Board of Directors, or by the chairman of the Board, or by the president, or by one or more shareholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at that meeting.

If a special meeting is called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the chairman of the Board, the president, any vice president, or the secretary of the corporation. The officer receiving the request shall cause notice to be promptly given to the shareholders entitled to vote, in accordance with the provisions of

Sections 4 and 5 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, not less than thirty-five (35) nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty (20) days after receipt of the request, the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph of this Section 3 shall be construed as limiting, fixing or affecting the time when a meeting of shareholders called by action of the Board of Directors may be held.

Section 4. NOTICE OF SHAREHOLDERS' MEETINGS. All notices of meetings of shareholders shall be sent or otherwise given in accordance with Section 5 of this Article II not less than ten (10) (or, if sent by third-class mail, thirty (30) days) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and (i) in the case of a special meeting, the general nature of the business to be transacted, or (ii) in the case of the annual meeting, those matters which the Board of Directors, at the time of giving the notice, intends to present for action by the shareholders. The notice of any meeting at which Directors are to be elected shall include the name of any nominee or nominees whom, at the time of notice, management intends to present for election.

If action is proposed to be taken at any meeting for approval of (i) a contract or transaction in which a Director has a direct or indirect financial interest, pursuant to Section 310 of the Corporations Code of California (the "Code"), (ii) an amendment of the Articles of Incorporation, pursuant to Section 902 of that Code, (iii) a reorganization of the corporation, pursuant to Section 1201 of that Code, (iv) a voluntary dissolution of the corporation, pursuant to Section 1900 of that Code, or (v) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, pursuant to Section 2007 of that Code, the notice shall also state the general nature of that proposal.

Section 5. MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE. Notice of any meeting of shareholders shall be given either personally or by first-class mail (unless the corporation has 500 or more shareholders determined as provided by the California Corporations Code on the record date for the meeting, in which case notice may be sent by third-class mail) or telegraph or other written communication, charges prepaid, addressed to the shareholder at the address of that shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice. If no such address appears on the corporation's books or is given, notice shall be deemed to have been given if sent to that shareholder by first-class mail or telegraphic or other written communication to the corporation's principal executive office, or if published at least once in a newspaper of general circulation in the county where that office is located. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by telegram or other means of written communication.

If any notice addressed to a shareholder at the address of that shareholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the shareholder at that address, all future notices or reports shall be deemed to have been duly given without further mailing



if these shall be available to the shareholder on written demand of the shareholder at the principal executive office of the corporation for a period of one year from the date of the giving of the notice.

Any affidavit of the mailing or other means of giving any notice of any shareholders' meeting shall be executed by the secretary, assistant secretary, or any transfer agent of the corporation giving the notice, and shall be filed and maintained in the minute book of the corporation.

**Section 6. QUORUM.** The presence in person or by proxy of the holders of a majority of the shares entitled to vote at any meeting of shareholders shall constitute a quorum for the transaction of business. The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

**Section 7. ADJOURNED MEETING; NOTICE.** Any shareholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the shares represented at that meeting, either in person or by proxy, but in the absence of a quorum, no other business may be transacted at that meeting, except as provided in Section 6 of this Article II.

When any meeting of shareholders, either annual or special, is adjourned to another time or place; notice need not be given of the adjourned meeting if the time and place are announced at a meeting at which the adjournment is taken, unless a new record date for the adjourned meeting is fixed, or unless the adjournment is for more than forty-five (45) days from the date set for the original meeting, in which case the Board of Directors shall set a new record date. Notice of any such adjourned meeting shall be given to each shareholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Sections 4 and 5 of this Article II. At any adjourned meeting the corporation may transact any business which might have been transacted at the original meeting.

**Section 8. VOTING.** The shareholders entitled to vote at any meeting of shareholders shall be determined in accordance with the provisions of Section 11 of this Article II, subject to the provisions of Sections 702 to 704, inclusive, of the Corporations Code of California (relating to voting shares held by a fiduciary, in the name of a corporation, or in joint ownership).

The voting at all meetings of shareholders need not be by ballot, but any qualified shareholder before the voting begins may demand a stock vote whereupon such stock vote shall be taken by ballot, each of which shall state the name of the shareholder voting and the number of shares voted by such shareholder, and if such ballot be cast by a proxy, it shall also state the name of such proxy.

