# FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **2003-09-12** | Period of Report: **2003-07-31**
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## FILER

**ADC TELECOMMUNICATIONS INC**

CIK:**61478**| IRS No.: **410743912** | State of Incorp.:**MN** | Fiscal Year End: **1031**
Type: **10-Q** | Act: **34** | File No.: **000-01424** | Film No.: **03893871**
SIC: **3661** Telephone & telegraph apparatus

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# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 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 July 31, 2003**

**OR**

☐ **TRANSACTION REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from N/A to N/A**

**Commission file number 0-1424**

# ADC Telecommunications, Inc.

(Exact name of registrant as specified in its charter)

| **Minnesota** | **41-0743912** |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |

**13625 Technology Drive, Eden Prairie, MN 55344-2252**
(Address of principal executive offices) (Zip code)

**(952) 938-8080**
(Registrant' s telephone number, including area code)

**N/A**
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES ☒ NO ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

YES ☒ NO ☐

**APPLICABLE ONLY TO CORPORATE ISSUERS:**

Indicate the number of shares outstanding of each of the issuer' s classes of common stock, as of the latest practicable date.

Common stock, $.20 par value: 804,859,035 shares as of September 8, 2003

## PART I. FINANCIAL INFORMATION

### ITEM 1. FINANCIAL STATEMENTS

**ADC TELECOMMUNICATIONS, INC. AND SUBSIDIARIES**
**CONDENSED CONSOLIDATED BALANCE SHEETS–UNAUDITED**

**(In millions)**

| | July 31, 2003 | October 31, 2002 |
|---|---|---|
| **ASSETS:** | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | $ 743.7 | $ 278.9 |
| Available-for-sale securities | 3.5 | 0.5 |
| Accounts receivable, net | 100.2 | 114.6 |
| Unbilled revenue | 33.5 | 25.8 |
| Inventories, net | 76.5 | 94.9 |
| Prepaid income taxes | 15.3 | 126.6 |
| Prepaid and other current assets | 29.4 | 44.5 |
| Total current assets | 1,002.1 | 685.8 |
| PROPERTY AND EQUIPMENT, net | 206.9 | 206.8 |
| ASSETS HELD FOR SALE | 24.6 | 20.0 |
| RESTRICTED CASH | 21.0 | 177.0 |
| OTHER ASSETS | 38.7 | 54.6 |
| Total assets | $ 1,293.3 | $ 1,144.2 |
| **LIABILITIES AND SHAREOWNERS' INVESTMENT:** | | |
| CURRENT LIABILITIES: | | |
| Accounts payable | $ 46.1 | $ 73.0 |
| Accrued compensation and benefits | 62.0 | 74.1 |
| Restructuring accrual | 40.0 | 124.2 |
| Other accrued liabilities | 115.9 | 110.8 |
| Notes payable | 8.5 | 15.7 |
| Total current liabilities | 272.5 | 397.8 |

| | | |
|---|---|---|
| LONG-TERM NOTES PAYABLE | 400.0 | 10.8 |
| OTHER LONG-TERM LIABILITIES | 3.3 | 3.4 |
| Total liabilities | 675.8 | 412.0 |
| SHAREOWNERS' INVESTMENT (804.1 and 799.6 shares outstanding, respectively) | 617.5 | 732.2 |
| Total liabilities and shareowners' investment | $ 1,293.3 | $ 1,144.2 |

See accompanying notes to condensed consolidated financial statements.



**ADC TELECOMMUNICATIONS, INC. AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS–UNAUDITED**
**(In millions, except per share amounts)**

| | Three months Ended July 31, | | Nine Months Ended July 31, | |
|---|---|---|---|---|
| | 2003 | 2002 | 2003 | 2002 |
| NET SALES: | | | | |
| Product | $ 136.5 | $ 177.7 | $ 430.5 | $ 641.5 |
| Service | 52.0 | 57.4 | 149.9 | 185.4 |
| TOTAL NET SALES | 188.5 | 235.1 | 580.4 | 826.9 |
| COST OF SALES: | | | | |
| Product | 75.7 | 149.1 | 238.0 | 461.0 |
| Service | 40.3 | 53.0 | 125.7 | 164.4 |
| TOTAL COST OF SALES | 116.0 | 202.1 | 363.7 | 625.4 |
| GROSS PROFIT | 72.5 | 33.0 | 216.7 | 201.5 |
| EXPENSES: | | | | |
| Research and development | 25.4 | 52.1 | 85.1 | 147.9 |
| Selling and administration | 49.6 | 95.1 | 174.6 | 314.2 |
| Impairment charges | 0.2 | 160.1 | 14.8 | 178.8 |
| Restructuring charges | 12.0 | 19.2 | 32.2 | 80.0 |
| Total Expenses | 87.2 | 326.5 | 306.7 | 720.9 |
| OPERATING LOSS | (14.7) | (293.5) | (90.0) | (519.4) |
| OTHER INCOME (EXPENSE), NET | (0.4) | (4.0) | 4.0 | 19.0 |
| LOSS BEFORE INCOME TAXES | (15.1) | (297.5) | (86.0) | (500.4) |
| PROVISION (BENEFIT) FOR INCOME TAXES | – | 331.6 | – | 262.7 |

| | | | | |
|---|---|---|---|---|
| NET LOSS | $ (15.1) | $ (629.1) | $ (86.0) | $ (763.1) |
| AVERAGE COMMON SHARES OUTSTANDING (BASIC AND DILUTED) | 804.1 | 796.4 | 802.7 | 794.9 |
| LOSS PER SHARE (BASIC AND DILUTED) | $ (0.02) | $ (0.79) | $ (0.11) | $ (0.96) |

See accompanying notes to condensed consolidated financial statements.



**ADC TELECOMMUNICATIONS, INC. AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS−UNAUDITED**
**(In millions)**

| | Nine Months Ended July 31, | |
|---|---|---|
| | 2003 | 2002 |
| OPERATING ACTIVITIES: | | |
| Net loss | $ (86.0) | $ (763.1) |
| Adjustments to reconcile net loss to net cash from operating activities: | | |
| Purchased in process research and development | – | 10.5 |
| Inventory and fixed asset impairments | 17.4 | 156.6 |
| Goodwill write-off | – | 36.6 |
| Depreciation and amortization | 46.4 | 83.1 |
| Provision for losses on receivables | 1.7 | 23.3 |
| Inventory reserves | (0.2) | 29.0 |
| Non-cash stock compensation | 5.5 | 10.8 |
| Change in deferred income taxes | – | 474.1 |
| Loss on write-down of investments | – | 39.9 |
| Gain on sale of investments | (2.0) | (66.5) |
| Loss on sale of business and product lines | 2.8 | 4.8 |
| Loss on sale of fixed assets and sale leasebacks | 1.5 | 8.2 |
| Other | (0.9) | – |
| Changes in operating assets and liabilities, net of acquisitions and divestitures: | | |
| Accounts and unbilled receivables | 15.4 | 126.9 |
| Inventories | 15.9 | 60.9 |
| Prepaid and other assets | 154.2 | 69.1 |
| Accounts payable | (33.8) | (80.2) |
| Accrued liabilities | (107.3) | (59.0) |
| Total cash provided by operating activities | 30.6 | 165.0 |
| INVESTING ACTIVITIES: | | |
| Acquisitions, net of cash acquired | – | (4.3) |
| Divestitures, net of cash disposed | 0.5 | 1.1 |
| Property and equipment additions, net of disposals | (65.5) | (30.1) |
| Change in restricted cash | 156.0 | (276.5) |

| | | |
|---|---|---|
| Sale of available-for-sale securities, net | – | 68.7 |
| Sale (purchase) of long-term investments, net | 3.7 | (3.0) |
| Total cash provided by (used) for investing activities | 94.7 | (244.1) |
| FINANCING ACTIVITIES: | | |
| Issuance (repayments) of debt | 371.5 | (4.1) |
| Sale of warrants, net of purchased call options | (34.5) | – |
| Common stock issued | 2.8 | 6.5 |
| Total cash provided by (used for) financing activities | 339.8 | 2.4 |
| EFFECT OF EXCHANGE RATE CHANGES ON CASH | (0.3) | (0.1) |
| INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS | 464.8 | (76.8) |
| CASH AND CASH EQUIVALENTS, beginning of period | 278.9 | 348.6 |
| CASH AND CASH EQUIVALENTS, end of period | $ 743.7 | $ 271.8 |

See accompanying notes to condensed consolidated financial statements.



**ADC TELECOMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS–UNAUDITED**

**Note 1 Basis of Presentation:**

The interim information furnished in this report is unaudited but reflects all normal recurring adjustments which are necessary, in the opinion of our management, for a fair statement of the results for the interim periods. The operating results for the quarter ended July 31, 2003, are not necessarily indicative of the operating results to be expected for the full fiscal year. These statements should be read in conjunction with our most recent Annual Report filed on Form 10-K for the fiscal year ended October 31, 2002.

*Reclassifications.* Certain prior year amounts have been reclassified to conform to the current year presentation.

*Recently Issued Accounting Pronouncements.* In June 2002, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 146, "Accounting for Costs Associated with Exit or Disposal Activities." SFAS No. 146 superseded Emerging Issues Task Force (EITF) Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)." The principal difference between SFAS No. 146 and EITF No. 94-3 relates to when an entity can recognize a liability related to exit or disposal activities. SFAS No. 146 requires that a liability be recognized for a cost associated with an exit or disposal activity when the liability is incurred. EITF No. 94-3 allowed a liability related to an exit or disposal activity to be recognized on the date an entity commits to an exit plan. We adopted this standard on January 1, 2003, which was the standard' s effective date. The standard did not materially impact our consolidated financial results or financial position upon adoption.

In November 2002, the FASB issued Interpretation No. 45, "Guarantor' s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of the Indebtedness of Others," which requires a guarantor to recognize and measure certain types of guarantees at fair value. In addition, Interpretation No. 45 requires the guarantor to make new disclosures for these guarantees and other types of guarantees that are not subject to the initial recognition and measurement provisions. The disclosure requirements are effective for financial statements with interim or annual periods ended after December 15, 2002, while the recognition and measurement provisions are applicable on

a prospective basis to guarantees issued or modified after December 31, 2002. We adopted the initial recognition and measurement provision as well as the disclosure provision of Interpretation No. 45 during the first quarter of fiscal 2003. The initial recognition and measurement provisions did not have a material impact on our consolidated financial results or financial position. See Note 12 for guarantee disclosure information.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure." The provisions of SFAS No. 148 amend SFAS No. 123, "Accounting for Stock Based Compensation," to provide alternative methods of transitioning to a fair value-based method of accounting for stock-based employee compensation. In addition, SFAS No. 148 also expands the disclosure requirements of SFAS No. 123 by requiring more detailed disclosure in both annual and interim financial statements. The transition provisions of SFAS No. 148 will not have a material impact on our financial results, as we do not plan to adopt the fair value-based accounting provisions of SFAS No. 123, which is commonly referred to as expensing of stock options. The disclosure provisions of SFAS No. 148 are effective for interim periods beginning after December 15, 2002. Accordingly, we adopted the disclosure provisions of this standard during the second quarter of fiscal 2003. See Note 14 for this SFAS No. 148 disclosure.

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin No. 51," which requires companies to consolidate certain types of variable interest entities. A variable interest entity is an entity that has inadequate invested equity at risk to meet expected future losses, or whose holders of the equity investments lack any of the following three characteristics: (i) the ability to make decisions about the entity' s activities; (ii) the obligation to absorb the entity' s losses if they occur; or (iii) the right to receive the entity' s future returns if they occur. Interpretation No. 46 is applicable immediately for all variable interests created after January 31, 2003. For all variable interest entities created before February 1, 2003, the provisions of this interpretation are effective in the first fiscal year or interim period beginning after June 15, 2003 (our fourth quarter of fiscal 2003). We are not currently a party to any transactions involving variable interest entities.

*Summary of Significant Accounting Policies.* A detailed description of our significant accounting policies can be found in our most recent Annual Report filed on Form 10-K for the fiscal year ended October 31, 2002.



**Note 2 Inventories:**

Inventories include material, labor and overhead and are stated at the lower of first-in, first-out cost or market. Inventories consisted of (in millions):

| | July 31, 2003 | October 31, 2002 |
|---|---|---|
| Purchased materials and manufactured products | $ 66.5 | $ 82.5 |
| Work-in-process | 10.0 | 12.4 |
| | $ 76.5 | $ 94.9 |

**Note 3 Income Taxes:**

A deferred tax asset generally represents future tax benefits to be received when certain expenses previously recognized in U.S. GAAP-based income statements become deductible expenses under applicable income tax laws. Thus, realization of a deferred tax asset is dependent on future taxable income against which these deductions can be applied. SFAS No. 109, "Accounting for Income Taxes," requires that a valuation allowance be established when it is more likely than not that all or a portion of deferred tax assets will not be realized. In fiscal 2002 and for the three and nine months ended July 31, 2003, we recorded a full valuation allowance against all our deferred tax assets. We expect to provide a full valuation allowance on any future tax benefits until we can sustain a level of profitability that demonstrates our ability to utilize these assets. We will not record tax benefits or significant provisions for pre-tax income (loss) until either our deferred tax

assets are fully utilized to reduce future income tax liabilities or the value of our deferred tax assets are restored on the balance sheet. As of July 31, 2003, we had $739.2 million of deferred tax assets that have a full valuation allowance against them and thus are not reflected on the Condensed Consolidated Balance Sheet. Our deferred tax assets expire through October 31, 2023.

**Note 4 Property Plant & Equipment:**

We record our property, plant and equipment, net of accumulated depreciation at the appropriate carrying value in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." For the three and nine months ended July 31, 2003, we recognized $0.2 million and $14.8 million, respectively, of impairment charges in accordance with SFAS No. 144. As of July 31, 2003, we believe that the current carrying value represents the fair value as defined by SFAS No. 144, and therefore no impairment exists related to our operating assets at this time. We will continue to assess our long-lived assets and if deemed necessary in accordance with SFAS 144, will record impairment related charges at that time.

| | July 31, 2003 | October 31, 2002 |
|---|---|---|
| Land and buildings | $ 135.9 | $ 113.5 |
| Machinery and equipment | 405.0 | 418.8 |
| Furniture and fixtures | 39.9 | 37.8 |
| Less: accumulated depreciation | (375.7) | (370.9) |
| Total | 205.1 | 199.2 |
| Construction in progress (CIP) | 1.8 | 7.6 |
| Total | $ 206.9 | $ 206.8 |

**Note 5 Comprehensive Loss:**

The following table presents the calculation of comprehensive loss as required by SFAS No. 130. Comprehensive loss has no impact on our net loss, balance sheet or shareowners' investment. The components of comprehensive loss are as follows (in millions):

| | Three months Ended July 31, | | Nine Months Ended July 31, | |
|---|---|---|---|---|
| | 2003 | 2002 | 2003 | 2002 |
| Net loss | $ (15.1) | $ (629.1) | $ (86.0) | $ (763.1) |
| Change in cumulative translation adjustments | (1.0) | 3.8 | (6.6) | (2.6) |
| Reclassification adjustment for realized (gains) losses on securities classified as available for sale, net-of-tax | – | (22.2) | – | (41.8) |
| Unrealized gain (loss) from securities classified as available for sale, net-of-tax | 0.4 | 0.1 | 3.0 | (2.3) |
| Comprehensive loss | $ (15.7) | $ (647.4) | $ (89.6) | $ (809.8) |



**Note 6 Earnings (Loss) Per Share:**

Basic loss per common share was calculated by dividing net loss by the weighted average number of common shares outstanding during the period. Diluted earnings per share would typically be calculated by dividing net income by the sum of the weighted average number of common shares outstanding plus all additional common shares that would have been outstanding if all potentially dilutive common stock equivalents had been satisfied with shares of common stock. No such potentially dilutive common stock equivalents were included in the diluted loss per share calculation as their impact would have been anti-dilutive due to our net loss. The following table specifies the number

of shares utilized in the loss per share calculations for the periods ended July 31, 2003 and July 31, 2002 (in millions, except for per share amounts).

| | Three months Ended July 31, | | Nine Months Ended July 31, | |
|---|---|---|---|---|
| | 2003 | 2002 | 2003 | 2002 |
| Net loss | $ (15.1) | $ (629.1) | $ (86.0) | $ (763.1) |
| Loss per common share (basic and diluted) | (0.02) | (0.79) | (0.11) | (0.96) |
| Weighted average common shares outstanding (basic and diluted) | 804.1 | 796.4 | 802.7 | 794.9 |

Because of their anti-dilutive effect, stock options and all shares reserved for issuance upon conversion of our convertible notes were excluded for the three and nine month periods ended July 31, 2003. Upon achieving a positive net income, our recent issuance of convertible notes will require us to use the "if-converted" method for computing diluted earnings per share with respect to the shares reserved for issuance upon conversion of the notes. Under this method, we will add back the net-of-tax interest expense on the convertible notes and then divide net income by outstanding shares, including all 99.7 million shares reserved for issuance upon conversion of the notes. If this calculation results in further diluting the earnings per share, our diluted earnings per share will include all 99.7 million shares of common stock reserved for issuance upon conversion of our convertible notes. If this calculation is anti-dilutive, the net-of-tax interest on the convertible notes will not be added back and the 99.7 million shares of common stock reserved for issuance upon conversion of our convertible notes will not be included. See Note 13 for a discussion of our convertible notes.

**Note 7 Divestitures:**

During fiscal 2002 and the nine months ended July 31, 2003, we sold or shut down non-strategic product lines. The net sales, operating income (loss) and net loss of the divested product lines were as follows (in millions, except for per share amounts):

| | Three months Ended July 31, | | Nine Months Ended July 31, | |
|---|---|---|---|---|
| | 2003 | 2002 | 2003 | 2002 |
| Net sales | $ – | $ 3.9 | $ 1.6 | $ 15.2 |
| Operating income (loss) | – | (23.1) | (1.0) | (92.9) |
| Net loss (basic and diluted) | – | (9.2) | (1.0) | (70.6) |
| Loss per common share (basic and diluted) | $ – | $ (0.01) | $ (0.00) | $ (0.09) |

**Note 8 Segment Reporting:**

The "management approach" required by SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," requires us to disclose selected financial data by operating segment. This approach is based on the way we organize segments within an enterprise for making operating decisions and assessing performance. We have identified two reportable segments based on our internal organizational structure, management of operations and performance evaluation. These segments are Broadband Infrastructure and Access, and Integrated Solutions. Segment detail is summarized as follows (in millions):



| | Broadband Infrastructure and Access | Integrated Solutions | Unallocated Items | Consolidated |
|---|---|---|---|---|
| **Three Months Ended July 31, 2003** | | | | |
| External sales: | | | | |

| | | | | |
|---|---|---|---|---|
| Product | $ 112.6 | $ 23.9 | $ – | $ 136.5 |
| Service | – | 52.0 | – | 52.0 |
| Total external sales | 112.6 | 75.9 | – | 188.5 |
| | | | | |
| Impairment, restructuring and other disposal charges (1) | – | – | (13.5) | (13.5) |
| Operating loss | (5.3) | 3.7 | (13.1) | (14.7) |
| Other income (expense), net | – | – | (0.4) | (0.4) |
| Pre-tax loss | (5.3) | 3.7 | (13.5) | (15.1) |
| Assets | 302.5 | 286.1 | 704.7 | 1,293.3 |
| | | | | |
| **Three Months Ended July 31, 2002** | | | | |
| External sales: | | | | |
| Product | $ 156.5 | $ 21.2 | $ – | $ 177.7 |
| Service | – | 57.4 | – | 57.4 |
| Total external sales | 156.5 | 78.6 | – | 235.1 |
| | | | | |
| Impairment, restructuring and other disposal charges (1) | – | – | (193.2) | (193.2) |
| In-process research and development | – | – | – | – |
| Operating loss | (76.2) | (14.3) | (203.0) | (293.5) |
| Other income (expense), net | – | – | (4.0) | (4.0) |
| Pre-tax loss | (76.2) | (14.3) | (207.0) | (297.5) |
| Assets | 538.1 | 215.9 | 820.4 | 1,574.4 |
| | | | | |
| **Nine Months Ended July 31, 2003** | | | | |
| External sales: | | | | |
| Product | $ 364.9 | $ 65.6 | $ – | $ 430.5 |
| Service | – | 149.9 | – | 149.9 |
| Total external Sales | 364.9 | 215.5 | – | 580.4 |
| | | | | |
| Impairment, restructuring and other disposal charges (1) | – | – | (49.7) | (49.7) |
| Operating loss | (24.8) | (5.6) | (59.6) | (90.0) |
| Other income, net | – | – | 4.0 | 4.0 |
| Pre-tax loss | (24.8) | (5.6) | (55.6) | (86.0) |
| Assets | 302.5 | 286.1 | 704.7 | 1,293.3 |
| | | | | |
| **Nine Months Ended July 31, 2002** | | | | |
| External sales: | | | | |
| Product | $ 559.0 | $ 82.5 | $ – | $ 641.5 |
| Service | – | 185.4 | – | 185.4 |
| Total external sales | 559.0 | 267.9 | – | 826.9 |
| | | | | |
| Impairment, restructuring and other disposal charges(1) | – | – | (272.2) | (272.2) |
| In-process research and development | – | – | (10.5) | (10.5) |
| Operating loss | (216.2) | (25.9) | (277.3) | (519.4) |
| Other income (expense), net | – | – | 19.0 | 19.0 |
| Pre-tax loss | (216.2) | (25.9) | (258.3) | (500.4) |
| Assets | 538.1 | 215.9 | 820.4 | 1,574.4 |

(1) These impairment, restructuring and other disposal charges were not allocated to a specific segment. See Note 9 for a discussion of these charges.

**Note 9 Impairment, Restructuring and Other Disposal Charges:**

During the three and nine months ended July 31, 2003 and 2002, we continued our plan to improve operating performance by restructuring and streamlining our operations. As a result, we incurred impairment charges related to the disposal of excess equipment, restructuring charges associated with workforce reductions as well as the consolidation of excess facilities, and other disposal charges associated with inventory write-offs and certain administrative charges related to product line divestitures or shutdowns. The impairment, restructuring and other disposal charges resulting from our actions, by category of expenditures, are as follows for the three and nine months ended July 31, 2003 and 2002, respectively (in millions):



| Three Months Ended July 31, 2003 | Impairment Charges | Restructuring Charges | Selling and Administrative Charges | Cost of Product Sold | Total |
|---|---|---|---|---|---|
| Employee severance costs | $ – | $ 5.3 | $ – | $ – | $ 5.3 |
| Fixed asset write-downs | 0.2 | – | – | – | 0.2 |
| Facility consolidation and lease termination | – | 6.7 | – | – | 6.7 |
| Inventory write-offs | – | – | – | 1.3 | 1.3 |
| Other | – | – | – | – | – |
| Total | $ 0.2 | $ 12.0 | $ – | $ 1.3 | $ 13.5 |

| Three Months Ended July 31, 2002 | Impairment Charges | Restructuring Charges | Selling and Administrative Charges | Cost of Product Sold | Total |
|---|---|---|---|---|---|
| Employee severance costs | $ – | $ 18.9 | $ – | $ – | $ 18.9 |
| Fixed asset write-downs | 123.5 | – | – | – | 123.5 |
| Goodwill write-downs | 36.6 | – | – | – | 36.6 |
| Facility consolidation and lease termination | – | – | – | – | – |
| Inventory write-offs | – | – | – | 13.8 | 13.8 |
| Committed sales contracts - administrative | – | – | 0.1 | – | 0.1 |
| Other | – | 0.3 | – | – | 0.3 |
| Total | $ 160.1 | $ 19.2 | $ 0.1 | $ 13.8 | $ 193.2 |

| Nine Months Ended July 31, 2003 | Impairment Charges | Restructuring Charges | Selling and Administrative Charges | Cost of Product Sold | Total |
|---|---|---|---|---|---|
| Employee severance costs | $ – | $ 26.8 | $ – | $ – | $ 26.8 |
| Fixed asset write-downs | 14.8 | – | – | – | 14.8 |
| Facility consolidation and lease termination | – | 5.3 | – | – | 5.3 |
| Inventory write-offs | – | – | – | 2.7 | 2.7 |
| Other | – | 0.1 | – | – | 0.1 |
| Total | $ 14.8 | $ 32.2 | $ – | $ 2.7 | $ 49.7 |

| Nine Months Ended July 31, 2002 | Impairment Charges | Restructuring Charges | Selling and Administrative Charges | Cost of Product Sold | Total |
|---|---|---|---|---|---|
| Employee severance costs | $ – | $ 30.8 | $ – | $ – | $ 30.8 |
| Fixed asset write-downs | 142.2 | – | – | – | 142.2 |

| | | | | | |
|---|---|---|---|---|---|
| Goodwill write-downs | 36.6 | – | – | – | 36.6 |
| Facility consolidation and lease termination | – | 35.9 | – | – | 35.9 |
| Inventory write-offs | – | – | – | 14.5 | 14.5 |
| Committed sales contracts - administrative | – | – | (1.1) | – | (1.1) |
| In-process research and development | – | 10.5 | – | – | 10.5 |
| Other | – | 2.8 | – | – | 2.8 |
| Total | $ 178.8 | $ 80.0 | $ (1.1) | $ 14.5 | $ 272.2 |

***Impairment Charges:*** As a result of our intention to sell, scale-back or exit non-strategic businesses, we evaluated our property and equipment assets for impairment. For the three and nine months ended July 31, 2003, we recognized $0.2 million and $14.8 million, respectively, of impairment charges in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." For the three and nine months ended July 31, 2002, we recognized $160.1 million and $178.8 million, respectively, of impairment charges in accordance with SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets."

***Restructuring Charges:*** Restructuring charges relate principally to employee severance costs and facility consolidation costs resulting from the closure of facilities and other workforce reductions attributable to our efforts to reduce costs. During the three and nine months ended July 31, 2003, approximately 220 and 1,240 employees, respectively, were impacted by reductions in force. The costs of these reductions will be funded through cash from operations. Restructuring charges for the nine months ended July 31, 2002, include an in-process research and development charge of $10.5 million related to our buy-out of two joint ventures (See Note 10).

Facility consolidation and lease termination costs represent lease termination costs and other costs associated with our decision to consolidate and close duplicative or excess manufacturing and office facilities. During the nine months ended July 31, 2003, we negotiated a favorable lease termination settlement with a landlord of a leased facility and accordingly reversed $4.2 million of our previous restructuring accrual for this lease settlement.

***Other Disposal Charges:*** Inventory write-offs represent losses incurred to write down the carrying value of inventory for product lines that have been discontinued. Revenues and gross margins from these product lines are not material to our consolidated results of operations. Committed sales contracts represent the administrative expenses necessary to complete or negotiate settlements



with respect to certain committed sales contracts, which costs would normally be classified as selling and administration expenses. These costs are a direct result of our decision to exit certain product lines.

***Effect of Restructuring Charges on Future Cash Flows:*** The following table provides detail on the activity and our remaining restructuring accrual balance by category as of July 31, 2003 (in millions):

| Type of Charge | Accrual October 31, 2002 | Net Additions | Cash Charges | Accrual July 31, 2003 |
|---|---|---|---|---|
| Employee severance costs | $ 17.0 | $ 26.8 | $ 32.4 | $ 11.4 |
| Facilities consolidation | 105.6 | 5.3 | 82.3 | 28.6 |
| Other | 1.6 | 0.1 | 1.7 | – |
| Total | $ 124.2 | $ 32.2 | $ 116.4 | $ 40.0 |

No adjustment was made to our restructuring accrual balance for changes in assumptions during the three months ended July 31, 2003. For the nine months ended July 31, 2003, we recorded a $3.2 million reduction to the restructuring accrual balance due to a change in assumptions. The adjustment was primarily related to the termination of a lease for a manufacturing facility used in our optical components business. We were able to terminate this lease much earlier than our original estimate and at a lower settlement cost than the original estimate. This adjustment was recorded as an offset to the additions to the accrual, and thus is reflected in the "Net Additions" column in the table above.

We expect that substantially all of the remaining $11.4 million accrual relating to employee severance costs as of July 31, 2003, will be paid from unrestricted cash by the end of the first quarter of fiscal 2004. Of the $28.6 million to be paid for the consolidation of facilities, we expect that approximately $11.1 million will be paid from unrestricted cash through July 31, 2004, and the balance will be paid from unrestricted cash over the respective lease terms of the facilities through 2015. Based on our intention to continue to consolidate and close duplicative or excess manufacturing operations in order to reduce our cost structure, we may incur additional restructuring charges (both cash and non-cash) in future periods, which may have a material effect on our operating results.

In addition to the restructuring accrual described above, we have $24.6 million of assets held for sale (of which $4.8 million relates to our Broadband Infrastructure and Access segment and $19.8 million was not allocated to either of our segments). We classified these assets as "Held for Sale" pursuant to our decision to exit non-strategic product lines and to reduce the size of our operations. We expect to sell or dispose of these assets before July 31, 2004.

**Note 10 Joint Ventures:**

In January 2001 and December 2001, we entered into a total of three joint ventures with Competence Research and Development Ltd., an independent company. The joint ventures were established to share development risk and capital resources associated with the ongoing development of technology used in our iAN™, BroadAccess™, and Small Subscriber product lines. The joint ventures were successful in advancing the development of technology related to these product lines. When the joint ventures were established we held 34%, 20%, and 49% interests, respectively, in the three joint venture entities. Because we did not have majority control over the joint ventures, these investments were accounted for using the equity method. Therefore, a pro rata portion of the joint ventures' profits or losses was reflected in our Condensed Consolidated Income Statement as Other Income (Expense). During the nine months ended July 31, 2002, we incurred $2.6 million in equity losses related to these joint ventures.

In December 2001, we purchased Competence' s 66% interest in one of the joint ventures for $3.9 million in cash and the assumption of $16.5 million in debt owed by that joint venture, the proceeds of which were being used to fund the development of technology. In February 2002, we purchased Competence' s remaining interests in the other joint ventures for a total of approximately $350,000 in cash and the assumption of approximately $4.2 million in debt, the proceeds of which were used to fund the development of the technology. The debt related to the February 2002 purchases was paid off immediately following the purchases. We recorded expenses of $10.5 million for in-process research and development projects associated with the purchase of Competence' s interests in these ventures in the second quarter of fiscal 2002. In addition, $10.3 million was allocated to developed technology, of which $5.3 was written off prior to fiscal 2003. The remainder is being amortized over a period of seven years. Appraisals for purchased in-process and developed technology were determined using the income approach, discounted based on the estimated likelihood that the project ultimately would succeed.

**Note 11 Synthetic Leases:**

We were party to an operating lease agreement related to our world headquarters facility in Eden Prairie, Minnesota. This lease was set to expire in October of fiscal 2006. This operating lease, which is sometimes referred to as a "synthetic lease," contained a minimum residual value guarantee by us at the end of the lease term, and also gave us a purchase option at the end of the lease term.



During the three months ended July 31, 2003, we purchased this property for an aggregate purchase price of $46.8 million. The entire purchase price was paid out of the pledged collateral that was classified as restricted cash on our Condensed Consolidated Balance Sheet.

In addition to the purchase of the world headquarters building, during the nine months ended July 31, 2003, we purchased a total of four other properties that we had been leasing under synthetic leases. Two properties were purchased for $55.9 million and the remaining two were purchased for $45.5 million. All of the properties were purchased using the restricted cash we had previously pledged to secure the lease obligations. The two properties that were purchased for $55.9 million were recorded at their fair market value of $15.7 million, which resulted in a $5.2 million impairment charge and a $35.0 million reduction in our restructuring accrual as we had previously recognized this loss in a prior fiscal year. These two properties are currently classified as assets held for sale on our Condensed Consolidated Balance Sheet

because we intend to sell them within one year from the date of purchase. The remaining two properties that were purchased for $45.5 million were immediately sold for total proceeds of $15.3 million which became available to us as unrestricted cash. The majority of the difference between the purchase price for these two properties of $45.5 million and the sales price of $15.3 million we received was previously accrued as part of our restructuring accrual.

**Note 12 Guarantees:**

In connection with the sale of a participation interest in a customer note receivable for $14.3 million, we guaranteed the payment obligation of the customer to the purchaser of the participation interest. During the nine months ended July 31, 2003, the underlying customer defaulted on the note receivable. Therefore, we were required to pay the purchaser of the participation interest $14.5 million, which was the outstanding principal and interest on the note receivable at the time the customer defaulted. Of the $14.5 million payment, we used $14.3 million from our restricted cash that was previously pledged to secure our guarantee with the remainder being paid from unrestricted cash. This note receivable has been fully reserved for as part of our allowance for doubtful accounts reserve. As of July 31, 2003, we did not have any outstanding guarantees.

We have entered into a variety of agreements with third parties that include indemnification clauses, both in the ordinary course of business and in connection with our divestitures of certain product lines. These clauses require us to compensate these third parties for certain liabilities and damages incurred by them. We have not made any significant indemnification payments as a result of these clauses, and in accordance with FASB Interpretation No. 45, "Guarantors Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," have not accrued any amounts with respect to these indemnification clauses.

**Note 13 Long-Term Debt:**

On June 4, 2003, we issued $400.0 million of convertible unsecured subordinated notes in two separate transactions pursuant to Rule 144A under the Securities Act of 1933. This issuance was made through an initial offering of $350.0 million of convertible notes on May 29, 2003, and the subsequent exercise in full by the underwriters of such offering of their option to purchase an additional $50.0 million of convertible notes. The net proceeds to us from this offering were $355.5 million after underwriting discounts of $10.0 million and the net payment for the purchased call options and warrant transactions described below. In the first transaction we issued $200.0 million of 1.0% fixed rate convertible unsecured subordinated notes that mature on June 15, 2008. In the second transaction, we issued $200.0 million of convertible unsecured subordinated notes that have a variable interest rate and mature on June 15, 2013. The interest rate for the variable rate notes is equal to 6-month LIBOR plus 0.375%. The interest rate for the variable rate notes will be reset on each semi-annual interest payment date, which are June 15 and December 15 of each year beginning on December 15, 2003, for both the fixed and variable rate notes. The initial interest rate on the variable note is 1.59625% for the period ending December 15, 2003. The holders of both the fixed and variable rate notes may convert all or some of their notes into shares of our common stock at any time prior to maturity at a conversion price of $4.013 per share. We may not redeem the fixed rate notes anytime prior to their maturity date. We may redeem any or all of the variable rate notes at any time on or after June 23, 2008.

Concurrent with the issuance of the fixed and variable rate notes, we purchased five and ten-year call options on our common stock to reduce the potential dilution from conversion of the notes. Under the terms of these call options, which become exercisable upon conversion of the notes, we have the right to purchase from the counterparty at a purchase price of $4.013 per share the aggregate number of shares that we are obligated to issue upon conversion of the fixed and variable notes, which is a maximum of 99.7 million shares. We also have the option to settle the call options with the counterparty through a net share settlement or cash settlement, either of which would be based on the extent to which the then-current market price of our common stock exceeds $4.013 per share. The total cost of the call options was $137.3 million, which was recognized in shareowners' investment. The cost of the call options was partially offset by the sale of warrants to acquire shares of our common stock with terms of five and ten years to the same counterparty with whom we entered into the call options. The warrants are exercisable for an aggregate of 99.7 million shares at an exercise price of $5.28 per share. The warrants become exercisable upon conversion of the notes, and may be settled, at our option, either through a net share settlement or a net cash settlement, either of which would be based on the extent to which the then-current

market price of our common stock exceeds $5.28 per share. The gross proceeds from the sale of the warrants were $102.8 million, which was recognized in shareowners' investment. The call options and the warrants are subject to early expiration upon conversion of the notes. The net effect of the call options and the warrants is to either reduce the potential dilution from the conversion of the notes (if we elect net share settlement) or to increase the net cash proceeds of the offering (if we elect net cash settlement) if the notes are converted at a time when the current market price of our common stock is greater than $4.013 per share.

We plan to use the cash proceeds from this offering for general corporate purposes and strategic opportunities, including financing for possible acquisitions or investments in complementary businesses, technologies or products.

**Note 14 SFAS 148 Disclosure:**

We recently adopted the disclosure provisions of SFAS No. 148. However, as discussed in Note 1, we did not adopt the transition provisions of SFAS No. 148. As a result of adopting the disclosure provisions of SFAS No. 148, we are required to disclose the method we use to account for stock based compensation on a quarterly basis. Stock compensation is awarded to certain key employees in the form of stock options and restricted stock. We account for our stock compensation in accordance with Accounting Principles Board (APB) Opinion 25, "Accounting for Stock Issued to Employees," and related interpretations. All stock options are issued at fair market value on the date of grant. Accordingly, we did not recognize stock compensation expense for stock options granted during the periods presented. SFAS No. 148 also requires disclosure of how stock compensation expense would be computed under SFAS No. 123, "Accounting for Stock Based Compensation," using the fair value method. Under the fair value based method, compensation cost is measured at the grant date based on the value of the award and is recognized over the service period, which is usually the vesting period. Fair value is determined using an option-pricing model, such as Black-Scholes, that takes into account the stock price at the grant date, the exercise price, the expected life of the option, the volatility of the underlying stock, the expected dividends, and the risk-free interest rate over the expected life of the option. The following table summarizes what our operating results would have been if the fair value method of accounting for stock options had been utilized (in millions, except for per share amounts):

| | Three months Ended July 31, | | Nine Months Ended July 31, | |
|---|---|---|---|---|
| | 2003 | 2002 | 2003 | 2002 |
| Net Loss | | | | |
| As reported | $ (15.1) | $ (629.1) | $ (86.0) | $ (763.1) |
| Stock compensation expense – fair value based method | (10.3) | (22.5) | (40.8) | (91.1) |
| Pro Forma Net Loss | $ (25.4) | $ (651.6) | $ (126.8) | $ (854.2) |
| | | | | |
| Loss Per Share – Basic and Diluted | | | | |
| As reported | $ (0.02) | $ (0.79) | $ (0.11) | $ (0.96) |
| Pro forma | $ (0.03) | $ (0.82) | $ (0.16) | $ (1.08) |

During the three months ended July 31, 2003, we offered to eligible employees the right to exchange certain of their employee stock options for a lesser number of new options to be granted six months and one day following the surrender of their existing options. The new options, which are expected to be granted on or about December 29, 2003, will have an exercise price equal to the average of the high and low trading price of our common stock on the grant date and will vest over a two year period from the grant date. For purposes of the above tabular disclosure of what our operating results would have been under the fair value method of accounting for stock options, the unrecognized compensation cost of the cancelled options together with any incremental fair value of the replacement options will be amortized over a 30 month period, which consists of the 24 month vesting period for the replacement options and the six month and one day period between the cancellation of the surrendered options and the grant of the replacement options.

We have issued restricted stock as part of employee incentive programs as well as in conjunction with our fiscal year 2000 purchase of Broadband Access Systems, Inc. The fair market value of the restricted stock is amortized over the projected remaining vesting period. During the three and nine months ended July 31, 2003, we incurred $1.1 million and $5.7 million, respectively, of non-cash stock

compensation expense related to restricted stock issuances. Non-cash stock compensation expense for the three and nine months ended July 31, 2002, was $3.4 million and $10.9 million, respectively.



## ITEM 2. MANAGEMENT' S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Business

ADC is a leading global supplier of broadband network equipment, software and systems integration services that enable communications service providers to deliver high-speed Internet, data, video and voice services to consumers and businesses worldwide. Telephone companies, cable television operators, Internet and data service providers, wireless service providers and other communications service providers are building and upgrading the broadband network infrastructure required to offer high-speed Internet access as well as data, video, telephony and other interactive multimedia services. Our product offerings and development efforts are focused on increasing the speed and efficiency of the last mile/kilometer portion of broadband communications networks, and our product and service offerings help connect communications service providers' offices to businesses and end users' homes as well as to wireless communications devices.

Our customers include local and long-distance telephone companies, cable television operators, wireless service providers, new competitive service providers, broadcasters, governments, businesses, system integrators and communications equipment manufacturers and distributors. We offer broadband connectivity components and systems, broadband access and network equipment, software and systems integration services to our customers through the following two segments of product and service offerings:

Broadband Infrastructure and Access; and

Integrated Solutions.

*Broadband Infrastructure and Access* focuses on Internet Protocol (IP)-based offerings for the cable industry, Digital Subscriber Line (DSL) offerings for the telecommunications industry, and broadband connectivity products for wireline, cable and wireless communications network applications. These products consist of:

connectivity systems and components that provide the infrastructure to wireline, cable and wireless service providers to connect Internet, data, video and voice services to the network over copper, coaxial and fiber-optic cables, and

access systems used by wireline, cable and wireless service providers to deliver high-speed Internet, data and voice services to consumers and businesses in the last mile/kilometer of communication networks.

*Integrated Solutions* products and services consist of systems integration services and operations support systems (OSS) software for broadband, multiservice communications over wireline, cable and wireless networks. Systems integration services are used to design, equip and build communications networks that deliver Internet, data, video and voice services to consumers and businesses. OSS software includes communications billing, customer management, network performance and service-level assurance software used by service providers to operate communications networks.

### Marketplace Conditions

Our operating results during the three and nine months ended July 31, 2003, continued to be adversely affected by the prolonged downturn in general economic conditions, and continuing adverse conditions in the communications equipment industry in particular. In this economic environment, many of our communications service provider customers are continuing to defer capital spending, and reduce their communications equipment purchases. We also experienced and expect to continue to experience increased pricing pressure from many of our customers. A majority of our revenues continue to be derived from telecommunications service providers. These companies in particular have greatly reduced their spending on communications equipment, resulting in significant reductions in our year over year revenues. We have also been impacted by reduced or deferred capital spending by our cable industry customers as these customers focus on the profitable deployment of broadband services, which has caused uncertainty with respect to the timing of their plans to expand their networks to offer

voice-over Internet Protocol services. Moreover, some of our customers, both in the telecommunications service industry and the cable industry, have experienced serious financial difficulties, which in some cases have resulted in bankruptcy filings or cessation of operations. We believe that all of the conditions described above are impacting the communications equipment industry generally, and are not unique to us.

As the prolonged downturn in the communications service industry continues, we expect some consolidation among our customers in order for them to increase market share, diversify product portfolios and/or achieve greater economies of scale. This activity is likely to have an impact on our results of operations during the time the consolidating companies focus on integrating their operations and choose their equipment vendors. There can be no assurance that we will be a supplier to the surviving service provider. An example of this trend became evident during the nine month period ended July 31, 2003, with the acquisition of AT&T Broadband by Comcast Corporation, which has caused uncertainty with respect to our future revenues for IP cable products as Comcast integrates AT&T Broadband' s operations.

In addition to the consolidation we expect from our customers, we expect several forms of structural correction in the communications equipment industry. Over the next twelve to eighteen months we expect some competitors to drop out of the



marketplace due to bankruptcy or shareholder liquidation. We also believe that companies in the communications equipment industry will seek to form more strategic alliances or consolidate to diversify product portfolios or obtain greater economies of scale. Finally, we expect continuing product line rationalization as companies divest unprofitable product lines in an effort to focus on profitable business opportunities. With the proceeds of our recent convertible note offering, we intend to pursue opportunities to acquire additional product lines or businesses that are complimentary to our strategic focus. We may also divest non-strategic product lines as we focus on growing our business profitably. We continue to review our product portfolio for appropriate strategic additions or divestitures.

When the downturn in communications equipment spending first became evident in fiscal 2001, we implemented a cost restructuring plan through which we took steps to reduce operating expenses and capital spending. As it became evident in 2002 and 2003 that our industry was experiencing a more pronounced and prolonged economic downturn, we took additional cost restructuring measures to realize further cost savings. Our actions to date have included:

the sale of non-strategic product lines;
facility closure and consolidation;
elimination of duplicative functions;
significant reductions in discretionary spending;
the disposition of surplus equipment; and
substantial reductions in our workforce.

Demand for communications equipment remains at low levels compared to pre-2001 levels, and as a result of the significant slowdown in capital spending in our target markets, it is difficult to predict the level of future demand in these markets, even in the very short term. Despite the above-mentioned restructuring actions, we may be unable to meet our anticipated revenue levels in any particular quarter, in which case our operating results could be materially adversely affected for that period if we are unable to further reduce our expenses in time to counteract such a decline in revenue.

We continue to be dependent on telecommunications service providers for the majority of our revenues, with the four major U.S. incumbent local exchange carriers accounting for approximately 26% and 30% of our revenues during the three and nine months ended July 31, 2003, respectively. In addition, our top ten customers accounted for approximately 45% and 56% of our revenues during the three and nine months ended July 31, 2003, respectively.

On February 20, 2003, the Federal Communications Commission (FCC) adopted rules under the U.S. Telecommunications Act of 1996 concerning the obligation of the established telecommunication service providers to share their networks with competitors, a practice known as "unbundling." The FCC essentially retained the existing unbundling obligations of the carriers (known as UNE-P) with respect to

their historic copper-based network infrastructure, and ruled not to require the unbundling of certain network elements in their next generation hybrid and fiber networks. In August 2003, the FCC issued its final rules on unbundling obligations, and it is too early to predict what effect these rules will have on capital spending by our customers. Portions of these rules have already been subjected to legal challenges by various constituents within the telecommunications industry, and additional legal challenges are likely. Overall, we do not anticipate that this aspect of the decision will result in increased capital spending by the incumbent carriers or insurgent competitors in the near term.

Our results of operations have historically been subject to seasonal factors, with stronger demand for our products during the fourth fiscal quarter ending October 31 (primarily as a result of customer budget cycles and our fiscal year-end incentives) and weaker demand for our products during the first fiscal quarter ending January 31 (primarily as a result of the number of holidays in late November, December and early January, the development of annual capital budgets by our customers during that period, and a general industry slowdown during that period). There can be no assurance that these historical seasonal trends will continue in the future. For instance, due to the economic downturn in the communications equipment and services market during fiscal 2002 and 2001, the trend was not evident in either fiscal year. This trend was also not evident during the first nine months of fiscal 2003.

A more detailed description of the risks to our business related to seasonality, along with other risk factors associated with our business, can be found in Exhibit 99-a to our Form 10-Q for the quarter ended April 30, 2003.

**Impairment, Restructuring and Other Disposal Charges**

We recorded additional impairment, restructuring, and other disposal charges during the three and nine months ended July 31, 2003 and 2002. Impairment charges represent a write-down of the carrying value of property, equipment and goodwill assets to their estimated fair market value. Restructuring charges represent the direct costs of employee terminations and facility consolidations as a result of downsizing our business. Other disposal charges represent the direct costs of exiting certain product lines. A brief



explanation of these charges follows, and a more thorough summary is contained in Note 9 to the Condensed Consolidated Financial Statements in Item 1 of this Form 10-Q.

***Three Months Ended July 31, 2003 and 2002***

During the three months ended July 31, 2003 and 2002, we incurred the following charges (in millions):

| | Three Months Ended July 31, | |
|---|---|---|
| | **2003** | **2002** |
| Impairment Charges | $ 0.2 | $ 160.1 |
| Restructuring Charges | 12.0 | 19.2 |
| Other Disposal Charges | 1.3 | 13.9 |
| | $ 13.5 | $ 193.2 |

***Impairment Charges***. For the three months ended July 31, 2003, the impairment charges consisted solely of property and equipment impairments, which impacted both the Broadband Infrastructure and Access and Integrated Solutions segments. The impairment charges were the result of our plan to dispose of excess equipment that resulted from our decision to close or consolidate duplicative facilities in order to streamline and reduce the size of our operations. The fair market value of this equipment was determined using external sources, primarily proceeds received from previous equipment sales. For the three months ended July 31, 2002, the impairment charges related primarily to the write-down of the carrying value of the property, equipment and goodwill related to our former optical components business.

***Restructuring Charges***. The $12.0 million of restructuring charges incurred during the three months ended July 31, 2003, consisted principally of $5.3 million for employee severance costs related to workforce reductions and $6.7 million for facility consolidation and lease termination costs. The employee terminations affected both the Broadband Infrastructure and Access and Integrated Solutions segments.

Approximately 220 employees were impacted by reductions in force during the quarter. The $6.7 million of facility consolidation costs primarily relates to the consolidation of six facilities associated with our Integrated Solutions segment. The $19.2 million of restructuring charges incurred during the three months ended July 31, 2002, consisted principally of $18.9 million for employee severance costs and $0.3 million of other restructuring related costs.