At any meeting of the shareholders, every shareholder having the right to vote shall be entitled to vote in person, or by proxy appointed in a writing subscribed by such shareholder and bearing a date not more than eleven (11) months prior to said meeting, unless the writing states that

it is irrevocable and is held by a person specified in Section 705(e) of the California Corporations Code, in which event it is irrevocable for the period specified in said writing.

Except as otherwise provided in the Articles of Incorporation, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote of shareholders. No shareholder shall be entitled to cumulate such shareholder's votes for any Director. The preceding sentence of this provision shall become effective only when the Corporation becomes a listed corporation within the meaning of Section 301.5 of the California Corporations Code.

**Section 9. WAIVER OF NOTICE OR CONSENT BY ABSENT SHAREHOLDERS.** The transactions of any meeting of shareholders, either annual or special, however called and noticed, and wherever held, shall be as valid as though a meeting had been duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or a consent to a holding of the meeting, or an approval of the minutes. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any annual or special meeting of shareholders, except that if action is taken or proposed to be taken for approval of any of those matters specified in the second paragraph of Section 4 of this Article II, the waiver of notice or consent shall state the general nature of the proposal. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if that objection is expressly made at the meeting.

**Section 10. SHAREHOLDER ACTION.** Any action required or permitted to be taken by the holders of the Common Stock or Preferred Stock of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders other than a written consent at such a meeting.

**Section 11. RECORD DATE FOR SHAREHOLDER NOTICE, VOTING, AND GIVING CONSENTS.** For purposes of determining the shareholders entitled to give consent to corporate action without a meeting, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting, and in this event only shareholders of record on the date so fixed are entitled to notice and to vote or to give consents, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date, except as otherwise provided in California General Corporations Law.

If the Board of Directors does not so fix a record date:

(a) The record date for determining shareholders entitled to notice of or to a vote at a meeting of shareholders shall be at the close of business on the business date next preceding the

day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(b) The record date for determining shareholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto, or the sixtieth (60th) day before the date of such other action, whichever is later.

**Section 12. PROXIES.** Every person entitled to vote for Directors or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the secretary of the corporation. A proxy shall be deemed signed if the shareholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the shareholder or the shareholder's attorney in fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the corporation stating that the proxy is revoked, or by a subsequent proxy executed by, or attendance at the meeting and voting in person by, the person executing the proxy; or (ii) written notice of the death or incapacity of the maker of that proxy is received by the corporation before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Sections 705(e) and 705(f) of the Corporations Code of California.

**Section 13. INSPECTORS OF ELECTION.** Before any meeting of shareholders, the Board of Directors may appoint any persons other than nominees for office to act as inspectors of election at the meeting or its adjournment. If no inspectors of election are so appointed, the chairman of the meeting may, and on the request of any shareholder or a shareholder's proxy shall appoint inspectors of election at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more shareholders or proxies, the holders of a majority of shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the chairman of the meeting may, and upon the request of any shareholder or a shareholder's proxy shall, appoint a person to fill that vacancy.

These inspectors shall:

- (a) Determine the number of shares outstanding and the voting power of each, the shares' represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;
- (b) Receive votes, ballots, or consents;
- (c) Hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (d) Count and tabulate all votes or consents;

- (e) Determine when the polls shall close;
- (f) Determine the result; and
- (g) Do any other acts that may be proper to conduct the election or vote with fairness to all shareholders.

### **ARTICLE III**

#### **DIRECTORS**

Section 1. **POWERS.** Subject to the provisions of the California General Corporation Law and any limitation in the Articles of Incorporation and these Bylaws relating to action required to be approved by the shareholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

Without prejudice to these general powers, and subject to the same limitations, the Directors shall have the power to:

- (a) Select and remove all officers, agents, and employees of the corporation; prescribe any powers and duties for them that are consistent with law, with the Articles of Incorporation, and with these Bylaws; fix their compensation; and require from them security for faithful service.
- (b) Change the principal executive office or the principal business office in the State of California from one location to another; cause the corporation to be qualified to do business in any other state, territory, dependency, or country and conduct business within or without the State of California; and designate any place within or without the State of California for the holding of any shareholders' meeting, or meetings, including annual meetings.
- (c) Adopt, make, and use a corporate seal; prescribe the forms of certificates of stock; and alter the form of the seal and certificates.
- (d) Authorize the issuance of shares of stock of the corporation on any lawful terms, in consideration of money paid, labor done, services actually rendered, debts or securities cancelled, or tangible or intangible property actually received.
- (e) Borrow money and incur indebtedness on behalf of the corporation, and cause to be executed and delivered for the corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

Section 2. NUMBER OF DIRECTORS. The number of Directors of the corporation shall be no less than four (4) nor more than seven (7), the exact number of Directors to be fixed from time to time within such limit by a duly adopted resolution of the Board of Directors or shareholders. The exact number of Directors presently authorized shall be seven (7) until changed within the limits specified above by a duly adopted resolution of the Board of Directors or shareholders.

Section 3. ELECTION AND TERM OF OFFICE OF DIRECTORS. Directors shall be elected at each annual meeting of the shareholders to hold office until the next annual meeting. Each Director, including a Director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been qualified and elected.

Section 4. VACANCIES. Vacancies in the Board of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by a sole remaining Director, except that a vacancy created by the removal of a Director by the vote of the shareholders or by court order may be filled only by the vote of a majority of the shares entitled to vote represented at a duly held meeting at which a quorum is present. Each Director so elected shall hold office until the next annual meeting of the shareholders and until a successor has been elected or qualified.

A vacancy or vacancies in the Board of Directors shall be deemed to exist in the event of death or resignation or removal of any Director, or if the Board of Directors by resolution declares vacant the office of a Director who has been declared of unsound mind, by an order of Court or convicted of a felony, or if the authorized number of Directors is increased, or if the shareholders fail, at any meeting of shareholders at which any Director or Directors are elected, to elect the number of Directors to be voted for at that meeting.

Any Director may resign effective on giving written notice to the chairman of the board, the president, the secretary, or the Board of Directors, unless the notice specifies a later time for the resignation to become effective. If the resignation of a Director is effective at a future time, the Board of Directors may elect a successor to take office when the resignation becomes effective.

No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

Section 5. PLACE OF MEETINGS AND MEETINGS BY TELEPHONE. Regular meetings of the Board of Directors may be held at any place within or outside the State of California that has been designated from time to time by resolution of the Board. In the absence of such a designation, regular meetings shall be held at the principal executive office of the corporation. Special meetings of the Board shall be held at any place within or outside the State of California that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, at the principal executive office of the corporation. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at the meeting.

Section 6. ANNUAL MEETING. Immediately following each annual meeting of shareholders, the Board of Directors shall hold a regular meeting for the purpose of organization, any desired election of officers, and the transaction of other business. Notice of this meeting shall not be required.

Section 7. OTHER REGULAR MEETINGS. Other regular meetings of the Board of Directors shall be held without call at such time as shall from time to time be fixed by the Board of Directors. Such regular meetings may be held without notice.

Section 8. SPECIAL MEETINGS. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairman of the Board or the president or any vice president or the secretary or any two Directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each Director or sent by first class mail or telegram, charges prepaid, addressed to each Director at that Director's address as it is shown on the records of the corporation. In case the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. In case the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. In case the notice is delivered personally, or by telephone or telegram, it shall be delivered personally or by telephone or to the telegraph company at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the Director or to a person at the office of the Director who the person giving the notice has reason to believe will promptly communicate it to the Director. The notice need not specify the purpose of the meeting nor the place if the meeting is to be held at the principal executive office of the corporation.

Section 9. QUORUM. A majority of the authorized number of Directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 11 of this Article III. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, subject to the provisions of Section 310 of the Corporations Code of California (as to approval of contracts or transactions in which a Director has direct or indirect material financial interest), Section 311 of that Code (as to appointment of committee), and Section 317(e) of that Code (as to indemnification of Directors). A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 10. WAIVER OF NOTICE. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Director

who attends the meeting without protesting before or at its commencement, the lack of notice to that Director.

Section 11. ADJOURNMENT. A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 12. NOTICE OF ADJOURNMENT. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four hours, in which case notice of the adjourned meeting, in the manner specified in Section 8 of this Article II, to the Directors who were not present at the time of the adjournment.

Section 13. ACTION WITHOUT MEETING. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consents shall be filed with the minutes of the proceedings of the Board.

Section 14. FEES AND COMPENSATION OF DIRECTORS. Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors. This Section 14 shall not be construed to preclude any Director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation for those services.