***Other Disposal Charges***. For the three months ended July 31, 2003, we incurred $1.3 million of inventory write-offs associated with discontinuing product lines. For the three months ended July 31, 2002, the $13.9 million of other disposal charges consists principally of inventory write offs for discontinued product lines. All of these inventory write-offs were reported in cost of sales.

***Nine Months Ended July 31, 2003 and 2002***

During the nine months ended July 31, 2003 and 2002, we incurred the following charges (in millions):

| | Nine Months Ended July 31, | |
|---|---|---|
| | **2003** | **2002** |
| Impairment charges | $ 14.8 | $ 178.8 |
| Restructuring charges | 32.2 | 80.0 |
| Other Disposal charges | 2.7 | 13.4 |
| | $ 49.7 | $ 272.2 |

***Impairment Charges***. For the nine months ended July 31, 2003, the impairment charges consisted solely of property and equipment impairments, which impacted both the Broadband Infrastructure and Access and Integrated Solutions segments. The impairment charges were the result of our plan to dispose of excess equipment that resulted from our decision to streamline and reduce the size of our operations. The fair market value of this equipment was determined using external sources, primarily proceeds received from previous equipment sales or estimates of discounted cash flows. For the nine months ended July 31, 2003, the impairment charges related primarily to the write-down in the carrying value of property, equipment and goodwill related to product lines that we determined to dispose of or shut down. The largest of these product lines was our former optical components business.

***Restructuring Charges***. The $32.2 million of restructuring charges incurred during the nine months ended July 31, 2003, consist principally of $26.8 million for employee severance costs related to workforce reduction and $5.3 million of facility consolidation charges. The employee terminations affected both the Broadband Infrastructure and Access and Integrated Solutions



segments. Approximately 1,240 employees were impacted by reductions in force during the nine months ended July 31, 2003. The $5.3 million of facility consolidation charges reflects a $4.2 million reversal of a previous accrual related to a manufacturing facility used in our optical components business. The $80.0 million of restructuring charges incurred during the nine months ended July 31, 2002, consisted principally of $30.8 million of employee severance costs, $35.9 million of facility consolidation and lease termination costs, $10.5 million associated with the write-off of in process research and development and $2.8 million of other costs associated with our facility consolidation and restructuring plans.

***Other Disposal Charges***. For the nine months ended July 31, 2003, the $2.7 million of other disposal charges represent additional inventory write-offs related to product lines that have been discontinued. This charge was reported in cost of sales on our Condensed Consolidated Statement of Operations. For the nine months ended July 31, 2002, the $13.4 million of other disposal charges represent $14.5 million of inventory write-offs reported as cost of sales as well as $(1.1) million of committed sales contracts expense offsets which relate to administrative costs that are reported as selling and administrative expenses in our Condensed Consolidated Statement of Operations.

***Effect of Restructuring Charges on Future Cash Flow***

The following table provides detail on the remaining restructuring accrual by category as of July 31, 2003, and October 31, 2002 (in millions):

| Type of Charge | Accrual October 31, 2002 | Accrual July 31, 2003 |
|---|---|---|
| Employee severance costs | $ 17.0 | $ 11.4 |
| Facilities consolidation | 105.6 | 28.6 |
| Other | 1.6 | – |
| Total | $ 124.2 | $ 40.0 |

We believe that our entire restructuring accrual of $40.0 million as of July 31, 2003, will have to be paid from unrestricted cash as follows:

Substantially all of the $11.4 million of employee severance costs will be paid through the first quarter of fiscal 2004.

The facility consolidation accrual relates principally to excess leased facilities. Of the $28.6 million facility consolidation accrual, we estimate $11.1 million will be paid through July 31, 2004, with the remainder being paid over the respective lease terms ending through fiscal 2015.

The restructuring accrual was established based on our assumptions of the relevant costs at the time the restructuring decisions were made. The accrual is periodically adjusted based on new information and actual costs incurred. The ultimate resolution of the accrual may result in adjustments, which may have a material effect on our operating results. Although most of our restructuring plan initiatives have been implemented, we do not expect to complete our current restructuring plan until the end of fiscal 2003. Accordingly, we expect to continue to incur restructuring charges throughout the remainder of the fiscal year and may incur such charges in later fiscal years.

**Results of Operations**

The following table contains information regarding the percentage to net sales of certain income and expense items for the three and nine months ended July 31, 2003 and 2002:

| | Percentage of Net Sales | | | |
|---|---|---|---|---|
| | Three Months Ended July 31, | | Nine Months Ended July 31, | |
| | 2003 | 2002 | 2003 | 2002 |
| **Net Sales:** | | | | |
| Product | 72.4% | 75.6% | 74.2% | 77.6% |
| Service | 27.6 | 24.4 | 25.8 | 22.4 |
| **Total Net Sales** | 100.0 | 100.0 | 100.0 | 100.0 |
| **Cost of Sales:** | | | | |
| Product | 40.1 | 63.4 | 41.1 | 55.7 |
| Service | 21.4 | 22.5 | 21.6 | 19.9 |
| **Total Cost of Sales** | 61.5 | 85.9 | 62.7 | 75.6 |
| **Gross Profit** | 38.5 | 14.1 | 37.3 | 24.4 |
| **Expenses:** | | | | |
| Research and development | 13.5 | 22.2 | 14.7 | 17.9 |
| Selling and administration | 26.3 | 40.5 | 30.1 | 38.0 |
| Impairment charges | – | 68.0 | 2.5 | 21.6 |
| Restructuring charges | 6.5 | 8.2 | 5.5 | 8.4 |
| In process research and development | – | – | – | 1.3 |
| **Total Expenses** | 46.3 | 138.9 | 52.8 | 87.2 |
| **Operating Income / (Loss)** | (7.8) | (124.8) | (15.5) | (62.8) |
| **Other Income (Expense), Net** | (0.2) | (1.7) | 0.7 | 2.3 |

| | | | | |
|---|---|---|---|---|
| **Loss Before Income Taxes** | (8.0) | (126.5) | (14.8) | (60.5) |
| **Provision (Benefit) for Income Taxes** | – | (141.1) | – | (31.8) |
| **Net Loss** | (8.0) | (267.6) | (14.8) | (92.3) |



***Net Sales***

The following table sets forth our net sales for the three and nine months ended July 31, 2003 and 2002, respectively, for each of our functional product and service segments described above (in millions):

| | Three Months Ended July 31, | | | | Nine Months Ended July 31, | | | |
|---|---|---|---|---|---|---|---|---|
| | 2003 | | 2002 | | 2003 | | 2002 | |
| | Net Sales | % | Net Sales | % | Net Sales | % | Net Sales | % |
| **Broadband Infrastructure and Access** | $ 112.6 | 59.7% | $ 156.5 | 66.6% | $ 364.9 | 62.9% | $ 559.0 | 67.6% |
| **Integrated Solutions:** | | | | | | | | |
| Product | 23.9 | 12.7 | 21.2 | 9.0 | 65.6 | 11.3 | 82.5 | 10.0 |
| Service | 52.0 | 27.6 | 57.4 | 24.4 | 149.9 | 25.8 | 185.4 | 22.4 |
| **Total Integrated Solutions** | 75.9 | 40.3 | 78.6 | 33.4 | 215.5 | 37.1 | 267.9 | 32.4 |
| **Total** | $ 188.5 | 100.0% | $ 235.1 | 100.0% | $ 580.4 | 100.0% | $ 826.9 | 100.0% |

Net sales were $188.5 million and $580.4 million for the three and nine months ended July 31, 2003, respectively, reflecting a 19.8% and 29.8% decrease over the comparable 2002 time periods. Prior year amounts for the three and nine months periods included $3.9 million and $15.2 million of net sales from product lines divested prior to fiscal 2003. International sales comprised 35.9% and 37.1% of our net sales for the three and nine months ended July 31, 2003, respectively, and 28.6% and 27.7% for the three and nine months ended July 31, 2002, respectively.

During the three and nine months ended July 31, 2003, net sales of Broadband Infrastructure and Access products declined by 28.1% and 34.7%, respectively, over the comparable 2002 time periods. Net sales in all of our Broadband Infrastructure and Access product lines decreased as a result of lower volumes of products sold due to reductions in communications service provider capital budgets, as well as the lack of new network build-outs or significant expansions of existing networks. In addition, sales of our IP Cable product line decreased as a result of a significant customer being acquired by Comcast Corporation. Our wireline product line continues to face strong competition, which is continuing to put pressure on our market share positions for these products. In response, we intend to continue to aggressively defend our current market share by delivering high quality products and superior customer service at competitive prices.

During the three and nine months ended July 31, 2003, net sales of our Integrated Solutions products declined by 3.4% and 19.6%, respectively, over the comparable 2002 time periods. Net sales in this segment decreased as a result of continued reductions in our customers' capital spending budgets, which was tempered by an increase in sales of our software products due to increased license volumes, and a broadening of the historic customer base for our systems integration services, which has predominately been the major U.S. incumbent local exchange carriers, to wireless carriers and long distance service providers. We anticipate that future revenue in our Integrated Solutions segment will be subject to increased variability, because we intend to focus our software sales efforts on major accounts, which typically have longer sales cycles for large-scale software installations.

For the three months ended July 31, 2003, international sales increased as a percentage of sales in part due to an increase in the sale of systems integration services in Europe. For the nine months ended July 31, 2003, the increase in international sales as a percentage of total sales over the comparable fiscal 2002 period was largely attributable to the recognition of $16.0 million of deferred revenue from a European customer during the three months ended January 31, 2003. In addition, during the nine months ended July

31, 2003, as a result of meeting customer acceptance criteria, we recognized $8.1 million of revenue from a software installation at a large European customer, the majority of which related to license fees. As a percentage of total sales, international sales increased in many regions during the three and nine months ended July 31, 2003, compared to the same 2002 period, including Canada, Europe and the Asia Pacific region. We attribute these increases to more pronounced capital spending reductions in the United States than in these other regions.

***Gross Profit***

During the three and nine months ended July 31, 2003, gross profit percentages were 38.5% and 37.3%, respectively, and 14.0% and 24.4% for the three and nine months ended July 31, 2002, respectively. The increase in gross profit percentage was primarily due to a reduction in our fixed costs of sales as a result of our restructuring activities aimed at downsizing our operations in response to the continued downturn in the telecommunications industry. In addition, inventory write-downs totaling $13.8 million and $14.5 million were taken for the three months and nine months ended July 31, 2002, respectively, as compared to $1.3 and $2.7 million for the three and nine months ended July 31, 2003, respectively, related to discontinued product lines. We also benefited from a more favorable sales mix toward our higher margin product lines as well as from production efficiencies and reduced production costs resulting from our decision to outsource portions of our manufacturing operations. We anticipate that our future gross profit percentage will vary based on many factors, including sales mix, competitive pricing, timing of new product introductions, timing of customer acceptance and collectibility of large-scale sales transactions and manufacturing volume.

***Operating Expenses***

Total operating expenses for the three and nine months ended July 31, 2003, were $87.2 million and $306.7 million, respectively, representing 46.3% and 52.8% of net sales, respectively. Included in these operating expenses were restructuring charges of $12.0 million and $32.2 million and impairment charges of $0.2 million and $14.8 million for the three and nine months ended July 31, 2003, respectively. Total operating expenses for the three and nine months ended July 31, 2002, were $326.5 million and $720.9 million, respectively, representing 138.9% and 87.2% of net sales, respectively. Included in these operating expenses were impairment charges of $160.1 million and $178.8 million, respectively, and restructuring and in process research and development charges of $19.2 million and $80.0 million, respectively. The decrease in our operating expenses in absolute dollars and as a percentage of revenue was primarily due to a significant reduction in the amount of our restructuring and impairment charges, the ongoing cost savings from our restructuring efforts and the divestiture of certain business units and product lines. We will continue to monitor our operating expenses for opportunities to further reduce our operating costs.

Research and development expenses were $25.4 million and $85.1 million for the three and nine months ended July 31, 2003, respectively, compared to $52.1 million and $147.9 million during the three and nine months ended July 31, 2002, respectively. This represents a decrease of 51.2% and 42.5% during the three and nine months ended July 31, 2003, over the comparable 2002 time periods. Research and development expenses for the three and nine months ended July 31, 2003, decreased by $26.7 million and $62.8 million of which $8.2 million and $29.1 million are due to the divestiture or discontinuance of certain business units and product lines in fiscal 2002. We believe that, given the rapidly changing technological and competitive environment in the communications equipment industry, continued commitment to product development efforts will be required for us to remain competitive. Accordingly, we intend to continue to allocate substantial resources, as a percentage of our net sales, to product development in each of our operating segments.

Selling and administration expenses were $49.6 million and $174.6 million for the three and nine months ended July 31, 2003, respectively, which was a decrease of 47.8% and 44.4% from $95.1 million and $314.2 million for the three and nine months ended July 31, 2002, respectively. This decrease reflected the effects of headcount reductions resulting from our continued restructuring efforts. In addition, of the $45.5 million and $139.6 million reductions for the three and nine months ended July 31, 2003, $11.7 and $34.4 million, respectively, was attributable to lower bad debt expense in the current year, and $5.7 million and $34.5 million, respectively, was due to the divestiture or discontinuance of certain business units and product lines in fiscal 2002.

***Other Income (Expense), Net***

The following table provides a breakdown of other income and expenses for the three and nine months ended July 31, 2003 and 2002 (in millions):

| | Three months ended July 31, | | Nine months ended July 31, | |
|---|---|---|---|---|
| | 2003 | 2002 | 2003 | 2002 |
| Interest income | $ 2.3 | $ 3.3 | $ 5.3 | $ 8.3 |
| Cash interest expense | (1.4) | (1.0) | (1.6) | (3.0) |
| Non-cash interest expense | (0.1) | – | (0.2) | – |
| Loss on sale of product lines | – | (4.8) | (2.8) | (4.8) |
| Gain on sale of investments | – | 13.7 | 2.0 | 22.6 |
| Gain (loss) on sale of fixed assets | (.6) | (5.3) | (1.6) | (8.9) |
| Loss on equity investment | – | (3.0) | – | (6.5) |
| Gain on patent infringement settlement | – | – | – | 26.2 |
| Other | (.6) | (6.9) | 2.9 | (14.9) |
| **Total Other Income (Expense)** | $ (0.4) | $ (4.0) | $ 4.0 | $ 19.0 |



***Income Taxes***

As a result of our cumulative losses over the past two fiscal years and the full utilization of our loss carryback potential, we are not recognizing a tax benefit on our pretax losses until we can sustain a level of profitability that demonstrates our ability to utilize our deferred tax assets. Therefore, the effective income tax rate for the three and nine months ended July 31, 2003, was zero. The effective income tax rate for the three and nine months ended July 31, 2002, was 38.0% and 38.0%, excluding the impact of lower rates used for restructuring charges. In addition, during the third quarter of 2002, a full valuation allowance was established against our net deferred tax assets. This valuation allowance was $453.4 million for the three and nine months ended July 31, 2002, which was partially offset by a tax benefit on the pre-tax loss as well as tax benefit adjustments related to tax law changes of $121.8 million and $190.7 million for the three and nine months ended July 31, 2002, respectively.

***Net Loss***

Net loss was ($15.1) million (or $0.02 per diluted share) and ($86.0) million (or $0.11 per diluted share) for the three and nine months ended July 31, 2003, respectively, compared to net loss of ($629.1) million, or ($0.79) per diluted share and ($763.1) million, or ($0.96) per diluted share for the three and nine months ended July 31, 2002, respectively.

**Application of Critical Accounting Policies and Estimates**

There were no significant changes to our critical accounting policies during the three and nine months ended July 31, 2003. See our most recent Annual Report filed on Form 10-K for fiscal 2002 for a discussion of our critical accounting policies.

**Liquidity and Capital Resources**

***Cash***

Cash and cash equivalents, primarily short-term investments in commercial paper with maturities of less than 90 days and other short-term investments had a balance of $743.7 million at July 31, 2003, which is an increase of $464.8 million compared to October 31, 2002. The major sources of cash during the nine months ended July 31, 2003, were $132.9 million in income tax refunds and the proceeds of our $400.0 million convertible unsecured subordinated note offering on June 4, 2003. In addition, restricted cash decreased by $156.0 million.

Of this amount, $148.2 million was used to purchase five properties subject to "synthetic" operating leases, and $14.3 million was used to pay a guarantee of a customer note receivable. Other cash outflows included $63.0 million used to fund investing and financing activities (such as net property plant and equipment additions) and the repayment of long-term debt. Cash inflows of $45.9 million were associated with working capital management improvements, which were offset by net losses from operations.

As of July 31, 2003, we had restricted cash of $21.0 million. Restricted cash represents cash pledged to various financial institutions to secure certain of our obligations, primarily cash collateral for letters of credit and foreign currency hedging activities. As a result, restricted cash is not available to us for working capital. The restricted cash is expected to become available to us upon satisfaction of the obligations pursuant to which the letters of credit and currency hedging arrangements were issued. We are entitled to the interest earnings on our restricted cash balances.

During the nine months ended July 31, 2002, cash decreased $76.8 million compared to October 31, 2001. In addition, as of July 31, 2002, we held approximately $6.4 million in marketable securities. The major elements of the 2002 change included $165.0 million in cash proceeds from improved working capital management, income tax refunds and a patent infringement settlement, which were offset by a $276.5 million increase in restricted cash and net losses from operations.



***Finance-related Transactions***

On June 4, 2003, we issued $400.0 million of convertible unsecured subordinated notes in two separate transactions pursuant to Rule 144A under the Securities Act of 1933. This issuance was made through an initial offering of $350.0 million of convertible notes on May 29, 2003, and the subsequent exercise in full by the underwriters of such offering of their option to purchase an additional $50.0 million of convertible notes. The net proceeds to us from this offering were $355.5 million after underwriting discounts of $10.0 million and the net payment for the purchased call options and warrant transactions described below. In the first transaction we issued $200.0 million of 1.0% fixed rate convertible unsecured subordinated notes that mature on June 15, 2008. In the second transaction, we issued $200.0 million of convertible unsecured subordinated notes that have a variable interest rate and mature on June 15, 2013. The interest rate for the variable rate notes is equal to 6-month LIBOR plus 0.375%. The interest rate for the variable rate notes will be reset on each semi-annual interest payment date, which are June 15 and December 15 of each year beginning on December 15, 2003, for both the fixed and variable rate notes. The initial interest rate on the variable note is 1.59625% for the period ending December 15, 2003. The holders of both the fixed and variable rate notes may convert all or some of their notes into shares of our common stock at any time prior to maturity at a conversion price of $4.013 per share. We may not redeem the fixed rate notes anytime prior to their maturity date. We may redeem any or all of the variable rate notes at any time on or after June 23, 2008.

Concurrent with the issuance of the fixed and variable rate notes, we purchased five and ten-year call options on our common stock to reduce the potential dilution from conversion of the notes. Under the terms of these call options, which become exercisable upon conversion of the notes, we have the right to purchase from the counterparty at a purchase price of $4.013 per share the aggregate number of shares that we are obligated to issue upon conversion of the fixed and variable notes, which is a maximum of 99.7 million shares. We also have the option to settle the call options with the counterparty through a net share settlement or cash settlement, either of which would be based on the extent to which the then-current market price of our common stock exceeds $4.013 per share. The total cost of the call options was $137.3 million, which was recognized in shareowners' investment. The cost of the call options was partially offset by the sale of warrants to acquire shares of our common stock with terms of five and ten years to the same counterparty with whom we entered into the call options. The warrants are exercisable for an aggregate of 99.7 million shares at an exercise price of $5.28 per share. The warrants become exercisable upon conversion of the notes, and may be settled, at our option, either through a net share settlement or a net cash settlement, either of which would be based on the extent to which the then-current market price of our common stock exceeds $5.28 per share. The gross proceeds from the sale of the warrants were $102.8 million, which was recognized in shareowners' investment. The call options and the warrants are subject to early expiration upon conversion of the notes. The net effect of the call options and the warrants is to either reduce the potential dilution from the conversion of the notes (if we elect net share settlement) or to increase the net cash proceeds of the offering (if we elect net cash settlement) if the notes are converted at a time when the current market price of our common stock is greater than $4.013 per share.

We plan to use the cash proceeds from this offering for general corporate purposes and strategic opportunities, including financing for possible acquisitions or investments in complementary businesses, technologies or products.

During the nine months ended July 31, 2003, we cancelled our accounts receivable securitization arrangement because we did not plan to utilize it. We entered into this arrangement with a financial institution in December 2001, and the arrangement was intended to function much like a revolving line of credit, but with a lower cost of funds than a traditional revolving line of credit. Pursuant to this arrangement, we were able to sell certain of our U.S.-sourced accounts receivable to the financial institution without recourse to us. The accounts receivable securitization agreement was never utilized.

***Vendor Financing***

We have worked with customers and third-party financiers to find a means of funding customer equipment purchases from us by negotiating financing arrangements. As of July 31, 2003 and 2002, we had commitments to extend credit of approximately $57.7 million and $58.0 million, respectively, under such arrangements. The total amount drawn and outstanding under the commitments was approximately $21.5 million and $14.0 million as of July 31, 2003 and 2002, respectively. The commitments to extend credit are conditional agreements generally having fixed expiration or termination dates and specific interest rates, conditions and purposes. These commitments may expire without being drawn. Some of these commitments enable the customer to draw on the commitment after the customer has made payment to us for the products we sold, up to the amount the customer previously paid to us. Accordingly, amounts committed may affect future cash flows. We regularly review all outstanding commitments, and the results of these reviews are considered in assessing the overall risk for possible credit losses. At July 31, 2003, we have recorded approximately $19.0 million in loss reserves in the event of non-performance under these financing arrangements.

In connection with the sale of a participation interest in a customer note receivable for $14.3 million, we guaranteed the payment obligation of the customer to the purchaser of the participation interest. During the nine months ended July 31, 2003, the customer defaulted on the note receivable. Therefore, we were required to pay the purchaser of the participation interest $14.5 million, which was the outstanding principal and interest amount on the note receivable at the time the customer defaulted. Of the



$14.5 million payment, we used $14.3 million from our restricted cash that was previously pledged to secure our guarantee with the remainder being paid from unrestricted cash. This note receivable has been fully reserved for as part of our allowance for doubtful accounts reserve.

***Working Capital Outlook***

Our main source of liquidity continues to be our unrestricted cash on hand. We expect to receive a federal income tax refund of approximately $5.0 million during the fourth fiscal quarter of 2003. We intend to continue to use our unrestricted cash to fund our operations in the event that positive cash flow is not achieved in the near term and to pay our $40.0 million restructuring accrual. We believe that our current unrestricted cash on hand should be adequate to fund our working capital requirements, planned capital expenditures, and restructuring costs through fiscal 2003 and beyond.

We believe that the cash provided by our recent convertible note financing transaction will also enable us to pursue strategic opportunities, including possible product line or business acquisitions. However, if the cost of one or more acquisition opportunities exceeds our existing capital resources, additional sources of capital may be required. Given the current state of the communications equipment industry, there are few alternatives available as sources of financing. Commercial bank financing is not readily available at this time to us or to many other companies in our industry. Accordingly, any plan to raise additional capital would likely involve an equity-based or equity-linked financing, such as another issuance of convertible debt or the issuance of common stock or preferred stock, which would be dilutive to existing shareholders. Following the completion of our recent convertible note financing transaction, we only have approximately 10 million shares of common stock available for issuance under our articles of incorporation after taking into account our share reserves for our stock option plans and employee stock purchase plan. Accordingly, any plan to raise capital through the issuance of shares of common stock or

securities convertible into common stock may require an amendment to our articles of incorporation, which would require the approval of shareowners.

***Off-balance Sheet Arrangements***

We were a party to an operating lease agreement related to our world headquarters facility in Eden Prairie, Minnesota. This lease was set to expire in October of fiscal 2006. This operating lease, which is sometimes referred to as a "synthetic lease," contained a minimum residual value guarantee by us at the end of the lease term, and also gave us a purchase option at the end of the lease term. During the three months ended July 31, 2003, we purchased this property for an aggregate purchase price of $46.8 million. The entire purchase price was paid out of the pledged collateral that was classified as restricted cash on our Condensed Consolidated Balance Sheet.

This lease arrangement was originally entered into as an economical means of financing the construction of our world headquarters facility. Subsequently, the purchase option price for this facility was fully cash collateralized. As a result, we no longer were receiving any financing benefits from this arrangement. During the three and nine months ended July 31, 2003, we incurred rent expense under this lease in the amount of $0.3 million and $0.9 million, respectively. During the three and nine months ended July 31, 2002, we incurred rent expense under this lease in the amount of $1.8 million and $4.6 million, respectively. During the three and nine months ended July 31, 2003 and 2002, we incurred cash outlays from our unrestricted cash (for payment of rent) of like amounts.

In addition to the purchase of the world headquarters building, during the nine months ended July 31, 2003, we purchased a total of four other properties that we had been leasing under synthetic leases. Two properties were purchased for $55.9 million and the remaining two were purchased for $45.5 million. All of the properties were purchased using the restricted cash we had previously pledged to secure the lease obligations. The two properties that were purchased for $55.9 million were recorded at their fair market value of $15.7 million, which resulted in a $5.2 million impairment charge and a $35.0 million reduction in our restructuring accrual as we had previously recognized this loss in a prior fiscal year. These two properties are currently classified as assets held for sale on our Condensed Consolidated Balance Sheet because we intend to sell them within one year from the date of purchase. The remaining two properties that were purchased for $45.5 million were immediately sold for total proceeds of $15.3 million, which became available to us as unrestricted cash. The majority of the difference between the purchase price for these two properties of $45.5 million and the sales price we received was previously accrued as part of our restructuring accrual.

In connection with our investment activity, we invested in two independent venture capital funds in fiscal 2000. Our investments in these funds are recorded as long-term assets on our Condensed Consolidated Balance Sheet. We committed to invest an aggregate of $15.0 million in these funds as the fund managers made capital calls. During the three and nine months ended July 31, 2003, we contributed $0.5 million and $1.2 million, respectively, to these funds. During the three and nine months ended July 31, 2002, we contributed $1.1 and $1.3 million, respectively to these funds. As of July 31, 2003, our outstanding unfunded commitment totaled $8.2 million. We expect that our remaining commitment will be funded through the use of unrestricted cash on hand over the course of the next three years.



**Cautionary Statement for Purposes of the "Safe Harbor" Provisions of the Private Securities Litigation Reform Act of 1995**

The foregoing Management' s Discussion and Analysis of Financial Condition and Results of Operations, as well as the Notes to the Condensed Consolidated Financial Statements, contain various "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements represent our expectations or beliefs concerning future events, including but not limited to the following: any statements regarding future sales, profit percentages, earnings per share and other results of operations, our estimates of probable liabilities relating to pending litigation, the continuation of historical trends, the sufficiency of our cash balances and cash generated from operating and financing activities for our future liquidity and capital resource needs and the effect of regulatory changes. We caution that any forward-looking statements made by us in this report or in other announcements made by us are qualified by important factors that could cause actual results to differ materially from those in the forward-looking statements. These include, without limitation: the magnitude and duration of the significant downturn in the communications equipment industry which began in 2001, particularly with respect to the demand for equipment by telecommunication

service providers, from which a majority of our revenues are derived; our ability to restructure our business to achieve operating profitability; macroeconomic factors that influence the demand for telecommunications services and the consequent demand for communications equipment; possible consolidation among our customers, which could cause disruption in our customer relationships or displacement of us as an equipment vendor to the surviving entity; our ability to keep pace with rapid technological change in our industry; our ability to make the proper strategic choices with respect to product line acquisitions or divestitures; increased competition within our industry and increased pricing pressure from our customers; our dependence on relatively few customers for a majority of our revenues; fluctuations in our operating results from quarter-to-quarter, which are influenced by many factors outside of our control, including variations in demand for particular products in our portfolio which have varying profit margins; the impact of regulatory changes on our customers' willingness to make capital expenditures for our equipment, software and services; financial problems, work interruptions in operations or other difficulties faced by some of our customers, which can influence future sales to these customers as well as our ability to collect amounts due us; economic and regulatory conditions outside of the United States, as approximately 25% to 40% of our sales come from non-U.S. jurisdictions; our ability to protect our intellectual property rights and defend against infringement claims made by third parties; possible limitations on our ability to raise additional capital if required, either due to unfavorable market conditions, lack of investor demand or the current corporate charter limitation on our ability to issue additional shares of common stock; our ability to attract and retain qualified employees; our ability to maintain key competencies during a period of reduced resources and restructuring; potential liabilities that could arise if there are design or manufacturing defects with respect to any of our products; our ability to obtain raw materials and components, and our increased dependence on contract manufacturers to make certain of our products; changes in interest rates, foreign currency exchange rates and equity securities prices, all of which will impact our operating results; our ability to successfully defend or satisfactorily settle our pending litigation; and other risks and uncertainties, including those identified in Exhibit 99-a to our Form 10-Q for the period ended April 30, 2003. We disclaim any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to market risk from changes in security prices, foreign exchange rates and interest rates. Market fluctuations could affect our results of operations and financial condition adversely. We, at times, reduce this risk through the use of derivative financial instruments. We do not enter into derivative financial instruments for the purpose of speculation.

We are exposed to interest rate risk as a result of issuing $200.0 million of convertible unsecured subordinated notes that have a variable interest rate on June 4, 2003. The interest rate on these notes is equal to 6-month LIBOR plus 0.375%. The interest rate on these notes will reset semiannually on each interest payment date, which is June 15 and December 15 of each year until their maturity in fiscal 2013. Assuming interest rates rise 1%, 5% and 10%, our annual interest expense would increase by $2.0 million, $10.0 million and $20.0 million, respectively.

We offer a non-qualified 401(k) excess plan to allow certain executives to defer earnings in excess of the annual individual contribution and compensation limits on 401(k) plans imposed by the U.S. Internal Revenue Code. Under this plan, the salary deferrals and our matching contributions are not placed in a separate fund or trust account. Rather, the deferrals represent our unsecured general obligation to pay the balance owing to the executives upon termination of their employment. In addition, the executives are able to elect to have their account balances indexed to a variety of diversified mutual funds (stock, bond and balanced), as well as to our common stock. Accordingly, our outstanding deferred compensation obligation under this plan is subject to market risk. As of July 31, 2003, our outstanding deferred compensation obligation related to the 401(k) excess plan was $6.8 million, of which approximately $1.2 million was indexed to ADC common stock. Assuming a 20%, 50% and 100% aggregate increase in the value of the investment alternatives to which the account balances may be indexed, our outstanding deferred compensation obligation would increase by $1.4 million, $3.4 million and $6.8 million, respectively, and we would incur an expense of a like amount.

We are exposed to market risk from changes in foreign exchange rates. To mitigate the risk from these exposures, we have instituted a balance sheet hedging program. The objective of this program is to protect our net monetary assets and liabilities in non-

functional currencies from fluctuations due to movements in foreign exchange rates. The program operates in markets where hedging costs are beneficial. We attempt to minimize exposure to currencies in which hedging instruments are unavailable or prohibitively expensive by managing our operating activities and net asset positions. The majority of hedging instruments utilized are forward contracts with maturities of less than one year. Foreign exchange contracts reduce our overall exposure to exchange rate movements, since gains and losses on these contracts offset losses and gains on the underlying exposure.

**ITEM 4. DISCLOSURE CONTROLS AND PROCEDURES**

Under the supervision and with the participation of our management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")). Based on that evaluation, our CEO and CFO have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures are adequately designed to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the applicable rules and forms. During the period covered by this Quarterly Report on Form 10-Q, there was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II. OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

On March 5, 2003, we were served with a shareowner lawsuit brought by Wanda Kinermon that has been filed in the United States District Court for the District of Minnesota. The complaint names ADC, William J. Cadogan, our former Chairman and Chief Executive Officer, and Robert E. Switz, our Chief Executive Officer, as defendants. During the period the lawsuit covers, Mr. Switz held the position of Executive Vice President and Chief Financial Officer. This lawsuit purports to bring suit on behalf of a class of purchasers of our publicly traded securities from November 2000 to March 28, 2001. Since this lawsuit was served, we were named as a defendant in 11 other substantially similar lawsuits. The complaints allege that we violated the securities laws and our fiduciary duties by making false and misleading statements about our financial performance and business prospects. These shareowner lawsuits have been consolidated into a single lawsuit, which has been captioned In Re ADC Telecommunications, Inc. Securities Litigation.

On May 19, 2003, we were served with a lawsuit brought by Lorraine Osborne that has been filed in the United States District Court for the District of Minnesota. The complaint names ADC, the third party we utilize to administer and serve as trustee of our Retirement Savings Plan and several of our current and former officers and directors as defendants. Since this lawsuit was served, we were served with two substantially similar lawsuits. These lawsuits have been brought by individuals who seek to represent a class of participants in our Retirement Savings Plan who purchased our common stock as one of the investment alternatives under the plan. The lawsuits allege a breach of fiduciary duties under the Employee Retirement Income Security Act. We anticipate that these three lawsuits will be consolidated in the near future.

We believe that all of the above lawsuits are without merit and intend to defend these actions vigorously. However, litigation is by its nature uncertain and unfavorable resolutions of these lawsuits could materially adversely affect our business, results of operations or financial condition.

We have received notices from certain technology companies claiming that some of our products may infringe patents owned by these companies. These notices also include an offer to license the patented technology. We are still in the process of investigating these allegations. At this time we are not able to predict whether these claims may result in a material impact on our business, results of operations or financial condition.

We are a party to various other lawsuits, proceedings and claims arising in the ordinary course of business or otherwise. The amount of monetary liability resulting from an adverse result in many of such lawsuits, proceedings or claims cannot be determined at this time. As of July 31, 2003, we had recorded approximately $18.1 million in loss reserves in the event of such adverse outcomes in these matters. Litigation by its nature is uncertain and we cannot predict the ultimate outcome of these matters with certainty. However, in light of the

reserves we have taken, we believe the ultimate resolution of these other lawsuits, proceedings and claims will not have a material adverse impact on our business, results of operations or financial condition.

**ITEM 2. CHANGES IN SECURITIES**

On June 4, 2003, we sold $200.0 million aggregate principal amount of 1% Convertible Subordinated Notes due December 15, 2008, and $200.0 million aggregate principal amount of Floating Rate Convertible Subordinated Notes due December 15, 2013 (the total $400.0 million of notes are referred to as the "Notes"). The initial purchasers were Banc of America Securities, LLC, Credit



Suisse First Boston, Merrill Lynch & Co. and Morgan Stanley, who purchased the notes from us at 97.5% of face value. Holders of the Notes may convert the Notes into shares of our common stock at a conversion rate of 249.1901 shares per $1,000 principal amount of Notes (equal to a conversion price of $4.013 per share) at anytime prior to maturity or their repurchase, subject to adjustment in certain circumstances. The offer and sale of the Notes was exempt from the registration requirements of the Securities Act of 1933, as amended, pursuant to Rule 144A.

We filed a Registration Statement on Form S-3 for the resale of the Notes and the shares of the common stock issuable upon conversion of the Notes. However, the SEC has not yet declared the registration statement to be effective. Of the net proceeds from the sale of the Notes, $34.5 million was used to enter into a call option and warrant transaction with two of the initial purchasers to reduce the potential dilution from conversion of the Notes (See Note 13 to the Condensed Consolidated Financial Statements in Item 1 of this Form 10-Q for a description of this call option and warrant transaction). The net remaining proceeds of $355.5 million from the sale of the Notes were invested in short-term investments per our investment policy. The net proceeds remain available for general corporate purposes.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

**ITEM 5. OTHER INFORMATION**

Pursuant to the shareowner approval we received at our March 4, 2003 annual meeting of shareowners, we offered to eligible employees the right to exchange certain of their existing employee stock options for a lesser number of employee stock options at a new exercise price. The final exchange ratios used for this stock option exchange program were as follows:

| Current Exercise Price Range of Eligible Options | Exchange Ratio |
|---|---|
| $4.00 to $5.49 | 1.50 to 1.00 |
| $5.50 to $7.99 | 2.00 to 1.00 |
| $8.00 to $14.99 | 2.75 to 1.00 |
| $15.00 or higher | 4.75 to 1.00 |

Our offer under this stock option exchange program expired at 11:59 p.m. Central Time on June 27, 2003. Of the 3,136 employees who were eligible to participate, 1,815 elected to participate. Of the 45,086,569 options eligible to be tendered in the offer, we accepted for cancellation options to purchase 27,766,074 shares of common stock. Upon the terms and subject to the conditions of the offer, we expect to grant options to purchase an aggregate of 11,605,217 shares of our common stock in exchange for such tendered options on or about

December 29, 2003. The new options will be issued with an exercise price equal to the average of the high and low trading price of our common stock on the NASDAQ Stock Market on the date of the grant of the new options (subject to the terms and conditions of the offer).

**ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K**

a. Exhibits

See Exhibit Index on page 26 for a description of the documents that are filed as exhibits to this Quarterly Report on Form 10-Q or incorporated by reference herein. Any document incorporated by reference is identified by a parenthetical referencing the SEC filing which included the document. We will furnish to a securityholder upon request a copy of any Exhibit at cost.

b. Reports on Form 8-K

We filed or furnished the following Current Reports on Form 8-K during the quarter ended July 31, 2003:

| Date | Item Reported |
|---|---|
| May 21, 2003 | Item 9 and Item 12 – May 21, 2003 – news release announcing our second quarter earnings. |
| May 22, 2003 | Item 5 – May 19, 2003 – reporting the filing of a purported class action lawsuit against us and certain individual defendants alleging violations of ERISA. |
| May 29, 2003 | Item 5 and Item 7 – May 29, 2003 – to file updated risk factors. |
| June 5, 2003 | Item 9 – June 5, 2003 – Regulation FD disclosure |
| July 31, 2003 | Item 5, 7 and 9 – July 30, 2003 – reporting adoption of Amended and Restated Shareholder Rights Agreement. |



**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.

Dated: September 12, 2003

ADC TELECOMMUNICATIONS, INC.

By: /s/ Gokul V. Hemmady
Gokul V. Hemmady
Vice President, Chief Financial Officer and Controller
(Principal Financial Officer and Duly Authorized Officer)



**ADC TELECOMMUNICATIONS, INC.**
**EXHIBIT INDEX TO FORM 10-Q**
**FOR THE THREE MONTHS ENDED JULY 31, 2003**

| Exhibit No. | Description |
|---|---|

| | | |
|---|---|---|
| 4-a | | Form of certificate for shares of common stock of ADC Telecommunications, Inc. (Incorporated by reference to Exhibit 4-a to ADC' s Form 10-Q for the quarter ended April 30, 1996.) |
| 4-b | | Restated Articles of Incorporation of ADC Telecommunications, Inc., as amended prior to January 20, 2000. (Incorporated by reference to Exhibit 4.1 to ADC' s Registration Statement on Form S-3 dated April 15, 1997.) |
| 4-c | | Articles of Amendment to Restated Articles of Incorporation of ADC Telecommunications, Inc. dated January 20, 2000. (Incorporated by reference to Exhibit 4.6 to ADC' s Registration Statement on Form S-8 dated March 14, 2000.) |
| 4-d | | Articles of Amendment to Restated Articles of Incorporation of ADC Telecommunications, Inc., dated June 30, 2000. (Incorporated by reference to Exhibit 4-g to ADC' s Quarterly Report on Form 10-Q for the quarter ended July 31, 2000.) |
| 4-e | | Restated Bylaws of ADC Telecommunications, Inc., as amended effective July 30, 2002. (Incorporated by reference to exhibit 4-e ADC' s Quarterly Report on Form 10-Q for the quarter ended July 31, 2002) |
| 4-f | | Rights Agreement, as amended and restated July 30, 2003, between ADC Telecommunications, Inc. and Computershare Investor Services, LLC as Rights Agent (Incorporated by reference to Exhibit 4-b to ADC' s Form 8-A/A filed on July 31, 2003) |
| 4-g | | Indenture dated as of June 4, 2003 between ADC Telecommunications, Inc. and U.S. Bank National Association. |
| 4-h | | Registration Rights Agreement dated as of June 4, 2003 between ADC Telecommunications, Inc. and Banc of America Securities LLC, Credit Suisse First Boston LLC and Merrill Lynch Pierce Fenner & Smith Incorporated as representatives of the Initial Purchase of ADC' s 1% Convertible Subordinated Notes due 2008 and Floating Rate Convertible Subordinated Notes due 2013. |
| 10-a | | First Amendment of ADC Telecommunications, Inc. 401(k) Excess Plan (2002 Restatement) dated as of February 26, 2002. |
| 10-b | | Second Amendment of ADC Telecommunications, Inc. 401(k) Excess Plan (2002 Restatement) dated as of April 1, 2003. |
| 10-c | | Third Amendment of ADC Telecommunications, Inc. 401(k) Excess Plan (2002 Restatement) dated as of January 1, 2003. |
| 10-d | ** | Executive Employment Agreement dated as of May 5, 2003 between ADC Telecommunications, Inc. and Dilip Singh. |
| 10-e | | Executive Employment Agreement dated as of August 13, 2003, between ADC Telecommunications, Inc., and Robert E. Switz |
| 10-f | | Early Termination Option Notice dated May 30, 2003, from ADC Telecommunications, Inc. to Lease Plan North America, Inc. |
| 10-g | | Termination of Memorandum of Ground Lease dated July 17, 2003, from ADC Telecommunications, Inc. and Lease Plan North America, Inc. |
| 10-h | | Termination, Satisfaction and Release of Memorandum of Lease, Mortgage and Security Agreement between Lease Plan North America, Inc., ADC Telecommunications, Inc., ABN AMRO Bank N.V. and Amsterdam Funding Corporation. |
| 10-i | | Quit Claim Deed, Quit Claim Bill of Sale and Termination of Lease dated July 17, 2003, executed by Lease Plan North America, Inc. in favor of ADC Telecommunications, Inc. |
| 31-a | | Certification of principal executive officer required by Exchange Act Rule 13a-14(a) |
| 31-b | | Certification of principal financial officer required by Exchange Act Rule 13a-14(a) |
| 32 | | Certifications furnished pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

** Pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, confidential portions of Exhibit 10-d have been deleted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

**ADC TELECOMMUNICATIONS, INC.**

**1% CONVERTIBLE SUBORDINATED NOTES DUE JUNE 15, 2008**
**FLOATING RATE CONVERTIBLE SUBORDINATED NOTES DUE JUNE 15, 2013**

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**INDENTURE**
**DATED AS OF JUNE 4, 2003**

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**U.S. BANK NATIONAL ASSOCIATION,**
**AS TRUSTEE**

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THIS INDENTURE dated as of June 4, 2003 is between ADC Telecommunications, Inc., a corporation duly organized under the laws of the State of Minnesota (the "Company"), and U.S. Bank National Association, a national banking association organized and existing under the laws of the United States, as Trustee (the "Trustee").

In consideration of the premises and the purchase of the Securities by the Holders thereof, both parties agree as follows for the benefit of the other and for the equal and ratable benefit of the registered Holders of the Company' s 1% Convertible Subordinated Notes Due June 15, 2008 and Floating Rate Convertible Subordinated Notes Due June 15, 2013.

## ARTICLE 1

## DEFINITIONS AND INCORPORATION BY REFERENCE

### SECTION 1.1. DEFINITIONS.

"Additional Interest" has the meaning specified in Section 5 of the Registration Rights Agreement. All references herein to interest accrued or payable as of any date shall include any Additional Interest accrued or payable as of such date as provided in the Registration Rights Agreement.

"Affiliate" means, with respect to any specified person, any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, "control" when used with respect to any person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" means any Registrar, Paying Agent or Conversion Agent.

"Applicable Procedures" means, with respect to any transfer or exchange of beneficial ownership interests in the Global Securities, the rules and procedures of the Depositary, to the extent applicable to such transfer or exchange.

"Board of Directors" means either the board of directors of the Company or any committee of the Board of Directors authorized to act for it with respect to this Indenture.

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

"Capital Stock" or "capital stock" of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, but excluding any debt securities convertible into such equity.

"Cash" or "cash" means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

"Certificated Securities" means Securities that are in substantially the forms attached hereto as Exhibit A-1 and Exhibit A-2 and that do not include the information or the schedule called for by footnotes 1, 3 and 4 thereof.

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"Common Stock" means the common stock of the Company, $0.20 par value per share, as it exists on the date of this Indenture and any shares of any class or classes of capital stock of the Company resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; provided, however, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion of Securities shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"Company" means the party named as such in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Company.

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered which office at the date of the execution of this Indenture is located at [ ], Attention: Corporate Trust Services (ADC Telecommunications, Inc. − 1% Convertible Subordinated Notes Due June 15, 2008 and Floating Rate Convertible Subordinated Notes Due June 15, 2013) or at any other time at such other address as the Trustee may designate from time to time by notice to the Company.

"Default" or "default" means, when used with respect to the Securities, any event which is or, after notice or passage of time or both, would be an Event of Default.

"Designated Senior Indebtedness" means any particular Senior Indebtedness of the Company in which the instrument creating or evidencing the same (or any related agreements or documents to which the Company is a party) expressly provides that such Senior Indebtedness shall be "Designated Senior Indebtedness" for purposes of this Indenture (provided that such instrument, agreement or other

document may place limitations and conditions on the right of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"Final Maturity Date", when used with respect to the Fixed Rate Securities, means June 15, 2008 and when used with respect to the Floating Rate Securities, means June 15, 2013.

"Fixed Rate Securities" means any of the Company' s 1% Convertible Subordinated Notes Due June 15, 2008, as amended or supplemented from time to time, that are issued under this Indenture.

"Floating Rate Securities" means any of the Company' s Floating Rate Convertible Subordinated Notes Due June 15, 2013, as amended or supplemented from time to time, that are issued under this Indenture.

"GAAP" means generally accepted accounting principles in the United States of America as in effect as of the date of this Indenture, including those set forth in (1) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, (2) the statements and pronouncements of the Financial Accounting Standards Board, (3) such other statements



by such other entity as approved by a significant segment of the accounting profession and (4) the rules and regulations of the SEC governing the inclusion of financial statements (including pro forma financial statements) in registration statements filed under the Securities Act and periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

"Global Securities" means Securities that are in substantially the forms attached hereto as Exhibit A-1 or Exhibit A-2 and that include the information and schedule called for by footnotes 1, 3 and 4 thereof and which are deposited with the Depositary or its custodian and registered in the name of the Depositary or its nominee.

"Holder" or "Securityholder" means the person in whose name a Security is registered on the Primary Registrar' s books.

"Indebtedness" means, with respect to any Person, without duplication, (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person (i) for borrowed money (including obligations of such Person in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or (ii) evidenced by credit or loan agreements, bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof) (other than any accounts payable or other accrued current liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services), (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees or bankers' acceptances, (c) all obligations and liabilities (contingent or otherwise) of such Person in respect of leases of such Person required, in conformity with GAAP, to be accounted for as capitalized lease obligations on the balance sheet of such Person, (d) all obligations and liabilities (contingent or otherwise) of such Person under any lease or related document (including a purchase agreement, conditional sale or other title retention agreement) in connection with the lease of real property or improvements thereon (or any personal property included as part of any such lease) which provides that such Person is contractually obligated to purchase or cause a third party to purchase the leased property or pay an agreed upon residual value of the leased property to the lessor (whether or not such lease transaction is characterized as an operating lease or a capitalized lease in accordance with GAAP), (e) all obligations (contingent or otherwise) of such Person with respect to any interest rate or other swap, cap, floor or collar agreement, hedge agreement, forward contract, or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement; (f) all direct or indirect guarantees, or similar agreements by such Person in respect of, and obligations or liabilities of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kinds described in clauses

(a) through (e), and (g) any and all deferrals, renewals, extensions, refinancings and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kinds described in clauses (a) through (f).

"Indenture" means this Indenture as amended or supplemented from time to time pursuant to the terms of this Indenture.

"Initial Purchasers" means Banc of America Securities LLC, Credit Suisse First Boston LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Morgan Stanley & Co. Incorporated.



"Interest" on any Security shall refer to interest and Additional Interest thereon, unless the context otherwise requires.

"Officer" means the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Controller, the Secretary or any Assistant Controller or Assistant Secretary of the Company.

"Officers' Certificate" means a certificate signed by two Officers; provided, however, that for purposes of Sections 4.11 and 6.3, "Officers' Certificate" means a certificate signed by the principal executive officer, principal financial officer or principal accounting officer of the Company and by one other Officer.

"Opinion of Counsel" means a written opinion from legal counsel. The counsel may be an employee of or counsel to the Company or the Trustee.

"Person" or "person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Principal" or "principal" of a debt security, including the Securities, means the principal of the security plus, when appropriate, the premium, if any, on the security.

"Redemption Date" or "redemption date" means the date specified for redemption of the Floating Rate Securities in accordance with the terms of the Floating Rate Securities and this Indenture.

"Redemption Price" or "redemption price" has the meaning set forth in paragraph 19 of the Floating Rate Securities.

"Registration Rights Agreement" means the Registration Rights Agreement dated as of June 19, 2003, between the Company and the Initial Purchasers.

"Representative" means the (a) indenture trustee or other trustee, agent or representative for any Senior Indebtedness or (b) with respect to any Senior Indebtedness that does not have any such trustee, agent or other representative, (i) in the case of such Senior Indebtedness issued pursuant to an agreement providing for voting arrangements as among the holders or owners of such Senior Indebtedness, any holder or owner of such Senior Indebtedness acting with the consent of the required persons necessary to bind such holders or owners of such Senior Indebtedness and (ii) in the case of all other such Senior Indebtedness, the holder or owner of such Senior Indebtedness.

"Restricted Global Security" means a Global Security that is a Restricted Security.

"Restricted Security" means a Security required to bear the restricted legend set forth in the form of Securities set forth in Exhibits A-1 and A-2 of this Indenture.

"Rule 144" means Rule 144 under the Securities Act or any successor to such Rule.

"Rule 144A" means Rule 144A under the Securities Act or any successor to such Rule.

"SEC" means the Securities and Exchange Commission.

"Securities" means any of the Company' s Fixed Rate Securities and Floating Rate Securities or any of them (each, a "Security"), as amended or supplemented from time to time, that are issued under this Indenture.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"Securities Custodian" means the Trustee, as custodian with respect to the Securities in global form, or any successor thereto.

"Senior Indebtedness" means the principal of, premium, if any, interest (including any interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowed as a claim in any such proceeding) and rent payable on or in connection with, and all fees, costs, expenses and other amounts accrued or due on or in connection with, Indebtedness of the Company whether secured or unsecured, absolute or contingent, due or to become due, outstanding on the date of this Indenture or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing), unless in the case of any particular Indebtedness the instrument creating or evidencing the same or the assumption or guarantee thereof expressly provides that such Indebtedness shall not be senior in right of payment to the Securities or expressly provides that such Indebtedness is "pari passu" or "junior" to the Securities. Notwithstanding the foregoing, the term Senior Indebtedness shall not include (i) any Indebtedness of the Company to any majority-owned Subsidiary of the Company (other than Indebtedness of the Company arising by reason of guarantees by the Company of Indebtedness of any such Subsidiary to a Person that is not a Subsidiary of the Company) or (ii) the Securities.

"Significant Subsidiary" means, in respect of any Person, a Subsidiary of such Person that would constitute a "significant subsidiary" as such term is defined under Rule 1-02 of Regulation S-X under the Securities Act and the Exchange Act.

"Subsidiary" means, in respect of any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

"TIA" means the Trust Indenture Act of 1939, as amended, and the rules and regulations thereunder as in effect on the date of this Indenture, except as provided in Section 11.3, and except to the extent any amendment to the Trust Indenture Act expressly provides for application of the Trust Indenture Act as in effect on another date.

"Trading Day" means a day during which trading in securities generally occurs on the Nasdaq National Market (or, if the Common Stock is not quoted on the Nasdaq National Market, on the principal market on which the Common Stock is then traded), other than a day on which a material suspension of or limitation on trading is imposed that affects either the Nasdaq National Market (or, if applicable, such



other market) in its entirety or only the shares of Common Stock (by reason of movements in price exceeding limits permitted by the relevant market on which the shares are traded or otherwise) or on which the Nasdaq National Market (or, if applicable, such other market) cannot clear the transfer of shares due to an event beyond the Company' s control.

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

"Trust Officer" means, with respect to the Trustee, any officer assigned to the Corporate Trust Office, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer' s knowledge of and familiarity with the particular subject.

"Unrestricted Certificated Security" means a Certificated Security that is not a Restricted Security.

"Unrestricted Global Security" means a Global Security that is not a Restricted Security.

"Vice President" when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

"Voting Stock" of a Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors.

**SECTION 1.2. OTHER DEFINITIONS.**

| Term | Defined in Section |
|---|---|
| "Agent Members" | 2.1 (b) |
| "Bankruptcy Law" | 8.1 |
| "Change in Control" | 3.8 (a) |
| "Change in Control Purchase Date" | 3.8 (a) |
| "Change in Control Purchase Notice" | 3.8 (c) |
| "Change in Control Purchase Price" | 3.8 (a) |
| "Closing Price" | 4.6 (d) |
| "Company Notice" | 3.8 (a) |
| "Company Order" | 2.2 |
| "Conversion Agent" | 2.3 |
| "Conversion Date" | 4.2 |
| "Conversion Price" | 4.6 |
| "Current Market Price" | 4.6 (d) |
| "Custodian" | 8.1 |
| "DTC" | 2.1 (a) |
| "Depositary" | 2.1 (a) |
| "Determination Date" | 4.6 (c) |
| "Event of Default" | 8.1 |
| "Expiration Date" | 4.6 (c) |
| "Expiration Time" | 4.6 (c) |



| Term | Defined in Section |
|---|---|
| "Instrument" | 8.1 (6) |
| "Legal Holiday" | 12.7 |
| "Legend" | 2.12 (a) |
| "Notice of Default" | 8.1 (6) |
| "Paying Agent" | 2.3 |
| "Payment Blockage Notice" | 5.2 |

| | |
|---|---|
| "Primary Registrar" | 2.3 |
| "Purchase Agreement" | 2.1 |
| "Purchased Shares" | 4.6(c) |
| "QIB" | 2.1 |
| "Registrar" | 2.3 |
| "Trigger Event" | 4.6(c) |
| "Triggering Distribution" | 4.6(c) |
| "Unissued Shares" | 3.8(a) |

**SECTION 1.3. TRUST INDENTURE ACT PROVISIONS.**

Whenever this Indenture refers to a provision of the TIA, that provision is incorporated by reference in and made a part of this Indenture. The Indenture shall also include those provisions of the TIA required to be included herein by the provisions of the Trust Indenture Reform Act of 1990. The following TIA terms used in this Indenture have the following meanings:

"indenture securities" means the Securities;

"indenture security holder" means a Securityholder;

"indenture to be qualified" means this Indenture;

"indenture trustee" or "institutional trustee" means the Trustee; and "obligor" on the indenture securities means the Company or any other obligor on the Securities.

All other terms used in this Indenture that are defined in the TIA, defined by TIA reference to another statute or defined by any SEC rule and not otherwise defined herein have the meanings assigned to them therein.

**SECTION 1.4. RULES OF CONSTRUCTION.**

Unless the context otherwise requires:

(A) a term has the meaning assigned to it;

(B) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(C) words in the singular include the plural, and words in the plural include the singular;

(D) provisions apply to successive events and transactions;

(E) the term "merger" includes a statutory share exchange and the term "merged" has a correlative meaning;

(F) the masculine gender includes the feminine and the neuter;

(G) references to agreements and other instruments include subsequent amendments thereto; and

(H) "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

## ARTICLE 2

## THE SECURITIES

### SECTION 2.1. FORM AND DATING.

The Securities and the Trustee' s certificate of authentication shall be substantially in the respective forms set forth in Exhibits A-1 and A-2, which are incorporated in and made part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage. The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication. The Securities are being offered and sold by the Company pursuant to a Purchase Agreement, dated May 29, 2003 (the "**Purchase Agreement**"), between the Company and the Initial Purchasers, in transactions exempt from, or not subject to, the registration requirements of the Securities Act.

(a) Restricted Global Securities. All of the Securities are initially being offered and sold to qualified institutional buyers as defined in Rule 144A (collectively, "QIBs" or individually, each a "**QIB**") in reliance on Rule 144A under the Securities Act and shall be issued initially in the form of one or more Restricted Global Securities, which shall be deposited on behalf of the purchasers of the Securities represented thereby with the Trustee, at its Corporate Trust Office, as custodian for the depositary, The Depository Trust Company ("**DTC**") (such depositary, or any successor thereto, being hereinafter referred to as the "**Depositary**"), and registered in the name of its nominee, Cede & Co., duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Restricted Global Securities may from time to time be increased or decreased by adjustments made on the records of the Securities Custodian as hereinafter provided, subject in each case to compliance with the Applicable Procedures.

(b) Global Securities In General. Each Global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, purchases or conversions of such Securities. Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.12 hereof and shall be made on the records of the



Trustee and the Depositary. Upon effectiveness of a shelf registration statement pursuant to the Registration Rights Agreement, the Company shall issue, and the Trustee shall authenticate, a Global Security with respect to each series of Securities in the form of Exhibit A-1 or A-2 hereof, as applicable, which Global Securities shall not bear the Legend. Upon any sale of a beneficial interest in a Restricted Global Security pursuant to such registration statement and delivery of appropriate evidence thereof to the Trustee or any sale or transfer of a beneficial interest in connection with which the Legend may be removed in accordance with this Indenture, the Trustee shall increase the principal

amount of the unrestricted Global Security by the amount of such sale (or, as permitted by this Indenture, issued an unrestricted Certificated Security) and likewise reduce the principal amount of the Restricted Global Security.

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

(c) Book Entry Provisions. The Company shall execute and the Trustee shall, in accordance with this Section 2.1(c), authenticate and deliver initially one or more Global Securities that (i) shall be registered in the name of the Depositary or its nominee, (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary' s instructions and (iii) shall bear legends substantially in the form of the first paragraph of Exhibits A-1 and A-2 hereto.

**SECTION 2.2. EXECUTION AND AUTHENTICATION.**

An Officer shall sign the Securities for the Company by manual or facsimile signature attested by the manual or facsimile signature of the Secretary or an Assistant Secretary of the Company. Typographic and other minor errors or defects in any such facsimile signature shall not affect the validity or enforceability of any Security which has been authenticated and delivered by the Trustee.

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

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall authenticate and make available for delivery Securities for original issue in an aggregate principal amount of up to $175,000,000 Fixed Rate Securities (subject to increase by up to $25,000,000 in the event the Initial Purchasers exercise the option to purchase additional Securities granted to them in the Purchase Agreement) and an aggregate principal amount of up to $175,000,000 Floating Rate Securities (subject to increase by up to $25,000,000 in the event the Initial Purchasers exercise the option to purchase additional Securities granted to them in the Purchase Agreement) upon receipt of a written order or orders of the Company signed by an Officer of the Company (a "**Company**



**Order**"). The Company Order shall specify the amount of Securities to be authenticated, shall provide that all such Securities will be represented by a Restricted Global Security and the date on which each original issue of Securities is to be authenticated. The aggregate principal amount of Securities outstanding at any time of either series may not exceed the amounts in the foregoing sentence, except as provided in Section 2.7. The Floating Rate Securities and the Fixed Rate Securities shall each constitute a separate series of Securities issued hereunder and each such series shall vote separately as its own class under the Indenture, except where otherwise provided.

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

The Securities shall be issuable only in registered form without coupons and only in denominations of $1,000 principal amount and any integral multiple thereof.

**SECTION 2.3. REGISTRAR, PAYING AGENT AND CONVERSION AGENT.**

The Company shall maintain one or more offices or agencies where Securities may be presented for registration of transfer or for exchange (each, a "**Registrar**"), one or more offices or agencies where Securities may be presented for payment (each, a "**Paying Agent**"), one or more offices or agencies where Securities may be presented for conversion (each, a "**Conversion Agent**") and one or more offices or agencies where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will at all times maintain a Paying Agent, Conversion Agent, Registrar and an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served in the Borough of Manhattan, The City of New York. One of the Registrars (the "**Primary Registrar**") shall keep a register of the Securities and of their transfer and exchange.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent, Conversion Agent or agent for service of notices and demands in any place required by this Indenture, or fails to give the foregoing notice, the Trustee shall act as such. The Company or any Affiliate of the Company may act as Paying Agent (except for the purposes of Section 6.1 and Article 10).

The Company hereby initially designates the Trustee as Paying Agent, Registrar, Custodian and Conversion Agent, and the office or agency of the Trustee in the Borough of Manhattan, The City of New York (which shall initially be the office of the Trustee located at 100 Wall Street, Suite 1600, New York, New York 10005) as one such office or agency of the Company for each of the aforesaid purposes.

**SECTION 2.4. PAYING AGENT TO HOLD MONEY IN TRUST.**

Prior to 11:00 a.m., New York City time, on each due date of the principal of, interest or Additional Interest, if any, on any Securities, the Company shall deposit with a Paying Agent a sum sufficient to pay such principal, interest or Additional Interest, if any, so becoming due. Subject to



Section 5.2, a Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money held by the Paying Agent for the payment of principal of, interest or Additional Interest, if any, on the Securities, and shall notify the Trustee of any default by the Company (or any other obligor on the Securities) in making any such payment. If the Company or an Affiliate of the Company acts as Paying Agent, it shall, before 11:00 a.m., New York City time, on each due date of the principal of, interest or Additional Interest, if any, on any Securities, segregate the money and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee, and the Trustee may at any time during the continuance of any default, upon written request to a Paying Agent, require such Paying Agent to pay forthwith to the Trustee all sums so held in trust by such Paying Agent. Upon doing so, the Paying Agent (other than the Company) shall have no further liability for the money.

**SECTION 2.5. SECURITYHOLDER LISTS.**

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

**SECTION 2.6. TRANSFER AND EXCHANGE.**

(a) Subject to compliance with any applicable additional requirements contained in Section 2.12, when a Security is presented to a Registrar with a request to register a transfer thereof or to exchange such Security for an equal principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested; provided, however, that every Security

presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form and, if applicable, a transfer certificate each in the form included in Exhibits A-1 and A-2, as applicable, and in form satisfactory to the Registrar, duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Security for registration of transfer or exchange at an office or agency maintained pursuant to Section 2.3, the Company shall execute and the Trustee shall authenticate Securities of a like aggregate principal amount at the Registrar' s request. Any exchange or transfer shall be without charge, except that the Company or the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto, and provided, that this sentence shall not apply to any exchange pursuant to Section 2.10, 2.12(a), 3.5, 4.2 (last paragraph) or 11.5.

Neither the Company, any Registrar nor the Trustee shall be required to exchange or register a transfer of any Securities or portions thereof in respect of which a Change in Control Purchase Notice has been delivered and not withdrawn by the Holder thereof (except, in the case of the purchase of a Security in part, the portion thereof not to be purchased).

All Securities issued upon any transfer or exchange of Securities shall be valid obligations of the Company, evidencing the same debt and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

(b) Any Registrar appointed pursuant to Section 2.3 hereof shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Securities upon transfer or exchange of Securities.



(c) Each Holder of a Security agrees to indemnify the Company and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder' s Security in violation of any provision of this Indenture and/or applicable United States federal or state securities law.

**SECTION 2.7. REPLACEMENT SECURITIES.**

If any mutilated Security is surrendered to the Company, a Registrar or the Trustee, or the Company, a Registrar and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company, the applicable Registrar and the Trustee such security or indemnity as will be required by them to save each of them harmless, then, in the absence of notice to the Company, such Registrar or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be purchased by the Company pursuant to Article 3, the Company in its discretion may, instead of issuing a new Security, pay or purchase such Security, as the case may be.

Upon the issuance of any new Securities under this Section 2.7, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the reasonable fees and expenses of the Trustee or the Registrar) in connection therewith.

Every new Security issued pursuant to this Section 2.7 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 2.7 are (to the extent lawful) exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

**SECTION 2.8. OUTSTANDING SECURITIES.**

Securities outstanding at any time are all Securities authenticated by the Trustee, except for those canceled by it, those converted pursuant to Article 4, those delivered to it for cancellation or surrendered for transfer or exchange and those described in this Section 2.8 as not outstanding.

If a Security is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Company receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If a Paying Agent (other than the Company or an Affiliate of the Company) holds on a Redemption Date, Change in Control Purchase Date or the Final Maturity Date money sufficient to pay the principal of (including premium, if any), interest and Additional Interest, if any, on Securities (or portions thereof) payable on that date, then on and after such Redemption Date, Change in Control



Purchase Date or the Final Maturity Date, as the case may be, such Securities (or portions thereof, as the case may be) shall cease to be outstanding and interest and Additional Interest, if any, on them shall cease to accrue.

Subject to the restrictions contained in Section 2.9, a Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

**SECTION 2.9. TREASURY SECURITIES.**

In determining whether the Holders of the required principal amount of Securities have concurred in any notice, direction, waiver or consent, Securities owned by the Company or any other obligor on the Securities or by any Affiliate of the Company or of such other obligor shall be disregarded, except that, for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee' s right so to act with respect to the Securities and that the pledgee is not the Company or any other obligor on the Securities or any Affiliate of the Company or of such other obligor.

**SECTION 2.10. TEMPORARY SECURITIES.**

Until definitive Securities are ready for delivery, the Company may prepare and execute, and, upon receipt of a Company Order, the Trustee shall authenticate and deliver, temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company with the consent of the Trustee considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate and deliver definitive Securities in exchange for temporary Securities.

**SECTION 2.11. CANCELLATION.**

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent shall forward to the Trustee or its agent any Securities surrendered to them for transfer, exchange, payment or conversion. The Trustee and no one else shall cancel, in accordance with its standard procedures, all Securities surrendered for transfer, exchange, payment, conversion or cancellation and shall deliver the canceled Securities to the Company. All Securities which are purchased or otherwise acquired by the Company or any of its Subsidiaries prior to the Final Maturity Date may be delivered to the Trustee for cancellation or, if permitted by law, be

resold. The Company may not hold or resell such Securities or issue any new Securities to replace any Securities cancelled or any Securities that any Holder has converted pursuant to Article 4.

**SECTION 2.12. LEGEND; ADDITIONAL TRANSFER AND EXCHANGE REQUIREMENTS.**

(a) If Securities are issued upon the transfer, exchange or replacement of Securities subject to restrictions on transfer and bearing the legends set forth on the forms of Securities attached hereto as Exhibits A-1 and A-2 (collectively, the "**Legend**"), or if a request is made to remove the Legend on a Security, the Securities so issued shall bear the Legend, or the Legend shall not be removed, as the case



may be, unless there is delivered to the Company and the Registrar such satisfactory evidence, which shall include an opinion of counsel if requested by the Company or such Registrar, as may be reasonably required by the Company and the Registrar, that neither the Legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144 under the Securities Act or that such Securities are not "restricted" within the meaning of Rule 144 under the Securities Act; provided that no such evidence need be supplied in connection with the sale of such Security pursuant to a registration statement that is effective at the time of such sale. Upon (i) provision of such satisfactory evidence if requested, or (ii) notification by the Company to the Trustee and Registrar of the sale of such Security pursuant to a registration statement that is effective at the time of such sale, the Trustee, at the written direction of the Company, shall authenticate and deliver a Security that does not bear the Legend. If the Legend is removed from the face of a Security and the Security is subsequently held by an Affiliate of the Company, the Legend shall be reinstated.

(b) A Global Security may not be transferred, in whole or in part, to any Person other than the Depositary or a nominee or any successor thereof, and no such transfer to any such other Person may be registered; provided that the foregoing shall not prohibit any transfer of a Security that is issued in exchange for a Global Security but is not itself a Global Security. No transfer of a Security to any Person shall be effective under this Indenture or the Securities unless and until such Security has been registered in the name of such Person. Notwithstanding any other provisions of this Indenture or the Securities, transfers of a Global Security, in whole or in part, shall be made only in accordance with this Section 2.12.

(c) Subject to the succeeding paragraph, every Security shall be subject to the restrictions on transfer provided in the Legend. Whenever any Restricted Security is presented or surrendered for registration of transfer or for exchange for a Security registered in a name other than that of the Holder, such Security must be accompanied by a certificate in substantially the forms set forth in Exhibits A-1 and A-2, as applicable, dated the date of such surrender and signed by the Holder of such Security, as to compliance with such restrictions on transfer. The Registrar shall not be required to accept for such registration of transfer or exchange any Security not so accompanied by a properly completed certificate.

(d) The restrictions imposed by the Legend upon the transferability of any Security shall cease and terminate when such Security has been sold pursuant to an effective registration statement under the Securities Act or transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision). Any Security as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Security for exchange to the Registrar in accordance with the provisions of this Section 2.12 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 or any successor provision, by, if requested by the Company or the Registrar, an opinion of counsel reasonably acceptable to the Company and addressed to the Company to the effect that the transfer of such Security has been made in compliance with Rule 144 or such successor provision), be exchanged for a new Security, of like tenor and aggregate principal amount, which shall not bear the restrictive Legend. The Company shall inform the Trustee of the effective date of any registration statement registering the Securities under

the Securities Act. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned opinion of counsel or registration statement.



(e) As used in the preceding two paragraphs of this Section 2.12, the term "transfer" encompasses any sale, pledge, transfer, hypothecation or other disposition of any Security.

(f) The provisions of clauses (i), (ii), (iii), (iv) and (v) below shall apply only to Global Securities:

(i) Notwithstanding any other provisions of this Indenture or the Securities, a Global Security shall not be exchanged in whole or in part for a Security registered in the name of any Person other than the Depositary or one or more nominees thereof, provided that a Global Security may be exchanged for Securities registered in the names of any person designated by the Depositary in the event that (A) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Security or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor Depositary is not appointed by the Company within 90 days after receipt of such notice or the Company becomes aware of such failure of registration, (B) the Company has provided the Depositary with written notice that it has decided to discontinue use of the system of book-entry transfer through the Depositary or any successor Depositary or (C) an Event of Default has occurred and is continuing with respect to the Securities. Any Global Security exchanged pursuant to clauses (A) or (B) above shall be so exchanged in whole and not in part, and any Global Security exchanged pursuant to clause (C) above may be exchanged in whole or from time to time in part as directed by the Depositary. Any Security issued in exchange for a Global Security or any portion thereof shall be a Global Security; provided that any such Security so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Security.

(ii) Securities issued in exchange for a Global Security or any portion thereof shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Security or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear the applicable legends provided for herein. Any Global Security to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Registrar. With regard to any Global Security to be exchanged in part, either such Global Security shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Security, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Security issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(iii) Subject to the provisions of clause (v) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(iv) In the event of the occurrence of any of the events specified in clause (i) above, the Company will promptly make available to the Trustee a reasonable supply of Certificated Securities in definitive, fully registered form, without interest coupons.

(v) Neither Agent Members nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Security registered in the name of the Depositary or any nominee thereof, or under any such Global Security, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Security.

**SECTION 2.13. CUSIP NUMBERS.**

The Company in issuing the Securities may use one or more "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of purchase as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a purchase and that reliance may be placed only on the other identification numbers printed on the Securities, and any such purchase shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

## ARTICLE 3

## REDEMPTION AND PURCHASES

**SECTION 3.1. RIGHT TO REDEEM; NOTICES TO TRUSTEE.**

The Fixed Rate Securities may not be redeemed by the Company prior to the Final Maturity Date.

The Company, at its option, may redeem the Floating Rate Securities in accordance with the provisions of paragraph 14 of the Floating Rate Securities.

The Company may not redeem the Floating Rate Securities if it has failed to pay any interest or premium on the Floating Rate Securities and such failure to pay is continuing.

The Company shall give the notice to the Trustee provided for in this Section 3.1 by a Company Order, at least 45 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee).

**SECTION 3.2. SELECTION OF SECURITIES TO BE REDEEMED.**

If less than all the outstanding Floating Rate Securities are to be redeemed, the Trustee shall select the Floating Rate Securities to be redeemed in principal amounts of $1,000 or integral multiples of



$1,000 by lot, pro rata or by another method the Trustee considers fair and appropriate. The Trustee shall make the selection at least 30 days but not more than 60 days before the Redemption Date from outstanding Floating Rate Securities not previously called for redemption. The Trustee may select for redemption portions of the principal amount of Floating Rate Securities that have denominations larger than $1,000.

Provisions of this Indenture that apply to Floating Rate Securities called for redemption also apply to portions of Floating Rate Securities called for redemption. The Trustee shall notify the Company promptly of the Floating Rate Securities or portions of Floating Rate Securities to be redeemed.

If any Floating Rate Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Floating Rate Security so selected, the converted portion of such Floating Rate Security shall be deemed (so far as may be) to be the portion selected for redemption. Floating Rate Securities which have been converted during a selection of Floating Rate Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

**SECTION 3.3. NOTICE OF REDEMPTION.**

At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail, or shall cause to be mailed, a notice of redemption by first-class mail, postage prepaid, to each Holder of Floating Rate Securities to be redeemed.

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

the aggregate principal amount of the Securities to be redeemed;

the Redemption Date (which shall be a Business Day);

the Redemption Price including the amount of accrued and unpaid interest to be paid on such Floating Rate Securities;

the then current Conversion Price;

the name and address of the Paying Agent and Conversion Agent;

that Floating Rate Securities called for redemption may be converted at any time before the close of business on the date that is the last Business Day prior to the Redemption Date unless the Company fails to pay the Redemption Price;

that Holders who want to convert Floating Rate Securities must satisfy the requirements set forth in paragraph 6 of the Securities;

that Floating Rate Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;



if fewer than all the outstanding Floating Rate Securities of such series are to be redeemed, the certificate numbers, if any, and principal amounts of the particular Floating Rate Securities to be redeemed;

that, unless the Company defaults in making payment of such Redemption Price, interest on Floating Rate Securities called for redemption will cease to accrue on and after the Redemption Date; and

the CUSIP number of the Floating Rate Securities.

At the Company' s request, the Trustee shall give the notice of redemption in the Company' s name and at the Company' s expense, provided that the Company makes such request at least three Business Days prior to the date by which such notice of redemption must be given to Holders in accordance with this Section 3.3. Concurrently with the mailing of any such notice of redemption, the Company shall issue a press release announcing such redemption, the form and content of which shall be determined by the Company.

**SECTION 3.4. EFFECT OF NOTICE OF REDEMPTION.**

Once notice of redemption is given, Floating Rate Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice except for Floating Rate Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice, plus accrued and unpaid interest to, but excluding, the Redemption Date. If the Redemption Date falls after an interest payment record date and on or before an interest payment date, then the interest payment will be payable to the Holders who present the Floating Rate Securities for redemption.

On and after the Redemption Date, unless the Company defaults in the deposit of the redemption price, interest will cease to accrue on the Floating Rate Securities or any portion of the Floating Rate Securities called for redemption, the conversion right with respect to the Floating Rate Securities or any portion of the Floating Rate Securities called for redemption will lapse and all other rights of the Holder will terminate other than the right to receive the Redemption Price, without interest from the Redemption Date, on surrender of the Floating Rate Securities.

**SECTION 3.5. DEPOSIT OF REDEMPTION PRICE.**

Prior to 12:00 p.m. (New York City time) on the Redemption Date, the Company shall deposit with the Paying Agent (or the Trustee) money sufficient to pay the Redemption Price of and accrued and unpaid interest on all Floating Rate Securities to be redeemed on that date other than Floating Rate Securities or portions of Floating Rate Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose because of conversion of Floating Rate Securities pursuant to Article 4. If such money is then held by the Company in trust and is not required for such purpose it shall be discharged from such trust.



**SECTION 3.6. SECURITIES REDEEMED IN PART.**

Upon surrender of a Floating Rate Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder, without service charge, a new Floating Rate Security in an authorized denomination equal in principal amount to, and in exchange for, the unredeemed portion of the Floating Rate Security surrendered.

**SECTION 3.7. [Intentionally Omitted].**

**SECTION 3.8. PURCHASE OF SECURITIES AT OPTION OF THE HOLDER UPON CHANGE IN CONTROL.**

(a) If at any time that Securities remain outstanding there shall occur a Change in Control, Securities shall be purchased by the Company at the option of the Holders, as of the date that is 30 Business Days after the occurrence of the Change in Control (the "Change in Control Purchase Date") at a purchase price equal to 100% of the principal amount of the Securities, together with accrued and unpaid interest and Additional Interest, if any, to, but excluding, the Change in Control Purchase Date (the "Change in Control Purchase Price"), subject to satisfaction by or on behalf of any Holder of the requirements set forth in subsection (c) of this Section 3.8.

A "Change in Control" shall be deemed to have occurred if any of the following occurs after the date hereof (whether or not such transaction is pursuant to Article 7):

(1) any “person” or “group” (as such terms are defined below) is or becomes the “beneficial owner” (as defined below) of shares of Voting Stock of the Company representing 50% or more of the total voting power of all outstanding Voting Stock of the Company or has the power, directly or indirectly, to elect a majority of the members of the Board of Directors of the Company; or

(2) the Company consolidates with, or merges with or into, another Person or the Company sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of the assets of the Company, or any Person consolidates with, or merges with or into, the Company, in any such event other than pursuant to a transaction in which the Persons that “beneficially owned” (as defined below) shares of Voting Stock of the Company immediately prior to such transaction “beneficially own” (as defined below) shares of Voting Stock of the Company representing at least a majority of the total voting power of all outstanding Voting Stock of the surviving or transferee Person; or

(3) the holders of capital stock of the Company approve any plan or proposal for the liquidation or dissolution of the Company (whether or not otherwise in compliance with the terms hereof).

For the purpose of the definition of “Change in Control”, (i) ”person” and “group” have the meanings given such terms under Section 13(d) and 14(d) of the Exchange Act or any successor provision to either of the foregoing, and the term “group” includes any group acting for the purpose of acquiring, holding or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act (or any successor provision thereto), (ii) a “beneficial owner” shall be determined in accordance with Rule 13d-3 under the



Exchange Act, as in effect on the date of this Indenture, except that the number of shares of Voting Stock of the Company shall be deemed to include, in addition to all outstanding shares of Voting Stock of the Company and Unissued Shares deemed to be held by the “person” or “group” (as such terms are defined above) or other Person with respect to which the Change in Control determination is being made, all Unissued Shares deemed to be held by all other Persons, and (iii) the terms “beneficially owned” and “beneficially own” shall have meanings correlative to that of “beneficial owner”. The term “Unissued Shares” means shares of Voting Stock not outstanding that are subject to options, warrants, rights to purchase or conversion privileges exercisable within 60 days of the date of determination of a Change in Control.

Notwithstanding anything to the contrary set forth in this Section 3.8, a Change in Control will not be deemed to have occurred if either:

(1) the Closing Price (determined in accordance with Section 4.6(d) of this Indenture) of the Common Stock for any five Trading Days during the ten Trading Days immediately preceding the Change in Control is at least equal to 105% of the Conversion Price in effect on such Trading Day; or

(2) in the case of a merger or consolidation, at least 50% of the consideration by value in the merger or consolidation constituting the Change in Control consists of common stock or American Depositary Receipts (or other securities representing common equity interests) and any associated rights traded on a United States national securities exchange or quoted on the Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such Change in Control) and as a result of such transaction or transactions at least 50% of the value of the consideration for which the Securities become convertible consists of such common stock or American Depositary Receipts (or other securities representing common equity interests) and associated rights. The value of common stock, American Depositary Receipts or other securities representing common equity interests shall be the closing price therefor on the date of such merger or consolidation on the principal U.S. trading market therefor, and the value of other consideration shall be the fair market value thereof on such date.

(b) Within 10 Business Days after the occurrence of a Change in Control, the Company shall mail a written notice ("**Company Notice**") of the Change in Control to the Trustee and to each Holder (and to beneficial owners as required by applicable law). The notice shall include the form of a Change in Control Purchase Notice to be completed by the Holder and shall state:

(1) the date of such Change in Control and, briefly, the terms, conditions and events causing such Change in Control;

(2) the date by which the Change in Control Purchase Notice pursuant to this Section 3.8 must be given;

(3) the Change in Control Purchase Date;

(4) the Change in Control Purchase Price;

(5) the Holder' s right to require the Company to purchase the Securities;

(6) briefly, the conversion rights of the Securities;

(7) the name and address of each Paying Agent and Conversion Agent;

(8) the Conversion Price and any adjustments thereto;

(9) that Securities as to which a Change in Control Purchase Notice has been given may be converted into Common Stock pursuant to Article 4 of this Indenture only to the extent that the Change in Control Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(10) the procedures that the Holder must follow to exercise rights under this Section 3.8;

(11) the procedures for withdrawing a Change in Control Purchase Notice, including a form of notice of withdrawal;

(12) that the Holder must satisfy the requirements set forth in the Securities in order to convert the Securities; and

(13) whether the Change in Control Purchase Price will be paid in cash, Common Stock or American Depositary Receipts (or other securities representing common equity interests), or a combination thereof and, if a combination thereof, the percentage that it will pay in cash or shares of Common Stock or such other securities.

If any of the Securities is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depositary applicable to the repurchase of Global Securities.

In the event the Company has elected to pay the Change in Control Purchase Price (or a specified percentage thereof) with shares of Common Stock or other securities, the Company Notice shall state, in addition to the items specified above, (i) that each Holder will receive a number of shares of Common Stock or other securities equal to the quotient obtained by dividing (x) the portion of the Change in Control Purchase Price to be paid in shares of Common Stock or other securities, by (y) 97% of the average of the Closing Prices of the Common Stock or such other securities for the 15 Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date (except any cash amount to be paid in lieu of fractional shares); and (ii) that because the market price of shares of common stock or other securities will be determined prior to the Change in Control Purchase Date, Holders of the Securities will bear the market risk with respect to the value of such securities to be received from the date such market price is determined to the Change in Control Purchase Date.

(c) A Holder may exercise its rights specified in subsection (a) of this Section 3.8 upon delivery of a written notice (which shall be in substantially the form included in Exhibits A-1 and A-2 hereto, as applicable, and which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Depositary' s customary procedures) of the exercise of such rights (a "**Change in Control Purchase Notice**") to any Paying Agent at any time prior to the close of business on the Business Day next preceding the Change in Control Purchase Date.



The delivery of such Security to any Paying Agent (together with all necessary endorsements) at the office of such Paying Agent shall be a condition to the receipt by the Holder of the Change in Control Purchase Price therefor.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.8, a portion of a Security if the principal amount of such portion is $1,000 or an integral multiple of $1,000. Provisions of the Indenture that apply to the purchase of all of a Security pursuant to Sections 3.8 through 3.14 also apply to the purchase of such portion of such Security.

Notwithstanding anything herein to the contrary, any Holder delivering to a Paying Agent the Change in Control Purchase Notice contemplated by this subsection (c) shall have the right to withdraw such Change in Control Purchase Notice in whole or in a portion thereof that is a principal amount of $1,000 or in an integral multiple thereof at any time prior to the close of business on the Business Day next

preceding the Change in Control Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.10.

A Paying Agent shall promptly notify the Company of the receipt by it of any Change in Control Purchase Notice or written withdrawal thereof.

Anything herein to the contrary notwithstanding, in the case of Global Securities, any Change in Control Purchase Notice may be delivered or withdrawn and such Securities may be surrendered or delivered for purchase in accordance with the Applicable Procedures as in effect from time to time.

If the Change in Control Purchase Date falls after an interest payment record date and on or before an interest payment date, then the interest payment will be payable to the Holder who presents a Security for purchase.

**SECTION 3.9. COMPANY' S RIGHT TO ELECT MANNER OF PAYMENT OF CHANGE IN CONTROL PURCHASE PRICE FOR PAYMENT.**

(a) The Company may elect to pay the Change in Control Purchase Price of the Securities to be purchased on any Change in Control Purchase Date pursuant to Section 3.2 in cash or Common Stock or, in the case of a merger in which the Company is not the surviving corporation, common stock or American Depositary Receipts (or other securities representing common equity interests) of the surviving corporation or its direct or indirect parent corporation, or any combination of cash and stock, subject to the conditions set forth in this Section 3.9(a) and Section 3.9(b). All Holders whose Securities are purchased on a Change in Control Purchase Date pursuant to this Section 3.9 shall receive the same percentage of cash or common stock or American Depositary Receipts (or other securities representing common equity interests) in payment of the Change in Control Purchase Price for such Securities, except (i) as provided in Section 3.9(b) with regard to the payment of cash in lieu of fractional Common Stock and (ii) in the event that the Company is unable to purchase the Securities of a Holder or Holders for Common Stock because any necessary qualifications or registrations of the common stock or American Depositary Receipts (or other securities representing common equity interests) under applicable state securities laws cannot be obtained, the Company may purchase the Securities of such Holder or Holders for cash. The Company may not change its election with respect to the consideration (or components or percentages of components thereof) to be paid once the Company has given its Company Notice to Securityholders except pursuant to this Section 3.9(a) or pursuant to Section 3.9(b) in the event of a



failure to satisfy, prior to the close of business on the Change in Control Purchase Date, any condition to the payment of the Change in Control Purchase Price, in whole or in part, in common stock or American Depositary Receipts (or other securities representing common equity interests), in which case the Change in Control Purchase Price shall be paid in cash.

(b) In each case in which the Company has elected, pursuant to Section 3.9(a), to pay all or a portion of the Change in Control Purchase Price with common stock or American Depositary Receipts (or other securities representing common equity interests), the number of common stock or American Depositary Receipts (or other securities representing common equity interests) that shall be payable shall be equal to the quotient obtained by dividing (i) the relevant amount of the Change in Control Purchase Price to be paid in common stock or American Depositary Receipts (or other securities representing common equity interests) by (ii) 97% of the average of the Closing Prices of the common stock or American Depositary Receipts (or other securities representing common equity interests) for the 15 Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date (the "**Market Price**"), subject to the next succeeding paragraph.

In lieu of delivering a fractional common stock or American Depositary Receipts (or other securities representing common equity interests) in payment of the Change in Control Purchase Price, the Company will pay cash for the Market Price of the fractional share or

American Depositary Receipt (or other security representing common equity interests). If a Holder elects to have more than one Security purchased, the number of common stock or American Depositary Receipts (or other securities representing common equity interests) shall be based on the aggregate amount of Securities to be purchased.

The Company' s right to exercise its election to purchase Securities through the delivery of common stock or American Depositary Receipts (or other securities representing common equity interests) or a combination of common stock or American Depositary Receipts (or other securities representing common equity interests) and cash, as provided in Section 3.9(a) shall be conditioned upon:

the Company' s not having given a Company Notice of an election to pay entirely in cash and its timely giving of a Company Notice of election to purchase all or a specified percentage of the Securities with common stock or American Depositary Receipts (or other securities representing common equity interests) as provided herein;

the registration of the common stock or American Depositary Receipts (or other securities representing common equity interests) to be issued upon repurchase under the Securities Act and the Exchange Act;

any necessary qualification or registration of the common stock or American Depositary Receipts (or other securities representing common equity interests) to be issued upon repurchase under applicable state securities laws or the availability of an exemption from such qualification and registration;

listing of the common stock or American Depositary Receipts (or other securities representing common equity interests) on a United States national securities exchange or quotation thereof in an inter-dealer quotation system of any registered United States national securities association; and



the receipt by the Trustee of an Officers' Certificate and an Opinion of Counsel each stating that the terms of the delivery of the common stock or American Depositary Receipts (or other securities representing common equity interests) are in conformity with this Indenture, that the conditions above have been satisfied and that the securities being issued will be validly issued, fully paid and non-assessable and free of pre-emptive rights. The Officers' Certificate shall also set forth the number of common stock or American Depositary Receipts (or other securities representing common equity interests) to be delivered for each $1,000 Principal Amount of Securities and the daily prices of the common stock or American Depositary Receipts (or other securities representing common equity interests) used to calculate the average of the Closing Prices of the common stock or American Depositary Receipts (or other securities representing common equity interests).

If the foregoing conditions are not satisfied with respect to a Holder or Holders prior to the close of business on the last day prior to the Change in Control Purchase Date and the Company has elected to purchase the Securities pursuant to this Section 3.9 through the delivery of common stock or American Depositary Receipts (or other securities representing common equity interests), the Company shall pay the entire Change in Control Purchase Price of the Securities of such Holder or Holders in cash.

**SECTION 3.10. EFFECT OF CHANGE IN CONTROL PURCHASE NOTICE.**

Upon receipt by any Paying Agent of the Change in Control Purchase Notice specified in Section 3.8(c), the Holder of the Security in respect of which such Change in Control Purchase Notice was given shall (unless such Change in Control Purchase Notice is withdrawn as specified below) thereafter be entitled to receive the Change in Control Purchase Price with respect to such Security. Such Change in Control Purchase Price shall be paid to such Holder promptly following the later of (a) the Change in Control Purchase Date with respect to such Security (provided the conditions in Section 3.8(c) have been satisfied) and (b) the time of delivery of such Security to a Paying Agent by the Holder thereof in the manner required by Section 3.8(c). Securities in respect of which a Change in Control Purchase Notice has been given by the Holder thereof may not be converted into shares of Common Stock pursuant to Article 4 on or after the date of the delivery of such Change in Control Purchase Notice unless such Change in Control Purchase Notice has first been validly withdrawn.

A Change in Control Purchase Notice may be withdrawn by means of a written notice (which may be delivered by mail, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered

electronically or by other means in accordance with the Depositary' s customary procedures) of withdrawal delivered by the Holder to a Paying Agent at any time prior to the close of business on the Business Day immediately preceding the Change in Control Purchase Date, specifying the principal amount of the Security or portion thereof (which must be a principal amount of $1,000 or an integral multiple of $1,000 in excess thereof) with respect to which such notice of withdrawal is being submitted.

**SECTION 3.11. DEPOSIT OF CHANGE IN CONTROL PURCHASE PRICE.**

On or before 11:00 a.m. New York City time on the Change in Control Purchase Date, the Company shall deposit with the Trustee or with a Paying Agent (other than the Company or an Affiliate of the Company) an amount of money (in immediately available funds if deposited on such Change in Control Purchase Date) or securities sufficient to pay the aggregate Change in Control Purchase Price of



all the Securities or portions thereof that are to be purchased as of such Change in Control Purchase Date. The manner in which the deposit required by this Section 3.11 is made by the Company shall be at the option of the Company, provided that such deposit shall be made in a manner such that the Trustee or a Paying Agent shall have immediately available funds on the Change in Control Purchase Date.

If a Paying Agent holds, in accordance with the terms hereof, money or securities sufficient to pay the Change in Control Purchase Price of any Security for which a Change in Control Purchase Notice has been tendered and not withdrawn in accordance with this Indenture then, on the Change in Control Purchase Date, such Security will cease to be outstanding and the rights of the Holder in respect thereof shall terminate (other than the right to receive the Change in Control Purchase Price as aforesaid). The Company shall publicly announce the principal amount of Securities purchased as a result of such Change in Control on or as soon as practicable after the Change in Control Purchase Date.

The Company shall pay any documentary, stamp or similar issue or transfer tax due on any issuance of such Securities.

**SECTION 3.12. SECURITIES PURCHASED IN PART.**

Any Security that is to be purchased only in part shall be surrendered at the office of a Paying Agent, and promptly after the Change in Control Purchase Date the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of such authorized denomination or denominations as may be requested by such Holder, in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Security so surrendered that is not purchased.

**SECTION 3.13. COMPLIANCE WITH SECURITIES LAWS UPON PURCHASE OF SECURITIES**

In connection with any offer to purchase or purchase of Securities under Section 3.2, the Company shall (a) comply with Rule 13e-4 and Rule 14e-1 (or any successor to either such Rule), if applicable, under the Exchange Act, (b) file the related Schedule TO (or any successor or similar schedule, form or report) if required under the Exchange Act, and (c) otherwise comply with all federal and state securities laws in connection with such offer to purchase or purchase of Securities, all so as to permit the rights of the Holders and obligations of the Company under Sections 3.2 through 3.5 to be exercised in the time and in the manner specified therein.

**SECTION 3.14. REPAYMENT TO THE COMPANY.**

To the extent that the aggregate amount of cash or securities deposited by the Company pursuant to Section 3.4 exceeds the aggregate Change in Control Purchase Price (including interest and Additional Interest, if any, thereon) of the Securities or portions thereof that the Company is obligated to purchase, then promptly after the Change in Control Purchase Date the Trustee or a Paying Agent, as the case may be, shall return any such excess cash or securities to the Company.

## ARTICLE 4

## CONVERSION

### SECTION 4.1. CONVERSION PRIVILEGE

Subject to the further provisions of this Article 4 and the applicable paragraph of the Securities, a Holder of a Security may convert the principal amount of such Security (or any portion thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof) into Common Stock (and any associated rights represented thereby, including rights affected thereto pursuant to the Company' s Rights Plan in effect on the date hereof) at any time prior to the close of business on the Final Maturity Date, at the Conversion Price then in effect; provided, however, that, if such Security is submitted or presented for purchase or redemption pursuant to Article 3, such conversion right shall terminate at the close of business on the Business Day immediately preceding the Redemption Date or the Change in Control Purchase Date for such Security (unless the Company shall default in making the Redemption Price or Change in Control Purchase Price payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is purchased). The number of shares of Common Stock issuable upon conversion of a Security shall be determined by dividing the principal amount of the Security or portion thereof surrendered for conversion by the Conversion Price in effect on the Conversion Date. The initial Conversion Price is set forth in the form of the Securities of each series and is subject to adjustment as provided in this Article 4.

Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

A Security in respect of which a Holder has delivered a Change in Control Purchase Notice pursuant to Section 3.8(c) exercising the option of such Holder to require the Company to purchase such Security may be converted only if such Change in Control Purchase Notice is withdrawn by a written notice of withdrawal delivered to a Paying Agent prior to the close of business on the Business Day immediately preceding the Change in Control Purchase Date in accordance with Section 3.9.

A Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder has converted its Securities to Common Stock, and only to the extent such Securities are deemed to have been converted into Common Stock pursuant to this Article 4.

### SECTION 4.2. CONVERSION PROCEDURE.

To convert a Security, a Holder must (a) complete and manually sign the conversion notice on the back of the Security and deliver such notice to a Conversion Agent, (b) surrender the Security to a Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, and (d) pay any transfer or similar tax, if required. The date on which the Holder satisfies all of those requirements is the "Conversion Date." As soon as practicable after the Conversion Date, the Company shall deliver to the Holder through a Conversion Agent a certificate for the number of whole shares of Common Stock issuable upon the conversion and cash in lieu of any fractional shares pursuant to Section 4.3. Anything herein to the contrary notwithstanding, in the case of Global Securities, conversion notices may be delivered and such Securities may be surrendered for conversion in accordance with the Applicable Procedures as in effect from time to time.



The person in whose name the Common Stock certificate is registered shall be deemed to be a stockholder of record on the Conversion Date; provided, however, that no surrender of a Security on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the person or persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons

entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; provided, further, that such conversion shall be at the Conversion Price in effect on the Conversion Date as if the stock transfer books of the Company had not been closed. Upon conversion of a Security, such person shall no longer be a Holder of such Security. No payment or adjustment will be made for accrued interest (except as set forth below) or for dividends or distributions on shares of Common Stock issued upon conversion of a Security. Accrued interest shall be deemed paid through delivery of Common Stock upon conversion.

Interest or Additional Interest, if any, shall be payable to such registered Holder notwithstanding the conversion of a Security after a regular record date and prior to the interest payment date, subject to the provisions of this Indenture relating to the payment of defaulted interest or Additional Interest, if any, by the Company. Securities so surrendered for conversion (in whole or in part) during the period from the close of business on any regular record date to the opening of business on the next succeeding interest payment date, if any, shall also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest or Additional Interest, if any, payable on such interest payment date on the principal amount of such Security then being converted. The preceding sentence does not apply, however, if (1) the Company has specified a Redemption Date that is after a record date for an interest payment but on or prior to the corresponding interest payment date or (2) any overdue interest exists at the time of conversion with respect to the notes converted (in which case the Holder will not be required to pay the Company for the amount of the interest payment that the Holder will receive that represents overdue interest, but will be required to pay the Company for the amount of the interest payment that the Holder will receive that represents payment of interest that is not overdue). Except as otherwise provided in this Section 4.2, no payment or adjustment will be made for accrued interest or Additional Interest, if any, on a converted Security. If the Company defaults in the payment of interest or Additional Interest, if any, payable on such interest payment date, the Company shall promptly repay such funds to such Holder.