## **ARTICLE IV**

### **COMMITTEES**

Section 1. COMMITTEES OF DIRECTORS. The Board of Directors may, by resolution adopted by a majority of the authorized number of Directors, designate one or more committees, each consisting of two or more Directors, to serve at the pleasure of the Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except with respect to:

- (a) the approval of any action which, under the General Corporation Law of California, also requires shareholders' approval or approval of the outstanding shares;
- (b) the filling of vacancies on the Board of Directors or in any committee;
- (c) the fixing of compensation of the Directors for serving on the Board or any committee;
- (d) the amendment or repeal of Bylaws or the adoption of new Bylaws;

(e) a distribution to the shareholders of the corporation, except at a rate or in a periodic amount or within a price range determined by the Board of Directors; or

(f) the appointment of any other committees of the Board of Directors or the members of these committees.

Section 2. MEETINGS AND ACTION OF COMMITTEES. Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these Bylaws, Sections 5 (place of meetings), 7 (regular meetings), 8 (special meetings and notice), 9 (quorum), 10 (waiver of notice), 11 (adjournment), 12 (notice of adjournment), and 13 (action without meeting), with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee; special meetings of committees may also be called by resolution of the Board of Directors; and notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

## **ARTICLE V**

### **OFFICERS**

Section 1. OFFICERS. The officers of the corporation shall be a president, a secretary, and a chief financial officer. The corporation may also have, at the discretion of the Board of Directors, a chairman of the Board, one or more vice presidents, one or more assistant secretaries, one or more chief financial officers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article V. Any number of offices may be held by the same person.

Section 2. ELECTION OF OFFICERS. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article V, shall be chosen by the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. SUBORDINATE OFFICERS. The Board of Directors may appoint, and may empower the president to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws or as the Board of Directors may from time to time determine.

Section 4. REMOVAL AND RESIGNATION OF OFFICERS. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board of Directors, at any regular or special meeting of the Board, or, except



in case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

Section 5. VACANCIES IN OFFICES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

Section 6. CHAIRMAN OF THE BOARD. The chairman of the Board, if such an officer is elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no president, the chairman of the Board shall in addition be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 7 of this Article V.

Section 7. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if there be such an officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the corporation. He shall preside at all meetings of the shareholders and, in the absence of the chairman of the Board, or if there be none, at all meetings of the Board of Directors. He shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws.

Section 8. VICE PRESIDENTS. In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or the Bylaws, and the president, or the chairman of the Board.

Section 9. SECRETARY. The secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of Directors, committees or Directors, and shareholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at the Directors' meetings or committee meetings, the number of shares present or represented at shareholders' meetings, and the proceedings.

The secretary shall keep, or cause to be kept, at the principal executive office or at the office of the corporation's transfer agent or registrar, as determined by resolution of the Board of Directors a share register, or a duplicate share register, showing the names of all shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the Board of Directors required by the Bylaws or ByLaw to be given, and he shall keep the seal of the corporation if one be adopted, in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by the Bylaws.

**Section 10. CHIEF FINANCIAL OFFICER.** The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any Director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the president and Directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the corporation, and shall have other power and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

**Section 11. APPROVAL OF LOANS TO OFFICERS.**\*/ The Corporation may, upon the approval of the Board of Directors alone, make loans of money or property to, or guarantee the obligations of, any officer of the Corporation or its parent or subsidiary, whether or not a director, or adopt an employee benefit plan or plans authorizing such loans or guaranties provided that (i) the Board of Directors determines that such a loan or guaranty or plan may reasonably be expected to benefit the Corporation, (ii) the Corporation has outstanding shares held of record by 100 or more persons (determined as provided in Section 605 of the California Corporations Code) on the date of approval by the Board of Directors, and (iii) the approval of the Board of Directors is by a vote sufficient without counting the vote of any interested director or directors.

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\*/ This section is effective only if it has been approved by the shareholders in accordance with Sections 315(b) and 152 of the California Corporations Code.

## **ARTICLE VI**

### **INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS**

Section 1. INDEMNIFICATION OF DIRECTORS AND OFFICERS. The corporation shall, to the maximum extent and in the manner not prohibited by the Code, indemnify each of its directors and officers against expenses (as defined in Section 317(a) of the Code), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding (as defined in Section 317(a) of the Code), arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Article VI, a "director" or "officer" of the corporation includes any person (i) who is or was a director or officer of the corporation, (ii) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

Section 2. INDEMNIFICATION OF EMPLOYEES AND OTHERS. The corporation shall have the power, to the extent and in the manner not prohibited by the Code, to indemnify each of its employees and agents (other than directors and officers) against expenses (as defined in Section 317(a) of the Code), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding (as defined in Section 317(a) of the Code), arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Article VI, an "employee" or "agent" of the corporation (other than a director or officer) includes any person (i) who is or was an employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

Section 3. PAYMENT OF EXPENSES IN ADVANCE. Expenses incurred in defending any civil or criminal action or proceeding for which indemnification is required pursuant to Section 6.1 or for which indemnification is permitted pursuant to Section 6.2 following authorization thereof by the Board of Directors shall be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Article VI.

Section 4. INDEMNITY NOT EXCLUSIVE. The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding

such office, to the extent that such additional rights to indemnification are authorized in the Articles of Incorporation.

**Section 5. INSURANCE INDEMNIFICATION.** The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation against any liability asserted against or incurred by such person in such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article VI.

**Section 6. CONFLICTS.** Unless mandated by the law, or order, judgment or decree of any court of competent jurisdiction, no indemnification or advance shall be made under this Article VI in any circumstance where it appears:

- (1) That it would be inconsistent with a provision of the Articles of Incorporation, these bylaws, a resolution of the shareholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- (2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

## **ARTICLE VII**

### **GENERAL CORPORATE MATTERS**

**Section 1. RECORD DATE FOR PURPOSES OTHER THAN NOTICE AND VOTING.** For purposes of determining the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action (other than action by shareholders by written consent without a meeting), the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) days before any such action, and in that case only shareholders of record on the date so fixed are entitled to receive the dividends, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date so fixed, except as otherwise provided in the California General Corporation Law.

If the Board of Directors does not so fix a record date, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the Board adopts the applicable resolutions or the sixtieth (60th) day before the date of that action, whichever is later.

**Section 2. CHECKS, DRAFTS, EVIDENCES OF INDEBTEDNESS.** All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness, issued in the name of or payable to the corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

**Section 3. CORPORATE CONTRACTS AND INSTRUMENTS; HOW EXECUTED.** The Board of Directors, except as otherwise provided in the Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation, and this authority may be general or confined to specific instances; and unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to tender it liable for any purpose or for any amount.

**Section 4. CERTIFICATES FOR SHARES.** A certificate or certificates for shares of the capital stock of the corporation shall be issued to each shareholder when any of these shares are fully paid, and the Board of Directors may authorize the issuance of certificates or shares as partly paid provided that these certificates shall state the amount of the consideration to be paid for them and the amount paid. All certificates shall be signed in the name of the corporation by the chairman of the Board or vice chairman of the Board or the president or vice president and by the chief financial officer or an assistant treasurer or the secretary of any assistant secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent, or registrar who has signed or show facsimile signature has been placed on a certificate shall have ceased to be that officer, transfer agent, or registrar before that certificate is issued, it may be issued by the corporation with the same effect as if that person were an officer, transfer agent, or registrar at the date of issuance.

**Section 5. LOST CERTIFICATES.** Except as provided in this Section 5, no new certificates for shares shall be issued to replace an old certificate unless the latter is surrendered to the corporation and cancelled at the same time. The Board of Directors may, in case any share certificate or certificate for any other security is lost, stolen, or destroyed, authorize the issuance of a replacement certificate on such terms and conditions as the Board may require, including provision for indemnification of the corporation secured by a bond or other adequate security sufficient to protect the corporation against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft, or destruction of the certificate or the issuance of the replacement certificate.

**Section 6. REPRESENTATION OF SHARES OF OTHER CORPORATIONS.** The chairman of the Board, the president, or any vice president, or any other person authorized by resolution of the Board of Directors or by any of the foregoing designated officers, is authorized to vote on behalf of the corporation any and all shares of any other corporation or corporations, foreign or domestic, standing in the name of the corporation. The authority granted to these officers to vote or represent on behalf of the corporation any and all shares held by the corporation in any other corporation or corporations may be exercised by any of these officers in person or by any person authorized to do so by a proxy duly executed by these officers.

**Section 7. CONSTRUCTION AND DEFINITIONS.** Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California General Corporations Law shall govern the construction of these Bylaws. Without limiting the generality of

this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

## **ARTICLE VIII**

### **AMENDMENTS**

Section 1. AMENDMENT BY SHAREHOLDERS. New Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of holders of a majority of the outstanding shares entitled to vote; provided, however, that if the Articles of Incorporation of the corporation set forth the number of authorized Directors of the corporation, the authorized number of Directors may be changed only by an amendment of the Articles of Incorporation.

Section 2. AMENDMENT BY DIRECTORS. Subject to the rights of the shareholders as provided in Section 1 of this Article VIII, Bylaws, other than a Bylaw or an amendment of a Bylaw changing the authorized number of Directors, may be adopted, amended, or repealed by the Board of Directors.