Nothing in this Section shall affect the right of a Holder in whose name any Security is registered at the close of business on a record date to receive the interest and Additional Interest, if any, payable on such Security on the interest payment date in accordance with the terms of this Indenture, the Securities and the Registration Rights Agreement. If a Holder converts more than one Security at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on the aggregate principal amount of Securities converted.

Upon surrender of a Security that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Security equal in principal amount to the unconverted portion of the Security surrendered.

**SECTION 4.3. FRACTIONAL SHARES.**

The Company will not issue fractional shares of Common Stock upon conversion of Securities. In lieu thereof, the Company will pay an amount in cash for the current market value of the fractional shares. The cash amount paid in lieu of fractional shares shall be determined, (calculated to the nearest



1/1000$^{th}$ of a share) by multiplying the Closing Price (determined as set forth in Section 4.6(d)) of the Common Stock on the Trading Day immediately prior to the Conversion Date by such fractional share and rounding the product to the nearest whole cent.

**SECTION 4.4. TAXES ON CONVERSION.**

If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon such conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder' s name. The Conversion Agent may refuse to deliver the certificate representing the Common Stock being issued in a name other than the Holder' s name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder' s name. Nothing herein shall preclude any tax withholding required by law or regulation.

**SECTION 4.5. COMPANY TO PROVIDE STOCK.**

The Company shall, prior to issuance of any Securities hereunder, and from time to time as may be necessary, reserve, out of its authorized but unissued Common Stock, a sufficient number of shares of Common Stock to permit the conversion of all outstanding Securities into shares of Common Stock.

All shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares, shall be duly authorized, validly issued, fully paid and nonassessable and shall be free from preemptive or similar rights and free of any lien or adverse claim.

The Company will endeavor promptly to comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on each national securities exchange or on the Nasdaq National Market or other over-the-counter market or such other market on which the Common Stock is then listed or quoted. Any Common Stock issued upon conversion of a Security hereunder which at the time of conversion was a Restricted Security will also be a Restricted Security.

**SECTION 4.6. ADJUSTMENT OF CONVERSION PRICE.**

The conversion price as stated in paragraph 6 of each of the Securities (the "**Conversion Price**") shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall (i) pay a dividend on its Common Stock in shares of Common Stock, (ii) make a distribution on its Common Stock in shares of Common Stock, (iii) subdivide its outstanding Common Stock into a greater number of shares, or (iv) combine its outstanding Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior thereto shall be adjusted so that the Holder of any Security thereafter surrendered for conversion shall be entitled to receive that number of shares of Common Stock which it would have owned had such Security been converted immediately prior to the happening of such event. An adjustment made pursuant to this subsection (a) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of subdivision of combination.

(b) In case the Company shall issue rights or warrants to all or substantially all holders of its Common Stock entitling them (for a period of not more than 60 days after such issuance) to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share (or having a conversion price per share) less than the Current Market Price per share of Common Stock (as determined in accordance with subsection (d) of this Section 4.6) on the record date for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price in effect immediately prior thereto shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to such record date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding on such record date plus the number of shares which the aggregate offering price of the total number of shares of Common Stock so offered (or the aggregate conversion price of the convertible securities so offered, which shall be determined by multiplying the number of shares of Common Stock issuable upon conversion of such convertible securities by the conversion price per share of Common Stock pursuant to the terms of such convertible securities) would purchase at the Current Market Price per share (as defined in subsection (d) of this Section 4.6) of Common Stock on such record date, and of which the denominator shall be the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock offered (or into which the convertible securities so offered are convertible). Such adjustment shall be made successively whenever any such rights or warrants are issued, and shall become effective immediately after such record date. If at the end of the period during which such rights or warrants are exercisable not all rights or warrants shall have been exercised, the adjusted Conversion Price shall be immediately readjusted to what it would have been based upon the number of additional shares of Common Stock actually issued (or the number of shares of Common Stock issuable upon conversion of convertible securities actually issued).

(c) In case the Company shall distribute to all or substantially all holders of its Common Stock any shares of capital stock of the Company (other than Common Stock), evidences of indebtedness or other assets (including securities of any person other than the Company but excluding (1) dividends or distributions paid exclusively in cash referred to in Section 4.6(c)(2) below or (2) dividends or distributions referred to in subsection (a) of this Section 4.6), or shall distribute to all or substantially all holders of its Common Stock rights or warrants to subscribe for or purchase any securities (excluding those rights and warrants referred to in subsection (b) of this Section 4.6), then in each such case the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the current Conversion Price by a fraction of which the numerator shall be the Current Market Price per share (as defined in subsection (d) of this Section 4.6) of the Common Stock on the record date mentioned below less the fair market value on such record date (as determined in good faith by the Board of Directors, whose determination shall be evidenced by an Officers' Certificate delivered to the Trustee) of the portion of the capital stock, evidences of indebtedness or other assets so distributed or of such rights or warrants applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the record date), and of which the denominator shall be the Current Market Price per share (as defined in subsection (d) of this Section 4.6) of the Common Stock on such record date. Such adjustment shall be made successively whenever any such distribution is made and shall become effective immediately after the record date for the determination of stockholders entitled to receive such distribution.

In the event the then fair market value (as so determined) of the portion of the capital stock, evidences of indebtedness or other assets so distributed or of such rights or warrants applicable to one share of Common Stock is equal to or greater than the Current Market Price per share of the Common Stock on such record date, in lieu of the foregoing adjustment, adequate provision shall be made so that



each holder of a Security shall have the right to receive upon conversion the amount of capital stock, evidences of indebtedness or other assets so distributed or of such rights or warrants such holder would have received had such holder converted each Security on such record date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 4.6(c) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock.

Rights (including rights issued under the Company' s Rights Plan as in effect on the date hereof) or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company' s Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 4.6 (and no adjustment to the Conversion Price under this Section 4.6 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment to the Conversion Price shall be made under this Section 4.6(c). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Price under this Section 4.6 was made, (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Price shall be readjusted as if such rights and warrants had not been issued.

(1) In case the Company shall, by dividend or otherwise, at any time distribute (a "**Triggering Distribution**") to all or substantially all holders of its Common Stock cash in an aggregate amount that, together with the aggregate amount of (A) any cash and the fair market value (as determined in good faith by the Board of Directors, whose determination shall be evidenced by an Officers' Certificate delivered to the Trustee) of any other consideration payable in respect of any tender offer by the Company or a Subsidiary of the Company for Common Stock consummated within the 12 months preceding the date of payment of the Triggering Distribution and in respect of which no Conversion Price adjustment pursuant to this Section 4.6 has been made and (B) all other cash distributions to all or substantially all holders of its Common Stock made within the 12 months preceding the date of payment of the Triggering Distribution and in respect of which no Conversion Price adjustment pursuant to this



Section 4.6 has been made, exceeds an amount equal to 10.0% of the product of the Current Market Price per share of Common Stock (as determined in accordance with subsection (d) of this Section 4.6) on the Business Day (the "**Determination Date**") immediately preceding the day on which such Triggering Distribution is declared by the Company multiplied by the number of shares of Common Stock outstanding on the Determination Date (excluding shares held in the treasury of the Company), the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying such Conversion Price in effect immediately prior to the Determination Date by a fraction of which the numerator shall be the Current Market Price per share of the Common Stock (as determined in accordance with subsection (d) of this Section 4.6) on the Determination Date less the sum of the aggregate amount of cash and the aggregate fair market value (determined as aforesaid in this Section 4.6(c)(1)) of any such other consideration so distributed, paid or payable within such 12 months (including, without limitation, the Triggering Distribution) applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the Determination Date) and the denominator shall be such Current Market Price per share of the Common Stock (as determined in accordance with subsection (d) of this Section 4.6) on the Determination Date, such reduction to become effective immediately prior to the opening of business on the day following the date on which the Triggering Distribution is paid.

(2) In case any tender offer made by the Company or any of its Subsidiaries for Common Stock shall expire and such tender offer (as amended upon the expiration thereof) shall involve the payment of aggregate consideration in an amount (determined as the sum of the aggregate amount of cash consideration and the aggregate fair market value (as determined in good faith by the Board of Directors, whose determination shall be evidenced by an Officers' Certificate delivered to the Trustee thereof) of any other consideration) that, together

with the aggregate amount of (A) any cash and the fair market value (as determined in good faith by the Board of Directors, whose determination shall be evidenced by an Officers' Certificate delivered to the Trustee) of any other consideration payable in respect of any other tender offers by the Company or any Subsidiary of the Company for Common Stock consummated within the 12 months preceding the date of the Expiration Date (as defined below) and in respect of which no Conversion Price adjustment pursuant to this Section 4.6 has been made and (B) all cash distributions to all or substantially all holders of its Common Stock made within the 12 months preceding the Expiration Date and in respect of which no Conversion Price adjustment pursuant to this Section 4.6 has been made, exceeds an amount equal to 10.0% of the product of the Current Market Price per share of Common Stock (as determined in accordance with subsection (d) of this Section 4.6) as of the last date (the "**Expiration Date**") tenders could have been made pursuant to such tender offer (as it may be amended) (the last time at which such tenders could have been made on the Expiration Date is hereinafter sometimes called the "**Expiration Time**") multiplied by the number of shares of Common Stock outstanding (including tendered shares but excluding any shares held in the treasury of the Company) at the Expiration Time, then, immediately prior to the opening of business on the day after the Expiration Date, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Expiration Date by a fraction of which the numerator shall be the product of the number of shares of Common Stock outstanding (including tendered shares but excluding any shares held in the treasury of the Company) at the Expiration Time multiplied by the Current Market Price per share of the Common Stock (as determined in accordance with subsection (d) of this Section 4.6) on the Trading Day next succeeding the Expiration Date and the denominator shall be the sum of (x) the aggregate consideration (determined as aforesaid) payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the



product of the number of shares of Common Stock outstanding (less any Purchased Shares and excluding any shares held in the treasury of the Company) at the Expiration Time and the Current Market Price per share of Common Stock (as determined in accordance with subsection (d) of this Section 4.6) on the Trading Day next succeeding the Expiration Date, such reduction to become effective immediately prior to the opening of business on the day following the Expiration Date. In the event that the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any or all such purchases or any or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would have been in effect based upon the number of shares actually purchased. If the application of this Section 4.6(c)(2) to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 4.6(c)(2).

(3) For purposes of this Section 4.6(c), the term "tender offer" shall mean and include both tender offers and exchange offers, all references to "purchases" of shares in tender offers (and all similar references) shall mean and include both the purchase of shares in tender offers and the acquisition of shares pursuant to exchange offers, and all references to "tendered shares" (and all similar references) shall mean and include shares tendered in both tender offers and exchange offers.

(d) For the purpose of any computation under subsections (b) and (c) of this Section 4.6, the current market price (the "**Current Market Price**") per share of Common Stock on any date shall be deemed to be the average of the daily closing prices for the 30 consecutive Trading Days commencing 45 Trading Days before (i) the Determination Date or the Expiration Date, as the case may be, with respect to distributions or tender offers under subsection (c) of this Section 4.6 or (ii) the record date with respect to distributions, issuances or other events requiring such computation under subsection (b) or (c) of this Section 4.6. The closing price (the "**Closing Price**") for each day shall be the last reported sales price or, in case no such reported sale takes place on such date, the average of the reported closing bid and asked prices in either case on the Nasdaq National Market or, if the Common Stock is not listed or admitted to trading on the Nasdaq National Market, on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if not listed or admitted to trading on the Nasdaq National Market or any national securities exchange, the last reported sales price of the Common Stock as quoted on NASDAQ or, in case no reported sales takes place, the average of the closing bid and asked prices as quoted on NASDAQ or any comparable system or, if the Common Stock is not quoted on NASDAQ or any comparable system, the closing sales price or, in case no reported sale takes place, the average of the closing bid and asked prices, as furnished by any two members of the National Association of Securities

Dealers, Inc. selected from time to time by the Company for that purpose. If no such prices are available, the Current Market Price per share shall be the fair value of a share of Common Stock as determined in good faith by the Board of Directors (which shall be evidenced by an Officers' Certificate delivered to the Trustee).

(e) In any case in which this Section 4.6 shall require that an adjustment be made following a record date or a Determination Date or Expiration Date, as the case may be, established for purposes of this Section 4.6, the Company may elect to defer (but only until five Business Days following the filing by the Company with the Trustee of the certificate described in Section 4.9) issuing to the Holder of any Security converted after such record date or Determination Date or Expiration Date the shares of Common Stock and other capital stock of the Company issuable upon such conversion over and above the shares of Common Stock and other capital stock of the Company issuable upon such conversion only on the basis of the Conversion Price prior to adjustment; and, in lieu of the shares the issuance of which is so deferred, the Company shall issue or cause its transfer agents to issue due bills or other appropriate



evidence prepared by the Company of the right to receive such shares. If any distribution in respect of which an adjustment to the Conversion Price is required to be made as of the record date or Determination Date or Expiration Date therefor is not thereafter made or paid by the Company for any reason, the Conversion Price shall be readjusted to the Conversion Price which would then be in effect if such record date had not been fixed or such effective date or Determination Date or Expiration Date had not occurred.

**SECTION 4.7. NO ADJUSTMENT.**

No adjustment in the Conversion Price shall be required if Holders may participate in the transactions set forth in Section 4.6 above without converting.

No adjustment in the Conversion Price shall be required unless the adjustment would require an increase or decrease of at least 1% in the Conversion Price as last adjusted; provided, however, that any adjustments which by reason of this Section 4.7 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article 4 shall be made to the nearest one-tenth of a cent or to the nearest one-hundredth of a share, as the case may be.

Except as otherwise described in this Article 4, no adjustment in the Conversion Price shall be required for the issuance of Common Stock or the right to purchase Common Stock or any such convertible or exchangeable securities.

To the extent that the Securities become convertible into the right to receive cash, no adjustment need be made thereafter as to the cash. Interest will not accrue on the cash.

**SECTION 4.8. ADJUSTMENT FOR TAX PURPOSES.**

The Company shall, upon 15 days prior notice, be entitled to make such reductions in the Conversion Price, in addition to those required by Section 4.6, as it in its discretion shall determine to be advisable in order that any stock dividends, subdivisions of shares, distributions of rights to purchase stock or securities or distributions of securities convertible into or exchangeable for stock hereafter made by the Company to its stockholders shall not be taxable.

**SECTION 4.9. NOTICE OF ADJUSTMENT.**

Whenever the Conversion Price or conversion privilege is adjusted, the Company shall promptly mail to Securityholders a notice of the adjustment and file with the Trustee an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. Unless and until the Trustee shall receive an Officers' Certificate setting forth an adjustment of the Conversion Price, the Trustee may

assume without inquiry that the Conversion Price has not been adjusted and that the last Conversion Price of which it has knowledge remains in effect.

**SECTION 4.10. NOTICE OF CERTAIN TRANSACTIONS.**

In the event that:

(1) the Company takes any action which would require an adjustment in the Conversion Price;



(2) the Company consolidates or merges with, or transfers all or substantially all of its property and assets to, another corporation and stockholders of the Company must approve the transaction; or

(3) there is a dissolution or liquidation of the Company,

the Company shall mail to Holders and file with the Trustee a notice stating the proposed record or effective date, as the case may be. The Company shall mail the notice at least ten days before such date. Failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in clause (1), (2) or (3) of this Section 4.10.

**SECTION 4.11. EFFECT OF RECLASSIFICATION, CONSOLIDATION, MERGER OR SALE ON CONVERSION PRIVILEGE.**

If any of the following shall occur, namely: (a) any reclassification or change of shares of Common Stock issuable upon conversion of the Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination, or any other change for which an adjustment is provided in Section 4.6); (b) any consolidation or merger or combination to which the Company is a party or (c) any sale or conveyance of all or substantially all of the property and assets of the Company, directly or indirectly, to any person, then the Company, or such successor, purchasing or transferee corporation, as the case may be, shall, as a condition precedent to such reclassification, change, combination, consolidation, merger, sale or conveyance, execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then outstanding shall have the right to convert such Security into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reclassification, change, combination, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock deliverable upon conversion of such Security immediately prior to such reclassification, change, combination, consolidation, merger, sale or conveyance based on the assumption that the Holder would not have exercised any rights of election that the Holder would have had as a Holder of Common Stock to select a particular type of consideration. Such supplemental indenture shall provide for adjustments of the Conversion Price which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Price provided for in this Article 4. If, in the case of any such consolidation, merger, combination, sale or conveyance, the stock or other securities and property (including cash) receivable thereupon by a holder of Common Stock include shares of stock or other securities and property of a person other than the successor, purchasing or transferee corporation, as the case may be, in such consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other person and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing. The provisions of this Section 4.11 shall similarly apply to successive reclassifications, changes, combinations, consolidations, mergers, sales or conveyances.

In the event the Company shall execute a supplemental indenture pursuant to this Section 4.11, the Company shall promptly file with the Trustee (x) an Officers' Certificate briefly stating the reasons therefor, the kind or amount of shares of stock or other securities or property (including cash) receivable by Holders of the Securities upon the conversion of their Securities after any such reclassification, change, combination, consolidation, merger, sale or conveyance, any adjustment to be made with respect

thereto and that all conditions precedent have been complied with and (y) an Opinion of Counsel that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders.

**SECTION 4.12. TRUSTEE' S DISCLAIMER.**

The Trustee shall have no duty to determine when an adjustment under this Article 4 should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of that fact or the correctness of any such adjustment, and shall be protected in relying upon, an Officers' Certificate including the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 4.9. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the Company' s failure to comply with any provisions of this Article 4.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 4.11, but may accept as conclusive evidence of the correctness thereof, and shall be fully protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 4.11.

**SECTION 4.13. VOLUNTARY REDUCTION.**

The Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 days and if the reduction is irrevocable during the period if our Board of Directors determines that such reduction would be in the best interest of the Company, and the Company provides 15 days prior notice of any reduction in the Conversion Price; provided, however, that in no event may the Company reduce the Conversion Price to be less than the par value of a share of Common Stock.

## ARTICLE 5

## SUBORDINATION

**SECTION 5.1. AGREEMENT OF SUBORDINATION.**

The Company covenants and agrees, and each Holder of Securities issued hereunder by its acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article 5; and each Person holding any Security, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees to be bound by such provisions.

The payment of the principal of, premium, if any, interest and Additional Interest, if any, on all Securities (including, but not limited to, the Redemption Price and the Change in Control Purchase Price with respect to the Securities subject to redemption or purchase in accordance with Article 3 as provided in this Indenture) issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all Senior Indebtedness, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article 5 shall prevent the occurrence of any default or Event of Default hereunder.



**SECTION 5.2. PAYMENTS TO HOLDERS.**

No payment shall be made with respect to the principal of, or premium, if any, or interest or Additional Interest, if any, on the Securities (including, but not limited to, the Redemption Price and the Change in Control Purchase Price with respect to the Securities subject

to redemption or purchase in accordance with Article 3 as provided in this Indenture), except payments and distributions made by the Trustee as permitted by the first or second paragraph of Section 5.5, if:

(i) a default in the payment of principal, premium, interest, rent or other obligations due on any Designated Senior Indebtedness occurs and is continuing (or, in the case of Designated Senior Indebtedness for which there is a period of grace, in the event of such a default that continues beyond the period of grace, if any, specified in the instrument or lease evidencing such Designated Senior Indebtedness), unless and until such default shall have been cured or waived or shall have ceased to exist; or

(ii) a default, other than a payment default, on a Designated Senior Indebtedness occurs and is continuing that then permits holders of such Designated Senior Indebtedness to accelerate its maturity and the Trustee receives a notice of the default (a "**Payment Blockage Notice**") from a Representative or holder of Designated Senior Indebtedness or the Company.

Subject to the provisions of Section 5.5, if the Trustee receives any Payment Blockage Notice pursuant to clause (ii) above, no subsequent Payment Blockage Notice shall be effective for purposes of this Section unless and until at least 365 days shall have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee (unless such default was waived, cured or otherwise ceased to exist and thereafter subsequently reoccurred) shall be, or be made, the basis for a subsequent Payment Blockage Notice.

The Company may and shall resume payments on and distributions in respect of the Securities upon the earlier of:

(a) in the case of a default referred to in clause (i) above, the date upon which the default is cured or waived or ceases to exist, or

(b) in the case of a default referred to in clause (ii) above, the earlier of the date on which such default is cured or waived or ceases to exist or 179 days pass after the date on which the applicable Payment Blockage Notice is received, unless this Article 5 otherwise prohibits the payment or distribution at the time of such payment or distribution.

Upon any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company (whether voluntary or involuntary) or in bankruptcy, insolvency, receivership or similar proceedings, all amounts due or to become due upon all Senior Indebtedness shall first be paid in full in cash, or other payments satisfactory to the holders of Senior Indebtedness before any payment is made on account of the principal of, premium, if any, interest or Additional Interest, if any, on the Securities (except payments made pursuant to Article 10 from monies deposited with the Trustee pursuant thereto prior to commencement of proceedings for such dissolution, winding-up, liquidation or reorganization); and upon any such dissolution or winding-up or liquidation or



reorganization of the Company or bankruptcy, insolvency, receivership or other proceeding, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled, except for the provision of this Article 5, shall (except as aforesaid) be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders of the Securities or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, or as otherwise required by law or a court order) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay all Senior Indebtedness in full in cash, or other payment satisfactory to the holders of Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness, before any payment or distribution is made to the Holders of the Securities or to the Trustee.

For purposes of this Article 5, the words, "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or

readjustment, the payment of which is subordinated at least to the extent provided in this Article 5 with respect to the Securities to the payment of all Senior Indebtedness which may at the time be outstanding; provided that (i) the Senior Indebtedness is assumed by the new corporation, if any, resulting from any reorganization or readjustment, and (ii) the rights of the holders of Senior Indebtedness (other than leases which are not assumed by the Company or the new corporation, as the case may be) are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance, transfer or lease of all or substantially all its property to another corporation upon the terms and conditions provided for in Article 7 shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 5.2 if such other corporation shall, as a part of such consolidation, merger, conveyance, transfer or lease, comply with the conditions stated in Article 7.

In the event of the acceleration of the Securities because of an Event of Default, no payment or distribution shall be made to the Trustee or any Holder of Securities in respect of the principal of, premium, if any, interest or Additional Interest, if any, on the Securities by the Company (including, but not limited to, the Redemption Price or Change in Control Purchase Price with respect to the Securities subject to redemption or purchase in accordance with Article 3 as provided in this Indenture), except payments and distributions made by the Trustee as permitted by Section 5.5, until all Senior Indebtedness has been paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness or such acceleration is rescinded in accordance with the terms of this Indenture. If payment of the Securities is accelerated because of an Event of Default, the Company shall promptly notify holders of Senior Indebtedness of such acceleration.

In the event that, notwithstanding the foregoing provisions, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (including, without limitation, by way of setoff or otherwise), prohibited by the foregoing, shall be received by the Trustee or the Holders of the Securities before all Senior Indebtedness is paid in full, in cash or other payment satisfactory to the holders of Senior Indebtedness, or provision is made for such payment thereof in accordance with its terms in cash or other payment satisfactory to the holders of Senior Indebtedness, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to



the holders of Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Indebtedness remaining unpaid to the extent necessary to pay all Senior Indebtedness in full, in cash or other payment satisfactory to the holders of Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness.

Nothing in this Section 5.2 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 9.7. This Section 5.2 shall be subject to the further provisions of Section 5.5.

**SECTION 5.3. SUBROGATION OF SECURITIES.**

Subject to the payment in full, in cash or other payment satisfactory to the holders of Senior Indebtedness, of all Senior Indebtedness, the rights of the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this Article 5 (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to other indebtedness of the Company to substantially the same extent as the Securities are subordinated and is entitled to like rights of subrogation) to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Indebtedness until the principal, premium, if any, interest and Additional Interest, if any, on the Securities shall be paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article 5, and no payment over pursuant to the provisions of this Article 5, to or for the benefit of the holders of Senior Indebtedness by Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than holders of Senior Indebtedness, and the Holders of the Securities, be deemed to be a payment by the Company to or on account of the Senior Indebtedness; and no payments or distributions of cash, property or securities to or for the benefit of

the Holders of the Securities pursuant to the subrogation provisions of this Article 5, which would otherwise have been paid to the holders of Senior Indebtedness shall be deemed to be a payment by the Company to or for the account of the Securities. It is understood that the provisions of this Article 5 are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

Nothing contained in this Article 5 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of (and premium, if any), interest and Additional Interest, if any, on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of the Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 5 of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.



Upon any payment or distribution of assets of the Company referred to in this Article 5, the Trustee, subject to the provisions of Section 9.1, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such bankruptcy, dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon and all other facts pertinent thereto or to this Article 5.

**SECTION 5.4. AUTHORIZATION TO EFFECT SUBORDINATION.**

Each Holder of a Security by the Holder' s acceptance thereof authorizes and directs the Trustee on the Holder' s behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 5 and appoints the Trustee to act as the Holder' s attorney-in-fact for any and all such purposes. If the Trustee does not file a proper proof of claim or proof of debt in the form required in any proceeding referred to in Section 5.3 hereof at least 30 days before the expiration of the time to file such claim, the holders of any Senior Indebtedness or their representatives are hereby authorized to file an appropriate claim for and on behalf of the Holders of the Securities.

**SECTION 5.5. NOTICE TO TRUSTEE.**

The Company shall give prompt written notice in the form of an Officers' Certificate to a Trust Officer of the Trustee and to any Paying Agent of any fact known to the Company which would prohibit the making of any payment of monies to or by the Trustee or any Paying Agent in respect of the Securities pursuant to the provisions of this Article 5. Notwithstanding the provisions of this Article 5 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article 5, unless and until a Trust Officer of the Trustee shall have received written notice thereof at the Corporate Trust Office from the Company (in the form of an Officers' Certificate) or a Representative or a Holder or Holders of Senior Indebtedness or from any trustee thereof; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 9.1, shall be entitled in all respects to assume that no such facts exist; provided that if on a date not less than one Business Day prior to the date upon which by the terms hereof any such monies may become payable for any purpose (including, without limitation, the payment of the principal of, or premium, if any, interest or Additional Interest, if any, on any Security) the Trustee shall not have received, with respect to such monies, the notice provided for in this Section 5.5, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date. Notwithstanding anything in this Article 5 to the contrary, nothing shall prevent any payment by the Trustee to the Holders of monies deposited with it pursuant to Article 10, and any such payment shall not be subject to the provisions of Article 5.

The Trustee, subject to the provisions of Section 9.1, shall be entitled to rely on the delivery to it of a written notice by a Representative or a person representing himself to be a holder of Senior Indebtedness (or a trustee on behalf of such holder) to establish that such notice has been given by a Representative or a holder of Senior Indebtedness or a trustee on behalf of any such holder or holders. In



the event that the Trustee determines in good faith that further evidence is required with respect to the right of any person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article 5, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 5, and if such evidence is not furnished the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

**SECTION 5.6. TRUSTEE' S RELATION TO SENIOR INDEBTEDNESS.**

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 5 in respect of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in Section 9.11 or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 5, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and, subject to the provisions of Section 9.1, the Trustee shall not be liable to any holder of Senior Indebtedness if it shall pay over or deliver to Holders of Securities, the Company or any other person money or assets to which any holder of Senior Indebtedness shall be entitled by virtue of this Article 5 or otherwise.

**SECTION 5.7. NO IMPAIRMENT OF SUBORDINATION.**

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

**SECTION 5.8. CERTAIN CONVERSIONS DEEMED PAYMENT.**

For the purposes of this Article 5 only, the issuance and delivery of junior securities upon conversion of Securities in accordance with Article 4 and the payment, issuance or delivery of cash, property or other securities upon conversion of a Security shall not be deemed to constitute a payment or distribution on account of the principal of such Security (or premium, if any) or interest. For the purposes of this Section 5.8, the term "**junior securities**" means (a) shares of any stock of any class of the Company, or (b) securities of the Company which are subordinated in right of payment to all Senior Indebtedness which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. Nothing contained in this Article 5 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article 4.



**SECTION 5.9. ARTICLE APPLICABLE TO PAYING AGENTS.**

If at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that the first paragraph of Section 5.5 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

**SECTION 5.10. SENIOR INDEBTEDNESS ENTITLED TO RELY.**

The holders of Senior Indebtedness (including, without limitation, Designated Senior Indebtedness) shall have the right to rely upon this Article 5, and no amendment or modification of the provisions contained herein shall diminish the rights of such holders unless such holders shall have agreed in writing thereto.

## ARTICLE 6

## COVENANTS

**SECTION 6.1. PAYMENT OF SECURITIES.**

The Company shall promptly make all payments in respect of the Securities on the dates and in the manner provided in the Securities and this Indenture. An installment of principal, interest or Additional Interest, if any, shall be considered paid on the date it is due if the Paying Agent (other than the Company) holds by 11:00 a.m., New York City time, on that date money, deposited by the Company or an Affiliate thereof, sufficient to pay the installment. Subject to Section 4.2 hereof and except in the case of a redemption or Change in Control, accrued and unpaid interest or Additional Interest, if any, on any Security that is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the Person in whose name that Security is registered at the close of business on the record date for such interest or Additional Interest, if any, at the office or agency of the Company maintained for such purpose. The Company shall, (in immediately available funds) to the fullest extent permitted by law, pay interest on overdue principal (including premium, if any) and overdue installments of interest from the original due date to the date paid, at the rate applicable to the Security plus 2% per annum, which interest shall be payable on demand. Additional Interest, if any, shall accrue at the rates provided for in the Registration Rights Agreement and shall be paid at the same time and in the same manner as regular interest.

Payment of the principal of (and premium, if any, interest and Additional Interest, if any, payable on the Final Maturity Date) on the Securities shall be made at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York (which shall initially be the Corporate Trust Office of the Trustee) in immediately available funds in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payment of interest or Additional Interest, if any, shall be made by check mailed to the address of the Person entitled thereto as such address appears in the Register; provided further that a Holder with an aggregate principal amount in excess of $2,000,000 will be paid by wire transfer in immediately available funds at the election of such Holder if such Holder has provided wire transfer instructions to the Company



at least 10 Business Days prior to the payment date. Any wire transfer instructions received by the Trustee will remain in effect until revoked by the Holder.

**SECTION 6.2. SEC REPORTS.**

The Company shall file all reports and other information and documents which it is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, and within 15 days after it files them with the SEC, the Company shall file copies of all such reports, information and other documents with the Trustee.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee' s receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company' s compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

**SECTION 6.3. COMPLIANCE CERTIFICATES.**

The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year of the Company (beginning with the fiscal year ending October 31, 2004), an Officers' Certificate as to the signer' s knowledge of the Company' s compliance with all conditions and covenants on its part contained in this Indenture and stating whether or not the signer knows of any default or Event of Default. If such signer knows of such a default or Event of Default, the Officers' Certificate shall describe the default or Event of Default and the efforts to remedy the same. For the purposes of this Section 6.3, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

**SECTION 6.4. FURTHER INSTRUMENTS AND ACTS.**

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

**SECTION 6.5. MAINTENANCE OF CORPORATE EXISTENCE.**

Subject to Article 7, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

**SECTION 6.6. RULE 144A INFORMATION REQUIREMENT.**

Within the period prior to the expiration of the holding period applicable to sales of the Securities under Rule 144(k) under the Securities Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, upon the request of any Holder or beneficial holder of the Securities make available to such Holder or beneficial holder of Securities or any Common Stock issued upon conversion thereof in connection with any sale thereof and any prospective purchaser of Securities or such Common Stock designated by such Holder or beneficial holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act and it will take such further action as any Holder or beneficial holder of such Securities or



such Common Stock may reasonably request, all to the extent required from time to time to enable such Holder or beneficial holder to sell its Securities or Common Stock without registration under the Securities Act within the limitation of the exemption provided by Rule 144A, as such Rule may be amended from time to time. Upon the request of any Holder or any beneficial holder of the Securities or such Common Stock, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements.

**SECTION 6.7. STAY, EXTENSION AND USURY LAWS.**

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of, premium, if any, interest or Additional Interest, if any, on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**SECTION 6.8. PAYMENT OF ADDITIONAL INTEREST.**

If Additional Interest is payable by the Company pursuant to the Registration Rights Agreement, the Company shall deliver to the Trustee a certificate to that effect stating (i) the amount of such Additional Interest that is payable, (ii) the reason why such Additional Interest is payable and (iii) the date on which such Additional Interest is payable. Unless and until a Trust Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable.

## ARTICLE 7

## CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

**SECTION 7.1. COMPANY MAY CONSOLIDATE, ETC. ONLY ON CERTAIN TERMS.**

The Company shall not consolidate with or merge into any other Person (in a transaction in which the Company is not the surviving Person) or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets to any Person, unless:

(1) in case the Company shall consolidate with or merge into another Person (in a transaction in which the Company is not the surviving Person) or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, (premium, if any), interest and Additional Interest, if any, on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed (and the conversion rights shall be provided for in accordance with Article 4, by



supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Company) formed by such consolidation or into which the Company shall have been merged or by the Person which shall have acquired the Company' s assets);

(2) immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

**SECTION 7.2. SUCCESSOR SUBSTITUTED.**

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of all or substantially all of the properties and assets of the Company in accordance with Section 7.1, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

## ARTICLE 8

## DEFAULT AND REMEDIES

### SECTION 8.1. EVENTS OF DEFAULT.

An "Event of Default" shall occur if:

(1) the Company defaults in the payment of any interest or Additional Interest, if any, payable on any Security when the same becomes due and payable and the default continues for a period of 30 days, whether or not such payment shall be prohibited by the provisions of Article 5 hereof;

(2) the Company defaults in the payment of any principal of (including, without limitation, any premium, if any, on) any Security when the same becomes due and payable (whether at maturity, upon a Change in Control Purchase Date or otherwise), whether or not such payment shall be prohibited by the provisions of Article 5 hereof;

(3) the Company fails to comply with any of its other covenants contained in the Securities or this Indenture and the default continues for the period and after the notice specified below;

(4) the Company defaults in the payment of the purchase price of any Security when the same becomes due and payable, whether or not such payment shall be prohibited by the provisions of Article 5 hereof; or

(5) the Company fails to provide a Change in Control Purchase Notice when required by Section 3.8; or

(6) any indebtedness under any bond, debenture, note or other evidence of indebtedness for money borrowed by the Company or any Significant Subsidiary or under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company or any Significant Subsidiary (an "Instrument") with a principal amount then outstanding in excess of U.S. $25,000,000, whether such indebtedness now exists or shall hereafter be created, is not paid at final maturity of the Instrument (either at its stated maturity or upon acceleration thereof), and such indebtedness is not discharged, or such default in payment or acceleration is not cured or rescinded, within a period of 30 days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Securities of a series a written notice specifying such default and requiring the Company to cause such indebtedness to be discharged or cause such default to be cured or waived or such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

(7) the Company or any Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case or proceeding;

(B) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property; or

(D) makes a general assignment for the benefit of its creditors; or

(8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Significant Subsidiary in an involuntary case or proceeding;

(B) appoints a Custodian of the Company or any Significant Subsidiary or for all or substantially all of the property of the Company or any Significant Subsidiary; or

(C) orders the liquidation of the Company or any Significant Subsidiary;

and in each case the order or decree remains unstayed and in effect for 60 consecutive days.

The term "Bankruptcy Law" means Title 11 of the United States Code (or any successor thereto) or any similar federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.



A default under clause (3) above is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in aggregate principal amount of the Securities of a series then outstanding notify the Company and the Trustee, in writing of the default, and the Company does not cure the default within 60 days after receipt of such notice. The notice given pursuant to this Section 8.1 must specify the default, demand that it be remedied and state that the notice is a "Notice of Default." When any default under this Section 8.1 is cured, it ceases.

The Trustee shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been given to a Trust Officer at the Corporate Trust Office of the Trustee by the Company, a Paying Agent, any Holder or any agent of any Holder.

**SECTION 8.2. ACCELERATION.**

If an Event of Default (other than an Event of Default specified in clause (7) or (8) of Section 8.1) occurs and is continuing, the Trustee may, by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Securities then outstanding of any series may, by notice to the Company and the Trustee, declare all unpaid principal to the date of acceleration on the Securities then outstanding of such series (if not then due and payable) to be due and payable upon any such declaration, and the same shall become and be immediately due and payable. If an Event of Default specified in clause (7) or (8) of Section 8.1 occurs with respect to the Company, all unpaid principal of the Securities of each series then outstanding shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Holders of a majority in aggregate principal amount of the Securities then outstanding of any series by notice to the Trustee may rescind an acceleration and its consequences with respect to that series if (a) all existing Events of Default with respect to that series, other than the nonpayment of the principal of the Securities which has become due solely by such declaration of acceleration, have been cured or waived; (b) to the extent the payment of such interest is lawful, interest at a rate of 2% per annum over the amount of interest otherwise payable on such Security on overdue installments of interest and Additional Interest, if any, and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; (c) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (d) all payments due to the Trustee and any predecessor Trustee under Section 9.7 have been made. No such rescission shall affect any subsequent default or impair any right consequent thereto.

**SECTION 8.3. OTHER REMEDIES.**

If an Event of Default occurs and is continuing with respect to any series, the Trustee may, but shall not be obligated to, pursue any available remedy by proceeding at law or in equity to collect the payment of the principal of or interest or Additional Interest, if any, on the Securities of such series or to enforce the performance of any provision of such Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.



**SECTION 8.4. WAIVER OF DEFAULTS AND EVENTS OF DEFAULT.**

Subject to Sections 8.7 and 11.2, the Holders of a majority in aggregate principal amount of the Securities then outstanding of a series by notice to the Trustee may waive an existing default or Event of Default and its consequence with respect to such series, except a default or Event of Default in the payment of the principal of, premium, if any, or interest or Additional Interest, if any, on any Security when due, a failure by the Company to convert any Securities into Common Stock or any default or Event of Default in respect of any provision of this Indenture or the Securities which, under Section 11.2, cannot be modified or amended without the consent of the Holder of each Security affected. When a default or Event of Default is waived, it is cured and ceases.

**SECTION 8.5. CONTROL BY MAJORITY.**

The Holders of a majority in principal amount of all Securities then outstanding of any series may direct the time, method and place of conducting any proceeding for exercising any remedy or power available to the Trustee or exercising any trust or power conferred on it with respect to such series. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of another Holder or the Trustee, or that may involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it; provided, however, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

**SECTION 8.6. LIMITATIONS ON SUITS.**

A Holder may not pursue any remedy with respect to this Indenture or the Securities (except actions for payment of overdue principal, premium, if any, interest or Additional Interest, if any, or for the right to convert the Securities pursuant to Article 4) unless:

(1) the Holder gives to the Trustee written notice of a continuing Event of Default;

(2) the Holders of at least 25% in aggregate principal amount of the then outstanding Securities of the applicable series make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee reasonable indemnity to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Securities then outstanding of the applicable series.

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



**SECTION 8.7. RIGHTS OF HOLDERS TO RECEIVE PAYMENT AND TO CONVERT.**

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of the principal of, interest and Additional Interest, if any, on the Security, on or after the respective due dates expressed in the Security and this Indenture, to convert such Security in accordance with Article 4 and to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

**SECTION 8.8. COLLECTION SUIT BY TRUSTEE.**

If an Event of Default in the payment of principal, interest or Additional Interest, if any, specified in clause (1) or (2) of Section 8.1 occurs and is continuing with respect to any Securities, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or another obligor on the Securities for the whole amount of principal and accrued interest or Additional Interest, if any, remaining unpaid, together with, to the extent that payment of such interest is lawful, interest on overdue principal and overdue installments of interest or Additional Interest, if any, in each case at a rate equal to the interest rate then in effect on such Security plus 2% per annum and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

**SECTION 8.9. TRUSTEE MAY FILE PROOFS OF CLAIM.**

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), its creditors or its property and shall be entitled and empowered to collect and receive any money or other property payable or deliverable on any such claims and to distribute the same, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 9.7, and to the extent that such payment of the reasonable compensation, expenses, disbursements and advances in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other property which the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to, or, on behalf of any Holder, to authorize, accept or adopt any plan of

reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

**SECTION 8.10. PRIORITIES.**

If the Trustee collects any money pursuant to this Article 8, it shall pay out the money in the following order:



*First*, to the Trustee for amounts due under Section 9.7;

*Second*, to the holders of Senior Indebtedness to the extent required by Article 5;

*Third*, to Holders for amounts due and unpaid on the Securities for principal, interest and Additional Interest, if any, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal, interest and Additional Interest, if any, respectively; and

*Fourth*, the balance, if any, to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 8.10.

**SECTION 8.11. UNDERTAKING FOR COSTS.**

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 8.11 does not apply to a suit made by the Trustee, a suit by a Holder pursuant to Section 8.7, or a suit by Holders of more than 10% in aggregate principal amount of the Securities then outstanding of any series.

## ARTICLE 9

## TRUSTEE

**SECTION 9.1. DUTIES OF TRUSTEE.**

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

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

(1) the Trustee need perform only those duties as are specifically set forth in this Indenture and no others; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee, however, shall examine any certificates and opinions which by any provision hereof are specifically required to be delivered to the Trustee to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except (subject to the Trust Indenture Act) that:



(1) this paragraph does not limit the effect of subsection (b) of this Section 9.1;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 8.5.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers unless the Trustee shall have received adequate indemnity in its opinion against potential costs and liabilities incurred by it relating thereto.

(e) Every provision of this Indenture that in any way relates to the Trustee is subject to subsections (a), (b), (c) and (d) of this Section 9.1.

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

**SECTION 9.2. RIGHTS OF TRUSTEE.**

Subject to Section 9.1:

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

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, which shall conform to Section 12.4(b). The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion.

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

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

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection in respect of any such action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.



(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office, and such notice references the Securities and this Indenture.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

**SECTION 9.3. INDIVIDUAL RIGHTS OF TRUSTEE.**

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

**SECTION 9.4. TRUSTEE' S DISCLAIMER.**

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

**SECTION 9.5. NOTICE OF DEFAULT OR EVENTS OF DEFAULT.**

If a default or an Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to each Securityholder of the affected series notice of the default or Event of Default within 90 days after it occurs. However, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding notice is in the interests of Securityholders of such series, except in the case of a default or an Event of Default in payment of the principal of, interest or Additional Interest, if any, on any Security of such series.

**SECTION 9.6. REPORTS BY TRUSTEE TO HOLDERS.**

If such report is required by TIA Section 313, within 60 days after each May 15, beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA Section 313(a). The Trustee also shall comply with TIA Section 313(b)(2) and (c).



A copy of each report at the time of its mailing to Securityholders shall be mailed to the Company and filed with the SEC and each stock exchange, if any, on which the Securities are listed. The Company shall notify the Trustee whenever the Securities become listed on any stock exchange or listed or admitted to trading on any quotation system and any changes in the stock exchanges or quotation systems on which the Securities are listed or admitted to trading and of any delisting thereof.

**SECTION 9.7. COMPENSATION AND INDEMNITY.**

The Company shall pay to the Trustee from time to time such compensation (as agreed to from time to time by the Company and the Trustee in writing) for its services (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The Company shall reimburse the Trustee upon request for all reasonable disbursements, expenses and advances incurred or made by it. Such expenses may include the reasonable compensation, disbursements and expenses of the Trustee' s agents and counsel.

The Company shall indemnify the Trustee or any predecessor Trustee (which for purposes of this Section 9.7 shall include its officers, directors, employees and agents) for, and hold it harmless against, any and all loss, liability or expense including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), (including reasonable legal fees and expenses) incurred by it in connection with the acceptance or administration of its duties under this Indenture or any action or failure to act as authorized or within the discretion or rights or powers conferred upon the Trustee hereunder including the reasonable costs and expenses of the Trustee and its counsel in defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee shall notify the Company promptly of any claim asserted against the Trustee for which it may seek indemnity. The Company need not pay for any settlement effected without its prior written consent, which shall not be unreasonably withheld.

The Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by it resulting from its gross negligence or bad faith.

To secure the Company' s payment obligations in this Section 9.7, the Trustee shall have a senior claim to which the Securities are hereby made subordinate on all money or property held or collected by the Trustee, except such money or property held in trust to pay the

principal of, interest and Additional Interest, if any, on the Securities. The obligations of the Company under this Section 9.7 shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after an Event of Default specified in clause (7) or (8) of Section 8.1 occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law to the extent permitted by law. The provisions of this Section shall survive the termination of this Indenture.

**SECTION 9.8. REPLACEMENT OF TRUSTEE.**

The Trustee may resign by so notifying the Company. The Holders of a majority in aggregate principal amount of the Securities then outstanding may remove the Trustee by so notifying the Trustee and may, with the Company' s written consent, appoint a successor Trustee. The Company may remove the Trustee if:



(1) the Trustee fails to comply with Section 9.10;

(2) the Trustee is adjudged a bankrupt or an insolvent;

(3) a receiver or other public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. The resignation or removal of a Trustee shall not be effective until a successor Trustee shall have delivered the written acceptance of its appointment as described below.

If a successor Trustee does not take office within 45 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of 10% in principal amount of the Securities then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee at the expense of the Company.

If the Trustee fails to comply with Section 9.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee and be released from its obligations (exclusive of any liabilities that the retiring Trustee may have incurred while acting as Trustee) hereunder, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall mail notice of its succession to each Holder.

A retiring Trustee shall not be liable for the acts or omissions of any successor Trustee after its succession.

Notwithstanding replacement of the Trustee pursuant to this Section 9.8, the Company' s obligations under Section 9.7 shall continue for the benefit of the retiring Trustee.

**SECTION 9.9. SUCCESSOR TRUSTEE BY MERGER, ETC.**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets (including the administration of this Indenture) to, another corporation, the resulting, surviving or transferee corporation, without any further act, shall be the

successor Trustee, provided such transferee corporation shall qualify and be eligible under Section 9.10. Such successor Trustee shall promptly mail notice of its succession to the Company and each Holder.

**SECTION 9.10. ELIGIBILITY; DISQUALIFICATION.**

The Trustee shall always satisfy the requirements of paragraphs (1), (2) and (5) of TIA Section 310(a). The Trustee (or its parent holding company) shall have a combined capital and surplus of at least $50,000,000. If at any time the Trustee shall cease to satisfy any such requirements, it shall resign



immediately in the manner and with the effect specified in this Article 9. The Trustee shall be subject to the provisions of TIA Section 310(b). Nothing herein shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b).

**SECTION 9.11. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.**

The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

## ARTICLE 10

## SATISFACTION AND DISCHARGE OF INDENTURE

**SECTION 10.1. SATISFACTION AND DISCHARGE OF INDENTURE.**

This Indenture shall cease to be of further effect (except as to any surviving rights of conversion, registration of transfer or exchange of Securities herein expressly provided for and except as further provided below), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (ii) Securities for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company as provided in Section 10.3) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation have become due and payable and the Company has irrevocably deposited or caused to be irrevocably deposited cash with the Trustee or a Paying Agent (other than the Company or any of its Affiliates) as trust funds in trust for the purpose of and in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and interest (including Additional Interest, if any) to the date of such deposit (in the case of Securities which have become due and payable);

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 9.7 shall survive and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the provisions of

Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.12, Article 4, Section 6.1, Section 6.2, this Article 10 and Section 12.5, shall survive until the Securities have been paid in full.



**SECTION 10.2. APPLICATION OF TRUST MONEY.**

Subject to the provisions of Section 10.3, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Holders, all money deposited with it pursuant to Section 10.1 and shall apply the deposited money in accordance with this Indenture and the Securities to the payment of the principal of, interest and Additional Interest, if any, on the Securities. Money so held in trust shall not be subject to the subordination provisions of Article 5.

**SECTION 10.3. REPAYMENT TO COMPANY.**

The Trustee and each Paying Agent shall promptly pay to the Company upon request any excess money (i) deposited with them pursuant to Section 10.1 and (ii) held by them at any time.

The Trustee and each Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest or Additional Interest, if any, that remains unclaimed for two years after a right to such money has matured; provided, however, that the Trustee or such Paying Agent, before being required to make any such payment, may at the expense of the Company cause to be mailed to each Holder entitled to such money notice that such money remains unclaimed and that after a date specified therein, which shall be at least 30 days from the date of such mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

**SECTION 10.4. REINSTATEMENT.**

If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 10.2 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company' s obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.1 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 10.2; provided, however, that if the Company has made any payment of the principal of or interest or Additional Interest, if any, on any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive any such payment from the money held by the Trustee or such Paying Agent.

## ARTICLE 11

## AMENDMENTS, SUPPLEMENTS AND WAIVERS

**SECTION 11.1. WITHOUT CONSENT OF HOLDERS.**

The Company and the Trustee may amend or supplement this Indenture or the Securities with respect to one or both series of Securities without notice to or consent of any Securityholder:

(a) to comply with Sections 4.11 and 7.1;

(b) to cure any ambiguity, defect or inconsistency;



(c) to make any other change that does not adversely affect the rights of any Securityholder;

(d) to comply with the provisions of the TIA;

(e) to add to the covenants of the Company for the equal and ratable benefit of the Securityholders or to surrender any right, power or option conferred upon the Company; or

(f) to appoint a successor Trustee.

**SECTION 11.2. WITH CONSENT OF HOLDERS.**

The Company and the Trustee may, with respect to any series of Securities, amend or supplement this Indenture or the Securities with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding of each series affected thereby. The Holders of at least a majority in aggregate principal amount of the Securities then outstanding of a series may waive compliance (with respect to such series) in a particular instance by the Company with any provision of this Indenture or the Securities of such series without notice to any Securityholder. However, notwithstanding the foregoing but subject to Section 11.4, without the written consent of each Securityholder of the series affected, an amendment, supplement or waiver, including a waiver pursuant to Section 8.4, may not:

(a) change the stated maturity of the principal of any Security;

(b) reduce the principal amount of, or any premium or interest on, any Security;

(c) change the place or currency of payment of principal of, or any premium, interest or Additional Interest, if any, on, any Security;

(d) impair the right to institute suit for the enforcement of any payment on, or with respect to, any Security;

(e) modify the provisions with respect to the purchase right of Holders pursuant to Article 3 upon a Change in Control in a manner adverse to Holders;

(f) modify the subordination provisions of Article 5 in a manner materially adverse to the Holders of Securities;

(g) adversely affect the right of Holders to convert Securities other than as provided in or under Article 4 of this Indenture;

(h) reduce the percentage of the aggregate principal amount of the outstanding Securities whose Holders must consent to a modification or amendment;

(i) reduce the percentage of the aggregate principal amount of the outstanding Securities necessary for the waiver of compliance with the provisions of this Indenture or the waiver of defaults under this Indenture; and

(j) modify any of the provisions of this Section or Section 8.4, except to increase any such percentage or to provide that provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Security affected thereby.

It shall not be necessary for the consent of the Holders under this Section 11.2 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under Section 11.1 or this Section 11.2 becomes effective, the Company shall mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver. An amendment or supplement under this Section 11.2 or under Section 11.1 may not make any change that adversely affects the rights under Article 5 of any holder of an issue of Senior Indebtedness unless the holders of that issue, pursuant to its terms, consent to the change.

**SECTION 11.3. COMPLIANCE WITH TRUST INDENTURE ACT.**

Every amendment to or supplement of this Indenture or the Securities shall comply with the TIA as in effect at the date of such amendment or supplement.

**SECTION 11.4. REVOCATION AND EFFECT OF CONSENTS.**

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder' s Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

After an amendment, supplement or waiver becomes effective with respect to a series, it shall bind every Securityholder of such series, unless it makes a change described in any of clauses (a) through (k) of Section 11.2. In that case the amendment, supplement or waiver shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder' s Security.

**SECTION 11.5. NOTATION ON OR EXCHANGE OF SECURITIES.**

If an amendment, supplement or waiver changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

**SECTION 11.6. TRUSTEE TO SIGN AMENDMENTS, ETC.**

The Trustee shall sign any amendment or supplemental indenture authorized pursuant to this Article 11 if the amendment or supplemental indenture does not adversely affect the rights, duties,



liabilities or immunities of the Trustee. If it does, the Trustee may, in its sole discretion, but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be entitled to receive and, subject to Section 9.1, shall be fully protected in

relying upon, an Opinion of Counsel stating that such amendment or supplemental indenture is authorized or permitted by this Indenture. The Company may not sign an amendment or supplement indenture until the Board of Directors approves it.

**SECTION 11.7. EFFECT OF SUPPLEMENTAL INDENTURES.**

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

## ARTICLE 12

## MISCELLANEOUS

**SECTION 12.1. TRUST INDENTURE ACT CONTROLS.**

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the TIA through operation of Section 318(c) thereof, such imposed duties shall control.

**SECTION 12.2. NOTICES.**

Any demand, authorization notice, request, consent or communication shall be given in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by delivery in person or mail by first-class mail, postage prepaid, or by guaranteed overnight courier) to the following facsimile numbers:

If to the Company, to:

ADC Telecommunications, Inc.
13625 Technology Drive
Eden Prairie, Minnesota 55440
Attention: General Counsel
Facsimile No.: 652-917-1717

if to the Trustee, to:
180 East Fifth Street
St. Paul, MN 55101
Attn: Corporate Trust Services (ADC Telecommunications, Inc.)
Facsimile No.: 651-244-0711

Such notices or communications shall be effective when received.

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



Any notice or communication mailed to a Securityholder shall be mailed by first-class mail or delivered by an overnight delivery service to it at its address shown on the register kept by the Primary Registrar.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication to a Securityholder is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

**SECTION 12.3. COMMUNICATIONS BY HOLDERS WITH OTHER HOLDERS.**

Securityholders may communicate pursuant to TIA Section 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and any other person shall have the protection of TIA Section 312(c).

**SECTION 12.4. CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.**

(a) Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee at the request of the Trustee:

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

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent (including any covenants, compliance with which constitutes a condition precedent) have been complied with.

(b) Each Officers' Certificate and Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that the person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with;

provided however, that with respect to matters of fact an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.



**SECTION 12.5. RECORD DATE FOR VOTE OR CONSENT OF SECURITYHOLDERS.**

The Company (or, in the event deposits have been made pursuant to Section 10.1, the Trustee) may set a record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture, which record date shall not be more than thirty (30) days prior to the date of the commencement of solicitation of such action. Notwithstanding the provisions of Section 11.4, if a record date is fixed, those persons who were Holders of Securities at the close of business on such record date (or their duly designated proxies), and only those persons, shall be entitled to take such action by vote or consent or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date.

**SECTION 12.6. RULES BY TRUSTEE, PAYING AGENT, REGISTRAR AND CONVERSION AGENT.**

The Trustee may make reasonable rules (not inconsistent with the terms of this Indenture) for action by or at a meeting of Holders. Any Registrar, Paying Agent or Conversion Agent may make reasonable rules for its functions.

**SECTION 12.7. LEGAL HOLIDAYS.**

A "Legal Holiday" is a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York and the state in which the Corporate Trust Office is located are not required to be open (and, in the case of the Floating Rate Notes, commercial banks in London, England, are not open for business, including dealings in U.S dollars). If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest or Additional Interest, if any, shall accrue for the intervening period on such payment. If an interest record date is a Legal Holiday, the record date shall not be affected.

**SECTION 12.8. GOVERNING LAW; SUBMISSION TO JURISDICTION.**

(a) This Indenture and the Securities shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws.

(b) The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or United States Federal court sitting in The City of New York over any suit, action or proceeding arising out of or relating to this Indenture. The Company irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.

**SECTION 12.9. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.**

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary of the Company. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.



**SECTION 12.10. NO RECOURSE AGAINST OTHERS.**

All liability described in paragraph 15 of the Securities of any director, officer, employee or stockholder, as such, of the Company is waived and released.

**SECTION 12.11. SUCCESSORS.**

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

**SECTION 12.12. MULTIPLE COUNTERPARTS.**

The parties may sign multiple counterparts of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent the same agreement.

**SECTION 12.13. SEPARABILITY.**

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

**SECTION 12.14. TABLE OF CONTENTS, HEADINGS, ETC.**

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

**SECTION 12.15. CALCULATIONS IN RESPECT OF THE SECURITIES.**

The Company and its agents shall make all calculations under the Indenture and the Securities in good faith. In the absence of manifest error, such calculations shall be final and binding on all Holders. The Company shall provide a copy of such calculations to the Trustee as required hereunder.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the date and year first above written.

**ADC Telecommunications, Inc.**

By: /s/ Robert E. Switz
Name: Robert E. Switz
Title: Executive Vice President and Chief Financial Officer

**U.S. Bank National Association, as Trustee**

By: /s/ Frank P. Leslie III
Name: Frank P. Leslie III
Title: Vice President

*(Signature Page to Indenture)*



**EXHIBIT A-1**
**[FORM OF FACE OF SECURITY]**

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

SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND, UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.](1)

[THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE ' 'SECURITIES ACT' '), AND THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION THEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.](2)

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION THEREOF MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE

(1) These paragraphs should be included only if the Security is a Global Security.

(2) These paragraphs to be included only if the Security is a Restricted Security.



SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. IN ANY CASE, THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS SECURITY EXCEPT AS PERMITTED UNDER THE SECURITIES ACT.](2)

[THE HOLDER OF THIS SECURITY IS ENTITLED TO THE BENEFITS OF A REGISTRATION RIGHTS AGREEMENT (AS SUCH TERM IS DEFINED IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF) AND, BY ITS ACCEPTANCE HEREOF, AGREES TO BE BOUND BY AND TO COMPLY WITH THE PROVISIONS OF SUCH REGISTRATION RIGHTS AGREEMENT.](2)



**ADC TELECOMMUNICATIONS, INC.**

CUSIP: 000886AC5 R-1

1% CONVERTIBLE SUBORDINATED NOTES DUE JUNE 15, 2008

ADC Telecommunications, Inc., a Delaware corporation (the "Company", which term shall include any successor corporation under the Indenture referred to on the reverse hereof), promises to pay to , or registered assigns, the principal sum of Dollars ($ ) on June 15, 2008 [or such greater or lesser amount as is indicated on the Schedule of Exchanges of Notes on the other side of this Note](3) and to pay interest thereon as provided on the other side of this Note.

Interest Payment Dates: June 15 and December 15, beginning December 15, 2003.

Record Dates: June 1 and December 1

This Note is convertible as specified on the other side of this Note. Additional provisions of this Note are set forth on the other side of this Note.

SIGNATURE PAGE FOLLOWS

(3) This phrase should be included only if the Security is a global Security.



IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

**ADC Telecommunications, Inc.**

By: _____
Name:
Title:

Attest:

_____
Name:
Title:

Dated:



Trustee' s Certificate of Authentication: This is one of the Securities referred to in the within-mentioned Indenture.

**U.S. Bank National Association,**
as Trustee

_____
Authorized Signatory

By:

**[FORM OF REVERSE SIDE OF SECURITY]**

**ADC TELECOMMUNICATIONS, INC.**
**1% CONVERTIBLE SUBORDINATED NOTES DUE JUNE 15, 2008**

1. INTEREST

The Company shall pay interest on this Note semiannually in arrears on June 15 and December 15, each an "interest payment date", of each year, commencing on December 15, 2003, at the rate per annum specified in the title of this Note. Interest shall accrue from and including June 4, 2003 or the most recent interest payment date to which interest had been paid or duly provided for to but excluding the date on which such interest is paid. Interest on this Note will be computed on the basis of a 360-day year of twelve 30-day months.

The Company shall, (in immediately available funds) to the fullest extent permitted by law, pay interest on overdue principal (including premium, if any) and overdue installments of interest from the original due date to the date paid, at the rate applicable to this Note plus 2% per annum, which interest shall be payable on demand.

All references in the Indenture and this Note to interest shall be deemed to include a reference to additional interest payable pursuant to the Registration Rights Agreement dated as of June 4, 2003 with respect to this Note. If additional interest is payable on this Note as contemplated under the Registration Rights Agreement, it shall be payable on each interest payment date and at maturity to the record holder entitled to interest on such date.

The interest so payable and punctually paid or duly provided for on any interest payment date will be paid to the Person in whose name this Note (or one or more Predecessor Securities) is registered at the close of business on the June 1 or December 1 preceding such interest payment date (the "Record Date") except as provided in the Indenture. Payment of the principal of (and premium, if any) and interest on this Note will be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts and as otherwise provided in the Indenture.

2. METHOD OF PAYMENT

The Holder must surrender this Note to a Paying Agent to collect payment of principal at maturity. The Company will make any payments of interest at maturity to the person to whom the principal is paid. On presentation and surrender of the certificated Note, the Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. The Company will make any payments of interest on any interest payment date other than the date of maturity by check mailed to the address of the record date registered holder as it appears in the security register; provided, however, that a Holder with an aggregate principal amount in excess of $2,000,000 will be paid by wire transfer in immediately available funds at the election of such Holder if such Holder has provided wire transfer instructions in writing to the Trustee not less than 10 Business Days prior to the interest payment date. Any wire transfer instructions received by the trustee will remain in effect until revoked by the registered holder. Notwithstanding the foregoing, so long as



this Note is registered in the name of a Depositary or its nominee, all payments hereon shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee.

3. PAYING AGENT, REGISTRAR AND CONVERSION AGENT

Initially, U.S. Bank National Association (the "Trustee", which term shall include any successor trustee under the Indenture hereinafter referred to) will act as Paying Agent, Registrar and Conversion Agent. The Company may change any Paying Agent, Registrar or

Conversion Agent without notice to the Holder. The Company or any of its Subsidiaries may, subject to certain limitations set forth in the Indenture, act as Paying Agent or Registrar.

4. INDENTURE, LIMITATIONS

This Note is one of a duly authorized issue of Securities of the Company designated as its 1% Convertible Subordinated Notes Due June 15, 2008 (the "Notes"), issued under an Indenture dated as of June 4, 2003 (together with any supplemental indentures thereto, the "Indenture"), between the Company and the Trustee. The terms of this Note include those stated in the Indenture and those required by or made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended, as in effect on the date of the Indenture. This Note is subject to all such terms, and the Holder of this Note is referred to the Indenture and said Act for a statement of them. Capitalized terms used and not defined herein have the meanings assigned to such terms in the Indenture.

The Notes are subordinated unsecured obligations of the Company limited to $175,000,000 aggregate principal amount (or $200,000,000 if the initial purchasers exercise their option to purchase additional Notes). The Indenture does not limit other debt of the Company, secured or unsecured, including Senior Indebtedness.

5. PURCHASE OF NOTES AT OPTION OF HOLDER UPON A CHANGE IN CONTROL

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase all or any part specified by the Holder (so long as the principal amount of such part is $1,000 or an integral multiple of $1,000 in excess thereof) of the Notes held by such Holder on the date that is 30 Business Days after the occurrence of a Change in Control, at a purchase price equal to 100% of the principal amount thereof together with accrued interest and Additional Interest, if any, up to, but excluding, the Change in Control Purchase Date. The Holder shall have the right to withdraw any Change in Control Purchase Notice (in whole or in a portion thereof that is $1,000 or an integral multiple of $1,000 in excess thereof) at any time prior to the close of business on the Business Day next preceding the Change in Control Purchase Date by delivering a written notice of withdrawal to the Paying Agent in accordance with the terms of the Indenture.

The Company may pay the purchase price in cash or certain securities, as set forth in the Indenture.

6. CONVERSION

A Holder of a Note may convert the principal amount of such Note (or any portion thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof) into shares of Common Stock at any time prior to the close of business on the Final Maturity Date; provided, however, that if the Note is subject to purchase upon a Change in Control, the conversion right will terminate at the close of business on the



Business Day immediately preceding the Change in Control Purchase Date for such Note or such earlier date as the Holder presents such Note for purchase (unless the Company shall default in making the Change in Control Purchase Price, when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Note is purchased).

The initial Conversion Price is $4.013 per share, subject to adjustment under certain circumstances as provided in the Indenture. The number of shares of Common Stock issuable upon conversion of a Note is determined by dividing the principal amount of the Note or portion thereof converted by the Conversion Price in effect on the Conversion Date. No fractional shares will be issued upon conversion; in lieu thereof, an amount will be paid in cash based upon the Closing Price (as defined in the Indenture) of the Common Stock on the Trading Day immediately prior to the Conversion Date.

To convert a Note, a Holder must (a) complete and manually sign the conversion notice set forth below and deliver such notice to a Conversion Agent, (b) surrender the Note to a Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, and (d) pay any transfer or similar tax, if required. Notes so surrendered for conversion (in whole or in part)

during the period from the close of business on any regular record date to the opening of business on the next succeeding interest payment date, if any, shall also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such interest payment date on the principal amount of such Note then being converted, and such interest shall be payable to such registered Holder notwithstanding the conversion of such Note, subject to the provisions of this Indenture relating to the payment of defaulted interest, if any, by the Company in each case to the extent provided in the Indenture, including Section 4.2 thereof. If the Company defaults in the payment of interest payable on such interest payment date, if any, the Company shall promptly repay such funds to such Holder. A Holder may convert a portion of a Note equal to $1,000 or any integral multiple thereof.

A Note in respect of which a Holder had delivered a Change in Control Purchase Notice exercising the option of such Holder to require the Company to purchase such Note may be converted only if the Change in Control Purchase Notice is withdrawn in accordance with the terms of the Indenture.

7. SUBORDINATION

The indebtedness evidenced by the Notes is, to the extent and in the manner provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness of the Company (including any interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowed as a claim in any such proceeding). Any Holder by accepting this Note agrees to and shall be bound by such subordination provisions and authorizes the Trustee to give them effect. In addition to all other rights of Senior Indebtedness described in the Indenture, the Senior Indebtedness shall continue to be Senior Indebtedness and entitled to the benefits of the subordination provisions irrespective of any amendment, modification or waiver of any terms of any instrument relating to the Senior Indebtedness or any extension or renewal of the Senior Indebtedness.

8. DENOMINATIONS, TRANSFER, EXCHANGE, CANCELLATION

The Notes are in registered form, without coupons, in denominations of $1,000 and integral multiples of $1,000. A Holder may register the transfer of or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements



and transfer documents and to pay any taxes or other governmental charges that may be imposed in relation thereto by law or permitted by the Indenture.

All Notes surrendered for payment, registration of transfer or exchange or conversion will, if surrendered to the Company or any of its other Agents with respect to the Notes, be delivered to the Trustee. The Trustee will promptly cancel all Notes delivered to it. No Notes will be authenticated in exchange for any Notes cancelled as provided in the Indenture.

9. PERSONS DEEMED OWNERS

The Holder of a Note may be treated as the owner of it for all purposes.

10. UNCLAIMED MONEY

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Company at its written request, subject to applicable unclaimed property law. After that, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

11. AMENDMENT, SUPPLEMENT AND WAIVER

Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, and an existing default or Event of Default and its consequence or compliance with any provision of the Indenture or the Notes may be waived in a particular instance with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding. Without the consent of or notice to any Holder, the Company and the Trustee may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, defect or inconsistency or make any other change that does not adversely affect the rights of any Holder.

12. SUCCESSOR ENTITY

When a successor corporation assumes all the obligations of its predecessor under the Notes and the Indenture in accordance with the terms and conditions of the Indenture, the predecessor corporation (except in certain circumstances specified in the Indenture) be released from those obligations.

13. DEFAULTS AND REMEDIES

Under the Indenture, an Event of Default includes: (i) default for 30 days in payment of interest or Additional Interest, if any, on any Notes; (ii) default in payment of any principal (including, without limitation, any premium) on the Notes when due; (iii) failure by the Company for 60 days after notice to it to comply with any of its other covenants contained in the Indenture or the Notes; (iv) default in the payment of certain indebtedness of the Company or a Significant Subsidiary; (v) certain events of bankruptcy, insolvency or reorganization of the Company or any Significant Subsidiary and (vi) certain other events described in the Indenture. If an Event of Default (other than as a result of certain events of bankruptcy, insolvency or reorganization of the Company) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding may declare all unpaid principal to the date of acceleration on the Notes then outstanding to be due and payable immediately, all as and to the extent provided in the Indenture. If an Event of Default occurs as a result



of certain events of bankruptcy, insolvency or reorganization of the Company, unpaid principal of the Notes then outstanding shall become due and payable immediately without any declaration or other act on the part of the Trustee or any Holder, all as and to the extent provided in the Indenture. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Holders of a majority in aggregate principal amount of the Notes then outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing default (except a default in payment of principal or interest) if it determines that withholding notice is in their interests. The Company is required to file periodic reports with the Trustee as to the absence of default.

14. TRUSTEE DEALINGS WITH THE COMPANY

U.S. Bank National Association, the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from and perform services for the Company or an Affiliate of the Company, and may otherwise deal with the Company or an Affiliate of the Company, as if it were not the Trustee.

15. NO RECOURSE AGAINST OTHERS

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Indenture nor for any claim based on, in respect of or by reason of such obligations or their creation. The Holder of this Note by accepting this Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of this Note.

16. AUTHENTICATION

This Note shall not be valid until the Trustee or an authenticating agent manually signs the certificate of authentication on the other side of this Note.

17. ABBREVIATIONS AND DEFINITIONS

Customary abbreviations may be used in the name of the Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and UGMA (= Uniform Gifts to Minors Act).

All terms defined in the Indenture and used in this Note but not specifically defined herein are defined in the Indenture and are used herein as so defined.

18. INDENTURE TO CONTROL; GOVERNING LAW

In the case of any conflict between the provisions of this Note and the Indenture, the provisions of the Indenture shall control. This Note shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of law.



The Company will furnish to any Holder, upon written request and without charge, a copy of the Indenture. Requests may be made to: ADC Telecommunications, Inc., 13625 Technology Drive, Eden Prairie, MN 55440, [phone], Attention: Investor Relations.



**ASSIGNMENT FORM**

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

(Insert assignee' s soc. sec. or tax I.D. no.)

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

and irrevocably appoint

agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Your Signature:

Date: _____ _____

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

*Signature guaranteed by:

By: _____

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.



**CONVERSION NOTICE**

To convert this Note into Common Stock of the Company, check the box: ☐

To convert only part of this Note, state the principal amount to be converted (must be $1,000 or a integral multiple of $1,000):

$ .

If you want the stock certificate made out in another person' s name, fill in the form below:

(Insert assignee' s soc. sec. or tax I.D. no.)

-

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

Your Signature:

Date: _____ _____

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

*Signature guaranteed by:

By: _____

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.



**OPTION TO ELECT REPURCHASE**
**UPON A CHANGE IN CONTROL**

To: ADC Telecommunications, Inc.

The undersigned registered owner of this Security hereby irrevocably acknowledges receipt of a notice from ADC Telecommunications, Inc. (the "Company") as to the occurrence of a Change in Control with respect to the Company and requests and instructs the Company to purchase the entire principal amount of this Security, or the portion thereof (which is $1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Security at the Change in Control Purchase Price, together with accrued interest, if any, to, but excluding, such date, to the registered Holder hereof.

Dated: _____

_____

_____

Signature(s) must be guaranteed by a qualified guarantor institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

_____

Signature Guaranty

Principal amount to be purchased
(in an integral multiple of $1,000, if less than all):

_____

NOTICE: The signature to the foregoing Election must correspond to the Name as written upon the face of this Security in every particular, without alteration or any change whatsoever.



**SCHEDULE OF EXCHANGES OF NOTES(3)**

The following exchanges, repurchases or conversions of a part of this global Note have been made:

| Principal Amount of this Global Note Following Such Decrease Date of Exchange (or Increase) | Authorized Signatory of Securities Custodian | Amount of Decrease in Principal Amount of this Global Note | Amount of Increase in Principal Amount of this Global Note |
|---|---|---|---|
| | | | |
| | | | |

(3) This schedule should be included only if the Security is a global Security.



**CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR REGISTRATION OF TRANSFER OF RESTRICTED SECURITIES(4)**

Re: 1% Convertible Subordinated Notes Due June 15, 2008 (the "Notes") of ADC Telecommunications, Inc.

This certificate relates to $ principal amount of Notes owned in (check applicable box)

☐ book-entry or ☐ definitive form by (the "Transferor").

The Transferor has requested a Registrar or the Trustee to exchange or register the transfer of such Notes.

In connection with such request and in respect of each such Note, the Transferor does hereby certify that the Transferor is familiar with transfer restrictions relating to the Notes as provided in Section 2.12 of the Indenture dated as of June 4, 2003 between ADC Telecommunications, Inc. and U.S. Bank National Association, as trustee (the "Indenture"), and the transfer of such Note is in accordance with any applicable securities laws of any state and is being made pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act") (check applicable box) or the transfer or exchange, as the case may be, of such Note does not require registration under the Securities Act because (check applicable box):

☐ Such Note is being transferred pursuant to an effective registration statement under the Securities Act.

☐ Such Note is being acquired for the Transferor' s own account, without transfer.

☐ Such Note is being transferred to the Company.

☐ Such Note is being transferred to a person the Transferor reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A or any successor provision thereto ("Rule 144A") under the Securities Act) that is purchasing for its own account or for the account of a "qualified institutional buyer", in each case to whom notice has been given that the transfer is being made in reliance on such Rule 144A, and in each case in reliance on Rule 144A.

☐ Such Note is being transferred pursuant to and in compliance with an exemption from the registration requirements under the Securities Act in accordance with Rule 144 (or any successor thereto) ("Rule 144") under the Securities Act.

☐ Such Note is being transferred to a non-U.S. Person in an offshore transaction in compliance with Rule 904 of Regulation S under the Securities Act (or any successor thereto).

(4) This certificate should only be included if this Security is a Restricted Security.



The Transferor acknowledges and agrees that, if the transferee will hold any such Notes in the form of beneficial interests in a global Note which is a "restricted security" within the meaning of Rule 144 under the Securities Act, then such transfer can only be made pursuant to (i) Rule 144A under the Securities Act and such transferee must be a "qualified institutional buyer" (as defined in Rule 144A) or (ii) Regulation S under the Securities Act.

Date: _____

_____
(Insert Name of Transferor)



**EXHIBIT A-2**
**[FORM OF FACE OF SECURITY]**

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN

AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND, UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.](4)

[THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE ‘ ‘SECURITIES ACT’ ’ ), AND THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION THEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.](5)

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION THEREOF MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS

(4) These paragraphs should be included only if the Security is a Global Security.

(5) These paragraphs to be included only if the Security is a Restricted Security.



OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. IN ANY CASE, THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS SECURITY EXCEPT AS PERMITTED UNDER THE SECURITIES ACT.](2)

[THE HOLDER OF THIS SECURITY IS ENTITLED TO THE BENEFITS OF A REGISTRATION RIGHTS AGREEMENT (AS SUCH TERM IS DEFINED IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF) AND, BY ITS ACCEPTANCE HEREOF, AGREES TO BE BOUND BY AND TO COMPLY WITH THE PROVISIONS OF SUCH REGISTRATION RIGHTS AGREEMENT.](2)



**ADC TELECOMMUNICATIONS, INC.**

CUSIP: 000886AA9 R-1

FLOATING RATE CONVERTIBLE SUBORDINATED NOTES DUE JUNE 15, 2013

ADC Telecommunications, Inc., a Delaware corporation (the "Company", which term shall include any successor corporation under the Indenture referred to on the reverse hereof), promises to pay to , or registered assigns, the principal sum of Dollars ($ ) on June 15, 2013 [or such greater or lesser amount as is indicated on the Schedule of Exchanges of Notes on the other side of this Note] (3) and to pay interest thereon as provided on the other side of this Note.

Interest Payment Dates: June 15 and December 15, beginning December 15, 2003.

Record Dates: June 1 and December 1

This Note is convertible as specified on the other side of this Note. Additional provisions of this Note are set forth on the other side of this Note.

SIGNATURE PAGE FOLLOWS

(3) This phrase should be included only if the Security is a global Security.



IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

**ADC Telecommunications, Inc.**

By: _____
Name:
Title:

Attest:

_____
Name:
Title:

Dated:



Trustee' s Certificate of Authentication: This is one of the Securities referred to in the within-mentioned Indenture.

**U.S. Bank National Association,**
as Trustee

Authorized Signatory

By:



[FORM OF REVERSE SIDE OF SECURITY]

ADC TELECOMMUNICATIONS, INC.
FLOATING RATE CONVERTIBLE SUBORDINATED NOTES DUE JUNE 15, 2013

1. INTEREST

The Company shall pay interest on this Note semiannually in arrears at the rate specified below on June 15 and December 15, each an interest payment date, commencing on December 15, 2003. Interest shall accrue from and including June 4, 2003 or the most recent interest date to which interest has been paid or duly provided for. Interest on this Note will be computed on the basis of a 360-day year using the actual number of days elapsed from and including an interest payment date to but excluding the next succeeding interest payment date.

The Company shall, (in immediately available funds) to the fullest extent permitted by law, pay interest on overdue principal (including premium, if any) and overdue installments of interest from the original due date to the date paid, at the rate applicable to this Note plus 2% per annum, which interest shall be payable on demand.

All references in the Indenture and this Note to interest shall be deemed to include a reference to additional interest if payable pursuant to the Registration Rights Agreement dated as of June 4, 2003 with respect to the Notes. If additional interest is payable on this Note as contemplated under the Registration Rights Agreement, it shall be payable on each interest payment date and at maturity to the record holder entitled to interest on such date.

The interest so payable and punctually paid or duly provided for on any interest payment date will be paid to the Person in whose name this Note (or one or more Predecessor Securities) is registered at the close of business on the June 1 or December 1 preceding such interest payment date (the "Record Date") except as provided in the Indenture. Payment of the principal of (and premium, if any) and interest on this Note will be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts and as otherwise provided in the Indenture.

The interest rate on this Note for the period from June 4, 2003 to December 15, 2003 will be 1.5625%. The Calculation Agent will reset the interest rate on each interest payment date, each an "interest reset date," commencing December 15, 2003. The second London business day preceding an interest reset date will be the "LIBOR determination date" for that interest reset date. To reset the interest rate, the Calculation Agent will determine 6-month LIBOR on the LIBOR determination date and then add 0.375% to it. The interest rate in effect on each day that is not an interest reset date will be the interest rate determined as of the LIBOR determination date pertaining to the immediately preceding interest reset date. The interest rate in effect on any day that is an interest reset date will be the interest rate determined as of the interest determination date pertaining to that interest reset date.

"6-month LIBOR" means:

a) the rate for six-month deposits in United States dollars commencing on the related interest payment date, that appears on the Moneyline Telerate Page 3750 as of 11:00 a.m., London time, on the LIBOR determination date; or

b) if no rate appears on the particular LIBOR determination date on the Moneyline Telerate Page 3750, the rate calculated by the calculation agent as the arithmetic mean (rounded, if necessary, to the nearest one thousandth of a percentage point, with five one-ten thousandths of a percentage point rounded upwards) of at least two offered quotations obtained by the calculation agent after requesting the principal London offices of each of four major reference banks in the London interbank market to provide the calculation agent with its offered quotation for deposits in United States dollars for the period of six months, commencing on the related interest payment date, to prime banks in the London interbank market at approximately 11:00 a.m., London time, on that LIBOR determination date and in a principal amount that is representative for a single transaction in United States dollars in that market at that time; or

c) if fewer than two offered quotations referred to in clause (b) are provided as requested, the rate calculated by the calculation agent as the arithmetic mean (rounded, if necessary, to the nearest one thousandth of a percentage point, with five one-ten thousandths of a percentage point rounded upwards) of the rates quoted at approximately 11:00 a.m., New York time, on the particular LIBOR determination date by three major banks in The City of New York selected by the calculation agent for loans in United States dollars to leading European banks for a period of six months and in a principal amount that is representative for a single transaction in United States dollars in that market at that time; or

d) if the banks so selected by the calculation agent are not quoting as mentioned in clause (c), 6-month LIBOR in effect on the preceding LIBOR determination date (1.5625% per annum in the case of the reset on December 15, 2003).

" "Moneyline Telerate Page 3750" " means the display on Moneyline Telerate (or any successor service) on such page (or any other page as may replace such page on such service) for the purpose of displaying the London interbank rates of major banks for United States dollars.

" "London banking day" " means a day on which commercial banks are open for business, including dealings in United States dollars, in London.

The Calculation Agent shall be U.S. Bank National Association, or such other Person as the Company shall from time to time designate.

2. METHOD OF PAYMENT

The Holder must surrender this Note to a Paying Agent to collect payment of principal at maturity. The Company will make any payments of interest at maturity to the person to whom the principal is paid. On presentation and surrender of the certificated Note, the Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. The Company will make any payments of interest on any interest payment date other than the date of maturity by check mailed to the address of the record date registered holder as it appears in the security register; provided, however, that a Holder with an aggregate principal amount in excess of $2,000,000 will be paid by wire transfer in immediately available funds at the election of such Holder if such Holder has provided wire transfer instructions in writing to the Trustee not less than 10 Business Days prior to the interest payment date. Any wire transfer instructions received by the trustee will remain in effect until revoked by the registered holder. Notwithstanding the foregoing, so long as



this Note is registered in the name of a Depositary or its nominee, all payments hereon shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee.

3. PAYING AGENT, REGISTRAR AND CONVERSION AGENT

Initially, U.S. Bank National Association (the "Trustee", which term shall include any successor trustee under the Indenture hereinafter referred to) will act as Paying Agent, Registrar and Conversion Agent. The Company may change any Paying Agent, Registrar or Conversion Agent without notice to the Holder. The Company or any of its Subsidiaries may, subject to certain limitations set forth in the Indenture, act as Paying Agent or Registrar.

4. INDENTURE, LIMITATIONS

This Note is one of a duly authorized issue of Securities of the Company designated as its Floating Rate Convertible Subordinated Notes Due June 15, 2013 (the "Notes"), issued under an Indenture dated as of June 4, 2003 (together with any supplemental indentures thereto, the "Indenture"), between the Company and the Trustee. The terms of this Note include those stated in the Indenture and those required by or made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended, as in effect on the date of the Indenture. This Note is subject to all such terms, and the Holder of this Note is referred to the Indenture and said Act for a statement of them. Capitalized terms used and not defined herein have the meanings assigned to such terms in the Indenture.

The Notes are subordinated unsecured obligations of the Company limited to $175,000,000 aggregate principal amount (or $200,000,000 if the Initial Purchasers exercise their option to purchase additional Notes). The Indenture does not limit other debt of the Company, secured or unsecured, including Senior Indebtedness.

5. PURCHASE OF NOTES AT OPTION OF HOLDER UPON A CHANGE IN CONTROL

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase all or any part specified by the Holder (so long as the principal amount of such part is $1,000 or an integral multiple of $1,000 in excess thereof) of the Notes held by such Holder on the date that is 30 Business Days after the occurrence of a Change in Control, at a purchase price equal to 100% of the principal amount thereof together with accrued interest and Additional Interest, if any, up to, but excluding, the Change in Control Purchase Date. The Holder shall have the right to withdraw any Change in Control Purchase Notice (in whole or in a portion thereof that is $1,000 or an integral multiple of $1,000 in excess thereof) at any time prior to the close of business on the Business Day next preceding the Change in Control Purchase Date by delivering a written notice of withdrawal to the Paying Agent in accordance with the terms of the Indenture.

The Company may pay the purchase price in cash or certain securities, as set forth in the Indenture.

6. CONVERSION

A Holder of a Note may convert the principal amount of such Note (or any portion thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof) into shares of Common Stock at any time prior to the close of business on the Final Maturity Date; provided, however, that if the Note is subject to redemption or purchase upon a Change in Control, the conversion right will terminate at the close of



business on the Business Day immediately preceding the Redemption Date or Change in Control Purchase Date for such Note or such earlier date as the Holder presents such Note for purchase (unless the Company shall default in making the Redemption Price or Change in Control Purchase Price, when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Note is purchased).

The initial Conversion Price is $4.013 per share, subject to adjustment under certain circumstances as provided in the Indenture. The number of shares of Common Stock issuable upon conversion of a Note is determined by dividing the principal amount of the Note or portion thereof converted by the Conversion Price in effect on the Conversion Date. No fractional shares will be issued upon conversion; in lieu thereof, an amount will be paid in cash based upon the Closing Price (as defined in the Indenture) of the Common Stock on the Trading Day immediately prior to the Conversion Date.

To convert a Note, a Holder must (a) complete and manually sign the conversion notice set forth below and deliver such notice to a Conversion Agent, (b) surrender the Note to a Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, and (d) pay any transfer or similar tax, if required. Notes so surrendered for conversion (in whole or in part) during the period from the close of business on any regular record date to the opening of business on the next succeeding interest payment date, if any, shall also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such interest payment date on the principal amount of such Note then being converted, and such interest shall be payable to such registered Holder

notwithstanding the conversion of such Note, subject to the provisions of this Indenture relating to the payment of defaulted interest, if any, by the Company in each case to the extent provided in the Indenture, including Section 4.2 thereof. If the Company defaults in the payment of interest payable on such interest payment date, if any, the Company shall promptly repay such funds to such Holder. A Holder may convert a portion of a Note equal to $1,000 or any integral multiple thereof.

A Note in respect of which a Holder had delivered a Change in Control Purchase Notice exercising the option of such Holder to require the Company to purchase such Note may be converted only if the Change in Control Purchase Notice is withdrawn in accordance with the terms of the Indenture.

7. SUBORDINATION

The indebtedness evidenced by the Notes is, to the extent and in the manner provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness of the Company (including any interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowed as a claim in any such proceeding). Any Holder by accepting this Note agrees to and shall be bound by such subordination provisions and authorizes the Trustee to give them effect. In addition to all other rights of Senior Indebtedness described in the Indenture, the Senior Indebtedness shall continue to be Senior Indebtedness and entitled to the benefits of the subordination provisions irrespective of any amendment, modification or waiver of any terms of any instrument relating to the Senior Indebtedness or any extension or renewal of the Senior Indebtedness.

8. DENOMINATIONS, TRANSFER, EXCHANGE, CANCELLATION

The Notes are in registered form, without coupons, in denominations of $1,000 and integral multiples of $1,000. A Holder may register the transfer of or exchange Notes in accordance with the



Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or other governmental charges that may be imposed in relation thereto by law or permitted by the Indenture.

All Notes surrendered for payment, registration of transfer or exchange or conversion will, if surrendered to the Company or any of its other Agents with respect to the Notes, be delivered to the Trustee. The Trustee will promptly cancel all Notes delivered to it. No Notes will be authenticated in exchange for any Notes cancelled as provided in the Indenture.

9. PERSONS DEEMED OWNERS

The Holder of a Note may be treated as the owner of it for all purposes.

10. UNCLAIMED MONEY

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Company at its written request, subject to applicable unclaimed property law. After that, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

11. AMENDMENT, SUPPLEMENT AND WAIVER

Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, and an existing default or Event of Default and its consequence or compliance with any provision of the Indenture or the Notes may be waived in a particular instance with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding. Without the consent of or notice to any Holder, the Company and the

Trustee may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, defect or inconsistency or make any other change that does not adversely affect the rights of any Holder.

12. SUCCESSOR ENTITY

When a successor corporation assumes all the obligations of its predecessor under the Notes and the Indenture in accordance with the terms and conditions of the Indenture, the predecessor corporation (except in certain circumstances specified in the Indenture) be released from those obligations.

13. DEFAULTS AND REMEDIES

Under the Indenture, an Event of Default includes: (i) default for 30 days in payment of interest or Additional Interest, if any, on any Notes; (ii) default in payment of any principal (including, without limitation, any premium) on the Notes when due; (iii) failure by the Company for 60 days after notice to it to comply with any of its other covenants contained in the Indenture or the Notes; (iv) default in the payment of certain indebtedness of the Company or a Significant Subsidiary; (v) certain events of bankruptcy, insolvency or reorganization of the Company or any Significant Subsidiary and (vi) certain other events described in the Indenture. If an Event of Default (other than as a result of certain events of bankruptcy, insolvency or reorganization of the Company) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding may declare all unpaid principal to the date of acceleration on the Notes then outstanding to be due and payable



immediately, all as and to the extent provided in the Indenture. If an Event of Default occurs as a result of certain events of bankruptcy, insolvency or reorganization of the Company, unpaid principal of the Notes then outstanding shall become due and payable immediately without any declaration or other act on the part of the Trustee or any Holder, all as and to the extent provided in the Indenture. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Holders of a majority in aggregate principal amount of the Notes then outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing default (except a default in payment of principal or interest) if it determines that withholding notice is in their interests. The Company is required to file periodic reports with the Trustee as to the absence of default.

14. REDEMPTION AT THE OPTION OF THE COMPANY.

No sinking fund is provided for the Notes. Prior to June 23, 2008, the Notes will not be redeemable. Beginning on that date, the Company may redeem the Notes as a whole at any time, or in part from time to time, at the following redemption prices, expressed as a percentage of the principal amount of the Notes plus accrued and unpaid interest to, but excluding, the Redemption Date:

| Redemption Period | Redemption Price |
|---|---|
| Beginning June 23, 2008 and ending on June 14, 2009 | 100.98% |
| Beginning June 15, 2009 and ending on June 14, 2010 | 100.82% |
| Beginning June 15, 2010 and ending on June 14, 2011 | 100.66% |
| Beginning June 15, 2011 and thereafter | 100.5% |

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of Notes to be redeemed at the Holder' s registered address. If money sufficient to pay the redemption price plus accrued and unpaid interest to, but

excluding, the redemption date of all Notes (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent prior to or on the redemption date, immediately after such redemption date interest ceases to accrue on such Notes or portions thereof. Notes in denominations larger than $1,000 of principal amount may be redeemed in part but only in integral multiples of $1,000 of principal amount.

15. TRUSTEE DEALINGS WITH THE COMPANY

U.S. Bank National Association, the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from and perform services for the Company or an Affiliate of the Company, and may otherwise deal with the Company or an Affiliate of the Company, as if it were not the Trustee.



16. NO RECOURSE AGAINST OTHERS

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Indenture nor for any claim based on, in respect of or by reason of such obligations or their creation. The Holder of this Note by accepting this Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of this Note.

17. AUTHENTICATION

This Note shall not be valid until the Trustee or an authenticating agent manually signs the certificate of authentication on the other side of this Note.

18. ABBREVIATIONS AND DEFINITIONS

Customary abbreviations may be used in the name of the Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and UGMA (= Uniform Gifts to Minors Act).

All terms defined in the Indenture and used in this Note but not specifically defined herein are defined in the Indenture and are used herein as so defined.

19. INDENTURE TO CONTROL; GOVERNING LAW

In the case of any conflict between the provisions of this Note and the Indenture, the provisions of the Indenture shall control. This Note shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of law.

The Company will furnish to any Holder, upon written request and without charge, a copy of the Indenture. Requests may be made to: ADC Telecommunications, Inc., 13625 Technology Drive, Eden Prairie, MN 55440, [phone], Attention: Investor Relations.



**ASSIGNMENT FORM**

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

(Insert assignee' s soc. sec. or tax I.D. no.)

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

and irrevocably appoint

agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Your Signature:

Date: _____ _____

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

*Signature guaranteed by:

By: _____

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.



**CONVERSION NOTICE**

To convert this Note into Common Stock of the Company, check the box: ☐

To convert only part of this Note, state the principal amount to be converted (must be $1,000 or a integral multiple of $1,000):

$ .

If you want the stock certificate made out in another person' s name, fill in the form below:

(Insert assignee' s soc. sec. or tax I.D. no.)

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

Your Signature:

Date: _____ _____

(Sign exactly as your name appears on the

other side of this Note)

*Signature guaranteed by:

By: _____

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.



**OPTION TO ELECT REPURCHASE**
**UPON A CHANGE IN CONTROL**

To: ADC Telecommunications, Inc.

The undersigned registered owner of this Security hereby irrevocably acknowledges receipt of a notice from ADC Telecommunications, Inc. (the "Company") as to the occurrence of a Change in Control with respect to the Company and requests and instructs the Company to purchase the entire principal amount of this Security, or the portion thereof (which is $1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Security at the Change in Control Purchase Price, together with accrued interest, if any, to, but excluding, such date, to the registered Holder hereof.

Dated: _____

_____

_____

Signature(s) must be guaranteed by a qualified guarantor institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

_____

Signature Guaranty

Principal amount to be purchased
(in an integral multiple of $1,000, if less than all):

_____

NOTICE: The signature to the foregoing Election must correspond to the Name as written upon the face of this Security in every particular, without alteration or any change whatsoever.



**SCHEDULE OF EXCHANGES OF NOTES**(3)

The following exchanges, repurchases or conversions of a part of this global Note have been made:

| Principal Amount of this Global Note Following Such Decrease Date of Exchange (or Increase) | Authorized Signatory of Notes Custodian | Amount of Decrease in Principal Amount of this Global Note | Amount of Increase in Principal Amount of this Global Note |
|---|---|---|---|
| | | | |
| | | | |

(3) This schedule should be included only if the Security is a global Security.



**CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR REGISTRATION OF TRANSFER OF RESTRICTED SECURITIES(4)**

Re: Floating Rate Convertible Subordinated Notes Due June 15, 2013 (the "Notes") of ADC Telecommunications, Inc.

This certificate relates to $ principal amount of Notes owned in (check applicable box)

☐ book-entry or ☐ definitive form by (the "Transferor").

The Transferor has requested a Registrar or the Trustee to exchange or register the transfer of such Notes.

In connection with such request and in respect of each such Note, the Transferor does hereby certify that the Transferor is familiar with transfer restrictions relating to the Notes as provided in Section 2.12 of the Indenture dated as of June 4, 2003 between ADC Telecommunications, Inc. and U.S. Bank National Association, as trustee (the "Indenture"), and the transfer of such Securities is in accordance with any applicable securities laws of any state and is being made pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act") (check applicable box) or the transfer or exchange, as the case may be, of such Note does not require registration under the Securities Act because (check applicable box):

☐ Such Note is being transferred pursuant to an effective registration statement under the Securities Act.

☐ Such Note is being acquired for the Transferor' s own account, without transfer.

☐ Such Note is being transferred to the Company.

☐ Such Note is being transferred to a person the Transferor reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A or any successor provision thereto ("Rule 144A") under the Securities Act) that is purchasing for its own account or for the account of a "qualified institutional buyer", in each case to whom notice has been given that the transfer is being made in reliance on such Rule 144A, and in each case in reliance on Rule 144A.

☐ Such Note is being transferred pursuant to and in compliance with an exemption from the registration requirements under the Securities Act in accordance with Rule 144 (or any successor thereto) ("Rule 144") under the Securities Act.

☐ Such Note is being transferred to a non-U.S. Person in an offshore transaction in compliance with Rule 904 of Regulation S under the Securities Act (or any successor thereto).

(4) This certificate should only be included if this Security is a Transfer Restricted Security.

The Transferor acknowledges and agrees that, if the transferee will hold any such Notes in the form of beneficial interests in a global Note which is a "restricted security" within the meaning of Rule 144 under the Securities Act, then such transfer can only be made pursuant to (i) Rule 144A under the Securities Act and such transferee must be a "qualified institutional buyer" (as defined in Rule 144A) or (ii) Regulation S under the Securities Act.