[INTEVAC LETTERHEAD]

January 24, 2002

Mr. Kevin Fairbairn  
106 Kennedy Court  
Los Gatos, CA 95032

Dear Kevin

On behalf of Intevac (the "Company"), I am pleased to offer you the position of President and Chief Executive Officer of the Company. Speaking for myself, as well as the other members of the Company's Board of Directors, we are all very impressed with you and your credentials and we look forward to your future success in this position.

The terms of your new position with the Company are set forth below:

You will become the President and Chief Executive of the Company. As President and Chief Executive Office, you will have responsibility for the general management of the Company's business and you will report to the Board of Directors.

You will be paid a monthly base salary of \$20,417, which is equivalent to \$245,000 on an annualized basis. Your salary will be payable pursuant to the Company's regular payroll policy. You will be eligible for an annual performance bonus of up to 200% of annual salary predicated upon achieving specific goals and objectives. At the Company's election the bonus paid above 50% of salary may be paid in cash or stock. The details of this bonus plan will be worked out jointly between you and the Board and agreed to annually within sixty (60) days after approval of the years' annual operating plan. For the year 2002 the understanding is that a bonus of 50% will be awarded at end of 2002 provided the company performance is reasonably good with details to be agreed by 4/1/02.

In addition, upon becoming an employee of the Company, I will recommend that the Board of Directors grant you an option to purchase an aggregate of 250,000 shares Intevac's common stock at an exercise price equal to the fair market value of the Common Stock on the date of the grant, as determined by the Board of Directors. These option shares will vest at the rate of 1/5th of the total number of shares on the first anniversary of your date of employment, and an additional 1/60th of the total number of shares at the end of each one-month period thereafter.

In the event of a Change of Control after which Intevac stock would not exist (such as purchase of the Company for cash) all options in this grant that have not vested will immediately vest and be exercised.

In the event of a Change of Control after which Intevac stock survives the employee may elect to retain the unvested options or to accelerate vesting with conditions like those in the "purchase of the Company for cash" situation.

In the event of a Change of Control after which stock in the acquiring company is exchanged for Intevac stock and the acquiring company offers to provide an option in a different stock of equivalent economic value the employee may elect to accept the new stock options or accelerate vesting with conditions like those in the "purchase the Company for cash" situation.

"Change of Control" means a merger or acquisition of the Company in a transaction pursuant to which the shareholders of the Company immediately prior to such transaction own less than fifty percent (50%) of the surviving entity in such transaction, or sale of all or substantially all of the assets of the Company.

In the event of the involuntary termination of your position as President and Chief Executive Officer for any reason not involving good cause, conditioned upon your execution of a waiver and release of claims that is acceptable to the Company, the Company will continue to pay your base salary for twelve (12) months following such termination.

In the event of change of control where the buyer decides to not continue your position, the Company will continue to pay you an amount equal to your base salary for twelve (12) months in one lump sum. In the event the buyer requests that you continue as CEO or equivalent position a contract will be established with the buyer requiring them to pay you an amount equal to twice (2 times) your annual salary after 12 months employment.

You will be eligible to participate in the Company's standard benefits program, details of which will be sent under separate cover.

This offer of employment is contingent upon (1) your signing the Company's Employee Proprietary Information Agreement, and (2) your providing proof of your eligibility to work in the U.S.

Your employment with the Company will be on an "at will" basis, meaning that either you or the Company may terminate your employment at any time for any reason or no reason.

Kevin, we are all delighted to be able to extend you this offer and look forward to working with you.

To indicate your acceptance of the Company's offer, please sign and date this letter in the space provided below and return it to me.

Sincerely,

*/s/ NORMAN H. POND*

*Norman H. Pond  
Chairman*

**Accepted and Agreed:**

*Signature: /s/ K.P. FAIRBAIRN*  
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*Start Date: 24 Jan 02*  
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[INTEVAC LETTERHEAD]

January 24, 2002

Kevin Fairbairn  
Address  
Los Gatos, CA

Dear Kevin,

Congratulations and welcome to Intevac. This is to confirm your acceptance with an immediate start date. As we discussed, it is important that you become involved right away with some important decisions. I appreciate you devoting part of your time to Intevac until February 24, 2002, at which time, you will become a full-time employee with Intevac.

Thank you again and welcome aboard.

Sincerely,

/s/ NORM POND

NORM POND

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