Date: _____ _____

(Insert Name of Transferor)

**Exhibit 4-h**

**EXECUTION COPY**

**ADC Telecommunications, Inc.**

**1.00% Convertible Subordinated Notes due 2008**

**$175,000,000 Floating Rate Convertible Subordinated Notes due 2013**

# REGISTRATION RIGHTS AGREEMENT

June 4, 2003

Banc of America Securities LLC
Credit Suisse First Boston LLC
Merrill Lynch Pierce Fenner & Smith Incorporated
as Representatives of the Initial Purchasers
c/o Credit Suisse First Boston LLC
Eleven Madison Avenue
New York, New York 10010-3629

Dear Sirs:

ADC Telecommunications, Inc., a Minnesota corporation (the "**Company**"), proposes to issue and sell to Banc of America Securities LLC, Credit Suisse First Boston LLC, Merrill Lynch Pierce Fenner & Smith Incorporated and the other initial purchasers listed on Schedule A of the Purchase Agreement referred to below (collectively, the "**Initial Purchasers**"), upon the terms set forth in a purchase agreement dated May 29, 2003 (the "**Purchase Agreement**"), $175,000,000 aggregate principal amount (plus up to an additional $25,000,000 principal amount) of its 1.00% Convertible Subordinated Notes due 2008 and $175,000,000 aggregate principal amount (plus up to an additional $25,000,000 principal amount) of its Floating Rate Subordinated Notes due 2013 (the "**Initial Securities**"). The Initial Securities will be convertible into shares of common stock, par value $0.20 per share, of the Company (including any security issued with respect thereto upon any stock dividend, split or similar dividend, the "**Common Stock**") at the conversion price set forth in the Offering Circular dated May 29, 2003. The Initial Securities will be issued pursuant to an Indenture, to be dated as of June 4, 2003 (the "**Indenture**"), between the Company and U.S. Bank National Association , as trustee (the "**Trustee**"). As an inducement to the Initial Purchasers to enter into the Purchase Agreement, the Company agrees with the Initial Purchasers, for the benefit of (i) the Initial Purchasers and (ii) the holders of the Initial Securities and the Common Stock issuable upon conversion of the Initial Securities (collectively, the "**Securities**") from time to time until such time as such Securities have been sold pursuant to a Shelf Registration Statement (as defined below) (each of the foregoing a "**Holder**" and collectively the "**Holders**"), as follows:

1. *Shelf Registration*. (a) The Company shall, at its cost, prepare and, as promptly as practicable (but in no event more than 90 days after the first date of original issuance of the Initial Securities) file with the Securities and Exchange Commission (the "**Commission**") and thereafter use its commercially reasonable efforts to cause to be declared effective as soon as practicable (but in no event later than 180 days after the first date of original issuance of the Initial Securities) a registration statement on Form S-3 (the "**Shelf Registration Statement**") relating to the offer and sale of the Transfer Restricted Securities (as defined in Section 5(d) hereof) by the Holders thereof from time to time in accordance with the methods of

distribution set forth in the Shelf Registration Statement and Rule 415 under the Securities Act of 1933, as amended (the "**Securities Act**") (hereinafter, the "**Shelf Registration**"); provided, however, that no Holder (other than an Initial Purchaser) shall be entitled to have the Securities held by it covered by such Shelf Registration Statement unless such Holder agrees in writing to be bound by all the provisions of this Agreement applicable to such Holder.

(b) The Company shall use its commercially reasonable efforts to keep the Shelf Registration Statement continuously effective in order to permit the prospectus included therein (the "**Prospectus**") to be lawfully delivered by the Holders of the relevant Securities, for a period of two years (or for such longer period if extended pursuant to Section 2(h) below) from the date of its effectiveness or such shorter period that will terminate when all the Securities covered by the Shelf Registration Statement (i) have been sold pursuant thereto or pursuant to Rule 144 under the Securities Act (or any similar provision then in effect), (ii) are no longer restricted securities (as defined in Rule 144(k) under the Securities Act, or any successor rule thereof), assuming for this purpose that the Holders thereof are not affiliates of the Company or (iii) have ceased to be outstanding (whether as a result of repurchase and cancellation, conversion or otherwise) (in any such case, such period being called the "**Shelf Registration Period**"). Subject to Section 1(d) below, the Company shall be deemed not to have used commercially reasonable efforts to keep the Shelf Registration Statement effective during the requisite period if it voluntarily takes any action that would result in Holders of Securities covered thereby not being able to offer and sell such Securities during that period, unless such action is (i) required by applicable law or (ii) taken by the Company in good faith and contemplated by Section 2(b)(v) below, and the Company thereafter complies with the requirements of Section 2(h). At the time the Shelf Registration Statement is declared effective, each Holder who has provided the Company with an appropriately completed Notice and Questionnaire (in the form set forth in the Offering Circular with respect to the Initial Securities) on or prior to the deadline for response set forth therein and who holds Transfer Restricted Securities, shall be named as a selling securityholder in the Shelf Registration Statement and the related prospectus in such a manner as to permit such Holder to deliver such prospectus to purchasers of Transfer Restricted Securities in accordance with applicable law. None of the Company' s securityholders (other than the Holders of Transfer Restricted Securities) shall have the right to include any of the Company' s securities in the Shelf Registration Statement.

(c) Notwithstanding any other provisions of this Agreement to the contrary, the Company shall cause the Shelf Registration Statement and the Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement, amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act and the rules and regulations of the Commission and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) The Company may suspend the use of the prospectus for a period ("**Suspension Period**") not to exceed 45 days in any 90-day period or an aggregate of 90 days in any 365-day period if the Board of Directors of the Company shall have determined in good faith that because of valid business reasons (not including avoidance of the Company' s obligations hereunder), including, without limitation, the acquisition or divestiture of assets, pending corporate developments, public filings with the Commission and similar events, it is in the interest of the Company to suspend such use, and prior to suspending such use the Company provides the Holders with written notice of such suspension, which notice need not specify the nature of the event giving rise to such suspension.

2. *Registration Procedures*. In connection with the Shelf Registration contemplated by Section 1 hereof, the following provisions shall apply:

(a) (i) Not less than 30 calendar days prior to the anticipated effective date of the Shelf Registration Statement, the Company shall mail the Notice and Questionnaire to the Holders of Transfer Restricted Securities. No Holder shall be entitled to be named as a selling securityholder in the Shelf Registration Statement as of the Effective Date, and no Holder shall be entitled to use the prospectus



forming a part thereof for offers and resales of Transfer Restricted Securities at any time, unless such Holder has returned a completed and signed Notice and Questionnaire to the Company at least two business days prior to effectiveness of the Shelf Registration Statement and has been identified in the prospectus or prospectus supplement as a selling securityholder. Notwithstanding the foregoing, upon the request of any

Holder of Transfer Restricted Securities that did not return a Notice and Questionnaire on a timely basis or did not receive a Notice and Questionnaire because it was a subsequent transferee of Transfer Restricted Securities after the Company mailed the Notice and Questionnaire, (x) the Company shall distribute a Notice and Questionnaire to such Holder at the address set forth in the request and (y) upon receipt of a properly completed Notice and Questionnaire from such Holder, the Company will use reasonable efforts to, as promptly as practicable, file any amendments or supplements to the Shelf Registration Statement so that such Holder may use the Shelf Registration Statement; provided, however, that the Company shall have no obligation to pay Additional Interest to such Holder for its failure to file a pre-effective amendment or prospectus supplement. The Company may further require each Holder to furnish to the Company such information regarding the Holder and the distribution of the Transfer Restricted Securities as the Company may reasonably require for inclusion in the Shelf Registration Statement and each Holder agrees to supply such information promptly upon such request. Each Holder agrees that such Holder shall immediately notify the Company if any information previously furnished by such Holder contained in the Shelf Registration Statement contains any untrue statement of a material fact or omits to state therein a material fact necessary to make the statements therein not misleading, and immediately furnish to the Company such additional information or changes as are necessary so that any information regarding such Holder contained in the Shelf Registration Statement or Prospectus does not contain an untrue statement of a material fact or omits to state therein a material fact necessary to make the statements therein not misleading.

(ii) The Company shall (A) furnish to each Initial Purchaser, prior to the filing thereof with the Commission, a copy of the Shelf Registration Statement and each amendment thereof and each supplement, if any, to the prospectus included therein and, in the event that an Initial Purchaser (with respect to any portion of an unsold allotment from the original offering) is participating in the Shelf Registration Statement, shall use its best efforts to reflect in each such document, when so filed with the Commission, such comments as such Initial Purchaser reasonably may propose; and (B) include the names of the Holders who propose to sell Securities pursuant to the Shelf Registration Statement as selling securityholders.

(b) The Company shall give written notice to the Initial Purchasers and the Holders of the Securities (which notice pursuant to clauses (ii)-(v) hereof shall be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made):

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

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

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

(iv) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(v) of the happening of any event that requires the Company to make changes in the Shelf Registration Statement or the Prospectus in order that the Shelf Registration Statement or the Prospectus does not contain an untrue statement of a material fact nor omit to state a material fact



required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading; and

(vi) of the start and completion of any Suspension Period.

(c) The Company shall use commercially reasonable efforts to obtain the withdrawal at the earliest possible time, of any order suspending the effectiveness of the Shelf Registration Statement.

(d) The Company shall furnish to each Holder of Securities included within the coverage of the Shelf Registration, without charge, at least one copy of the Shelf Registration Statement and any post-effective amendment thereto, including financial statements and schedules, and, if the Holder so requests in writing, all exhibits thereto (including those, if any, incorporated by reference).

(e) The Company shall, during the Shelf Registration Period, deliver to each Holder of Securities included within the coverage of the Shelf Registration, without charge, as many copies of the Prospectus (including each preliminary prospectus) included in the Shelf Registration Statement and any amendment or supplement thereto as such person may reasonably request. The Company consents, subject to the provisions of this Agreement, to the use of the Prospectus or any amendment or supplement thereto by each of the selling Holders of the Securities in connection with the offering and sale of the Securities covered by the Prospectus, or any amendment or supplement thereto, included in the Shelf Registration Statement.

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

(g) The Company shall cooperate with the Holders of the Securities to facilitate the timely preparation and delivery of certificates representing the Securities to be sold pursuant to any Registration Statement free of any restrictive legends and in such denominations and registered in such names as the Holders may request a reasonable period of time prior to sales of the Securities pursuant to the Shelf Registration Statement.

(h) Upon the occurrence of any event contemplated by paragraphs (ii) through (v) of Section 2(b) above during the period for which the Company is required to maintain an effective Shelf Registration Statement, the Company shall, subject to Section 1(d) above promptly prepare and file a post-effective amendment to the Shelf Registration Statement or an amendment or supplement to the Prospectus and any other required document so that, as thereafter delivered to Holders or purchasers of the Securities, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Initial Purchasers and the Holders in accordance with paragraphs 1(d) or (ii) through (v) of Section 2(b) above to suspend the use of the Prospectus until the requisite changes to the Prospectus have been made, then the Initial Purchasers and the Holders shall suspend use of such prospectus, and the period of effectiveness of the Shelf Registration Statement provided for in Section 1(b) above shall be extended by the number of days from and including the date of the giving of such notice to and including the date when the Initial Purchasers and the Holders shall have received such amended or supplemented prospectus pursuant to this Section 2(h).

(i) Not later than the effective date of the Shelf Registration Statement, the Company will provide CUSIP numbers for the Initial Securities and the Common Stock registered under the Shelf Registration



Statement, and provide the Trustee with printed certificates for the Initial Securities, in a form eligible for deposit with The Depository Trust Company.

(j) The Company will comply with all rules and regulations of the Commission to the extent and so long as they are applicable to the Shelf Registration and will make generally available to its security holders (or otherwise provide in accordance with Section 11(a) of the Securities Act) an earnings statement satisfying the provisions of Section 11(a) of the Securities Act, no later than 45 days after the end of a

12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company' s first fiscal quarter commencing after the effective date of the Shelf Registration Statement, which statement shall cover such 12-month period.

(k) The Company shall cause the Indenture to be qualified under the Trust Indenture Act of 1939, as amended, (the "**Trust Indenture Act**") in a timely manner and containing such changes, if any, as shall be necessary for such qualification. In the event that such qualification would require the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(l) The Company may require each Holder of Securities to be sold pursuant to the Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of the Securities as the Company may from time to time reasonably require for inclusion in the Shelf Registration Statement.

(m) The Company shall enter into such customary agreements (including, if requested, an underwriting agreement in customary form) and take all such other actions, if any, as any Holder shall reasonably request in order to facilitate the disposition of the Securities pursuant to the Shelf Registration.

(n) The Company shall (i) make reasonably available for inspection by the Holders, any underwriter participating in any disposition pursuant to the Shelf Registration Statement and any attorney, accountant or other agent retained by the Holders or any such underwriter, all relevant financial and other records, pertinent corporate documents and properties of the Company and (ii) cause the Company' s officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the Holders or any such underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement, in each case, as shall be reasonably necessary to enable such persons, to conduct a reasonable investigation within the meaning of Section 11 of the Securities Act; provided, however, that the foregoing inspection and information gathering shall be coordinated on behalf of the Initial Purchasers by you and on behalf of the other parties, by one counsel designated by and on behalf of such other parties as described in Section 3 hereof; provided, further, however, that all records, information and documents provided by the Company shall be kept confidential by such Holders and any such underwriter, attorney, accountant or agent, unless such disclosure is made in connection with a court proceeding or required by law, or such records, information or documents are or become available to the public generally or through a third party without an accompanying obligation of confidentiality.

(o) The Company, if requested by any Holder of Securities covered by the Shelf Registration Statement in connection with an underwritten public offering shall cause (i) its counsel to deliver an opinion and updates thereof relating to the Securities in customary form addressed to such Holders and the managing underwriters, if any, thereof, and dated, in the case of the initial opinion, the effective date of such Shelf Registration Statement (it being agreed that the matters to be covered by such opinion shall include, without limitation, the due incorporation and good standing of the Company; the due authorization, execution and delivery of the relevant agreement of the type referred to in Section 2(m) hereof; the due authorization, execution, authentication and issuance, and the validity and enforceability, of the Securities; the absence of governmental approvals required to be obtained in connection with the Shelf Registration Statement, the offering and sale of the Securities, or any agreement of the type referred to in Section 2(m) hereof; the compliance as to form of the Shelf Registration Statement and any documents incorporated by reference therein and of the Indenture with the requirements of the Securities Act and the Trust Indenture



Act, respectively; and, a letter in customary form stating that as of the date of the opinion and as of the effective date of the Shelf Registration Statement or most recent post-effective amendment thereto, as the case may be, the absence from the Shelf Registration Statement and the prospectus included therein, as then amended or supplemented, and from any documents incorporated by reference therein of an untrue statement of a material fact or the omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any such documents, in the light of the circumstances existing at the time that such documents were filed with the Commission under the Exchange Act of 1934, as amended (the "**Exchange Act**")), (ii) its officers to execute and deliver all customary documents and certificates and updates thereof requested by any underwriters of the Securities and (iii) its independent public accountants and the independent public accountants with respect to any other entity for which financial information is provided in the Shelf Registration Statement to provide to the selling Holders of the applicable Securities and any underwriter therefor a comfort letter in customary

form and covering matters of the type customarily covered in comfort letters in connection with primary underwritten offerings, subject to receipt of appropriate documentation as contemplated, and only if permitted, by Statement of Auditing Standards No. 72.

(p) The Company will use its best efforts to (a) if the Initial Securities have been rated prior to the initial sale of such Initial Securities, confirm such ratings will apply to the Securities covered by a Registration Statement, or (b) if the Initial Securities were not previously rated, cause the Securities covered by a Registration Statement to be rated with the appropriate rating agencies, if so requested by holders of a majority in aggregate principal amount of Securities covered by the Shelf Registration Statement, or by the managing underwriters, if any.

(q) In the event that any broker-dealer registered under the Exchange Act shall underwrite any Securities or participate as a member of an underwriting syndicate or selling group or "assist in the distribution" (within the meaning of the Conduct Rules (the "**Rules**") of the National Association of Securities Dealers, Inc. ("**NASD**")) thereof, whether as a Holder of such Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company will assist such broker-dealer in complying with the requirements of such Rules, including, without limitation, by (i) if such Rules, including Rule 2720, shall so require, engaging a "qualified independent underwriter" (as defined in Rule 2720) to participate in the preparation of the Shelf Registration Statement relating to such Securities, to exercise usual standards of due diligence in respect thereto and, if any portion of the offering contemplated by such Registration Statement is an underwritten offering or is made through a placement or sales agent, to recommend the yield of such Securities, (ii) indemnifying any such qualified independent underwriter to the extent of the indemnification of underwriters provided in Section 5 hereof and (iii) providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the Rules.

(r) The Company shall use its best efforts to take all other steps necessary to effect the registration of the Securities covered by a Registration Statement contemplated hereby.

3. *Registration Expenses*. (a) All expenses incident to the Company' s performance of and compliance with this Agreement will be borne by the Company, regardless of whether a Registration Statement is ever filed or becomes effective, including without limitation:

(i) all registration and filing fees and expenses;

(ii) all fees and expenses of compliance with federal securities and state "blue sky" or securities laws;

(iii) all expenses of printing (including printing certificates for the Securities to be issued and printing of Prospectuses), messenger and delivery services and telephone;

(iv) all fees and disbursements of counsel for the Company;



(v) all application and filing fees in connection with listing the Securities on a national securities exchange or automated quotation system pursuant to the requirements hereof; and

(vi) all fees and disbursements of independent certified public accountants of the Company (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Company will bear its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit and the fees and expenses of any person, including special experts, retained by the Company.

(b) In connection with the Shelf Registration Statement required by this Agreement, the Company will reimburse the Initial Purchasers and the Holders of Securities covered by the Shelf Registration Statement, for the reasonable fees and disbursements of not more

than one counsel, designated by the Holders of a majority in principal amount of the Securities covered by the Shelf Registration Statement (provided that Holders of Common Stock issued upon the conversion of the Initial Securities shall be deemed to be Holders of the aggregate principal amount of Initial Securities from which such Common Stock was converted) to act as counsel for the Holders in connection therewith.

4. *Indemnification*. (a) The Company agrees to indemnify and hold harmless each Holder and each person, if any, who controls such Holder within the meaning of the Securities Act or the Exchange Act (each Holder, and such controlling persons are referred to collectively as the "**Indemnified Parties**") from and against any losses, claims, damages or liabilities, joint or several, or any actions in respect thereof (including, but not limited to, any losses, claims, damages, liabilities or actions relating to purchases and sales of the Securities) to which each Indemnified Party may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement or prospectus including any document incorporated by reference therein, or in any amendment or supplement thereto or in any preliminary prospectus relating to the Shelf Registration, or arise out of, or are based upon, the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse, as incurred, the Indemnified Parties for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action in respect thereof; provided, however, that (i) the Company shall not be liable in any such case to the extent that such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in the Shelf Registration Statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to the Shelf Registration in reliance upon and in conformity with written information pertaining to such Holder and furnished to the Company by or on behalf of such Holder specifically for inclusion therein and (ii) with respect to any untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus relating to the Shelf Registration Statement, the indemnity agreement contained in this subsection (a) shall not inure to the benefit of any Holder from whom the person asserting any such losses, claims, damages or liabilities purchased the Securities concerned, to the extent that a prospectus relating to such Securities was required to be delivered by such Holder under the Securities Act in connection with such purchase and any such loss, claim, damage or liability of such Holder results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Securities to such person, a copy of the final prospectus if the Company had previously furnished copies thereof to such Holder; provided further, however, that this indemnity agreement will be in addition to any liability which the Company may otherwise have to such Indemnified Party. The Company shall also indemnify underwriters, their officers and directors and each person who controls such underwriters within the meaning of the Securities Act or the Exchange Act to the same extent as provided above with respect to the indemnification of the Holders of the Securities if requested by such Holders.



(b) Each Holder, severally and not jointly, will indemnify and hold harmless the Company, its officers and directors and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act from and against any losses, claims, damages or liabilities or any actions in respect thereof, to which the Company or any such controlling person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to the Shelf Registration, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading, but in each case only to the extent that the untrue statement or omission or alleged untrue statement or omission was made in reliance upon and in conformity with written information pertaining to such Holder and furnished to the Company by or on behalf of such Holder specifically for inclusion therein; and, subject to the limitation set forth immediately preceding this clause, shall reimburse, as incurred, the Company for any legal or other expenses reasonably incurred by the Company or any such controlling person in connection with investigating or defending any loss, claim, damage, liability or action in respect thereof. This indemnity agreement will be in addition to any liability which such Holder may otherwise have to the Company or any of its controlling persons.

(c) Promptly after receipt by an indemnified party under this Section 4 of notice of the commencement of any action or proceeding (including a governmental investigation), such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 4, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall

not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof the indemnifying party will not be liable to such indemnified party under this Section 4 for any legal or other expenses, other than reasonable costs of investigation, subsequently incurred by such indemnified party in connection with the defense thereof. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action, and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 4 is unavailable or insufficient to hold harmless an indemnified party under subsections (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to in subsection (a) or (b) above in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or such Holder or such other indemnified party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of



this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding any other provision of this Section 4(d), the Holders shall not be required to contribute any amount in excess of the amount by which the net proceeds received by such Holders from the sale of the Securities pursuant to the Shelf Registration Statement exceeds the amount of damages which such Holders have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this paragraph (d), each person, if any, who controls such indemnified party within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such indemnified party and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Company.

(e) The agreements contained in this Section 4 shall survive the sale of the Securities pursuant to the Shelf Registration Statement and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party.

5. *Additional Interest Under Certain Circumstances*. (a) Additional interest (the "**Additional Interest**") with respect to the Initial Securities that are Transfer Restricted Securities (provided that for the purpose of this Section 5, holders of Common Stock issued upon conversion of the Initial Securities shall be deemed to be holders of the aggregate principal amount of Initial Securities from which such Common Stock was converted) shall be assessed as follows if any of the following events occur (each such event in clauses (i) through (iii) below being herein called a "**Registration Default**"):

(i) the Shelf Registration Statement has not been filed with the Commission by the 90th day after the first date of original issuance of the Initial Securities;

(ii) the Shelf Registration Statement has not been declared effective by the Commission by the 180th day after the first date of original issue of the Initial Securities;

(iii) the Shelf Registration Statement is declared effective by the Commission but the Shelf Registration Statement thereafter ceases to be effective or usable in connection with resales of Transfer Restricted Securities during the periods specified herein, except as provided in 5(b) below.

Each of the foregoing will constitute a Registration Default whatever the reason for any such event and whether it is voluntary or involuntary or is beyond the control of the Company or pursuant to operation of law or as a result of any action or inaction by the Commission, and each period during which a Registration Default has occurred and is continuing until the earlier of such time as no Registration Default is in effect being herein called a "**Registration Default Period**").

Additional Interest shall accrue on the Initial Securities over and above the interest set forth in the title of the Initial Securities from and including the date on which any such Registration Default shall occur to but excluding the date on which all such Registration Defaults have been cured, at a rate of 0.25% per annum for the first 90 days of the Registration Default Period, and at a rate of 0.50% per annum thereafter for the remaining portion of the Registration Default Period, (in each case, the "**Additional Interest Rate**") provided that in no event shall the Additional Interest Rate exceed 0.50% per annum.

No Additional Interest shall accrue as to any Initial Security or Common Stock from and after the earlier of the date such security is no longer a Transfer Restricted Security. Following the cure of all Registration Defaults requiring the payment by the Company of Additional Interest to the Holders of Transfer Restricted Securities pursuant to this Section 5, the accrual of Additional Interest will cease (without in any way limiting the effect of any subsequent Registration Default requiring the payment of



Additional Interest by the Company). All of the Company' s obligations set forth in this Section 5 that are outstanding with respect to any Transfer Restricted Security at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such security have been satisfied in full.

(b) A Registration Default referred to in Section 5(a)(iii) hereof shall be deemed not to have occurred and be continuing in relation to the Shelf Registration Statement or the related prospectus if (i) such Registration Default has occurred solely as a result of (x) the filing of a post-effective amendment to the Shelf Registration Statement to incorporate annual audited financial information with respect to the Company where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related prospectus or (y) other material events, with respect to the Company that would need to be described in such Shelf Registration Statement or the related prospectus and (ii) in the case of clause (y), (1) the Company is proceeding promptly and in good faith to amend or supplement the Shelf Registration Statement and related prospectus to describe such events as required by paragraph 2(h) hereof (provided, however, that in any case if such Registration Default occurs for a continuous period in excess of 5 business days, Additional Interest shall be payable in accordance with the above paragraph from the day such Registration Default occurs until such Registration Default is cured) or (2) if applicable, the Company terminates the Suspension Period by the 45th day or 90th day, as applicable.

(c) Any amounts of Additional Interest due pursuant to Section 5(a) will be payable in cash on the regular interest payment dates with respect to the Initial Securities. The amount of Additional Interest will be determined by multiplying the applicable Additional Interest Rate by the principal amount of the Initial Securities (or the deemed principal amount, in the case of Common Stock), further multiplied by a fraction, the numerator of which is the number of days such Additional Interest Rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months), and the denominator of which is 360.

(d) "**Transfer Restricted Securities**" means each Security until (i) the date on which such Security has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement or (ii) the date on which such Security is distributed to the public pursuant to Rule 144 under the Securities Act (or any similar provision then in force) or is saleable pursuant to Rule 144(k) under the Securities Act if, as a result, the legends with respect to transfer restrictions required under the Indenture are removed or removable in accordance with the terms thereof.

6. *Rules 144 and 144A*. The Company shall use its commercially reasonable efforts to file the reports required to be filed by it under the Securities Act and the Exchange Act in a timely manner and, if at any time the Company is not required to file such reports, it will, upon the request of any Holder, make publicly available other information so long as necessary to permit sales of their securities pursuant to Rules 144 and 144A. The Company covenants that it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Transfer Restricted Securities without registration under the Securities Act within the limitation of the exemptions provided by Rules 144 and 144A (including the requirements of Rule 144A(d)(4)). The Company will provide a copy of this Agreement to prospective purchasers of Securities identified to the Company by the Initial Purchasers upon request. Upon the request of any Holder, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 6 shall be deemed to require the Company to register any of its securities pursuant to the Exchange Act.

7. *Underwritten Registrations*. If any of the Transfer Restricted Securities covered by the Shelf Registration are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will administer the offering ("**Managing Underwriters**") will be selected by the holders of a majority in aggregate principal amount of such Transfer Restricted Securities to be included in such offering (provided that holders of Common Stock issued upon conversion of the Initial Securities shall



not be deemed holders of Common Stock, but shall be deemed to be holders of the aggregate principal amount of Initial Securities from which such Common Stock was converted).

No person may participate in any underwritten registration hereunder unless such person (i) agrees to sell such person' s Transfer Restricted Securities on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

8. *Miscellaneous*.

(a) *Remedies*. The Company acknowledges and agrees that any failure by the Company to comply with its obligations under Section 1 hereof may result in material irreparable injury to the Initial Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchasers or any Holder may obtain such relief as may be required to specifically enforce the Company' s obligations under Sections 1 hereof. The Company further agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) *No Inconsistent Agreements*. The Company will not on or after the date of this Agreement enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. The rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of the Company' s securities under any agreement in effect on the date hereof.

(c) *Amendments and Waivers*. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, except by the Company and the written consent of the holders of a majority in principal amount of the Securities affected by such amendment, modification, supplement, waiver or consents (provided that holders of Common Stock issued upon conversion of Initial Securities shall not be deemed holders of Common Stock, but shall be deemed to be holders of the aggregate principal amount of Initial Securities from which such Common Stock was converted). Without the consent of the

Holder of each Initial Security that is a Transfer Restricted Security, however, no modification may change the provisions relating to the payment of Additional Interest.

(d) *Notices*. All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, first-class mail return receipt requested, facsimile transmission, or air courier which guarantees overnight delivery:

(1) if to a Holder of the Securities, at the most current address given by such Holder to the Company.

(2) if to the Initial Purchasers;

Credit Suisse First Boston LLC
Eleven Madison Avenue
New York, NY 10010-3629
Fax No.: (212) 325-8278
Attention: Transactions Advisory Group



with a copy to:

Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017
Fax No.: (212) 450-3800
Attention: Michael P. Kaplan

(3) if to the Company, at its address as follows:

ADC Telecommunications, Inc.
13625 Technology Drive
Eden Prairie, Minnesota 55440
Attention: General Counsel

with a copy to:

Dorsey & Whitney LLP
Suite 1500
50 South Six Street
Minneapolis, MN 5502
Attention: Jay L. Swanson
Dannette L. Smith

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; three business days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged by recipient' s facsimile machine operator, if sent by facsimile transmission; and on the day delivered, if sent by overnight air courier guaranteeing next day delivery.

(e) *Third Party Beneficiaries.* The Holders shall be third party beneficiaries to the agreements made hereunder between the Company, on the one hand, and the Initial Purchasers, on the other hand, and shall have the right to enforce such agreements directly to the extent they may deem such enforcement necessary or advisable to protect their rights or the rights of Holders hereunder.

(f) *Successors and Assigns*. This Agreement shall be binding upon the Company and its successors and assigns.

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

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

(i) *Governing* Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

By the execution and delivery of this Agreement, the Company submits to the nonexclusive jurisdiction of any federal or state court in the State of New York.

(j) *Severability*. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any



such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(k) *Securities Held by the Company*. Whenever the consent or approval of Holders of a specified percentage of principal amount of Securities is required hereunder, Securities held by the Company or its affiliates (other than subsequent Holders of Securities if such subsequent Holders are deemed to be affiliates solely by reason of their holdings of such Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.



If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the several Initial Purchasers and the Company in accordance with its terms.

Very truly yours,

ADC TELECOMMUNICATIONS, INC.

by

/s/ Robert E. Switz

Name: Robert E. Switz

Title: Executive Vice President and Chief Financial Officer

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

BANC OF AMERICA SECURITIES LLC
CREDIT SUISSE FIRST BOSTON LLC
MERRILL LYNCH PIERCE FENNER & SMITH INCORPORATED
as Representatives of the Initial Purchasers

By: BANC OF AMERICA SECURITIES LLC

by

/s/ Robert Santangelo

Name: Robert Santangelo
Title: Managing Director

By: CREDIT SUISSE FIRST BOSTON LLC

by

/s/ Brian D. Host

Name: Brian D. Host
Title: Director

By: MERRILL LYNCH PIERCE FENNER & SMITH INCORPORATED

by

/s/ Hubert Chang

Name: Hubert Chang
Title: Vice President

**Exhibit 10-a**

**FIRST AMENDMENT**
**OF**
**ADC TELECOMMUNICATIONS, INC. 401(K) EXCESS PLAN**
**(2002 Restatement)**

WITNESSETH: That

WHEREAS, ADC TELECOMMUNICATIONS, INC., a Minnesota corporation (the "Principal Sponsor"), by resolution of its Board of Directors, has heretofore established and maintained a nonqualified, unfunded, deferred compensation and supplemental retirement plan for the benefit of a select group of management or highly compensated eligible employees, which in its most restated form, is embodied in a document effective January 1, 2002 and entitled "ADC Telecommunications, Inc. 401(k) Excess Plan (2002 Restatement)" (the "Plan Statement"); and

WHEREAS, The Principal Sponsor has delegated to the Retirement Committee of ADC Telecommunications, Inc. the power to make further amendments of the Plan Statement in any respect that does not materially increase the cost of the plan, and the Retirement Committee desires to amend the Plan Statement;

NOW, THEREFORE, The Plan Statement is hereby amended in the following respects:

**1. CODE § 162(m) DELAY. Effective for distributions payable on or after February 26, 2002, Section 7 of the Plan Statement shall be amended by the addition of the following new Section 7.5 and all subsequent sections (and cross-references thereto) shall be renumbered:**

7.5 **Code § 162(m) Delay**. If the Committee determines that delaying the time that initial payments are made or commenced would increase the probability that such payments would be fully deductible for federal or state income tax purposes, the Employer may unilaterally delay the time of the making or commencement of payments until the January 31 of the calendar year next following the calendar year in which the payments would otherwise be payable.

**2. SAVINGS CLAUSE. Save and except as hereinabove expressly amended, the Plan Statement shall continue in full force and effect.**

**Exhibit 10-b**

**SECOND AMENDMENT**
**OF**
**ADC TELECOMMUNICATIONS, INC.**
**401(k) EXCESS PLAN**
**(2002 Restatement)**

The "ADC TELECOMMUNICATIONS, INC. 401(k) EXCESS PLAN" adopted by ADC Telecommunications, Inc., a Minnesota corporation (the "Principal Sponsor") effective September 1, 1990, and which, in most recent amended and restated form, is embodied in a document entitled "ADC TELECOMMUNICATIONS, INC. 401(k) EXCESS PLAN (2002 Restatement)," as amended by a First Amendment adopted on February 26, 2002 (hereinafter collectively referred to the "Plan Statement"), is hereby amended in the following respect:

**1. FIXED MATCH ADDITIONS. Effective for all excess compensation paid after April 1, 2003, Section 3.2.1 of the Plan Statement is amended to read in full as follows:**

3.2.1. **Amount**. The Employer shall credit each eligible Participant' s Fixed Match Account with an amount equal to fifty percent (50%) of the first six percent (6%) of reduction in Excess Compensation for each pay period which was agreed to by the Participant pursuant to an Excess Savings Agreement.

**2. SAVINGS CLAUSE. Save and except as hereinabove expressly amended, the Plan Statement shall continue in full force and effect.**

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**Exhibit 10-c**

**THIRD AMENDMENT**
**OF**
**ADC TELECOMMUNICATIONS, INC.**
**401(k) EXCESS PLAN**
**(2002 Restatement)**

WHEREAS, ADC TELECOMMUNICATIONS, INC., a Minnesota corporation (the "Principal Sponsor"), by resolution of its Board of Directors, has heretofore established and maintained a nonqualified, unfunded, deferred compensation and supplemental retirement plan for the benefit of a select group of management or highly compensated eligible employees (the "Plan"), which in its most restated form, is embodied in a document entitled "ADC TELECOMMUNICATIONS, INC. 401(k) EXCESS PLAN (2002 Restatement)," as amended by two amendments (hereinafter collectively referred to the "Plan Statement"), and

WHEREAS, The Retirement Committee of ADC Telecommunications, Inc. (the "Committee") has been delegated the power to make further amendments of the Plan Statement which do not materially increase the cost of the Plan; and

WHEREAS, On September 4, 2002 but effective January 1, 2003, the Committee adopted a resolution removing the Plan' s eligibility grandfathering provision applicable to certain employees who were eligible to participate in the Plan before November 1, 2000 (as embodied in Section 2.2 of the Plan Statement).

NOW, THEREFORE, The Plan Statement is hereby amended consistent with the Committee' s resolution:

**1. REMOVAL OF GRANDFATHERING PROVISION FOR ELIGIBILITY. Effective for Plan Years beginning on or after January 1, 2003, Section 2.2 of the Plan Statement shall be deleted in its entirety without replacement. Employees who are eligible to participate in this Plan pursuant to Section 2.2 shall become subject to the automatic cancellation rules in Section 2.4 for Plan Years beginning on or after January 1, 2003.**

**2. SAVINGS CLAUSE. Save and except as hereinabove expressly amended, the Plan Statement shall continue in full force and effect.**

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Confidential treatment has been requested for this document. Redacted content has been indicated with [***]. The confidential portions that have been omitted have been filed separately with the Securities and Exchange Commission.

# EXECUTIVE EMPLOYMENT AGREEMENT

This EXECUTIVE EMPLOYMENT AGREEMENT, ("Agreement") dated as of May 5, 2003, is made and entered into between ADC Telecommunications, Inc., a Minnesota corporation ("EMPLOYER" or "ADC") and **DILIP SINGH**, an individual resident of the state of Connecticut. ("EXECUTIVE").

1. **Employment**. EMPLOYER hereby employs EXECUTIVE, and EXECUTIVE accepts such employment and agrees to perform services for EMPLOYER or any affiliate of EMPLOYER (collectively, the "EMPLOYER Affiliates"), for the period and upon the other terms and conditions set forth in this Agreement.

2. **Term**. The term of this Agreement and EXECUTIVE' s employment hereunder (the "Term") shall commence as of May 12, 2003 and extend for a continuous period ending on the last day of the month in which falls the two-year anniversary of the commencement of this Agreement, unless this Agreement and EXECUTIVE' s employment hereunder is terminated at an earlier date in accordance with Section 6 of this Agreement. If EMPLOYER and EXECUTIVE mutually agree to extend EXECUTIVE' s employment beyond the Term, EXECUTIVE, to the extent permitted by law, shall then be an employee-at-will and, except as otherwise specifically provided herein, the terms and conditions of this Agreement shall no longer be in effect.

3. **Position and Duties.**

3.01 **Service with EMPLOYER**. EXECUTIVE agrees to serve as ADC Vice President − President Software Systems Business Unit ("SSB"), and to perform such duties, as EXECUTIVE' s then immediate supervisor shall assign to EXECUTIVE from time to time. EXECUTIVE acknowledges and agrees that, from time to time, EXECUTIVE may be required to perform duties with respect to one or more EMPLOYER Affiliates.

3.02 **Performance of Duties; Absence of Conflicts.** EXECUTIVE agrees to serve EMPLOYER faithfully and to the best of EXECUTIVE' s ability and to devote EXECUTIVE' s full time, attention and efforts to the business and affairs of EMPLOYER during the term of EXECUTIVE' s employment. EXECUTIVE hereby confirms that EXECUTIVE is under no contractual commitments inconsistent with EXECUTIVE' s obligations set forth in this Agreement and that, during the term of this Agreement, EXECUTIVE will not render or perform any services for any other corporation, firm, entity or person which are inconsistent with the provisions of this Agreement or which would present a conflict of interest or otherwise impair EXECUTIVE' s ability to perform EXECUTIVE' s duties hereunder. EXECUTIVE also agrees that he will at all times comply with applicable policies of EMPLOYER regarding conflicts of interest, including but not limited to EMPLOYER' s Business Conduct Policy addressing Conflicts of Interest and any other similar policy as may be implemented or amended by EMPLOYER from time to time.

4. **Consideration.**

4.01 **Base Salary.** As base compensation for all services to be rendered by EXECUTIVE under this Agreement during the Term, EMPLOYER shall pay to EXECUTIVE an annualized salary of $300,000. EXECUTIVE' s salary shall be paid in accordance with Employer' s normal payroll procedures and policies, as such procedures and policies may be modified from time to time.

4.02 **Management Incentive Compensation.** During the Term, EXECUTIVE shall be eligible to participate in any Management Incentive Plan ("MIP"), EMPLOYER establishes for any fiscal year, according to the targets and goals, and the terms and conditions EMPLOYER establishes to govern the MIP for that fiscal year. For the fiscal year 2003 MIP, EXECUTIVE' s potential incentive under the MIP Plan will be targeted at not less than fifty-five percent (55%) of EXECUTIVE' s prorated base salary earned during the remainder of fiscal year 2003. EXECUTIVE' s participation in the MIP plan for fiscal year 2003 shall be pro rated from EXECUTIVE' s start date and MIP payments are subject to achievement of the performance goals established under the MIP Plan.

4.03 **Special Incentive Bonus for Fiscal Year 2003 Performance.** For Fiscal Year 2003 (FY03) only, EXECUTIVE shall be eligible to receive (i) a Special Incentive Bonus of $30,000 if SSB achieves or exceeds third quarter FY03 results of Operating Income of $2.9 Million and Net Sales of $35 Million; and (ii) a separate Special Incentive Bonus of $30,000 if SSB achieves or exceeds fourth quarter FY03 results of Operating Income of $6.5 Million and Net Sales of $42 Million.

4.04 **Employment Hiring Bonus**. In consideration for EXECUTIVE entering into this Agreement, EXECUTIVE will be paid the sum of $115,000 as an employment hiring bonus. Such payment will be made as soon as administratively feasible following commencement of the Term of this Agreement.

4.05 **Participation in Benefits.** During the term of EXECUTIVE' s employment by EMPLOYER, EXECUTIVE shall be entitled to participate in the employee benefits offered generally by EMPLOYER to its employees, to the extent that EXECUTIVE' s position, tenure, salary, health, and other qualifications make EXECUTIVE eligible to participate. EXECUTIVE' s participation in such benefits shall be subject to the terms of the applicable plans, as the same may be amended from time to time. EMPLOYER does not guarantee the adoption or continuance of any particular employee benefit during EXECUTIVE' s employment, and nothing in this Agreement is intended to, or shall in any way restrict the right of EMPLOYER, to amend, modify or terminate any of its benefits during the term of EXECUTIVE' s employment.

4.06 **Stock Options.**

(i) In consideration for EXECUTIVE' s entering into this Agreement, and in consideration for EXECUTIVE' s willingness to be bound by the provisions of Section 7 of this Agreement, ADC shall grant to EXECUTIVE an option to purchase up to two hundred fifty thousand (250,000) shares of ADC' s common stock, in accordance with the terms of the ADC Telecommunications, Inc. Global Stock Incentive Plan, ("Global Stock Plan"), and a stock option agreement to be entered into by EXECUTIVE. Such option shall be granted effective May 30, 2003 and the exercise price shall be based on the fair market value as of the date of the grant in accordance with the Global Stock Plan and ADC' s practices. Further, such option shall be a nonqualified stock option subject to vesting and other terms and conditions set forth in the Global Stock Plan and stock option agreement.

(ii) EXECUTIVE will also be eligible to participate in Employer' s Global Stock Plan. Any options awarded under this Section 4.06 will be subject to the sole discretion of the Compensation Committee and made in accordance with the terms of Employer' s Global Stock Plan, as the same may be amended from time to time, and pursuant to a stock option agreement to be entered into by EXECUTIVE.



4.07 **Expenses.** In accordance with Employer' s normal policies for expense reimbursement, EMPLOYER will reimburse EXECUTIVE for all reasonable and necessary expenses incurred by EXECUTIVE in the performance of EXECUTIVE' s duties as an employee of EMPLOYER, subject to the terms and conditions of Employer' s policies and procedures regarding reimbursement of travel and other expenses.

4.08 **Executive Perquisites.** EXECUTIVE will be eligible to receive any Executive perquisites that EMPLOYER may from time to time deem are appropriate and administratively feasible to provide to EMPLOYER Executives who are similar in

position, title and duties to EXECUTIVE. At present, the monetary perquisite for which EXECUTIVE is eligible is the annual sum of $10,000, which presently is paid periodically in conjunction with ordinary payroll practices.

5. **Employment Policies and Requirements.**

5.01 **Confidential Information/Intellectual Property; Other Employment Policies.** As a condition precedent to EMPLOYER' S hiring of EXECUTIVE and EMPLOYER' S performance of its obligations hereunder, EXECUTIVE shall execute and deliver to EMPLOYER the Employee Invention, Copyright and Trade Secret Agreement in the form attached hereto as **Exhibit A** (the "Employee Invention Agreement").

5.02 **Other Employments Policies.** EXECUTIVE shall comply with all of the applicable policies generally in effect for employees of EMPLOYER or any applicable EMPLOYER Affiliate for which EXECUTIVE performs services, including without limitation, Employer' s Code of Business Conduct and related policies, as the same may be amended from time to time.

5.03 **Securities Law Compliance.** EXECUTIVE acknowledges that as an employee of ADC, he will be subject to certain restrictions on trading in the securities of ADC, including without, limitation restrictions under EMPLOYER' S Policy on Trading in ADC Securities and restrictions under applicable securities laws. EXECUTIVE also acknowledges that he may be deemed to be an Executive officer within the meaning of U.S. Federal Securities Law. In such case, EMPLOYER and EXECUTIVE will be subject to additional disclosure obligations and restrictions on certain activities with respect to EXECUTIVE' s compensation and transactions in ADC securities.

6. **Termination.**

6.01 **Termination Due to Executive' s Death or Total Disability.** EXECUTIVE' s employment pursuant to this Agreement shall terminate automatically prior to the expiration of the Term in the event of EXECUTIVE' s death or EXECUTIVE' s total disability which results in EXECUTIVE' s inability to perform the essential functions of Executive' s position, with or without reasonable accommodation, provided EXECUTIVE has exhausted Executive' s entitlement to any applicable leave.

6.02 **Termination by EMPLOYER for Cause**. EXECUTIVE' s employment pursuant to this Agreement shall terminate prior to the expiration of the Term in the event EMPLOYER shall determine, in its sole discretion, that there is "cause" to terminate EXECUTIVE' s employment, which shall include any of the following:

(i) EXECUTIVE' s breach of any contractual obligation to EMPLOYER or any EMPLOYER Affiliate under the terms of this Agreement, the Employee



Invention Agreement or any other agreement between EXECUTIVE and EMPLOYER or any EMPLOYER Affiliate, or of any fiduciary duty to EMPLOYER or any EMPLOYER Affiliate;

(ii) EXECUTIVE' s conviction of any crime involving moral turpitude or any felony;

(iii) EXECUTIVE' s failure to carry out any reasonable directive of EMPLOYER or any EMPLOYER Affiliate;

(iv) EXECUTIVE' s embezzlement of funds of EMPLOYER or any EMPLOYER Affiliate;

(v) Any failure by EXECUTIVE to comply with Employer' s Code of Business Conduct or policies, or, as applicable, any EMPLOYER Affiliate; or

(vi) The willful and continued failure by EXECUTIVE to perform his duties or gross and willful misconduct including, but not limited to, wrongful appropriation of funds; or

(vii) A demonstrated lack of commitment of EXECUTIVE to EMPLOYER, or conduct by EXECUTIVE which is detrimental to EMPLOYER; provided that, EXECUTIVE shall have thirty (30) days to cure any such lack of commitment or detrimental conduct after EMPLOYER provides EXECUTIVE written notice of the actions or omissions constituting the lack of commitment or detrimental conduct.

6.03 **Involuntary Termination by EMPLOYER without Cause.** EMPLOYER may terminate EXECUTIVE' s employment at any time prior to the expiration of the Term for any reason, and without notice. If EMPLOYER terminates this Agreement without cause as defined in section 6.02 prior to the expiration of the Term, then EXECUTIVE shall be entitled to receive a lump sum payment of $300,000, provided that EXECUTIVE signs a general waiver and release of claims in a form acceptable to ADC.

6.04 **Termination by Executive' s Written Notice before Expiration of Term.** EXECUTIVE may terminate this Agreement at any time during the Term by giving 60 days written notice thereof to Employer' s Chief Executive Officer. If EXECUTIVE terminates this agreement, EXECUTIVE shall not be entitled to any further payments under this Agreement except as have been earned or are owing to EXECUTIVE under the terms of this Agreement as of the date of EXECUTIVE' s termination under this section 6.04. Upon notice of such termination by EXECUTIVE, EMPLOYER may at its option elect to have EXECUTIVE cease to provide services immediately and without any further obligation to Pay EXECUTIVE any compensation not owed as of the effective date of EXECUTIVE' s termination.

6.05 **Effect of Termination.** For avoidance of doubt, if the termination of EXECUTIVE' s employment occurs sooner than the end of the Term specified in Section 2, the "Term," as used herein, shall end on the date of such termination of employment. Notwithstanding any termination of EXECUTIVE' s employment with EMPLOYER, EXECUTIVE, in consideration of EXECUTIVE' s employment hereunder to the date of such termination, shall remain bound by the provisions of this Agreement which specifically relate to periods, activities or obligations upon or subsequent to the termination of



EXECUTIVE' s employment, including, but not limited to, the covenants contained in Section 7 hereof and the Employee Invention Agreement.

In the event that EXECUTIVE' s employment terminates due to EXECUTIVE' s death or total disability, or EMPLOYER terminates EXECUTIVE' s employment in accordance with Section 6.02, above, EXECUTIVE shall not be entitled to receive any further compensation under the provisions of this Agreement after the date of such termination, subject to applicable law.

Notwithstanding any other provision in this Agreement, should EXECUTIVE' s employment be terminated for any reason, EXECUTIVE will not earn and will have no right to receive any compensation except as expressly provided in this Agreement or in the terms and conditions of an EMPLOYER compensation plan or program referenced herein.

6.06 **Surrender of Records and Property.** Upon termination of EXECUTIVE' s employment with EMPLOYER, EXECUTIVE shall deliver promptly to EMPLOYER all EMPLOYER property, including net access cards, and all records, manuals, books, blank forms, documents, letters, memoranda, notes, notebooks, reports, computer disks, computer software, computer programs (including source code, object code, on-line files, documentation, testing materials and plans and reports), designs, drawings, formulae, data, tables or calculations or copies thereof, which are the property of EMPLOYER or any EMPLOYER Affiliate or which relate in any way to the business, products, practices or techniques of EMPLOYER or any EMPLOYER Affiliate, and all other property, trade secrets and confidential information of EMPLOYER or any EMPLOYER Affiliate, including, but not limited to, all tangible, written, graphical, machine readable and other materials (including all copies) which in whole or in part

contain any trade secrets or confidential information of EMPLOYER or any EMPLOYER Affiliate which in any of these cases are in EXECUTIVE' s possession or under EXECUTIVE' s control.

7. **Noncompetition.**

7.01 **Agreement Not to Compete.** In consideration of the above-described financial and other benefits EXECUTIVE will receive as a result of the Business Agreement, and in consideration of Employer' s hiring of EXECUTIVE and EXECUTIVE' s employment hereunder, EXECUTIVE agrees that, during the "Restricted Period" (as hereinafter defined), EXECUTIVE shall not, directly or indirectly, engage in any "Competing Business Activity" (as hereinafter defined), in any manner or capacity (e.g., as an advisor, principal, agent, partner, officer, director, shareholder, employee, member of any association or otherwise). As used in this Agreement, "Restricted Period" shall mean the period beginning on the date EXECUTIVE commences employment under this agreement and continuing for one (1) year following EXECUTIVE' s employment termination date, regardless of reason for termination. As used in this Agreement, "Competing Business Activity" shall mean any business activities that are competitive with the business conducted by EMPLOYER in which EXECUTIVE participated or, as applicable, the EMPLOYER Affiliate(s) for which EXECUTIVE performed services, at or prior to the date of the termination of EXECUTIVE' s employment with such entities. [***]

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[***] Confidential material has been omitted. The confidential portions that have been omitted have been filed separately with the Securities and Exchange Commission.



7.02 **Geographical Extent of Covenant.** The obligations of EXECUTIVE under this Section 7 shall apply to all markets, domestic or foreign, in which: (a) EMPLOYER or, as applicable, the EMPLOYER Affiliate(s) for which EXECUTIVE performed services, operates during the term of the Restricted Period; and (b) EMPLOYER or, as applicable, the EMPLOYER Affiliate(s) for which EXECUTIVE performed services, have plans to enter at the time of the termination of EXECUTIVE' s employment with EMPLOYER or, as applicable, any EMPLOYER Affiliate.

7.03 **Limitation on Covenant.** Ownership by EXECUTIVE, as a passive investment, of less than one percent (1%) of the outstanding shares of capital stock of any corporation listed on a national securities exchange or publicly traded in the over-the-counter market shall not constitute a breach of this Section 7.

7.04 **Nonsolicitation; Non-hire and Noninterference.** During the Restricted Period, EXECUTIVE shall not (a) induce or attempt to induce any employee of EMPLOYER or any EMPLOYER Affiliate to leave the employ of EMPLOYER or such EMPLOYER Affiliate, or in any way interfere adversely with the relationship between any such employee and EMPLOYER or such EMPLOYER Affiliate; (b) induce or attempt to induce any employee of EMPLOYER or any EMPLOYER Affiliate to work for, render services to, provide advice to, or supply confidential business information or trade secrets of EMPLOYER or any EMPLOYER Affiliate to any third person, firm or corporation; (c) employ, or otherwise pay for services rendered by, any employee of EMPLOYER or any EMPLOYER Affiliate in any business enterprise with which EXECUTIVE may be associated, connected or affiliated; or (d) induce or attempt to induce any customer, supplier, licensee, licensor or other business relation of EMPLOYER or any EMPLOYER Affiliate to cease doing business with EMPLOYER or such EMPLOYER Affiliate, or in any way interfere with the relationship between any such customer, supplier, licensee, licensor or other business relation and EMPLOYER or such EMPLOYER Affiliate.

7.05 **Indirect Competition or Solicitation.** EXECUTIVE agrees that, during the Restricted Period, EXECUTIVE will not, directly or indirectly, assist, solicit or encourage any employee of EMPLOYER or EMPLOYER Affiliate, or any other person in carrying out, directly or indirectly, any activity that would be prohibited by the provisions of this Section 7 if such activity were carried out by EXECUTIVE, either directly or indirectly.

7.06 **Notification of Employment.** If at any time during the Restricted Period EXECUTIVE accepts new employment or becomes affiliated with a third party, EXECUTIVE shall immediately notify EMPLOYER of the identity and business of the new Employer or affiliation. Without limiting the foregoing, EXECUTIVE' s obligation to give notice under this Section 7.06 shall apply to any business ventures in which EXECUTIVE proposes to engage, even if not with a third-party Employer (such as, without limitation, a joint venture, partnership or sole proprietorship). EXECUTIVE hereby consents to Employer' s notification to any such new Employer or business venture of the terms of this Agreement.

8. **Exhibit B**. The Provisions of the attached Exhibit B are incorporated herein by this reference and made a part of this Agreement.



9. **Miscellaneous.**

9.01 **Governing Law and Venue Selection.** This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to conflicts of laws principles thereof, of any of the United States of America, or of any other country, province or city. The parties agree that any litigation in any way relating to this Agreement or to EXECUTIVE' s employment by EMPLOYER, including but not limited to the termination of this Agreement or EXECUTIVE' s employment, will be venued in the State of Minnesota, Hennepin County District Court, or the United States District Court for the District of Minnesota. EXECUTIVE and EMPLOYER hereby consent to the personal jurisdiction of these courts and waive any objection that such venue is inconvenient or improper.

9.02 **Prior Agreements.** This Agreement (including other agreements specifically mentioned in this Agreement) contains the entire agreement of the parties relating to the employment of EXECUTIVE by EMPLOYER and the other matters discussed herein and supersedes all prior promises, contracts, agreements and understandings of any kind, whether express or implied, oral or written, with respect to such subject matter, and the parties hereto have made no agreements, representations or warranties relating to the subject matter of this Agreement which are not set forth herein or in the other agreements mentioned herein.

9.03 **Withholding Taxes.** EMPLOYER or any EMPLOYER Affiliate, as applicable, may take such action as it deems appropriate to insure that all applicable federal, state, city and other payroll, withholding, income or other taxes ("Taxes") arising from any compensation, benefits or any other payments made pursuant to this Agreement, or any other contract, agreement or understanding which relates, in whole or in part, to EXECUTIVE' s employment with EMPLOYER or any EMPLOYER Affiliate, are withheld or collected from EXECUTIVE. In connection with the foregoing, EXECUTIVE agrees to notify EMPLOYER promptly upon entering into any contract, agreement or understanding relating to EXECUTIVE' s employment with EMPLOYER or any EMPLOYER Affiliate (other than this Agreement and those agreements expressly provided for herein) and also to notify EMPLOYER promptly of any payments or benefits paid or otherwise made available pursuant to any such agreements.

9.04 **Amendments.** No amendment or modification of this Agreement shall be deemed effective unless made in writing and signed by EXECUTIVE and EMPLOYER.

9.05 **No Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provisions of this Agreement, except by a statement in writing signed by the party against whom enforcement of the waiver or estoppel is sought. Any written waiver shall not be deemed a continuing waiver unless specifically stated, shall operate only as to the specific term or condition waived, and shall not constitute a waiver of such term or condition for the future or as to any act other than as specifically set forth in the waiver.

9.06 **Assignment.** This Agreement shall not be assignable, in whole or in part, by any party without the written consent of the other party, except that EMPLOYER may, without the consent of EXECUTIVE, assign its rights and obligations under this Agreement to any EMPLOYER Affiliate or to any corporation, firm or other business entity with or into which

EMPLOYER may merge or consolidate, or to which EMPLOYER may sell or transfer all or substantially all of its assets, or of which 50% or more of the equity



investment and of the voting control is owned, directly or indirectly, by, or is under common ownership with, EMPLOYER. After any such assignment by EMPLOYER, EMPLOYER shall be discharged from all further liability hereunder and such assignee shall thereafter be deemed to be EMPLOYER for the purposes of all provisions of this Agreement including this Section 9.06. [***]

9.07 **Injunctive Relief.** EXECUTIVE acknowledges and agrees that the services to be rendered by EXECUTIVE hereunder are of a special, unique and extraordinary character, that it would be difficult to replace such services and that any violation of Sections 5, 6.06 or 7 hereof or of the Employee Invention Agreement would be highly injurious to EMPLOYER and/or to any EMPLOYER Affiliate and that it would be extremely difficult to compensate EMPLOYER and/or any EMPLOYER Affiliate fully for damages for any such violation. Accordingly, EXECUTIVE specifically agrees that EMPLOYER or any EMPLOYER Affiliate, as the case may be, shall be entitled to temporary and permanent injunctive relief to enforce the provisions of Sections 5, 6.06 and 7 hereof, and the Employee Invention Agreement and that such relief may be granted without the necessity of proving actual damages and without necessity of posting any bond. This provision with respect to injunctive relief shall not, however, diminish the right of EMPLOYER or any EMPLOYER Affiliate to claim and recover damages, or to seek and obtain any other relief available to it at law or in equity, in addition to injunctive relief.

9.08 **Severability.** To the extent any provision of this Agreement shall be determined to be invalid or unenforceable in any jurisdiction, such provision shall be deemed to be deleted from this Agreement as to such jurisdiction only, and the validity and enforceability of the remainder of such provision and of this Agreement shall be unaffected. In furtherance of and not in limitation of the foregoing, EXECUTIVE expressly agrees that should the duration of, geographical extent of, or business activities covered by, any provision of this Agreement be in excess of that which is valid or enforceable under applicable law in a given jurisdiction, then such provision, as to such jurisdiction only, shall be construed to cover only that duration, extent or activities that may validly or enforceably be covered. EXECUTIVE acknowledges the uncertainty of the law in this respect and expressly stipulates that this Agreement shall be construed in a manner that renders its provisions valid and enforceable to the maximum extent (not exceeding its express terms) possible under applicable law in each applicable jurisdiction.

[***] Confidential material has been omitted. The confidential portions that have been omitted have been filed separately with the Securities and Exchange Commission.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth in the first paragraph.

**EMPLOYER**

By /s/ Laura N. Owen
Name: Laura N. Owen
Title: Vice President, Human Resources

**EXECUTIVE**

/s/Dilip Singh 5/5/03
NAME (Dilip Singh)

**EXHIBIT A**

**PROPRIETARY INFORMATION, INVENTION and CONFIDENTIALITY AGREEMENT**

In consideration of my employment by ADC Telecommunications, Inc. (hereafter referred to as "the Company"), and the compensation received by me from the Company from time to time, I hereby agree to the following terms of this Proprietary Information, Invention and Confidentiality Agreement (hereafter referred to as "Agreement"):

1. Definitions:

   a. As used in this Agreement, "**ADC Telecommunications, Inc**." and "**Company**" refer to ADC Telecommunications, Inc. and each of its subsidiaries. I recognize and agree that my obligations under this Agreement and all terms of this Agreement apply to me regardless of whether I am employed by or work for ADC Telecommunications, Inc. or any subsidiary or affiliated company of ADC Telecommunications, Inc. Furthermore, I understand and agree that the terms of this Agreement will continue to apply to me even if I transfer at some time from one subsidiary or affiliate of the Company to another.

   b. I understand that the Company possesses and will possess Proprietary Information, which is important to its business. For purposes of this Agreement, "**Proprietary Information**" is information that was developed, created, or discovered by or on behalf of the Company, or which became or will become known by, or was or is conveyed to the Company, which has commercial value in the Company' s business. "Proprietary Information" includes, but is not limited to, software programs, source and object code, algorithms, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions (whether patentable or not), works of authorship, formulas, business and product development plans, customer lists, terms of compensation and performance levels of Company employees, and other information concerning the Company' s actual or anticipated business, research or development, or which is received in confidence by or for the Company from any other person. I understand that my employment creates a relationship of confidence and trust between me and the Company with respect to Proprietary Information.

   c. I understand that the Company possesses or will possess "**Company Documents and Materials**" which are important to its business. For purposes of this Agreement, "Company Documents and Materials" are documents or other media or tangible items that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company, whether such documents, media or items have been prepared by me or by others. "Company Documents and Materials" include, but are not limited to, blueprints, drawings, photographs, charts, graphs, notebooks, customer lists, computer disks, tapes or printouts, sound recordings and other printed, typewritten or handwritten documents, sample products, prototypes and models.

2. Confidentiality and Assignment. All Proprietary Information, including but not limited to all patents, patent rights, copyrights, trade secret rights, trademark rights and other rights (including, without limitation, intellectual property rights) anywhere in the world in connections therewith shall be the sole property of the Company. I hereby assign to the Company any and all rights, title and interest I may have or acquire in such Proprietary Information. At all times, both during my employment by the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it (or any information of a third party if disclosed to the Company by such third party in confidence), without the prior written consent of an officer of the Company, except as my be necessary in the ordinary course



of performing my duties to the Company.

3. Written Records and Company Documents. I agree to make and maintain adequate and current written records, in a form specified by the Company, of all inventions, trade secrets and works of authorship assigned or to be assigned to the Company pursuant to this Agreement. All Company Documents and Materials shall be the sole property of the Company. I agree that during my employment by the Company, I will not remove any Company Documents and Materials from the business premises of the Company or deliver any Company Documents and Materials to any person or entity outside the company, except as I am required to do in connection with performing the duties of my employment. I further agree that, immediately upon the termination of my employment by me or by the Company for any reason, or during my employment if so requested by the Company, I will return all Company Documents and Materials, apparatus, equipment and other physical property, or any reproduction of such property, excepting on (i) my personal copies of records relating to my compensation; (ii) my personal copies of any materials previously distributed generally to stockholders of the Company; and (iii) my copy of the Agreement.

4. Disclosure of Inventions. I will promptly disclose in writing to my immediate supervisor, or to such other person designated by the Company, all "**Inventions,**" which includes, without limitation, all software programs or subroutines, source or object code, algorithms, improvements, inventions, works of authorship, trade secrets, technology, designs, formulas, ideas, processes, techniques, know-how and data, whether or not patentable, made or discovered or conceived or reduced to practice or developed by me, either alone or jointly with others, during the term of my employment. I will also disclose to the President of the Company all Inventions made, discovered, conceived, reduced to practice, or developed by me within six (6) months after the termination of my employment with the Company which resulted, in whole or in part, from my prior employment by the Company. Such disclosures shall be received by the Company in confidence (to the extent such Inventions are not assigned to the Company pursuant to paragraph (5) below) and do not extend the assignment made in paragraph (5) below.

5. Inventions Property of Company. I agree that all inventions which I make, discover, conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others) during my employment shall be the sole property of the Company to the maximum extent permitted by applicable law. Appendix A to this Agreement provides notice and a summary of applicable state laws in the U.S.

   This assignment shall not extend to Inventions, the assignment of which is prohibited by applicable law, including but not limited to those summarized in Appendix A.

6. Other Rights of Company. The Company shall be the sole owner of all patents, patent rights, copyrights, trade secret rights, trademark rights and all other intellectual property or other rights in connection with Inventions that are the sole property of the Company. I further acknowledge and agree that such Inventions, including, without limitation, any computer programs, programming documentation, and other works of authorship, are "works made for hire" for purposes of the Company' s rights under copyright laws. I hereby assign to the Company any and all rights, title and interest I may have or acquire in such Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or machine a prior Invention owned by me or in which I have interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, sublicensable, worldwide license to make, have made, modify, use, market, sell and distribute such prior Invention as part of or in connection with such product, process or machine.



7. Cooperation. I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, without charge to the Company but at the Company' s expense, in further evidencing and perfecting the assignments made to the Company under this Agreement and in obtaining, maintaining, defending and enforcing patents, patent rights, copyrights, trademark rights, trade secret rights or any other rights in connection with such Inventions and improvements thereto in any and all countries. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in legal proceedings. I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorneys-in-fact to act for and on my behalf and instead of me, to execute and file any documents, applications or related findings and to do all other lawfully permitted acts to further the purposes set forth above in this subsection (f), including, without limitation, the perfection of assignment and prosecution and issuance of patents, patent applications, copyright applications and registrations, trademark

applications and registrations or other rights in connection with such Inventions and improvements thereto with the same legal force and effect as if executed by me.

8. Moral Rights. Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "**Moral Rights**"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, I hereby waive such Moral Rights and consent to any action of the Company that would violate such Moral Rights in the absence of such consent.

9. List of Inventions. I have attached hereto as **Appendix B**, a complete list of all Inventions or improvements to which I claim ownership and that I desire to remove from the operation of this Agreement, and I acknowledge and agree that such list is complete. If no such list is attached to this Agreement, I represent that I have not such Inventions and improvements at the time of signing this Agreement.

10. Non-Solicitation. During the term of my employment and for one (1) year thereafter, I will not directly or indirectly (i) encourage, solicit, or attempt to solicit any employee of the Company to leave the Company for any reason or in any interfere adversely with the relationship between any such employee and the Company; (ii) induce or attempt to induce any employee of the Company to work for, render services or provide advice to or supply confidential business information or trade secrets of the Company to any person or entity other than the Company; or (iii) employ, or otherwise pay for services rendered by, any employee of the Company in any other business enterprise. As part of this restriction, I will not interview or provide any input to any third party regarding any such person during the period in question. However, this obligation shall not affect any responsibility I may have as an employee of the Company with respect to the bona fide hiring and firing of Company personnel.

11. Notification. Prior to my submitting or disclosing for possible publication or dissemination outside the Company any material prepared by me that incorporates information that concerns the Company' s business or anticipated research, I agree to deliver a copy of such material to an officer of the Company for his or her review. Within twenty (20) days following such submission, the Company agrees to notify me in writing whether the Company believes such material contains any Proprietary Information or Inventions, and I agree to make such deletions and revisions as are



reasonably requested by the Company to protect its Proprietary Information and Inventions. I further agree to obtain the written consent of the Company prior to any review of such material by persons outside the Company.

12. No Competition During Employment. I agree that, during my employment with the Company, I will not provide consulting services to or become an employee of, any other firm or person engaged in a business in any way competitive with the Company, or involved in the design, development, marketing, sale or distribution of any networking or software products, without first informing the Company of the existence of such proposed relationship and obtaining the prior written consent of my manager and the Human Resource Manager responsible for the organization in which I work.

13. Past Employment or Agreements. I represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me in confidence or in trust prior to my employment by the Company, and I will not disclose to the Company, or induce the Company to use, any confidential or proprietary information or material belonging to any previous Employers or others. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith or in conflict with my employment with the Company. I further agree to conform to the rules and regulations of the Company.

14. At will Employment. (Applicable in the U.S.) If I am employed in the U.S., and do not otherwise have a signed employment agreement that is in effect with ADC, I agree that I am employed on an "at-will" basis. This means that I have the right to resign and the Company has the right to terminate my employment at any time for any reason, with or without cause. This is the complete

agreement between the Company and me on this term of my employment. I further agree that this term can only be modified by the Company President and he or she can only do so in a writing signed and dated by him or her and me.

15. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

16. Consent. I hereby authorize the Company to notify my new Employer about my rights and obligations under this Agreement following the termination of my employment with the Company.

17. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us, including but not limited to any and all statements made by any officer, employee or representative of the Company regarding the Company' s financial condition or future prospects. I understand and acknowledge that, except as set forth in this Agreement and in the offer letter from the Company to me (i) no other representation or inducement has been made to me, (ii) I have relied on my own judgment and investigation in accepting my employment with the Company, and (iii) I have not relied on any representation or inducement made by any officer, employee or representative of the Company. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in a writing signed by the President of the Company and me. I understand and agree that any subsequent change in my duties, salary or compensation will not affect the validity or scope of this Agreement.



18. Successors. This Agreement shall be effective as of the first day of my employment with the Company and shall be binding upon me, my heirs, executor, assigns, and administrators, and shall inure to the benefit of the Company, its subsidiaries, successors and assigns.

19. Governing Law. Although I may work for ADC Telecommunications, Inc. outside of Minnesota USA, I understand and agree that this Agreement shall be interpreted and enforced in accordance with the laws of the State of Minnesota to the extent enforceable.

20. Data Transfer. I acknowledge and agree that personal data about me, to the extent necessary for the administration and implementation of this Agreement and other aspects of my employment with the Company, must and may be collected, stored, used, processed by or transmitted within ADC and to ADC' s administrative agents. By my signature below, I hereby consent to the collection, transfer, storage, processing and use of such personal data, for the above-described purposes.

I HAVE READ THIS AGREEMENT CAREFULLY AND I UNDERSTAND AND ACCEPT THE OBLIGATIONS WHICH IT IMPOSES UPON ME WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME TO INDUCE ME TO SIGN THIS AGREEMENT. I SIGN THIS AGREEMENT VOLUNTARILY AND FREELY.

Dilip Singh
Employee Name (Please Print)

/s/ Dilip Singh
Employee Signature

5/5/03
Date



**Appendix A**

To the extent, if any, the laws of the following U.S. states are determined to apply to the enforcement of this agreement, written notice is hereby given as follows:

California:

Sections 2870-2872 of the California Labor Code provide that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention that the employee developed entirely on his or her own time without using the Employer' s equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the Employer' s business, or actual or demonstrably anticipated research or development of the Employer; or
(2) Result from any work performed by the employee for the Employer.

Illinois:

Illinois Statute 765-1060 provides that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention for which no equipment, supplies, facility, or trade secret information of the Employer was used and which was developed entirely on the employee' s own time, unless (a) the invention relates (i) to the business of the Employer, or (ii) to the Employer' s actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the Employer.

Kansas:

Kansas Statute 44-130 provides that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention for which no equipment, supplies, facility or trade secret information of the Employer was used and which was developed entirely on the employee' s own time, unless:

(1) The invention relates directly to the business of the Employer or to the Employer' s actual or demonstrably anticipated research or development; or
(2) the invention results from any work performed by the employee for the Employer.

Minnesota:

Minnesota Statute 181.78 provides that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention for which no equipment, supplies, facility or trade secret information of the Employer was used and which was developed entirely on the employee' s own time, and (1) which does not relate (a) directly to the business of the Employer or (b) to the Employer' s actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the Employer.

Washington:

Washington Statutes 49.44.140 and 49.44.140 150 provide that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention for which no equipment, supplies, facility, or trade secret information of the Employer was used and which was developed entirely on the employee' s own time, unless (a) the invention relates (i) directly to the business of the Employer, or (ii) to the Employer' s actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the Employer.



**Appendix B**

1. The following is a complete list of all Inventions or improvements relevant to the subject matter of my employment by the Company that have been made or discovered or conceived or first reduced to practice by me or jointly with others prior to my employment by the Company that I desire to remove from the operation of the Company' s Proprietary Information and Inventions Agreement:

☒ No inventions or improvements.

See below: Any and all inventions regarding:

Additional sheets attached.

2. I propose to bring to my employment the following materials and documents of a former Employer:

-

☒ No materials or documents.

See below:

/s/Dilip Singh — 5/5/03

Employee Signature — Date



**Exhibit B to Executive Employment Agreement**
**Payments in Event of Change of Control**

**Payments in Event of Change In Control.**

B.1 **Change In Control of ADC.** During the Term, EXECUTIVE will be eligible for coverage under the ADC Telecommunications, Inc. Executive Change In Control Severance Pay Plan, 2002 Restatement, ("ADC Executive CIC Plan"), according to the terms of that policy, as the same may be amended from time to time. [***]. EMPLOYER does not guarantee the continuance of its ADC Executive CIC Plan during EXECUTIVE' s employment, and nothing in this Agreement is intended to, or shall in any way restrict the right of EMPLOYER, to amend, modify or terminate its ADC Executive CIC Plan during the term of EXECUTIVE' s employment.

[*** - 4 pages]

[***] Confidential material has been omitted. The confidential portions that have been omitted have been filed separately with the Securities and Exchange Commission.



**SIGNATURE PAGE FOLLOWS**

**Initials by parties to Executive Employment Agreement dated May 5, 2003 to which this Exhibit B is made a part of.**

**/s/Dilip Singh** — **/s/Laura N. Owen**

**EXECUTIVE**

**On behalf of EMPLOYER**

# EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered as of August 13, 2003 (the "Commencement Date"), between ADC Telecommunications, Inc., a Minnesota corporation (the "Company"), and Robert E. Switz (the "Executive"), a resident of Minnesota.

## RECITALS

**WHEREAS**, the Company wishes to employ the Executive as the Company' s President and Chief Executive Officer and the Executive desires to accept and serve as the Company' s President and Chief Executive Officer;

**WHEREAS,** the Executive understands that such employment is expressly conditioned on execution of this Agreement; and

**WHEREAS**, the Company desires to employ the Executive as President and Chief Executive Officer, and the Executive desires to be employed by the Company in that capacity pursuant to the terms and conditions of this Agreement.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the Executive' s employment as the Company' s President and Chief Executive Officer and the foregoing premises, the mutual covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Executive agree as follows:

### ARTICLE I: EMPLOYMENT, TERM AND DUTIES

1.1 **Employment**. The Company hereby employs the Executive as President and Chief Executive Officer, and the Executive accepts such employment and agrees to perform services for the Company, for the period and upon the other terms and conditions set forth in this Agreement.

1.2 **Term**. Unless terminated at an earlier date in accordance with Article III of this Agreement, the term of this Agreement ("Term") shall be for a period of three (3) years, commencing on the Commencement Date, and shall extend through August 13, 2006. Thereafter, the Term shall be automatically extended for successive one-year periods unless either party objects to such extension by written notice to the other party at least sixty (60) days prior to the expiration of the initial Term or any extension of the Term. If the Company does not renew this Agreement and thereafter terminates the Executive' s employment with the Company as its Chief Executive Officer, or the Executive is removed as Chief Executive of the Company after the Term and thereafter resigns, in each case, for reasons that would not constitute "Cause" as defined in Section 3.1.2, then notwithstanding termination of this Agreement, the Executive shall be entitled to the benefits in Section 3.2.3, subject to the conditions set forth therein.

---

1.3 **Position and Duties.**

1.3.1 **Service with the Company.** The Executive agrees to serve as the Company' s President and Chief Executive Officer and to perform such duties (a) as are set forth for that position in the By-laws of the Company; (b) as the Company' s Board of Directors (the "Board") shall assign to the Executive from time to time; and (c) that the Executive undertakes or accepts consistent with his position as President and Chief Executive Officer. The Executive acknowledges and agrees that, from time to time, he will be required to perform duties with respect to one or more of the Company' s subsidiary or affiliate companies (each an "Affiliate"), and that he will not be entitled to any additional compensation for performing those duties.

The Executive also agrees to serve, for any period for which the Executive is elected, as a member of the Board or as a director or officer of any Affiliate; *provided, however*, that the Executive shall not be entitled to any additional compensation for serving in any of such capacities.

Upon termination of Employee' s employment, for whatever reason, Employee agrees to resign immediately from the Board and from all Affiliate boards of directors on which he is then currently serving.

1.3.2 **Performance of Duties.** During the Term, the Executive agrees to serve the Company faithfully and to the best of the Executive' s ability and to devote the Executive' s full business time, attention and efforts to the business and affairs of the Company (exclusive of any period of vacation, sick, disability, or other leave to which the Executive is entitled).

The Executive hereby confirms that, during the Term, the Executive will not render or perform services for any other corporation, firm, entity or person that are inconsistent with the provisions of this Agreement, whether or not such activity is pursued for gain, profit, or other pecuniary advantage.

The rest of this Section 1.3.2 notwithstanding, the Executive may (a) serve on the boards of profit or non-profit corporations (the Executive shall obtain approval to serve on such a board in accordance with all of the Company' s policies, including, without limitation, the Company' s Policy regarding Conflicts of Interest); (b) deliver lectures or fulfill speaking engagements; and (c) manage personal investments, so long as the activities referred to in clauses (a) through (c) above do not materially interfere with the performance of the Executive' s responsibilities under this Agreement. Notwithstanding the terms of clause (a) of the preceding sentence, the Executive agrees to resign from any and all boards of profit or non-profit corporations, as and when requested to do so by the Board at any time during the Term if, in its good faith judgment, the Board



determines that such service (or continued service) by the Executive is not in the best interests of the Company.

The Executive will perform all of the Executive' s responsibilities in compliance with all applicable laws and with all of the applicable policies generally in effect for employees of the Company or any applicable policies of the Company Affiliate for which the Executive performs services, including without limitation, the Company' s Global Business Code of Conduct and related policies, including the Company' s Policy on Trading in the Company' s Securities, as the same may be amended from time to time.

1.3.3 **Relocation.** The Executive' s primary office shall be located in the greater Twin Cities metropolitan area, unless the Company' s headquarters is relocated. If the Company' s headquarters is relocated, the Executive agrees to relocate his primary office location to the Company' s new headquarters, and the Company agrees to reimburse the Executive for his reasonable expenses in connection with any move he is required to make.

1.4 **Transitional Services**. The Executive agrees to continue to serve as the Company' s Chief Financial Officer, performing the duties of such office as he currently performs them, between the Commencement Date and the date that the Board elects a new Chief Financial Officer (or such earlier date, if any, as the Board determines), without receiving any compensation or benefits in addition to those set forth in this Agreement.

**ARTICLE II. COMPENSATION, BENEFITS AND EXPENSES**

2.1 **Base Salary**. As his initial base compensation for all services he renders under this Agreement, the Executive shall receive an annualized base salary ("Annual Base Salary") of Five Hundred Fifty Thousand Dollars ($550,000.00). The Annual Base Salary shall be paid in accordance with the Company' s normal payroll procedures and policies, as such procedures and policies may be modified from time to time. The Annual Base Salary shall be reviewed and adjusted in the sole discretion of the Board' s Compensation Committee (the "Committee") according to a schedule and in a manner consistent with the Company' s practices for salary adjustment, which practices may be revised from time to time.

2.2 **Incentive Compensation.** During the Term (and while the Company' s Executive Management Incentive Plan (the "EMIP") remains in effect), the Committee shall continue to designate the Executive as a participant in the EMIP, subject to and in accordance with the terms and conditions thereof, including any goals the Committee establishes to govern the EMIP for any fiscal year. For each fiscal year of the EMIP after fiscal year 2003 during the Term during which the targeted objective performance criteria established by the

Committee under the EMIP for such fiscal year are satisfied by the Executive, the Committee agrees that it shall not exercise its negative discretion under the EMIP to cause the Executive' s incentive compensation payable thereunder to be less than the "Target Incentive" (as defined below) applicable to that fiscal year,



so long as the targeted performance criteria established under the Company' s annual management incentive plan applicable to senior executives not participating in the EMIP for such fiscal year have otherwise been satisfied. For purposes of clarification and not in limitation of the preceding sentence, if the targeted performance criteria established under the Company' s annual management incentive plan applicable to senior executives not participating in the EMIP for such fiscal year have not otherwise been satisfied, then the Executive may have the opportunity to earn greater than 100% or may be paid less than 100% of his Annual Base Salary for such fiscal year, at the discretion of the Committee, and upon its consideration of relevant performance criteria.

For purposes of this Agreement, the term "Target Incentive" shall mean an amount equal to 100% of the Annual Base Salary actually paid to the Executive for a given fiscal year.

2.3 **Benefit Plans:** During the Term, the Executive shall be entitled to participate in the employee benefits offered generally by the Company to its executive employees, to the extent that the Executive' s position, tenure, salary, health, and other qualifications make the Executive eligible to participate. The Executive' s participation in such benefits shall be subject to the terms of the applicable plans, as the same may be amended from time to time. The Company does not guarantee the adoption or continuance of any particular employee benefit or benefit plan during the Term, and nothing in this Agreement is intended to, or shall in any way restrict the right of the Company, to amend, modify or terminate any of its benefits or benefit plans during the Term.

2.4 **Stock Options.** The Company will grant to the Executive an option to purchase 1,200,000 shares of the Company' s common stock on August 29, 2003, in accordance with the terms of the Company' s Global Stock Incentive Plan (the "Global Plan"), as the same may be amended from time to time, and a non-qualified stock option agreement to be entered into by the Executive and the Company. The exercise price for this option shall be the "fair market value" of the Company' s common stock on August 29, 2003, as determined in accordance with the terms of the Global Plan. Except as otherwise provided in Section 3.2.3, assuming the Executive remains employed with the Company or any Affiliate as of the dates set forth below, these options will vest over a three (3) year-period as follows:

| Grant | Vesting Date |
|---|---|
| 400,000 options | August 13, 2004 |
| 100,000 options per quarter thereafter | Last day of each fiscal quarter thereafter, commencing November 30, 2004 |

2.5 **Restricted Stock Grant.** The Company will grant to the Executive 650,000 shares of the Company' s common stock in accordance with the terms of the Global Plan, as the same may be amended from time to time, and a restricted stock agreement to be entered into by the Executive and the Company. Except as otherwise provided in Section 3.2.3, assuming that the Executive remains employed with the Company or any Affiliate as of the dates set forth below, these shares will vest over a three (3) year-period as follows:



| Grant | Vesting Date |
|---|---|
| 216,667 shares | August 13, 2004 |
| 216,667 shares | August 13, 2005 |
| 216,666 shares | August 13, 2006 |

2.6 **Additional Equity Grants.** The Executive will be eligible for consideration for additional grants of equity in the Company beginning with the fiscal year 2005 Company equity grant cycle, and in conformity with the practices and procedures of the Committee as in effect at such time. During the Term, the Executive shall be entitled to participate in the equity plans offered generally by the Company to its

executive employees, to the extent that the Executive' s position, tenure, salary and other qualifications make the Executive eligible to participate.

2.7 **Expenses.** During the Term, the Executive shall be entitled to reimbursement for all reasonable business expenses he incurs in carrying out his duties under this Agreement in accordance with the policies and practices of the Company for submission of expense reports, receipts, or similar documentation of such expenses as in effect from time to time by the Company.

2.8 **Executive Perquisites.** The Executive will be eligible to receive any executive perquisites that the Company may from time to time deem are appropriate and administratively feasible to provide to its executives, generally or to the Executive, specifically. Those perquisites shall include:

2.8.1 $24,000 annual perquisite allowance, paid at a rate of $2,000 per month, to cover additional benefits that will best meet the Executive' s personal needs; and

2.8.2 Payment of reasonable club membership fees and, after the date hereof, payment of reasonable monthly fees for one club selected by the Executive; provided that, the Committee reserves the right to determine whether such fees are reasonable.

**ARTICLE III: TERMINATION OF EMPLOYMENT**

3.1 **Termination.** The Executive' s employment under this Agreement may be terminated during the Term as described in this Article III.

3.1.1 **Death or Disability.** The Executive' s employment shall terminate automatically upon the Executive' s death. The Executive' s employment shall terminate in the event the Executive becomes "Totally Disabled." For purposes of this Agreement, "Totally Disabled" means "totally disabled" as defined in the Company' s Group Long-Term Disability Plan applicable to senior executives as in effect on the Commencement Date.

3.1.2 **Termination by the Company for Cause.** The Company may terminate this Agreement and the Executive' s employment hereunder for Cause at any time after providing written notice to the Executive. For purposes of this Agreement, "Cause" means:



(a) the gross neglect or willful failure or refusal of the Executive to perform the Executive' s duties hereunder (other than as a result of total or partial incapacity due to physical or mental illness) including any breach of the Executive' s fiduciary duties to the Company (including the Executive' s appropriation or attempted appropriation of a material business opportunity of the Company);

(b) the engaging by the Executive in intentional or willful misconduct which is materially injurious to the reputation, business, financial condition or business relationships of the Company or the Executive' s reputation or business relationships;

(c) perpetration of an intentional and knowing fraud against or affecting the Company or any customer, supplier, client, agent, or executive thereof;

(d) conviction (including conviction on a *nolo contendere* plea) of a felony or any crime involving fraud, dishonesty or moral turpitude; or

(e) the breach of any covenant set forth in Article IV or V hereof;

provided, however that:

(i) the matters covered by clause (a) or (e) above shall not be deemed to constitute "Cause" hereunder if, in the reasonable good faith belief of the Executive, his actions were in the best interests of the Company;

(ii) a termination pursuant to clauses (a), (b), (c) or (e) shall not become effective unless the Company has delivered written notice to the Executive describing Executive' s actions constituting "Cause" and the Executive has failed to convince the Board within fifteen business (15) days thereafter that his actions did not constitute "Cause" as described in such notice; and

(iii) a termination pursuant to clauses (a) or (e) above, if susceptible of cure, shall not become effective unless the Executive fails to cure such failure to perform or breach within forty-five (45) days after written notice from the Company identifying what reasonable actions shall be required to cure such failure to perform.

3.1.3 **Termination by the Company without Cause**. The Company may terminate this Agreement and the Executive' s employment hereunder for any reason or no reason at any time after providing written notice to the Executive. If the Company terminates the Executive' s employment for any reason other than Cause, then the terms of Section 3.2.3 shall apply.

3.1.4 **Termination by the Executive For Good Reason.** The Executive may terminate his employment for Good Reason. Good Reason will exist in the event that the Company, without the Executive' s written consent:



(a) institutes a material adverse change in the Executive' s title or in the duties assigned to the Executive;

(b) requires the Executive to relocate his principal residence to a location other than the Twin Cities metropolitan area, except as provided in Section 1.3.3;

(c) reduces the total amount of the Executive' s Annual Base Salary below $550,000;

(d) reduces the annual EMIP Target Incentive for any fiscal year during the Term that the EMIP is in effect;

(e) terminates the EMIP during the Term and does not offer the Executive an opportunity to earn the Target Incentive under another executive compensation plan of the Company;

(f) reduces the aggregate benefits package described in Sections 2.3 through 2.8 available to the Executive in a manner that is materially and adversely disproportionate in effect to the Executive when compared on a relative basis to the effects of such action on other senior executives of the Company, and such reductions were not supported by the Executive;

(g) does not nominate the Executive as a candidate to serve on the Board;

(h) enters into a Change in Control (as such term is defined in Section 3.4) transaction the result of which is that the Executive no longer is serving as the chief executive officer of a publicly reporting company;

(i) removes, as a general matter, the Executive' s primary authority to supervise and manage the executive officers of the Company who report directly to the Chief Executive Officer through the general assumption of that authority by the Board, or any committee or individual member of the Board; provided that, any action of the Board, or any committee or individual member of the Board, to seek information directly from, or to request that a project be undertaken at the direction of the Board by, any such executive officer shall not constitute "Good Reason" hereunder; and provided further, that the Executive acknowledges and agrees that neither of the following sets of activities constitutes "Good Reason:" (i) the Company' s internal audit function continuing to report directly to the Audit Committee on an ongoing basis, and (ii) certain executive officers and their staffs continuing to have ongoing responsibilities to support the Board and its committees; or

(j) substantially fails to comply with the provisions of Article II hereof; provided, however, that an unintentional failure to comply or a failure to

comply that results from administrative oversight shall not give rise to Good Reason, if such failure is promptly corrected.

The Executive shall have Good Reason to terminate his employment if (i) within forty-five (45) days following the Executive' s actual knowledge of the event which the Executive determines constitutes Good Reason, he notifies the Company in writing that he has determined a Good Reason exists and specifies the event creating Good Reason, and (ii) following receipt of such notice, the Company fails to remedy such event within forty-five (45) days. If either condition is not met, the Executive shall not have a Good Reason to terminate his employment.

3.1.5 **Continuation of Provisions.** Notwithstanding any termination of the Executive' s employment with the Company, the Executive, in consideration of the Executive' s employment hereunder to the date of employment termination, shall remain bound by the provisions of this Agreement which specifically relate to periods, activities or obligations upon or subsequent to the termination of the Executive' s employment, including, but not limited to, the covenants contained in Articles IV and V hereof and the Employee Invention Agreement, as defined in, and subject to the conditions stated in, Section 4.1.

3.1.6 **Surrender of Records and Property.** Upon any termination of the Executive' s employment with the Company, the Executive shall deliver promptly to the Company the SecurID Net Access card, and all records, manuals, books, blank forms, documents, letters, memoranda, notes, notebooks, reports, computer disks, computer software, computer programs (including source code, object code, on-line files, documentation, testing materials and plans and reports), designs, drawings, formulae, data, tables or calculations or copies thereof, which are the property of the Company or any Company Affiliate or which relate in any way to the business, products, practices or techniques of the Company or any Company Affiliate, and all other property, trade secrets and "Confidential Information" (as defined in Section 4.2) of the Company or any Company Affiliate, including, but not limited to, all tangible, written, graphical, machine readable and other materials (including all copies) which in whole or in part contain any trade secrets or Confidential Information of the Company or any Company Affiliate which in any of these cases are in the Executive' s possession or under the Executive' s control. This includes all copies or specimens in the Executive' s possession, whether prepared or made by others or the Executive. Upon any termination of the Executive' s employment, the Executive shall also refrain from accessing the Company' s files via computer or modem. The Executive shall acknowledge in writing the return of all such materials, when requested to do so by the Company.

Notwithstanding the foregoing, the Executive shall be entitled to retain one copy of this Agreement, any stock option, restricted stock or other plan or agreement with the Company pursuant to which the Executive retains any rights at the time of his employment termination with the Company, and documentation provided to the Executive during his employment relating to such compensation or benefits.

3.2 **Compensation Following Termination Prior to the End of the Term.** In the event that the Executive' s employment hereunder is terminated prior to the end of the Term, the



Executive shall be entitled only to the following compensation and benefits upon such termination:

3.2.1 **Termination by Reason of the Executive' s Death or Total Disability.** In the event that the Executive' s employment is terminated prior to the expiration of the Term by reason of the Executive' s death or Total Disability, then:

(a) The Company shall pay the following amounts to the Executive, the Executive' s spouse or his estate, as the case may be: any amounts due to the Executive for Annual Base Salary through the date of employment termination, together with any other unpaid and pro rata amounts to which the Executive is entitled as of the date of termination pursuant to Article II of this Agreement, including, without limitation, amounts that the Executive is entitled to under any benefit plan of the Company in accordance with the terms of such plan; and

(b) To the extent vested on the date of the Executive' s employment termination, the exercise period of the options granted to the Executive on August 29, 2003, will be to be extended to the earlier of the third anniversary of the date of the Executive' s employment termination and August 29, 2013; and

(c) The vesting of all shares of restricted stock granted to the Executive on August 29, 2003, will be accelerated to the date of the Executive' s employment termination.

Except as otherwise set forth above, the Executive will have no rights to any unvested benefits or any other compensation or payments coming due after the date of the Executive' s employment termination.

3.2.2 **Termination by the Company for Cause or by the Executive Without Good Reason.** If the Executive' s employment is terminated by the Company for Cause or the Executive voluntarily terminates employment without Good Reason, the Company shall pay to the Executive (a) any Annual Base Salary earned but not paid through the date of the Executive' s employment termination, plus (b) the amount of any other benefits to which the Executive is legally entitled as of such date under the terms and conditions of any benefit plans of the Company in which the Executive is participating as of such date. The Company shall have no further obligations under this Agreement.

3.2.3 **Termination by the Executive for Good Reason or by the Company Without Cause.** In the event that the Executive' s employment is terminated by the Executive for Good Reason or by the Company without Cause, and provided that the Executive has executed a written release to the Company in substantially the same form attached hereto as Exhibit A and the rescission period specified therein has expired, the Company shall:

(a) pay the following amounts to the Executive:



(i) any accrued but unpaid Annual Base Salary in effect at the date of termination of the Executive' s employment with the Company for services rendered to such date;

(ii) a lump sum severance payment of 200% of the sum of the Annual Base Salary and the amount payable under the then-current EMIP, assuming that the Executive were eligible for a payment thereunder at the EMIP Target Incentive in effect at the date of termination;

(iii) upon his election of COBRA continuation coverage, ADC shall continue to pay an amount equal to the current employer contribution to medical and dental premiums until such time as a) the Executive first becomes covered by another group medical and dental coverage or b) six months following the termination date, whichever is earlier; and

(iv) the amount of any other benefits to which the Executive is legally entitled as of such date under the terms and conditions of any benefit plans of the Company in which the Executive is participating as of the date of termination; and

(b) cause the vesting of the unvested portions of the 1,200,000 options and the 650,000 restricted shares granted on August 29, 2003, to be accelerated to the date of termination; and

(c) cause the exercise period for the unexercised options granted to the Executive on August 29, 2003, to be extended to the earlier of the third anniversary of the date of termination and August 29, 2013.

The Company shall have no further obligations under this Agreement.

3.2.4 **Change in Control.** Following a "Change in Control" (as that term is defined in the Company' s Change in Control Plan applicable to the Executive, as such plan may be amended from time to time), the Executive will be eligible to receive payments and benefits under such Change in Control Plan as then in effect. If a Change in Control occurs during the Term, this Agreement shall remain in effect following such Change in Control for the remainder of the Term. If the Executive receives payments and benefits under such Change in Control Plan as then in effect, the Executive shall not be entitled to receive any payments or benefits under this Agreement. If the Executive receives payments and benefits under this Agreement following a Change in Control, then Executive shall not be entitled to receive any payments or benefits under such Change in Control Plan as then in effect.

3.3 **No Other Benefits.** If the Executive receives the payments and benefits described in this Article III, the Executive will not be eligible to receive from the Company or any Affiliate any other severance or termination payments or benefits of any kind, including but not limited to those provided in Article II of this Agreement.

**ARTICLE IV: CONFIDENTIAL INFORMATION**

4.1 **Purpose and Scope.** As a condition precedent to the Company hiring the Executive as President and Chief Executive Officer and the Company' s performance of its obligations hereunder, the Executive shall execute and deliver to the Company the Employee Invention, Copyright and Trade Secret Agreement in the form attached hereto as **Exhibit B** (the "Employee Invention Agreement"). To the extent of any inconsistencies between the terms of this Agreement and the terms of the Employee Invention Agreement, the terms of this Agreement shall control during the Term (and any period during which the inconsistent sections of this Agreement survive beyond such Term). For purposes of clarification and not in limitation of the foregoing sentence, the parties acknowledge and agree that, during such period of time, the identified sections of the Agreement shall control over the comparable provisions of the Employee Inventions Agreement, as set forth in Exhibit C hereto.

4.2 **Nondisclosure.** At all times during the Executive' s employment and thereafter, the Executive will hold in the strictest confidence and will not disclose, use, lecture upon or publish any of the Company' s Confidential Information, except as such disclosure, use or publication may be required in connection with the Executive' s work for the Company, or unless the Company expressly authorizes such disclosure in writing. The Executive will obtain the Company' s written approval before publishing or submitting for publication any material (written, verbal or otherwise) that relates to the Executive' s work at the Company and/or incorporates any Confidential Information. The Executive hereby assigns to the Company any and all rights, title and interest the Executive may have or acquire in the Confidential Information and recognizes that all of the Confidential Information is and shall be the sole property of the Company and its successors and assigns.

As used herein, "Confidential Information" means information that was developed, created, or discovered by or on behalf of the Company, or which became or will become known by, or was or is conveyed to the Company, which has commercial value in the Company' s business. "Confidential Information" includes, but is not limited to, software programs, source and object code, algorithms, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions (whether patentable or not), works of authorship, formulas, business and product development plans, customer lists, terms of compensation and performance levels of the Company employees, financial, strategic and other information concerning the Company' s actual or anticipated business, research or development, or which is received in confidence by or for the Company from any other person. Information shall cease to be "Confidential Information" at such time as it becomes known to the general public through no fault of the Executive (including no breach of this Section 4.2 by the Executive).

**ARTICLE V: NON-COMPETITION, NON-SOLICITATION NON-HIRE AND NON-DISPARAGEMENT**

5.1 **Non-Competition Covenant.** In consideration of the financial and other benefits described in this Agreement, the Executive agrees that, during the period commencing on the Commencement Date and ending on the date that is one (1) year after the date on which the Executive ceases to be employed by the Company (for whatever reason and whether such cessation is occasioned by the Company or the Executive), the Executive shall not, directly or



indirectly, and in any manner or capacity (e.g., as an advisor, principal, agent, partner, officer, director, investor, shareholder, employee, member of any association or otherwise), engage in any business activities that are competitive with the business conducted by the Company or any Company Affiliate on or prior to the date the Executive ceases to be employed by the Company.

5.2 **Geographical Extent of Covenant.** The Executive acknowledges that the Company directly, or indirectly through the Company Affiliates, currently is engaged in business on a world-wide basis. Consequently, the Executive agrees that his obligations under this Article V shall apply in any market, foreign or domestic, in which: (a) the Company or, as applicable, a Company Affiliate(s), operates during the one-year period described in Section 5.1; and (b) the Company or, as applicable, a Company Affiliate(s), has plans to enter on the date the Executive ceases to be employed by the Company.

5.3 **Limitation on Covenant.** Ownership by the Executive, as a passive investment, of less than one percent (1%) of the outstanding shares of capital stock of any corporation listed on a national securities exchange or publicly traded in the over-the-counter market shall not constitute a breach of this Article V.

5.4 **Non-Solicitation And Non-Hire.** The Executive agrees that, for a period of two (2) years after termination of his employment for any reason (and whether occasioned by the Company or the Executive), the Executive shall not, except with the prior written consent of the Company: (a) hire or attempt to hire for employment any person who is employed by the Company or a Company Affiliate, or attempt to influence any such person to terminate employment with the Company or any Company Affiliate; (b) induce or attempt to induce any employee of the Company or any Company Affiliate to work for, render services to, provide advice to, or supply confidential business information or trade secrets of the Company or any Company Affiliate to any third person, firm or corporation; or (c) induce or attempt to induce any customer, supplier, licensee, licensor or other business relation of the Company or any Company Affiliate to cease doing business with the Company or such Company Affiliate, or in any way interfere with the relationship between any such customer, supplier, licensee, licensor or other business relation and the Company or any Company Affiliate. Nothing herein shall prohibit the Executive from general advertising for personnel not specifically targeting any employee or other personnel of the Company, or from hiring any such employee or other personnel responding to such general advertising.

The foregoing limitations shall not apply with respect to: (i) any former employee of the Company whose employment terminated prior to the Commencement Date, or (ii) any employee of the Company whose employment is terminated after the Commencement Date and prior to the date of the Executive' s termination of employment, so long as at least six (6) months have passed between the date of such employee' s employment termination and the date of any action by the Executive set forth in the first sentence of this Section 5.4.

5.5 **Non-Disparagement.** During and after the Term, the Executive agrees not to make any remarks (whether in public or private) knowingly or intentionally disparaging the Company or any Company Affiliate, or their respective products, services, officers, director or



employees, whether past or current, including any present, former or future director, officer, employee or agent of the Company or any Company Affiliate.

**ARTICLE VI: DISPUTE RESOLUTION PROCESS**

6.1 **Dispute Defined.** The Company and the Executive desire to establish a reasonable and confidential means of resolving any dispute, question or interpretation arising out of or relating to (i) this Agreement or the alleged breach or threatened breach of it, (ii) the making of this Agreement, including claims of fraud in the inducement, (iii) the Executive' s employment by the Company pursuant to this Agreement, including claims of wrongful termination or discrimination, or (iv) any activities by the Executive restricted by Articles IV and V and by Exhibit B (to the extent applicable) of this Agreement following the cessation of his employment with the Company (each such dispute to be referred to herein as a "Dispute").

6.2 **Procedure.** In furtherance of the parties' mutual desire, the Company and the Executive agree that if either party believes a Dispute exists, that party shall provide the other with written notice of the claimed Dispute. Upon receipt of that written notice, the following procedure shall be the exclusive means of fully and finally resolving the Dispute. First, within thirty (30) days of the other party receiving that notice, the Executive and appropriate representatives of the Company and/or Board will meet to attempt to resolve amicably the Dispute. Second, if a mutually agreeable resolution is not reached within thirty (30) days following the parties' first meeting, the parties will engage in mediation with a mutually agreeable neutral mediator, said mediation to be held within forty-five (45) days of the final meeting between the Executive and representatives of the Company and/or Board. The Company shall pay the fees and expenses of the mediator. Third, if the Dispute is not resolved through mediation within thirty (30) days, the Dispute shall be resolved exclusively by final and binding arbitration held in accordance with the provisions of this Agreement and the American Arbitration Association ("AAA") National Rules for the Resolution of Employment Disputes then in effect, unless such rules are inconsistent with the provisions of this Agreement. In connection with such arbitration:

(a) Any such arbitration shall be conducted: (A) by a neutral arbitrator appointed by mutual agreement of the parties; or (B) failing such agreement, by a neutral arbitrator appointed in accordance with said AAA rules;

(b) The parties shall be permitted reasonable discovery in accordance with the provisions of the Minnesota Rules of Civil Procedure, including the production of relevant documents by the other party, the exchange of witness lists, and a limited number of depositions, including depositions of any expert who will testify at the arbitration;

(c) The arbitrator' s award shall include findings of fact and conclusions of law showing the legal and factual bases for the arbitrator' s decision;

(d) The arbitrator shall have the authority to award to the prevailing party any remedy or relief that a United States District Court or court of the State of Minnesota could order or grant if the dispute had first been brought in that judicial forum, including costs and attorneys' fees;

(e) The arbitrator' s award may be entered by any court of competent jurisdiction; and

(f) Unless otherwise agreed by the parties, the place of any arbitration proceeding shall be Minneapolis, Minnesota.

6.3 **Confidentiality of Dispute Resolution.** Except as the parties shall agree in writing, upon court order, or as required by law, neither the Company nor the Executive will disclose to any third party, except for their counsel, retained experts and other persons directly serving counsel or retained experts, any fact or information in any way pertaining to the process of resolving a Dispute under this Article VI, or to the fact of or any term that is part of a resolution or settlement of any Dispute. This prohibition on disclosure specifically includes, without limitation, any disclosure of an oral statement or of a written document made or provided by either the Executive or the Company, or by any of its or his representatives, counsel or retained experts, or other persons directly serving any representatives, counsel or retained experts.

6.4 **Right to Injunctive Relief.** The Executive acknowledges and agrees that the services to be rendered by him hereunder are of a special, unique and extraordinary character, that it would be difficult to replace such services and that any violation of the Executive' s obligations under either Article IV or Article V would be highly injurious to the Company and/or to any Company Affiliate and that it would be extremely difficult to compensate the Company and/or any Company Affiliate fully for damages for any such violation. Accordingly, notwithstanding the terms of this Article VI, the Company or any Company Affiliate, as the case may be, shall be entitled to seek temporary and permanent injunctive relief from a court of law, in the event of violation by the Executive of any of his obligations under any provision of either Article IV or Article V. This provision with respect to injunctive relief shall not, however, diminish the right of the Company, any Company Affiliate or the Executive to claim and recover damages, or to seek and obtain any other relief available to it pursuant to the provisions of this Article VI.

**ARTICLE VII: ASSIGNMENT; SUCCESSORS.**

7.1 **Assignment**. This Agreement is personal to the Executive and, without the prior written consent of the Company, shall not be assignable by the Executive. This Agreement shall inure to the benefit of and be enforceable by the Executive' s heirs, executors and administrators.

7.2 **Successors**. This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns, provided that the Company may not assign this Agreement except in connection with the assignment or disposition of all or substantially all of the assets or stock of the Company, or by law as a result of a merger or consolidation.



**ARTICLE VIII: MISCELLANEOUS PROVISIONS**

8.1 **Notices**. All notices and other communications under this Agreement shall be in writing and shall be given by hand delivery to the other party, by registered or certified mail, return receipt requested, postage prepaid, or by telefacsimile with printed confirmation, addressed as follows:

If to the Executive:
Robert E. Switz
5930 Boulder Bridge Lane
Shorewood, Minnesota 55331
Fax: (952) 401-0061

With a copy to:
Lindquist & Vennum PLLP
4200 IDS Center
Minneapolis, Minnesota 55402
Fax: (612) 371-3207
Attention: Edward J. Wegerson

If to the Company by mail or fax:
ADC Telecommunications Inc.
P.O. Box 1101
Minneapolis, Minnesota 55440-1101
Fax: (952) 917-0708
Attention: Chairman of Compensation Committee
With a copy to: Chief Legal Officer

If to the Company by hand delivery:
ADC Telecommunications Inc.
13625 Technology Drive
Eden Prairie, Minnesota 55344-2252
Attention: Chairman of Compensation Committee
With a copy to: Chief Legal Officer

or to such other address as either party furnishes to the other in writing in accordance with this paragraph. Notices and communications shall be effective when actually received by the addressee or three (3) days after the initiation of delivery; provided, that this period will not extend any period of notice specifically set forth in this Agreement.



Any party may change the address for the purpose of this Section by giving the other written notice of the new address in the manner set forth above.

8.2 **Enforceability.** To the extent any provision of this Agreement shall be determined to be invalid or unenforceable in any jurisdiction, such provision shall be deemed to be deleted from this Agreement as to such jurisdiction only, and the validity and enforceability of the remainder of such provision and of this Agreement shall be unaffected. In furtherance of and not in limitation of the foregoing, the Executive and the Company expressly agree that should the duration of, geographical extent of, or business activities covered by, any provision of this Agreement be in excess of that which is valid or enforceable under applicable law in a given jurisdiction, then such provision, as to such jurisdiction only, shall be construed to cover only that duration, extent or activities that may validly or enforceably be covered. The Company and the Executive acknowledge the uncertainty of the law in this area with respect to Sections 5.1 and 5.2, and expressly stipulate that this Agreement is to be given the construction that renders its provisions valid and enforceable to the maximum extent (not exceeding its express terms) possible under applicable law.

8.3 **Taxes.** Notwithstanding any other provision of this Agreement, the Company shall withhold from any amount payable under this Agreement all federal, state, local and foreign taxes that are required to be withheld by applicable laws or regulations, or that are consistent with the Company' s prevailing practice.

8.4 **Governing Law, Construction, and Severability**. The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Minnesota. In the event any provision of this Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not in any way affect the legality or validity of any other provision of this Agreement.

It is the intention of the parties hereto that the Company be given the broadest possible protection respecting its Confidential Information and trade secrets and respecting competition by the Executive following the Executive' s separation from the Company.

8.5 **Venue**. Any action at law, suit in equity or judicial proceeding arising directly, indirectly or otherwise in connection with, out of, related to or from this Agreement or any provision hereof shall be litigated only in the State of Minnesota, Hennepin County District Court, or the United States District Court for the District of Minnesota. The Executive waives any right the Executive may have to transfer or change the venue of any litigation brought against the Executive by the Company.

8.6 **Entire Agreement**. This Agreement (together with the Exhibits attached hereto) is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions between the Company and the Executive regarding the subject matter hereof. No modification of, or amendment to, this Agreement, nor any waiver of either party' s rights under this Agreement, will be effective unless in writing and signed by both parties. Any subsequent change or changes in the Executive' s duties, obligations, salary or compensation will not affect the validity or scope of this Agreement.



8.7 **Counterparts**. This Agreement may be simultaneously executed in any number of counterparts, and such counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

8.8 **Captions and Headings**. The captions and paragraph headings used in this Agreement are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement or any of the provisions hereof.

8.9 **Survivability.** The provisions of this Agreement that by their terms call for performance subsequent to termination of the Executive' s employment under this Agreement, or of this Agreement, shall so survive such termination. For purposes of clarification and not in limitation of the foregoing sentence, the parties acknowledge and agree that Articles IV, V and VIII, Section 3.1.6 and the last sentence of Section 1.2 (and, solely for purposes of enforcing the last sentence of Section 1.2, Sections 3.1.2 and 3.2.3) shall survive the termination of this Agreement.

8.10 **Waiver.** No waiver by the Company or the Executive of any breach or violation of this Agreement shall be a waiver of any preceding or succeeding breach or violation. No waiver by the Company or the Executive of any right under this Agreement shall be construed as a waiver of any other right hereunder. Except as otherwise provided in Section 3.1.2 or Section 3.1.4, neither the Company nor the Executive shall not be required to give notice to enforce strict adherence to any of the terms or conditions of this Agreement.

8.11 **No Conflicting Obligations.** The Executive represents that the Executive' s performance of all the terms of this Agreement and as an the Executive of the Company does not and will not breach any agreement to keep in confidence information acquired by the Executive in confidence or in trust prior to the Executive' s employment with the Company. The Executive has not entered into, and the Executive agrees that he or she will not enter into, any agreement, either written or oral, in conflict with this Agreement.

8.12 **Representation of the Executive**. The Executive represents and warrants to the Company that the Executive is free to enter into this Agreement and has no contract, commitment, arrangement or understanding to or with any party that restrains or is in conflict with the Executive' s performance of the covenants, services and duties provided for in this Agreement. The Executive agrees to indemnify the Company and to hold it harmless against any and all liabilities or claims arising out of any unauthorized act or acts by the Executive that, the foregoing representation and warranty to the contrary notwithstanding, are in violation, or constitute a breach, of any such contract, commitment, arrangement or understanding.

8.13 **Advice of Counsel**. The Executive acknowledges that he has been provided the opportunity to seek, and has obtained, the advice of counsel in connection with the negotiation and execution of this Agreement.

8.14 **No Strict Construction**. Each of the Executive and the Company acknowledges and agrees that the language used in this Agreement and the other agreements referred to herein is, and shall be deemed to be, the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against either party hereto.



8.15 **Good Faith and Fair Dealing**. Each of the Executive and the Company acknowledges and agrees that his or its respective performance of his or its obligations under this Agreement shall be conducted in good faith and with fair dealing toward the other party hereto.

8.15 **Legal Fees**. The Company shall reimburse the Executive for the reasonable, and appropriately documented, fees and expenses of counsel to the Executive in connection with the negotiation and execution of this Agreement, up to a maximum total reimbursement of $10,000.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Dated this 29 day of August, 2003

/s/ Robert E. Switz
ROBERT E. SWITZ

ADC TELECOMMUNICATIONS, INC.

By /s/ Laura Owen
Laura Owen
Vice President, Human Resources



**EXHIBIT A**

*GENERAL RELEASE*

This General Release is made and entered into as of the day of , , by Robert E. Switz ("the Executive").

***WHEREAS***, ADC Telecommunications, Inc. (the "Company") and the Executive are parties to an Employment Agreement dated as of August 13, 2003;

***WHEREAS***, the Executive intends to settle any and all claims that the Executive has or may have against the Company as a result of the Executive' s employment with the Company and the cessation of the Executive' s employment with the Company; and

***WHEREAS***, under the terms of the Employment Agreement, which the Executive agrees are fair and reasonable, the Executive agreed to enter into this General Release as a condition precedent to the severance arrangements described in Article III of the Employment Agreement;

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

**1. Release.** For the consideration expressed in the Employment Agreement, the Executive does hereby fully and completely release and waive any and all claims, complaints, causes of action, demands, suits, and damages, of any kind or character, which the Executive has or may have against the Released Parties, as hereinafter defined, arising out of any acts, omissions, conduct, decisions, behavior, or events occurring up through the date of the Executive' s signature on this General Release, including the Executive' s employment with the Company and the cessation of that employment. For purposes of this General Release, "Released Parties" means collectively the Company, its

predecessors, successors, assigns, parents, affiliates, subsidiaries, related companies, officers, directors, shareholders, agents, servants, executives, and insurers, and each and all thereof.

The Executive understands and accepts that his release of claims includes any and all possible discrimination claims, including but not limited to claims based upon: Title VII of the Federal Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act; the Americans with Disabilities Act; the Equal Pay Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act; the Minnesota Human Rights Act; Minn. Stat. §181.81; the Minneapolis Code of Ordinances; or any other federal, state or local statute, ordinance or law. The Executive also understands that the Executive is giving up all other claims, including those grounded in contract or tort theories, including but not limited to: wrongful discharge; violation of Minn. Stat. §176.82; breach of contract; tortious interference with contractual relations; promissory estoppel; breach of the implied covenant of good faith and fair dealing; breach of express or implied promise; breach of manuals or other policies; assault; battery; fraud; false imprisonment; invasion of privacy; intentional or negligent misrepresentation; defamation, including libel, slander, discharge defamation and self-publication defamation; discharge in violation of public policy; whistleblower; intentional or negligent infliction of emotional distress; or any other theory, whether legal or equitable.



The Executive further understands that the Executive is releasing, and does hereby release, any claims for damages, by charge or otherwise, whether brought by him or on his behalf by any other party, governmental or otherwise, and agrees not to institute any claims for damages via administrative or legal proceedings against any of the Released Parties. The Executive also waives and releases any and all rights to money damages or other legal relief awarded by any governmental agency related to any charge or other claim against any of the Released Parties.

This Release does not apply to any post-termination claim that the Executive may have for benefits under the provisions of any Executive benefit plan maintained by the Company, or for any benefits or payments due to the Executive after the date hereof under the terms of the Employment Agreement.

The Executive' s release of claims shall not apply to any claims the Executive might have to indemnification under Minnesota Statute §302A.521, any other applicable statute or regulation, or the Company' s by-laws.

**2. Rescission.** The Executive has been informed of the Executive' s right to rescind this General Release by written notice to the Company within fifteen (15) calendar days after the execution of this General Release. The Executive has been informed and understands that any such rescission must be in writing and delivered to the Company by hand, or sent by mail within the 15-day time period. If delivered by mail, the rescission must be: (1) postmarked within the applicable period and (2) sent by certified mail, return receipt requested.

The Executive understands that the Company will have no obligations under the Employment Agreement in the event a notice of rescission by the Executive is timely delivered, and, in the event the Executive rescinds this General Release, the Executive agrees to repay to the Company any payments made to him or benefits conferred upon him pursuant to Article III of the Employment Agreement prior to the date of rescission.

**3. Acceptance Period; Advice of Counsel.** The terms of this General Release will be open for acceptance by the Executive for a period of 21 days after the date of the Executive' s employment termination, during which time the Executive may consider whether or not to accept this General Release. The Executive agrees that changes to this General Release, whether material or immaterial, will not restart this acceptance period. The Executive is hereby advised to seek the advice of an attorney regarding this General Release.

**4. Binding Agreement.** This General Release shall be binding upon, and inure to the benefit of, the Executive and the Company and their respective successors and permitted assigns.

**5. Representation.** The Executive hereby acknowledges and states that he has read this General Release. The Executive further represents that this General Release is written in language that is understandable to him, that he fully appreciates the meaning of its terms, and that he enters into this General Release freely and voluntarily.

***IN WITNESS WHEREOF,*** the Executive, after due consideration, has authorized, executed, and delivered this General Release all as of the date first written.

Robert E. Switz



**EXHIBIT B**

**PROPRIETARY INFORMATION, INVENTION and CONFIDENTIALITY AGREEMENT**

In consideration of my employment by ADC Telecommunications, Inc. (hereafter referred to as "the Company"), and the compensation received by me from the Company from time to time, I hereby agree to the following terms of this Proprietary Information, Invention and Confidentiality Agreement (hereafter referred to as "Agreement"):

1. Definitions:

a. As used in this Agreement, "**ADC Telecommunications, Inc.**" and "**the Company**" refer to ADC Telecommunications, Inc. and each of its subsidiaries. I recognize and agree that my obligations under this Agreement and all terms of this Agreement apply to me regardless of whether I am employed by or work for ADC Telecommunications, Inc. or any subsidiary or affiliated company of ADC Telecommunications, Inc. Furthermore, I understand and agree that the terms of this Agreement will continue to apply to me even if I transfer at some time from one subsidiary or affiliate of the Company to another.

b. I understand that the Company possesses and will possess Proprietary Information which is important to its business. For purposes of this Agreement, "**Proprietary Information**" is information that was developed, created, or discovered by or on behalf of the Company, or which became or will become known by, or was or is conveyed to the Company, which has commercial value in the Company' s business. "Proprietary Information" includes, but is not limited to, software programs, source and object code, algorithms, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions (whether patentable or not), works of authorship, formulas, business and product development plans, customer lists, terms of compensation and performance levels of the Company employees, and other information concerning the Company' s actual or anticipated business, research or development, or which is received in confidence by or for the Company from any other person. I understand that my employment creates a relationship of confidence and trust between me and the Company with respect to Proprietary Information.

c. I understand that the Company possesses or will possess "**Company Documents and Materials**" which are important to its business. For purposes of this Agreement, "Company Documents and Materials" are documents or other media or tangible items that contain or embody Proprietary Information or any other information concerning the business, operations or plans of the Company, whether such documents, media or items have been prepared by me or by others. "Company Documents and Materials" include, but are not limited to, blueprints, drawings, photographs, charts, graphs, notebooks, customer lists, computer disks, tapes or printouts, sound recordings and other printed, typewritten or handwritten documents, sample products, prototypes and models.



2. Confidentiality and Assignment. All Proprietary Information, including but not limited to all patents, patent rights, copyrights, trade secret rights, trademark rights and other rights (including, without limitation, intellectual property rights) anywhere in the world in

connections therewith shall be the sole property of the Company. I hereby assign to the Company any and all rights, title and interest I may have or acquire in such Proprietary Information. At all times, both during my employment by the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it (or any information of a third party if disclosed to the Company by such third party in confidence), without the prior written consent of an officer of the Company, except as my be necessary in the ordinary course of performing my duties to the Company.

3. Written Records and Company Documents. I agree to make and maintain adequate and current written records, in a form specified by the Company, of all inventions, trade secrets and works of authorship assigned or to be assigned to the Company pursuant to this Agreement. All the Company Documents and Materials shall be the sole property of the Company. I agree that during my employment by the Company, I will not remove any Company Documents and Materials from the business premises of the Company or deliver any Company Documents and Materials to any person or entity outside the company, except as I am required to do in connection with performing the duties of my employment. I further agree that, immediately upon the termination of my employment by me or by the Company for any reason, or during my employment if so requested by the Company, I will return all Company Documents and Materials, apparatus, equipment and other physical property, or any reproduction of such property, excepting on (i) my personal copies of records relating to my compensation; (ii) my personal copies of any materials previously distributed generally to stockholders of the Company; and (iii) my copy of the Agreement.

4. Disclosure of Inventions. I will promptly disclose in writing to my immediate supervisor, or to such other person designated by the Company, all "**Inventions,**" which includes, without limitation, all software programs or subroutines, source or object code, algorithms, improvements, inventions, works of authorship, trade secrets, technology, designs, formulas, ideas, processes, techniques, know-how and data, whether or not patentable, made or discovered or conceived or reduced to practice or developed by me, either alone or jointly with others, during the term of my employment. I will also disclose to the President of the Company all Inventions made, discovered, conceived, reduced to practice, or developed by me within six (6) months after the termination of my employment with the Company which resulted, in whole or in part, from my prior employment by the Company. Such disclosures shall be received by the Company in confidence (to the extent such Inventions are not assigned to the Company pursuant to paragraph (5) below) and do not extend the assignment made in paragraph (5) below.

5. Inventions Property of the Company. I agree that all inventions which I make, discover, conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others) during my employment shall be the sole property of the Company to the maximum extent permitted by applicable law. Appendix A to this Agreement provides notice and a summary of applicable state laws in the U.S.

This assignment shall not extend to Inventions, the assignment of which is prohibited by applicable law, including but not limited to those summarized in Appendix A.



6. Other Rights of the Company. The Company shall be the sole owner of all patents, patent rights, copyrights, trade secret rights, trademark rights and all other intellectual property or other rights in connection with Inventions that are the sole property of the Company. I further acknowledge and agree that such Inventions, including, without limitation, any computer programs, programming documentation, and other works of authorship, are "works made for hire" for purposes of the Company' s rights under copyright laws. I hereby assign to the Company any and all rights, title and interest I may have or acquire in such Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or machine a prior Invention owned by me or in which I have interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, sublicensable, worldwide license to make, have made, modify, use, market, sell and distribute such prior Invention as part of or in connection with such product, process or machine.

7. Cooperation. I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, without charge to the Company but at the Company' s expense, in further evidencing and perfecting the assignments made to the Company under this Agreement and in obtaining, maintaining, defending and enforcing patents, patent rights, copyrights, trademark rights, trade secret rights or any other rights in connection with such Inventions and improvements thereto in any and all countries. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in legal proceedings. I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorneys-in-fact to act for and on my behalf and instead of me, to execute and file any documents, applications or related findings and to do all other lawfully permitted acts to further the purposes set forth above in this subsection (f), including, without limitation, the perfection of assignment and prosecution and issuance of patents, patent applications, copyright applications and registrations, trademark applications and registrations or other rights in connection with such Inventions and improvements thereto with the same legal force and effect as if executed by me.

8. Moral Rights. Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "**Moral Rights**"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, I hereby waive such Moral Rights and consent to any action of the Company that would violate such Moral Rights in the absence of such consent.

9. List of Inventions. I have attached hereto as **Appendix B**, a complete list of all Inventions or improvements to which I claim ownership and that I desire to remove from the operation of this Agreement, and I acknowledge and agree that such list is complete. If no such list is attached to this Agreement, I represent that I have no such Inventions and improvements at the time of signing this Agreement.

10. Non-Solicitation. During the term of my employment and for one (1) year thereafter, I will not directly or indirectly (i) encourage, solicit, or attempt to solicit any employee of the Company to leave the Company for any reason or in any interfere adversely with the relationship between any such employee and the



Company; (ii) induce or attempt to induce any employee of the Company to work for, render services or provide advice to or supply confidential business information or trade secrets of the Company to any person or entity other than the Company; or (iii) employ, or otherwise pay for services rendered by, any employee of the Company in any other business enterprise. As part of this restriction, I will not interview or provide any input to any third party regarding any such person during the period in question. However, this obligation shall not affect any responsibility I may have as an employee of the Company with respect to the bona fide hiring and firing of the Company personnel.

11. Notification. Prior to my submitting or disclosing for possible publication or dissemination outside the Company any material prepared by me that incorporates information that concerns the Company' s business or anticipated research, I agree to deliver a copy of such material to an officer of the Company for his or her review. Within twenty (20) days following such submission, the Company agrees to notify me in writing whether the Company believes such material contains any Proprietary Information or Inventions, and I agree to make such deletions and revisions as are reasonably requested by the Company to protect its Proprietary Information and Inventions. I further agree to obtain the written consent of the Company prior to any review of such material by persons outside the Company.

12. No Competition During Employment. I agree that, during my employment with the Company, I will not provide consulting services to or become an employee of, any other firm or person engaged in a business in any way competitive with the Company, or involved in the design, development, marketing, sale or distribution of any networking or software products, without first informing the Company of the existence of such proposed relationship and obtaining the prior written consent of my manager and the Human Resource Manager responsible for the organization in which I work.

13. Past Employment or Agreements. I represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me in confidence or in trust prior to my employment by the Company, and I will not disclose to the Company, or induce the Company to use, any confidential or proprietary information or material belonging to any previous employers or others. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith or in conflict with my employment with the Company. I further agree to conform to the rules and regulations of the Company.

14. At will Employment. (Applicable in the U.S.) If I am employed in the U.S., I agree that I am employed on an "at-will" basis. This means that I have the right to resign and the Company has the right to terminate my employment at any time for any reason, with or without cause. This is the complete agreement between the Company and me on this term of my employment. I further agree that this term can only be modified by the Company President and he or she can only do so in a writing signed and dated by him or her and me.

15. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

16. Consent. I hereby authorize the Company to notify my new employer about my rights and obligations under this Agreement following the termination of my employment with the Company.

17. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us, including but not limited to any and all statements made by any officer, employee or representative of the Company regarding the Company' s financial condition or future prospects. I understand and acknowledge that, except as set forth in this Agreement and in the offer letter from the Company to me (i) no other representation or inducement has been made to me, (ii) I have relied on my own judgment and investigation in accepting my employment with the Company, and (iii) I have not relied on any representation or inducement made by any officer, employee or representative of the Company. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in a writing signed by the President of the Company and me. I understand and agree that any subsequent change in my duties, salary or compensation will not affect the validity or scope of this Agreement.

18. Successors. This Agreement shall be effective as of the first day of my employment with the Company and shall be binding upon me, my heirs, executor, assigns, and administrators, and shall inure to the benefit of the Company, its subsidiaries, successors and assigns.

19. Governing Law. Although I may work for ADC Telecommunications, Inc. outside of Minnesota USA, I understand and agree that this Agreement shall be interpreted and enforced in accordance with the laws of the State of Minnesota to the extent enforceable.

20. Data Transfer. I acknowledge and agree that personal data about me, to the extent necessary for the administration and implementation of this Agreement and other aspects of my employment with the Company, must and may be collected, stored, used, processed by or transmitted within ADC and to ADC' s administrative agents. By my signature below, I hereby consent to the collection, transfer, storage, processing and use of such personal data, for the above described purposes.

I HAVE READ THIS AGREEMENT CAREFULLY AND I UNDERSTAND AND ACCEPT THE OBLIGATIONS WHICH IT IMPOSES UPON ME WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME TO INDUCE ME TO SIGN THIS AGREEMENT. I SIGN THIS AGREEMENT VOLUNTARILY AND FREELY.

Robert E. Switz
Employee Name (Please Print)

/s/ Robert E. Switz — Employee Signature

8/29/03 — Date



**Appendix A**

To the extent, if any, the laws of the following U.S. states are determined to apply to the enforcement of this agreement, written notice is hereby given as follows:

California:

Sections 2870-2872 of the California Labor Code provide that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention that the employee developed entirely on his or her own time without using the employer' s equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer' s business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

Illinois:

Illinois Statute 765-1060 provides that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee' s own time, unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer' s actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer.

Kansas:

Kansas Statute 44-130 provides that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee' s own time, unless:

(1) The invention relates directly to the business of the employer or to the employer' s actual or demonstrably anticipated research or development; or

(2) the invention results from any work performed by the employee for the employer.

Minnesota:

Minnesota Statute 181.78 provides that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee' s own time, and (1) which does not relate (a) directly to the business of the employer or (b) to the employer' s actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the employer.

Washington:

Washington Statutes 49.44.140 and 49.44.140 150 provide that this agreement does not apply, and written notification is hereby provided to me that this agreement does not apply, to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee' s own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer' s



actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer.



## Appendix B

1. The following is a complete list of all Inventions or improvements relevant to the subject matter of my employment by the Company that have been made or discovered or conceived or first reduced to practice by me or jointly with others prior to my employment by the Company that I desire to remove from the operation of the Company' s Proprietary Information and Inventions Agreement:

☐ No inventions or improvements.

☐ See below: Any and all inventions regarding:

☐ Additional sheets attached.

2. I propose to bring to my employment the following materials and documents of a former employer:

☐ No materials or documents.

☐ See below:

Robert E. Switz
Employee Signature

8/29/03
Date



**EXHIBIT C**

**CONTROLLING PROVISIONS**

| Employment Agreement Section | Exhibit B Section | With Respect To |
|---|---|---|
| 4.2 | 2 | Confidentiality |
| 3.1.6 | 3 (last sentence) | Return of documents |
| 5.4 | 10 | Non-solicitation |
| 4.2 | 11 | Prior notice to publication |
| 5.1 | 12 | Non-competition |
| 8.11 and 8.12 | 13 | Prior conflicting agreements |
| 1.1 | 14 | At will employment vs. fixed term |
| 8.6 | 17 | Entire agreement |

**Exhibit 10-f**

May 30, 2003

By Facsimile Transmission (fax #312-904-6217)
and Overnight Courier

Lease Plan North America, Inc.
c/o ABN AMRO Bank N.V.
135 South LaSalle Street, Suite 740
Chicago, Illinois 60603
Attn: Anastasia Lambos
Assistant Vice President
Leasing and Asset Finance

Re: Participation Agreement dated October 22, 1999, as amended (the "Participation Agreement"), among Lease Plan North America, Inc., as agent for the Participants (the "Agent Lessor"), the Participants, ADC Telecommunications, Inc. (the "Lessee"), and ABN Amro Bank N.V., as Administrative Agent for the Participants (the "Administrative Agent"), and the Lease dated October 22, 1999, as amended (the "Lease") between the Agent Lessor and the Lessor.

Dear Ms. Lambos:

Section 18.1 of the Lease provides that on any Payment Date, the Lessee may at its option purchase the Premises (the "Early Termination Option") at a price equal to the Purchase Amount, by providing the Agent Lessor not less than thirty (30) days' prior written notice of such election to exercise, which election shall be irrevocable when made.

The Lessee hereby notifies you that it elects the Early Termination Option and repurchase the Premises on the Payment Date occurring on July 17, 2003.

Capitalized terms used in this notice and not defined have the meanings given them in the Participation Agreement.

ADC TELECOMMUNICATIONS, INC.

By: /s/ Gokul Hemmady

Title: Vice President, Treasurer & Controller

**Exhibit 10-g**

5-27-03

# TERMINATION OF MEMORANDUM OF GROUND LEASE

THIS TERMINATION OF MEMORANDUM OF GROUND LEASE (this "Termination") is made this 17th day of July, 2003, by and between ADC TELECOMMUNICATIONS, INC., a Minnesota corporation, as landlord ("Landlord"), and LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, not in its individual capacity, except as otherwise expressly stated herein, but solely as Agent Lessor, as tenant ("Tenant").

## RECITALS

A. Landlord and Tenant entered into the Memorandum of Ground Lease ("Memorandum") dated as of October 22, 1999, recorded and filed with the Office of the Registrar of Titles, Hennepin County, Minnesota, on October 28, 1999, as Document No. 3219721. The Memorandum evidenced an unrecorded Ground Lease dated as of October 22, 1999 ("Ground Lease"), between Landlord, as landlord, and Tenant, as tenant, which Ground Lease covered the real property described as Lot 1, Block 1, Technology Campus 3rd Addition, Hennepin County, Minnesota.

B. Landlord and Tenant wish to terminate the Ground Lease and the Memorandum.

## AGREEMENT

NOW, THEREFORE, in consideration of this Termination and other consideration, the receipt and sufficiency of which the parties hereto acknowledge, the parties hereto agree as follows:

1. The above Recitals are incorporated herein by reference as if fully set forth herein.

2. The Ground Lease and the Memorandum are hereby terminated and are null, void, and of no force or effect. Landlord and Tenant release all rights and interests they have under the Ground Lease and the Memorandum.

---

3. This Termination may be signed separately in counterparts which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first written above.

LANDLORD:

ADC TELECOMMUNICATIONS, INC.

By: /s/ Gokul V. Hemmady
Its: Vice President, Controller and Treasurer

TENANT:

LEASE PLAN NORTH AMERICA, INC., not in its individual capacity except as expressly stated herein but solely as Agent Lessor

By: /s/ Blake J. Lacher
Its: Vice President

LEASE PLAN NORTH AMERICA, INC., not in its individual capacity except as expressly stated herein but solely as Agent Lessor

By: /s/ Elizabeth R. McClellan
Its: Vice President

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Gokul V. Hemmady, the Vice President, Controller and Treasurer of ADC TELECOMMUNICATIONS, INC., a Minnesota corporation, on behalf of the corporation.

/s/ Carrie A. Neiburg
Notary Public



STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Blake J. Lacher, the Vice President of LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, on behalf of the corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor.

/s/ Renee M. Field
Notary Public

STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Elizabeth R. McClellan, the Vice President of LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, on behalf of the corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor.

/s/ Renee M. Field
Notary Public

This instrument was drafted by, and after recording
return to:

Dorsey & Whitney LLP (JLTIII)
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402-1498

**Exhibit 10-h**

**TERMINATION, SATISFACTION AND RELEASE OF MEMORANDUM OF LEASE, MORTGAGE AND SECURITY AGREEMENT**

THIS TERMINATION, SATISFACTION AND RELEASE OF MEMORANDUM OF LEASE, MORTGAGE AND SECURITY AGREEMENT (this "Agreement") is made this 17th day of July, 2003, by and between LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor ("Lessor"), and ADC TELECOMMUNICATIONS, INC., a Minnesota corporation ("ADC")(Lessor and ADC are hereinafter collectively referred to as "Mortgagor"); and LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor ("Agent Lessor"), LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, not in its individual capacity but solely as Agent Lessor ("Lease Plan"), ABN AMRO BANK N.V., a bank organized under the laws of the Netherlands ("ABN"), and AMSTERDAM FUNDING CORPORATION, a Delaware corporation ("Amsterdam")(Agent Lessor, Lease Plan, ABN, and Amsterdam are hereinafter collectively referred to as "Mortgagee").

RECITALS

A. Mortgagor, as mortgagor, granted that certain Memorandum of Lease, Mortgage and Security Agreement dated as of October 22, 1999, filed with the Office of the Registrar of Titles, Hennepin County, Minnesota, on October 28, 1999, as Document No. 3219722, as amended by the Amendment to Memorandum of Lease, Mortgage and Security Agreement dated as of October 26, 2001, filed with the Office of the Registrar of Titles, Hennepin County, Minnesota, on November 1, 2001, as Document No. 3454005, and the Second Amendment to Memorandum of Lease, Mortgage and Security Agreement dated as of October 29, 2002, filed with the Office of the Registrar of Titles, Hennepin County, Minnesota, on December 6, 2002, as Document No. 3642097 (the Memorandum of Lease, Mortgage and Security Agreement, as so amended, the "Security Agreement").

B. Mortgagor and Mortgagee wish to terminate the Security Instrument.

---

AGREEMENT

NOW, THEREFORE, in consideration of this Agreement and of other consideration, the receipt and sufficiency of which the parties hereto acknowledge, the parties hereto agree as follows:

1. The above Recitals are incorporated herein by reference as if fully set forth herein.

2. Mortgagee acknowledges that it has received full payment and satisfaction of all money and obligations secured by the Security Instrument, and in consideration of such payment and satisfaction, forever releases and discharges the debt evidenced by the Security Instrument, terminates the Security Instrument, and releases the real property described as Lot 1, Block 1, Technology Campus 3rd Addition, Hennepin County, Minnesota, from all of Mortgagee' s right, title, lien and interest therein and thereto.

3. This Agreement may be executed separately in counterparts which, when taken together, shall constitute one and the same instrument.

IN WITNESS whereof the undersigned have executed this instrument as of the 17th day of July, 2003.

MORTGAGOR:

LEASE PLAN NORTH AMERICA, INC., not in its individual capacity except as expressly stated herein but solely as Agent Lessor

By: /s/ Blake J. Lacher
Name: Blake J. Lacher
Title: Vice President

STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Blake J. Lacher, the Vice President of LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, on behalf of the corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor.

/s/ Renee M. Field
Notary Public



MORTGAGOR:

LEASE PLAN NORTH AMERICA, INC., not in its individual capacity except as expressly stated herein but solely as Agent Lessor

By: /s/ Elizabeth R. McClellan
Name: Elizabeth R. McClellan
Title: Vice President

STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Elizabeth R. McClellan, the Vice President of LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, on behalf of the corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor.

/s/ Renee M. Field
Notary Public



MORTGAGOR:

ADC TELECOMMUNICATIONS, INC.

By: /s/ Gokul V. Hemmady
Name: Gokul V. Hemmady

Title: Vice President, Controller & Treasurer

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Gokul V. Hemmady, the Vice President, Controller & Treasurer of ADC TELECOMMUNICATIONS, INC., a Minnesota corporation, on behalf of the corporation.

/s/ Carrie A. Neiburg
Notary Public

MORTGAGEE:

LEASE PLAN NORTH AMERICA, INC., not in its individual capacity except as expressly stated herein but solely as Agent Lessor

By: /s/ Blake J. Lacher
Name: Blake J. Lacher
Title: Vice President

STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Blake J. Lacher, the Vice President of LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, on behalf of the corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor.

/s/ Renee M. Field
Notary Public



MORTGAGEE:

LEASE PLAN NORTH AMERICA, INC. not in its individual capacity except as expressly stated herein but solely as Agent Lessor

By: /s/ Elizabeth R. McClellan
Name: Elizabeth R. McClellan
Title: Vice President

STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Elizabeth R. McClellan, the Vice President of LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, on behalf of the corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor.

/s/ Renee M. Field
Notary Public

MORTGAGEE:

ABN AMRO BANK N.V.

By: /s/ Blake J. Lacher
Name: Blake J. Lacher
Title: Vice President

STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Blake J. Lacher, the Vice President of ABN AMRO BANK N.V., a bank organized under the laws of the Netherlands, on behalf of the bank.

/s/ Renee M. Field
Notary Public



ABN AMRO BANK N.V.

By: /s/ Elizabeth R. McClellan
Name: Elizabeth R. McClellan
Title: Vice President

STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Elizabeth R. McClellan, the Vice President of ABN AMRO BANK N.V., a bank organized under the laws of the Netherlands, on behalf of the bank.

/s/ Renee M. Field
Notary Public

MORTGAGEE:

AMSTERDAM FUNDING CORPORATION

By: /s/ Andrew L. Stidd
Name: Andrew L. Stidd
Title: President

STATE OF New York )
) ss.
COUNTY OF New York )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Andrew L. Stidd, the President of AMSTERDAM FUNDING CORPORATION, a Delaware corporation, on behalf of the corporation.

/s/ Kevin P. Burns
Notary Public

THIS INSTRUMENT WAS
DRAFTED BY, AND AFTER
RECORDING RETURN TO:
Dorsey & Whitney LLP (JLTIII)
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402-1498

**QUITCLAIM DEED, QUITCLAIM BILL OF SALE AND TERMINATION OF LEASE**

LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, not in its individual capacity except as expressly stated herein, but solely as Agent Lessor for the Participants ("*Grantor*"), for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration to Grantor in hand paid by ADC TELECOMMUNICATIONS, INC., a Minnesota corporation ("*Grantee*"), whose address is 13625 Technology Drive, Eden Prairie, Minnesota 55344-2252, the receipt and sufficiency of which consideration is hereby acknowledged, has Bargained, Sold, Delivered and Assigned, and subject to the exceptions, liens, encumbrances, terms and provisions to conveyance and warranty hereinafter set forth and described, has QUITCLAIMED and CONVEYED WITHOUT RECOURSE, and by these presents does hereby QUITCLAIM and CONVEY WITHOUT RECOURSE, unto Grantee all improvements, tangible personal property and fixtures of any kind owned by Grantor and attached to or located on the land described as Lot 1, Block 1, Technology Campus 3rd Addition, Hennepin County, Minnesota. All the foregoing described land, improvements, and other property is hereinafter referred to as the "*Property*", and all capitalized terms not defined herein shall have the meanings given them in the Participation Agreement dated as of October 22, 1999, by and among Grantor, Grantee, the Persons named on Schedule I to the Participation Agreement, as Participants, and ABN AMRO Bank, N.V., a bank organized under the laws of the Netherlands, as Administrative Agent, as such Participation Agreement has been amended by the (A) the First Amendment to Participation Agreement dated as of January 29, 2001, (B) the Second Amendment to Participation Agreement dated as of August 24, 2001, (C) the Third Amendment to Participation Agreement dated as of October 31, 2001, (D) the Fourth Amendment to Participation Agreement dated as of December 11, 2001, (E) the Fifth Amendment to the Participation Agreement dated as of December 31, 2001, (F) the Sixth Amendment to Participation Agreement dated as of April 18, 2002, (G) the Seventh Amendment to Participation Agreement dated as of July 31, 2002, and (H) the Eighth Amendment to Participation Agreement and Other Operative Documents dated as of October 29, 2002 (the Participation Agreement, as so amended by the First Amendment to Participation Agreement, the Second Amendment to Participation Agreement, the Third Amendment to Participation Agreement, the Fourth Amendment to Participation Agreement, the Fifth Amendment to the Participation Agreement, and the Sixth Amendment to Participation Agreement, the Seventh Amendment to Participation Agreement, and the Eighth Amendment to Participation Agreement and Other Operative Documents are hereinafter referred to as the "Participation Agreement").

This conveyance is made and accepted subject and subordinate to all existing interests including any encumbrance caused by the fault, neglect or intention of the Grantee; provided, however, that this conveyance is made and accepted not subject to any Lessor Liens.

Grantor has executed this Quitclaim Deed, Quitclaim Bill of Sale and Termination of Lease, and QUITCLAIMED and CONVEYED the Property, and Grantee has accepted this Quitclaim Deed, Quitclaim Bill of Sale and Termination of Lease and purchased the Property AS IS AND WHEREVER LOCATED, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, EXPRESS, IMPLIED OR STATUTORY, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY OR BY ANY SAMPLE OR MODEL, AND ANY OTHER WARRANTIES CONTAINED IN OR CREATED BY THE



MINNESOTA UNIFORM COMMERCIAL CODE OR ANY OTHER LAW. THIS CONVEYANCE IS MADE WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND NO COVENANT OR WARRANTY SHALL BE IMPLIED FROM THE USE OF ANY WORD OR WORDS CONTAINED HEREIN, INCLUDING WITHOUT LIMITATION, ANY WARRANTY THAT MIGHT ARISE BY COMMON LAW, STATUTE, OR THE WARRANTIES IN MINNESOTA PROPERTY LAW (AS AMENDED FROM TIME TO TIME); PROVIDED HOWEVER, THAT GRANTOR SPECIFICALLY WARRANTS THAT THERE ARE NO LESSOR LIENS ENCUMBERING THE PROPERTY.

TO HAVE AND TO HOLD the Property unto Grantee, its heirs, executors, legal representatives, successors and assigns, forever without warranty of title of any kind (whether statutory, express or implied), except as specifically provided herein.

As of the recordation of this Quitclaim Deed, Quitclaim Bill of Sale and Termination of Lease, Grantor, as lessor, and Grantee, as lessee, do also hereby terminate that certain unrecorded Lease dated as of October 22, 1999, between Grantee, as Lessee and Mortgagor, and Grantor, as Agent Lessor and Mortgagee, as evidenced by the Memorandum of Lease, Mortgage and Security Agreement dated as of October 22, 1999, filed with the Office of the Registrar of Titles, Hennepin County, Minnesota on October 28, 1999, as Document No. 3219722, as amended by the Amendment to Memorandum of Lease, Mortgage and Security Agreement dated as of October 26, 2001, filed with the Office of the Registrar of Titles, Hennepin County, Minnesota, on November 1, 2001, as Document No. 3454005, and the Second Amendment to Memorandum of Lease, Mortgage and Security Agreement dated as of October 29, 2002, filed with the Office of the Registrar of Titles, Hennepin County, Minnesota, on December 6, 2003, as Document No. 3642097. This instrument may be executed separately in counterparts which, when taken together, shall constitute one and the same instrument.

***[SIGNATURE PAGE IMMEDIATELY FOLLOWS]***



LEASE PLAN NORTH AMERICA, INC., not in its individual capacity except as expressly stated herein but solely as Agent Lessor

By /s/ Blake J. Lacher

Its Vice President

STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Blake J. Lacher, the Vice President of LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, on behalf of the corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor.

/s/ Renee M. Field
Notary Public

LEASE PLAN NORTH AMERICA, INC., not in its individual capacity except as expressly stated herein but solely as Agent Lessor

By /s/ Elizabeth R. McClellan

Its Vice President

STATE OF Illinois )
) ss.
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 15th day of July, 2003, by Elizabeth R. McClellan, the Vice President of LEASE PLAN NORTH AMERICA, INC., an Illinois corporation, on behalf of the corporation, not in its individual capacity except as expressly stated herein but solely as Agent Lessor.

/s/ Renee M. Field
Notary Public



The undersigned joins in this Quitclaim Deed, Quitclaim Bill of Sale and Termination of Lease for the sole purpose of agreeing to the final paragraph hereof.

ADC TELECOMMUNICATIONS, INC.

By: /s/ Gokul V. Hemmady

Its: Vice President, Controller & Treasurer

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 15th day of June, 2003, by Gokul V. Hemmady, the Vice President, Controller and Treasurer of ADC TELECOMMUNICATIONS, INC., a Minnesota corporation, on behalf of the corporation.

/s/ Carrie A. Neiburg
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Dorsey & Whitney LLP (JLTIII)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

The total consideration for this Quitclaim Deed, Quitclaim Bill of Sale and Termination of Lease is less than $500.

**Exhibit 31-a**

**Certification of Principal Executive Officer Required by Exchange Act Rule 13a-14(a)**

**CERTIFICATIONS**

I, Robert E. Switz, the Chief Executive Officer of ADC Telecommunications, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of ADC Telecommunications, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

4. The registrant' s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

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

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

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

5. The registrant' s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant' s auditors and the audit committee of the registrant' s board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant' s ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant' s internal control over financial reporting.

Date: September 12, 2003

/s/ Robert E. Switz

Robert E. Switz

Chief Executive Officer

**Exhibit 31-b**

**Certification of Principal Financial Officer Required by Exchange Act Rule 13a-14(a)**

I, Gokul V. Hemmady, the Chief Financial Officer of ADC Telecommunications, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of ADC Telecommunications, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

4. The registrant' s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

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

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

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

5. The registrant' s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant' s auditors and the audit committee of the registrant' s board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which adversely affect the registrant' s ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant' s internal control over financial reporting.

Date: September 12, 2003

/s/ Gokul V. Hemmady

Gokul V. Hemmady

Chief Financial Officer

**Exhibit 32**

**Certifications Furnished Pursuant to 18 U.S.C. 1350,**
**as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Robert E. Switz and Gokul V. Hemmady, the Chief Executive Officer and Chief Financial Officer, respectively, of ADC Telecommunications, Inc., hereby certify that:

1. The quarterly report on form 10-Q of ADC Telecommunications, Inc. for the period ended July 31, 2003, as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of sections 13(a) and 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the above-mentioned report fairly presents, in all material respects, the financial condition and results of operations of ADC Telecommunications, Inc.

/s/ Robert E. Switz
Robert E. Switz
September 12, 2003

/s/ Gokul V. Hemmady
Gokul V. Hemmady
September 12, 2003